



Royal Commission
into Family Violence

Volume IV

Report and recommendations

March 2016

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19 The role of the health system

Introduction

This chapter explores the role of the health system in identifying and responding to family violence. Many people told the Commission that health professionals such as general practitioners; antenatal, maternal and child health nurses; as well as specialist health services, such as mental health and drug and alcohol services, are in a unique position to identify family violence and to intervene early.

Research suggests that women who experience family violence use health services more often than others, and that family violence and intimate partner violence is linked to poor physical and mental health outcomes for victims. Not all victims of family violence are able to, or choose to seek assistance from a specialist family violence service. Many will disclose violence or sexual assault to a trusted health professional in the context of seeking care for themselves or their children. Therefore, it is critical that health workers are able to respond and help victims to obtain the services they need.

This chapter begins with a discussion about the capacity of the health system to undertake effective identification and ‘screening’—the process that seeks to identify people who may be victims of violence or abuse—and how this differs from risk assessment processes. It also describes some of the screening tools used within the health sector.

The chapter then explores current health responses to family violence. The Commission heard particularly about the work of hospitals, general practitioners, maternal and child health nurses, drug and alcohol workers, mental health professionals, Aboriginal health services and community health centres. Women’s health services were acknowledged by many as having played a substantial role in family violence reform in Victoria, both in relation to primary prevention and response. Opportunities for a range of health professionals to strengthen and extend responses to family violence were identified; including dentists, ambulance workers and pharmacists.

The Commission heard that while there are pockets of good practice and innovation in identifying and responding to family violence within parts of the health service system; there is a lack of cohesion and consistency as a whole. A common theme in evidence before the Commission was the need for health services to be better coordinated in order to guarantee a standard of response to all victims of family violence, wherever they access the health system.

This chapter describes some common impediments to health practitioners being proactive in addressing family violence. These included a lack of time or resources to identify and respond to family violence and inadequate referral options. The absence of a safe and private space for consultation can also impede patients’ disclosures. At a system-level, the Commission heard of fragmentation between service providers, which is compromising effective referral pathways and coordinated responses.

The Commission also heard of the importance of workforce training and development to assist health workers to identify and respond to family violence with confidence. The Commission makes a range of recommendations designed to strengthen the health system’s ability to detect and act on family violence disclosures from patients. This includes increasing training and development of the workforce, improved screening and risk assessment processes and developing initiatives to facilitate a more joined-up approach to ensure victims of family violence are able to receive the help they need, regardless of where they enter the health system. Leadership, at policy, government and clinical practice levels, is considered essential to promote awareness and change.

The effects of family violence on the physical and mental health of women, children and other victims are discussed in more detail in Chapters 2, 10 and 20.

Note that the Commission uses the term 'mental illness' in this report because it is commonly used in the community; it recognises that some people prefer the term 'mental health disability' or 'mental ill-health'. The Commission recognises, too, that other terms, such as 'psychosocial disability', might be preferred by people with disabilities.

Context and current practice

Health professionals have a powerful role in responding to family violence.

An empathic response from a trusted doctor, nurse, midwife or other care provider that emphasises the perpetrator's responsibility, reinforces a woman's entitlement to a healthy relationship, encourages her to believe that a better life is possible, offers a range of options and respects her decisions is an important step in breaking down the sense of isolation that leaves women and children vulnerable to serious harm. These interventions have the potential to be empowering, may contribute to enhanced health outcomes and are potentially lifesaving.¹

The Commission heard the importance of health practitioners developing an understanding of the experience of family violence victims. The quality of response a victim receives from a health service is likely to significantly influence how she manages risk and her pathways out of violence. The Salvation Army stated in its submission: 'It takes a lot of courage to disclose family violence and a poor response can reinforce the belief that no one will believe her if she says anything or that there is no help available.'² According to World Health Organization guidelines, an effective response from health practitioners requires them to understand the dynamics of family violence and how it affects victims.

The critical role that the health system and health care providers can play in terms of identification, assessment, treatment, crisis intervention, documentation, referral and follow up, is poorly understood or accepted within the national health programmes and policies of various countries.³

In some cases, a woman's engagement with health services is not in direct response to the family violence she is experiencing, but rather in relation to the effects of the violence: '[I] called Lifeline after feeling suicidal after 13 years of abuse, I was taken to hospital and introduced to a social worker there.'⁴

The Commission also heard that family violence has serious and detrimental effects on victims' health and wellbeing. Women experiencing family violence use health and medical services more frequently than others because of increased rates of physical health issues that result from the violence.⁵ A 2004 report from VicHealth, the Victorian Health Promotion Foundation, found that women also present to health practitioners with a range of other health problems, including stress, anxiety, depression, panic disorders, suicidal behaviour, poor self-esteem, and post-traumatic stress disorders.⁶ Research shows that women who have experienced intimate partner violence are almost twice as likely to experience depression and to abuse alcohol.⁷

The evidence shows that barriers to victims of family violence who are seeking assistance and help are substantial. Victims can become isolated from social supports, as a consequence of a perpetrator's pattern of controlling behaviour, and are often overwhelmed by the financial, housing, social and other ramifications of having to separate from the perpetrator. Living in regional and rural environments can create additional barriers, through increased isolation, and influences the pattern of how women seek help.⁸

Impact of intimate partner violence on the burden of disease

A forthcoming State of Knowledge paper from ANROWS (Australia's National Research Organisation for Women's Safety), reviews the findings from literature that investigates the causal evidence on the health outcomes for women who experience intimate partner violence. A second paper in the same series, due later in 2016, will detail the estimated disease burden attributable to intimate partner violence.⁹

Intimate partner violence has been included as a risk factor in previous global and Australian burden of disease analysis, with the first estimate developed by VicHealth, in 2004.¹⁰ This analysis found that intimate partner violence was responsible for more preventable ill-health and premature death in Victorian women under the age of 45 than any other of the well-known risk factors, including high blood pressure, obesity and smoking.¹¹

Findings from the forthcoming ANROWS 2016 review, consistent with those found in previous Australian and international burden of disease studies, indicate that there is strong evidence of increased risk due to exposure to intimate partner violence for depression, termination of pregnancy (including miscarriage) and homicide. There is also evidence of possible increased risk for anxiety, premature birth and low birthweight, cardiovascular conditions and self-harm.

The paper also comments on the limitations of current data about the prevalence of violence experienced by Aboriginal and Torres Strait Islander women. It also highlights the need for further research in the health outcomes from intimate partner violence for women with disabilities, as well as refugee and migrant women.¹²

The paper confirms current knowledge about the serious and significant impacts of intimate partner violence on women's (and children's) health and wellbeing.¹³ It reinforces the importance of primary prevention efforts, and will provide a resource for policy and program development and service planning. In addition, the 2004 VicHealth report highlighted that:

- ▷ intimate partner violence warrants attention alongside that of other well established diseases and risk factors, such as high blood pressure, cholesterol and obesity
- ▷ given that intimate partner violence is implicated in the burden associated with other major public health problems (such as mental health, alcohol and substance abuse), substantial health gains could be made in these areas by attending to the incidence of violence.¹⁴

Identification and screening for family violence

Screening to identify whether a person may be a victim of family violence is the first step to triggering a supportive response.¹⁵ One process that aims to promote identification of family violence is screening. The Australian Institute of Health and Welfare has defined screening as a process by which an organisation or professional attempts to identify victims of violence or abuse in order to offer interventions that can lead to beneficial outcomes.¹⁶

Generally, when screening for family violence, a patient is asked a series of questions that seek to determine if they are experiencing, or are at risk of family violence.¹⁷

Screening can be:

- ▷ universal or routine—where all people attending a service are asked a standard set of questions, regardless of whether there is a suspicion of violence.
- ▷ targeted—where people are asked questions to determine whether they have been exposed to violence, or are at risk of it, based on a professional's judgement that indicators of family violence are present.¹⁸

Screening is different from a 'risk assessment', which involves identifying the presence of risk factors and determining the likelihood, consequence and timing of a violent event.¹⁹ We discuss risk assessment in Chapter 6.

Definition of terms

Universal services

Health services are universal, in the sense that they are available to all. These include the hospitals and the broader health system, general practitioners, schools, and early years' services.

Universal platforms are the sort of services that every child and every family has access to. Australia and Victoria are lucky that we have an accessible high quality system. So we are talking about maternal and child health nurses, child care, preschools, schools, GPs. These are non-stigmatising universal platforms that everybody has access to. Nobody, theoretically, is barred from access to any of these services by virtue of money or any other reason. That's what I mean by universal services.²⁰

Screening

Screening is the first point in the intake process where a history of family violence, or the risk of it, may be detected.

Risk assessment

Risk assessment is the process of identifying the presence of a risk factor and determining the likelihood of an adverse event, its consequence and its timing.²¹ In family violence, risk and safety for the victim is determined by considering the range of factors that affect the likelihood and severity of future violence. If a woman screens positively for family violence, the screening assessment is used to identify resources and referrals most appropriate to her circumstances. It is an essential pre-requisite to comprehensive risk assessment.

The Commission was told that the current practice for health services in Victoria is targeted screening for family violence, except in antenatal care and child and family health services, where routine screening is recommended.²² The Department of Health and Human Services' *Postnatal Care Guidelines for Victorian Health Services* state that health services should undertake a comprehensive assessment of factors that may impact on the health and wellbeing of women and their families, and that this assessment should be initiated during the antenatal care period.²³ These guidelines also state that health services must establish and maintain effective linkages with other services and must ensure Maternal and Child Health Services (MCH) are appropriately notified of women who are vulnerable or disadvantaged or who have high needs.²⁴

Communication between a woman and health and other professionals is supported by the Victorian Maternity Record, which is designed to provide pregnant women with a uniform printed record of their pregnancy care and progress.²⁵ Victorian policy states that it is aligned with the *National Evidence-Based Antenatal Care Guidelines* developed by the Commonwealth Government.²⁶

Victoria has had the Family Violence Risk Assessment and Risk Management Framework (also known as the Common Risk Assessment Framework, or CRAF) in place since 2007.²⁷ The CRAF provides guidance on identifying family violence for both family violence and non-family violence practitioners (such as health sector practitioners). The CRAF is discussed in detail in Chapter 6. The CRAF does not advocate universal screening, and is instead focused on the provision of training, tools and organisational support to build understanding of family violence and risk indicators.²⁸

In addition, the protocol *Continuity of Care: A communication protocol for Victorian public maternity services and the Maternal and Child Health Service* (2004) is currently being updated jointly by DHHS and the Department of Education and Training. A draft was released for public consideration in June 2015 with a view to finalising the protocol in 2015–16.²⁹

Debate on the merits of universal screening

Research considered by the Commission shows that there has been significant debate about the value of asking all women who are consulting health care providers about intimate partner violence. In general, studies have shown that universal screening of all women regarding partner violence increases the identification of family violence, but does not show a reduction in violence, nor any notable benefit to women's health.³⁰ Based on these findings, the World Health Organization (WHO) Clinical Guidelines for responding to intimate partner violence recommends that routine screening in health care encounters should not be implemented,³¹ although it may be appropriate in particular circumstances.

However, the WHO Guidelines also highlight that in particular health care settings (such as antenatal care, HIV testing and mental health settings), routine enquiry could be considered given the established risk factors relating to family violence, and the greater opportunities for follow-up.³² The UK National Institute for Health and Care Excellence also recommends routine screening of adults in postnatal and reproductive health settings and in children's services.³³

New South Wales requires routine screening for family violence to be undertaken in the four target programs of antenatal, early childhood health, mental health, and alcohol and other drugs services. The *Policy and Procedures for Identifying and Responding to Domestic Violence* (NSW Health) has been in place since 2003.³⁴ Of the 15,078 women screened across all programs between 1 and 30 November 2011, 6.1 per cent ($n=924$) were identified as having experienced family violence in the previous 12 months.³⁵

In its recent report on screening for family violence during pregnancy the Australian Institute of Health and Welfare states that screening has minimal adverse effects on victims of family violence, and that:

Even if women choose not to accept help, the delivery of screening questions by trained workers can break the silence, reduce isolation, increase the sense of support and send a message that the abuse is wrong, that it can adversely affect a woman's health and that something can be done.³⁶

The report notes that screening can also benefit workplace development by increasing awareness of and responsiveness to family violence within the workforce conducting the screening.³⁷

The New Zealand Ministry of Health's *Family Violence Intervention Guidelines on Child and Partner Abuse* recommend routine screening for all females aged 16 years and over.³⁸ Where there are child protection concerns identified, the female caregiver is also asked about intimate partner violence.³⁹ Most states in the United States have routine screening in emergency departments.⁴⁰ The US Department of Health and Human Services and the American College of Obstetricians and Gynaecologists recommend routine screening for all pregnant women at the first prenatal visit, at least once per trimester, and at the post-partum check-up.⁴¹

Screening tools and guidance

The Victorian Government currently has a screening tool within the primary health sector that includes family violence questions. The Service Coordination Tool Templates (SCTT) 2012 include a single page screener for health and social needs that asks 'Have you felt afraid of someone who hurts you or controls you?'⁴² The service provider is then sent to a safety module that has further questions including about children experiencing the parental abuse and whether the person has made a safety plan. The SCTT tool is discussed further below.

In 2009 the Commonwealth Government funded the development of the *Common Approach to Assessment, Referral and Support by the Australian Research Alliance for Children and Youth*.⁴³ The CAARS approach, also known as 'The Common Approach' was developed for use in multiple frontline settings, including health, to identify the needs of vulnerable families. The resource kit includes questions about safety and abuse, and professional guidance on conversation prompts for children, youth and parents. Professor Kelsey Hegarty, a general practitioner and Professor of General Practice at the University of Melbourne who currently leads an 'Abuse and violence in primary care' research program, noted in her evidence to the Commission, that the kit was evaluated positively across several health sites, which found that it can be used flexibly by practitioners.⁴⁴ She noted, however, that further implementation requires practitioner coaching to use the tools.

Victorian health service responses to family violence

The following section discusses evidence, submissions and research the Commission considered about responses to family violence across many services in the Victorian health sector, including responses by general practitioners, hospitals, mental health and drug and alcohol services, ambulance services, women's health services and Aboriginal community controlled health services. Other health services and sector partnerships are discussed at the end of this section.

General practitioners

Research suggests that women experiencing family violence use health services more often because of the emotional and physical health impacts of violence. A study undertaken in Queensland estimated that up to five women per week experiencing family violence attend a general medical practice.⁴⁵ The Salvation Army submitted that when women seeking its services were asked if they had ever spoken about family violence with a mainstream service provider, their most common response was that they had approached their GP.⁴⁶

... general practice is a setting where persons experiencing physical and mental health treatment for injuries and illnesses resulting from family violence and where disclosures about exposure to family violence are frequently made. These and other health services serve as an important pathway for referral to specialist family violence support services. It is vital that general practitioners are equipped to identify symptoms of family violence, assess risk, and provide advice about referrals to specialist services and in what circumstances legal intervention is required ...⁴⁷

As well as treating the physical and emotional injuries of family violence, GPs can support women to understand and identify what they are experiencing as family violence. General practitioners can also act as an important referral point into other support services.

Australian research shows that approximately one-third of abused women disclose abuse to their general practitioner and at least 80 per cent of women experiencing abuse seek help at some point from health services, usually general practice.⁴⁸ However only one in 10 abused women is directly asked about family violence by their GP.⁴⁹

The Commission heard from a number of women about the significant role GPs can play in responding to violence:

For the first time I told someone else - a wonderful female doctor. She used the right words to snap me out of all those years of denial when she said about the compressed fracture of my left cheekbone - this is criminal violence, if a stranger did this to you, you would tell the police and have them charged.⁵⁰

The Commission also heard that women can receive a less than satisfactory response when they disclose violence to their GP, including not being believed or having the violence minimised:

The first time I saw my doctor about the abuse I was concerned my skull had been fractured after being repeatedly punched in the head, I told my doctor what had happened, that my head felt flat in the area where I had been punched, and I experienced headaches consistently for weeks afterwards. The doctor I saw dismissed my concerns, told me skulls were hard to break, I could get an MRI if I really wanted to though. I was not given any advice or support regarding the abuse, I felt belittled and dismissed. This was approximately 3 months before my former husband attempted to stab me.⁵¹

Why don't the doctors pick up the signs? They never have the guts to go above and beyond and report. They have to, but they don't. Dentists and doctors should be the first port of call. People need to know how to respond. You need to prompt a woman – we need to educate the GPs, the nurses, the dentists. Teachers would always report so what makes it different.⁵²

Organisational stakeholders also identified challenges in engaging with GPs around family violence. One organisation informed the Commission that a client who disclosed family violence to their GP was told to 'go home, see what happens, and come back in a month if there is still a problem'.⁵³ In its submission, Victorian Primary Care Partnerships stated that 'GPs are often unaware of the broader service system and are ill equipped to assess family violence risks'.⁵⁴

Programs and initiatives to assist GPs to recognise and respond to family violence

The role played by health care professionals (particularly GPs) in responding to family violence is a matter that has arisen in investigations into numerous family violence homicides.⁵⁵

The 2012 coronial inquest into the death of 27-year-old woman, Ms Lynette Phillips, considered the issues that arise for a GP treating two patients who are in a relationship, once family violence has been disclosed. In this case, a representative from the Royal Australian College of General Practitioners (RACGP) expressed the view that it is possible for general practitioners to continue to treat patients in problematic relationships noting that patient safety needed to be made a priority.⁵⁶ Former State Coroner, Judge Jennifer Coate, found that practitioners require more than training and awareness-raising and recommended access to an on-call service to provide information and advice to primary healthcare providers, including 'guidance on risk and vulnerability indicators, safety planning, and referral pathways to local services'.⁵⁷

The then Secretary to the Department of Health responded to this recommendation by advising the Coroner of the availability of the national 'on-call' service, 1800RESPECT.⁵⁸

The 2015 coronial inquest into the death of four-year-old girl, Darcey Iris Freeman, also examined circumstances in which relevant information had been disclosed to at least two GPs. While this information did not disclose family violence concerning the child specifically, it did identify her mother's fear and concern for her children's welfare. Former State Coroner, Judge Ian Gray, did not make any adverse findings against the treating GPs but again recognised the opportunity for improvements in training and education of GPs. Judge Gray stated:

General Practitioners ... are at the front line and have a role in identification, responding to and follow-up support of patients and their children experiencing family violence. They can contribute to prevention.⁵⁹

Judge Gray also noted resistance from the RACGP to mandating family violence training for GPs but ultimately recommended that the RACGP consider the introduction of such compulsory training. In its response to this recommendation in January 2016, the RACGP made reference to a Commonwealth Government announcement in September 2015 that it had allocated funding for the development of specialised training across Australia to be delivered by the RACGP. It also noted that it had advocated for the introduction of Medicare patient rebates to support a national approach to healthcare delivery for women and children experiencing family violence. It did not otherwise engage with the recommendation to mandate family violence training for GPs.⁶⁰

A number of research projects have been conducted to support improved responses by GPs to family violence, including the Weave Project and the Pearl Project, both led by the University of Melbourne. The Weave Project has informed considerations about the nature of required training for GPs, and the critical factors that impact on patients' disclosure of family violence, for example, a woman's age, education, CALD (culturally and linguistically diverse) status, level of fear of her partner, and the GP's gender.⁶¹ The project's findings reflect other research that suggests that change in professional practice takes a significant period of time, and that training for health practitioners on this issue should commence during undergraduate education and continue throughout accreditation and continuing education.⁶²

Health practitioner training and professional development is discussed further below. The Pearl Project is also discussed later in the chapter.

The weave project

In 2008–09, Professor Hegarty and a team of researchers at the University of Melbourne initiated a long-term project, aimed at determining if a multi-faceted intervention involving screening for intimate partner abuse, training for GPs, and minimal practice change, resulted in increased safety, quality of life and mental health for women who experienced family violence.⁶³ The study involved 272 women attending 55 GPs. Half the GPs were trained to provide supportive counselling, and the other half received a basic resource kit only.

The project showed that after training, the knowledge, skills and attitudes of GPs relevant to family violence improved. Women at risk of or experiencing family violence reported that GPs who had undertaken the training inquired more about their safety and the safety of their children. These women also reported that their symptoms of depression had lessened as a consequence.

The project found that the most important aspects of a GP's response to family violence are spending time with patients so that trust can be built in the patient-doctor relationship, and involving women in decisions about their care.

Following the Weave Project, the University of Melbourne is testing an interactive web-based health relationship tool and safety decision aid called I-DECIDE.⁶⁴ The tool is for women who are not able to seek help or disclose violence to their health practitioner. It will be tested through a randomised controlled trial to determine if it is accessible and useful.⁶⁵

The Commission also heard about a number of other guidelines and toolkits that have been developed specifically for GPs to assist them in identifying and responding to family violence. These tools reflect recommendations from the Coroner to better resource GPs, and to consider the introduction of compulsory training.⁶⁶

The RACGP sets the curriculum for Australian General Practice. It has developed a six-hour online Active Learning Module to assist GPs in engaging with patients about family violence,⁶⁷ last updated in 2014. The RACGP publication *Abuse and Violence: Working with our patients in general practice* (the White Book) is now in its fourth edition and is available online. The manual provides guidance on appropriate identification and response in clinical practice to patients experiencing abuse and violence. It focuses on intimate partner and sexual violence, and children experiencing abuse.⁶⁸

The Active Learning Module is not mandatory for general practitioners.⁶⁹ Professor Hegarty highlighted the opportunity to link to the mandatory requirement for child safeguarding:

We need AHPRA [Australian Health Practitioner Regulation Agency] to step up and say that we need child safeguarding. I just don't see how we are going to get it otherwise. It is in the curriculum for training of GPs. I'm less aware about the nurses. But until we get it at a level that is as obvious as diabetes and mental health and asthma – and I think the only way to do that is to try to get it as mandatory to safeguard our children.⁷⁰

In May 2015, the Australian Medical Association (AMA) released a new resource—*Supporting Patients Experiencing Family Violence: A Resource for Medical Practitioners*. Developed in conjunction with the Law Council of Australia, the resource provides information about family violence and referral options.⁷¹

The Commission also heard that to actively promote the CRAF to general practitioners, DHHS had provided funding to Networking Health Victoria⁷² to amend their family violence training in line with the CRAF.⁷³

The Commission also heard suggestions for increasing the capacity of GPs in providing access to women experiencing family violence to counselling sessions available through Medicare (up to 10). Proposals included the Commonwealth Government developing Medicare 'special item numbers' for women and children experiencing family violence, with access to these numbers being available to GPs.⁷⁴ Medicare special item numbers are discussed further in Chapter 20.

Hospitals

Women access hospitals during stages of their lives that are high-risk periods for family violence. This includes during pregnancy and birth or for treatment for injuries arising from family violence incidents and sexual assaults. A strong theme in the evidence before the Commission was the important role that hospitals can play in responding to victims of family violence:

She might not be ready that day, but she needs to know that the hospital is a safe place to disclose family violence and that we are a 24-hour a day service and that she can come back at any time.⁷⁵

A number of submissions to the Commission highlighted the likely under-identification of family violence in hospitals as an area of concern.⁷⁶ DHHS also gave evidence that there is likely to be significant under-reporting,⁷⁷ which may arise due to a patient's shame, or fear of repercussion from the perpetrator.⁷⁸ The Royal Women's Hospital submitted that inpatient, outpatient and emergency data systems in Victorian hospitals are not currently required to capture and report on family violence disclosures, nor to track outcomes for victims of family violence.⁷⁹

The Commission understands that when people are treated for injuries in Victorian hospitals, data about those injuries is recorded in the Victorian Emergency Minimum Dataset (VEMD)⁸⁰ and the Victorian Admitted Episodes Dataset (VAED).⁸¹ Those data sets are held by the Victorian Injury Surveillance Unit (VISU).⁸² Ms Frances Diver, Deputy Secretary, Health Service Performance and Programs Division, DHHS, told the Commission that there is an opportunity to record disclosures of family violence by a patient to a hospital in these data sets.⁸³

Ms Diver explained that the VEMD has a field to be completed by emergency department clinicians (nurses and doctors) in relation to the cause of a patient's injury, which includes 'human intent'.⁸⁴ She described that there are 'subsets within those fields that relate to family violence'⁸⁵ including, for example 'sexual or other forms of assault, and neglect or maltreatment of a child or adult'.⁸⁶

- ▷ Since July 2009, the number of patients presenting to emergency departments whose injuries were recorded as either 'Child neglect, maltreatment by parent, guardian' or 'Maltreatment, assault by domestic partner' fluctuated between 629 (in 2011–12) and 485 (in 2013–14).
- ▷ In 2013–14, two thirds ($n=323$) of these patients were female and one third ($n=162$) were male.
- ▷ About 50 per cent ($n=82$) of the male patients and 60 per cent ($n=196$) of the female patients were aged 20 to 44.⁸⁷

As discussed, these figures are likely to be affected by under-reporting and under-recording.

In relation to admission to hospital (as compared with presentation to emergency departments), Ms Diver's evidence was that the VAED also has fields that cover external causes in which family violence can be recorded.⁸⁸

In 2015, the VISU undertook a study of data through the VEMD and VAED over a five year period (2009 to 2014).⁸⁹ It found that:

- ▷ 3794 women aged 15 years and over attended Victorian hospitals with intimate partner violence-related assault injuries, the most common to the head, face and neck.
- ▷ At least 13 per cent of women aged 15 to 44 years admitted to hospital for intimate partner violence-related assault injury were pregnant at the time, with the pattern of injuries markedly different.
- ▷ For half of the women who were pregnant, the most common body region injured was the abdomen, pelvis and lower back, compared to 15 per cent of those women not pregnant.⁹⁰

The report emphasises that these figures are conservative due to the under-reporting of intimate partner violence-related assault injury cases on hospital data sets, and discusses the current limitations on both the recording of the detail of these injuries and the need for improved VEMD and VAED data quality.⁹¹ It recommended that:

The DHHS should set data quality and completeness benchmarks for the injury surveillance items on the VEMD as over one-third of the 39 public hospitals contributing data to the VEMD, including some of our major hospitals, are contributing low quality injury surveillance data.⁹²

It also recommended that hospital emergency department clinicians should be trained and supported to use the relevant codes when they assess that partner violence is the most likely human intent in the occurrence of the injury.⁹³ In addition, the report noted that 'medical professionals utilise a great deal of caution when allocating the reason for injury unless clearly stated or admitted by the patient'.⁹⁴ The attitudes of the emergency department and hospital managers were noted by the report as key influences on the quality of the VEMD injury surveillance data.⁹⁵ DHHS also noted that the VEMD is not routinely analysed by the department.⁹⁶

DHHS told the Commission that hospital data collection was complicated by the fact that each hospital has its own data-collection system, and determines the most relevant data that meets their determined requirements. In addition, hospitals report through a minimum data-set that is determined by DHHS.⁹⁷

The Commission notes that under the *Strengthening Hospital Responses to Family Violence* initiative (described below), DHHS has funded work to map current data-collection processes and to report on options for developing a 'consistent, efficient and reliable system and process for data capture, retrieval and reporting'.⁹⁸ The Royal Women's Hospital, under an agreement with DHHS, will explore the transferability of data-management systems, protocols, tools and resources developed as part of this initiative, with a view to supporting its uptake across Victorian hospitals.⁹⁹

Supporting hospital practitioners to better recognise and respond to family violence

The Commission heard that there are at least four conditions that support health professionals in hospital settings to identify and respond to family violence (beyond treating injuries): institutional support, effective screening protocols, initial and ongoing training, and immediate access to onsite and offsite support services.¹⁰⁰

DHHS is responsible for setting priorities and informing protocols for Victorian hospitals, and is therefore a key resource for facilitating these conditions.¹⁰¹ DHHS policies in relation to responding to family violence are considered below. Ms Diver told the Commission about some of the challenges in ensuring that DHHS and hospitals work together to ensure that the conditions outlined above are met:

It's about what is the package [DHHS requirements], and to then make sure that hospitals don't have to re-invent the wheel every time they go to do it but that there are resources that are available to support them about this is what the protocol could look like, this is what the screening tool could look like, this is what the medical records notes could look like, this is how they organise their social work resources, this is how they do their service mapping with their kind of specialist family violence services. Then services will take that and adapt it slightly differently. So it is allowing services to adapt it to their local environment. If you allow the flexibility of services to adapt it to their local environment, they are more likely to take ownership of it, and actually embed it, own it, live it and actually implement it, rather than it being a circular from the department.¹⁰²

The Commission understands that the *Guidelines for the Victorian Emergency Department Care Coordination Program* (2009) require health services to use risk assessment and risk management frameworks developed or endorsed by the DHHS for initial assessment/screening and comprehensive needs assessment of individuals presenting to the emergency department.¹⁰³ Guidance on the role of acute health services in working with and referring to family violence and sexual assault services is included, and guidelines refer to the CRAF.¹⁰⁴ They include an example of an interagency protocol on family violence, developed by the Werribee Mercy Hospital with the local police family violence unit.¹⁰⁵

The Commission also heard about a number of projects currently under way to support responses to family violence in hospital settings. These are described further below.

Strengthening Hospital Responses to Family Violence Project

The Royal Women's Hospital and Bendigo Health are currently part of a project to improve hospital responses for women experiencing family violence. The project involves developing, implementing and evaluating training programs, and response protocols and resources.¹⁰⁶ By mid-2015, the project team had developed and trialed:

- ▷ policies, procedures and guidelines for clinical teams to identify and document experiences of family violence and any referrals made
- ▷ two modules of clinical training aimed at improving the ability of staff to identify and respond to family violence
- ▷ a systematic data capture strategy.¹⁰⁷

The evaluation of the project found that the project team has also strengthened the relationships between each hospital and key family violence services, and delivered clinical training to staff.¹⁰⁸ Feedback on the training to date has been positive.¹⁰⁹

The evaluation noted that ongoing support and resourcing is required to establish leading practice in Victorian hospitals.¹¹⁰ Recommendations included:

- ▷ All hospital staff should have access to regular training that builds comfort and competency in the identification and assessment of and response to violence against women and family violence.¹¹¹
- ▷ Referral pathways should be strengthened to ensure that hospitals have adequate support services, including internal and external referral pathways to social workers (including 24-hour options).¹¹²
- ▷ Partnerships should be strengthened between the community and health sectors through information sharing, co-location and an interdisciplinary approach.¹¹³
- ▷ The Victorian Government should further investigate and resource the development of a minimum reporting data set for hospitals targeted towards the identification and response to family violence.¹¹⁴
- ▷ Family violence training should be enhanced at undergraduate levels and through the Australian Health Practitioner Regulation Agency's accreditation of courses and curriculum.¹¹⁵

The project will culminate in a 'how-to' guide for hospitals that wish to strengthen their responses to family violence—*An Emerging Model to Strengthen Hospital Responses to Family Violence*.¹¹⁶ It will contain the key principles and elements of the project and include transferrable resources and templates.¹¹⁷

The Victorian Government's initial investment in the project was \$550,000.¹¹⁸ Ms Diver informed the Commission that the government is now planning for the next phase, which is likely to include distribution of the project kit to Victorian hospitals, as well as support mechanisms for local uptake and adaptation of the project kit in other Victorian hospitals.¹¹⁹ The Commission heard that this will be supported through a further \$250,000 investment in 2015–16.¹²⁰

St Vincent's Hospital—Elder Abuse Prevention and Response Initiative

St Vincent's Health Australia told the Commission about its new hospital-wide policy, model of care and education framework to respond to elder abuse.¹²¹ The model has the following key features:

- ▷ High-level governance arrangements—a senior Vulnerable Older People Coordination and Response Group review all data relating to suspected cases, and also advise on policy and continuous improvement.
- ▷ A model of care which supports staff to identify pathways for intervention and escalation based on risk, patient choice and safety planning.
- ▷ Data collection and notification—all cases of confirmed, witnessed or suspected elder abuse are notified to the Coordination and Response Group. The data informs process improvement, workforce training, performance measurement and service improvement.
- ▷ Tiered education—the framework is underpinned by three tiers of competency training to address the different roles and responsibilities of hospital staff.¹²²

The Commission heard that this model has already delivered significant practice improvements and that DHHS is in early negotiations with St Vincent's Health to explore the potential transferability of its Elder Abuse Prevention and Response Initiative.¹²³ We discuss this issue further in Chapter 27.

Other hospital initiatives

- ▷ The Mercy Hospital implemented an antenatal training initiative to support nurses to identify and respond to family violence. This involved releasing nurses during overlaps of shifts to attend family violence training.¹²⁴ Training was complemented by peer support in small groups where nurses can meet and discuss cases on an ongoing basis.¹²⁵
- ▷ Echuca Regional Health described the Enhanced Maternity Care Program established at Echuca Hospital in September 2011. The project aims to identify socially and/or medically at-risk pregnancies with the purpose of acting early to promote better outcomes for mothers, babies and families.¹²⁶ The program supports women in accessing internal and external services during the antenatal, intrapartum and postnatal periods.¹²⁷ The program is coordinated by an Integrated Family Services Worker and a midwife, to optimise engagement opportunities with pregnant women.¹²⁸

Coordinated responses to sexual assault in Victorian hospitals

Since the mid-1980s, Victorian hospitals have provided crisis care to victims of sexual assault through the Centres Against Sexual Assault (CASAs). The 'crisis care model' involves emergency hospital staff, police, forensic medical care, and sexual assault counsellors and advocates.

Many of the foundational principles of the 'crisis care unit' have been included in the design of the co-located Sexual Assault Multi-disciplinary Centres (MDCs), which are multi-disciplinary teams that include police, sexual assault counsellors, child protection workers and forensic doctors. These currently operate in Geelong, Bendigo, Dandenong, Mildura, Morwell and Seaford and provide services to victims of sexual assault and child abuse. MDCs were identified as an existing structure to which family violence services could be added or as a hub model that could be replicated for family violence specifically.¹²⁹ More detail about MDCs is provided in Chapters 12, 13 and 15.

Forensic medical examinations of family violence matters

One of the services available to assist sexual assault victims who access MDCs is the Victorian Institute of Forensic Medicine, a statewide forensic medical service. VIFM is a statutory agency whose responsibilities include the provision of expert forensic and medical services. In the context of the response to family violence, VIFM's primary role is assisting police and supporting criminal prosecutions by documenting injuries in a forensic report and presenting this to the court as expert evidence, for example in sexual assault prosecutions.¹³⁰

In Victoria, only a very small number of family violence victims are examined by forensic medical practitioners in the assessment and interpretation of injuries for court.¹³¹ In VIFM's view, this is inadequate and victims of family violence 'should have their injuries properly documented by a forensically trained medical officer, and in the case of serious injuries there should be a medico-legal report written for the purpose of facilitating justice outcomes in court'.¹³²

The submission acknowledged that given the prevalence of family violence, forensic medical examination for all family violence-related injuries would be impractical but recommended that it should be considered mandatory for injuries assessed as serious or as an indication of escalating violence.¹³³

Recommendations in VIFM's submission included the need to:

- ▷ promote the examination of family violence victims in an integrated setting such as at existing MDCs, where forensic medical services, Victoria Police and support agencies are co-located
- ▷ include forensic medical elements in the training of health professionals using the CRAF
- ▷ establish forensic medical clinical practice guidelines for health practitioners whose patients have been subject to family violence.¹³⁴

A recent evaluation of the MDCs noted that there is currently a varied approach to the use of forensic suites within the MDCs, and on the whole they are largely underutilised, or currently not in use.¹³⁵ The report found there were fundamental differences in views from the core agencies in the MDCs (police, sexual assault services) and VIFM about the best way to provide forensic services:

- ▷ core agency members were committed to victims accessing forensic medical examinations at appropriate facilities within the MDC building, and minimising the travel required for victims in accessing such services
- ▷ VIFM expressed concern about the ability of the MDC forensic suite facilities to appropriately respond to the safety, medical and health care needs of victims.¹³⁶

While noting that the delivery of forensic medical services was found to be an area of contention, the evaluation found that provision of forensic medical examinations was an essential service that can be offered to victims of sexual offences.¹³⁷ Some MDCs are also exploring ways of expanding the range of services offered to victims, such as having community health nurses located in the MDC.¹³⁸ DHHS also raised the importance of a community health nurse providing integrated health services to sexual assault victims and noted that Monash Health has been funded by DHHS to employ a statewide nursing coordinator, who will support community health services and provide leadership across MDCs.¹³⁹

Maternal and Child Health Services

Maternal and Child Health services provide a universal primary health service to families with children aged zero to six years, focusing on health promotion, early intervention and parenting support. MCH services and nurses play an important role in supporting families, with MCH nurses often the one consistent source of advice and support for new parents.¹⁴⁰ MCH services are funded through the Victorian Department of Education and Training, and are located within local government. Services are provided by registered nurses who are qualified midwives with postgraduate qualifications in maternal and child health. Contact from a MCH service is mandated by law following the receipt of a birth notification to the local council. Families are also informed of the service through hospitals, midwives, clinics and refugee and asylum seeker clinics.¹⁴¹ The Commission heard from DET that funding for the universal MCH service is made up of the following components: 10 Key Ages and Stages (KAS) consultations, flexible service capacity (such as delivering to first-time parent groups, or outreach to neighbourhood houses), with weightings for a rural location and socio-economic status.¹⁴²

The Commission was advised that the Enhanced MCH service in Victoria provides an additional response to families deemed at risk of experiencing poor outcomes. For example, if a woman is identified at being at increased risk of family violence, she may be referred from the universal MCH service to the Enhanced MCH service.¹⁴³ The Enhanced MCH service is funded for an average of 15 hours of service per family in metropolitan regions, and an average of 17 hours in rural regions. These hours are in addition to the hours of service provided by the universal MCH service.¹⁴⁴

Ms Gill Callister, Secretary, Department of Education and Training, told the Commission that the Victorian Aboriginal Health Service also has ongoing funding to provide targeted MCH services for children (birth to school age) and families from Aboriginal communities.¹⁴⁵

The Maternal and Child Health Line (MCH Line) is also part of the MCH service, and is a 24-hour advice line which provides support, counselling and referrals to families with children from birth to school age.¹⁴⁶

The Commission heard strong support for the role of the MCH service. Professor Frank Oberklaid, Foundation Director, Centre for Community Child Health, Murdoch Children's Research Institute at The Royal Children's Hospital, told the Commission that:

[Maternal and Child Health is] the jewel in the crown of Victoria's system ... When I go overseas and talk about our service system here and say we have a state-wide system of maternal and child health nurses, located in the community, co-funded by central government and local government, free, highly trained nurses, they don't believe that I'm saying that ... So it's a fabulous system. It's evolving with the times, perhaps not as fast as many of us would like, but they make contact with about 98, 99 per cent of all families, all children after birth. There's a legal requirement that the maternal and child health nurse gets notified after the birth of a child. They do a home visit within two or three weeks. Then the parents can take that child on a regular basis to the nurse to weigh, measure, get advice about various health issues.¹⁴⁷

Role of MCH nurses in identifying and responding to family violence

The Commission was told of the valued role of MCH nurses in identifying and responding to family violence:

MCH nurses can play an important role in identifying family violence and provide information and support to mothers and their children. Observations can be made in regard to women, their children, their interaction and the physical environment for signs of unsafe family life related to family violence. These signs include physical injury, emotional state, body language and developmental stages in babies, the ability of the mother to move freely around the home, to access all rooms and house content, whether the mother is free to meet with nurses on their own.¹⁴⁸

The transition to parenthood is a time when women are particularly vulnerable to violence, with family violence often starting or increasing at this time. As MCH services see nearly every Victorian family after the birth of a child, they are a key setting for identifying and responding to family violence.¹⁴⁹ The Commission heard that maternal and child health nurses often receive the first disclosure of family violence.¹⁵⁰

My first approach to ask for help was when my baby was two days old and I asked the maternal child health person and they referred me.¹⁵¹

In its submission, the Municipal Association of Victoria cited MCH services, alongside other services delivered by local councils, as having a particularly important role in supporting communities that experience barriers in engaging with other services.

MCH, HACC [Home and Community Care] and other services are key entry points for identifying at risk women, service referral and creating a safe space. For example, due to mistrust in government but simultaneous valuing of immunisation, many refugees and asylum seekers only engage council at child immunisations.¹⁵²

A recently developed MCH program with a specific family violence prevention focus, Baby Makes 3, was raised in a number of submissions.¹⁵³ Baby Makes 3 was first developed and tested as a prevention of violence against women program by VicHealth in 2009, and has since been funded through the Department of Justice and Regulation's Reducing Violence Against Women and Children grants program. The Commission heard that it has now been evaluated across a number of sites and has been demonstrating promising outcomes.¹⁵⁴ More detail about this program can be found in Chapter 10.

Introduction of routine screening at the four-week MCH nurse visit

In 2009, the Victorian Government introduced a new MCH clinical framework that coincided with the implementation of the CRAF. The *Maternal and Child Health Service: Practice Guidelines 2009* require MCH nurses to undertake an initial observation for signs of family violence at the first Key Ages and Stages (KAS) home visit.¹⁵⁵ The guidelines also require that MCH nurses ask specific family violence-related questions at the four-week KAS home visit, if it is safe and appropriate to do so. In addition to the initial and four-week home visits, MCH nurses can, and do, ask family violence specific questions and undertake observational assessments at any of the 10 other KAS consultations. The department advised that a family violence assessment is reported to be conducted at 18 per cent of home visits, at 21 per cent of four-month visits, and at 20 per cent of two-year visits.¹⁵⁶

The Commission was informed that in 2008–09,¹⁵⁷ and in 2012,¹⁵⁸ all Victorian MCH nurses were provided with access to CRAF training.

Data collection and MCH services

As is the case with other health services, there is limited data about family violence presentations to MCH services. Local councils are responsible for service and client data, reporting through several information data systems, which will shortly be consolidated into a single statewide data-collection system (called the child development information system, or CDIS).¹⁵⁹ Currently the only data relevant to family violence relates to the 'reason for counselling' (as provided by the MCH service), and the 'reason for referral', when a person is referred from a MCH service to another service provider.¹⁶⁰

In 2013–14, statewide data on MCH services indicated that ‘domestic violence’ was cited as the reason for 1660 instances of counselling and 486 instances of referral.¹⁶¹ This equates to approximately 3.9 per cent of all referrals recorded being attributed to domestic violence (see Table 19.1).¹⁶²

Table 19.1 Count of reasons for referral (mother or family) at four week visit, Department of Education and Training statewide data, 2013–14

Region	Domestic violence	Total
North-Eastern Victoria	95 (2.9%)	3184
North-Western Victoria	103 (3.2%)	3222
South-Eastern Victoria	188 (7.1%)	2660
South-Western Victoria	100 (3.0%)	3353
Total for Victoria	486 (3.9%)	12,419

Note: Other reasons for referral include emotional, physical, social interaction impaired, and family planning. DET receives this subset of data from local councils through an annual report collection process. The data includes information about family violence and safety plans completed. A referral implies that counselling has also occurred at the time of the referral consultation. A referral is where a written letter, phone call to the referring agency is made.

Source: Statement of Callister, 4 August 2015, 14, Attachment 3.

The Commission heard that in 2013–14, family violence assessments were only completed in 57.9 per cent of four week consultations.

Lessons from research and evaluation

At the same time that the new clinical framework and CRAF training were being rolled out, La Trobe University undertook a trial with a group of 160 MCH nurses to test the implementation of a model to improve MCH screening for family violence (the MOVE project).¹⁶³ This work built on a previous project (MOSAIC) that showed that MCH nurses had difficulty identifying women experiencing family violence, despite having undertaken family violence training.¹⁶⁴ The MOVE model comprises workforce development, established referral pathways with family violence services, a checklist tool and clinical guidance, and ongoing monitoring (with support from a nurse mentor).

The trial found that improved practice is dependent on:

- ▷ Ongoing workforce development and practice support—the trial group reported greater understanding of the dynamics of family violence, and of the specific issues facing women.
- ▷ Established referral pathways into family violence services—in both cohorts, fewer than 50 per cent of nurses agreed that family violence services were responsive. However, where there were good links with family violence services, the trial group nurses reported higher levels of screening and safety planning.
- ▷ Family violence screening at three to four months—there was almost universal feedback from the trial group that screening for family violence at four weeks (as mandated by the Practice Guidelines) is ‘too early as other family members continue to attend consultations with women in the early postnatal period’.¹⁶⁵

The importance of the MOVE research was noted by Ms Callister, who indicated the department was considering how to incorporate the key findings.¹⁶⁶ Associate Professor Stephanie Brown, Head of Healthy Mothers Healthy Families research group at the Murdoch Children’s Research Institute at The Royal Children’s Hospital also reinforced the findings of this study in her evidence to the Commission:

Given that women are often reluctant to disclose family violence, I think it is important that strategies to promote identification and support of women experiencing family violence are better articulated in the program logic for the maternal and child health service, and that specific protocols for maternal health surveillance (incorporating a focus on family violence) are included in more than one ‘key ages and stages visit’, and preferably on at least three occasions in the first 12 months postpartum, and other contacts during the early years before children start school.¹⁶⁷

Several submissions supported the need for ongoing training and support for MCH nurses about identifying and responding to family violence. The Victorian Council of Social Service (VCOSS) stated that some organisations report that responses in MCH settings remain inconsistent and that MCH nurses require training to recognise at risk clients earlier.¹⁶⁸ Dr Robyn Miller, social worker and family therapist, told the Commission that MCH nurses also require ongoing professional support to manage the 'emotional impact and the vicarious trauma' experienced as a consequence of their work with victims of family violence.¹⁶⁹

It was submitted to the Commission that with additional resourcing, and adoption of learnings from evaluations, the MCH service system is well-placed to have a stronger prevention and early intervention role in relation to family violence:

... [maternal and child health nurses] often work in isolated clinics and with high caseloads. They are often the frontline of key referrals to specialist services and are key advocates for the impact of the violence on the parenting relationship and the child's development. The enhanced maternal and child health program which enables more intensive home visiting support to the most vulnerable families, requires additional resourcing and a more structured support mechanism and bridging to other key services. This service system is well placed as a platform to further develop preventative and early intervention responses more systemically in Victoria.¹⁷⁰

Recent developments

The Commission heard that as part of the government's current review into the Victorian education system, there is a specific focus on the early childhood service system, including MCH services.¹⁷¹ The government indicated in its evidence that other new initiatives, such as a Principal MCH Nurse located in the Department of Education and Training, will provide practice leadership and advise on program and policy development.¹⁷²

DET has also commissioned the Australian Children's Foundation to adapt the *Assessing children and young people experiencing family violence: a practice guide for family violence practitioners* for use in the MCH Service, to better equip MCH Nurses with the skills to identify the signs of children affected by family violence.¹⁷³

This work, expected to be completed in 2016, will include a workforce needs survey; alignment of the Practice Guide to ensure it is fit for purpose within the current MCH practice framework, and piloting the revised guide in selected MCH services.¹⁷⁴ The government advised that initial work by the Australian Children's Foundation has identified 'that greater professional development and supports are needed to assist MCH Nurses to identify and assess the risk of family violence for both adults and children'.¹⁷⁵

The Commission also heard the Education State early childhood consultation process will provide an opportunity to reform MCH service delivery.¹⁷⁶ Two current research trials, while not including a specific family violence focus, were highlighted as likely to provide valuable improvements to MCH practice:¹⁷⁷

- ▷ right@home: a randomised controlled trial designed to promote family wellbeing and child development.¹⁷⁸ The trial is testing improved outcomes through a more sustained home visiting program that includes at least 25 home visits offered to mothers from the antenatal period until children turn two years old (the current Enhanced MCH program is 15 to 17 hours of additional service). Results are expected in 2016–17,¹⁷⁹ and
- ▷ Bridging the Gap: a four year research study bringing together health service clinicians and managers, policy makers and researchers to achieve sustainable improvements in refugee child and family health.¹⁸⁰

An online training resource, currently being developed by DHHS as part of the CRAF, will also provide another source of refresher training for MCH nurses.¹⁸¹

In addition, the Healthy Mothers Healthy Babies program addresses maternal risk behaviours and provides women with support during their pregnancy. It targets pregnant women who are unable access antenatal care services or who need extra support because they are at risk of poorer health outcomes. It works with women while they are pregnant until approximately four to six weeks after birth. It operates in nine local government areas of Melbourne that have high numbers of births, higher rates of socio-economic disadvantage and lower service accessibility.¹⁸²

Mental health services

Most Victorians with mental health issues access mental health services through their general practitioner or primary care provider, who can then refer them to a specialist mental health service system.¹⁸³ Specialist mental health services in Victoria are divided into two service delivery types: clinical and non-clinical.¹⁸⁴

There are a range of mental health interventions that people may access. For example, patients may receive:

- ▷ short-term care in hospital during an acute phase of mental illness as part of an acute inpatient service
- ▷ transitional treatment and rehabilitation in a prevention and recovery care (PARC) service, community care unit, or a secure extended care unit
- ▷ short-term care from the Acute Community Intervention Service (formerly known as a CAT team), where there is, for example, rapid onset of illness or distress, or acute relapse of a pre-existing mental illness.¹⁸⁵

In some instances, people may be compelled to undertake compulsory treatment for their mental health pursuant to the *Mental Health Act 2014* (Vic).

Funding of mental health services

Both the State and Commonwealth governments have responsibility for the funding of mental health services.¹⁸⁶ The Commonwealth Government generally funds services delivered by primary care providers and private psychiatry services for people with 'high prevalence' conditions such as depression, anxiety and substance use disorders. The Victorian Government funds services for people with low prevalence disorders such as schizophrenia, bipolar affective disorder, severe depression and severe personality disorder.¹⁸⁷ The threshold for entry into the state-funded system is based on a clinical assessment of severity of illness, complexity and acuity of need, and level of risk both to self and others.¹⁸⁸

The role of mental health services in identifying and responding to family violence

The Commission heard that a high percentage of people with mental illness accessing mental health services have experienced family violence—approximately 40 per cent of men accessing these services have experienced childhood sexual abuse; and between 50 and 90 per cent of women have experienced child sexual abuse or another form of family violence.¹⁸⁹

In 2011, the Department of Health (as it was then known) issued the *Service Guideline on gender sensitivity and safety: promoting a holistic approach to wellbeing*¹⁹⁰ (Service Guideline) on gender sensitivity and safety for mental health services, which addresses, among other things, gender sensitive and trauma-informed care, and family violence and sexual assault. The Service Guideline provides guidance for practitioners about how to implement best practice in these areas and how to work with people who have experienced trauma, family violence and sexual assault.¹⁹¹

Another way in which the mental health system intersects with family violence is through Risk Assessment and Management Panels (RAMPs), which are currently being expanded from two pilot RAMPs to a series of 17 RAMPs across the state.¹⁹² As discussed in Chapter 6, the aim of the RAMPs is to facilitate an integrated family violence service response to the highest risk cases. It is intended that mental health practitioners will be core members of the RAMPs alongside specialist family violence services and Victoria Police.

Specialist mental health services targeted to perpetrators

There are some statewide and specialist mental health services targeted to perpetrators. Forensicare provides inpatient and community services to people with serious mental illness who have offended or are at a high risk of offending.¹⁹³ Services are provided on the basis of a referral and subsequent assessment, including from area mental health services, Corrections Victoria, courts, the Adult Parole Board and other government agencies, and private practitioners. Services provided by Forensicare include primary and secondary consultations, the Problem Behaviour Program, the Community Integration Program, and the Non-custodial Supervision Order consultation and liaison program.¹⁹⁴ Perpetrators and mental health are discussed further in Chapter 18.

Demand

The Commission heard that there is a high level of demand for mental health services in Victoria. Dr Sabin Fernbacher, Women's Mental Health Consultant, Aboriginal Mental Health Project Manager and Families where a Parent has a Mental Illness Coordinator, Northern Area Mental Health Service, told the Commission that:

...services in Victoria are under resourced and over stretched. Within an inpatient setting, clinicians are often faced with making difficult decisions about discharging patients due to demand – to make room for new admissions.¹⁹⁵

Alcohol and drug services

There are a range of public health services, non-government agencies and private organisations delivering alcohol and drug services in Victoria, some of which are funded by the state and Commonwealth governments.¹⁹⁶ Both levels of government also fund prevention, harm reduction and research activities.¹⁹⁷

For many people, the entry point into Victoria's drug and alcohol system is through DirectLine, the statewide 24-hour telephone and online service. DirectLine identifies whether a person is potentially dependent on alcohol and/or other drugs and provides referral to a catchment-based intake and assessment service, where comprehensive screening and assessment occurs.¹⁹⁸

There is a separate assessment process for people within the justice system (referred to as 'forensic clients'). Offenders gain access to services through the Australian Community Support Organisation, which provides intake and assessment of forensic clients referred to it through the Community Offender Advice and Treatment Services program.¹⁹⁹

After the initial intake and assessment has occurred, clients may undertake one or a combination of treatment options through state-funded treatment services including counselling, withdrawal services, residential rehabilitation and pharmacotherapy.²⁰⁰

The Severe Substance Dependence Treatment Act 2010 (Vic) provides for a brief period of detention and compulsory treatment for people with severe substance dependence in a treatment centre.²⁰¹ The Drug Court Division of the Magistrates' Court can make a Drug Treatment Order, which combines a suspended term of imprisonment with an order for drug treatment.²⁰²

Drug and alcohol services targeted to particular groups

Some examples of services targeted to particular groups include:

- ▷ The Royal Women's Hospital Women's Alcohol and Drug Service provides medical care, counselling and support to women with complex substance use and dependence, as well as assessment and care of infants exposed to drugs and alcohol during pregnancy.²⁰³
- ▷ The Odyssey House Therapeutic Community is a residential rehabilitation service that can provide services for pregnant women and women with children, and Western Health's Women's Rehabilitation Program provides a therapeutic environment to assist women to address problematic or harmful substance use.²⁰⁴
- ▷ Youth-specific services are available to help vulnerable young people up to the age of 25 address their alcohol and drug use issues.²⁰⁵
- ▷ DHHS also funds Aboriginal workers based in some Aboriginal community controlled health organisations, Aboriginal community controlled organisations and some mainstream alcohol and drug services across Victoria.²⁰⁶

The role of drug and alcohol services in identifying and responding to family violence

A number of submissions identified resources that provide useful practice guidance for the alcohol and drug services sector. *Can I ask ...? An alcohol and drug clinician's guide to addressing family and domestic violence*, was developed by the National Centre for Education and Training on Addiction (NCETA) and Odyssey House in Victoria.²⁰⁷ This guide:

proposes a hierarchy of practitioner responses to family violence, from basic level response offered by all AOD workers; enhanced responses by frontline and counselling staff and intensive responses able to be provided by specialist AOD/FDV staff ... It provides guidelines for asking questions about family violence; 'tips' and 'traps' in working with clients who have experienced family violence; advice for safety planning and guidance for working with perpetrators (and importantly for avoiding inadvertent collusion).²⁰⁸

The Victorian Government has indicated its intent to actively promote this guide.²⁰⁹

Other materials, such as NCETA's *Breaking the Silence: Addressing family and domestic violence problems in alcohol and drug treatment practice in Australia*, provide specific guidance for alcohol and drug services to improve their responses to family violence at both a practitioner and organisational level.²¹⁰ Turning Point Alcohol and Drug Centre has also developed a suite of 15 clinical treatment guidelines to support alcohol and drug treatment service providers in every day practice, including a specific guideline on working with families.²¹¹

DHHS, as part of recent reforms to the alcohol and drug treatment sector, has implemented new screening and assessment tools that take into account a range of factors identified as contributing to a person's personal circumstances, including mental health, housing and family violence issues.²¹² The 2014 DHHS service specifications require that all adult non-residential services use these tools.²¹³

In relation to family violence, the tools raise relevant questions at different stages of a person's assessment, including at the initial screen and during any comprehensive assessment. DHHS advised that the family violence questions included in the screening and assessment tools have been adapted from the CRAF.²¹⁴ The guidelines note that a comprehensive assessment should only be undertaken if the worker has experience or expertise in family violence.

Pharmacists

International research suggests that pharmacists could be well-positioned to participate in screening and identifying people experiencing family violence.²¹⁵ A US study into the potential for screening for intimate partner violence in community pharmacies stated that 'it is an unfortunate deficit' that pharmacists have not been considered as part of the effort to address violence to date, as they are:

trusted members of the health care team with whom individuals have the most accessible and frequent contact. Pharmacists are one of the only health care providers available without an appointment. Importantly, pharmacists can be accessed in community settings (i.e., grocery and chain stores). Including community pharmacists in this public health effort [to assist people experiencing intimate partner violence] could be one of the most effective mechanisms to address this healthcare challenge.²¹⁶

This study found that additional support and training would be necessary for pharmacists to undertake effective screening for intimate partner violence. It also found that consumer education may be necessary as, 'although participants indicated that they trust pharmacists, they lacked awareness of pharmacists' training'. The study found that some concerns existed around 'lack of appropriate physical space in the pharmacy and the time needed to conduct screenings' and noted that 'consumers are unaware that pharmacists are trained in patient communication and counselling, suggesting a need for additional recognition of the skills and capabilities of community pharmacists'.²¹⁷

Ambulance services

The Commission heard that the role of ambulance officers can make a difference at critical points of crisis, and that there are opportunities to strengthen and enhance their role. A number of reflections through the Commission's consultations highlighted the role that they can play in providing immediate safety, through being able to remove victims, as well as perpetrators, from the current crisis:

I never sought help, it was embarrassing, but when he started shooting at me, my son who I was on the phone to at the time called the police. I was taken to hospital, and was released at 3am. There was nobody at the hospital that provided support, though the ambulance workers were fantastic.²¹⁸

We were in a country town. I called the sheriff there. The sheriff took him and kept him for the night. My daughter was five months old. Another time, when he had been drinking, he grabbed my hair. He passed out. He had a panic attack. I called the ambulance. He wasn't happy about it. When he saw the ambulance, he smashed me against the door. The ambulance called the police. They took him away. He spent a night with the police.²¹⁹

Ambulance officers don't have capacity to ask lots of questions while they're on a job – but it would be great for ambulance to make referrals – but quickly – push of a button – there is no time to do a triage service.²²⁰

In relation to intimate partner violence, research and evidence support the unique role of paramedics.²²¹ For example, the identification of intimate partner violence within the hospital and emergency setting is low; paramedics can assess intimate partner violence situations within the home environment; they may often be first on the scene, and they have an opportunity to provide referral information if the victim does not attend hospital.²²²

In 2015 research was published about the role of ambulance services in relation to family violence: *Preventing and reducing the impacts of intimate partner violence: Opportunities for Australian ambulance services*.²²³ Undertaken by Monash University and the Victorian Institute of Forensic Medicine, it found that no comprehensive guidelines currently exist for ambulance services; there is no national registration process or formal requirement for continuing education.²²⁴

The research recommended four areas of action:

- ▷ develop partnerships with external agencies—police, family violence services and emergency departments
- ▷ educate paramedics on intimate partner violence, and develop appropriate guidelines and procedures
- ▷ collect better data
- ▷ champion values and demonstrate leadership promoting zero tolerance towards violence against women.²²⁵

A 2014 Australian study of 50 paramedics²²⁶ which assessed the understanding and preparedness of paramedics to respond to family violence found that 90 per cent of the paramedics reported encountering at least one case of suspected intimate partner violence in the previous year, with the average number of cases being 3.66.²²⁷ Only 22 per cent reported that they felt confident in responding to situations of intimate partner violence. The vast majority of participants stated that they felt additional education and training would be most helpful for improving their ability to respond to family violence.²²⁸

The Commission heard that Ambulance Victoria has commenced work to develop a clinical practice guideline and policy framework to support the identification and management of patients who are either experiencing or at risk of family violence.²²⁹ This commitment is also in the annual *Statement of Priorities* agreement between the Minister for Ambulance Services and Ambulance Victoria.²³⁰ The Commission heard that this is expected to be completed in 2015–16 with workforce development to be provided prior to implementation.²³¹ Ambulance Victoria also has guidelines in place to direct their response to vulnerable children who are at risk of violence and abuse.²³²

Ambulance Victoria does not currently have a mandatory family violence field or flag in either its call-taking system or information recording system.²³³

Women's health services

DHHS funds the Victorian Women's Health Program, which includes three statewide women's health services, (Women's Health Victoria, the Multicultural Centre for Women's Health, and the Women's Health Information Centre at the Royal Women's Hospital), and eight regional women's health services (four metropolitan and four regional services).²³⁴

Women's health services are funded to:

... address women's health through systems level work (provide leadership and co-ordination, provide advice, identify gaps in data, support the trial of new interventions and approaches and build the evidence base) and direct service (partner with other organisations, identify priority health issues and interventions and deliver evidence based interventions).²³⁵

The Commission received submissions from all statewide and regional women's health services, and heard that these services have played a significant role in policy and program development in relation to both responding to family violence and in driving primary prevention strategies. The Commission understands a number of women's health services provide family violence counselling and casework support, and others provide the regional coordination role in the family violence system, including being the L17 (a family violence risk assessment and management report) contact point for police (such as the women's health service in the western region).

As described to the Commission, the scope of the work of women's health services includes:

- ▷ expertise in health promotion and primary prevention approaches to family violence
- ▷ working in partnership with local governments, health and community agencies to promote gender-based health promotion and service delivery, and to improve service system access and responsiveness for women
- ▷ delivering training and education programs for partner organisations on women's health issues and gender sensitivity in planning and service delivery
- ▷ expertise in the provision of workforce development in gender analysis and the social model of health to mainstream health and community services
- ▷ understanding of the particular risks and issues for rural women and children
- ▷ expertise in driving localised 'whole of community' approaches to family violence.²³⁶

Women's Health West described how its role enables it to work in both response and prevention of family violence:

This provides us with a unique perspective that clarifies that the primary prevention system is interlinked with, yet different from, the response system. Primary prevention is interlinked with the response system because it should only be attempted when there is a well-functioning and integrated response system in place.²³⁷

The Commission heard from women's health services about their commitment to a strengthened regional role particularly in relation to primary prevention of family violence, and that they were well placed to support the emerging primary prevention sector.²³⁸ This role was supported by other stakeholders, such as Our Watch and the Municipal Association of Victoria.²³⁹ Women's health services have been funded by the Victorian Government to lead the development of regional violence against women and children prevention planning. This is further described in Chapter 36.

Aboriginal and Torres Strait Islander programs

Aboriginal community controlled health organisations (ACCHOs) receive Commonwealth and State Government funding, and provide services that include advocacy, education and training, advice to government, and health and social support services.²⁴⁰ The peak body for Aboriginal health in Victoria is the Victorian Aboriginal Community Controlled Health Organisation, which has a membership base of 24 organisations and three associate members.²⁴¹

The Commission heard that there a number of programs that are delivered by ACCHOs to Aboriginal and Torres Strait Islander families, including: Bumps to Babes and Beyond, a whole-of-family model of care for pregnant Aboriginal women aged 14 to 25 run by Mallee District Aboriginal Services; the Aboriginal Best Start initiative, aiming to improve the health development and wellbeing of Aboriginal children, and the Aboriginal in Home Support program, that aims to build on the Koori Maternity Services program.²⁴² The Koori Maternity Services program is delivered through ACCHOs, and some metropolitan hospitals, and aims to improve access to culturally appropriate maternity care for women.²⁴³ The Victorian Government advised the Commission that draft guidelines are in development and provide that Koori Maternity Services have a key role to play in the identification and care of children, and that ACCHOs should have systems in place to support their staff to identify and support vulnerable children and where abuse is suspected.²⁴⁴

Associate Professor Brown reported on her own and other research demonstrating the importance of culturally appropriate care for Aboriginal women:

There is good evidence that without efforts to overcome barriers to access, such as lack of transport, poor health literacy, and past experiences of racist attitudes in health services, Aboriginal women are less likely to attend antenatal check-ups, and more likely to have their first visit later in pregnancy.²⁴⁵

In her evidence to the Commission, the Chief Executive Officer of VACCHO, Ms Jill Gallagher AO, stated that VACCHO was aware of eight ACCHO services with specific funding for family violence, but that funding was required for services beyond a crisis response.²⁴⁶

One area though, where our Aboriginal community does not have good access is to family violence services. All of VACCHO's member services that we interviewed talked about lack of funding for family violence prevention or intervention.²⁴⁷

Ms Gallagher also described how mental health combined with drug and alcohol issues are closely related to family violence in Aboriginal communities.²⁴⁸

Ms Gallagher reported that previous government decisions not to provide specific family violence programs in Aboriginal health services had been a 'missed opportunity'.²⁴⁹ She told the Commission that 'ACCHOs are the perfect places to put these preventative services in place', and some were demonstrating positive outcomes:

When actually funded to provide prevention programs of this type, ACCHOs do a very good job. The initial evaluation report on projects funded by Koori Community Safety Grants demonstrates this, with projects being successfully run by MDAS, VAHS Rumbalara and LEAHA. It is because they already know and trust their local ACCHO that they are more likely to feel comfortable to seek the help and assistance that they need. In contrast, Aboriginal women tend not go to mainstream services because they are afraid that they are linked to Child Protection Services; that they risk having their kids taken away if they tell the truth about their family situation.²⁵⁰

Further discussion about specific programs for Aboriginal and Torres Strait Islander communities is in Chapter 26.

Other health services

The Commission also heard that other frontline health services, such as radiographers and dentists, were well placed to identify family violence and link victims with support.²⁵¹ In its submission to the Commission, the Royal Australian and New Zealand College of Psychiatrists cited research indicating that:

... 76 per cent of abused women who suffered head, neck and facial injuries (Lowe 2001) and would cancel other medical appointments ... tend to keep their dental appointments.²⁵²

The important role that dentists can play was raised in a number of submissions and consultations.

I was unaware of the physical toll the violence had had on me until a couple of years ago after needing a panoramic x-ray of my face for some dental surgery. After I left the dentist and was driving home the surgeon contacted me to ask if I had ever been in a serious car accident. When I said no, she explained that I had numerous calcified and misaligned healed fractures in my face. The effect of being told this was extraordinary for me. I sat in my car on the side of the road and wept. It seems ludicrous now, in hindsight, to have been so shocked and so deeply saddened by this information, and yet it was as though someone had handed me a certificate that said 'you really were horribly abused and we can actually see that' and for the first time no one was blaming me for it.²⁵³

Latrobe Community Health Service described an example provided by one of its dentists, capturing the consistent challenge the Commission heard from many health practitioners:

There was a stated willingness to identify and act however; staff across programs indicated a feeling of helplessness at what to do or where to go.²⁵⁴

At the time of writing, the policies and guidelines available on the Australian Dental Association's website did not specifically refer to family violence. However at a Victorian conference on oral health in late 2015, the Chief Executive Officer of the Australian Dental Association, Mr Robert Boyd-Boland, noted the vital role played by dentists as first responders, indicating they would welcome 'specialised training for dentist students and support for dentists to recognise and assist patients who present with trauma that could be related to domestic violence.'²⁵⁵

Health service partnerships

The Commission heard about a number of promising health service partnerships, integrated services models, and collaborations between health and related service providers, that might be leveraged or built on to improve the overall response to family violence.

The introduction of Primary Health Networks (PHNs) on 1 July 2015 was identified as an opportunity to more effectively link GPs with other health and support services that respond to family violence.²⁵⁶ PHNs are discussed in more detail below.

Primary Care Partnerships

Primary Care Partnerships are established voluntary networks of local health and human service organisations. PCPs have a focus on chronic disease prevention and aim to improve service coordination and integrate health promotion to this end. There are 28 PCPs in Victoria.²⁵⁷ The Commission received evidence about the Identifying and Responding to Family Violence pilot project in the North West metropolitan region, which aims to assist PCP member agencies to provide a more streamlined and coordinated service system response to the diversity of women and children experiencing family violence. This project involves supporting and training PCP agencies to improve their screening practice, response and referral, and will be utilised to inform other PCP catchments. Ms Ilana Jaffe, Project Coordinator, Inner North West Primary Care Partnership, gave evidence that in 2014, a needs assessment was undertaken to gauge the level at which PCPs were identifying and responding to family violence. Responses were received from over 200 PCP member agencies. These responses made it clear that:

... there was not a lot of confidence or capacity in organisations to respond or identify family violence issues. They didn't have policies or procedures in place and they weren't that sure of how to refer even into family violence services.²⁵⁸

The Commission heard of the strong commitment of some PCPs to build capacity in this area.²⁵⁹ The Victorian Primary Care Partnerships submission described the new Service Coordination Tool Templates (SCTT) that PCPs have developed to identify family violence. In its submission, the Victorian Primary Care Partnerships noted that the SCTT:

is still not consistently embedded across client management systems. This results in the use of paper versions which can lead to subsequent difficulties in terms of timeliness of processing, usability, lack of data collection and storage.²⁶⁰

The Identifying and Responding to Family Violence pilot project will support the rollout of the SCTT, and develop resources for PCP member agencies to assist staff at all levels to identify and respond to family violence and make effective referrals.²⁶¹ The Commission notes that more broadly there is no mention of family violence in the PCP guidelines.

The Commission also heard about new networks being developed in the primary health sector. The Commonwealth Government is currently establishing Primary Health Networks (PHNs), which have replaced Medicare Locals. The government has advised that PHNs are expected to participate in PCPs.²⁶² In Victoria, six PHNs are currently operating—North Western Melbourne, Eastern Melbourne, South Eastern Melbourne, Grampians and Barwon South West, Murray and Gippsland.

Professor Hegarty told the Commission that PCPs, PHNs and other alliances across the health services sector, have a significant role to play in supporting practitioner training about family violence, which she supported being made mandatory.²⁶³

Health-Justice Partnerships

Alliances between legal advocacy and health services are a response to evidence that people with legal issues often seek advice from health services as their first point of contact.²⁶⁴ In 2014, the Legal Services Board funded nine Legal and Health Partnerships.²⁶⁵ The two Victorian partnerships outlined below received funding from the Legal Services Board.

Acting on the Warning Signs is an alliance between Inner Melbourne Community Legal and the Royal Women's Hospital. The initiative involves training clinicians in family violence prevention and integrating legal assistance into healthcare settings.²⁶⁶ Training aims to assist health professionals to identify family violence and provide basic family violence information to patients, and to understand their role in the broader system of supports for people experiencing or at risk of family violence. Training is delivered by police, lawyers and health professionals.²⁶⁷ The response from health practitioners is complemented by legal and social welfare assistance available onsite at the hospital itself.²⁶⁸

An evaluation of this initiative conducted by the University of Melbourne found:

- ▷ Health professionals self-reported that their general knowledge of family violence and the common presenting symptoms of family violence was significantly improved by the training.²⁶⁹
- ▷ Health professionals self-reported a significant improvement in confidence to respond to women where family violence was disclosed and to provide appropriate referrals.²⁷⁰
- ▷ Health professionals' self-reported referral rates in a three-month period were low compared to other services.²⁷¹
- ▷ Referrals to social workers *may* be tending toward an increase over time.²⁷²

The evaluation included a number of recommendations including:

- ▷ Family violence training should be mandatory, recurrent and ongoing for all staff at the Royal Women's Hospital and other hospitals.
- ▷ Referrals need to be complemented by other resources to support women in accessing services, such as posters and warm referrals.
- ▷ Effective databases are required to capture and track referrals.²⁷³

Acting on the Warning Signs is funded from philanthropic and pro bono sources.²⁷⁴ The Independent Hospital Pricing Authority has announced new activity-based funding arrangements (for the 2015–16 financial year) that will encourage similar multi-disciplinary initiatives in hospitals.²⁷⁵

Another legal advocacy-health partnership is the Health-Justice Partnership launched in April 2015 in the Dandenong Hospital in Victoria's southern region.²⁷⁶ InTouch Multicultural Centre Against Family Violence informed the Commission that it had partnered with legal, health and family violence services to 'provide integrated and culturally-appropriate health, social and legal services within a health setting', reporting that it is the only Victorian health-justice partnership with a primary focus on refugee and migrant women. The partnership is a model based on the Medical-Legal Partnership model, which is widely established across the US.

InTouch reported that the first phase of the project will involve establishing a system for the 'delivery of therapeutic, culturally sensitive social and legal services' in the catchment area of the Dandenong Magistrates' Court, with the second phase establishing an outreach clinic in Dandenong Hospital. The third phase will involve training health care professionals to identify and assist CALD victims of family violence.²⁷⁷

In September 2015, the Commonwealth Government announced funding under the *National Plan to Reduce Violence Against Women and their Children 2010–2022*, for four new health-justice partnerships. These partnerships were described as involving legal professionals providing training to doctors and health practitioners to better identify and respond to family violence, and providing 'onsite legal assistance to patients, helping women to access legal services in safe locations'.²⁷⁸ As part of this funding the Inner Melbourne Community Legal Service was funded to expand the health-justice partnership Acting on the Warning Signs.²⁷⁹

Challenges and opportunities

The many challenges and opportunities that exist within the health system to identify and respond to family violence are discussed in this section. The Commission heard about current barriers for health, mental health, and drug and alcohol practitioners that limit the effectiveness of these services in supporting and providing services and referrals for people experiencing family violence. The Commission also heard that opportunities for better training on family violence exist throughout the health sector from the early stages of training for practitioners, through to professional development opportunities, but that initiatives in this area need to be system-wide, supported by professional bodies and associations, and led and resourced by government.

Identifying and responding to family violence

The Commission heard that despite pockets of good practice within the health system, there are significant barriers and challenges for health practitioners in identifying family violence. Reasons for this can include a lack of time or training and knowledge about how to respond if family violence is disclosed. This is discussed further below.

Identifying family violence

Many health service providers are uncomfortable about discussing family violence, or are unprepared for a victim's disclosure and are therefore unable to provide a meaningful response.

Research shows women can go into an emergency department at hospital with bruises, fractures etc. and no one asks if they have experienced family violence so they don't say anything.²⁸⁰

At no time did anyone in any profession say 'this is family violence' and acted upon it, but instead just completely ignored anything I described that would be considered family violence as if anything I said never happened.²⁸¹

Dr Kim Robinson, Lecturer at Deakin University, told the Commission that research shows that women want their health practitioner to ask about family violence with active and direct questioning, even if they do not disclose their experience the first time they are asked.

The research evidence is showing us that survivors of family violence want to be asked about it. They want people to know. They may not feel able to volunteer that information at a particular point, but they want their health providers and others to ask them if they are experiencing violence. I think we can be much more robust in how we can prepare a generalist workforce for that type of role.²⁸²

VCOSS stated in its submission that an impediment to someone disclosing family violence is lack of privacy, particularly in the context of antenatal services where partners or family members are often present.²⁸³ The Commission heard from a victim of family violence that:

One of the reasons I never reported it to the police or anyone in the medical profession is because I never had the opportunity to do so. In circumstances where I could have (e.g. when he was arrested for attempting suicide or when he was in the hospital afterwards) I was never alone with anyone where I could have spoken freely. I was never asked to leave the room, or have a private chat.²⁸⁴

The Commission was told that asking about family violence must happen:

[in an] environment where women can talk without their partner/the perpetrator present, without this being presented in a way that causes suspicion and puts the woman at risk ... [and where she] cannot be seen if she is distressed.²⁸⁵

The importance of providing a safe space for people to disclose violence is reiterated in antenatal service guidelines from the United Kingdom and in WHO Guidelines (see box later in this chapter for further information).²⁸⁶

The Commission heard that disclosing family violence is a significant step for many women and that they are hesitant to disclose for a number of reasons, including ‘feelings of judgement and lack of trust in the system’.²⁸⁷

Even the most well-meaning people in the services I found, scared me. Most of us have no self-esteem and are easily put off asking for help.²⁸⁸

Some women told the Commission that they feared the consequences for their children if they disclosed the violence:

I didn’t want the maternal health nurse to know what was going on for fear that [removed] would be taken into care, and so kept quiet, trying to protect her and love her as much as I could, all the while being mindful that I had to pay my ex enough attention to avoid him getting angry.²⁸⁹

The Commission heard that there is a particular gap in health services identifying and appropriately responding to women and families with more complex social needs, such as younger mothers, families of refugee background and Aboriginal and Torres Strait Islander families.²⁹⁰ Foundation House provided an example of this in relation to MCH services:

It is expected that maternity and early childhood services can provide a setting within which women can disclose if they are subject to family violence which may adversely affect their health and that of their babies. However a recent study of new Afghan mothers and fathers undertaken by Murdoch Children’s Research Institute and Foundation House found that there were a number of barriers to this occurring. For example, “(s)ome providers had limited awareness of the experiences that refugees may have had prior to and after settling in Australia, and the impact of those experiences on their capacity to voice their concerns, or ability to access services”; it was common for professional interpreters not to be engaged in various settings, with the husband instead being used to interpret; and both the women and their husbands strongly preferred the use of female health professionals and interpreters. Each of these findings has strong implications regarding a woman’s willingness and ability to disclose family violence to a health care provider.²⁹¹

Barriers for health practitioners

The Commission heard that there a number of reasons, common to many health services, why health service providers do not ask about family violence. These include:

- ▷ high workloads and lack of time²⁹²
- ▷ not knowing what questions to ask
- ▷ feeling ill equipped to assess risk²⁹³
- ▷ concern they might be placing the woman at heightened risk by asking her to expose the violence
- ▷ a feeling of helplessness in not being able to provide a solution
- ▷ not knowing how and where to refer someone
- ▷ feeling they are being pushed into another role, with a tendency to categorize issues as ‘medical’ (their domain) and ‘social’ (not their domain)²⁹⁴
- ▷ frustration at the perceived ‘passivity’ of victims²⁹⁵
- ▷ lack of remuneration for their involvement in training activities relevant to identifying and responding to family violence.²⁹⁶

Professor Angela Taft, Director of the Judith Lumley Centre at La Trobe University, told the Commission:

I have had practitioners say to me, 'I actually can't ask that question [about family violence] because I actually don't know what to do, and it is unethical to do that therefore.'²⁹⁷

Mr Drew Bishop, a senior social worker from North West Area Mental Health Service, reflected this same point in relation to mental health practitioners.

Often, especially in an inpatient setting, workers or the nurses that work in the inpatient setting will feel uneasy about talking to people about trauma because they are either not trained in it, unsure how to deal with it or they don't have the time to deal with it. They might feel uneasy or anxious about the content and worry about, colloquially we say, opening a Pandora's box. "What do we then do with the impact?" Some of the concerns include re-traumatising the person or then not being able to contain the situation afterwards with the family or whatever.²⁹⁸

The private attitudes of health professionals also have a bearing on their willingness and ability to respond appropriately to family violence—with evidence to suggest that these are generally the same attitudes and beliefs as those held by the broader community.²⁹⁹ These beliefs may include:

- ▷ family violence is a result of some men not being able to control their anger
- ▷ family violence happens equally to men and women
- ▷ believing that 'women can leave a violent relationship if they really wanted to'
- ▷ supporting male dominance in decision-making in relationships
- ▷ not believing that women with disabilities are at greater risk of family violence than women without disabilities.³⁰⁰

Ms Diver also highlighted this point in her evidence to the Commission:

I think what we have then identified is that in fact, without adequate training and without an adequate understanding of the role of family violence on affecting health outcomes and broadly social attitudes and community culture around family violence, perhaps that hasn't been done in such a fulsome way. I think that I see an opportunity now for improving the way health professionals are equipped to facilitate conversations and assessment around the impact of family violence on health outcomes.³⁰¹

The RACGP recognises the need for practitioners to reflect and challenge their own attitudes:

Domestic and family violence can test a GP's professional skills to the limit, as there are often life threatening, physical, emotional and complex family and legal issues that require a high level of professionalism in order to successfully assist patients. GPs are expected to reflect on their own attitudes towards family and domestic violence in their training, and how these might impact and influence their management strategies.³⁰²

Barriers for mental health and drug and alcohol services

Dr John Read, Professor of Clinical Psychology, Swinburne University of Technology, emphasised to the Commission that key opportunities for intervention are lost when mental health services do not identify and respond to family violence:

People who are subjected to violence and who also have mental health problems (sometimes as a direct result of the violence) are often particularly marginalised and vulnerable. The violence toward them will be unlikely to be heard through the criminal justice system, but could and should, be identified by mental health services, leading to timely intervention and support ...³⁰³

The Commission was told that women and children experiencing family violence may be refused help at some mental health and drug and alcohol services because they are considered transient, or may be 'out of area' due to relocating to escape violence.³⁰⁴

The Commission heard evidence that the mental health sector is currently ill-equipped to identify and address family violence. In its submission, Cobaw Community Health stated that mental health workers have a tendency to focus on the presenting symptoms and do not always apply a systemic, family violence lens.³⁰⁵ The Centre Against Violence submitted that:

85% of women affected by family violence will develop a post-traumatic stress disorder and often receive care from the mental health sector. However, the appreciation the mental health sector has of the impact of family violence is minimal. Their response to safety and risk is also through a mental health lens only.³⁰⁶

Professor Patrick McGorry AO, Executive Director of the Orygen National Centre of Excellence in Youth Mental Health, similarly told the Commission:

In the general mental health system, in terms of a therapeutic response, the focus is typically a narrow one on the individual person presenting in front of a health practitioner ... I do not believe that most practitioners would be family focused or routinely assessing for family violence, or necessarily giving it much attention.³⁰⁷

Professor Jayashri Kulkarni, consultant psychiatrist and Professor of Psychiatry at the Monash Alfred Psychiatry Research Centre, referred in her evidence to the way in which psychiatric services tend to separate individual and structural causative factors when treating mental illness:

... one of the things that is missing in this discussion is it is as if there's been a horrible splitting of the violence and the mental health consequences and psychiatric illnesses and diagnoses. What we are seeing in the field, in my view, is that we have a group, usually psychiatrists and psychologists, who are focused on making a diagnosis of personality disorder, conduct disorder and other disorders and often the actual antecedent family violence is kind of consigned to some other person's purview to take that history and somehow magically deal with it. This is why I think we have an issue in the mental health ripples, which are very, very large and continue lifelong, of family violence. It is as if the mental health professions haven't caught up with taking very good histories and clear stories of the trauma and the violence and then putting that together with the consequent diagnosis and then coming up with holistic treatment and management plans.³⁰⁸

Dr Read similarly submitted that most mental health services tend to operate predominantly from a 'medical model' which prioritises the assessment of symptoms of an individual so as to apply a diagnostic label and prescribe a medication. This means that very often patients are not asked what has happened in their lives, or is happening now, that might have contributed to their mental illness.³⁰⁹

Dr Fernbacher told the Commission that there is a lack of clarity about the role of the mental health system in responding to family violence. She noted that while guidelines about family violence exist to assist mental health service providers, they are not binding, and do not include key performance criteria or formal feedback mechanisms.³¹⁰

The Commission also heard that it is not mandatory to assess family violence issues in the drug treatment sector. While there are now standardised assessment tools as a consequence of recent reforms, the Commission was told that practice resources remain under-developed and have not progressed beyond pilot programs:³¹¹

While [alcohol and drug treatment workers] may be well aware of the high prevalence of family violence among their clients, and deal with it every day, there has been limited specific information to guide this work and to develop system-wide responses to the issue.³¹²

Responding to family violence

The Commission heard different views about the nature of the response that is required from health practitioners when family violence is disclosed.

Professor Oberklaid told the Commission:

I think that all universal providers—nurses, GPs, child care workers, teachers—need to have some training in recognising family stress and the signs of stress and violence as well. But we can't expect everybody to become an expert. What we can expect, what we should expect, is each of these providers to recognise that things aren't going particularly well and to refer early and know who to refer to.³¹³

However, Professor Hegarty told the Commission that 'referral to formal domestic violence services at the point of identification as the only response may be problematic' as women may not identify what they are experiencing as family violence and therefore may not wish to access specialist support services.³¹⁴

Professor Hegarty spoke about the focus of her work supporting GPs to take a 'first-line' response, not just refer patients:

So what we taught the GPs to do was essentially the World Health Organization recommendations of a firstline response, which is, once someone is identified, to listen, inquire about their needs, validate their experience, enhance their safety and ensure ongoing support. It's got a mnemonic of "LIVES", and I think that that's easy to remember because we are trying to save lives.³¹⁵

Current World Health Organization guidelines

The World Health Organization recommends that women and their children need a safe 'first line response' when they disclose family violence to a health practitioner. This involves:

- ▷ First response: patients need to be responded to at any initial disclosure with active listening and non-judgemental support. These first line skills are taught at undergraduate and postgraduate level in most health courses.
- ▷ Safety assessment response: families need to have their safety assessed at the time of disclosure. They can then be guided to appropriate ongoing care, which might include the health practitioner seeing the patient for ongoing support, referral to advocacy services, or crisis support.
- ▷ Pathway to safety: health practitioners need an understanding of family violence services and access to resources and referrals in local areas to assist them in keeping women and children safe.

The WHO has also developed a clinical handbook, which is currently being trialled. A simple mnemonic reminds practitioners what an evidence based, woman-centred first-line response should incorporate: LIVES—Listen, Inquire about needs, Validate experiences, Enhance Safety, Support.³¹⁶

Professor Hegarty told the Commission that ongoing support from a GP, such as under a mental health care plan, can improve the mental health of women 'and when women are less depressed they take further actions often to keep themselves and their children safe'.³¹⁷

In relation to creating a supportive environment for disclosure, Dr Brigid McCaw, Medical Director of the Family Violence Prevention Program, Kaiser Permanente, Northern California Region, noted the usefulness of posters that tell people that a patient will be seen on their own for a period of time before family members are brought in to the consultation. A standard, promoted policy makes it easier for healthcare professionals to ensure privacy as they do not have to make up a reason for seeing the patient alone in situations where a family member may resist this practice.³¹⁸

Staff at the Royal Women's Hospital wear badges on their lanyards that read 'safe at home talk to me' or 'the Women's says no to violence against women'.³¹⁹ In addition, there are posters in waiting areas, palm cards in consulting rooms and factsheets on its website designed to educate the community about the health impacts of family violence and to encourage women to talk to their health professional.³²⁰ The Commission heard that this supports staffs, as well as patients:

So if you walk back into your department ... and the screening question is on your documentation, there are posters on the wall, I have the cue cards on my ID badge, I have had the training, I feel equipped, I'm ready now to go and actually start asking those questions.³²¹

Safety issues for vulnerable women and children

A common concern raised with the Commission was the failure of the mental health system to deal adequately with the trauma experienced by victims of family violence. An example of this is when women treated in inpatient psychiatric facilities are expected to share a ward with men:

In a mixed inpatient ward there are many situations or behaviours that can trigger memories of fear and abuse for others (shouting, banging of a door or aggressive or indeed abusive behaviour). Frequently the reaction of the person experiencing such triggering ... goes unnoticed and the person is left feeling unsafe.³²²

Another issue brought to the attention of the Commission is the conflict between some practices under the Mental Health Act and the safety of family violence victims. The Commission heard that the Mental Health Act places both individuals and carers at the centre of mental health treatment, recognising the latter's role in supporting their family member's recovery.³²³ The Act states that a carer's views will be considered when either the authorised psychiatrist or the Mental Health Tribunal is determining whether to make a Treatment Order, including the duration and setting of the Order, as well as consent to treatment, including electroconvulsive treatment.³²⁴ Carers are also notified about key events, which means that information about a patient's treatment will necessarily be given to the carer so they can effectively participate in a consultation or take any necessary action. Carers are also be given copies of any orders made.

The Commission received a submission from a woman who had experienced protracted family violence, and was then coerced into a mental health facility by her abusive husband. She was then discharged home to the perpetrator. Based on these experiences, she made several suggestions, including the following:

Secondly, train Mental Health specialists to investigate further into family violence, and not just note on a report that a relationship was "volatile"; also take necessary steps to make sure any mention of abuse is reported to local authorities. Also, when I was admitted into the psychiatric unit, there was no further investigation as to why a husband would be willing to admit his own wife only because she was angry, even after admitting that he was cheating on his wife. The hospital must interview the husband and wife together, make the husband accountable for admitting his wife, and not just treat the wife. When I was discharged, my husband made no changes and continued to cheat, control me and beat me.³²⁵

When the carer uses violence against the patient and seeks control over their life, this compromises the patient's safety and recovery and may exacerbate risk. While the *Mental Health Handbook* advises that clinicians should always seek a person's consent to sharing information with their carer or family member, when the patient cannot or refuses to consent, carers can still be given information to provide care to a patient and prepare for their caring role.³²⁶ It is not clear to the Commission the extent to which mental health practitioners are aware of the incidence of family violence perpetrated by carers, nor what practices are followed when this is known or suspected.

In evidence, Chief Psychiatrist, Dr Mark Oakley Browne, provided the Commission with a list of designated mental health services which have developed policies, protocols and assessment tools that relate to family violence. All of the 16 listed designated mental health services had established policies pertaining to family violence; seven of these services had specific family violence-related policies.³²⁷

In evidence, Dr Oakley Browne made similar submissions regarding discharge practices:

There is also an opportunity for mental health services to improve their intake and assessment processes to inform better treatment and also improve their discharge planning to ensure those leaving 'in-patient care' settings have a safe home to go to, and an integrated and supported recovery plan in place.³²⁸

Stakeholders also raised the need to develop the capacity of drug and alcohol services to address the specific needs of children who may be exposed to family violence. Workers may also refrain from asking clients about children in order to avoid any potential need to make child protection notifications, which could in turn jeopardise their working relationship with clients.³²⁹

Working with perpetrators

The Commission heard that perpetrators often present to health services with mental health issues or alcohol and drug issues, particularly during a time of crisis. Sometimes they attend health services for 'anger problems' with the encouragement of their partners.³³⁰ The need for the health system to have a more informed response to perpetrators has been referred to as part of family violence death reviews by the Victorian State Coroner, given the potential for perpetrators to have contact with health care professionals across various settings.³³¹

Knowing how to engage with men using violence, ensuring the safety of their partners and children, and avoiding collusion with the violent man, are complex issues and require health practitioners to have particular competencies.³³²

The time of new parenthood is also a stage when men are in regular contact with health services. This is a time when men may be more open to receiving information and developing skills, as well as considering alternative models of masculinity as they move into a new parental role. Dr Robyn Miller told the Commission:

The ante-natal period is ... a very good time to engage the perpetrators as men may be more open to getting help and changing their behaviour because they want to be a good dad. I have worked with many men in this situation who find the motivation to change because they do not want to be like their own father and do not want their children to have the kind of childhood which they had. I am not suggesting that a criminal justice response is not part of this process, nor that all men can be engaged. However, many men, if they were engaged skilfully and we had more options to connect them with services during this window of opportunity, would take it up.³³³

The Commission heard that the area of fathering is a current focus of research being led by the University of Melbourne and Professor Cathy Humphreys, Professor of Social Work.³³⁴ The aim of the research is to improve the parenting experience of children whose fathers have used family violence, and outcomes from this research may provide practice guidance in working with men who use family violence.

PEARL project: Responding to Perpetrators in Health Settings.

The PEARL project: Responding to Perpetrators in Health Settings is a project led by the University of Melbourne, focused specifically on general practitioners and their role in responding to men who use violence. The project found that whether men seek help for their behaviours is very much dependent upon the 'right person asking the right questions', highlighting the importance of training and education for health professionals.³³⁵

The PEARL project will run until early 2016, and will determine:

- ▷ the most effective ways for GPs to identify men who are using violence
- ▷ the most effective ways for GPs to respond when violence is identified or disclosed by male patients (including referral pathways)
- ▷ what types of interventions might improve the identification and response, within health settings to men who use violence.³³⁶

Perpetrator programs (including programs for perpetrators who are fathers) are discussed in more detail in Chapter 18.

Health sector coordination

A common theme in evidence before the Commission was the need for health services to be better coordinated and integrated so that people at risk of or experiencing family violence are guaranteed a standard of response wherever they access the health system.

We don't need a new service, or a yellow one instead of a green one. We need the glue to glue together the existing service systems so there are no wrong doors. So everywhere a child and family make contact anywhere with a service system, whether it is MCH nurses or child care or school or a paediatrician, "You have come to the right place. I can't help you, but I recognise you have an issue and I will take responsibility for referring you to somebody who can help you." That's an organised system.³³⁷

Pathways to support

The Commission heard that multiple and complex referral pathways mean that victims do not know where to go for help. In addition, family violence services are often not visible to health practitioners, and there is confusion and poor understanding of what specialist services offer.³³⁸ The need for a 'one-stop shop', and greater promotion to mainstream services was a common theme.³³⁹ The Commission heard a key barrier for effective responses for women and children was the lack of knowledge by first contact points about where to refer:

... (General Practitioners) require more information regarding family violence support services in their local area. A more integrated response between GPs and family Violence Programs would enable for a more fluid referral process for GPs. This would ensure that women and children are responded to in a timely and collaborative manner.³⁴⁰

It was also put to the Commission that a lack of knowledge or confidence about where to refer patients can lead to a decision not to ask particular questions that might lead to a patient disclosing family violence.³⁴¹ Professor Louise Newman AM, Director, Centre for Women's Mental Health at the Royal Women's Hospital also told the Commission that until better, less fragmented responses are available, better identification of family violence will not lead to better support:

In my view, before we implement mandatory training for health professionals on family violence and introduce better screening tools, we need to have clearer systems of response ... If we did have proper identification and safe disclosure of violence by women to health professionals, there would be increased demand which we would struggle to meet in the current service environment.³⁴²

The need for more streamlined referrals to other specialist services to meet the range of people's needs was also raised with the Commission. Improved access to mental health counselling and support, given the high correlation between family violence and depression was also raised:

Although the WHO recommends referrals to trauma informed mental health counselling and mother child counselling there is a distinct lack of availability and accessibility in Australia.³⁴³

The need for a more collaborative response from mental health and drug and alcohol services is described below.

Lack of collaboration between specialist services

The Commission heard evidence about the need for a more collaborative approach to providing mental health, drug and alcohol, and family violence services. Professor Hegarty told the Commission that siloed service delivery represents the status quo across the family violence, mental health and alcohol and drug systems:

... family violence and alcohol and other drug specific services ultimately end up providing care for the same women. While simultaneously targeting substance misuse and family violence is more effective than addressing either as a single issue, it is surprising that joined-up service provision and responsive care remains elusive ... siloed approaches are more common than not. Partnerships that coordinate interventions would improve outcomes for women and children yet these remain underdeveloped.³⁴⁴

Professor Humphreys expressed similar views:

I continue to be concerned about the profound division between the two sectors, a chasm which belies the evidence base and where there is strong potential to make greater inroads into the reduction of harm from family violence.³⁴⁵

The Women's Mental Health Network Victoria also told the Commission that consumers have raised concerns about the lack of coordination between the family violence and mental health systems.³⁴⁶

A common reason for failure to collaborate is that there are 'philosophical tensions' between the sectors.³⁴⁷ In its submission, the Melbourne Research Alliance to end violence against women and their children stated that the issue of causality is a barrier to the sectors working better together;³⁴⁸ for example, the conceptualisation of domestic and sexual violence as behaviour caused by psychological dysfunction or other individual or socio-demographic characteristics risks removing the responsibility of violence from the perpetrator.³⁴⁹ This is discussed in more detail in Chapter 18.

The Commission also heard that a lack of communication between the sectors has resulted in each feeling uninformed about the capacity of the other. Mr Bishop told the Commission that family violence workers have said that they are often unsure whether a client is high-risk enough to engage mental health services, or they are unable to get an immediate assessment, and do not feel confident to continue engaging the client without this support. Clients can therefore fall through the gaps.³⁵⁰

Tensions can also arise due to the difference in timeframes across the different sectors. For example, perpetrators and victims of family violence are likely to require support services over a longer timeframe than is provided by mental health services, particularly acute mental health service responses, which are crisis-oriented. It may be difficult for family violence services to engage specialist mental health input once the crisis period has passed. Family violence workers also told the Commission that accessing the limited mental health support that is available requires a diagnosis of a 'disorder' by a general practitioner, which can be stigmatising for survivors of family violence.³⁵¹ This is discussed further in Chapter 20.

The Commission heard about the benefits and potential gains that may be realised through closer coordination between service systems. NorthWestern Mental Health told the Commission that increasing the focus on family violence within mental health services is a practical and effective means to reduce the occurrence of family violence.³⁵²

There was a level of consensus across the evidence before the Commission about how services for people presenting with mental health, drug or alcohol issues and family violence could be better delivered. Mr Bishop stated that first, addressing family violence needs to be recognised as important and resourced. This includes allocating sufficient time to mental health workers to build and maintain relationships with their clients and with other family violence support services. Second, both sectors need to have a shared goal and a reciprocal relationship. This includes family violence services having the benefit of education and support from mental health services in relation to responding to people with mental health issues.³⁵³

The Women's Mental Health Network emphasised that a 'gendered mental health and wellbeing plan' and 'active mental health' promotion is a priority for addressing health and wellbeing of women experiencing family violence.³⁵⁴ NorthWestern Mental Health told the Commission that the three main avenues to better integration of services are:

- ▷ Improved channels of communication and information sharing.
- ▷ Increased specialist clinical expertise in the area of family violence.
- ▷ Improved access to outreach treatment services.³⁵⁵

In its submission, the Melbourne Research Alliance to end violence against women and their children identified a number of ways that a greater level of integration could be achieved across the sectors, including:

- ▷ Reviewing the evidence and funding for programs which effectively address the dual issues.
- ▷ Resourcing projects and collaborative efforts which address dual or complex needs.
- ▷ Increasing training across sectors.³⁵⁶

The Commission heard of areas of promising practice, such as the initiative at LinkHealth (previously Monashlink), where a dedicated alcohol and other drug practitioner worked specifically with victims and perpetrators of family violence.³⁵⁷ The government also highlighted this as an example of local arrangements to support better integration between the sectors.³⁵⁸ The Stella Project in London was also cited, which developed targeted resources and education for both sectors to support a more integrated approach.³⁵⁹

A number of other experts who gave evidence to the Commission advocated co-locating mental health, drug and alcohol and family violence services:

... connections are usually easier made when people are within a same building and over the years in Victoria we have had many examples - I remember I think in the 80s there was something called the NOW Centre on Sydney Road. Some of us may remember that. There was Child Protection. I think there was a homeless service. There was a women's service and other services and people would literally walk from one part of the building to the other one to talk to people in the other organisation. Whilst that might seem so simplistic, it is actually sometimes as simple as that, as co-location does make a change.³⁶⁰

If you work alongside people and you get to know them in another way other than their professional role, I think you get a better understanding of their roles and tasks and they of you. So I do think it can lead to an improvement in relationships and understanding.³⁶¹

The RACGP highlighted the need for better systems to enable GPs to identify and make referrals to psychiatrists and psychologists with expertise in family violence, along with more inclusive Medicare rebates to enable greater access to mental health care.³⁶²

System-wide models

The Commission heard evidence about the move to 'whole-of-system' approaches, and the development of more comprehensive responses to family violence within the healthcare system.

Kaiser Permanente is a not-for-profit, integrated health care delivery system in the United States which includes 39 hospitals and 619 medical centres, with a workforce of over 18,000 physicians.³⁶³ Clinics using the model provide outpatient, inpatient, emergency and behavioural health services, including mental health services.³⁶⁴

The Commission was told about Kaiser Permanente's 'systems-model' approach to family violence, adopted across northern California.³⁶⁵ The systems-model approach aims to support family violence responses across the whole healthcare system.³⁶⁶ Five principles underpin this approach:

- ▷ A supportive environment—health services provide a supportive and comfortable environment for victims to disclose family violence. This includes having posters on the walls of examination rooms and information sheets on the back of toilet doors, as well as take-away pamphlets or 'tear off' sheets.
- ▷ Clinical inquiry and referral—clinicians receive training and support on asking questions and responding to a disclosure of family violence, including how to use tools in the electronic health record (which provide reminders and questions that can be used for screening).
- ▷ Onsite family violence services—onsite support services are available to assist victims in accessing social and mental health supports.
- ▷ Links to community resources—community service providers are part of multi-disciplinary teams in centres.
- ▷ Leadership and oversight—the model includes strong local and regional health centre leadership structures to ensure that new research is circulated and practices are updated to reflect new approaches in best practice. Physician 'champions' and team leaders meet on a regular basis to improve practice.³⁶⁷

In 10 years, there has been a sixfold increase in the number of patients identified as being victims of family violence in clinics that have adopted this approach; and a 50 per cent uptake of referrals to mental health services following a disclosure.³⁶⁸ In her evidence to the Commission, Dr McCaw noted the importance of having quality data to support the model, and the benefits of co-locating services.³⁶⁹

In its submission to the Commission, the Royal Women's Hospital noted that the Kaiser Permanente model could serve as a useful precedent for service design in Victorian hospitals.³⁷⁰ Professor Hegarty, while noting that the US medical system is very different to that of Australia's, agreed that lessons learnt would be helpful in designing system responses here.³⁷¹

The Commission heard that in New Zealand, the Family Violence Intervention Programme introduced in 2002 supports health sector responses by funding coordinator positions in all district health boards (DHBs), auditing DHB performance, supporting research and evaluation and offering technical advice and training to health services committed to the program.³⁷²

The Commission also heard that one of the ANROWS research projects includes funding for the Department for General Practice at the University of Melbourne to build, implement and evaluate a trauma-informed 'systems model of care' that is responsive to women's needs.³⁷³

The model will take a whole of organization approach for services, including: environment, management, direct contact, practitioner support, referral pathways, information sharing, protocols and policies, and community linkages.³⁷⁴

The Commission understands that there are developments in Victoria moving towards implementation of this comprehensive approach. These include the work that has been led by the Royal Women's Hospital and the MOVE program (with maternal and child health nurses).³⁷⁵ According to Professor Hegarty:

I feel like all these projects, if we just sustained them in a longer term project and evaluated it well we could really - we are on the brink of having a really good system model, and certainly the Women's [Hospital] would be a very good place to trial that.³⁷⁶

Training and workforce development

The Commission heard that services across the health system need to be better resourced and skilled to pick up 'distress signals' in their patients at the earliest possible opportunity, to know how to have sensitive conversations with women, adolescents and children, and to assist them to access other supports.³⁷⁷

Opportunities for training and professional development

Currently, the availability, breadth and depth of professional development and training opportunities for health practitioners relevant to family violence, varies widely. The Commission was told of the importance of ensuring that all staff who interact with patients in healthcare settings are appropriately trained to identify and respond to family violence. This allows a continuity of service, especially where there is a high turnover of staff.³⁷⁸ The Commission heard that the Royal Women's Hospital takes this approach and in so doing has also identified the need to provide support to staff experiencing family violence.³⁷⁹

Health practitioner regulation and accreditation

A National Registration and Accreditation Scheme (NRAS) for health practitioners commenced in 2010, with professions covered within its remit including medical and dental practitioners, nurses and midwives, optometrists, chiropractors, pharmacists, physiotherapists and psychologists.³⁸⁰ Each profession has a National Board which regulates the profession and whose role includes approval of accredited programs of study to provide qualifications for registration in the relevant health profession.³⁸¹ The Australian Health Practitioners Regulation Agency administers NRAS and provides administrative support to the National Boards. A specified amount of Continuing Professional Development is required each year to maintain registration.³⁸²

All National Boards have issued codes of conduct for health practitioners, with most adopting a common code of conduct.³⁸³ The common code reinforces the mandatory obligations of practitioners to report child abuse and neglect, and sets out components of good practice.

Pre-service and undergraduate training

The need for competencies relevant to identifying and responding to family violence to be in both pre-service and in organisational settings, was a common theme before the Commission.³⁸⁴ The Royal Women's Hospital highlighted that the current 'invisibility' of family violence in the hospital system begins in the undergraduate education of health professionals.³⁸⁵ The Commission heard that there is very limited content dedicated to family violence in many relevant degrees for health practitioners, and that undergraduate and graduate training of the medical and nursing professions lacks any mandatory content on intimate partner violence.³⁸⁶

Compared to my undergraduate and postgraduate studies in nursing and midwifery, it was only when I went to do my maternal and child health nursing that I received formal education or curriculum into family violence.³⁸⁷

The role of professional bodies and associations and was also emphasised in providing essential leadership in this area. This is further discussed below.

Training for mental health and drug and alcohol practitioners

The Commission heard strong endorsement for formal training to build the capacity of alcohol and drug services, mental health services, family violence services and men's behaviour change programs to respond to clients with complex needs.³⁸⁸

Professor Hegarty told the Commission that there is a need for a more consistent and comprehensive approach to intimate partner violence education in medical and other health practitioner degrees, so that identifying and responding to family violence in health settings becomes the norm.³⁸⁹ The Victorian Alcohol and Drug Association emphasised that building confidence and skill among the alcohol and drug workforce to identify family violence, and to know where to refer for specialist assistance, is paramount.³⁹⁰

The RANZCP's Victorian Branch told the Commission that there is a lack of family violence education at all levels of medical and psychiatry training that is hindering optimal engagement with the complex issue of family violence.³⁹¹ The Researching Abuse and Violence Team at the University of Melbourne also called for training of public and private mental health professionals in family violence, noting the lack of training as part of undergraduate/graduate programs for psychologists, social workers and psychiatrists.³⁹² The RANZCP submitted that it should be mandatory for all mental health professionals to be trained in identifying and responding to family violence, recognising that complex cases involving family violence are likely to present in the mental health system.³⁹³

The National Alliance for Action on Alcohol advocated strengthening the workforce through training and the use of common assessment tools, and noted that 'the CRAF and the Family Violence Referral Protocol do not consistently or sufficiently address the role of alcohol' in family violence:

Neither mechanism adequately addresses how service providers should assess the contribution of alcohol misuse to family violence, nor is there sufficient training or support to facilitate family and other services in engaging AOD treatment services.³⁹⁴

DHHS advised the Commission that while the department does not specifically fund family violence education or training activities, funding is provided for training priorities determined by local workforce training needs analysis and delivered through department funded mental health and alcohol and drug training providers. Examples included a number of courses delivered by the Bouverie Centre on topics such as trauma informed sensitive family practice; gender sensitivity in Victoria's mental health services and working systematically with sexual abuse. Other courses included addressing male perpetrated domestic violence (delivered by No To Violence) and domestic violence and childhood trauma.³⁹⁵

Training provision and delivery

The Commission heard that, while significant amount of family violence assessment training has been available to the broader social services sector, it has been insufficient to ensure staff from health and community agencies are appropriately skilled in this area.³⁹⁶ There was recognition that CRAF workforce training targeted to whole sectors, such as that provided to all maternal and child health nurses, had been useful.³⁹⁷ The 'one-off' nature of this training however, is problematic.³⁹⁸

The content of the CRAF training, and whether it was sufficient for the role of health practitioners was also raised. Ms Jaffe outlined that the level 1 CRAF training was 'predominately awareness raising', and that in her view:

I believe that it needs to incorporate some basic safety planning, predominantly because often a woman will disclose or will unpack with whichever health professional she lands that she is experiencing family violence but may not be ready to uptake services.

From speaking to services, that can take anywhere from weeks to months for her to potentially make that decision, to even make that phone call. In that instance no-one is safety planning with her.³⁹⁹

The delivery mode of training was also raised as an important issue. The Commission heard that ‘train the trainer’ models, while cheaper, have limited usefulness when the trainer does not have expertise in the relevant field:

So what I have seen historically is you will have a mental health worker—I’m just choosing mental health but it could be drug and alcohol—you might give them a three day training on understanding family violence and then they are meant to go out and train other mental health workers. You cannot give a worker 10 or 20 years of experience in a three day program, and what happens over time is the common ideas and beliefs that are already circulating in the workplace end up being reinforced. So we are not actually changing behaviour. But it is a very cheap option often and an option that organisations tend to opt for.⁴⁰⁰

The importance of the availability of quality online training was also raised. The Commission heard that DHHS is developing a CRAF online training resource, to provide another source of training for professionals and service providers.⁴⁰¹ Ms Callister told the Commission that DET was currently facilitating refresher CRAF training for all MCH nurses through this online module.⁴⁰² This is further discussed in Chapter 6.

Gender-sensitive training

Building ‘gender-sensitive’ practice was raised in a number of submissions as related to improving health system responses to family violence. The Women’s Mental Health Network Victoria has developed a training program, called the *Building Gender-Sensitive and Safe Practice Training Program*, that aims to support services and practitioners to consider the needs, wishes and experiences of people in relation to their gender and sexual identity, and to ensure access to high-quality care based on dignity and respect.⁴⁰³ The Commission notes that the former Department of Health developed a training program for the health workforce in 2011 under its *Service guideline on gender sensitivity and safety: promoting a holistic approach to wellbeing*. This guideline included best practice responses to family violence.⁴⁰⁴

In its submission, the Gippsland Integrated Family Violence Committee highlighted the need for health practitioners to understand the particular dynamics of family violence and its gendered impacts:

If women or children are referred through their General Practitioner on a mental health plan, it has been found that a large number of psychologists in Gippsland don’t have any training about family violence therefore don’t understand the issues and recommend couples attend therapy and family mediation together, which could place the woman and her children at greater risk. The majority haven’t been trained in the Family Violence Risk Assessment and Risk Management Framework (CRAF).⁴⁰⁵

It was however continuously emphasised to the Commission that training and professional development is only one element of the overall support required by healthcare practitioners to usefully contribute to a family violence response.

You need it as a whole to have a good foundation for a good system. So you need the management support. You need guidelines. You need resources. Training is almost last. It’s almost like the last thing that you do. It’s not a pick and mix. These are the basics that we have found that work to make a good system work.⁴⁰⁶

Evidence about the workforce development and learning unit in NSW Health, the Education Centre Against Violence (ECAV), was provided by Ms Lorna McNamara, the Director of ECAV. Ms McNamara noted that one of the benefits of this unit was its location in government.

The brief from NSW Health has been for ECAV to provide training both to government agencies and to NGOs. This has placed us in a unique position, where we work across government departments and agencies as well as with NGOs, giving us a broad perspective across these different organisations.⁴⁰⁷

Ms McNamara noted that on a practical level, ECAV 'has been able to participate in high level meetings, and be involved in policy development including inter-agency policy development' which she suggests would be less likely to occur with external training provider.⁴⁰⁸ This area is further discussed in Chapter 40.

Trauma-informed care

Workforce development in delivering 'trauma-informed care' was an area commonly identified as necessary in the evidence before the Commission:

There is increasing recognition in mental health services that clinical practice and patient treatment and care should be informed by trauma-informed care and have a focus on recovery ... trauma-informed care recognises the high prevalence of experiences of assault and abuse among people accessing mental health services and acknowledges the ongoing impact of trauma on people's health, wellbeing and behaviour. Trauma-informed services take care to avoid practices that may exacerbate or retrigger previous experiences of trauma and undertake routine enquiry about people's experiences of abuse.⁴⁰⁹

Professor Kulkarni told the Commission that practitioners are not being taught at medical school how to appropriately ask about a patient's history with trauma, including family violence.⁴¹⁰

Dr Fernbacher told the Commission that the Department of Health's 2011 *Service Guideline on Gender Sensitivity and Safety*, a trauma-informed training tool, provides guidance to the mental health sector on family violence and sexual assault.⁴¹¹ She identified some challenges with the guideline, including that it is not binding and there is no monitoring structure for services to report back on implementation.⁴¹² The Women's Mental Health Network told the Commission that it has developed a training program for staff working in mental health, and drug and alcohol services, based around that guideline.⁴¹³

Dr Fernbacher told the Commission that in addition to training, other mechanisms are required to embed trauma-informed care:

I think there needs to be a number of layers, for example, a strategy, guidelines, but also some binding feedback mechanisms where mental health services would need to demonstrate how they have integrated those sentiments or the guidelines or the strategies into their service delivery. So training is one aspect, but how can you demonstrate that you have actually now either reorientated your service or that people are really practising in a different way. So, if that is through KPIs or other mechanisms, I think it would be important that that is part of any implementation.⁴¹⁴

The Chief Psychiatrist cautioned that trauma-informed care constitutes a major shift in current practice, that will take time and resources, and that mental health services will require assistance in the form of a Statewide Trauma-Informed Care Strategy, a Trauma-Informed Care Guideline and a Trauma-Informed Care Implementation Plan.⁴¹⁵

Commonwealth developments in training

At a national level, the Commonwealth has funded DV-Alert training through Lifeline, which provides training to 'frontline workers' to respond to and refer people in situations of family violence. The training program was funded under the National Plan to Reduce Violence Against Women and their Children 2010–2022. The National Plan includes a focus on strengthening the role of health services in identifying and responding to family violence, including a common risk assessment framework and training for the health sector that aligns with specialist family violence services.⁴¹⁶

As part of a 2015 Commonwealth funding announcement for initiatives under the National Plan, \$14 million was provided to expand the DV-alert training program to 'police, social workers, emergency department staff and community workers'.⁴¹⁷ This funding also included work with the Royal Australian College of General Practitioners to develop and deliver specialised training to general practitioners nationally.

The National Sexual Assault, Domestic and Family Violence Counselling Service (1800 RESPECT) has been funded to develop an online toolkit for frontline workers to help them better recognise and respond to sexual assault and family violence. The online toolkit includes resources such as information about recognising the signs, supporting disclosure, assessing risk, safety planning, cultural competence and trauma. It also includes resources for managers and organisations and information on family violence policies. Professor Hegarty highlighted these resources but also commented that she thought it unlikely many health practitioners would be aware they were available.⁴¹⁸

Leadership from government and professional bodies

The Chief Psychiatrist noted the importance of champions to effect practice changes in the mental health sector:

You need to identify local champions. Health care services, health care providers were very tribal in a way and our practice is very much influenced by what respected other practitioners do. So social influence is very important in shaping practice. So having people who are regarded as good practitioners by people in the front line endorsing a particular practice is very powerful in bringing about change.⁴¹⁹

Championing workforce change

Dr Fernbacher told the Commission that improving the way the mental health workforce responds to family violence victims requires clear direction and allocation of responsibilities by DHHS, supported by:

- ▷ A departmental strategy on trauma-informed care.
- ▷ A DHHS guideline outlining in greater detail the roles and responsibilities of clinical and mental health community support services.
- ▷ An implementation strategy with statewide and regional resourcing.
- ▷ A governance structure with key performance indicators and mechanisms to monitor, report on and refine implementation.
- ▷ Training for mental health staff in the CRAF and trauma-informed care.⁴²⁰

The RANZCP suggested that the Chief Psychiatrist should have responsibility for formulating training for psychiatrists. It also recommended that there be 'one main respected champion of the cause at each institution'.⁴²¹

An evaluation of the MOVE study (discussed above) also emphasised the importance of leadership in facilitating appropriate practices to identify and respond to family violence including the need to build a sense of 'professional duty' in workplace culture to assist patients at risk of or experiencing family violence:

If you do that message, 'This is your professional duty of care to do this', and then you provide those professionals with what they need in an ongoing way, then you are more likely to get a sustained behaviour change, which is what I think we should all be working towards.⁴²²

Professor Hegarty also highlighted the need for changes in workplace culture to support the use of tools and guidelines. She noted that while some general practitioners follow the guidelines *Abuse and Violence: Working with our patients in general practice*:

... others don't. This isn't enough. Health professionals need compulsory training to ensure better health and safety outcomes for women and children experiencing domestic violence. Only an organisational shift can make this happen. Practitioners need a supportive environment and changes in health system protocols and [policies].⁴²³

Leadership within organisations to effectively implement policy and practice change is also required. The Commission heard about the importance of leaders within health sector sponsoring and championing family violence policy and initiatives, such as the chief executive officers of public health entities responsible for making operational decisions.⁴²⁴

Leadership from government and professional bodies

The Commission was told of the need for clear directions from government departments and key organisations to support consistent responses to family violence being adopted and implemented by health service providers.

The Commission notes that there is limited reference to alcohol and substance use in the *National Plan to Reduce Violence Against Women and their Children 2010–2022*, and limited reference to family violence within the *National Drug Strategy 2010–2015*. The *National Alcohol and other Drug Workforce Development Strategy 2015–2018*, part of the *National Drug Strategy*, does reflect the need for strategies to support greater integration with the family violence sector. Ms Ingrid Wilson, PhD candidate at the Judith Lumley Centre, La Trobe University told the Commission:

We need a better focus on alcohol-related domestic violence in our policy frameworks. Historically, alcohol has been given little attention in national and state domestic violence frameworks, although much focus has been on strategies to reduce alcohol-related violence affecting Indigenous communities. Yet the data show that alcohol-related domestic violence is not confined to Indigenous Australians. Hence, policy and intervention frameworks should look to reduce alcohol-related violence across the whole Australian community.⁴²⁵

DHHS has significant power to effect change in the practices of hospitals and the health sector more broadly, as it is responsible for developing policy, setting priorities, funding, and formally monitoring public health services.⁴²⁶

The role of the Department of Health and Human Services

- ▷ *Sets strategic priorities.* DHHS sets strategic priorities, with public health service entities such as hospitals then making decisions within the parameters set by these strategic priorities. The board of each public health service is required to have a strategic plan that is consistent with DHHS strategic priorities. This plan is approved by DHHS.⁴²⁷
- ▷ *Develops statements of priorities and annual funding guidelines.* A Statement of Priorities is an agreement between a health service entity and the Victorian Government about the services to be provided by that entity and the way in which those services are to be provided.⁴²⁸ Each statement sets out a number of 'strategic priorities', the 'action' to be taken in relation to those priorities and the 'deliverable' to be achieved from that action.⁴²⁹ It also sets out key performance indicators for a number of 'performance priorities'.⁴³⁰
- ▷ *Sets policies and guidelines.* In entering into a Statement of Priorities, a public health service entity agrees to comply with all applicable policies and guidelines issued by DHHS, for example, elder abuse policies or maternity policies.⁴³¹
- ▷ *Monitors performance.* DHHS monitors, analyses and evaluates a health service's performance against the requirements in its Statement of Priorities.⁴³²

DHHS also determines the level of funding for services.

DHHS's Statement of Priorities for public health services in 2015–16 included a mandatory requirement for services to develop deliverables relevant to improving responses to family violence.⁴³³ Health services are required to demonstrate how they are working to prevent, identify and better respond to family violence, particularly in vulnerable or high-risk groups to list the actions they intend to take and to monitor these actions during the year.⁴³⁴

A review by the Commission of DHHS's policies and funding guidelines indicated that family violence is not universally described or captured in data sources. Within the area of public health, policies that did not mention family violence include: the Victorian Health Priorities Framework 2012–2022 (Metro and Rural); the Victorian Health Service Performance monitoring framework; the *Capability Framework for Victorian Maternity and Newborn Services 2010*, and the Koori Maternity Services Minimum Data Set (which collects data for age, referrals for alcohol/drug abuse and smoking, but not family violence).

Role of the Chief Psychiatrist

Under the Mental Health Act, the role of the Chief Psychiatrist is to provide clinical leadership and promote continuous improvement in the quality and safety of mental health services.⁴³⁵ The Chief Psychiatrist holds an executive role in DHHS, and leads a team consisting of the Office of the Chief Psychiatrist and the Office of the Chief Mental Health Nurse. The Chief Psychiatrist also provides advice to the Minister for Mental Health, and Secretary of DHHS about the provision of mental health services.

The Chief Psychiatrist performs a range of functions including developing and assisting mental health service providers to comply with standards, guidelines and practice directions, conducting clinical practice audits and reviews, and developing and delivering information and training to promote quality and safety.⁴³⁶

Dr Oakley Browne, the Chief Psychiatrist, explained in evidence that one of the functions of the Office of the Chief Psychiatrist is issuing standards, guidelines and practice directions.⁴³⁷ These guidelines inform the development of the local policies and protocols of mental health services and are used by other government agencies such as the Mental Health Complaints Commissioner, the Mental Health Tribunal and the Health Services Commissioner.⁴³⁸

The Office of the Chief Psychiatrist has not produced a specific family violence guideline, however, Dr Oakley Browne stated that several other guidelines relate to family violence including *Working together with families and carers* (2005), *Promoting sexual safety, responding to sexual activity, and managing allegations of sexual assault in adult acute inpatient units* (updated 2012), *Discharge planning for Adult Community Mental Health Services* (2002) and *Treatment plans under the Mental Health Act* (updated 2009).⁴³⁹ While they are not strictly enforceable, the Commission was told that mental health services undergo a regular cycle of accreditation, and part of this process reviews their assessment tools.⁴⁴⁰

Dr Oakley Browne also informed the Commission of a guide developed by the Victorian Community Council Against Violence with support from the former Department of Health, *Identifying and Responding to Family Violence: A Guide for Mental Health Clinicians in Victoria* (2005) which was distributed to mental health services and is used at the discretion of the clinician or service.⁴⁴¹ As discussed above the *Service Guideline on gender sensitivity and safety: promoting a holistic approach to wellbeing* (2011) provides guidance to practitioners, including those in the mental health system, on best practice when working with people who have experienced trauma, family violence and sexual assault.⁴⁴²

Role of professional bodies and associations

Professor Taft told the Commission that professional bodies, such as the Australian Medical Association (AMA) and the Nursing and Midwifery Council have an essential role in developing and driving the implementation of family violence response standards for their members.⁴⁴³

As discussed earlier, the AMA and the RACGP have developed resources and curriculum to support their members in responding to family violence.

The Commission understands that, at the time of writing, apart from the AMA and the RACGP, only a limited number of professional associations make reference to family violence in their professional guidelines. A review of websites for the Australian Health Practitioner Regulation Agency (AHPRA), the Medical Board of Australia, Dental Board of Australia and Nursing and Midwifery Board of Australia, revealed that only the Midwifery Board specifically included family violence in its national competency standards.

Other medical colleges and peak health bodies to address family violence include the Australian Psychological Society, which publishes a range of material that provides guidance on assessing clients for family violence. The Royal Australasian College of Surgeons (RACS) published a *Position Paper on Domestic Violence* in late 2015.⁴⁴⁴ In its submission to the Commission, the RACS emphasised its support for data-collection system improvement, particularly in relation to hospital presentations.⁴⁴⁵ *The Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZOG) Standards of Maternity Care* (2014) indicate that obstetricians (GP and specialist) and midwives 'should have a working knowledge of the impact of domestic abuse. Staff should be competent in recognising the symptoms and presentations of such abuse and be able to make appropriate referrals'.⁴⁴⁶

In its submission to the Commission, the Victorian Branch of the Royal Australian and New Zealand College of Psychiatrists, noted the lack of family violence education at all levels of medical and psychiatry training. It hosted a multi-disciplinary roundtable in early 2015 to address the lack of emphasis on mental health in family violence service delivery. The roundtable identified the need for better training and development of practice guidelines, however, the Commission is not aware whether these have been progressed.⁴⁴⁷

The RACGP suggested that relevant professional associations play a role in improving access to psychologists, psychiatrists and other practitioners trained in family violence, particularly intimate partner violence.⁴⁴⁸

We suggest easier access could be achieved if health professional search databases, such as those provided by Australian Psychological Society (APS) and the Royal Australian and New Zealand College of Psychiatrists (RANZCP) were expanded to include a specialist search on psychologists and psychiatrists specially trained in areas of abuse and violence. This could also include practitioners who are prepared to do court reports at reasonable rates for women and children in the court system. More efficient access would enable GPs and their teams to more successfully coordinate the medical care of women.⁴⁴⁹

The way forward

The Commission believes that health professionals can play a vital role in identifying and responding to family violence. We heard that some victims of family violence will never present at a specialist family violence service or contact the police; however, many will seek medical assistance at various points in their lives, such as during times of pregnancy or childbirth, or to seek treatment for injuries or medical conditions as a result of violence.

Health professionals have a unique opportunity to identify family violence through contact with both victims and perpetrators, by detecting common warning signs or through sensitively asking questions that can help to uncover it. Once identified (either through detection or disclosure) it is critical that the violence is acknowledged and that effective steps are taken to minimise risks to the victim and any children by providing support and assisting with appropriate referrals.

Ensuring that health professionals are able to detect the signs of family violence and offer meaningful support is essential for avoiding missed opportunities to intervene and offer assistance. The Commission recommends system-wide reform to ensure greater coordination and preparedness within the broader health sector to support patients. These are described below.

In Chapter 20, the Commission also recommends that the Victorian Government, through the Council of Australian Governments, encourage the Commonwealth to consider a Medicare item number for family violence counselling and therapeutic services distinct from a General Practitioner Mental Health Treatment Plan. The Commission further recommends that in the longer term, consideration be given to establishing a Medicare item number or a similar tool that will allow medical practitioners to record a family violence-related consultation or procedure. This will also help to more accurately capture the health burden of family violence.

Coordinated health system responses to family violence

Whole-of-system, integrated approaches are essential if health services are to respond effectively to family violence. The evidence shows that embedding family violence awareness across entire health systems is the most successful way of building confidence in practitioners to recognise and respond effectively to family violence, and increasing the numbers of victims who are able to disclose family violence.

Reflecting family violence in health and wellbeing plans

The *Victorian public health and wellbeing plan 2015–19* was released in September 2015 and identifies the government's health and wellbeing priorities for the four-year period.

The plan recognises that gender roles, norms and expectations, gender-based violence and sexism can have significant impacts on an individual's health and wellbeing. This edition of the plan identifies prevention of violence and injury as a priority, noting that family violence is the second-largest cause of ill-health and early death for women aged 20 to 34.⁴⁵⁰

Local government is recognised as a major partner in the implementation of this plan, and there is a legislative requirement for each local government to create a municipal public health and wellbeing plan that considers the directions and priorities of the Victorian plan.

These plans include examination of data about health status and determinants in the municipal district, goals and strategies for helping to achieve maximum health and wellbeing and details of how the community will be involved and how the plan will be executed in partnership with relevant agencies. Councils are well placed to do this work in their role as employers, as well as their service and program delivery roles in areas such as early childhood, engagement with youth and older people.

The Commission recommends that the existing legislative requirements be amended to expressly require councils, in collaboration with regional family violence governance committees, to develop measures to prevent and respond to family violence as part of this planning process. Many councils are already proactively addressing family violence in their municipalities. Other local councils may require some more support from their regional committee to undertake this work.

The Commission sees merit in the Victorian Government considering other amendments to the *Public Health and Wellbeing Act 2008* (Vic), for example to require a statewide public health and wellbeing plan to include reference to the health impact of family violence and the development of proposals to prevent it. Any such plan should also be consistent with the recommended Statewide Family Violence Action Plan discussed in Chapter 38.

Recommendation 94

The Victorian Government amend section 26 of the *Public Health and Wellbeing Act 2008* (Vic)—which requires that councils prepare a municipal public health and wellbeing plan—to require councils to report on the measures the council proposes to take to reduce family violence and respond to the needs of victims. Alternatively, the Victorian Government could amend section 125 of the *Local Government Act 1989* (Vic)—which requires each council to prepare a council plan—to require councils to include these measures in their council plan (rather than their health and wellbeing plans) [within 12 months].

Whole-of-organisation approaches

There are a number of positive approaches to identifying and responding to family violence within parts of the health service system that have been evaluated and are working effectively. These include programs within hospitals, work with general practitioners and with maternal and child health nurses, clinical guidance, targeted professional development, and partnerships between different health service providers and specialist family violence services. These need to be built on to form part of a system-wide approach, rather than remain discrete pockets of innovation.

Key elements of a whole-of-organisation approach to addressing family violence are:

- ▷ policies, procedures and guidelines
- ▷ protocols for internal and external referral pathways
- ▷ partnerships between health services and specialist family violence services
- ▷ a workforce that is equipped and supported to identify and respond to family violence
- ▷ executive leadership and governance
- ▷ appropriate funding
- ▷ the appointment of clinical champions
- ▷ supportive environment for disclosure, including appropriate design of spaces where patients are seen
- ▷ accurate and consistent data collection
- ▷ systems for evaluation and monitoring of progress.

Funding and support should be provided at the requisite level and for as long as it is necessary to ensure a whole-of-organisation model is adopted across all Victorian hospitals. Models that Victoria could draw on in developing more comprehensive whole-of-system approaches include the Kaiser Permanente model in the US and relevant work in New Zealand.

DHHS has pursued a number of initiatives in public hospitals to strengthen responses to family violence. Some hospitals have, through their own initiative, developed risk assessment and management guidelines, protocols and ways to strengthen their relationships with the family violence system. This work should be commended, and models such as that being developed at the Royal Women's Hospital are moving towards a comprehensive best practice approach. This approach needs to be expanded statewide to ensure that all public hospitals have an effective response to family violence.

In addition, in the short-term, the Victorian Government should continue to support and resource improvements to the outcomes and transferability of the Strengthening Hospital Responses to Family Violence project and St Vincent's Health Elder Abuse Prevention and Response Initiative.

Recommendation 95

The Victorian Government resource public hospitals to implement a whole-of-hospital model for responding to family violence, drawing on evaluated approaches in Victoria and elsewhere [within three to five years].

Data collection and management systems

The Victorian Government should continue to develop and trial data management systems and processes that enable consistent, efficient data capture, retrieval and reporting on family violence disclosures and responses within the health system. Developing a shared framework of data definitions and performance indicators, and developing shared standards and procedures to foster consistency and quality among Victorian data sets are central to these recommendations.

In relation to hospitals, the Commission heard that core inpatient, outpatient and emergency data systems in Victoria's hospitals are not effectively capturing and reporting the rate of disclosures of family violence, or tracking outcomes. The Commission acknowledges that there are fields within the Victorian Emergency Minimum Dataset in which injuries that were most likely caused by a family member may be recorded but recognises that there are opportunities to improve the recording and quality of that data, for the following reasons:

- ▷ such fields do not appear to be designed to capture all forms of family violence; and
- ▷ this data set is confined to presentations to the emergency departments of the 39 Victorian public hospitals that provide 24-hour emergency department services.

Similarly, there are opportunities to improve the recording and quality of data recorded on the Victorian Admitted Episodes Dataset.

In addition, many hospitals still maintain paper medical files, supplemented by some limited computer-based information. The Commission recommends that DHHS build on the current work underway at the Royal Women's Hospital to investigate transferability of improved data collection. Guidance and training to improve practitioner confidence in systematic data entry will be an essential part of this strategy. The Commission recognises that this will require some lead time so that required systems can be reviewed and updated.

Broader recommendations about family violence data collection and its governance are discussed in Chapter 39.

Improving family violence identification

Antenatal screening

We know that pregnancy represents a time of heightened risk for family violence. It is important that the health system recognises this and takes advantage of the fact that women will generally have regular engagement with health professionals during this time—representing an opportunity to build trust and offer help.

The World Health Organization recommends family violence screening occur in antenatal settings, because of the increased risks of intimate partner violence during pregnancy. In Victoria, routine screening is recommended during the antenatal period, but is not mandated. There is also a lack of practice guidance to support health professionals to conduct such screenings.

The Commission therefore recommends that routine screening be required in all public antenatal settings, to improve the safety and health outcomes of women and children. While screening is a process that is distinct from a formal risk assessment, it does serve as a mechanism to identify women who are at risk. Therefore, any screening process should align with best practice knowledge about family violence risk factors.

In Chapter 6, we recommend the review of the CRAF. The CRAF provides guidance for a range of practitioners on risk factors for family violence. Any routine screening tool must be aligned to risks identified in the revised CRAF to ensure best practice and consistency across the broader health and social services sectors.

For screening to be effective, health professionals will require guidance and training about the nature and dynamics of family violence. Health professionals will also require training about how best to ask questions about family violence so that women feel comfortable, and that their privacy and confidentiality are assured. Supervision and clinical guidance, appropriate referral pathways and secondary consultation will need to be in place so that disclosures can be acted on promptly and appropriately. Evaluation and monitoring of this new approach will be essential.

This will build on the government's commitment to review and strengthen the training and mandatory risk assessment undertaken by maternal and child health nurses in the post-natal period.

Recommendation 96

The Department of Health and Human Services require routine screening for family violence in all public antenatal settings. The screening guidance should be aligned with the revised Family Violence Risk Assessment and Risk Management Framework. Implementation will require targeted and continued training, the development of specific guidelines, and clinical support [by 31 December 2017].

Recognising family violence risks in the mental health setting

The importance of effective integration between, or collaboration of, the family violence and mental health sectors is a common theme throughout this report. We know that people with mental illness can be particularly vulnerable and are at greater risk of family violence victimisation. In addition, mental illness can be an individual risk factor for the use of violence (this is discussed in greater detail in Chapter 18).

The recommended review of the CRAF should include a health sector-wide assessment of policies, protocols and practices that have implications for family violence, including: privacy and confidentiality within clinical settings; human resources; training provided and gaps identified in training; and physical resources.

In Chapter 7, the Commission recommends that current legislative impediments be removed to allow for simpler and more efficient information sharing relating to the assessment and management of family violence risk. Specifically, we recommend the *Family Violence Protection Act 2008* (Vic) be amended to allow the sharing of information between prescribed organisations under the Act. Health services will be prescribed organisations and will be able to share information with specialist family violence services and others where it is necessary to do so to assess or manage risk. In order to facilitate information sharing we have also recommended the establishment of a Central Information Point (CIP) of which DHHS would form part. Further details of these proposals are set out in Chapter 7. As prescribed organisations, health services will also be required to use CRAF-aligned tools when assessing risk.

The Commission considers it appropriate that the CRAF be used by members of the Mental Health Tribunal making decisions about compulsory treatment pursuant to the Mental Health Act. Applying the CRAF would both ensure that family violence is systematically considered in relation to people with a mental illness, whether they are a perpetrator or victim, and that consideration of risk associated with family violence (either as a victim or perpetrator) informs the development of appropriate treatment plans.

Chief Psychiatrist guidelines

The Commission heard about a range of safety issues faced by some family violence victims receiving mental health services, including the role of a carer (who may be the perpetrator of family violence), inappropriate discharge arrangements and mental health practitioners responding inadequately to trauma. We also note the evidence of the Chief Psychiatrist who suggested there is an opportunity to improve discharge planning to ensure the safety of family violence victims when they leave ‘in-patient care’ services.

Although there is a guideline for mental health services specific to sexual assault, there is no equivalent family violence guideline. Based on the evidence we received, the Commission is of the view that mental health service providers would benefit from additional consolidated guidance from the Chief Psychiatrist on the dynamics of family violence, the gendered impacts of violence and how to best deliver services to victims of family violence in mental health settings. A specific guideline on family violence would have a broad coverage across mental health service providers, and importantly, it would establish minimum standards for providers when identifying and responding to family violence.

Therefore, the Commission recommends that the Chief Psychiatrist issue a guideline specifically relating to family violence, to provide that family violence risk should be assessed when considering discharging or transferring care of a person receiving mental health services and when consulting with families or carers on treatment planning. These guidelines should be formulated in consultation with the DHHS principal family violence practitioner discussed at the end of this chapter and recommended in Chapter 40.

Recommendation 97

The Chief Psychiatrist issue a guideline relating to family violence—including that family violence risk should be assessed when considering discharging or transferring care of a person receiving mental health services and when consulting with families or carers in relation to treatment planning [within two years].

Cross-sector collaboration

Embedding family violence specialist advisors within drug and alcohol and mental health services

The Commission considers that the following preconditions for success need to be in place to improve collaboration between the family violence, mental health and drug and alcohol sectors:

- ▷ clear expectations set by government about the need for collaboration and to ensure that sectors are tasked and resourced to work collaboratively
- ▷ articulation of the mental health and alcohol and drug sectors' roles and responsibilities in relation to family violence
- ▷ articulation of the roles and responsibilities of family violence services (victim and perpetrator) in relation to identification and response to alcohol, drug and mental health issues
- ▷ in-service and pre-service training for the family violence, drug and alcohol and mental health sectors, with an emphasis upon cross-sector learning
- ▷ referral and secondary consultation pathways between services
- ▷ removal of barriers to information sharing
- ▷ resources for collaborative models, such as co-location or reciprocal work placements
- ▷ the inclusion of representatives from drug and alcohol and mental health services in Risk Assessment and Management Panels and other local-level risk management forums
- ▷ collaborative service planning to identify, resolve or provide clear practice guidance in relation to any interdisciplinary tensions or conflicts.

A clear message in evidence before the Commission was that workers in the mental health and drug and alcohol sectors wish to increase their knowledge and capability in family violence, and that family violence practitioners need to do the same in relation to mental health, drug and alcohol and other individual risk factors for family violence. The Commission strongly believes that this needs to go beyond understanding each other's referral pathways and one-off short training courses or ad hoc partnerships, to a more sustainable model of interagency and inter-sectoral collaboration and learning described in Chapter 40.

The Commission believes there is an appetite for embedding specialist family violence practitioners in mental health and drug and alcohol services. Their role would be to provide advice to clinicians on family violence matters as part of a multi-disciplinary practice. The benefits of this approach would be:

- ▷ it is truly collaborative; staff have to have an appreciation of multi-disciplinary practice and resolve traditional differences in practice philosophies
- ▷ the embedded worker is fully part of the team; decisions and actions are taken jointly, client management systems are accessible, and information can be shared. This assists with risk management for the victim and potentially improves clinical outcomes by better supporting her safety
- ▷ two approaches and service ethos are combined in practice, increasing opportunities for intersectoral practice and learning.

It is not realistic, however, to embed a family violence adviser in every drug and alcohol or mental health service in the state. A more prudent option would be to resource family violence positions in key services, with a reasonable mix of metropolitan and rural locations across clinical and community settings, to test and evaluate the model and inform future investment decisions. The key condition is that drug and alcohol and mental health workers can access this expertise in each region of Victoria.

Recommendation 98

The Victorian Government fund the establishment of specialist family violence advisor positions to be located in major mental health and drug and alcohol services. The advisors' expertise should be available to practitioners in these sectors across Victoria [within 12 months].

Support and Safety Hubs

In Chapter 13 the Commission recommends the establishment of Support and Safety Hubs. These will represent a new, area based, single entry point into family violence services and Integrated Family Services—consolidating the current L17 police referral points for victims, perpetrators and Child FIRST intake.

Within the hubs, there will be some specific roles to assist health practitioners to better meet the needs of people experiencing family violence. Advanced family violence practitioner positions will be established and these practitioners can be requested to provide a secondary consultation by health professionals when they have clients who are experiencing or are at risk of family violence. These positions, and the Support and Safety Hubs more generally, will be a clear and identifiable referral point for health professionals for their patients.

In addition, to further strengthen the links between the various sectors, the Commission recommends changes to promote shared casework models (facilitating greater harmonisation across sectors) and ensure that mental health and drug and alcohol services are appropriately represented on multi-agency risk responses, such as the RAMPs, which are responsible for identifying and responding to families considered to be at high risk. We also recommend these sectors be represented within other governance arrangements supporting the implementation of the recommended Statewide Family Violence Action Plan. For further information on this, see Chapter 38.

Recommendation 99

The Victorian Government encourage and facilitate mental health, drug and alcohol and family violence services to collaborate [within 12 months] by:

- ▷ resourcing and promoting shared casework models
- ▷ ensuring that mental health and drug and alcohol services are represented on Risk Assessment and Management Panels and other multi-agency risk management models at the local level.

Referrals to other medical professionals

It is essential, that as front-line staff, all health professionals have an understanding of family violence, to help them identify warning signs and to support people when disclosures are made. Encouraging disclosure without the ability to effectively respond to that disclosure is potentially harmful and may deter future disclosures, putting victims at greater risk.

Of all the health professionals, people are most likely to interact with a general practitioner. Therefore, it is critical that general practitioners have access to appropriate referrals to medical practitioners to ensure families at risk obtain the help they need.

For this reason, we recommend that peak health bodies work together to establish a cross-disciplinary database of professionals with expertise in family violence. This will provide some assurance that when a person is referred to further health interventions, their experience of family violence will be recognised and form part of the response to their health concerns.

Recommendation 100

The Royal Australian College of General Practitioners, the Royal Australian and New Zealand College of Psychiatrists and psychologist and drug and alcohol service peak bodies collaborate to develop a database of psychiatrists, psychologists, drug and alcohol practitioners and any other professionals with expertise in family violence to help general practitioners when making referrals [within 12 months].

Greater access to family violence forensic examinations

The Commission agrees with the Victorian Institute of Forensic Medicine that access to forensic medical examinations for family violence matters should be expanded as a matter of priority. The Commission also agrees that these examinations could be undertaken at sexual assault MDCs where forensic suites have been purpose built. The timely access to health and medical services following experiences of violence within settings that recognise the importance of safety and the impact of trauma is essential. In the Commission's view forensic examination should be seen as an essential service that needs to be offered where appropriate to family violence victims.

The Commission agrees with VIFM that forensic medical components should be included in the training of health professionals, and that forensic medical clinical practice guidelines should be developed for health practitioners whose patients have been subject to family violence.

Recommendation 101

Victoria Police actively seek access to forensic medical examinations in family violence matters from the Victorian Institute of Forensic Medicine [within two years].

Training and workforce development

As health professionals play such an important role in the identification and response to family violence, the Commission considers that family violence should form part of the critical working knowledge of health professionals, rather than being an optional add on to their studies and ongoing professional development.

For this reason, we recommend that a family violence learning agenda form part of undergraduate and graduate training for general practitioners and mental health professionals (psychologists and psychiatrists).

Recommendation 102

The Chief Psychiatrist—in consultation with the Royal Australian College of General Practitioners, the Royal Australian and New Zealand College of Psychiatrists and psychologists' peak bodies—coordinate the development of a family violence learning agenda [within two years] that includes:

- ▷ undergraduate and graduate training in relation to family violence
- ▷ continuing professional development in relation to family violence
- ▷ guidance on appropriate responses to people with mental illness who have also suffered family violence.

Internationally, the Commission understands that a new Cochrane review undertaken by the World Health Organization is currently evaluating educational interventions for intimate partner violence, and that a new curriculum is being developed for partner violence at pre-service and in-service levels for global health practitioners. This will provide useful guidance for required work in Australia to ensure that family violence is included in undergraduate and postgraduate training.

Professional development for general practitioners

The Royal Australian College of General Practitioners has played a leadership role in driving the development of curriculum guidance, training and information to assist their members. Mandating family violence training as a required part of continuing professional development (CPD) for registration is the next logical step.

CPD registration standards for medical practitioners are developed by the Medical Board of Australia and subject to approval by the Australian Health Workforce Ministerial Council (Ministerial Council) pursuant to the *Health Practitioner Regulation National Law* (2009). The Commission encourages both the RACGP and the Australian College of Rural and Remote Medicine to consider mandating family violence training within the CPD standards that they are authorised by the Australian Medical Council to set.

The Commission agrees with the RACGP that child safeguarding training should be provided, and supports the option proposed by the University of Melbourne that mandatory family violence training should be provided through a 'child safeguarding' framework that includes family violence. We understand that this model is working successfully in the United Kingdom where mandatory Child and Adult Safeguarding training is required of all health practitioners.

Recommendation 103

The Victorian Government, through its membership of the Australian Health Workforce Ministerial Council, encourage the Ministerial Council to approve standards that facilitate a mandatory requirement that general practitioners complete family violence training as part of their continuing professional development [within 12 months].

Role of professional associations and individual health sector workforce development

Professional associations have an important leadership role in supporting their members to undertake training. Despite the number of quality training packages and resources that are available for health practitioners, the majority do not undertake this training. While several professional associations have taken steps to improve understanding of family violence and its effects, there is significant room for improvement. The Commission supports including workforce development in family violence as a mandatory component of registration.

At individual sector levels, workforce training packages need to be developed that are targeted to the needs, and specific roles and responsibilities of the health practitioners.

DET's commissioning of the Australian Children's Foundation to adapt the *Assessing children and young people experiencing family violence: a practice guide for family violence practitioners* for use by maternal and child health nurses is a positive step. Maternal and child health nurses need to confidently identify and assess women for risk of family violence, at any stage, and not just at the four-week visit. This review must also address the recommendations of the MOVE study.

In the same vein, the Commission supports recent moves by Ambulance Victoria to develop a clinical practice guideline and policy framework to support the identification and management of patients who are either experiencing or at risk of family violence. This is a long overdue step. This new guidance, as with all sector-specific family violence risk assessment guidance, must align with and be informed by the revised CRAF.

Health service providers need to better understand the gendered impacts of violence, and how these intersect with other factors in individuals' lives. Guidelines such as the *Service guideline on gender sensitivity and safety: promoting a holistic approach to wellbeing* currently used by drug and alcohol and mental health sectors, should be more widely utilised and promoted.

As outlined elsewhere in this report, it is critical that all parts of the system adopt a consistent approach to working with perpetrators. A focus on perpetrators better ensures the safety of victims, increasing opportunities for accountability and behaviour change. Strengthened practice in working with perpetrators is required across the health sector. The work that the University of Melbourne is progressing with general practitioners, the *PEARL project: Responding to Perpetrators in Health Settings*, will provide important lessons for other parts of the health sector.

It should be noted that pregnancy and early fatherhood also represent a unique opportunity to motivate perpetrators to change their behaviour. Therefore, health professionals in these settings should also ensure referral pathways are in place for men at risk of using violence who may be willing to change their behaviour or seek help. Perpetrator interventions, including programs for perpetrators who are fathers, are discussed in more detail in Chapter 18.

A family violence industry plan

The Commission recommends in Chapter 40 that a comprehensive industry plan for family violence needs to be developed. The industry plan needs to take account of the challenges for the health and universal sectors, as outlined in this chapter, and of their need to gain confidence and literacy in family violence. One of the objectives of the plan will be to develop clear competencies, supported by a workforce strategy, to support non-family violence services in their role in meeting this challenge.

In addition, the Commission is recommending targeted actions that will support strengthening the professional responses to family violence within the health sector. These recommendations are also outlined in Chapter 40. Two key actions are:

- ▷ **Establishing a Family Violence Principal Practitioner in DHHS.** Following the success of the Senior Practitioner role in Child Protection and the inclusion of the Senior Practitioner—Disability in the Office of Professional Practice, the Commission recommends that a position of family violence principal practitioner should be established in DHHS. Their role would be to advise on family violence practice issues across the department, including in health services and in consultation with other principal practitioners.
- ▷ **Establishing a delivery mechanism for comprehensive workforce development and industry planning.** Victoria's universal and specialist service systems could be enhanced by greater collaboration and co-learning. The Commission recommends that the Victorian Government establish a delivery mechanism for comprehensive inter-disciplinary learning on family violence across the health, human services and justice systems. As there are numerous ways that this could be achieved, the Commission recommends that in determining a model, the NSW Education Centre Against Violence, which is located in that jurisdiction's Department of Health should be considered.

Endnotes

- 1 The Royal Women's Hospital, Submission 356, 6.
- 2 The Salvation Army, Submission 450, 18.
- 3 World Health Organization, 'Responding to Intimate Partner Violence and Sexual Violence Against Women: WHO Clinical and Policy Guidelines' (2013) 10.
- 4 Community consultation, Bendigo 1, 5 May 2015.
- 5 Melbourne Research Alliance to end violence against women and their children (Prof Cathy Humphreys et al)—01, Submission 840, Briefing Paper 1, 4.
- 6 Victorian Health Promotion Foundation, 'The Health Costs of Violence: Measuring the Burden of Disease Cause by Intimate Partner Violence—A Summary of Findings' (prepared for the Department of Human Services, 2004).
- 7 World Health Organization, 'Global and Regional Estimates of Violence Against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-partner Sexual Violence' (2013) 25, 30.
- 8 Jan Breckenridge et al, 'National Mapping and Meta-Evaluation Outlining Key Features of Effective "Safe at Home" Programs that Enhance Safety and Prevent Homelessness for Women and Their Children Who Have Experienced Domestic and Family Violence' (Landscapes: State of Knowledge No 5, Australia's National Research Organisation for Women's Safety, July 2015) 36.
- 9 Miriam Lum On et al, 'Examination of the Health Outcomes of Intimate Partner Violence Against Women' (Landscapes: State of Knowledge, Australia's National Research Organisation for Women's Safety, 2016) (forthcoming).
- 10 Victorian Health Promotion Foundation, above n 6, 15.
- 11 Ibid 8, 25.
- 12 Lum On et al, above n 9, 38–9.
- 13 Ibid 44.
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20 Recovery: health and wellbeing

Introduction

The trauma of family violence has a profound impact on health and wellbeing. Through submissions, consultations and hearings, victims recounted their experience of the effects of family violence. The Commission heard these effects are severe—reducing victims’ physical and mental health, social and economic participation, and ability to live free from fear. Whether they first occur during a violent relationship, post-separation or after the relationship has ended, the effects of family violence can last for long periods and damage victims’ lives in many ways.

In Chapter 2, we described some of the health and wellbeing effects of family violence in the words of the women who described their experiences to us. In the first section of this chapter, we briefly review some specific issues, namely mental health and the often neglected area of links between family violence and acquired brain injury.

The trauma of family violence can lead to poor mental and physical health outcomes, an increased risk of clinically significant depression, anxiety disorders, and post-traumatic stress disorders, loss of self-confidence, isolation, and for some, the misuse of alcohol and drugs. Despite this, the Commission has learned of the enormous resilience and strength of victims of family violence. The Commission also heard that there is a complex cycle for some victims of family violence. Violence in childhood or youth can contribute to mental illness,¹ which in turn makes victims more vulnerable to experiencing family violence in intimate partner relationships as adults. Drug and alcohol misuse is an individual risk factor for family violence victims as well as a way of managing trauma.

We heard about the cumulative effects of these various experiences, which are often compounded by difficulty in navigating the justice and service systems, and in attempting to regain financial and social independence. The Commission heard that the challenge of navigating these difficulties can be exhausting and distressing, and can impact significantly on a victim’s health and wellbeing.

The second part of this chapter focuses on the existing challenges and opportunities in the area of health and wellbeing support for victims of family violence. Recovery requires a broad range of mutually reinforcing interventions and strategies, including secure housing, economic security, social supports, skills development and employment. This section focuses on one important type of intervention to improve the health and wellbeing of victims of family violence—therapeutic interventions. The Commission also recognises that victims have diverse health and wellbeing support needs—some people will prefer support through their personal, spiritual, religious or community networks, others may require counselling services, while some may need intensive, therapeutic support.

The range and availability in Victoria of counselling and psychological services, which are the primary form of therapeutic intervention in family violence, is discussed. The Commission heard that, despite available evidence demonstrating the importance of this type of support, there are a limited number of therapeutic interventions available to victims and these are difficult to access.

Limitations to family violence victims’ eligibility for relief through the Victims of Crime Assistance Tribunal (VOCAT) and the difficulties some victims experience when attempting to navigate VOCAT and the Victims Support Agency’s Victims Assistance Program (VAP) are also discussed.

In the final section of this chapter, the Commission assesses the current interventions available to improve health and wellbeing during and after the immediate experience of family violence, and identifies the need to urgently expand the number and range of counselling services available to victims in Victoria. The Commission also considers the way forward in providing victims with ongoing and flexible therapeutic interventions.

The Commission recommends extending the number of Family Violence Flexible Support Packages to ensure greater access to counselling, psychological services and opportunities to strengthen social connections as well as other appropriate health and wellbeing supports. The Commission also recommends that the Victorian Government advocate at Commonwealth level for a Medicare item number for family violence to be established, distinct from a GP Mental Health Treatment Plan.

The Commission further recommends that the issues raised in respect of VOCAT and VAP be considered as part of the Victorian Law Reform Commission's current review, *Victims of Crime in the Criminal Justice Process*.

Our aim in making these recommendations is to strengthen therapeutic interventions in the hope of improving the health and wellbeing of victims of family violence and providing victims with the recovery services and support they urgently need. In doing so we recognise that not every victim will need or wish to have these services; however, the practice must be that those who do need such support can access this without delay and from a professional who understands family violence, its nature and dynamics.

Context and current practice

This section discusses current evidence about the relationship between family violence, poor physical health outcomes, mental health, and family violence and drug and alcohol misuse, for victims. It also looks at the cumulative effects of family violence on victims' health.

Effects of family violence on victims' physical health and wellbeing

As discussed in Chapter 2, the repeated and horrific physical and sexual violence experienced by many victims have significant health consequences including disability, chronic pain and reproductive health issues. Women who are victims of family violence are more likely to experience a range of poorer physical health outcomes including asthma, heart disease, obesity, stroke, blood pressure irregularities, cancer, reproductive issues, sexually transmitted infections including HIV, eating disorders, self-harm and suicide.²

The Australian Longitudinal Study on Women's Health found that women who have been in violent relationships use health services more often than other women and are more likely than others to visit general practitioners.³ The World Health Organization observed that the health consequences of violence against women can be 'long-lasting and chronic and/or fatal', highlighting findings that the more severe the violence, the greater its effects on the physical and mental health of women.⁴

Acquired brain injuries resulting from family violence

The Commission heard that while there is limited evidence in Australia to date on the relationship between family violence and Acquired Brain Injuries,⁵ international research confirms that ABIs can be a consequence of family violence and can be a risk factor for being a victim of family violence.⁶

The Commission heard that female victims of family violence often suffer repeated injuries to their head, face and neck.⁷ While not all injuries to the head will result in a brain injury, some may. Repeated blows to the head may lead to cumulative brain injuries, and the risk of negative consequences from ABI increases significantly with multiple injuries.⁸ Although many people with mild brain injuries recover within days or weeks, some may not recover and there may be long-term cognitive, physical, behavioural and emotional symptoms.⁹

There is emerging recognition that victims of family violence can suffer brain injuries in such attacks and that these are often not diagnosed.¹⁰ ABIs are also common in abused children, and may particularly affect children under three years of age.¹¹

One United States study reported that, of 99 women referred to as 'battered', 74 per cent suffered at least one type of brain injury from their partner, while 27 per cent sustained accident-related brain injuries.¹² Only 25 per cent of these women had attended hospital to have their head injuries evaluated.¹³

For victims of family violence, an ABI can have a number of consequences. First, it may not be diagnosed or treated, as symptoms of traumatic brain injury are not always immediately apparent or may be similar to symptoms of various mental health disabilities.¹⁴ Research suggests that screening for ABIs by family violence services, crisis accommodation services and mainstream health services is unlikely to be occurring, given the lack of awareness of ABIs in the context of family violence.¹⁵

Secondly, research suggests that it can expose victims to the risk of further harm:

Existing in a violent partnership exacerbates the risk of cumulative and progressively serious consequences of repeated hits to the head. In addition to the potential for [traumatic brain injury] to be a consequence of [intimate partner violence], the presence of [traumatic brain injury] symptoms may increase a [victim's] risk for further violence, particularly because their symptoms may increase their vulnerability to their abusive partners ...¹⁶

Thirdly, as for other women with disabilities, the presence of an ABI may make it difficult for some women to articulate or define abusive behaviour.¹⁷ It can also limit a victim's ability to leave the relationship, and some victims may have fewer options for reaching safety.¹⁸

Chapter 31 highlights the limited Australian research on ABIs both in terms of victimisation and perpetration. The Commission recommends that the Victorian Government fund research into the prevalence of ABIs among both victims and perpetrators of family violence.

Women's experience of family violence and mental health

Many victims described to the Commission the experience of psychological harm during and following family violence. These included emotional and psychological breakdowns, post-traumatic stress symptoms, self-harming behaviours, changes in eating and sleeping patterns, anxiety and depression.¹⁹

Research shows that exposure to family violence contributes to the development of mental health problems, and that the more severe the abuse, the greater the impact on a woman's mental health.²⁰

The World Health Organization has identified mental disorder, and depression in particular, as an individual risk factor that makes women vulnerable to experiencing intimate partner violence.²¹ A recent United Kingdom study found that family violence was reported by 27 per cent ($n=36$) of women with severe mental illness in the preceding 12 months, compared to nine per cent ($n=1085$) of the control population.²² Victoria's Family Violence Risk Assessment and Risk Management Framework (also known as the Common Risk Assessment Framework or CRAF) also identifies depression/a mental health issue as a factor that can increase a person's vulnerability to family violence.²³

Victoria Police L17 data provides further insight into the prevalence of mental health issues among victims of family violence.²⁴ Table 20.1 below illustrates that victim mental health issues have been identified as a factor in an increasing proportion of family violence incidents over the past five years. The Commission notes that a limitation on this data is the capacity of police members to identify mental health issues without specialist training and in challenging operational circumstances.

Table 20.1 Affected Family Members (victims) where mental health issue recorded by Victoria Police at the time of the family violence incident, from July 2009 to June 2014

AFM	2009–10	2010–11	2011–12	2012–13	2013–14
Mental health issue not recorded	91%	90%	90%	89%	85%
Mental health issue recorded	9%	10%	10%	11%	15%
Total family incidents (n)	35,666	40,733	49,927	60,408	65,154

Source: Crime Statistics Agency, *An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14* (January 2016), Table 1: Family incidents recorded and family incident rate per 100,000 population, July 2009 to June 2014 and Table 23: Proportion of hazards recorded on L17 Risk Assessment and Risk Management Report, July 2009 to June 2014, provided to the Commission by the Crime Statistics Agency, 8 January 2016.

The Commission heard that mental illness can be linked to earlier experiences of violence, with the mental illness caused by the earlier violence then contributing to women's vulnerability to further violence. Professor Jayashri Kulkarni, consultant psychiatrist and Professor of Psychiatry at Monash Alfred Psychiatry Research Centre, told the Commission that a common condition that presents for women who have experienced violence is Complex Trauma Disorder.²⁵

Essentially what we see in this Condition is that there is a trauma or violence against the woman (and often we see this with family violence), over an extended period of time when the girl is growing up, particularly in the childhood years and early puberty years. This could involve the woman growing up in a household where she was subjected to violence either of a sexual or a physical nature, or emotional deprivation or other emotional abuse.²⁶

[An] issue for women who did not receive early intervention (either professional or by some other family member or mentor) is that the relationships they form later in life are often very poor. The fundamental issue in this regard is that they learn from an early age, not to trust others. Along with the experience of violence is a fear of abandonment, which means that even if a relationship is violent, the woman will not want to leave or upset the balance in any way, because there is this major fear that she will be left to fend for herself and she feels as if she cannot.²⁷

The Commission heard considerable evidence about the many effects that family violence can have on the mental health of victims. The Royal Australian and New Zealand College of Psychiatrists told the Commission that 'chronic stress such as that seen in [family violence] leads to neuro-biological impacts which in turn produces mental illness and physical illness'.²⁸ In its submission to the Commission, the Women's Mental Health Network Victoria stated:

Violence against women has wide-ranging and persistent effects on women's mental health. Women are at risk of impacts including stress, anxiety, depression, phobias, eating disorders, sleep disorders, panic disorders, suicidal behaviour, poor self-esteem, traumatic and post-traumatic stress disorders, and self-harming behaviours (VicHealth 2004, Braaf and Meyering 2013).²⁹

Anglicare Victoria provided an overview of recent research in relation to family violence and mental health, which establishes that women who are the victims of family violence:

- ▷ are much more likely to develop depression and to become suicidal
- ▷ are more likely to develop clinically significant anxiety disorders, including post-traumatic stress disorder, which can impact their ability to be emotionally present for their children and to care for and nurture them
- ▷ may use alcohol and other drugs to cope with the psychological turmoil that violence has inflicted upon them.³⁰

A forthcoming paper by ANROWS (Australia's National Research Organisation for Women's Safety) describes the evidence on the health outcomes for women who experience intimate partner violence).³¹ The ANROWS paper reviews available literature on causal pathways between intimate partner violence and health outcomes.³² ANROWS found that the evidence that intimate partner violence may result in a particular health outcome among Australian women is:

- ▷ convincing in relation to depression, termination of pregnancy and spontaneous abortion and homicide
- ▷ probable in relation to anxiety, self-harm and attempted suicide
- ▷ possible in relation to a range of outcomes including alcohol use disorder and drug use disorder (may be bi-directional).³³

Research undertaken in 2004 by the Victorian Health Promotion Foundation (VicHealth) into the disease burden created by intimate partner violence, found that intimate partner violence was responsible for more preventable illness and premature death in Victorian women under the age of 45 than any other well-known risk factor, including high blood pressure, obesity and smoking.³⁴ VicHealth also estimated that anxiety and depression represented the greatest proportion of the disease burden associated with family violence (27 and 35 per cent respectively).³⁵

The link between intimate partner violence and depression also emerged in the academic literature reviewed by the Commission. For example, recent meta-analysis of 16 studies (including two Australian studies) found that experience of intimate partner violence increases the odds of depressive symptoms and suicide attempts among women, and conversely, depressive symptoms can increase the odds of intimate partner violence.³⁶

Other Australian research suggests that the mental health of approximately 18 per cent ($n=11,050$) of women with depression and 17 per cent ($n=8475$) of women with anxiety disorders is attributable to domestic violence.³⁷ One United Kingdom study found that women who experienced depression were significantly more likely to have experienced severe combined abuse than women who were not depressed even after other contributing factors, such as low income, were considered.³⁸

Family violence survivors and support services provided insights into the experience of mental illness in the context of family violence. One survivor told the Commission:

Even though I was consistently seeing a psychologist and I tried to stay strong, in the end I broke down. I was diagnosed with Post Traumatic Stress Disorder because of the abuse and placed on anti-depressants by my doctor who nearly sent me to hospital because my weight had plummeted so dramatically, caused by the stress of constant court dates, contacts and continued abuse. Unable to eat, not sleeping and yet still raising a child.³⁹

Hanover Welfare Services and HomeGround Housing Services described the situation of some of their clients to the Commission as follows:

As well as physical injuries (there were examples of broken jaws and slash wounds), the damage to mental health was perhaps most profound because of the constant threat in their lives. There was unceasing worry for their own and their children's safety (death threats, hiding, false identities) as well as feelings of guilt and disgust about themselves for exposing their children to the [family violence]. Some psychological damage was inevitable and they all spoke of the need for counselling for both themselves and their children. The mothers commonly needed a Doctor's Medicare rebated Mental Health Plan and medication for anxiety and depression.⁴⁰

Tactics of abuse used against women with mental illness

The Commission heard that some perpetrators use mental illness experienced by their victim as part of the abuse. Dr Sabin Fernbacher, Women's Mental Health Consultant, Aboriginal Mental Health Project Manager and Families where a Parent has a Mental Health Coordinator, Northern Area Mental Health Service, informed the Commission that there are a 'myriad of techniques' that family violence perpetrators use against women with mental illness:

Some examples of violence using mental illness are: telling her that nobody will believe her (because she has a mental illness); telling other people that she is 'crazy' and she makes things up; threatening to tell others (family, employer etc) of her behaviour when unwell (e.g. self-harm); colluding with delusions (e.g. moving furniture around and then denying it); withholding medication or determining when medication has to be taken (to her detriment); and showing concern for her mental health towards professionals while actively undermining her mental health. Further, when children are involved, men may threaten to have the children 'taken away', because she is 'unfit' (this is a real threat for many women with mental illness who may be forced to 'prove' that they are able to care for their children due to mental illness).⁴¹

People who have experienced family violence told the Commission about 'gaslighting'—an emotional tactic used by perpetrators to obtain or maintain control over a person by manipulating them into believing that they are mentally or emotionally unwell.⁴² For example, one participant in a community consultation described her situation:

... once he tried to give me anti-depressants. I refused. And then I hear that he tells the kids that 'your mother is mad and she's refusing medication'. When I had the accident, the doctor asked me if there was any reason to harm myself ... my husband had got in first and told the doctor that I was suicidal.⁴³

The Commission also heard that perpetrators may also use the victim's mental health problems to trivialise the violence, use it as an excuse for violence or claim the victim is hysterical—to avoid detection or deflect the focus away from their violence and onto the victim's mental health. One lay witness spoke of experiences that were typical of those of women with mental health disabilities who came before the Commission. She described the first time she called the police and her husband's reaction:

After they left, he still kind of happy and laughing, like he thought 'That was going to stop me?' 'All I have to do'—this is what he told me afterwards—'All I have to do is tell them "You understand women, they're irrational, they over-exaggerate, they overreact sometimes" and he made me feel like they [the police] had a laugh about me ... All he had to tell them was 'Oh, she's on anti-depressants and she's not taking her medication'. And it just made me feel so much more isolated, so small in my own home. I only ever called the police one time after that.⁴⁴

Women's experience of family violence and drug and alcohol misuse

The Commission heard evidence that the higher risk of alcohol and drug problems for women living with family violence has been noted across all areas of the service system including drug and alcohol services, midwifery, primary care, police family violence teams, and child protection services.⁴⁵

A 2014 World Health Organization report indicates that women exposed to intimate partner violence are almost twice as likely to have an alcohol use disorder, and women who have experienced non-partner sexual violence are also 2.3 times more likely to have alcohol use disorders than women who have not had these experiences.⁴⁶

Ms Ingrid Wilson, PhD candidate, Judith Lumley Centre, La Trobe University, told the Commission that women who are victims of family violence are more likely to 'self-medicate' using alcohol, which can lead to problematic drinking levels.⁴⁷ Professor Cathy Humphreys, Professor of Social Work, University of Melbourne, told the Commission that women living with family violence and who have problematic substance use are also more likely to suffer injuries, less likely to be believed and supported, and more likely to use violence against their partner, even if it is in self-defence.⁴⁸

Women told the Commission of turning to alcohol or drugs as a consequence of the violence. As noted above, research suggests that such self-medication may be a way of coping with traumatic experiences, including post-traumatic stress disorder.⁴⁹

The Commission also heard that for different communities of women, substance abuse has additional impacts. For example, Caraniche reported that approximately 70 per cent of women participating in prison alcohol and drug treatment programs report being the victim of family violence in their adult relationships:

Exposure to trauma and violence and the related psychological distress [are] an important causal factor in substance abuse and drug and alcohol-related offending. Addressing the longstanding impact of violent relationships and the related trauma is a fundamental component in substance abuse treatment programs for women.⁵⁰

The Commission considered evidence from the United Kingdom, which shows that male partners often introduce women to drug use.⁵¹ Through our community consultations, women in prison confirmed this experience—some added that they were often forced to take part in illegal drug consumption and dealing drugs.⁵²

The Youth Substance Abuse Service gave evidence to the Commission that some young women experience violence from their male drug dealers:

These girls are obtaining their drugs from a man who they think loves and cares for them when, in fact, the man is effectively their dealer and is extremely controlling, violent and abusive and is sexually exploiting them.⁵³

Chapter 19 examines the role of mental health and drug and alcohol services.

The cumulative effects of family violence on victims' health

Submissions and research considered by the Commission highlighted the fact that the effects of family violence on the health and wellbeing of victims are complex and interrelated. The cumulative effects of family violence can be experienced by victims throughout their lives. In a submission received by the Commission, the cyclical nature of harm through childhood and into adult life is described:

The extent this abuse has had on me in every possible facet of my being is so extensive I couldn't possibly begin to describe it. My health has suffered and now continues to suffer, I have never been able to hold a job for long enough to make money because of the mental health problems I have to deal with because of the recurring PTSD problems, so I am in chronic poverty, which means I can't break the cycle I grew up in, and exacerbates so many of my depression and anxiety problems. I have never, ever had a chance in my entire life to feel like I have security, or a safe place to go home to. I struggle with personal relationships, particularly sexual relationships, and this causes a huge burden on my life generally, but also a massive amount of anxiety around thinking about my future. I will never have children because I don't think I could cope with the stress it would cause me, and I am too terrified that I would pass it negative mental health problems, either through genetic predisposition [or] how I raise it.⁵⁴

Research also illustrates the cumulative effect that family violence has on the mental health of victims. An Australian study of 1218 women who had experienced gender-based violence concluded that women who report such violence are more likely to experience mental illness over the course of their lifetime.⁵⁵ The study found that approximately 77 per cent of women who have experienced three or four types of gender-based violence had anxiety disorders, 56 per cent had post-traumatic stress disorder and 35 per cent had made suicide attempts.⁵⁶ Victoria's Chief Psychiatrist, Dr Mark Oakley Browne, told the Commission that prolonged or severe exposure to violence produces longer-term effects on the person.⁵⁷

Dr Fernbacher, from the Northern Area Mental Health Service, submitted that:

... whilst there is some debate about how much is causal and how much is contributing factor, when we look at the population of people who receive mental health care in clinic and mental health services or receive a mental health diagnosis the overwhelming number of women have experienced some form of interpersonal violence; most of the time more than once; often prolonged; often multiple times over their lifetime ... If we look at the more acute end of mental health, women or people who go to emergency departments or are seen by an emergency mental health team or end up in acute inpatient units, anything between 50 and up to 90 per cent of women have experienced some form of interpersonal violence that mostly happens within family violence.⁵⁸

Research and submissions from victims emphasised to the Commission that the cumulative and often long-term effects of family violence on the health and wellbeing of victims are devastating and can prevent or delay restoration and recovery.

Current responses and challenges

In this section, the Commission examines the current response and service systems available to support the health and wellbeing of family violence victims, and discusses evidence received about the availability and range of therapeutic interventions and the challenges associated with accessing these services. As Domestic Violence Victoria highlighted in their submission:

... there is strong evidence that, for many women, effective support in the post-crisis and recovery stage after the major crisis period has passed, is equally important to their longer-term stability [as the crisis phase when they leave a relationship].⁵⁹

This section considers two important interventions to improve the health and wellbeing of victims of family violence—therapeutic interventions and restorative justice initiatives. The role of the Victims of Crime Assistance Tribunal (VOCAT) and Victims Assistance Program (VAP) in helping women to rebuild and recover is also discussed.

Initiatives to assist victims within the broader health system are discussed in Chapter 19.

Availability and range of counselling and therapeutic interventions

The Commission was informed that international and domestic research has consistently demonstrated the value of therapeutic support to assist victims of family violence. A study by the Australian Domestic and Family Violence Clearinghouse and the University of New South Wales found that continuing emotional support following family violence was important for recovery.⁶⁰

Other Australian studies have also shown the need for various avenues for support in recovering from the effects of family violence.⁶¹ A United States study based on surveys and interviews with 37 women who were in violent intimate partner relationships found that support systems were crucial to recovery from family violence, particularly in the form of spiritual and informal support.⁶² Further, a Monash University study found that participants would benefit from being in the company of other survivors and hearing about their experiences and the progress that can be achieved over a period.⁶³

In addition, the Australian Longitudinal Study on Women's Health, which began in 1996 with a representative sample of 40,000 Australian women in three age groups, found that female victims of intimate partner violence were healthier if they had more social support, such as having someone to confide in, or practical support, such as financial aid.⁶⁴ The study concluded that the development and implementation of social support interventions would be of great benefit for women who have experienced intimate partner violence.⁶⁵

The primary form of therapeutic intervention in family violence is counselling and psychological services. There are a range of ways for victims of family violence to access counselling in Victoria including through family violence specialist services or community organisations, through Medicare or by using personal funds. VOCAT and VAP also provide counselling through compensation awards.⁶⁶

The Commission heard a range of views about counselling and therapeutic services—many victims described supportive and beneficial experiences.⁶⁷ One woman told the Commission that she 'wouldn't be alive today without counselling'.⁶⁸ For others, the process was not therapeutic and did not aid in their recovery.⁶⁹ Some victims of family violence prefer and gain more benefit from support through their personal, spiritual, religious or community networks.⁷⁰

Despite the evidence demonstrating the importance of support, the Commission heard that victims of family violence currently have a limited range of therapeutic interventions available to them. The Commission was also told that where these interventions do exist, they are difficult to access.

Counselling through specialist family violence services or community organisations

The Victorian Government funds family violence counselling, called family violence support services, to support women and children experiencing or recovering from family violence.⁷¹ This includes both individual and group counselling. This is provided by community service organisations, some but not all of which may also be providers of specialist family violence services. The Victorian Government currently funds 35 organisations to provide counselling through family violence support services.⁷²

The Commission was told that this program aims to enhance the safety, confidence, life skills and independence of women, and improve their emotional health and wellbeing and sense of empowerment.⁷³ For children and young people, the program aims to break the cycle of violence by enhancing their coping skills and self-esteem and helping them develop non-violent life strategies.⁷⁴ At a statewide level the Department of Health and Human Services requires that a minimum of 30 per cent of family violence counselling services provides services to children and young people affected by family violence.⁷⁵

Organisations providing counselling services are required to comply with the *Practice Guideline: Women and children's family violence counselling and support programs* (2008).⁷⁶ In addition, Domestic Violence Victoria has developed the *Code of Practice for Specialist Family Violence Services for Women and Children* (2006) which is aimed at enhancing the service system's transparency, consistency and accountability, including counselling services.⁷⁷

Data provided to the Commission shows that between 2009 and 2014, the number of clients assisted through these services significantly exceeded the number of clients the services were funded to assist.⁷⁸ For example, in 2010–11 funding was provided for 2340 clients but 10,697 were assisted.⁷⁹ Relationships Australia Victoria suggested that:

... further resources need to be allocated at service delivery points that assist families' ongoing safety and wellbeing. There are no quick fixes to the complexity of family violence for many of our clients, and bolstering services to ensure that they remain innovative and reflective of multifaceted need 'on the ground' is vital. This sentiment is also echoed by the need for different service models for CALD, Indigenous and newly arrived families affected by family violence.⁸⁰

The Commission heard that while many victims want counselling, most do not receive it at the frequency or for the duration it is needed. One individual who asked to remain confidential, suggested that in cases where the perpetrator is convicted, there is a lack of continuing emotional support after the conviction.⁸¹ In addition, a person told the Commission:

... I plead for governments state and federal to fund professional counselling services for the adult survivors of DFV who suffer with complex trauma. The resistance by the State to fund such services makes no sense in economic or social terms, as left without the opportunity to recover, these damaged individuals rarely come close to realising their full potential.⁸²

Through submissions, consultations and hearings, the Commission heard there is overwhelming support for increasing the availability of timely, culturally appropriate, long-term, individual and group counselling services that use counsellors who are trained in family violence.⁸³ Relationships Australia Victoria noted the benefits of support and recovery groups, including the opportunity for victims to establish a support system by developing positive relationships with other women and group facilitators.⁸⁴

In addition, the Commission was told that there is a shortage of counsellors who can deliver specialist counselling for victims of family violence, especially in regional areas.⁸⁵ The Commission heard that there are long waiting lists for counselling services that are publicly funded, including specialist family violence services.⁸⁶

The Commission was informed of the importance of counsellors, psychologists, psychiatrists and social workers who provide services to family violence victims having appropriate training.⁸⁷ In particular, it was important for them to be sensitive to the trauma experienced by clients who have experienced family violence and sexual assault.⁸⁸

Support must also be long term, with the focus on repairing the victim's sense of self worth. Community programs may assist, but I noticed Mum never truly recovered from her situation because that support was not there, apart from [removed].⁸⁹

The importance of systems that are sensitive to the trauma victims had experienced in aiding recovery, was emphasised in submissions, consultations and hearings.⁹⁰ A number of organisations, and individuals' submissions emphasised the need for a cultural shift to achieve an approach that is more sensitive to trauma.⁹¹ This includes the need for organisational cultures that are 'personal, holistic, creative, open and therapeutic'.⁹² For example:

I would like to see my sister heal and for my mum to feel supported, for this to happen they need people in their lives to understand the long lasting impacts of men's violence against women.⁹³

Medicare-funded counselling

Individual and group-based counselling may be provided by a psychologist or counsellor as part of a GP Mental Health Treatment Plan, developed in consultation with a general practitioner. Under this plan, Medicare rebates are available for up to 10 individual and 10 group sessions with allied mental health services per year.⁹⁴

The Commission was told by a number of victims of family violence and others that 10 sessions is insufficient.⁹⁵ Further, the Commission heard that psychologists and counsellors accessed through a referral from a general practitioner will not necessarily be trained or have experience in family violence counselling.⁹⁶ In submissions and community consultations, it was noted that there are also long waiting lists for counselling services that are publicly funded, including by Medicare.⁹⁷ People living in regional, rural or remote areas also face challenges in accessing Medicare-funded counselling, particularly through specialist family violence services.⁹⁸

The Commission heard about the requirement for victims of family violence to apply for counselling sessions through a GP Mental Health Treatment Plan.⁹⁹ To access this service, the person must be assessed as having a mental disorder.¹⁰⁰ Some victims will require mental health assistance, others will not. We heard that this can be a setback in their recovery because of the social and emotional effect and/or fear of being pathologised, or labelled as mentally ill.¹⁰¹

In recognition that only some victims of family violence will meet the criteria for a GP Mental Health Treatment Plan, the Researching Abuse and Violence Team at University of Melbourne recommended that the Commonwealth Government develop special item numbers, similar to the Mental Health Assessment or Diabetes or Asthma item numbers, to develop family plans and follow-up for women and children experiencing family violence.¹⁰² The Researching Abuse and Violence Team at University of Melbourne submitted:

A family based plan would allow mother child work and group work which have both been found to be the most effective when women and their children are affected by family violence.¹⁰³

The Researching Abuse and Violence Team at University of Melbourne submit that these plans would involve accredited specialist services who could access these special item numbers and provide counselling for up to 10 sessions per year.¹⁰⁴ Another person suggested expanding the currently available range of counselling services to other areas of supportive medicine and therapeutic interventions.¹⁰⁵

The Commission notes that in response to the recent National Mental Health Commission's *Contributing Lives, Thriving Communities—Review of Mental Health Programmes and Services*, the Commonwealth Government has stated that it intends to expand Medicare benefits to mental health nursing, drug and alcohol services, vocational assistance, peer support and care coordination support, recognising the importance of complex care services.¹⁰⁶

Private providers

Private counselling is available to victims of family violence who can afford such a service. Counselling is available in generalist organisations, through faith-based organisations, or from private providers. Like Medicare-funded counselling, this expands the pool of psychologists and counsellors available beyond specialist family violence services and community service organisations. However, it was noted that the cost of private counselling excludes many victims of family violence.¹⁰⁷ Further, the Commission was told that psychologists and counsellors accessed independently are not required to be trained or to have experience in family violence. Some people described experiences of receiving services from untrained counsellors, which can compromise the quality and effectiveness of the counselling provided.¹⁰⁸

Other therapeutic interventions

Aside from counselling and psychological services, there are a range of other therapeutic interventions that the Commission heard can assist victims to recover, build confidence and support re-engagement in the community. As this chapter has discussed, recovery requires a holistic approach that incorporates financial, mental and physical health recovery and support in order to access appropriate accommodation, employment opportunities and social networks. This section identifies several therapeutic interventions noted in submissions and by witnesses that can assist victims of family violence in their recovery.

The Judith Lumley Centre at La Trobe University informed the Commission there is a growing evidence base for the effectiveness of support provided by peer or mentor mothers to improve the health and wellbeing of women living or who had lived in violence.¹⁰⁹ They drew the Commission's attention to two evaluations of peer or mentor mother programs in Victoria. The first program and the evaluation results are described below:

MOSAIC was a study undertaken in north west Melbourne that aimed to reduce partner abuse and depression among women who were pregnant or had infants under 5 years. MOSAIC provided 12 months of weekly home visiting from trained and supervised local mentor mothers (English and Vietnamese speaking), offering non-professional befriending, advocacy, parenting support and referrals.¹¹⁰

Mothers supported by MOSAIC mentors showed a significant reduction in mean abuse scores at follow-up compared with un-mentored mothers (15.9 vs 21.8). There was weak evidence for other outcomes, but a trend was evident favouring MOSAIC-mentored women: lower levels of depression (22%) in the MOSAIC group compared with 33% in the un-mentored group, and better levels of physical health; 82 per cent of women mentored said they would recommend mentors to friends in similar situations.¹¹¹

Non-professional mentor mother support can improve the safety and enhance the physical and mental wellbeing of mothers and children experiencing partner violence.¹¹²

The Commission was also made aware of the SISTER2sister mentoring program, partnering mentors with teenage girls with a history of abuse, family violence and poverty.¹¹³

Women's and children's support groups were raised as another form of therapeutic intervention aiding women and their children in recovery, but a shortage of these groups was noted in some submissions.¹¹⁴ Consultation participants told the Commission:

Women's groups – for all the years it took me to go through this process, it was the women's groups that empowered me to understand my situation.¹¹⁵

The best thing is for women to actually get into groups and actually be empowered to talk about their experiences.¹¹⁶

One survivor of family violence described her and her children's experiences after living in violence for many years—both as a participant and later as a facilitator of women's groups:

Women's groups are an inexpensive and powerful healing tool for women ... Sharing your journey with other women who understand and have experienced the same trauma is probably the most empowering debriefing tool available. Information and strategies are vital in helping to undo the brainwashing that is so common with men who use power and control. So, I wish to highlight the necessity of making money available to community centres to offer women's groups so they can be offered free of charge to women healing from family violence.¹¹⁷

The Commission also heard about a range of therapeutic programs. In her evidence to the Commission, Ms Jocelyn Bignold, Chief Executive Officer, McAuley Community Services for Women, described the 'About Me' program which engages women who have experienced family violence and builds the skills required for them to participate in and be included in the community. Ms Bignold described the experience of one participant in the program:

One woman that comes to mind—her goal was to finish the tattoo on her arm. That means she was motivated to save money for the tattoo. In the process she was also sponsoring endangered tigers in another country. Then of course that means we get to see where their strengths are and what their dreams are and work on those.¹¹⁸

There are also a range of therapeutic programs for children and young people. These include Melbourne City Mission's 'coaching' for youth as part of its Enhanced Youth Refuge Model, the Play Connect 'arts therapy' program for children and Berry Street's TURTLE program that focuses on restoring the mother-child relationship.¹¹⁹ Therapeutic programs for children and young people are discussed in detail in Chapter 10.

The Commission also heard about the history and strength of media advocacy work in Victoria such as the Eastern Media Advocacy Program which has been evaluated as having positive impacts both for victims and on the media:

Whilst some advocates reported individual challenges and moments of feeling uncomfortable when talking with the media or speaking in public, overall they reported increased self-confidence, enhanced knowledge and skills and a sense of empowerment that has “assisted all advocates to move forward in one way or another on their personal journey”. Other positive impacts included increased sense of health and wellbeing—particularly in regard to social support, a reduced sense of isolation and an increased feeling of social connectedness.¹²⁰

The Commission notes the Victorian Government’s recent announcement of a new memorial to honour the lives of victims of family violence, recognising the importance of providing a place for healing and reflection.¹²¹ A study by the Loddon Campaspe Community Legal Centre found that, among other elements, validation—to be heard and to be believed and not judged—is important to women’s sense of justice.¹²²

Chapter 38 examines the significance of victim’s voices in the design and review of the family violence service system.

Victims of Crime Assistance Tribunal and Victims Assistance Program

Assistance to victims of crime in Victoria is guided by the *Victims’ Charter Act 2006* (Vic) which sets out principles that govern the response to persons adversely affected by crime, and establishes requirements for the monitoring and review of these principles.¹²³ The two forms of assistance available to victims of crime are the Victims of Crime Assistance Tribunal and the Victims Assistance Program.

Victims of Crime Assistance Tribunal

The *Victims of Crime Assistance Act 1996* (Vic) establishes a state-funded scheme for victims of crime to assist recovery. VOCAT administers the scheme and has the power to award financial assistance to victims of crime.¹²⁴

To be eligible for VOCAT relief, a person must be a primary victim, secondary victim or related victim.¹²⁵ As a primary victim, the person must have experienced an act of violence which resulted in death or injury. An act of violence is defined in the Act to mean a criminal act or series of criminal acts which result in injury or death.¹²⁶ There are specific criminal offences which fall within the meaning of ‘criminal act’, including a criminal offence punishable on conviction by imprisonment which involves assault, injury or the threat of injury; certain sexual offences; stalking; child stealing and kidnapping.¹²⁷ An injury for the purposes of the Act includes both physical and psychological injury.¹²⁸

Financial assistance provided by VOCAT can be awarded for reasonable expenses incurred by the victim for counselling, medical expenses, loss of earnings, damage to clothing worn at the time of the incident and safety-related expenses, up to a maximum of \$60,000 for primary victims.¹²⁹ Primary victims may also be awarded a lump sum of up to \$10,000 in the form of special financial assistance, where they have suffered any significant adverse effect as a result of an act of violence being committed against them.¹³⁰

The Commission heard about the important role that schemes such as VOCAT can play in recovery. Women’s Legal Service Victoria noted that seeking assistance through VOCAT ‘can assist financially, but also act as a validation and recognition of the victim’s experiences’,¹³¹ and that compensation payments ‘may have a role in preventing entrenched poverty’.¹³²

In 2014–15, 24 per cent of all VOCAT applications were identified as being family violence-related matters.¹³³ This had increased from 14 per cent in 2005–06.¹³⁴ Despite the relatively high percentage of family violence-related VOCAT applications, submissions raised concerns about how victims of family violence access and engage with the scheme. The Commission heard from several sources that reform of the scheme, and consideration of the barriers that victims of family violence may face in accessing it, is necessary.¹³⁵

Barriers to accessing the scheme

Eligibility

One key issue is the difficulty victims of family violence face in accessing VOCAT if they are not deemed a victim of a 'criminal act' as defined under the Victims of Crime Assistance Act. As the Commission was told by the Magistrates' Court of Victoria and Children's Court of Victoria:

... the definition of family violence under the FVPA, giving rise to the ability to make an intervention order, encompasses a broad range of behaviours, not all of which constitute criminal offences.¹³⁶

Women's Legal Service Victoria pointed out that due to this eligibility definition, victims of what are generally non-criminal forms of family violence such as economic abuse are not recognised and are unable to access the scheme.¹³⁷

The Commission heard from a victim of family violence that:

This is not a gap; this is a Canyon of deficiency in legal protection and justice for my children and myself ... We applied for victims of crime compensation in order to replace some belongings as we arrived in Victoria with nothing but our dogs and cats and the clothes on our backs. We did not qualify. We were told Domestic Violence was not an actual crime.¹³⁸

In considering whether to expand the eligibility criteria to allow victims of non-criminal acts of family violence to access the scheme, the Magistrates' Court of Victoria and Children's Court of Victoria suggested that an expanded definition of 'act of violence' may mean more applications would be made to VOCAT, and 'applications falling under the expanded category may be more complex to determine, and result in unintended consequences'.¹³⁹

The Commission also notes that the Australian Law Reform Commission and New South Wales Law Reform Commission in their joint report *Family Violence—A National Legal Response*, were of the view that it would be

... inappropriate for legislation establishing victims' compensation schemes to adopt definitions of family violence used in family violence legislation to the extent that those definitions include conduct that does not constitute a criminal offence—such as emotional abuse or economic abuse.¹⁴⁰

Further, the Australian Law Reform Commission and New South Wales Law Reform Commission noted that 'the adoption of a definition that captures non-criminal conduct would clearly be in direct conflict with the purposes of such schemes, as they are presently framed'.¹⁴¹

The Commission notes, however, that the scheme as it is currently drafted can produce anomalous results in terms of eligibility; two victims of family violence who experience much the same conduct may have differing abilities to access the scheme.¹⁴²

Currently, victims of breaches of family violence intervention orders (conviction for which is punishable by imprisonment) which involve assault, injury or the threat of injury, would be eligible under the test outlined above (provided the incident resulted in injury, either physical or psychological, to the victim). Victims of breaches of intervention orders which do not involve assault, injury or the threat of injury, would not be eligible. For example, if a perpetrator of family violence breached an intervention order by sending a text message containing a threat to harm the victim (which resulted in injury to the victim), this victim would be eligible to access the scheme. If the perpetrator sent a text message which breached the intervention order but which did not contain a threat, the victim would not be eligible to access the scheme.

Patterns of behaviour

Another key issue raised in submissions was that even if the victim of family violence is eligible under the scheme, the law does not sufficiently take into account the cumulative harm of individual acts of violence as a result of experiencing persistent and protracted violence.¹⁴³

Under the legislation, criminal acts can be considered 'related criminal acts' if they occurred over a period of time and were committed by the same person or group of persons (unless the tribunal considers that they ought not to be treated as related criminal acts).¹⁴⁴ A series of related criminal acts is then said to constitute a single act of violence.¹⁴⁵ While this means that victims do not have to make separate applications for each incident of violence, it may also have implications for the amount of special financial assistance that is awarded. The Magistrates' Court and Children's Court of Victoria noted:

It ... means that a victim of long-term, chronic family violence (a series of related acts) is placed on an equivalent footing to someone who has been injured in a one-off assault, for example in a brawl between strangers, when it comes to the amount of available [special financial assistance].¹⁴⁶

As discussed above, in addition to costs covered for specific expenses incurred, victims can be awarded a lump sum as 'a symbolic expression by the State of the community's sympathy and condolence for, and recognition of, significant adverse effects experienced or suffered by them as victims of crime'.¹⁴⁷ Special financial assistance is classified into categories A, B, C or D.¹⁴⁸ Section 8A prescribes the maximum amounts that can be awarded to an eligible victim, tied to the seriousness of the offending involved, with category A being the most serious offences and category D the least serious.¹⁴⁹

For those victims of family violence who were not the victims of crimes that fall into the higher categories of offences (category A includes, for example, any offence that involves the sexual penetration of a person or attempted murder), they may only be eligible for the amount tied to the 'less serious' offences in perhaps category D or C—despite potentially having endured these 'less serious' offences over a long period of time.

Related acts of violence are taken into account in some circumstances to increase the amount of special financial assistance available. However, this is only available for related criminal acts that fall within category D, and only increases the maximum award from a category D amount to a category C amount (\$650 to \$1300).¹⁵⁰ In contrast, a person who has been a victim of a category A offence could be awarded up to \$10,000.¹⁵¹ The Victims of Crime Assistance Act does not appear to adequately recognise the cumulative harm of a series of acts of violence over time.¹⁵²

One of the witnesses who gave evidence before the Commission, who had been the victim of a stranger rape as well as protracted family violence from an intimate partner, described her experience of obtaining compensation for the family violence:

... I submitted a claim through VOCAT for the rape I experienced in 2005. I received \$10,000 compensation. I later also submitted a claim for the family violence and received \$1,000 compensation. I found that interesting. The rape was horrible, it had really affected my life—but it was one night of my life. The family violence affected my life for years and was damaging on so many levels. I couldn't work out how they came to those figures. Given the extent to which you are emotionally and psychologically damaged by the family violence conduct, it is odd that it weighed less on the scale.¹⁵³

The Magistrates' Court and Children's Court recommended that consideration be given to amending the regulations to include related acts in the context of family violence as a circumstance in which the category A maximum amount is available for related acts of violence in category B, C or D—this would allow VOCAT to award up to \$10,000 in the form of special financial assistance to recognise the impact of family violence.¹⁵⁴

Notifying perpetrators

Under the Victims of Crime Assistance Act, VOCAT may give notice of the time and place for a hearing to any other person whom the tribunal considers to have a legitimate interest in the matter,¹⁵⁵ which may include the alleged offender.¹⁵⁶ The Act also provides that the tribunal must not, however, notify the person who is alleged to have committed the act of violence without first giving the applicant an opportunity to be heard on the issue of whether or not that notice should be given.¹⁵⁷

VOCAT has issued a practice direction which sets out a process which must be complied with if the tribunal member decides to notify the alleged perpetrator. This entails advising the applicant in writing that notification of the alleged offender is being considered, with 21 days allowed for a response. After considering the response, the member will make a decision. If the member determines that the alleged offender is still to be notified, the applicant will be advised of the decision in writing. The applicant will then have a further 21 days in which to advise the tribunal as to whether they still wish to pursue their application.¹⁵⁸

VOCAT states on its website that notifying perpetrators 'rarely occurs' and that it is 'always mindful of the potential discomfort and additional distress caused to applicants in the relatively few matters where an alleged offender is notified of an application'.¹⁵⁹ The Commission heard, however, of situations where the tribunal intended to contact the perpetrator and/or invited them to participate in the proceedings.¹⁶⁰ This can re-traumatise victims.¹⁶¹

Other barriers

Time limit on applications

VOCAT must strike out an application made more than two years from when the relevant act of violence occurred unless it considers that, in the particular circumstances, the application ought not to be struck out.¹⁶² The Commission was told that the legislated time limit of two years on making an application can be a barrier for victims of family violence.¹⁶³ One woman told the Commission this time period is:

... no time at all to go through the emotional trauma of appealing to the Tribunal for compensation. It takes a lot of time and effort for a mother to gain a normality and routine in her life for herself and for her children.¹⁶⁴

Conduct of the applicant

Sections 52, 53 and 54 of the Victims of Crime Assistance Act require VOCAT to consider:¹⁶⁵

- ▷ whether the applicant reported the act of violence to police within a reasonable time¹⁶⁶
- ▷ whether the applicant provided reasonable assistance to investigating authorities¹⁶⁷
- ▷ the character, behaviour or attitude of the applicant at any time¹⁶⁸
- ▷ whether the perpetrator of the alleged act of violence will benefit directly or indirectly from an award of assistance.¹⁶⁹

As stated in the Magistrates' Court and Children's Court submission, depending on how the tribunal member weighs up these considerations, an application may be refused outright, or an award of assistance reduced.¹⁷⁰ It was also stated that:

The requirements of these three sections are often relevant in applications arising out of abusive relationships. This is because of the power dynamics at play in family violence, and the fact that there may be numerous reconciliations before the victim terminates the relationship ... A victim may call 000 for police to attend at the time of an incident, but then be unwilling or unable to go on to make a formal police statement about the crime. She may make a formal statement, but later withdraw it. She may not support the police in their application for a full intervention order, with the result that only a 'basic' order can be made to promote her safety. In cases where she has cooperated fully with investigating authorities and the perpetrator has been found guilty, she may nevertheless have reconciled with the offender; will he now benefit from an award?¹⁷¹

The Magistrates' Court and Children's Court recommended that consideration be given to including family violence as a factor to be considered in applications where sections 52, 53 and 54 are relevant.¹⁷² This would help to ensure members are aware of the importance of considering any relevant family violence matters in the exercise of their discretion.¹⁷³

VOCAT process as a therapeutic process

The Commission spoke to victims who had therapeutic experiences through the VOCAT process—one witness who appeared before the Commission told the Commission that:

... I had gone through the VOCAT processes and received an outcome. As part of this process I had participated in a closed VOCAT hearing. I had the experience of speaking to a Magistrate, who believed what I had to say, and I felt validated. Even though the person who raped me had left the country and was not prosecuted, I felt satisfied with having spoken about my experience and having been believed.¹⁷⁴

However, the Commission also heard from women who felt this process had not greatly assisted them.¹⁷⁵ Women's Legal Service Victoria noted that there is a level of inconsistency in decision making by magistrates sitting in VOCAT, which can leave victims confused and further traumatised.¹⁷⁶

Lack of awareness of the scheme

The Commission heard that some victims did not know or had not been told they could apply to VOCAT and were not given assistance in preparing the application.¹⁷⁷ One woman explained that she only discovered her eligibility as a victim of family violence after making an application as a victim of a sexual assault.¹⁷⁸ Gay and Lesbian Health Victoria noted the lack of support for gay, bisexual and trans* men:

There are few if any options available to this group under the current referral and support service system. We understand that currently, the only option for these male victims of family violence is referral to the Victims of Crime organisation by police. However, we believe it unlikely that many GBT men would access this option.¹⁷⁹

Some service providers suggested that VOCAT is underused by family violence victims and called for better promotion of this service.¹⁸⁰

Ability to make immediate compensation awards

VOCAT is able to make interim awards for payment of expenses prior to the final determination of an application (including for urgent safety-related items).¹⁸¹ Specialist family violence service venues, operating in a number of magistrates' courts, have 'adopted procedures to enable interim orders to be made by VOCAT for expenses such as urgent security measures, relocation expenses and medical bills'.¹⁸² However, the administrative processes that must be followed in order to process such payments can take several weeks. The Commission heard that in some cases the financial assistance is not received quickly enough to be useful.¹⁸³

Delays

Others described the application processing time as too lengthy.¹⁸⁴ In 2014–15, of 6053 applications lodged, approximately 54.7 per cent were finalised within nine months of submission, and approximately 69.4 per cent within 12 months.¹⁸⁵ Recent research by Women's Legal Service Victoria found that women involved in the research waited long periods of time, and that this was particularly distressing for women living in financial insecurity.¹⁸⁶

Victims Assistance Program

Another avenue of support available to victims of crime is the Victims Assistance Program, run by the Victims Support Agency. Eligibility for assistance from VAP depends on a person being a primary, secondary and/or related victim of crime as defined in the Victims of Crime Assistance Act.¹⁸⁷ In exceptional circumstances these criteria may be waived to enable victims outside the target group to access VAP services.¹⁸⁸

The VAP provides information and advocacy, referrals, practical support such as security, accommodation, medical and transport needs, and access to counselling and other therapeutic interventions.¹⁸⁹ In addition, VAP facilitates community connections through avenues such as community and sporting groups, schools and churches, and assists victims to complete applications to VOCAT.¹⁹⁰

VAP uses a case-management model with a comprehensive assessment process in which a victim is assessed for the type and extent of intervention required. The assessment informs the development of an individualised care plan which may include therapeutic interventions such as counselling and group work.¹⁹¹ The VAP Practice Manual emphasises that responses must be adaptive and acknowledge the long-term needs of victims.¹⁹² For example, VAP may seek information from other service providers, such as counselling progress reports, and review case goals in light of this information.¹⁹³ Where victims are waiting for specific interventions, VAP conducts ‘active holding strategies’ such as weekly phone calls to the victim.¹⁹⁴

The Department of Justice and Regulation submitted that the total cost of the VAP in 2014–15 was approximately \$9.378 million.¹⁹⁵ The Department estimates that services provided to family violence victims accounted for 41 per cent of the total services in 2014–15 (or approximately \$3.845 million).¹⁹⁶

Importantly, victims of family violence must seek support through VAP and VOCAT separately. Victims have to navigate two separate schemes through two different doors. This may result in support being inefficiently provided (for example, through duplication). There is also concern that victims have to re-tell their experiences of violence through both processes, which could be re-traumatising.

The Commission was told about the New South Wales model, which, in contrast, enables victims to access compensation through a single victims’ support scheme. In 2013, New South Wales replaced its Victims’ Compensation Tribunal with the more holistic Victims’ Support Scheme, in which crisis support is provided, if required, followed by a needs assessment and the development of a care package.¹⁹⁷ A care package might include information, support and referrals; counselling; financial assistance for immediate needs (to address any urgent needs as a result of the incident); financial assistance for economic loss (to aid rehabilitation and recovery); and a recognition payment (to acknowledge the trauma suffered).¹⁹⁸

The way forward

Family violence can have long-term effects on a victim’s health and wellbeing. In addition to obtaining housing, financial security, education and employment, the ability of victims to regain their health and sense of wellbeing after family violence is an essential part of the recovery process.

The Commission has considered the current response. In the light of substantial evidence from victims, their supporters and service providers, we have formed the view that the current response system does not emphasise recovery to the extent needed to adequately improve the health and wellbeing of victims. This is in large part due to the historical focus on ensuring the immediate safety and security of victims of family violence and the demand pressures that services currently experience. However, safety is only the start—the ultimate objective of the family violence system must be that victims, including children, can live safely, recover and thrive.

The Commission considered a range of supports, from counselling to more intensive therapeutic services. In evidence before the Commission, several opportunities were identified to enhance both the range of options available to victims and their quantum.

In relation to such supports, our vision is a system that responds flexibly to victims’ changing needs and ensures that family violence does not define them or their futures. We heard a consistent message that specialist family violence services should not be confined to dealing with the crisis only, but should support victims to recover from the effects of past violence so that they can move forward. Addressing the availability and range of therapeutic interventions, particularly counselling services, is vital to this endeavour.

Promoting 'recovery' through therapeutic interventions

Individualised packages

Pathways to recovery are diverse—as the Living Well Group noted in its submission, depending on the victim, support can take the form of financial aid, good friends and support groups.¹⁹⁹ Some victims may require a range of therapeutic interventions for a longer period, while others will need fewer and briefer interventions. The Commission envisages a path where victims have a choice about what interventions they wish to access. Importantly, this path should not be linear; it must reflect the diverse experiences of victims of family violence.

We note that the Royal Commission into Institutional Responses to Child Sexual Abuse has recommended the establishment of a redress scheme that funds counselling for survivors of such abuse throughout their lives. It has also recommended that counselling and support be available on a flexible and episodic basis.²⁰⁰ In view of the complexities associated with responding to trauma, their report notes that there should be no limits placed on counselling and psychological care provided to survivors.²⁰¹

As noted elsewhere in this report, in September 2015, the Victorian Government announced Family Violence Flexible Support Packages which provide individualised support of up to \$7000 to women and their children experiencing family violence. The package can be used to purchase a number of goods and services including 'medical or pharmaceutical costs not covered by Medicare or Pharmaceutical Benefits Scheme, counselling or specialist services'.²⁰² At this stage, it is unclear to the Commission what types of therapeutic interventions and services can be purchased, and from which providers. In addition, it is not clear whether there are any time limits on purchasing services once the victim moves into recovery.

In Chapter 9, the Commission made a recommendation to expand the current Family Violence Flexible Support Packages for victims of family violence. These packages are critical to promoting recovery. They are also individualised, so the type and level of assistance to individual victims are tailored to their circumstances and phase of recovery. The Commission heard that each person's experience of family violence is different, and so are the services and supports they require to recover from the impact of violence.

We recommend that further provision for health and wellbeing recovery, including for children, be part of the Family Violence Flexible Support Packages. In practical terms, this means access to a broad range of therapeutic interventions including counselling, psychological services and opportunities to strengthen social connections. It may also mean access to other appropriate health and wellbeing supports. For example, this could include the range of alternative therapeutic interventions such as the peer/mother mentoring, women's and children's groups and empowerment programs discussed previously. For many women, these initiatives helped in their recovery from violence. Such assistance should be available immediately, deployed flexibly and be long-term if necessary.

Children's recovery should focus on their counselling needs, health, early years learning, education and strengthening social connections. Supports for children and young people are discussed in more detail in Chapter 10.

The Commission acknowledges that some victims of family violence will have access to counselling through Family Violence Flexible Support Packages; however, others will not. Therefore, the need to develop and increase the capacity of family violence counselling services is essential.

Increase quantum and range of counselling services to meet demand

The Commission heard about the importance of long-term support for victims of violence to assist them to recover physically, psychologically and emotionally. Many victims of family violence benefit from support through their family, friends, personal, spiritual, religious or community networks, while others are assisted by professional counselling services.²⁰³

Evidence provided to the Commission highlighted the importance of therapeutic interventions in victims' recovery. Therapeutic interventions that are sensitive to the trauma victims had experienced were highlighted in submissions, consultations and hearings.²⁰⁴ Services that provide trauma-informed support, and which are informed by the victim's experience are essential to responding effectively to family violence.

Women told the Commission that the availability and range of counselling and psychological services is limited, which adds to the already stressful experience of rebuilding a life away from violence. There are a range of barriers to accessing counselling services, including the cost of private providers, meeting the criteria for Medicare-funded counselling and the waiting times of family violence support services (counselling). For many women, counselling is not available for the frequency or the duration it is needed to assist in recovery.

As previously discussed, the number of clients assisted through the Victorian Government's family violence support services program significantly exceeded the number of clients funded to be assisted.²⁰⁵ However, the Commission notes that from 2010–11 to 2013–14, the number of clients assisted decreased from 10,697 to 5356, despite funding increasing during this period.²⁰⁶ Service delivery continued to exceed the funded level but by a smaller margin. It is unclear what the reasons for this are, but possibilities include:

- ▷ the data is affected by methodological issues such as changes to data definition, recording and reporting
- ▷ a recognition by providers that the level of 'over performing' could not be sustained because insufficient effort was being provided to each client, and as such, the level of service delivery was recalibrated
- ▷ DHHS changed the services it was purchasing by changing, for example, the clients it was targeting or the duration or intensity of the service to be provided
- ▷ duration of assistance to clients was extended due to the lack of 'exit' options to transition to, which reduced the number of other clients who could be assisted in a year.

In any case, the evidence shows that the level of funding does not match the demand.

Increasing the capacity of specialist family violence services

The Commission acknowledges that specialist family violence services are under-resourced and due to volume pressures and funding, have a greater focus on responding to crisis situations and ensuring victims' immediate safety. However, the Commission sees great value in these services providing specialist post-crisis and recovery counselling.

As discussed in Chapter 8, specialist family violence services currently have skilled staff and counsellors with an intimate understanding of family violence. They are also in a position to support victims in accessing a broader range of recovery assistance, including therapeutic initiatives such as mentoring and women's support groups.

In Chapter 41, we recommend that the Victorian Government provide immediate funding to increase the capacity of specialist family violence services to address existing demand. This funding should be ongoing, in recognition that it is for direct service delivery which is unlikely to reduce in the medium term. As part of the increase in investment recommended, the Victorian Government should increase resources for family violence counselling services to meet the needs of victims in the recovery phase.

Recommendation 104

The Victorian Government increase investment in programs to ensure that people who have been affected by family violence have timely access to group-based or individual counselling for as long as they need. The counselling should be delivered by practitioners with appropriate training [within 12 months].

Introducing a family violence Medicare item number

The Commission has considered the role of Medicare-funded counselling for victims of family violence. While there are certainly benefits in accessing this service, the Commission heard that the current allocation of 10 counselling sessions through Medicare is too limited in terms of the number of sessions available. The Commission understands this is an issue that also affects other people in the community.²⁰⁷

In response to the recent review undertaken by the National Mental Health Commission, the Commonwealth Government recognised that the current approach is 'one size fits all', which may not be the most efficient pathway for a community with a variety of mental health needs.²⁰⁸ They have committed to refining the model of stepped primary mental health care and modifying options for the GP Mental Health Treatment Plan.²⁰⁹

In addition, the Commission is concerned that victims of family violence who present at a general practitioner without meeting certain criteria related to their mental health (that is—being assessed as having a mental health disorder) are ineligible to access Medicare-funded counselling. In this sense, the Medicare-funded service is being underused, but in another sense, it is being overused by victims of family violence who do not have mental health needs but whose general practitioner has put them on a GP Mental Health Treatment Plan so that they can access some counselling. This may be because the general practitioner has identified family violence and is aware of its effect on health and wellbeing and used the GP Mental Health Treatment Plan to provide the victim with counselling services she needs.

The Commission's view is that victims of family violence should be able to access counselling services without a GP Mental Health Treatment Plan. The Commission supports the Researching Abuse and Violence Team at the University of Melbourne's recommendation that the Commonwealth Government should consider developing Medicare special item numbers for victims of family violence and give access to special item numbers to identified services.²¹⁰ These special item numbers should be available for counselling services and related therapeutic services.

The Commission understands that providing counselling and other therapeutic services to a particular group in the community through a Medicare special item number is not necessarily an easy fit within the current pattern of servicing. There is an opportunity for the Commonwealth Government to think creatively about how such a reform would work in practice.

Introducing a Medicare special item number for family violence will have a number of benefits including that it recognises that counselling is being provided due to the effects of family violence on a victim's health and wellbeing. Further, establishing a link between family violence and a Medicare item will provide better information and data on the prevalence of family violence and its impacts on health and wellbeing.²¹¹ It will also provide a more realistic estimate of the cost of family violence.

In the longer term, consideration should be given to establishing an item number or similar mechanism that will allow medical practitioners to record other family violence-related consultations or procedures so that the disease burden of family violence can be captured more accurately. Such information and data would facilitate improvements to future policy and practice responses to family violence.

The Commission recognises the Commonwealth Government's intention to extend Medicare benefits to mental health nursing, drug and alcohol services, vocational assistance, peer support and care coordination support, as well as refine the current model of stepped primary mental health care.²¹² We welcome these announcements and await the Commonwealth Government's implementation of these reforms. We note that some of these services can be beneficial for victims of family violence in their recovery from family violence. It is our view that any Medicare special item number for victims of family violence should not be limited to counselling.

A related issue arises concerning the skills of general practitioners to understand, identify and provide appropriate specialist support referrals to victims of family violence. As discussed in Chapter 19, general practitioners are frequently accessed by victims of family violence, although the Commission heard that women can receive a less than satisfactory response after disclosing family violence to their general practitioner. Workforce development is also needed to assist general practitioners to recognise family violence beyond intimate partner violence, such as elder abuse. Chapter 40 examines what is required to build a more responsive universal health system workforce.

Recommendation 105

The Victorian Government, through the Council of Australian Governments, encourage the Commonwealth Government to consider a Medicare item number for family violence counselling and therapeutic services distinct from a general practitioner mental health treatment plan. In the longer term consideration should be given to establishing a Medicare item number or a similar mechanism that will allow medical practitioners to record a family violence-related consultation or procedure and so more accurately ascertain the public cost of family violence [within 12 months].

Amend the Victims of Crime Assistance Act

The Commission has considered the functions of VOCAT and VAP in relation to victims of family violence, and presents its conclusions in this section.

The Commission was told that eligibility requirements for VOCAT and VAP should ensure that victims of family violence do not face additional barriers to accessing assistance. In regard to VOCAT, submissions raised the issue of the criminal threshold in accessing the scheme, which in many cases excludes victims of family violence when the conduct which has caused injury is not criminal in nature (such as emotional or economic abuse). The Commission agrees with the Magistrates' Court of Victoria and Children's Court of Victoria that expanding the definition of 'act of violence' to include potentially non-criminal conduct may result in unintended and complex consequences and does not fall within the current purposes of the scheme. However, consideration should be given to whether a victim of a breach of a family violence intervention order, without the requirement for the breach to involve assault, injury or threat of injury, should be eligible to access the scheme.

The Commission is concerned that VOCAT, in determining whether or not to make an award of assistance or the amount of assistance to award, does not adequately take into account the pattern of violence that is commonly experienced by family violence victims. The Commission supports a legislative approach that ensures the cumulative harm and long-term effects of family violence are taken into account, including potentially increasing the maximum amount of special financial assistance that can be awarded to victims of family violence to the category A maximum amount where there are related criminal acts.

The Commission has also considered a range of other issues raised in submissions and in evidence, including whether perpetrators are notified of VOCAT proceedings, the two-year time limit for making an application and the conduct of victims being taken into account (for example, victims having to report to police within a reasonable time). The Commission supports appropriate reform to ensure that the nature and dynamics of family violence are appropriately taken into account by the tribunal. This could include legislative amendment (for example, including family violence as a specific criterion to which tribunal members must have regard in considering whether or not victims reported an offence to police in a reasonable time). We would also strongly support education and training for all magistrates specifically in relation to those family violence issues that can arise in VOCAT proceedings.

As with other victims of crime, victims of family violence currently seek support through VAP and VOCAT separately. In contrast, New South Wales provides a single victims' support scheme. The Commission supports further enquiries as to whether this approach could be adopted in Victoria. If a more streamlined approach were to be pursued, any changes in level of assistance or limitation periods should not disadvantage victims of family violence.

The Commission acknowledges that the Victorian Law Reform Commission is currently undertaking a review into the role of victims of crime before, during and after a criminal trial, the *Victims of Crime in the Criminal Justice Process*. The VLRC's terms of reference include considering the making of compensation, restitution or other orders for the benefit of victims against offenders as part of, or in conjunction with, the criminal trial process. In its consultation paper, the VLRC specifically raises the question, 'Are there offences not covered by the *Victims of Crime Assistance Act 1996* (Vic) that should be?'

The VLRC is due to report its findings in September 2016.²¹³

Recommendation 106

The Victorian Law Reform Commission consider the matters the Commission raised in this report in relation to the Victims of Crime Assistance Tribunal and the Victim Assistance Program in its Victims of Crime in the Criminal Trial Process review. To the extent that these matters do not fall within the terms of reference for that review, the Attorney-General should amend the terms of reference or ensure that a separate review of these matters is carried out.

Endnotes

- 1 The Commission uses the term mental illness in this report because it is commonly used in the community, but recognises that some people prefer the term 'mental health disability' or 'mental ill-health'. The Commission recognises, too, that other terms, such as 'psychosocial disability', might be preferred by people with disabilities.
- 2 The Royal Women's Hospital, *Family violence—information for women* (December 2012) 2 <<https://thewomens.r.worldssl.net/images/uploads/fact-sheets/Family-violence.pdf>>.
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- 4 Claudia Garcia-Moreno, Alessandra Guedes and Wendy Knerr, 'Understanding and Addressing Violence Against Women: Health Consequences' (Information Sheet, World Health Organization, 2012) 1.
- 5 Community consultation, Geelong 2, 28 April 2015.
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- 7 See, eg, Anonymous, Submission 244, 1; Anonymous, Submission 296, 2; Confidential, Submission 361, 1; Confidential, Submission 601.
- 8 Murray et al, above n 6, 3 citing Valera and Berenbaum, above n 6, 797.
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- 10 Liz Olle, 'Violence-Induced Disability: The Consequences of Violence Against Women and Children' (Discussion Paper No 5, Domestic Violence and Incest Resource Centre, 2006) 32–4.
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- 15 Murray et al, above n 6, 7.
- 16 Ibid 3.
- 17 Victorian Council of Social Service, Submission 467, 24.
- 18 McAuley Community Services for Women, Submission 480, 28; Victorian Council of Social Service, Submission 467, 24.
- 19 See, eg, Chawla Family, Submission 422, 3; Anonymous, Submission 429, 3; Domestic Violence Victoria—04, Submission 943, 9; Anonymous, Submission 54, 1, 3.
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- 21 Alexander Butchart, Claudia Garcia-Moreno and Christopher Mikton, 'Preventing Intimate Partner and Sexual Violence Against Women: Taking Action and Generating Evidence' (World Health Organization and London School of Hygiene and Tropical Medicine, 2010) 27.
- 22 Hind Khalifeh et al, 'Domestic and sexual violence against patients with severe mental illness' (2015) 45 *Psychological Medicine* 875, 879, 882.
- 23 Department of Human Services, 'Family Violence Risk Assessment and Risk Management: Framework and Practice Guides 1–3 (Edition 2)' (April 2012) 26.
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- 25 Statement of Kulkarni, 20 July 2015, 2 [11].
- 26 Ibid 2 [12].
- 27 Ibid 5 [26], [29].
- 28 Royal Australian and New Zealand College of Psychiatrists, Submission 395, 10.
- 29 Women's Mental Health Network Victoria Inc, Submission 417, 5.
- 30 Anglicare Victoria, Submission 665, 3.
- 31 Miriam Lum On et al, 'Examination of the Health Outcomes of Intimate Partner Violence Against Women' (Landscapes: State of Knowledge, Australia's National Research Organisation for Women's Safety, 2016) (forthcoming).
- 32 See, eg, ibid 6.
- 33 Ibid 28–30. Bi-directional means that alcohol use disorder and drug use disorder predicts subsequent intimate partner violence *and* intimate partner violence can predict subsequent alcohol use and drug use.
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- 35 Ibid 11.
- 36 Karen M Devries et al, 'Intimate Partner Violence and Incident Depressive Symptoms and Suicide Attempts: A Systematic Review of Longitudinal Studies' (2013) 10(5) *PLoS Medicine* 1, 6.
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- 39 Anonymous, Submission 373, 2–3.
- 40 Hanover Welfare Services and HomeGround Housing Services, Submission 652, 18.
- 41 Statement of Fernbacher, 21 July 2015, 6 [25].
- 42 Rowena Hammond, Submission 428, 4.
- 43 Community Consultation, Shepparton 1, 18 May 2015.
- 44 Confidential transcript of 'Jones', 13 July 2015, C9 [8]–[18].
- 45 Statement of Humphreys, 16 July 2015, 6 [33].
- 46 World Health Organization, 'Global Status Report on Violence Prevention 2014' (2014) 17.
- 47 Statement of Wilson, 9 July 2015, 5 [26].
- 48 Statement of Humphreys, 16 July 2015, 6 [33].
- 49 See also Antonia Quadara, Mary Stathopoulos and Rebecca Jenkinson, 'Establishing the Connection (Between Alcohol and Other Drug Use and Sexual Victimisation)' (Landscapes: State of Knowledge No 6, Australian National Research Organisation for Women's Safety, July 2015) 13.
- 50 Caraniche, Submission 456, 2.
- 51 Against Violence & Abuse, *Stella Project Toolkit (2007): Domestic Violence, Drugs and Alcohol: Good Practice Guidelines* (2010) Chapter 2—Drugs and Alcohol: Theory and Practice for the Domestic Violence Sector, 57 <<http://www.avaproject.org.uk/our-resources/good-practice-guidance-toolkits.aspx>> citing Norma Finkelstein, 'Using the Relational model as a context for treating pregnant and parenting Chemically Dependent Women' in B Underhill & D Finnegan (eds) (1996) 6(1) *Journal of Chemical Dependency Treatment* 23.
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66 *Victims of Crime Assistance Act 1996* (Vic) ss 8, 10(2)(a), 13(2)(a).

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86 Community consultation, Werribee 1, 11 May 2015, 13; Community consultation, Melbourne 2, 14 May 2015, 11; Quantum Support Services Incorporated, Submission 371, 10; Connections UnitingCare, Submission 398, 6.

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88 Loddon Campaspe Community Legal Centre, Submission 236, 7–8. See also, Australian Services Union—Victorian and Tasmanian Authorities and Services Branch, Submission 482, 18.

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100 Department of Health (Cth), 'Better Access to Mental Health Care', above n 94.

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123 *Victims' Charter Act 2006* (Vic) s 1.

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125 Section 7(1) of the *Victims of Crime Assistance Act 1996* (Vic) states that a primary victim of an act of violence is a person who is injured or dies as a direct result of an act of violence committed against him or her. A secondary victim of an act of violence is a person who is present at the scene of an act of violence and who is injured as a direct result of witnessing that act: s 9(1). A related victim of an act of violence is a person who, at the time of the occurrence of the act of violence—(a) was a close family member of; or (b) was a dependant of; or (c) had an intimate personal relationship with—a primary victim of that act who died as a direct result of that act: s 11(1).

126 *Victims of Crime Assistance Act 1996* (Vic) s 3(1).

127 Ibid.

128 Ibid. See also s 3(2) which provides that notwithstanding the definition of injury in sub-section (1), if the tribunal is satisfied on medical or psychological evidence that treatment or counselling is required as a result of trauma associated with an act of violence, the person concerned is deemed to be suffering an injury for the purposes of the Act.

129 Ibid s 8. In exceptional circumstances, VOCAT may also award 'expenses actually and reasonably incurred, or reasonably likely to be incurred, by the primary victim to assist them in their recovery from the act of violence': s 8(3).

130 Ibid s 8A.

131 Women's Legal Service Victoria—01, Submission 940, 52.

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133 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 23.

134 Ibid.

135 Smallwood, above n 132, 57; Victoria Legal Aid, Submission 919, 53; Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 60; Safe Steps Family Violence Response Centre, Submission 942, 35.

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142 See, eg, Women's Legal Service Victoria—03, Submission 940, 13.

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145 Ibid s 4(4).

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148 Ibid s 8A(2)(c).

149 Ibid s 8A(3)–(5).

150 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 59.

151 *Victims of Crime Assistance Act 1996* (Vic) s 8A(5).

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156 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 58.

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160 Confidential, Submission 669, 2; Sharyn Jenkins, Submission 188, 2.

161 Women's Legal Service Victoria—01, Submission 940, 53.

162 *Victims of Crime Assistance Act 1996* (Vic) s 29(1)–(2). Section 29(1) provides that in the case of an application by a related victim or a person who has incurred funeral expenses, the application must be made within two years after the death of the primary victim.

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164 Anonymous, Submission 20, 4.

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21 Financial security

Introduction

Family violence has significant implications for a victim's economic security and independence. The abuse may be financial in nature, defined by law as economic abuse, or may be characterised by other forms of family violence that affect a victim's financial wellbeing and put them at financial risk.

Economic abuse is a form of family violence that is not well recognised by the community, service providers or the police. The widespread lack of awareness and understanding of the types of economic abuse women experience means that efforts to prevent and respond to economic abuse are limited. The Commission heard evidence that financial security is a significant protective factor in victims gaining freedom from abusive partners.

Victims of family violence are more likely than other women to experience financial difficulty and many women experience poverty as a result of family violence, regardless of their prior economic circumstances.¹ Research also tells us that women from culturally and linguistically diverse backgrounds and older women are at greater risk of financial insecurity following family violence and face additional barriers to accessing support. The financial consequences of family violence can be acutely damaging and they are often long-term.²

Victims' financial security is affected by partners who perpetrate economic abuse by controlling household finances, financial and utility accounts and incurring debt in the victim's name through coercion or deception—this can take many forms. What is central to these behaviours is that they 'control a woman's ability to acquire, use, and maintain economic resources, thus threatening her economic security and potential for self-sufficiency'.³ These behaviours are deliberate attempts to prevent women's economic independence. This chapter describes the difficulties that many victims have in extricating themselves from debts and liabilities incurred through this abuse.

The first section of this chapter explores a range of issues that exacerbate family violence victims' experience of financial insecurity, including difficulty accessing child support payments, family violence-related debt, tenancy issues and problem gambling.

The use of joint assets, by perpetrators, to continue to exert control over their partner or former partner in the aftermath of family violence, is considered in the second section of this chapter. The Commission heard that some perpetrators dispose of or withhold access to joint property and that personal property conditions are currently underutilised by magistrates. The absence of clear personal property conditions on family violence intervention orders results in difficulties for police, who are already often unwilling to get involved in family violence-related property disputes, in assisting victims to retrieve property.

This section also discusses initiatives aimed at promoting economic recovery and increasing the financial security and recovery of victims of family violence. The Commission heard that securing paid employment assists victims of family violence to become financially secure and recover from the economic and non-economic consequences of family violence. It is important to remember that family violence affects people of all ages, life stages and economic circumstances. Therefore, initiatives to address economic insecurity will need to be targeted to capture the diversity of these experiences.

In the final section of this chapter, the Commission discusses key issues in the evidence and makes a number of recommendations on improving understanding of economic abuse, supporting financial literacy, addressing family violence-related debt, protecting personal property, reforming tenancy law and supporting long-term economic recovery.

Context

This section examines the many complex factors that contribute to women's experiences of financial insecurity as a consequence of family violence and economic abuse. We explore how economic abuse can be a barrier to women leaving violent relationships, and a tactic that perpetrators use to exercise control over their victims, even after other forms of abuse have stopped or after the relationship has ended.

Awareness and understanding of economic abuse

As discussed in Chapter 2, economic abuse is recognised as a form of family violence in the *Family Violence Protection Act 2008* (Vic).⁴ Despite this legal recognition, awareness of economic abuse as a form of family violence is not widespread in the community. The 2013 National Community Attitudes towards Violence Against Women Survey found that economic abuse was the least likely form of abuse to be recognised as partner violence.⁵

The Commission heard that women are highly unlikely to identify their own experience of economic abuse; some even wish they had experienced physical abuse rather than economic abuse because it is easier to identify and support is more widely available.⁶

The Commission also heard that the police response to economic abuse indicates a lack of understanding of its harm and consequences, and police may not address economic abuse directly, particularly when issuing intervention orders.⁷ Others described their frustration at police not responding to economic abuse and not recognising it as a breach of a family violence intervention order.

Police said there's never been a court case where there's been found to be a breach of IVO for financial abuse. He locked me out of accounts, mortgage and other finances.⁸

The Commission was told that police generally focus on physical violence and meeting the victim's immediate safety needs, rather than addressing other forms of non-physical violence.⁹

Justice Connect Seniors Law explained that in circumstances where family members are the perpetrators of economic abuse against an older person the victim may be hesitant to pursue criminal charges. Rather, informal or civil remedies should be an option.¹⁰ Understanding the nature and dynamics of economic abuse against older people will assist police to provide appropriate legal options, alternative remedies and referrals. This is discussed in Chapter 27.

Victims' experiences

The Commission received substantial evidence on the nature and dynamics of economic abuse. These are detailed in Chapter 2. This section briefly examines women's experiences of financial insecurity as a consequence of family violence and economic abuse.

Economic abuse is commonly experienced during a violent relationship, and can continue post-separation. In some cases, economic abuse can begin after separation.¹¹ In family violence situations, physical and sexual abuse may cease after separation while emotional and economic abuse continues.¹² Economic abuse is a mechanism for the perpetrator to continue to exert control when other forms of violence are not available.¹³

A victim's financial security can be affected both directly through economic abuse and indirectly by other forms of family violence. Examples of other types of abuse that can affect a victim's financial security include:

- ▷ physical abuse, such as preventing sleep, that interferes with a victim's capacity to engage in education or employment
- ▷ sexual abuse where a woman is forced or coerced into sexual activity for money
- ▷ psychological or emotional abuse where manipulative behaviour is used to make a woman feel she cannot succeed at study or other endeavours
- ▷ stalking behaviours, such as constant phone calls or repeated visits to a victim's workplace, which interfere with employment.¹⁴

Several studies have found that economic abuse is likely to occur in conjunction with psychological, emotional, physical and sexual abuse.¹⁵ One study found that 80 per cent of the 134 victims in the research group had experienced economic abuse.¹⁶

Recent research confirms that a lack of money was the most significant barrier to women leaving an abusive relationship.¹⁷ One woman told the Commission:

If I had had some financial independence earlier I would have left the relationship much sooner. However, I had no money of my own, I had [several] children to support and I didn't know whether I'd be able to get a job or not. I also lacked confidence and felt that I couldn't survive on my own.¹⁸

A US study found income variables were possibly the most powerful predictors of the 'stay or leave' decision. Women who had a source of income independent of the abuser, including welfare, or who had incomes larger than those of their partners were much more likely to leave the abuser.¹⁹

In addition to preventing women from leaving violent relationships, submissions explained that financial hardship also explains why many women return to a violent relationship.²⁰

Post-separation poverty and financial hardship

While it was good to be out of the violent situation, it was financially very difficult. I don't know what was worse, struggling with the bills or living with the violence.²¹

Divorce or separation, regardless of whether family violence is present, disproportionately affects women financially. Sixty per cent of women experience financial hardship in the first 12 months after divorce as a result of this life event.²²

Family violence can lead to hardship, regardless of pre-violence economic status. The Brotherhood of St Laurence cites a study of 500 Australian women which found that all the women who left a violent partner were worse off economically, even if they had a job, compared with when they were in the family home and even compared with before they became involved in the relationship.²³

The Commission heard directly from a range of women about their experiences after separation. These experiences consistently highlighted the isolation, uncertainty and stress related to financial insecurity that can affect victims.²⁴

For those who have little economic security before the violence occurs, options can be further limited:

Mum is stuck on welfare and is, according to the government, a burden to society. I feel bad I can't get a job to help out financially. We have gone without a car, have gone without heating for years and when we finally got heating we can't afford to use it, we can't afford to eat properly. We are in an invisible poverty. This is the economic legacy of family violence.²⁵

Child support payments

While the Commission's terms of reference do not explicitly direct it to examine the child support system, avoidance of child support has severe financial implications for many victims of family violence and their children.

Australia's Child Support Program

The Child Support Program was introduced progressively over 1988 to 1989, and remains governed by the two statutes enacted in that period: the *Child Support (Registration and Collection) Act 1988* (Cth) and the *Child Support (Assessment) Act 1989* (Cth).²⁶ CSP is administered by the Commonwealth Department of Human Services (DHS), which previously referred to its administering team as the Child Support Agency.²⁷

Payment rates are calculated by DHS, taking into account both parents' income, relevant care arrangements, and any dependent children including children from other relationships. These payments may be collected privately or by DHS and then transferred to the payee parent. Alternatively, parents may privately agree on an assessment, and have it collected privately or by DHS.²⁸

As separation is often a time of financial difficulty, many CSP clients receive income support from the government, usually the Family Tax Benefit (FTB). FTB-A is a payment intended to help families with the cost of raising children. It is paid for each child and is means-tested. CSP has two main links with the FTB-A regime. First, parents applying for FTB-A must take 'reasonable action' to obtain a CSP payment within 13 weeks of being entitled to apply for CSP, or they will only receive the lowest rate of FTB-A. Second, FTB-A will be reduced based on the amount of child support a parent receives or is entitled to receive, until the base FTB-A amount is reached.

The primary way the CSP accounts for family violence is by providing an exemption from the requirement to take 'reasonable action' to seek child support where the recipient fears that the payer will react violently towards them or their family or where there will be a 'harmful or disruptive effect' on either the payee or payer. This allows victims to receive the full FTB-A payment without applying for child support, preventing them from needing to contact the perpetrator and helping to keep them safe.²⁹

The Commission heard that refusal to pay and avoiding payment through hiding earnings is a 'common [way] economic abuse occur[s]'³⁰ and that child support payments are used by perpetrators to continue to exercise control post separation.³¹ The Council of Single Mothers and Their Children Victoria Inc. submitted that avoiding child support payments is a form of financial abuse despite it not often being perceived as violence.³² Further, they noted that 'almost 100% of those callers to [their] Support Line who are in financial crisis identify unpaid child support as a major factor'.³³

The Commission heard that perpetrators use a number of strategies including:

- ▷ Structuring financial affairs to minimise payments. For example, perpetrators cease employment or secure cash-in-hand employment to report a low taxable income.³⁴ Where perpetrators are self-employed they are able to use other forms of tax planning to minimise taxable income.³⁵ As child support payments are calculated by reference to the taxable income received in the previous year by both parents, this minimises the payments a perpetrator is required to make.
- ▷ Avoiding reporting or estimating lowered income. Even where a perpetrator has not structured their affairs to minimise contributions, they may estimate their income will be lower in the current year to reduce their assessment, as child support payments are assessed by reference to the previous year's income.³⁶ Alternatively, a perpetrator may refuse to file a tax return, frustrating attempts to determine their actual income and child support obligations.³⁷ The Standing Committee Inquiry into the Child Support Program expressed concern over the small number of payer parents targeted by DHS and the ATO for failing to file tax returns.³⁸
- ▷ Repeatedly applying for re-assessment of payment.³⁹ There is no restriction on how many times a child support payer may request a re-assessment, regardless of whether this is really necessary, although DHS may appoint a skilled case manager in such circumstances.⁴⁰

Economic circumstances and family violence

Socio-economic status and locational disadvantage

Family violence occurs throughout the social spectrum. Its impacts can be devastating regardless of postcode, 'class' or background:

Family Violence does not discriminate in terms of race, or social or economic status. In fact, having grown up in a violent household and experiencing violence on a regular basis and coming from an upper-middle class family, I found it was hidden a lot more easily for many years and when someone finally did intervene, it was hidden and denied due to the manipulative and deceptive nature of my father who had the ability to charm and convince anyone that nothing had happened/was happening. I attended one of the most prestigious private schools in Melbourne for much of my secondary schooling however no one intervened, noticed, or got me the help I needed when I was being violently abused. I was even BLAMED for my own abuse by the police. My teachers at school were completely unaware of what I was experiencing at home and treated me harshly and with no understanding when I was struggling at school.⁴¹

International evidence is equivocal on socio-economic status as a contributing factor to the occurrence of family violence.⁴² However what we do know is that different forms of inequality and discrimination can lead to social and economic disadvantage.⁴³ The effect of this is that when socio-economic disadvantage intersects with other forms of disadvantage, discrimination and inequality, the risk of violence increases.⁴⁴

As noted above, economic dependence or not having financial knowledge and resources to leave the violent relationship can prevent or delay action. Thus, poverty can worsen the effects of family violence. This might explain, at least in part, concentrations of family violence victimisation in communities of persistent disadvantage.

It may also contribute to spatial patterns of family violence incidence because social disadvantage is heavily concentrated in some areas.⁴⁵ There might also be barriers to gaining access to the services, supports and resources that can help to either prevent violence or prevent it from continuing or escalating, including for example in rural and regional areas.⁴⁶ The Brotherhood of St Laurence noted:

While family violence exists right across Victoria, police data ... indicates that some areas are more affected than others. The rural and regional areas of Campaspe, Latrobe, Central Goldfields and Mildura are the highest offending areas in the state. In metropolitan Melbourne, Casey, Hume, Geelong, Frankston and Whittlesea have the most reported family violence incidents. We note that Casey, Hume and Whittlesea, all growth corridors of Melbourne, are characterised by rapid population growth, a lag in the provision of basic services, and comparatively poor social capital, civic connections, transport and employment opportunities. These factors may contribute to family violence.⁴⁷

Table 21.1 shows the 10 most disadvantaged of Victoria's 79 local government areas, as measured by the Australian Bureau of Statistics' Index of Relative Socio-economic Disadvantage, as well as the rate of police reports of family violence incidents per 100,000 population, and the associated ranking for family violence from July 2011–June 2012 until July 2013–June 2014.⁴⁸

Table 21.1 Police reports of family violence incidents per 100,000 population: 10 most disadvantaged Victorian local government areas

Ranking for disadvantage (2011)	Local government area	Ranking for police family violence incidents per 100,000	Family violence incident rate per 100,000 population (July 2014 – June 2015)
1	Greater Dandenong	30	1391.9
2	Central Goldfields	6	2270.0
3	Brimbank	36	1247.4
4	Loddon	51	973.4
5	Mildura	2	2938.4
6	Northern Grampians	18	1569.7
7	Latrobe	1	3099.8
8	Pyrenees	67	675.2
9	Hindmarsh	46	1026.8
10	Swan Hill	4	2594.1

Source: Based on data from Australian Bureau of Statistics, *Census of Population and Housing: Socio-Economic Indexes for Areas (SIEFA) Australia 2011* (2013); Crime Statistics Agency, Family incident rate per 100,000 population, by region and local government.

The table shows that, although there is some congruence, particularly in regional areas, a less-than-clear pattern emerges between relative disadvantage and family violence. These variations could be partly a result of the measures used to construct the Index of Relative Socio-economic Disadvantage, which, unlike some social exclusion indices, does not include any family violence measures.⁴⁹ In contrast, in a 2015 study family violence was included as one of 22 measures of disadvantage.⁵⁰ Professor Tony Vinson, Emeritus Professor, University of New South Wales, gave evidence that in relation to this study 'domestic violence is one of the indicators that appears with moderate but identifiable strength in the profiles of disadvantaged localities'.⁵¹ There may also be highly localised pockets of deep disadvantage in some areas and a more privileged socio-economic situation in other parts of the same local government area. This might partially explain why the City of Greater Dandenong, ranked as the most disadvantaged local government area in Victoria, ranks 30th for police reports of family violence incidents per 100,000 population.

Features of social exclusion

Social exclusion is multi-dimensional and includes disadvantage in multiple life domains.⁵² Data from the Household, Income and Labour Dynamics, or HILDA, survey from 2003 to 2012 shows that about a quarter of Australians aged over 15 years experienced some level of social exclusion in 2012.⁵³

- ▷ Social exclusion is concentrated. As a result, '1.7 per cent of Australian postcodes account for more than seven times their share of major factors causing intergenerational poverty and disadvantage'.⁵⁴
- ▷ Social exclusion is persistent. Twenty-five of the 40 most disadvantaged Victorian localities in 2014 were in that category in 2007.⁵⁵
- ▷ Single people and sole parents experience social exclusion at higher rates than other households. More than one-third of these people experienced social exclusion in 2012.⁵⁶
- ▷ Women are at higher risk of social exclusion than men. The incidence of social exclusion is five percentage points higher among women than among men, and this gap has remained relatively consistent in the past decade.⁵⁷
- ▷ Other demographic factors also correlate strongly with social exclusion. For example, more than half of Australians with a long-term health condition or disability experience social exclusion, and nearly 48 per cent of people aged over 65 years experienced social exclusion in 2012.⁵⁸
- ▷ Immigrants from culturally and linguistically diverse backgrounds and Aboriginal and Torres Strait Islander peoples are 'particularly likely to experience social exclusion in Australia'.⁵⁹

Social exclusion, in and of itself, does not cause family violence. It is when social exclusion intersects with multiple forms of discrimination, disadvantage and gender inequality that the risk of violence increases.

Economic gender inequality

Women's lack of economic independence and financial security contributes to them being at risk of being coerced or controlled by their male partners. This is not to say that women with fewer resources generally are more likely to be victims of family violence. Rather, the lack of economic equality between men and women, regardless of their position within a wider socio-economic setting, can facilitate control by some men over their female partners.⁶⁰ Women are at greater risk of experiencing poverty than men with a range of factors contributing to economic insecurity.⁶¹ The extent of women's economic vulnerability is further compounded by race, disability, age and sexuality.⁶²

As at August 2015, Australian women's average weekly full-time earnings were approximately 17.9 per cent less than the male equivalent.⁶³ Over the last twenty years this figure has consistently been recorded at between 15 and 19 per cent.⁶⁴

The determinants of systemic income disparity between men and women in Australia are many and interrelated.⁶⁵ In its 2009 report on the gender gap in retirement savings the Australian Human Rights Commission states:

Women's decisions to take time out of paid work, to trade salary for flexibility or to work in a low paid job are often viewed as a matter of individual choice and responsibility. Yet, these choices are very often constrained by a range of external factors such as inflexible workplace structures, family dynamics, cultural pressures and gendered stereotypes.⁶⁶

In addition to structural economic gender inequality, cultural norms about household finances may result in some men controlling household finances. The myth that men are inherently better money managers than women, and that women are disinterested or incompetent when it comes to finances, still exists. As one report observed:

Into this mix add the cultural belief that money is a private matter, and social expectations about love and trust in intimate relationships, and a perfect environment is created for financial abuse to be normalised and rendered invisible at both an individual and community level.⁶⁷

Problem gambling

In this section we briefly discuss the evidence the Commission received regarding gambling and family violence. It is included in this chapter in recognition of the financial impact of gambling problems upon victims—either when their partner has a gambling problem or when the victim does:

He played the stock market and would continuously gamble away money including emptying the children's bank accounts.⁶⁸

Gambling problems are closely associated with poverty; they affect the functioning of family relationships and affect intimate partners, as well as other family members such as children, parents, siblings and grandparents. There is now consistent international evidence that gambling problems are associated with family violence.⁶⁹ As the Australian Institute of Family Studies has noted, 'the relationships are complex; however, people with gambling problems are more likely than people without gambling problems to be victims and perpetrators of intimate partner violence'.⁷⁰

It is of note that research into the relationship between gambling and family violence is an emerging area of inquiry and to date sample sizes have been small.

Only a few studies are available with large variability in reported prevalence estimates. In addition, many studies are not representative of the general population, include only small numbers of problem gamblers, use groups that may experience multiple problems in addition to gambling-related issues, and use different definitions of violence. Further research is required to provide information about the relationship between problem gambling and violence that extends into the family beyond intimate partners.⁷¹

In their submission, Women's Health in the North also recommended that further research be conducted into this area.⁷²

Despite this gap in research, recent studies have shown that between 34 and 53 per cent of people with gambling problems experienced some form of family violence in the preceding 12 months. In the studies, parents, current partners and former partners were both the most common perpetrators and the most common victims of the family violence.⁷³

Although most research in the area relates to intimate relationships, there is some evidence that gambling-related family violence extends to children and other members of the broader family. A 2014 review of six previous studies found that approximately 56 per cent of people with a gambling problem perpetrated physical violence against their children.⁷⁴

The estimates vary, but recent studies show that gambling is more closely related to victimisation than perpetration. For example, the Australian arm of a 2013 study of 120 family members of problem gamblers seeking help in Australia, New Zealand and Hong Kong found that, among those who reported family violence, 20 per cent were victims, 10.8 per cent were perpetrators, and 21.6 per cent reported both victimisation and perpetration.⁷⁵

The correlation with victims was borne out in submissions to the Commission, several of which noted that women sometimes go to a licensed venue with poker machines because it is the only, safe and welcoming place where they can avoid their partner's violence.⁷⁶ It was noted that gambling venues are not safe places for women seeking refuge from violence if the women then goes on to develop a gambling problem.⁷⁷

Economic abuse and population groups

Older women

While there are few comprehensive Australian data sources that indicate the prevalence of economic abuse of older people there is some evidence that identifies the gendered nature of the issue. In 2010, Monash University analysed public advocate, helpline and public trustee data, and found that women are more likely to experience financial elder abuse than men.⁷⁸ It also found that the primary perpetrators were sons, followed by daughters.⁷⁹ The finding that women are more likely to experience financial elder abuse than men is consistent with Seniors Rights Victoria helpline data where women make up approximately 72 per cent of calls.⁸⁰

Data shows that women enter retirement with a lower average household net worth and less superannuation than men.⁸¹ For women entering retirement who have a history of family violence, the risk of financial insecurity is amplified. Similarly, older single women who experience family violence are also at greater risk of financial insecurity and poverty.

According to the Association of Superannuation Funds of Australia, one in three women will retire with no superannuation at all and around 90 per cent of women will retire with inadequate savings to fund a comfortable lifestyle in retirement.⁸² There is a gap of \$85,400 in the average retirement payout with women receiving \$112,600 and men receiving \$198,000.⁸³ In percentage terms women retire on approximately 57 per cent of the amount men retire on.

Women are more likely than men to be reliant on the full age pension as their main source of retirement income.⁸⁴ The Australia Human Rights Commission states that ‘between 2001 and 2005, single elderly female households had not only experienced the highest incidence of poverty compared to other household types, but had also been at the greatest risk of persistent poverty’.⁸⁵

Women from culturally and linguistically diverse backgrounds

Women from culturally and linguistically diverse backgrounds who experience economic abuse can face a range of additional barriers to leaving the violent relationship including social isolation, uncertain immigration status and a lack of knowledge about what constitutes family violence.⁸⁶ For many women, these barriers make it difficult to report the violence, seek support and gain financial security.

The Commission heard that some perpetrators prevent their partners from learning English.⁸⁷ This acts to further isolate and exclude their partner from participating in economic and social life. A recent report by Wyndham Legal Service and Good Shepherd Australia New Zealand described situations where women were coerced into signing loan and other documents in English that they did not understand.⁸⁸ This described a case where a husband coerced his wife, who did not read, write or understand English, to sign a finance agreement for a car, despite the fact that she could not drive and did not have an Australian licence. When the woman left the husband she was pursued for the debt, which was in her name.⁸⁹

When multiple forms of discrimination, disadvantage and social exclusion intersect with gender inequality, the risk of violence increases and the barriers to leaving a violent relationship are amplified. One witness told the Commission:

We often find particularly with our clients from a culturally and linguistically diverse background that particularly for older women, who may not have English as their first language, they are unable to read English, they are heavily disadvantaged through these arrangements because they often have no paper trail to prove payments and arrangements have taken place.⁹⁰

A victim’s immigration status can also be exploited by her partner, and used as a form of control.⁹¹ In many situations, visa and migration challenges were combined with dowry-related abuse.⁹² For a detailed discussion on the experiences of culturally and linguistically diverse communities and family violence, see Chapter 28.

Challenges and opportunities

In this section we discuss the major issues raised with us in evidence regarding family violence-related debt, and the procedures available to victims in these circumstances. Utilities, infringements and tenancy-related matters are discussed. The section finishes with a brief discussion of the links between problem gambling and family violence victimisation.

Family violence-related debt

By withholding financial support or through the use of deception or coercion, perpetrators avoid responsibility for a range of debts, and leave their partners or former partners with substantial liabilities, severely affecting their financial security. Women can also accumulate debt as an indirect result of violence, due to, for example, their exclusion from employment or due to homelessness.⁹³

The extent of this issue, like the prevalence of economic abuse more broadly is not known. However, a recent report by Women's Legal Service Victoria found that most clients who sought assistance for family violence left the relationship with debt. Of 170 women assisted by Women's Legal Service Victoria's *Stepping Stones* project, 25 per cent were dealing with a debt accrued against their wishes, without their knowledge, without understanding or under duress.⁹⁴

The Commission heard that debt was commonly incurred in relation to:

- ▷ consumer credit products—mortgages, personal loans or credit cards
- ▷ utilities—electricity, water, gas and telecommunications including mobile phones
- ▷ car related debt—traffic and parking fines.⁹⁵

For victims, the psychological and emotional toll of attempting to resolve debts at the same time as ensuring their own personal safety cannot be understated. Advocates have, therefore, called for financial and utilities institutions, and the regulatory regimes that govern them, to introduce clear and accessible processes to enable victims to resolve ongoing financial complexities. We discuss this in the next section.

Financial institutions and consumer credit products

In Australia, the key regulatory regime that governs consumer credit transactions is the National Credit Code.⁹⁶ The Australian Banker's Association issues a Code of Banking Practice to guide good banking practices.⁹⁷

The Commission received evidence detailing the experiences of women who accumulated consumer credit debt through family violence including:

- ▷ being the sole debtor for a loan over an asset a perpetrator benefited from
- ▷ being a joint debtor but forced to be the only party making repayments on the loan
- ▷ having no access to details about a loan held in a perpetrator's name over a family asset.

Analysis of client matters by Women's Legal Service Victoria's *Stepping Stones* project found that of 170 clients assisted, the majority had left a violent relationship with debt. Of the women assisted, 43 per cent had joint debts and 85 per cent had debts in their sole name.⁹⁸

Loan in victim's name

Among the tactics used by perpetrators to coerce or deceive their partner to take out a loan as the sole debtor included the perpetrator having a bad credit rating or lying about having a bad credit rating⁹⁹ or otherwise placing pressure on the woman to sign contracts.¹⁰⁰

In his evidence to the Commission, Mr Denis Nelthorpe AM, Chief Executive Officer of Western Community Legal Centre, discussed the experiences of victims with a loan in their name who did not necessarily derive a benefit from the asset. Many feared a bad credit rating if they did not pay off the debt, and even, in some cases, refused to apply for a waiver.¹⁰¹

Loan held in both names

Jointly held debt was highlighted as one of the most difficult issues for victims to resolve with financial institutions. These difficulties often resulted in ongoing abuse after the relationship ended due to victims being unable to extricate themselves from financial arrangements with former partners.¹⁰²

Joint parties to a loan are both responsible for the debt and the financial institution can legally pursue each debtor separately for the full amount owing. A loan agreement of this kind can only be altered and the debt apportioned by the consent of both parties¹⁰³ which in circumstances of family violence, is unlikely to occur.

Researchers described the threat of a damaged credit rating as the reason women serviced a joint debt even if they derived little or no benefit from the asset.¹⁰⁴ One example of this was a joint loan over a car which was taken by one party who refused to make payments on the loan or return the car so it could be sold to assist in paying out the amount owing. Fearful of damaging her credit rating the victim continued to pay off the loan.¹⁰⁵

Loan held by perpetrator

Where the loan is held solely in the name of the perpetrator and it is secured over an asset such as the family home, women reported having difficulty getting details about the loan and preventing their ex-partner from drawing money out of the account.¹⁰⁶

Existing provisions in the National Credit Code allow action to be taken where an unjust transaction has taken place. Under section 76 of the code the court can consider factors such as the relative bargaining power of the parties and whether unfair pressure, undue influence or unfair tactics were exercised.¹⁰⁷ If found, relief can be ordered including waiving the debt or finding that a party is owed money.¹⁰⁸ While there is some evidence this has been used by victims of family violence, it is not a remedy widely available due to a lack of information generally about options in these circumstances.¹⁰⁹ The cost of legal proceedings may also be a factor.

Financial hardship provisions

The Commission heard that in many cases debt accumulated through economic abuse is not waived and many women struggle to make repayments to hold on to assets and to avoid defaulting and acquiring a bad credit rating.¹¹⁰

Financial hardship provisions exist within the National Credit Code in circumstances where a person is unable to meet their obligation under their credit contract.¹¹¹ The Code of Banking Practice also outlines how member banks should deal with consumer's financial difficulties.¹¹²

Further guidance is provided by industry guidelines. For example, the Australian Bankers Association issued a guideline for its members which recognises that financial hardship can be due to factors including: 'significant life events (such as a relationship breakdown or a death in the family)'.¹¹³ However, these guidelines do not have legal force so compliance by financial institutions is not monitored.

Women's experience of accessing hardship programs following family violence was mixed. One victim told the Commission:

I have been actively pursued by financial institutions that were fully aware of my indication I had been the victim of family violence and this made no difference to them. Rarely was I treated with sensitivity, compassion and understanding.¹¹⁴

Others reported receiving better treatment when they were represented by a financial counsellor:

I wrote them this really long, nice letter explaining everything and I don't know if they rang me or texted me and said no, sorry, we can't do that. But the financial counsellor rang them and got them down to \$10 a fortnight.¹¹⁵

Submissions noted the need for consistent policies and procedures including training staff in banks and other credit providers in economic abuse and family violence issues.¹¹⁶ This would likely see an improvement of the experience for victims of family violence.

The ANZ Bank told the Commission that it has established practices for staff to identify and deal with customers experiencing family violence. Where its staff identify a case involving family violence, they communicate separately with joint account holders, and refer the customer to the bank's financial hardship team instead of its debt collection team.¹¹⁷ This team can assist the victim by making changes to the loan such as reducing the amount of payments by extending the duration of the loan, refinancing where applicable or other measures.¹¹⁸

Financial Services Ombudsman

The Financial Services Ombudsman Australia provides dispute resolution services for consumers and member financial services providers.¹¹⁹ While limited evidence in relation to the Ombudsman was received, the Commission acknowledges its important role in resolving disputes, particularly in circumstances where debt is unfairly accrued due to family violence.

Essential household utilities

Electricity, gas, water and communication devices are essential services for every household. They are required for daily functions such as heating, cooling, cooking and bathing to enable full participation in society. Telecommunication services such as internet accounts and mobile phones help connect victims of family violence to other family members and friends and also assist in accessing information and help.

Because of the critical function these essential services play, perpetrators use control over them as a form of economic abuse in a number of ways including:

- ▷ insisting the account is in a victim's name and refusing to contribute to the cost
- ▷ putting a service in the sole name of the victim without their knowledge or consent
- ▷ holding an account jointly and refusing to contribute to the cost
- ▷ holding the account in their own name and not paying bills, resulting in disconnection
- ▷ holding the account in their own name and threatening to have the service cut off or having it cut off when they leave the family home.¹²⁰

These tactics have a number of effects:

- ▷ women are forced to bear the full economic cost of utilities to ensure the household has access to services
- ▷ women are fearful that their inability to pay, or their partner's refusal to pay, may result in being pursued by debt collectors or lead to disconnection of services
- ▷ utilities are disconnected and women go without services necessary to care for themselves and their children
- ▷ utility providers send correspondence to the household (containing the victim's new residential address) which is intercepted by the perpetrator and potentially threatens their personal safety.

The Commission heard accounts of family violence victims being left financially at risk with the prospect of losing essential household utilities. One woman explained:

My ex breached the IVO by not paying our mortgage, by not giving me any money at all from our business accounts, took my name off our business accounts and also off our personal bank account linked to our mortgage and didn't pay any household utility bills (so that I risked having services cut) so that I was left unemployed and without any form of income to support myself and my ... children.¹²¹

Joint account holders

In relation to utility accounts that are jointly held in the names of both the victim and perpetrator there is no ready legal recourse to sever the joint liability.¹²² As with consumer credit products, both parties are liable for the debt and can be pursued separately for the entire amount.¹²³ Consent from both parties may be required both to enter a hardship arrangement and to remove an account holder's name.¹²⁴

This obligation may expose victims to danger if they have to approach the perpetrator in order to obtain the required consent. This would also be the case where the victim was willing to pay off the entire debt through a payment plan.

Account held by perpetrator

Where the account is held in the name of the perpetrator alone, account information cannot be accessed by another party including the victim. Failure of the perpetrator to pay the bill can result in termination and the Commission heard that victims were required to pay reconnection fees for a service at the same address.¹²⁵

Financial hardship provisions

In Victoria, the Essential Services Commission regulates retail sale of gas, electricity and water. Gas and electricity retailers are required to comply with the Essential Services Commission's Energy Retail Code (Version 11).¹²⁶ Urban water retailers are subject to the Customer Service Code for Urban Water Businesses.¹²⁷ Telecommunications companies are regulated under the Federal Telecommunications Consumer Protections Code.¹²⁸

These instruments require retailers to have hardship policies. While these detail how customers experiencing hardship are to be dealt with (payment plans, assistance for replacement of appliances) they do not define hardship or set the eligibility criteria for what circumstances constitute hardship. This is left to the individual retailer and 'there is a high degree of variation in how retailers determine who is and who is not a 'hardship customer' and therefore who is entitled to support under a retailer's hardship program'.¹²⁹ In its recent Energy Hardship Draft Report, the Essential Services Commission found the level of discretion afforded to energy retailers in Victoria 'may be causing significantly different experiences and outcomes for customers'.¹³⁰

A 2014 report by the Consumer Utilities Advocacy Centre found while many energy and water retailers use broad language to define eligibility for accessing hardship programs, family violence is rarely explicitly listed.¹³¹ The Commission was informed that South East Water,¹³² AGL and Energy Australia¹³³ have specific provisions for family violence in their hardship policies. Submissions and witnesses consistently recommended to the Commission that utility and telecommunications providers should amend their hardship policy criteria to explicitly recognise family violence.¹³⁴

Although hardship policies are required to be publically available, the Essential Services Commission noted there was no uniformity in how this information was displayed on websites. Some retailers have a hardship icon link available on the home page and others under sections called 'terms, prices and regulatory information' making it more difficult to locate.¹³⁵

Even where hardship policies existed they are of little value if victims face significant barriers in using them. A common theme among victims trying to access hardship programs across utility providers was the lack of empathy and understanding of family violence.¹³⁶ The lack of dedicated, trained staff meant women had difficulty making disclosures about their abuse and often required their story to be told to several workers.¹³⁷

The Commission heard of some service providers who are seeking to address these barriers. Telstra informed the Commission of their Specialist Assistance Team who assist consumers experiencing financial hardship. Telstra holds a Financial Hardship Forum and CEO–Consumer Roundtable twice a year which allows the company to hear directly from consumers about their experiences accessing services. Recognising that publically accessible directories may have privacy consequences for victims of family violence, Telstra also noted an initiative that waives the silent line fee for victims of family violence and stated it will develop processes and deliver staff training around this initiative to ensure victims can disclose safely.¹³⁸

Utility Relief Grant Scheme

Administered by the Department of Health and Human Services, the Utility Relief Grant Scheme provides assistance to eligible people who are unable to pay their mains electricity, gas or water bill due to a temporary financial crisis.¹³⁹ In recent research, Women's Legal Service Victoria found that only eight per cent of the surveyed community sector workers were aware of family violence victims frequently accessing this scheme.¹⁴⁰ The research also found that utility providers do not provide advice on eligibility for accessing the scheme.¹⁴¹ This is a substantial gap in ensuring women stay financially afloat post family violence and that they, and their children have a home with heat, light and water.

The role of Ombudsman bodies

The Energy and Water Ombudsman Victoria provides dispute resolution services for consumers, and energy and water companies. The Telecommunications Industry Ombudsman provides dispute resolution services for small business and residential consumers, and internet and telephone service providers in Australia.

The Commission received little evidence in relation to the role of these Ombudsman bodies assisting in family violence-related disputes, however the Commission notes the Consumer Utilities Action Centre's call for EWOV to publish guidelines on what is fair and reasonable, to assist retailers in resolving disputes involving outstanding joint debtors and preventing the transfer of debt.¹⁴²

Car-related infringements and debt

There are a range of car-related debt issues that arise in circumstances of family violence. The Commission heard that some perpetrators incur parking and traffic infringements while driving vehicles that are registered in the victim's name.¹⁴³ In other cases, parking and traffic infringements incurred by the perpetrator in their own car are attributed to the victim leaving them to service the fine.¹⁴⁴ In other circumstances, victims themselves commit parking and traffic offences while experiencing family violence—for example, if they are escaping violence, experiencing homelessness or sleeping in their car.¹⁴⁵ One woman shared her experience of family violence and car-related debt.

When my husband became angry, he would drive the car erratically and speed through red lights. The car was in my name and so the red light and speeding fines would also be in my name, and I would have to pay the fine. Although I knew about nominating another driver at that time, the circumstances of a violent relationship meant it was not possible for me to nominate him as the other driver. After I had left my husband, I was still forced to pay half of the loan for a car that he continued to drive and continued to incur fines in my name. Even though I had attempted to live free from his violence, I was not free from his control and the financial strain of meeting the needs of four children, paying rent, and the occasional fine incurred by him having the family car.¹⁴⁶

In addition to the financial burden of having to pay individual fines, submissions said that as fines accumulate, a victim may also face the suspension of their drivers licence and registration, confiscation of the car and imprisonment.¹⁴⁷ The loss of access to transport may in turn impede a victim's capacity to escape violence and keep her isolated, particularly in outer suburban and regional areas where public transport is limited.

The Commission heard that the infringement system includes some options for avoiding being penalised for the behaviour of their partner or because of family violence circumstances. The options for avoiding penalisation include:

- ▷ nominating another driver, which may require identifying and locating the perpetrator¹⁴⁸
- ▷ applying for withdrawal or revocation of the infringement on the basis of special circumstances or exceptional circumstances.¹⁴⁹

In evidence, Ms Marisa De Cicco, Deputy Secretary, Criminal Justice Division of the Department of Justice and Regulation pointed out that infringements are offences under criminal law—if the victim did not commit the offence and the infringement penalty is waived, the issue of criminal responsibility remains, but if the victim did commit the offence, the issue is whether the reasons for offending justifies waiving the infringement.¹⁵⁰

The Commission acknowledges that the infringements system is complex and that victims may come into contact with it at different points throughout the lifecycle of the infringement for example, immediately when the infringement is received, through to the enforcement order stage and the warrant stage.

Nominating another driver

In situations where the victim did not commit the offence and is in a position to nominate the offending driver, the Commission heard that many women do not pursue this option due to fear of retribution, and the inability to provide sufficient information to identify and locate their former partner as required under the *Road Safety Act 1986* (Vic).¹⁵¹

A joint working group of the Federation of Community Legal Centres and the Financial and Consumer Rights Council, the Infringements Working Group, submitted that the Road Safety Act should be amended. Where a person declares that they were not the driver of the vehicle at the time of the offending; and shows (for example, through a statutory declaration, copy of a family violence intervention order, or support letter from a family violence worker) that they are a victim of family violence and, accordingly, are unable to identify the person in control of the vehicle at the time, the infringement should be waived or the enforcement order revoked.¹⁵² It is important to note that this means the perpetrator would not be required to respond to the infringement.¹⁵³

Ms De Cicco raised several issues to consider in the case for any legislative reform, including the extent of information required to demonstrate family violence is occurring or has occurred and how real the threat of retribution is.¹⁵⁴ There is also the important issue of transferring liability to the perpetrator, particularly in serious cases of car-related offending.¹⁵⁵ In addition, Ms De Cicco questioned whether the enforcement agency or related body should be obliged to report the family violence to police.¹⁵⁶

Applying for a withdrawal or revocation

As noted above, victims themselves may also be at risk of committing parking and traffic offences while experiencing or attempting to escape family violence.¹⁵⁷ The Infringements Working Group (IWG) submitted that the current infringements regime does not appropriately recognise this experience of family violence.¹⁵⁸

Currently, victims can apply to have the infringement withdrawn or revoked (depending on the stage the infringement is at) under the *Infringements Act 2006* (Vic) if they can establish their situation falls into 'special circumstances' or 'exceptional circumstances'.¹⁵⁹

Special circumstances include a mental or intellectual disability, illness, addiction to drugs or alcohol, or homelessness that results in the person being unable to understand that their conduct constitutes an offence or results in them unable to control conduct which constitutes an offence.¹⁶⁰ Although family violence can lead to circumstances that fall within the definition of 'special circumstances', such as homelessness, the Infringements Act does not recognise family violence as an independent ground for withdrawal or revocation.¹⁶¹

A person who has received infringements as a result of family violence can make an application for withdrawal or revocation on the basis of 'exceptional circumstances'. This is not defined in the Infringements Act although the IWG noted in its submission that 'it is common for applications for withdrawal or revocation on the basis of exceptional circumstances, citing family violence, to be rejected'.¹⁶² Further, it submitted that there is little guidance provided to determine which matters fit within this category.¹⁶³

Based on these issues, the IWG focused on amending the special circumstances provision. It submitted that although some women experiencing family violence may meet the criteria for special circumstances, the requirement to prove that the particular circumstances 'resulted in', an inability to understand or control offending conduct requires a level of causation that is hard to prove.¹⁶⁴ The IWG recommended that firstly; family violence be incorporated into the definition of special circumstances and secondly; that the definition of special circumstances be amended to 'contributes to' rather than 'results in', to recognise that family violence, mental or intellectual disability, illness, addiction to drugs or alcohol, or homelessness contributed to the person receiving the infringement.¹⁶⁵

Ms De Cicco informed the Commission that any legislative change must consider the nexus between the family violence circumstances and the commission of the offence.¹⁶⁶

Other options to resolve family violence-related infringements and debt

The Commission heard that the Department of Justice and Regulation has been considering options to alleviate the impact of infringements on victims of family violence.¹⁶⁷ Their preferred option is for the Magistrates' Court to address infringement issues in the context of family violence intervention order proceedings.¹⁶⁸

In evidence, Ms De Cicco suggested two avenues to address this issue; the first is for the relevant material in the Magistrates' Court to be amended so that family violence-related infringements are identified and form part of the proceedings; the second is for amendments to be made to infringements legislation so that family violence-related issues can be identified and resolved.¹⁶⁹

The Department of Justice and Regulation informed the Commission that the *Fines Reform Act 2014* (Vic) will create the appointment of a Director, Fines Victoria, who will oversee and monitor infringement activity and review decisions by enforcement agencies to service the infringement notice and to enforce the fine.¹⁷⁰ Ms De Cicco stated in evidence:

This centralisation should assist applicants and enable a more consistent application of policy for family violence matters.¹⁷¹

Financial counselling services

Resolving debt is the starting point to economic empowerment because once you start to resolve debts, then you can start also to start having the conversations in respect to future planning and future economic aspirations.¹⁷²

The Commission heard the role of financial counsellors in assisting victims of economic abuse to have debts waived, enter into hardship arrangements and assist with accessing Centrelink services is central to the recovery of many women.¹⁷³ A number of organisations suggested victims of family violence should have greater access to financial counsellors and services to assist in their financial security and recovery.¹⁷⁴

Financial counsellors have more formal access to hardship departments than lawyers or emergency relief workers because of their specialist training and existing relationships with banks, energy providers and telecommunications companies. However, very few financial counsellors have family violence or economic abuse expertise. The Financial and Consumer Rights Council highlighted the need for specific training to be developed.¹⁷⁵

Accessing support services can be difficult for women living in or escaping from family violence.¹⁷⁶ The Commission heard that many organisations in the financial counselling sector and the community legal sector support co-location of these services to better meet the needs of victims of family violence.¹⁷⁷ This would prevent women from having to go to numerous places to get answers regarding the various financial problems arising from family violence. It also means women can make informed decisions about their financial and legal options. Ms Emma Smallwood, Lawyer and Economic Well-being Project Research Coordinator, Women's Legal Service Victoria, described the co-location of a financial counsellor and lawyer within her organisation:

It's been incredibly successful ... It means the women aren't having to retell their stories to multiple professionals. It means they are not getting conflicting advice from multiple professionals who might deal in a particularly siloed areas, be it financial counselling or the legal system.¹⁷⁸

It was noted however that in providing support and assistance, legal and financial counselling services should not inadvertently perpetuate power imbalances:

Where a level of technical expertise is required to navigate a particular legal or financial system or process, the service provider becomes the expert and the woman seeking help is reliant on that expertise. This can be disempowering for women.¹⁷⁹

Joint assets

The Commission heard evidence that joint assets are commonly used by perpetrators to continue to exert control over their partner or former partner post family violence.

... I discovered that the husband had hidden cars and cash (over \$250,000), along with a number of other financial discrepancies. He was also hindering the transfer of property to me. Assets were not transferred to me for some years ...¹⁸⁰

Controlling assets raises two issues in the context of economic abuse. The first issue is when the perpetrator withholds, disposes of or denies access to joint property without lawful excuse. The Magistrates' Court has powers under the Family Violence Protection Act to make conditions about the use of personal property in family violence intervention orders ('personal property conditions').¹⁸¹ These can assist victims in their short and long-term economic recovery, and is discussed in detail below.

The second issue relates to reaching property settlements. Submissions provided to the Commission described a range of issues, including:

- ▷ perpetrators dragging out settlements to drain the victim's financial resources¹⁸²
- ▷ the difficulties victims face in reaching fair informal property settlements due to ongoing violence¹⁸³
- ▷ perpetrators using property settlements to coerce the victim to agree to unfair arrangements (for example—perpetrator will relinquish property if victim withdraws intervention order)¹⁸⁴
- ▷ property damage caused by perpetrator reducing the value of assets awarded to victim in any settlement agreement¹⁸⁵
- ▷ the high cost of legal representation, which is a barrier to pursuing the matter in federal family courts.¹⁸⁶

These issues and other issues related to property settlements are discussed in Chapter 24.

Personal property

Section 86 of Family Violence Protection Act states that the Magistrates' Court may include two types of personal property conditions in a family violence intervention order.¹⁸⁷

The first type of condition directs the perpetrator ('respondent') to return property to the victim ('protected person') and 'may apply if the protected person has left the residence and requires basic personal property such as clothes, cooking equipment, a car, bicycle, medicine or children's possessions'.¹⁸⁸ The property may be owned by the protected person or a family member of the protected person, such as a child. Property which is jointly owned by the protected person and the respondent may be included in the order where return 'will enable the protected person's everyday life to continue with as little disruption as practicable in the circumstances'.¹⁸⁹ For example, the court may order that the respondent should return a car or mobile phone to the protected person, even though it is jointly owned.

The second type of condition allows respondents who are excluded from the victim's place of residence to return and collect their personal property.¹⁹⁰ Respondents must be accompanied by a police officer or other specified person (such as a family friend who is trusted by the protected person and respondent). Any order for the recovery of a respondent's property must include a condition that 'furniture or appliances in the residence that enable the normal running of the home [are] to remain in the residence'.¹⁹¹

The Magistrates' Court has broad discretion as to which items of personal property may be included in personal property conditions. Notably, Victoria is the only state or territory where legislation specifies what the respondent cannot remove from the residence (for example, furniture or appliances in the residence that enable the normal running of the home) if they are excluded.

The Commission heard evidence that personal property conditions can be of significant assistance to victims of family violence in times of crisis. For example, Ms Smallwood said:

I think it is important to acknowledge that often women do leave the home when the police take out an intervention order and they never return because of fear for safety. So they are leaving without any of their possessions and that has huge long-term repercussions for that woman. So, any gains that can be made in that intervention order in relation to a return of even some of her things that she can continue her daily life with would make a huge impact.¹⁹²

In addition to addressing and preventing economic abuse and assisting victims' economic security and recovery, personal property conditions may operate to enhance victims' safety in the short to medium term. As the Australian Law Reform Commission and New South Wales Law Reform Commission noted in the 2010 report *Family Violence—A National Legal Response*:

Personal property disputes can escalate tensions between parties following family violence and relationship breakdown—potentially putting victims at further risk. Proceedings provide an accessible and safe forum for victims of family violence to resolve personal property disputes. By addressing ongoing conflict and providing safe procedures around the recovery of personal property, personal property directions may operate to improve the safety of victims of family violence.¹⁹³

Underutilisation use of personal property conditions

The Commission understands that magistrates rarely make conditions which specifically address property issues, including economic abuse, despite having the power to do so under the Family Violence Protection Act.¹⁹⁴ A number of factors may contribute to personal property conditions rarely appearing in family violence intervention orders.

Currently, the intervention order system is focused on physical and emotional abuse, and prioritises physical safety over economic security.¹⁹⁵ Victims of family violence may not apply for specific personal property conditions because they are unaware they can be obtained, or because they consider that such a request could exacerbate the violence or result in a contested hearing.

The Commission has also heard that police may not see personal property conditions as a priority. Ms Smallwood observed '[p]olice are often of the view that they do not want to become involved in property disputes'.¹⁹⁶ This is despite the fact that the Victoria Police Code of Practice for the Investigation of Family Violence explains that personal property conditions can be part of family violence intervention orders.¹⁹⁷

Another explanation for a lack of personal property conditions may be the capacity and willingness of magistrates to make them. The Royal Commission heard that some magistrates do not understand their powers relating to personal property orders and that there may be 'a fear [on the part of magistrates] that [including personal property conditions] will sort of somehow open the floodgates'.¹⁹⁸ Magistrates also appear to be concerned about intervention orders encroaching into property law or family law jurisdictions.¹⁹⁹ This concern may be explained by the fact that personal property conditions are subject to any order to the contrary made by the Family Court, or another court or a tribunal with relevant jurisdiction to adjudicate in property disputes. Personal property conditions also have no effect on ownership rights.²⁰⁰

When personal property conditions are made, the Commission was told they are often not specific enough to be enforceable.²⁰¹ The current Application for a Family Violence Intervention Order form asks applicants if they want the court to order that:

The respondent must arrange to return personal property belonging to the protected person/s within 2 days of the service of the order.

The respondent must arrange to return jointly owned property within 2 days of the service of the order.²⁰²

However, the form does not allow applicants to specify the personal property to be subject to the order.²⁰³ As Ms Smallwood noted:

It is usually the case that those clauses, if they are included in the intervention order, are too broad to have any real enforceability when the police look to a breach of an intervention order when it is reported by a victim.²⁰⁴

The onus is also on the protected person to alert the court or police to a breach of a family violence intervention order and victims may be reluctant to report breaches of personal property condition because the court system and the police prioritise physical safety.

Finally, the lack of specificity of personal property conditions is important where an exclusion condition is made and the respondent returns to the residence to collect their personal property. The Victoria Police Code of Practice for the Investigation of Family Violence states that 'where property retrieval is later necessary, police attendance may be required to maintain the peace when both parties are in attendance.' However, 'police are not to arbitrate disputes over individual items for retrieval.'²⁰⁵ Ms Smallwood submitted that, while it is understandable that police officers should not have to decide which items a respondent may take, in the absence of clear personal property conditions victims may be at a disadvantage because they may be too afraid to prevent a perpetrator from taking their property.²⁰⁶

Issues related to the Residential Tenancies Act

Safe and affordable housing is essential for family violence victims' recovery. However, there are a range of issues related to tenancy and residency agreements that can disproportionately affect victims. The financial implications are often severe.

In Victoria, the *Residential Tenancies Act 1997* (Vic) regulates residential tenancy agreements, as well as residency agreements in rooming houses and caravan parks. It covers both social housing and private rental accommodation.

A review of the Residential Tenancies Act is under way and is due to be completed by mid-2018.²⁰⁷ The review has been initiated in recognition of the fact that the rental sector has changed since the current residential tenancy laws were introduced. Among other things, the review will consider whether the legislation provides sufficient safeguards for tenants.

This section examines the evidence the Commission received in relation to applying for a new tenancy agreement, the apportionment of liability, the modification of rental properties, termination of tenancies and 'blacklisting'.

Applying for a new tenancy agreement

Under section 233A of the Residential Tenancies Act,²⁰⁸ where a tenant is excluded from the premises after a final family violence intervention order (or a personal safety intervention order) is made, the protected person can apply to the Victorian Civil and Administrative Tribunal (VCAT) for an order terminating the existing tenancy agreement and requiring the landlord to enter into a new tenancy agreement with the protected person and any other persons.²⁰⁹

The Commission was told by a number of people that this provision is not well-known and is underutilised.²¹⁰ In 2013–14, there were 39 applications for the reduction of a fixed term tenancy agreement because of an intervention order and 13 applications for the creation of a tenancy agreement because of an intervention order.²¹¹ During this same period, 24,947 final family violence intervention orders were made.²¹²

The Commission was told that steps should be taken to increase the use of section 233A so that victims of family violence are better able to maintain their tenancies. This could include programs to build awareness of these applications within Victoria Police, the Magistrates' Court and frontline service providers.²¹³

In addition, Justice Connect told the Commission that 'despite the laudable intention of section 233A',²¹⁴ there are limitations to its usefulness in practice. VCAT noted that 'this is an entirely reactive regime, and is predicated on the existence of a final order of this nature. The conditions on the exercise of jurisdiction very significantly limit the capacity of VCAT members to respond to family violence when this is evident in cases before them'.²¹⁵

Similarly, the Judicial College of Victoria stated that:

The Residential Tenancies division relies heavily on the Magistrates' Court making an intervention order with the correct exclusionary clauses... If the Magistrates' Court fails to impose an exclusionary condition on the intervention order, VCAT will adjourn the matter, while application is made to the Magistrates' Court for the correct form of order. This results in double-handling by both jurisdictions, and delay.²¹⁶

VCAT proposed that an ability to make orders under section 233A in situations where family violence has occurred, but a final family violence intervention order with the relevant exclusionary condition not yet in place, would enable it to better respond to situations of family violence.²¹⁷

Other states have made amendments to their residential tenancy legislation in recognition of the issues that arise in the intersection between family violence and tenancy agreements. For example, in Queensland and South Australia an existing tenancy can be terminated, and a new tenancy created in the name of the victim of family violence, in situations where family violence has occurred but there is no protection order or intervention order in place.²¹⁸

In addition, concern was expressed that victims of family violence have to make applications in two different forums—the Magistrates' Court and VCAT—in order to obtain a final family violence intervention order with an exclusion condition and then to obtain an order under section 233A for creation of a new tenancy.²¹⁹ If a victim has to attend VCAT after having already sought an order in the Magistrates' Court, they have to navigate another system, retell their story and potentially face the perpetrator again.

Apportionment of liability

Victims of family violence living in rental accommodation, either public or private, are often burdened with compensation claims and debts that limit their ability to obtain safe alternative housing.²²⁰

The Commission heard that issues can arise for victims of family violence in relation to apportionment of liability, where parties are co-tenants on the lease. The general position under the Residential Tenancies Act is that tenants are jointly and severally liable for any loss or damage that the landlord suffers as a result of a breach of the tenancy agreement or the Residential Tenancies Act by any of the co-tenants. This means that a landlord seeking an award of compensation can make their claim against any or all of the co-tenants to the lease agreement.

According to Justice Connect, compensation claims are most commonly brought under the Residential Tenancies Act against victims of family violence in one of the following two ways:

- ▷ a landlord claims compensation against all co-tenants in relation to damage caused by a single co-tenant who is the perpetrator of family violence
- ▷ the landlord claims compensation for rent arrears that accrued after a victim of family violence fled the premises and a perpetrator remained in possession.²²¹

Justice Connect noted that other than under section 233C of the Residential Tenancies Act, it is difficult for VCAT members to apportion liability between tenants even where it is clear that property damage has been caused, or the rental arrears have been incurred, by the perpetrator.²²²

The Tenants Union of Victoria also raised issues that arise under section 234 of the Residential Tenancies Act.²²³ This allows a person to apply for an order reducing the term of a fixed-term tenancy (sometimes called 'breaking the lease'). The VCAT member must be satisfied that the applicant has experienced an unforeseen change in their circumstances that will cause severe hardship. This includes situations where the applicant is a protected person under a family violence intervention order and is seeking to break the tenancy in order to protect their own or their children's safety.²²⁴ VCAT can order that the applicant pay compensation to the landlord, such as the cost of advertising the property and lost rent.²²⁵ This order can only be made against the applicant; VCAT is not able to order a co-tenant—for example, the perpetrator—to pay some or all of the compensation to the landlord.

A number of submissions recommended that the Residential Tenancies Act be amended to address situations such as this and ensure that victims of family violence are not held legally liable for debts that are properly attributable to perpetrators of family violence.²²⁶

'Blacklisting'

Under the Residential Tenancies Act, tenants' details can be listed on the tenancy database, where one or more tenants have breached certain provisions of the Act or the tenancy agreement and the landlord is either owed more than the bond will cover, or VCAT has made a possession order in respect of the rented premises.²²⁷ Breaches that can result in such a listing include the failure to pay rent and damage to premises, both of which are often the result of a perpetrator's actions.²²⁸

A number of submissions raised concerns that details of family violence victims were listed on tenancy databases.²²⁹ This was identified as a significant barrier for women trying to access the private rental market. According to Justice Connect, residential tenancy database listings for victims of family violence can contribute to delays in transitioning women out of crisis and refuge accommodation.²³⁰

Several submissions called for the Residential Tenancies Act to be amended to allow victims of family violence to prevent their personal details from being listed on residential tenancy databases and to remove existing listings where the breach or damage occurred in the context of family violence.²³¹

Modification of rental properties

Under section 64 of the Residential Tenancies Act, a tenant must obtain consent from the landlord to install any fixtures on the property or make any alteration, renovation or addition to the rental property.²³² A person affected by family violence who may wish to increase security on the premises, for example, by installing video cameras, requires the landlord's consent to do so. The landlord can refuse to allow the modification, regardless of the reason and regardless of the fact that tenants are required to pay for the cost of restoring the property when they vacate.²³³

In its submission to the Commission, the Tenants Union of Victoria called for section 64 to be amended so that the landlord must not unreasonably withhold consent to a request to modify the rental property, when modifications are requested to improve the security of the rental property, and the tenant is affected by family violence.²³⁴

Termination of tenancies

The Commission was told of other issues in relation to the termination of co-tenancies, specifically the inability of a victim to terminate the tenancy without the consent of her co-tenant (the perpetrator) or where the perpetrator refuses to vacate the property.

Where a periodic tenancy is on foot—for example, where an initial fixed term lease has ended—the Residential Tenancies Act allows tenants to terminate the lease by giving 28 days' notice.²³⁵ However, a notice to vacate may be seen as invalid if it is signed by only one tenant. In addition, a tenancy will usually only terminate when the tenants deliver vacant possession, which requires all tenants to leave the property, remove their belongings and return the keys.

The Tenants Union of Victoria noted that even where an application has been made under section 234 of the Residential Tenancies Act to reduce the fixed term tenancy, all co-tenants are required to give vacant possession to the landlord in order for the tenancy to be terminated.²³⁶ If one party remains in possession, a periodic tenancy will be created²³⁷ and, as in the case above, both tenants may continue to be jointly and severally liable.²³⁸ If an application under section 234 is not made and the tenants wish to terminate the lease, the potential costs of ending the lease early could be very high; the landlord can seek compensation for reasonable costs incurred as a result of the early termination of the lease, including payment of rent until the landlord is able to enter into a lease with new tenants.²³⁹

This is in contrast to, for example, New South Wales, where a co-tenant may give a 21-day termination notice to the landlord and each co-tenant if the fixed term of the residential tenancy agreement has ended or the agreement is a periodic agreement. If the co-tenant gives such a notice and vacates the premises, the co-tenant will then cease to be a tenant on the termination date.²⁴⁰ Further, co-tenants can also apply to the NSW Civil and Administrative Tribunal for an order terminating the tenancy, be it a fixed term or periodic tenancy agreement, because of 'special circumstances'.²⁴¹

Promoting economic recovery

Financial security for victims of family violence is not just about meeting the daily cost of living and resolving the financial implications of debt, personal property and tenancy issues but also about women re-gaining control over their lives and counteracting the disempowerment they experienced as a result of relationship abuse.²⁴² This section examines the evidence the Commission received in relation to initiatives and mechanisms to promote economic recovery.

Access to employment

I am trying very hard to heal and move forwards and do this through further education and employment seeking.²⁴³

The Commission was told that securing paid employment is one of the most effective means of moving towards a position of financial security after family violence.²⁴⁴ It can also be an effective pathway out of a violent relationship.²⁴⁵

Any strategies developed to protect the financial security of women who have experienced family violence must enable women to acquire decent and secure employment ... [W]omen and their children who experience family violence are far more vulnerable to poverty, financial insecurity and homelessness. The most effective way to counter poverty is meaningful and decently paid employment.²⁴⁶

However, gaining, re-gaining and maintaining paid employment can be difficult for women living in a violent relationship and post family violence.²⁴⁷ Women's Information and Referral Exchange, also known as WIRE, informed the Commission that women face difficulties providing work history if the perpetrator has prevented them from working and also providing referees if they have changed their identity for security reasons. Maintaining employment can be equally challenging—there are barriers to accessing transport and sustainable child-care arrangements and avoiding disruptions to work attendance due to legal and health appointments.²⁴⁸

Based on their experience working with job-seeking women who are or have experienced family violence, WIRE recommended that women who have experienced family violence should have access to specialist employment programs.²⁴⁹ This was supported by a number of other submissions.²⁵⁰ One survivor of family violence told the Commission:

There should be employment pathways for them so they can gain a sense of dignity and know that their hard work can generate results to keep them motivated.²⁵¹

Specialist employment programs can assist women throughout the job seeking and placement stages. Programs that support or provide training and education opportunities are essential. These are critical pathways to employment and financial security. The following two case studies highlight the role of specialised family violence employment programs.

Case study: McAuley Works

Established in 2010, McAuley Works is an employment program aimed at assisting women experiencing family violence, and/or homelessness and/or mental illness to secure meaningful employment.²⁵² In her evidence, Ms Jocelyn Bignold, Chief Executive Officer of McAuley Community Services for Women, told the Commission that of the 201 referrals it had received at the end of the 2013–14 financial year, 134 women had found employment. In July 2015, 90 of those women were still in jobs, 88 women had accessed vocational education and training programs and 45 women were no longer, although they had previously been, receiving Centrelink payments.²⁵³

Ms Bignold told the Commission that co-case management and supporting women before, during and after placement into a job contributed to the success of the program. This was evidenced in women returning to the program and seeking other job opportunities, varying their working hours and beginning vocational training based on their needs and aspirations.²⁵⁴

Case study: Fitted for work

Fitted for Work provides interview training, mentoring, work experience, personal outfitting and a range of transition to work and staying employed programs for women experiencing disadvantage.²⁵⁵ Since 2005, Fitted for Work has assisted over 20,000 women into employment.²⁵⁶

Fitted for Work has identified that many women accessing their service are impacted by family violence. In their submission they note that 'work provides a way out' after the devastation family violence has on their families, career and financial status.²⁵⁷

The Commission heard that uncertain funding arrangements can severely impact on the effectiveness of employment programs. Because employment programs are largely funded by the Commonwealth and have varying funding criteria, smaller programs rely on ad hoc funding usually through corporate grants trusts or state government.²⁵⁸ Speaking in response to the closure of McAuley Works, Ms Bignold told the Commission:

It's a loss of continuity, loss of experience in the sector at large, loss of a successful program for women ... it's difficult to plan, it's difficult for workforce retention, difficult to get a long-term analysis of what's going on.²⁵⁹

In November 2015, the Victorian Government announced Family Violence Flexible Support Packages of up to \$7000 for practical expenses including, among other goods and services, education/training courses to promote employment.²⁶⁰ In Chapter 9 the Commission recommends expanding these packages considerably, including longer term rental subsidies and further assistance towards the costs of gaining employment.

Financial literacy

The experience of economic abuse and the removal of financial control from the victim to perpetrator, means many victims do not have an opportunity to develop or maintain their financial skills.²⁶¹ Financial literacy is both a tool for the prevention of economic abuse and also for economic recovery following family violence.²⁶² A number of service providers told the Commission that addressing the financial literacy of women experiencing family violence is a powerful prevention tool.²⁶³ Ms Julie Kun, Deputy Chief Executive Officer and Business Development Manager, Women's Information and Referral Exchange, told the Commission:

I think that with education and training, when women come into the relationships they will be more able to see the red flags that financial abuse is happening because one of the things that we heard over and over again is that it is a slow, creeping thing and that by the time they're gone, 'Uh-oh, what's happening here', they are well down the track and it's really hard to extricate themselves from the relationship.²⁶⁴

It is also clear that economic empowerment is vital to post family violence recovery. The Commission heard of women who for years were kept financially dependent on their abusive partner, restricted from making any financial decision or accessing bank accounts, bills and other essential information.²⁶⁵ For many, this affected their confidence and financial literacy.

The Commission was told about several financial literacy initiatives. For example:

- ▷ WIRE described two financial literacy programs to the Commission. The first is a prevention program called *Strong Beginnings—Financial Equals* which targets women who are beginning new relationships, builds their financial management skills and teaches them how to identify financial abuse. The second program is called *New Beginning: Steps to a more secure financial future* which targets 'women who have experienced family violence to improve their short, medium and long-term financial security outcomes by decreasing their financial recovery time'.²⁶⁶
- ▷ Casey North Community Information & Support Service provides a program called *Keeping It Together* which includes a workshop on financial literacy and capability (delivered by a qualified financial counsellor).²⁶⁷ In 2012, this financial literacy program was presented a highly commended award by the National Money Smart Week Awards.²⁶⁸
- ▷ Women's Health in the North developed *Managing Money: Every Woman's Business* which provides culturally sensitive financial literacy education and skills training for women including newly-arrived and migrant women.²⁶⁹ This program received a highly commended award at the 2015 Financial Literacy Australia Awards.²⁷⁰ This organisation also produced the *For Love or Money* film and resource materials on financial abuse.²⁷¹

The Commission understands that in the past, the Office of Women's Policy and Consumer Affairs Victoria have funded financial literacy training in partnership with organisations including WIRE and the Queen Victoria Women's Centre. Women's Legal Service Victoria's *Stepping Stones* report also noted that 'some financial counselling services provide financial literacy training, including pairing women with "money mentors" to assist them in budgeting, finding entitlements and negotiating with creditors'.²⁷² The Commission heard these are all vital initiatives to improve women's financial literacy.

Delivering programs can be challenging when women are in unstable living situations and have other pressing priorities dealing with abuse. In addition, while there are some education programs targeted specifically at women, the majority of financial literacy resources are generic.²⁷³ The Commission heard these are important considerations in delivering financial literacy education more broadly to women experiencing family violence.

Microfinance initiatives

Microfinance initiatives provide small loans to people on low incomes. They are one important way of assisting women to build their financial capacity and become financially independent post family violence.

Case study: No Interest Loan Scheme

Good Shepherd Microfinance provides a No Interest Loan Scheme for loans up to \$1200 to people on low incomes to purchase essential household goods and services.²⁷⁴ In partnership with other organisations, Good Shepherd Microfinance also provides low interest loans, financial services, savings incentives programs, assistance with energy retailers and insurance products.²⁷⁵

Keys findings of an evaluation of the NILS showed that, of 710 clients surveyed, 82 per cent experienced a net improvement in economic outcomes, 74 per cent experienced a net improvement in social and health outcomes and the financial capabilities of 47 per cent of clients increased.²⁷⁶

Women's Health Goulburn North East runs a specific family violence NILS program through Good Shepherd Microfinance which assists women leaving violence relationships navigate the complexities of obtaining loans given their often limited access to eligibility documentation such as utility bills.²⁷⁷

The Commission heard that providing this immediate financial relief and assisting women to develop their financial skills is reliant on having access to financial workers who understand economic abuse and can respond appropriately.²⁷⁸

The way forward

Family violence occurs across the social spectrum—regardless of postcode, class or background. While an absolute nexus between socio economic status and family violence does not exist, it is clear that economic dependency—not having financial resources to escape violence—will prevent or delay action by victims. Some perpetrators capitalise on the threat of poverty to coerce their partners into returning. While poverty may not always be a contributing factor for family violence, it is very often a result.

This chapter has outlined the key issues presented to the Commission in relation to the financial implications of family violence, both as a consequence of economic abuse and other forms of violence that affect victims' financial wellbeing. While recognising the diversity in women's experiences—in economic circumstance, age and life stage—it is clear that financial security and independence are significant factors in victims gaining freedom from violent relationships and also in their recovery.

Evidence provided to the Commission also suggests that the lack of awareness and understanding of economic abuse among victims, the broader community and police, all contribute to women's ongoing experiences of financial insecurity as a result of economic abuse, even after issues related to physical risk have been addressed.

The Commission makes recommendations to promote financial security and independence—by improving the understanding of economic abuse, addressing debt, protecting personal property, reforming tenancy law, and by promoting long term economic recovery. These initiatives and regulatory changes are mutually reinforcing. They respond to those directly experiencing family violence and promote financial security to assist with long term recovery after the experience of family violence.

Improving understanding of economic abuse and financial recovery

Economic abuse is rarely identified as a form of family violence. The Commission received evidence that service providers, police, judicial members, regulatory bodies, financial services and utility providers do not consistently and appropriately recognise, intervene and respond to economic abuse and the financial hardships associated with post family violence separation. This presents an opportunity to develop the capacity of these professionals to identify economic abuse and know what to do in response.

Given the front-line role that police play in responding to family violence, being able to identify and understand the impact of economic abuse is critical in addressing this often invisible form of violence.

In Chapters 14 and 27, the Commission outlined recommendations to improve understanding and awareness of economic abuse and financial recovery. In recognition that older people, particularly women, are at greater risk of experiencing economic abuse, the Commission made recommendations to improve workforce literacy on elder abuse, and to, for example, strengthen Victoria Police's response to economic abuse. In addition, the Commission recommended that Victoria Police specialist family violence positions and family violence teams, as part of their leadership, education and quality assurance functions, should encourage general duties members to identify and prosecute all breaches and substantive offences against the person and property (including, for example, financial abuse).

The lack of understanding and awareness of economic abuse in the community may also affect how data is collected on its prevalence and nature. Chapter 39 discusses data collection practices more generally, noting that key data such as the Australian Bureau of Statistics' Personal Safety Survey does not currently specifically collect data-economic abuse.

Further, while there is some evidence that examines the intersection between problem gambling and family violence, the Commission's view is that this is an area requiring further research. The Commission was particularly disturbed by evidence that victims go to a licensed venue with poker machines because it is a safe place to avoid their partner's violence. This is indicative of the lack of options women face to find safety and shows how far we still need to go to keep women safe.

We consider the Victorian Government should fund evidence-based research into the intersection of problem gambling and victimisation/perpetration of family violence, the use of gambling venues as 'safe spaces' for victims of family violence and the disproportionate effects of gambling on women.

Addressing family violence-related debt

The Commission received substantial evidence about the difficulties victims experience in attempting to resolve debts and liabilities with financial, utility and car-related service providers and institutions. Improving the capacity of employees to understand, identify and respond to economic abuse and introducing clear and accessible laws, regulations and processes to enable victims to resolve ongoing financial complexities will result in a clearer pathway towards financial security. It is equally important for consumers to know that there are contact officers (for example—financial hardship officers, family violence officers) within these institutions to provide assistance to victims of family violence. These initiatives will likely improve the service experience for victims when resolving family violence-related debt issues.

Recommendation 107

The Victorian Government encourage the Financial and Consumer Rights Council to require that its members receive family violence and economic abuse training as part of continuing professional development and in order to remain members. The council should also work with other financial counselling member organisations to encourage them to do the same [from 1 January 2017].

Financial institutions and essential household utility providers

The Commission has considered the role of financial institutions and utility providers and agrees with Women's Legal Service Victoria that there is a need to develop the capacity of employees to understand, identify and respond to family violence and economic abuse and the financial insecurity that follows.

Based on the experiences of victims of family violence and the information provided by services supporting victims working through these issues, the Commission recommends a suite of actions to improve protections for victims, create more consistent approaches to hardship policies and procedures, and provide certainty for utility providers and financial institutions.

The Energy and Water Ombudsman, Telecommunications Ombudsman and Financial Services Ombudsman have an essential role in resolving disputes between service providers and consumers. The Commission's view is that ensuring employees are provided with guidance and training in understanding, identifying and responding to family violence is vital. This will improve the experience of family violence victims and ensure fairer outcomes for parties.

Recommendation 108

The Victorian Government, through the Council of Australian Governments, encourage the Commonwealth Government [within 12 months] to:

- ▷ amend the National Credit Code to include family violence as a ground for financial hardship and develop an awareness campaign to ensure that both consumers and credit providers are aware of their rights and responsibilities.
- ▷ work with the Australian Communications and Media Authority and its related representative bodies and associations to amend the Telecommunications Consumer Protections Code to:
 - ▷ list minimum eligibility criteria for access to hardship programs
 - ▷ make family violence an express eligibility criterion
 - ▷ incorporate a requirement for specific policies for customers experiencing family violence to clarify consent requirements for payment plans when an account is jointly held
 - ▷ include grounds for splitting jointly held debt and removing an account holder's name if family violence has occurred.

Recommendation 109

The Victorian Government work with the Essential Services Commission [within 12 months] to:

- ▷ amend the Energy Retail Code and Customer Service Code—Urban Water Businesses [within 12 months] to:
 - ▷ list minimum eligibility criteria for access to hardship programs
 - ▷ include family violence as an explicit eligibility criterion.
- ▷ develop industry guidelines for energy and water retailers to require comprehensive and ongoing training of customer service staff to help them identify customers experiencing family violence and financial hardship
- ▷ publicise the availability of dispute resolution mechanisms for people affected by family violence.

Recommendation 110

The Victorian Government encourage the Victorian Energy and Water Ombudsman and the Commonwealth Financial Services Ombudsman and Telecommunications Ombudsman to publicise the availability of their dispute-resolution processes to help victims of family violence resolve disputes with service providers in relation to debts and liabilities incurred in the context of family violence [within 12 months].

Recommendation 111

The Victorian Government encourage the Australian Bankers' Association, through its Financial Abuse Prevention Working Group, to develop a family violence-specific industry guideline [within 12 months]. This should be supported by training and education for relevant banking staff, to help them understand, identify and deal with economic abuse associated with family violence.

Recognising family violence in the infringements regime

The Commission is concerned about the disproportionate impact of car-related debt on victims of family violence. The Commission heard evidence about circumstances that can result in the accumulation of fines by victims of family violence and result in women being penalised for the behaviour of the perpetrator. In addition to the financial burden of having to pay fines, a victim may face the suspension of their drivers licence and registration, confiscation of their car, and imprisonment.

The Commission was greatly assisted by the Infringements Working Group (IWG) who work with clients experiencing family violence, financial hardship and family violence-related infringements. Evidence presented by Ms De Cicco drew the Commission's attention to some of the complex issues in reforming infringement laws, particularly when the infringement is related to a criminal offence.²⁷⁹

The Commission agrees with the two primary issues raised by the IWG, namely that victims face difficulties in nominating the perpetrator when they incur the infringement or fine in the victim's name, and in having a fine or infringement waived in situations where the victim incurred the fine or infringement in circumstances of family violence.

Nominating another driver

Amendments to the Road Safety Act might alleviate the impact of infringement debt on family violence victims where they did not commit the offence.

The extent of information required to demonstrate that family violence has occurred and the reality of the threat of retribution, as well as any obligation on the enforcement agency or related body to report the family violence to police, are additional considerations.²⁸⁰ This is especially challenging as not all women feel able to report family violence to police, or seek a family violence intervention order.

As raised by the IWG, amendments could mean the perpetrator would not be pursued for the offending, however 'it would remove the risk of retaliation the current nomination procedure entails, avoid the risk of nominations being rejected by violent partners, and prevent victims of family violence taking responsibility for offences they did not commit'.²⁸¹ Despite this, the Commission agrees with Ms De Cicco that the issue of liability, particularly in serious cases of car-related offending, is very serious.²⁸² On balance, we consider any amendments require further detailed consideration, including in light of the other recommendations in this chapter.

Recommendation 112

The Department of Justice and Regulation investigate whether *the Road Safety Act 1986* (Vic) should be amended so that, if a perpetrator of family violence incurs traffic fines while driving a car registered in the name of the victim, the victim is able to have the fines revoked [within 12 months] by declaring:

- ▷ They were not the driver of the vehicle at the time of the offending.
- ▷ They are a victim of family violence—as evidenced by a statutory declaration, a copy of a family violence safety notice or family violence intervention order, or a support letter from a family violence worker, general practitioner or other appropriate professional.
- ▷ They are unable to identify the person in control of the vehicle at the time for safety reasons.

Applying for a withdrawal or revocation

The Commission learned that women who incur infringements as the driver are limited in their ability to make use of the provision of special circumstances or exceptional circumstances to apply to have fines withdrawn or revoked.

The Commission agrees with the IWG that the exceptional circumstances category does not provide much assistance to family violence victims due to a lack of legislative guidance and the potential for inconsistency in how it is applied.²⁸³

We also agree that although some family violence victims may meet the criteria for special circumstances because their experience of family violence involves, for example homelessness, the requirement to prove that the particular circumstances 'resulted' in an inability to understand or control offending conduct requires a level of causation that is hard to prove.²⁸⁴

The Commission's preferred option is to amend the Infringements Act to ensure that family violence is a special circumstance that can 'contribute to' rather than 'results in' the offending conduct. Amending the test for application of the other special circumstances (mental or intellectual disability, illness, addiction to drugs or alcohol, or homelessness) to 'contributes to' is not within the Commission's terms of reference however, this may be a matter for the Director, Fines Victoria, to consider further.

Recommendation 113

The Victorian Government amend the *Infringements Act 2006* (Vic) to provide that the experience of family violence may be a special circumstance entitling a person to have a traffic infringement withdrawn or revoked [within 12 months].

Infringement matters dealt with in family violence intervention order proceedings

The Commission understands that the Department of Justice and Regulation has been considering options to alleviate the impact of infringements on victims of family violence.²⁸⁵ Their preferred option is for the Magistrates' Court to address infringement issues in the context of FVIO proceedings.²⁸⁶

The Commission heard that there are two options to address this issue; the first is for the relevant material in the Magistrates' Court to be amended so that family violence-related infringements are identified and form part of the proceedings; the second is for amendments to infringements legislation so that family violence-related issues can be identified and resolved.²⁸⁷ The Commission recognises that not all family violence victims apply for an FVIO, so whilst it is important for those people in the system, legislative change is required to improve the experience of other family violence victims.

The Commission is supportive of infringement issues forming part of the FVIO proceedings in the Magistrates' Court. This will require further consideration.

In addition, the Commission also understands that under the Fines Reform Act, the Director, Fines Victoria, will be appointed who will oversee and monitor infringement activity and review decisions by enforcement agencies to service the infringement notice and to enforce the fine.²⁸⁸ The Commission agrees with Ms De Cicco that this centralisation will improve consistency for family violence victims.

Protecting personal property

Personal property conditions are a powerful and important mechanism in preventing economic abuse, protecting victims' personal safety and helping victims recover from family violence.

While the Commission recognises that personal property conditions are not long-term solutions for the division of property between spouses, which is a matter to be determined under the *Family Law Act 1975* (Cth),²⁸⁹ the underutilisation of personal property conditions by magistrates in FVIO's is of concern. In order to ensure their effectiveness, personal property conditions must be as specific as possible regarding the property that may be returned to the victim or recovered by the perpetrator.²⁹⁰

Similarly, applicants require more specific information about how they can request personal property conditions. The Application for a Family Violence Intervention Order form (FVIO1) should allow applicants to list specific items of personal property that they would like the court to include in the FVIO. Similarly, applicants should receive appropriate information and legal assistance about personal property orders.

Recommendation 114

The Magistrates' Court of Victoria consider [within 12 months]:

- ▷ issuing a practice direction to encourage the use of personal property conditions in family violence intervention orders
- ▷ including specific questions about personal property conditions in the information form that precedes the application for a family violence intervention order (FVIO1 form).

Recommendation 115

Victoria Police amend the Victoria Police Code of Practice for the Investigation of Family Violence to provide guidance and examples in relation to when it is appropriate to seek personal property conditions in family violence intervention orders [within 12 months].

Tenancy law reform

Evidence provided to the Commission identified a number of significant limitations in the way in which Victoria's family violence law intersects with tenancy law. A number of submissions to the Commission called for amendments to the Residential Tenancies Act to allow for more appropriate responses to situations of family violence.²⁹¹ Justice Connect submitted that 'modest changes [to the Residential Tenancies Act] could have significant potential to reduce evictions into homelessness and barriers to obtaining alternative safe accommodation'.²⁹²

The Commission acknowledges that the Residential Tenancies Act is currently being reviewed and that this review has a much broader focus than family violence. The Commission makes recommendations as to particular reforms which should be considered as part of this broader review. In our view, some of these particular reforms could be considered immediately, before the overall review is completed. These reforms include the proposed amendment to section 233A and better enabling tenants to make reasonable modifications to improve safety. Similarly, given that the review is not due to conclude until 2018, the Commission also makes a number of recommendations beyond the review to address key areas of concern in the short term.

Applying for a new tenancy agreement

As discussed, section 233A of the Residential Tenancies Act allows VCAT to make an order to terminate an existing tenancy agreement that a victim of family violence has with the perpetrator and to order the landlord to enter into a new tenancy agreement with the victim. However, VCAT can only make such an order where a final FVIO excluding the perpetrator has been made. This contrasts with other jurisdictions, including Queensland and South Australia, where from the home similar orders can be made without a final FVIO. VCAT submitted that a similar provision in Victorian law would assist them to better respond to family violence.²⁹³

The Commission notes that in establishing such a provision, VCAT would be required to adjudicate on matters of family violence and to make assessments as to whether family violence, as defined under the Family Violence Protection Act, is occurring. Unlike the Magistrates' Court, VCAT has not traditionally been a forum in which these matters are adjudicated and VCAT members may not have particular expertise in this area. Further, a decision to terminate a person's tenancy is a significant curtailment of that person's rights. Such an order by VCAT would have similar effect to a final FVIO with an exclusionary condition. However, in this instance, the order has been made by a VCAT member, rather than a magistrate, as is contemplated by the Family Violence Protection Act.

While the Commission agrees that VCAT should have broader powers to make orders under section 233A, we would also recommend that VCAT should have regard to specific criteria, such as whether an application for an family violence intervention order has been made and, if so, the status of that order. Given the complex nature and dynamics of family violence, we would also recommend that training and education be provided to all members in the relevant list (see Chapter 40).

The Commission also heard concerns that victims of family violence have to make applications in two different forums—the Magistrates' Court and VCAT in order to obtain a final FVIO with an exclusion condition and then to obtain an order under section 233A for creation of a new tenancy.²⁹⁴

One possible mechanism to address this concern is to broaden the powers of the Magistrates' Court to make orders under section 233A of the Residential Tenancies Act, as part of an application for an FVIO heard in the Magistrates' Court.²⁹⁵ This would allow applicants to deal with tenancy matters as part of the FVIO application, in the same jurisdiction and as part of the same proceeding. This approach would, however, involve joining the landlord and any other existing tenants as parties to the proceeding, prior to making an order under section 233A.

While there are currently few applications made under section 233A, this proposed mechanism has the potential to increase the workload of already over-burdened Magistrates' Courts. The Commission was informed that most applications for FVIOs resolved by consent at the first mention.²⁹⁶ Otherwise, the current delay between a first mention and a directions hearing in an application for an FVIO that does not resolve immediately is between two and three months.²⁹⁷ Accordingly, proceedings that would otherwise resolve on the first day are likely to have to be adjourned, and may not be heard for several months. While in theory it appears an attractive solution for a victim of family violence to be able to make application for a section 233A order in the Magistrates' Court at the same time as seeking a family violence intervention order, in practice it may not result in a significantly more streamlined process and, in some cases, may create additional delays.

The Commission does, however, agree with the recommendation contained in Justice Connect's submission that, in hearing FVIO applications, magistrates should inquire as early as possible about whether the applicant and respondent are in shared rental accommodation and, if so, ensure the protected person is notified of the right to apply for a new tenancy agreement. In these circumstances, a successful applicant could be provided with an information pack about this process, including the application form and details of relevant agencies that may be able to assist.²⁹⁸

Apportionment of liability

The Commission heard evidence that victims of family violence living in private and public rental accommodation are often burdened with compensation claims and debts that limit their ability to obtain safe alternative housing.

Tenants are, in general, jointly and severally liable for any loss or damage as a result of a breach of the tenancy agreement and a landlord can claim against any or all of them. Apart from using section 233C of the Residential Tenancies Act (which requires a final FVIO to be made), it is difficult for VCAT members to apportion liability between tenants, even when it is clear that the perpetrator is responsible for the loss, including under section 234 of the Act.

The Commission considers that the Act should be amended to address these limitations and ensure that victims are not held legally liable for debts that are properly attributable to perpetrators of family violence.

Giving notice and ending a tenancy

The Commission heard that further challenges can arise for victims of family violence in relation to the termination of co-tenancies.

Based on the issues raised previously, the Commission's view is that an ability to apply to VCAT for termination of a co-tenancy in circumstances of family violence would be a desirable reform. However, as discussed above, such an amendment may require the victim to initiate two sets of proceedings in two separate jurisdictions, imposing an additional administrative and potentially emotional burden on the victim.

One solution may be to create the ability for a magistrate to terminate the tenancy of a co-tenant who is a protected person under an FVIO at the time the intervention order is made. Magistrates could also be given the ability to make orders apportioning liability between the co-tenants at this time. However, this again gives rise to the concern discussed previously that the landlord and any other tenants would need to become parties to the proceeding, which would necessitate an adjournment and create delays. In addition, if a magistrate was able to make orders regarding the liability of the respective tenants, additional information would need to be sought regarding the extent of any liability.

Modification of rental properties

As discussed previously, a landlord may currently refuse a modification to a property; for example, installing security cameras or other fixtures that might assist with safety. This is regardless of the fact that tenants are required to meet the cost of restoring the property when they leave. This provision has the potential to undermine the ability of victims of family violence to stay safely in their homes. A solution would be to amend the Residential Tenancies Act to provide that a landlord must not unreasonably withhold consent to a request to modify the rental property when notifications are requested to improve the security of the rental property, and the tenant is affected by family violence.

Recommendation 116

The Department of Justice and Regulation's review of the *Residential Tenancies Act 2006* (Vic) consider amending the Act to:

- ▷ empower Victorian Civil and Administrative Tribunal members to make an order under section 233A of the Act if a member is satisfied that family violence has occurred after considering certain criteria—but without requiring a final family violence intervention order containing an exclusionary condition
- ▷ provide a clear mechanism for apportionment of liability arising out of the tenancy in situations of family violence, to ensure that victims of family violence are not held liable for rent (or other tenancy-related debts) that are properly attributable to perpetrators of family violence
- ▷ enable victims of family violence to prevent their personal details from being listed on residential tenancy databases, and to remove existing listings, where the breach of the Act or the tenancy agreement occurred in the context of family violence
- ▷ enable victims of family violence wishing to leave a tenancy to apply to the Victorian Civil and Administrative Tribunal for an order terminating a co-tenancy if the co-tenant is the perpetrator of that violence—including, where relevant, an order dealing with apportionment of liability for rent (or other tenancy-related debts) between the co-tenants
- ▷ prevent a landlord from unreasonably withholding consent to a request from a tenant who is a victim of family violence for approval to reasonably modify the rental property in order to improve the security of that property.

Recommendation 117

The Victorian Government encourage the use of applications under section 233A of the *Residential Tenancies Act 2006* (Vic) [within 12 months], including by means of training and education for family violence support workers, Victoria Police and other relevant support staff in relation to the existence and operation of the provision.

Recommendation 118

The Magistrates' Court of Victoria consider issuing a practice direction to encourage magistrates hearing family violence intervention order applications to inquire as early as possible about whether the applicant and respondent are in shared rental accommodation and, if so, ensure that the protected person is notified of the right to apply for a new tenancy agreement and receives information about how to do so [within 12 months].

Recommendation 119

The Victorian Government consider any legislative reform that would limit as far as possible the necessity for individuals affected by family violence with proceedings in the Magistrates' Court of Victoria to bring separate proceedings in the Victorian Civil and Administrative Tribunal in connection with any tenancy related to the family violence [within two years].

Recommendation 120

The Victorian Government ensure that Victorian Civil and Administrative Tribunal members receive training and education to ensure that they have adequate expertise in the *Family Violence Protection Act 2008* (Vic) and family violence matters [within 12 months].

Promoting economic recovery

Victims of family violence described their simple desire to be able to rebuild their lives by having the opportunity and capability to be able to confidently participate in the mainstream social and economic life of the Victorian community. The Commission consistently heard of their aspirations to be able to fully recover: to be able to renew their enjoyment of family and friends, to benefit from the income and self-esteem derived from having a job, to see their children do well in school and to be confident about their futures.

However, we also heard from many of their great sense of frustration, and at times despair, due to these aspirations seeming unachievable and to their own opportunities and those of their children being limited. Economic security is a protective factor against family violence and also a significant aspect of recovery. Promoting economic independence through a variety of mutually reinforcing initiatives is vital to empowering victims of family violence.

Family violence packages

This chapter discussed several powerful recovery tools including employment and skills development, financial literacy programs, financial counselling services and microfinance initiatives. These initiatives assist victims to gain, re-gain and maintain financial security. The importance of these opportunities is discussed below.

Employment

As areas of jobs growth in the Victorian economy are increasingly in the service and knowledge-based industries, employers are placing a premium on education, up to date skills, recent work experience and the personal networks people have to support themselves in finding and keeping work. This makes it particularly difficult for people who have suffered the trauma, dislocation and loss of self-esteem caused by family violence to gain and maintain employment. The often lengthy periods the system takes to resolve matters as basic as stable housing can lead to the atrophy of work skills, personal and professional confidence and credentials.

The Commission is persuaded that specialist employment assistance needs to be made available to victims of family violence. It should be based on an understanding of the impact of family violence and be able to be closely integrated with other forms of assistance in order that the different forms of assistance become mutually reinforcing steps on the road to recovery. The policy principle here is similar to that underpinning the Victorian Government's Work and Learning Centres and initiatives under its Back to Work and associated programs. The Commission recommends that there be an explicit link in working with women around housing and employment in recognition that resilience in the housing market may be enhanced through employment.

We further recommend that this form of integrated and rapid assistance be delivered through expanding the existing Family Violence Flexible Support Packages. The Commission's recommendations regarding these packages are discussed in Chapter 9.

The Commission acknowledges that victims experience family violence and its financial impacts at all ages, life stages and economic circumstances. For example, a woman entering retirement who has experienced years of economic abuse will require a different response than a young woman with children who wishes to re-enter the workforce or maintain her employment.

Financial literacy programs

In this chapter, the Commission detailed evidence that lack of financial knowledge among some women makes it harder to leave violent relationships or to be financially secure enough to do so. There remain structural and cultural barriers to women achieving economic equality—the gender pay gap, along with the myth that men are better money managers and should control household finances, still exists.

The Commission is strongly of the view that financial literacy is a significant protective factor from financial insecurity generally and that which results from family violence.

As discussed above, strategies to enhance women’s economic participation are important but they must be accompanied by initiatives to improve financial literacy. The Commission notes the important projects run by WIRE, Casey North Community Information & Support Service and Women’s Health in the North. The success of financial literacy programs depends on the provider’s understanding of the particular challenges of women living in violent relationships and recognition of the needs of women in different life stages and economic circumstances.

The Commission supports these types of financial literacy programs as part of broader efforts to address gender equality. There is an opportunity to reflect the importance of financial literacy in the Victorian Gender Equality Strategy.

Recommendation 121

The Victorian Government support the expansion of initiatives that deliver financial literacy training and education for victims of family violence [within two years].

Endnotes

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240 *Residential Tenancies Act 2010* (NSW) s 101.

241 *Residential Tenancies Act 2010* (NSW) s 102. See also, *Residential Tenancies Act 1995* (SA) s 89A.

242 Braaf and Meyering, above n 1, 25.

243 Anonymous, Submission 76, 2.

244 WIRE Information Service, Submission 574, 13; Ludo McFerran, ‘Safe at Home, Safe at Work? National Domestic Violence and the Workplace Survey’ (Australian Domestic and Family Violence Clearinghouse, December 2011) 2.

245 Statement of Bignold, 13 July 2015, 7–8 [34].

246 WIRE Information Service, Submission 574, 13.

247 Fitted for Work, Submission 622, 2. *Ibid* 15.

248 WIRE Information Service, Submission 574, 15.

249 *Ibid* 16.

250 See, eg, Whittlesea Community Connections, Submission 375, 3; Lee Faliana, Submission 29, 2.

251 Lee Faliana, Submission 29, 2.

252 Statement of Bignold, 13 July 2015, 2 [11], 8 [39]. The program was closed at 30 June 2015 due to a lack of funding.

253 Statement of Bignold, 13 July 2015, 11 [53].

254 Transcript of Bignold, 16 July 2015, 589 [16]–590 [26].

255 Fitted for Work, Submission 622, 1.

256 *Ibid.*

257 *Ibid* 2.

258 Transcript of Bignold, 16 July 2015, 584 [16]–585 [11].

259 *Ibid* 586[3]–[11].

260 Minister for Families and Children, The Hon Jenny Mikakos, ‘Labor Government Boosting Flexible Family Violence Support’ (Media Release, 26 November 2015).

261 Tanya Corrie, ‘Economic Security for Survivors of Domestic and Family Violence: Understanding and Measuring the Impact’ (Good Shepherd Australia New Zealand, 2016) 40.

262 MacDonald, above n 14, vi.

263 See, eg, Good Shepherd Australia New Zealand, Submission 836, 23; Community consultation, Benalla 2, 19 May 2015.

264 Transcript of Kun, 16 July 2015, 446 [23]–30].

265 See, eg, Nicole Brand, Submission 385, 2.

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267 Casey North Community Information & Support Service, Submission 163, 1–2.

268 Australian Securities and Investments Commission, ‘Moneysmart Week 2012 Awards Ceremony Recognises Achievement in Advancing Australians’ Financial Literacy’ (Media Release, 3 September 2012) 6.

269 Women’s Health In the North, ‘Managing Money: Every Women’s Business’ (Guide, 2012).

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272 Smallwood, above n 15, 65.

273 Braaf and Meyering, above n 1, 40. See also 10thousandgirl organisation, *10thousandgirl: Financial Thinking for Women* <<http://10thousandgirl.com/>>.

274 To qualify for the No Interest Loan Scheme, the applicant must have a Health Care Card/Pension Card or be on a low income, have resided in their current premises for more than three months and show a willingness and capacity to repay. See Good Shepherd Microfinance, *The No Interest Loan Scheme* <<http://goodshepherdmicrofinance.org.au/services/no-interest-loan-scheme-nils>>.

275 Statement of Mooney, 9 July 2015, 4 [25].

276 Stephen Bennett et al, ‘Life Changing Loans at No Interest: An Outcomes Evaluation of Good Shepherd Microfinances’ No Interest Loan Scheme (NILS) (University of NSW, Centre for Social Impact, March 2014) 8. See also Statement of Mooney, 9 July 2015, 7 [36.5]–[36.7].

277 Women’s Health Goulburn North East, Submission 367, 2.

278 *Ibid.*

279 See, eg, Statement of De Cicco, 7 August 2015, 13–14 [36]–[37].

280 *Ibid* 13 [37.1]–14 [37.6]

281 Infringements Working Group, Submission 799, 9.

282 Statement of De Cicco, 7 August 2015, 13 [37.3].

283 Infringements Working Group, Submission 799, 2, 5.

284 *Ibid* 5.

285 Statement of De Cicco, 7 August 2015, 14 [38].

286 *Ibid* 14 [39].

287 *Ibid* 15 [40].

288 *Ibid* 15 [41], [42], [43].

289 See Chapter 24.

290 Australian Law Reform Commission and New South Wales Law Reform Commission, above n 193, 748.

291 See, eg, Victorian Civil and Administrative Tribunal, Submission 164, 6; Judicial College of Victoria, Submission 536, 10; Confidential, Submission 575, 5; Justice Connect, Submission 889, 5; Community Housing Federation of Victoria et al, Submission 550, 31; and Quantum Support Services Inc, Submission 371, 4.

292 Justice Connect, Submission 889, 22.

293 Victorian Civil and Administrative Tribunal, Submission 164, 2–3.

294 Confidential, Submission 575, 2.

295 We note that magistrates currently have jurisdiction in relation to residential tenancy matters which involve a monetary claim for an amount exceeding \$10,000: see *Residential Tenancies Act 1997* (Vic) ss 509, 510 and 447.

296 296 Statement of Cooney, 30 July 2015, 13 [61]

297 *Ibid* 14–15 [72].

298 298 Justice Connect, Submission 889, 29.

22 Restorative justice for victims of family violence

Introduction

This chapter considers whether a restorative justice approach to family violence should be introduced in Victoria.

The Commission heard that many victims of family violence find current court processes dissatisfying and at times traumatic, often because they fail to adequately meet their needs for participation, having a voice, validation, offender accountability and restoration. A number of organisations that work with family violence victims urged the Commission to consider a restorative justice approach to family violence, in addition to making essential reforms to the court system, to address these concerns.

The first section of this chapter outlines what the Commission heard about the limitations of court responses to family violence and the emergence of restorative justice as an additional response to family violence.

The second section of this chapter reviews the evidence before the Commission from a number of stakeholders who asked the Commission to consider introducing restorative justice programs in Victoria. The Commission was told that a restorative justice approach has the potential to deliver better outcomes for women than the adversarial justice system because of its ability to provide a forum for women to be heard on their own terms, and offer a process that is tailored to individual women's needs. It also heard that a restorative justice approach has the capacity to result in practical outcomes, such as agreements in relation to joint utilities and bank accounts and that it may be particularly relevant in cases where the victim wishes to remain in her relationship but wants the abuse to stop. Proponents of a restorative justice model also considered that this approach may facilitate better acknowledgment, and even genuine accountability, on the part of the perpetrator.

The Commission examined this issue closely, in light of concerns that a restorative justice approach might be manipulated by perpetrators, and could undermine the important gains that have been made in ensuring family violence is treated as a public issue rather than simply a private matter between individuals. The Commission also reviewed a number of restorative justice programs in other jurisdictions, which are outlined in this chapter.

After careful consideration of the evidence and the submissions received on the issue, the Commission is persuaded that, provided robust safeguards are in place and it is offered as an additional option (not as a substitute or precondition) to pursuing action through the courts, a restorative justice process should be made available to those victims who wish to pursue such an option. The Commission agrees that restorative justice processes have the potential to meet a broad range of victims' needs that might not always be available through the courts, and to assist victims to recover from the impact of the abuse they have suffered. In the final section of this chapter, the Commission recommends the development of a framework and pilot program for the delivery of restorative justice options for victims of family violence that are victim-driven and incorporate robust safeguards.

Context

Limitations with court responses to family violence

As discussed in Chapter 16, the justice system plays a fundamental role in protecting victims' safety and promoting perpetrator accountability in both the civil and criminal jurisdictions. Not only is a court able to make orders that demonstrate that violent behaviour has consequences for perpetrators, its involvement also signals that family violence is a matter of public importance and not something that should be left to be resolved privately. For some women, invoking the jurisdiction of the court is a turning point in their lives. This may mark the moment when they finally have the opportunity to talk openly about the abuse they have suffered, the perpetrator must face the prospect of public disapproval and the imposition of sanctions, and responsibility for managing the violence is transferred from the victim to the state. In this respect the court process can be affirming and empowering for victims of family violence.¹

However, the Commission heard that many women find the reality of the court process to be deeply dissatisfying and even re-traumatising, such that, far from being a process that helps them to recover from the violence, it instead compounds its effects. This is discussed in Chapter 16.

A strong theme to emerge from consultations held by the Commission was the need for victims to understand the options available to them, and the processes involved, and to be empowered to make their own decisions about what steps and outcomes are appropriate.² The Commission heard many stories about victims who, after a sustained period of abuse, took action to protect their own and their children's safety, only to be propelled into a confusing, complex and unsupportive system.³

Once in the justice system, victims often feel they have not been heard by the court, either because their matter has been dealt with so quickly, because their lawyers have spoken on their behalf, or because their story has not been believed or validated by the court.⁴ The relatives of family violence homicide victims with whom the Commission met also described the limited focus on the victim's 'voice' in any subsequent criminal trial or inquest.

Justice system processes can prolong contact with the perpetrator with the potential for extended victimisation.⁵ This can re-traumatise victims and counteract their attempts to diminish the effects of family violence on their lives.⁶ On the other hand, while wanting the violence to stop and seeking accountability from the perpetrator, some victims of family violence may wish to remain on reasonable or even intimate terms with the perpetrator, objectives which may be alien to a system that primarily aims to achieve and maintain separation of the parties.⁷

It has also been argued that the criminal justice system focuses on the legal view of individual offences instead of a more holistic understanding of patterns of abuse, and can encourage denial rather than admissions of offending.⁸

In its submission, Loddon Campaspe Community Legal Centre reported on the results of a research project involving 190 victims of family violence with cases before a number of central Victorian magistrates' Courts. Loddon Campaspe Community Legal Centre concluded that there were five elements the women identified as being important to their sense of justice:

- ▷ participation—for example, for the decision-making to be more in their hands
- ▷ voice—to be heard, for legal actors to listen and for those experiencing family violence to be empowered to say what is their truth; for them to define clearly what is safety and justice for them
- ▷ validation—for their feelings, behaviour and experiences to be understood; to be believed, not judged or made to feel ashamed
- ▷ offender accountability—for the offender to acknowledge the harm he has caused; for him to apologise and change his behaviour; and for the community and justice system to monitor his behaviour and hold him accountable
- ▷ restoration—for the justice process to be the beginning not the end; for healing to occur for the women and their children and their community.⁹

Loddon Campaspe Community Legal Centre's conclusions reflect many of the justice concerns of victims of crime generally. Drawing on the research literature about what victims of crime seek from the justice system, the Victorian Law Reform Commission has summarised those concerns as: participation and voice; information; trust, neutrality and respectful treatment; punishment and retribution; deterrence, protection and community safety; material and emotional reparation and restoration.¹⁰

These concerns also reflect international research findings about the motivations of victims of sexual and domestic violence when seeking justice outcomes: the most important of which are validation; vindication from the community¹¹ (including by exposing the perpetrator's conduct to friends and family members);¹² and preventing the perpetrator from committing further crimes, however that might be achieved.¹³ Victims of sexual violence also consider their sense of control, and not having to continually relive the crime, as important elements of achieving justice.¹⁴ As a result, some commentators suggest that the requirements imposed on victims through legal proceedings do not cater for victims' needs and are fundamentally opposed to their perceptions of justice.¹⁵ In the context of responding to sexual assault, the provision of a 'menu of options' for victims has been suggested, including alternative or informal justice approaches that provide victims with a greater degree of participation, voice, validation and vindication.¹⁶

Loddon Campaspe Community Legal Centre told the Commission that the results of their research project showed that none of the women surveyed felt that their 'justice needs' for offender accountability or restoration were met by the justice system response.¹⁷ Some of the women who participated in the research project identified restorative processes, such as opportunities to be heard in a more empowering and less adversarial forum, as having the potential to address their unmet needs.¹⁸

Definition of restorative justice

Restorative justice has been defined as a process:

... to involve, to the extent possible, those who have a stake in a specific offence and to collectively identify and address harms, needs and obligations, in order to heal and put things as right as possible.¹⁹

and as a process:

... whereby all parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future.²⁰

Restorative justice focuses on the personal harm caused by a crime, rather than on a violation of the law committed solely against the state.²¹

Restorative justice processes can take different forms. Some involve direct contact between the victim and perpetrator (such as victim-offender mediation and group conferencing), while others involve just the victims in processes that aim to be restorative, for example by giving them a forum in which to be heard (these are referred to as truth-telling models).²²

The group conference model involves a scheduled, mediated encounter between a consenting victim and perpetrator, as well as other participants such as their representatives, police members, family members or friends.²³ The meeting provides an opportunity for the victim to describe what impact the crime has had on them, for the perpetrator to acknowledge the harm they have caused, and for the parties to decide what actions might be taken to repair the harm. Participants first negotiate a shared understanding (the 'truth-telling stage') and then a mutually acceptable plan (the 'problem-solving stage') to address the reparation of harm, prevention of harm and promotion of wellbeing.²⁴ Ideally the process should be complemented by a clear structure for continuing oversight and support.²⁵

A conference need not have tangible outcomes, but if it does, outcomes might include an apology, financial compensation, an agreement about managing future contact, or a commitment on the part of the perpetrator to address the underlying causes of their offending behaviour. Some restorative justice programs are linked to the sentencing phase of a criminal prosecution, with the judicial officer invited to take the conference outcome into account in imposing a sentence. Others take place after sentencing, or entirely outside the criminal justice system.

Restorative justice processes used in cases of general, that is non-family violence-related, offences have been found to increase victim satisfaction and offender responsibility, and in some cases to reduce reoffending.²⁶

Concerns about restorative justice

The use of restorative justice processes in family violence matters has long been controversial.

In its publication *Time for Action*, the National Council to Reduce Violence against Women and their Children summarised the major concerns about restorative justice as relating to:

- the unequal power relationships between victims and perpetrators of gendered violence, and the capacity of the perpetrator, through subtle forms of intimidation, to exert power over their victim and therefore the restorative justice process
- the assumption of a uniform set of community values that condemns violence against women
- the appeal to apology and forgiveness, which are characteristics of the cycle of abuse in intimate partner violence
- a concern that restorative justice will be favoured by governments because it may be seen as a cheaper option.²⁷

While acknowledging that restorative models were worth exploring, Helen Fatouros, Director of Criminal Law Services at Victoria Legal Aid, said in evidence:

... there is a very significant role for the State to play, particularly around serious offending like sexual offending around children, where the accountability function of the criminal law and the symbolic role of punishment is vitally important and that cannot be left to just restorative models.²⁸

In light of concerns of this nature, previous reviews by the Victorian Law Reform Commission in 2005, the Law Reform Committee of the Victorian Parliament in 2009 and the Australian Law Reform Commission in 2010 recommended that further research be undertaken before restorative justice practices are considered for use in family violence matters.²⁹

However, in 2011 the National Council to Reduce Violence against Women and their Children recommended that trials be undertaken, with necessary caution, 'to explore the utility and suitability of restorative justice for cases of domestic and family violence and sexual assault'.³⁰

Introducing restorative justice processes in Victoria

A number of individuals and organisations asked the Commission to consider whether restorative justice processes should be introduced in Victoria as an additional way of supporting family violence victims, including in relation to children and young people,³¹ to overcome the effects of the abuse they have experienced and to overcome the limitations of the justice system response.³² We heard that the use of restorative justice in family violence matters remains contentious, but that it has the potential to meet the needs of victims in ways that the justice system may not currently be able to achieve.

Women's Legal Service Victoria urged the Commission to recommend that a restorative justice pilot be developed.³³ In its submission to the Commission, the Victorian Government expressed an interest in innovative justice solutions, including restorative justice, noting that the 'expansion of specialist courts focused on restorative justice for victims and perpetrators is an opportunity for government in the area of crisis response'.³⁴

Proponents of a restorative justice model note that such an approach does not preclude holding perpetrators to account and taking serious action against them through formal justice mechanisms.³⁵

One woman who gave evidence at a public hearing reflected on her experience of the justice system and the approach she believes may have been more useful for her:

... for me experiencing trial was horrendous. To be pointed at by his barrister and told, 'It did not happen,' it was so confusing for me because I have been taught since I was young to respect authority, to do as you're told, and here's someone with intelligence and power telling me, 'It did not happen,' and I came this close to saying, 'Okay, you're right.' I was spinning. If that could have been avoided with restorative justice so much time could have been [saved]—and I feel the result would have been the same ...³⁶

... if there was such restorative justice where he could admit he's done something wrong if he was willing to, and I could express the level of hurt and open his eyes to the layers of hurt from self-doubt ... the nightmares ... [He] was initially my high school friend. I know there's a soul in there somewhere. I feel if I was face-to-face with him and tell him ... if it was in an environment that was safe, if he could hear it, surely it would pull at his heartstrings to change ... Restorative justice would have eliminated ... having to tell the children that their father is in jail. I would have much preferred to sit face-to-face and tell him how his actions—the long-term effects [they] have on me. That would be therapeutic ... For him to hear it and to apologise would be justice. The effect is the same, that he won't do it to someone else.³⁷

The Commission was told that a restorative justice approach to family violence cases could deliver better outcomes for women than the adversarial justice system because it would offer a process that is tailored to an individual woman's needs and be informed by her own choices:³⁸

There should be more time and more resources allocated to allow women to have the agency to make the most appropriate decision for their circumstances. Currently, there are no alternatives [for] women who do not want state intervention and would prefer a restorative justice approach.³⁹

Professor Leigh Goodmark from the University of Maryland in the United States gave evidence at the Commission's hearings and argued that:

Restorative justice places a great deal of power in the hands of the victim survivor, including the power to decide whether restorative processes are appropriate, to confront their partners, and to have their partners admit responsibility and seek reparations.⁴⁰

Professor Goodmark has argued that in the United States, domestic violence law and policy rely almost exclusively on separation-based remedies and reflect the assumption that women always have, or should have, the goal of leaving the relationship.⁴¹ She states that this ignores women's calculations about the merits of staying in the relationship and the reality that, in many instances, separation serves women poorly, if at all.⁴² Professor Goodmark told the Commission that 'studies show us that a fairly large number of people intend to continue their relationship with their partner'.⁴³

Professor Goodmark saw a particular role for restorative justice options in those cases where the victim does not wish to separate from the perpetrator but wants the abuse to stop, or for victims whose contact with their ex-partner will continue:

For people who are going to be co-parenting, and for people who are living in the same small geographic or ethnic or religious communities, figuring out how to re-order relationships after intimate partner violence, knowing that there will be ongoing contact between the parties, is particularly important. I think there's a real place for restorative justice there.⁴⁴

InTouch Multicultural Centre Against Family Violence pointed out that available legal avenues do not cater for those clients who want to continue their relationships:

... [InTouch] regularly sees its clients stay in violent relationships without pursuing the civil or criminal remedies that are currently available to them because neither would help them to achieve what they want, which is to continue in their relationship without the violence. The implementation of a best practice restorative justice process for family violence might assist women to achieve this aim.⁴⁵

Such an approach might also have benefits for children. Loddon Campaspe Community Legal Centre observed:

In assisting children with their recovery from family violence, a restorative process could provide a forum where children are better heard by the offenders and/or significant agencies. Such an environment may allow women and children to more actively participate in discussions about their safety and well-being, facilitated by people they trust rather than by the authorities.⁴⁶

The Commission heard that a restorative justice approach could provide better opportunities for the victim to be heard by the perpetrator.⁴⁷

I think there is a place in the criminal justice system for restorative justice, where, in some cases, a victim can face their perpetrator and the perpetrator can apologise for their destructive and damaging behaviour. The perpetrator could make it clear that they will never repeat the actions which have led to the offence. They could be forced, in a closely monitored way, to do courses, programs, practical active things that could help to change their thinking for good. The victim could explain the effect that the family violence has had on them so that the perpetrator can have some understanding of the consequences of their actions. This might even take the place of a lengthy prison term, providing no further abuse occurs. Of course, if the abuse occurred again, none of this could apply.⁴⁸

It could also facilitate a better acknowledgment, and even genuine accountability, by the perpetrator of the harm they caused, rather than denial.⁴⁹ A woman who attended the Commission's community consultations whose sister had committed suicide following a number of abusive relationships, spoke about the limitations of the criminal justice system in this respect:

I still don't know how can we bring them to account now. The most overwhelming thing is for justice to happen now. These men aren't going to change by going to jail. They have to accept it in themselves. They are not facing themselves.⁵⁰

It is said that restorative justice has the potential to increase the likelihood of family violence being reported because it offers more flexibility and an alternative to the criminal justice system.⁵¹ In Chapter 23 and Chapter 27 we outline how older people experiencing abuse, for example by an adult child, and the parents of adolescents who use violence towards them or their siblings can be reluctant to report violence because they wish to maintain their family relationships, and may be fearful of the consequences for their children of reporting the abuse to the police.

A similar point was made by participants in the Victorian Equal Opportunity and Human Rights Commission's recent *Independent Review into Sex Discrimination, Sexual Harassment, including Predatory Behaviour in Victoria Police* who stated that Victoria Police's 'punitive' and 'adversarial' response to formal complaints dissuaded them from reporting relevant behaviour.⁵²

The Centre Against Violence submitted that a restorative justice model could also address power imbalances in a way that other mediated forums, such as couples counselling, would not.⁵³

The Commission also heard that:

- ▷ A restorative justice conference might result in a set of very practical outcomes, such as agreements in relation to joint utilities and bank accounts, as well as a commitment on the part of the perpetrator to seek assistance to change his behaviour.⁵⁴
- ▷ As an alternative to traditional criminal justice processes, a restorative justice process could be particularly beneficial where relationships between communities and police or courts are strained, or where women have experienced an inadequate or damaging response from the criminal justice system in the past.⁵⁵
- ▷ A restorative justice process would expand the network of people able to provide continuing support and oversight,⁵⁶ and supplement and strengthen justice, health and human services interventions.⁵⁷ Including other family members or peers in the conference process may also increase the visibility of the perpetrator's violence,⁵⁸ and repair broader family relationships, for example, between children and parents.⁵⁹

There is support for the use of restorative models of justice within Aboriginal and Torres Strait Islander communities, due to the models' capacity to incorporate elements of healing and self-determination and to avoid the re-victimisation frequently associated with the criminal justice system.⁶⁰ However, some victims' advocates caution against applying restorative justice models in cases involving sexual and family violence in those communities, and urge in-depth consultation and community development of any relevant programs.⁶¹

A number of submissions listed conditions that would need to be in place for a restorative justice approach in a family violence context to be successful. In particular, submissions noted that it was important that victims requested the process,⁶² consented to it,⁶³ or led it.⁶⁴ Other submissions highlighted the importance of ensuring that victims feel safe during the process and that any process would hold perpetrators to account, be accessible to all victims, including culturally and linguistically diverse victims, and use skilled and experienced conveners.⁶⁵

The submissions the Commission received listed a number of factors that would need to be considered to implement a restorative justice approach. These included guidelines on the types of cases a restorative justice program would accept, systems of case management, the format of the conferencing process and arrangements for monitoring and evaluation.⁶⁶ Other variables included timing (for example, whether it would occur before or after a perpetrator's conviction and/or sentencing) and whether parties who were in a continuing relationship would be eligible.⁶⁷

Women's Legal Service Victoria submitted that a pilot be developed first for approaches with the lowest level of complexity and risk and, subject to the success of those, approaches with greater complexity and risk could then be trialled.⁶⁸

A first approach to trial might be limited to cases where:

- the victim requests the restorative process, *and*
- the parties do not have a continuing relationship, *and*
- the perpetrator has been convicted and sentenced.

A slightly more complex approach, might be to extend restorative approaches to cases where:

- the victim requests the process, *and*
- there is a continuing relationship, *or*
- the perpetrator has not yet been sentenced.⁶⁹

The Commission also heard about the therapeutic value of truth-telling exercises that do not necessarily involve the perpetrator.⁷⁰ One option that has been tested is Victim Impact Panels in which a small panel of volunteer victims address a larger group of offenders who are not known to them. The panels aim to provide victims with a forum to express their feelings and provide perpetrators with an understanding of the consequences of their violence. They have been trialled in the context of family violence in the United States with positive responses from victims.⁷¹

Restorative justice programs in other jurisdictions

During its consideration of the issues surrounding the use of restorative justice for family violence matters, the Commission reviewed information about several restorative justice programs currently being operated in Australia, New Zealand and some European Union countries.

Australia

While there are numerous restorative justice programs operating around Australia, and in the youth justice context in Victoria (discussed further in Chapter 23), there are only a few examples of programs for family violence or sexual assault-related matters in Australia.⁷² In Victoria, the South Eastern Centre Against Sexual Assault has established a pilot restorative justice conferencing program for victims of sexual assault, many of whom were abused by family members.⁷³ The Commission was also told that, based on its experience in facilitating youth group conferences, and in close consultation with family violence specialists, CatholicCare Sandhurst is exploring the possibility of establishing a program that offers victims of family violence restorative justice options.⁷⁴

The Australian Capital Territory is expanding its legislated restorative justice scheme to include adults and more serious crimes from 2016, and to address family violence from 2018.⁷⁵

While it is not a restorative justice program, the Commission heard that the Victoria Legal Aid Family Dispute Resolution Service can offer restorative outcomes to participants in the family law context, provided there is adequate screening, risk assessment and preparation.⁷⁶ The process allows the parties to have their say, and the confidentiality rules that apply in that process can encourage perpetrators to acknowledge past wrongs. Similarly, Women's Legal Service Queensland developed its Coordinated Family Dispute Resolution model to provide specialised dispute resolution for families where there had been a history of family violence.⁷⁷ This service featured specialist risk assessment and counselling support, legal advice and representation at the session for both perpetrators and victims.⁷⁸

New Zealand

Restorative justice conferencing in family violence matters is reasonably widespread in New Zealand. Research has indicated that participants have found these processes satisfying and that they would recommend participation to other victims and perpetrators in response to family violence.⁷⁹ The New Zealand Ministry of Justice issues detailed standards for restorative justice in family violence cases which make victims' safety a paramount consideration.⁸⁰

The Victorian Association for Restorative Justice referred in its submission to a specific program from New Zealand, the Whanganui Family Violence Integrated Services Project, which involves collaboration between 17 statutory, iwi and community organisations.⁸¹ The professionals involved in the program meet weekly to coordinate and monitor the support to the families involved. Health and human services agencies provide constructive interventions while the justice agencies act as a safety net, providing reactive interventions when necessary.⁸²

Project Restore, based in Auckland, conducts restorative justice conferences for victims of sexual offences and is regarded as being a best-practice approach due to the extensive and specialised preparation involved and the support workers allocated to the victim and offender throughout the process.⁸³

European Union

The use of restorative justice processes in cases of family violence in the European Union is fairly established.⁸⁴ A 2015 European Forum for Restorative Justice paper canvassing best-practice examples of existing programs noted that most European countries have experience with voluntary forms of restorative justice interventions in family violence cases.⁸⁵ The paper examined programs in Austria, Denmark, Finland, Greece, the Netherlands and the United Kingdom. Although it concluded that the practices and regulatory environment differ between countries, it examined the following features, which exist to varying degrees across jurisdictions:

- ▷ the legislative framework, if any, underpinning the program, and its relationship to the criminal justice system
- ▷ referral pathways, and access and eligibility criteria for participation (consent of the victim and the perpetrator is a precondition in all jurisdictions)
- ▷ the safeguards adopted, such as providing victims upfront with advice about all available options, detailed preparation and intake procedures, exclusion of certain types of case, the involvement of victim support agencies and support people
- ▷ the organisations that conduct the conferences (in some cases they are police or prosecuting agencies, in others community-based organisations)
- ▷ the family violence-specific training undertaken by facilitators
- ▷ guidelines for the types of outcome that might result
- ▷ procedures for monitoring and supervising any agreements reached
- ▷ complaint mechanisms.⁸⁶

A subsequent report, which discussed the outcomes of interviews with participants from the various programs, articulated the advantages of participation but also identified some weaknesses and limitations of existing practices, and opportunities for improvement.⁸⁷

The Criminal Justice Programme of the European Union has commissioned the development of practitioner guidelines for the use of restorative justice in family violence cases.⁸⁸ Guidelines published in 2016 discuss the need for specially trained and highly experienced facilitators, and set standards for risk assessment processes and preparation for, conduct of, and follow-up from a restorative justice conference.⁸⁹

The way forward

The Commission has considered the role of restorative justice processes in family violence matters carefully. In light of the support such approaches have from organisations that work directly with victims of family violence (such as Women's Legal Service Victoria, Loddon Campaspe Community Legal Centre, the Centre Against Violence and, to a degree, InTouch Multicultural Centre Against Family Violence), which is in turn based on the views and experiences of their clients, we are persuaded that the time has come to progress work on a restorative justice approach to family violence in Victoria.

The Commission agrees that restorative justice processes have the potential to assist victims to recover from the impact of the abuse they have suffered, and to mitigate the limitations of the justice system by providing them with greater scope to meet their needs for participation, voice, validation, offender accountability and restoration. The versatility of restorative justice processes means that they can be adapted to address the complexity and diversity associated with the experience of family violence. They may be of particular benefit for parents of adolescents or adult children who have used violence, who wish to preserve family relationships or avoid a criminal justice response.

It is important to emphasise that a restorative justice process cannot and should not preclude a victim from seeking redress through the court system, nor should it be stipulated as a precondition to taking court action, nor a process that victims are pressured to undertake in preference to other more formal options. It should be offered as an additional option for victims to consider. Further, introducing restorative justice options must not provide a reason to avoid addressing the existing shortcomings of the justice system. Rather, restorative justice options should serve to supplement the outcomes available from the justice system. Given that a restorative justice engagement can only proceed if a victim has identified it as an option that will address their needs, and only in circumstances where the perpetrator is willing to participate and to take responsibility for the harm caused, it is likely that any future program will only cater to a relatively small proportion of family violence cases. This means it is essential that justice system responses are improved in the ways we have recommended in Chapter 16.

The Commission acknowledges that concerns and uncertainties remain about introducing a restorative justice approach, and that there are situations where restorative justice processes will be appropriate, and situations where they will not be. The victim must be central to these decisions; her control and choice is central to the success of any restorative justice initiative.

For this reason, we recommend that a framework for a restorative justice approach be developed with utmost care, in consultation with victims' representatives, and that it encompass robust safeguards. Of primary importance is that victims who are invited to participate are fully informed about the process and their options, and that their consent is a precondition to any conference.

In addition to the support expressed for restorative justice options in the submissions we received and in our hearings and consultations, we are conscious of the emerging Australian and international literature and evidence about the value of, and challenges associated with, the use of restorative justice in family violence and sexual assault matters. The development of options in Victoria can draw on the available analysis and experience in other jurisdictions to structure conferences in ways that most effectively address victims' needs, identify and manage risks, and define and set standards for program implementation.

We also note that there is a cohort of experienced youth group conferencing conveners in Victoria, some of whom are likely to be able to undertake further training on the dynamics of family violence to equip them to facilitate conferences in these matters.

The Commission recommends that the Department of Justice and Regulation develop a framework and a pilot program for the delivery of restorative justice options for victims of family violence. Development of the framework should take place in consultation with restorative justice experts, family violence specialists and victim representatives and other relevant stakeholders.

The development of the framework and pilot program should consider:

- ▷ the gateway into the restorative justice process and the criteria for eligibility (for example, the level of offending that such an approach would apply to, and whether a provider should be able to decline to offer a restorative justice intervention for safety reasons)
- ▷ the standards and guidelines that should govern the process; and the safeguards that would need to be in place, including risk assessment processes and preparation processes
- ▷ the timing of the process (for example, whether it would take place before, during or after the court process, bearing in mind that the aim of the program should be to provide the greatest benefit to the greatest number of victims and that victims should have a choice about when to engage); and the interaction with ongoing or anticipated court proceedings, whether in the civil or criminal jurisdictions, the Children's Court or the Family Court
- ▷ the associated support services that would be required for both victims and perpetrators, in particular the involvement of people with expertise in behaviour change strategies
- ▷ the need for any program to be inclusive of the diversity of people affected by family violence, and to take account of their individual cultural and other needs
- ▷ the consequences and outcomes of the process; and how outcomes would be monitored
- ▷ the level of accreditation, skill, experience and training required for facilitators
- ▷ how a pilot program would be evaluated.

Recommendation 122

The Department of Justice and Regulation, in consultation with victims' representatives and experts in restorative justice, develop a framework and pilot program for the delivery of restorative justice options for victims of family violence. The framework and pilot program should have victims at their centre, incorporate strong safeguards, be based on international best practice, and be delivered by appropriately skilled and qualified facilitators [within two years].

Endnotes

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- 3 See, eg, Statement of 'Jones', 13 July 2015; Statement of 'Jones', 7 August 2015; Safe Steps Family Violence Response Centre, Submission 942, 17.
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- 11 Judith L Herman, 'Justice from the Victim's Perspective' (2005) 11(5) *Violence Against Women* 571, 585.
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- 21 Jacqueline Joudo Larsen, Australian Institute of Criminology (Cth), 'Restorative Justice in the Australian Criminal Justice System' (AIC Reports Research and Public Policy Series No 127, 2014) 2.
- 22 See generally Victorian Association for Restorative Justice, Submission 839. See also Centre for Innovative Justice, above n 16, 12.
- 23 Centre for Innovative Justice—01, Submission 93, 76.
- 24 Victorian Association for Restorative Justice, Submission 839, 6.
- 25 Ibid 5, 9.
- 26 Larsen, above n 21, 22–28.
- 27 National Council to Reduce Violence against Women and their Children, Department of Families, Housing, Community Services and Indigenous Affairs (Cth), 'Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children' (March 2009) 106 (citations omitted). See also Centre for Innovative Justice—01, Submission 93, 76; ibid 33.
- 28 Transcript of Fatouros, 6 August 2015, 2113 [4]–[9].
- 29 Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence—A National Legal Response: Final Report*, ALRC Report No 114, NSWLR Report No 128 (2010) 1093–4; Victorian Law Reform Commission, *Review of Family Violence Laws, Report* (2006) 84–5; Law Reform Committee, Parliament of Victoria, *Inquiry into Alternative Dispute Resolution and Restorative Justice* (2009) 333. See also Success Works, 'Sexual Assault Reform Strategy Final Evaluation Report' (January 2011), 212, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.
- 30 National Council to Reduce Violence against Women and their Children, above n 27, 122.
- 31 Jesuit Social Services, Submission 875, 16. See also Law Reform Committee, Parliament of Victoria, above n 29, 330.
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- 42 Ibid 105.
- 43 Transcript of Goodmark, 6 August 2015, 2075 [7]–[9].
- 44 Ibid 2075 [10]–[16].
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- 54 Victim restoration roundtable, Melbourne, 25 September 2015.
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- 63 InTouch Multicultural Centre Against Family Violence, Submission 612, 41.
- 64 Loddon Campaspe Community Legal Centre, Submission 236, 5; Goulburn Valley Community Legal Centre, Submission 495, 5.
- 65 Loddon Campaspe Community Legal Centre, Submission 236, 5; Goulburn Valley Community Legal Centre, Submission 495, 5; Victorian Association for Restorative Justice, Submission 839, 1; InTouch Multicultural Centre Against Family Violence, Submission 612, 41; Victorian Association for Restorative Justice, Submission 839, 10.
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23 Adolescents who use family violence

Introduction

This chapter considers the issues that arise when young people use violence in the home against their parents, siblings and other family members. It is important to note that adult children may also be violent to family members. However, the focus of this chapter is the use of violence by adolescents. This chapter uses the phrase ‘adolescents who use violence in the home’ to refer to young people’s use of violence against family members noting that not all family violence occurs in the home.

Adolescent violence in the home is a distinct form of family violence. It exists across all communities and geographic areas.¹ Reporting of use of violence in the home by young people has increased in recent years, at a similar rate of increase to adult family violence.

In this chapter the Commission examines the different forms of adolescent violence in the home that exist, including child on parent violence, sibling violence and problem sexual behaviour. Commonalities and differences between adolescents’ use of violence in the home and family violence perpetrated by adults are also examined.

Adolescent violence against family members is less gendered than adult family violence, however the majority of victims are women and the majority of those using violence are young men. Around two-thirds (64 per cent) of those aged 17 years or younger who are violent towards their parents are male.² This compares to 77 per cent of perpetrators of all family violence who are men.³ It has been reported that young males are more likely to use physical aggression than young females.⁴

Like other types of family violence, adolescent violence in the home can involve physical, emotional, psychological, sexual, financial and other types of abusive behaviours intended to harm, control, threaten or coerce parents, siblings or other family members.⁵ It can have a devastating impact on family members, including physical injury and poor mental health (such as stress, anxiety and depression), economic hardship, for example, through damage to property, theft of property, or being coerced to hand over money, and eviction from their home because of damaged property.⁶

The Commission was told that lack of awareness and understanding of this particular type of family violence among the community, family violence prevention and support services, youth services, and the justice system, are obstacles for victims who need support. Most devastating of all are the stigma and shame associated with this form of violence, which arises from unfair assumptions about the victim’s ability to be a good parent and the shock that their child (or grandchild or sibling) has used violence against them. Shame is exacerbated by lack of community awareness about this form of violence. All these factors create enormous barriers to seeking help.

Use of violence in the home by adolescents may co-exist with family violence perpetrated by others, including intimate partner violence against the mother that the young person has witnessed, as well as direct violence against children.⁷ This has important ramifications for practice, including that programs working with young people using violence need to be prepared to deal with the presence of family violence in the home beyond that being used by the young person.

This chapter also surveys the current system response—in particular what the Commission heard about police and justice responses and the availability of early intervention programs that are specifically targeted at working with young people and their families as an alternative to the criminal justice system.

At the end of this chapter, the Commission articulates policy and practice principles for a more comprehensive response to this form of family violence, which will include the recognition that a therapeutic response is more appropriate than increasing police powers.

Currently there is no systemic response to the needs of these young people and their families, though a number of positive initiatives operate in local areas. The Victorian Government is currently trialling Adolescent Family Violence Programs in three locations. Based broadly on the United States Step Up program, the initial evaluation findings are positive. The Commission recommends that if the final evaluation demonstrates success in improving victim safety and changing behaviour, this program should be expanded across the state. Other promising initiatives, including joining Youth Justice Group Conferencing with Adolescent Family Violence Programs for young people and their families should also be trialled and, if successful, should be supported.

In recognition that requiring a young person to leave home should always be the last resort, we also make recommendations to provide supported accommodation to them. We also recommend that family violence applicant and respondent worker positions be established at the Melbourne Children's Court of Victoria to assist young people and families.

Context

Incidence of adolescent violence in the home

Notes on data

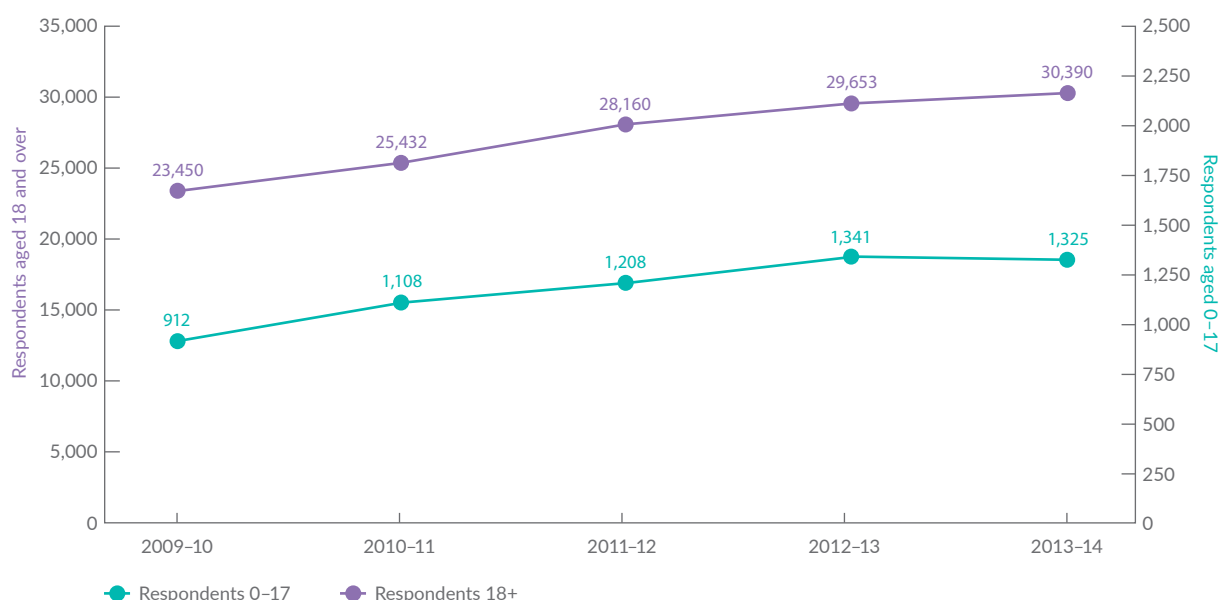
There are various limitations around data that need to be acknowledged. In addition to the general limitations of family violence data discussed in Chapters 3 and 39 of this report, there are also the following limitations:

- ▷ Lack of consistency around the definition of 'adolescent'. Some agencies record adolescents as being from 0 to 17 years old, others from 15 to 19 years old. In service settings a 'young person' is a person up to the age of 25 years old.
- ▷ Some Victoria Police data is broken down by age range 0 to 17 years, whereas other data is broken down by age range 10 to 14 years and 15 to 19 years. Children's Court data has similar inconsistencies. Data has been provided in age ranges that are consistent with the way this data has previously been reported, and to align with the different definitions of 'youth'. In some cases, the age of a user of violence or a victim will not be recorded and so they will be excluded from the analysis. (Thus, in the following discussion, some graphs will include 18 and 19 year-olds and others will not.)
- ▷ Different data sets have different counting rules and capture different forms of violence.⁸ The Magistrates' Court and Children's Court data was extracted from the Courtlink database. The data includes all finalised applications for family violence intervention orders where the final hearing occurred between 1 July 2009 and 30 June 2014. All of the graphs below utilise only original applications and exclude applications for variation, extension and revocation, in order to avoid counting individuals multiple times.⁹

Victoria Police data shows that over the last five years, the total number of family violence incidents reported to police where the person using violence was 19 years or less, grew from 4516 to 7397.¹⁰ The growth in reported incidents is commensurate with the wider growth of family violence reporting over the last five years. The proportion of total reported family violence incidents where the person using violence was 19 years or under actually fell in that timeframe, from 12.7 per cent to 11.4 per cent.¹¹ Nevertheless, family violence incidents where a young person is the reported user of violence represent around one in 10 family violence incidents reported to police.

The number of adolescent respondents to FVIO applications across the Children's Court and the Magistrates' Court also increased in the five year period from 2009–10 to 2013–14,¹² keeping pace—approximately—with the increase for adults, as can be seen in Figure 23.1. In 2009–10, the proportion of the total number of applications across both courts that had child (0 to 17 year-old) respondents was 3.7 per cent (n=912) and in 2013–14 it was 4.2 per cent (n=1325), with minor variations in the intervening years.

Figure 23.1 Respondents aged 0–17 years on family violence intervention order applications compared to adult respondents 2009–10 to 2013–14



Source: Crime Statistics Agency, *An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14* (January 2016), Children's Court data source, Tab 6, Table 6: Respondents on original FVIO applications by gender and age group, July 2009 to June 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015; Magistrates' Court data source, Tab 6, Table 6: Respondents on original FVIO applications by gender and age group, July 2009 to June 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015.

Adolescent child-parent violence data

The child-parent violence data shown here is a subset of the total number of police incidents involving an 'other party' (the person who used the violence) aged 17 years or younger.

During the five year period from July 2009 to June 2014, police recorded 11,861 family violence incidents where the person who used the violence was aged 17 years or younger and the affected family member (the victim) was an adult parent.¹³ Of these:

- ▷ Sixty-four per cent (n=7608) of those who used violence aged 17 years or younger, where the victim was an adult parent, were male and 36 per cent (n=4253) were female.¹⁴
- ▷ Of the victims, 80 per cent (n=9542) were female parents and 20 per cent (n=2319) were male parents.¹⁵

The proportion of females aged 17 years or younger who use violence against their parents as recorded in police incidents has remained consistent over the last five years.¹⁶ Children's Court data paints a similar picture of the gender breakdown between respondents aged 0 to 17 years old on FVIO applications.¹⁷

Sibling violence data

- ▷ Data shows that young people aged 10 to 19 years are the reported users of violence in just under 20 per cent of Victoria Police family violence incidents against victims aged 17 and younger.¹⁸ Due to the age patterns, the majority of these family members are likely to be siblings; however, it is noted that the data does not distinguish between sibling and other family member victims.
- ▷ For this group, the gender profile has also remained fairly consistent. Over the five years to June 2014, male other parties accounted for between 81 and 84 per cent of incidents.¹⁹
- ▷ Children's Court data shows that in nine per cent ($n=162$) of family violence applications in 2013–14, the affected family member was a sibling of the respondent. This proportion has remained fairly steady over the last five years.²⁰ It should be noted that this data is not confined to users of violence under the age of 18, as the Children's Court deals with a number of adult family violence perpetrators.²¹
- ▷ From 2009–10 to 2013–14, males made up between 70 and 76 per cent of respondents in applications where both the affected family member and the respondent were aged 17 years and younger.²²

Forms of family violence

Child on parent violence

The majority of adolescent family violence is perpetrated against mothers, particularly sole mothers, mostly by male adolescents:

Mothers who are sole parents are particularly at risk from their adolescent sons, many describing how the language and behaviour of their sons bears a chilling similarity to that of their violent fathers.²³

Abuse of fathers is also usually by sons.²⁴ Other vulnerable family members include parents with disabilities, younger siblings, grandparents and family pets.²⁵

The literature indicates that severity of the violence depends on age and gender, with the severity of abuse by sons increasing incrementally between the ages of 10 and 17, whilst parental abuse by daughters increases between the ages of 10 and 13 years, and falls after that age.²⁶ This suggests that whereas young women cease using family violence as they get older, young men are more likely to continue using violence.

As with all family violence, it is likely that adolescent violence in the home is under-reported. Parents may be reluctant to report their children's violent behaviour to the police for various reasons, including:

- ▷ social isolation, feelings of self-blame, shame and denial²⁷
- ▷ 'lack of acknowledgement from [and understanding by] community agencies of the types, severity and frequency of violence and impact on family'²⁸
- ▷ minimisation of abuse (for example, excusing the adolescent's violence on the basis of 'typical male behaviour', 'inherent traits' or having learnt the behaviour from their father)²⁹
- ▷ fear of how the adolescent might react upon discovering the report³⁰
- ▷ fear their child may get a criminal record if the violence is reported to police.³¹

The Commission consistently heard that victims of adolescent family violence also experience parental guilt, finding it particularly difficult to articulate their experiences due to 'cultural expectations of unconditional parental love'.³² Adolescent violence was also described as a 'hidden and shameful' subject, resulting in parents not seeking support until at crisis point.³³ There is also a lack of awareness amongst parents of the support services that are available to them.³⁴ Daly and Wade comment that these barriers to reporting are 'similar to those that inhibit adult females from reporting male partner violence'.³⁵

Despite the violence, victims face the dilemma that they remain responsible for caring for the young person who is using violence against them.³⁶ Family members, particularly parents, are often concerned about their adolescent child and want to maintain their relationship with them.³⁷ Although parents may have economic power in the relationship, their children may have emotional and psychological power over them.³⁸

Adolescents may also be highly vulnerable and, if under the age of 18, are still children and in need of protection.³⁹ They may have poor health or have experienced trauma themselves; in addition, they commonly lack resources and life experience.⁴⁰

When young adult children are perpetrators of violence it's very difficult. People don't want to get involved so help is hard to get. The police seem to blame me for my son's behaviour and yet he is not well. I need them to help me help my son. I need protection from my son and yet I love him and want him to be well. It's very difficult. This experience places me more at risk as it impacts my mental health illness at times.⁴¹

Parents may view calling the police as a last resort and may only contemplate it after the violence has been ongoing for some time.⁴² The Commission heard that when parents do call the police, they may simply want assistance to address their child's behaviour, rather than to trigger a criminal justice response.⁴³ They may therefore understate their level of victimisation.⁴⁴ Individuals experiencing adolescent family violence described such situations to the Commission:

[My daughter] got very drunk and tried to kill me ... I didn't want to charge my daughter because she needs help but the police put the intervention order on her. The neighbours called the police because she was out of control.⁴⁵

Sibling violence

My son's violent against women. The way he treats his sister. Because of his dad. He hates women, they're all nothing ... It's an everyday struggle.⁴⁶

Research demonstrates the seriousness of sibling conflict, including aggression and violence, which has been linked 'to a wide range of negative youth outcomes'.⁴⁷

It was noted that this form of family violence often receives inadequate recognition.⁴⁸ One victim told us:

Sibling violence often flies under the radar and I believe it is too often put down to kids just being kids, but violence is violence and the effects, regardless of who is inflicting it, are the same. As [a] child victim of persistent sibling violence coupled with inappropriate responses to it from the adults around me, I feel that my own life has been impacted.⁴⁹

Professor Mark Feinberg, Research Professor at the Prevention Research Centre, Pennsylvania State University, claimed that sibling relationships have 'the highest levels of violence of any family relationship'.⁵⁰ In their joint submission, the Centre for Behavioural Science and Forensicare noted that US studies have shown that sibling violence is a common form of family violence.⁵¹

In its submission, the Centre for Multicultural Youth highlighted the problem of sibling violence within culturally and linguistically diverse communities, for example, where 'an older male sibling takes on a disciplinary role towards younger siblings, particularly in the context of culturally-driven concerns around his sister's behaviour'.⁵²

Problem sexual behaviour

Sexual abuse by children and young people is less common than sexual abuse by adults, however, it has similar devastating effects for victims. While some young people with problem sexual behaviour target adults, younger siblings may be common targets due to proximity and vulnerability.⁵³ There are no identified direct causes of problem sexual behaviour by young people, however there are a number of risk factors that can contribute to it including childhood experience of family violence and being a victim of sexual abuse.⁵⁴ However, 'most young people with sexually abusive behaviours do not go on to become adult offenders'.⁵⁵

The Criminal Division of the Children's Court decides cases where sexual offence charges have been brought against children and young people aged 10 to 17 years. The Children's Court told the Commission that the majority of victims in these cases are also children and adolescents, with many being younger family members of the accused.⁵⁶

A number of Victoria's centres against sexual assault and other regional agencies provide interventions for 10 to 14 year olds with problem sexual behaviour, through Sexually Abusive Behaviours Treatment Services. Evaluations show that these programs achieve positive outcomes.⁵⁷ This program and the current response to adolescent sexual offending in the context of family violence is discussed in more detail in Chapter 12.

Commonalities and differences with adult family violence

Parent victims of a young person's violence 'consistently report that the emotional and psychological impacts have a more profound and long lasting impact than the physical violence itself, with the most significant effects relating to the shock, incredulity and disbelief that their own child is using violence against them'.⁵⁸ The ongoing cyclical nature of the violence—violence, apology and forgiveness—is a feature of both adult and adolescent family violence.⁵⁹

While fear and control is present in both adult intimate partner violence and adolescent violence in the home, parent victims tend to have greater control and freedom than victims of intimate partner violence; they are more easily able to maintain privacy and confidentiality and are likely to have greater economic and social resources than their child.⁶⁰

The young person's legal status as a child affects how the justice system responds, with an appropriate focus on rehabilitation. However, 'the competing needs of family safety, protecting children and adults and rehabilitating young offenders mean that the criminal justice system struggles with how best to juggle these'.⁶¹

A further difference between adult and adolescent family violence is that most parents view reconciliation as the ideal outcome in adolescent violence situations, whereas this is less often the case for victims of intimate partner violence.⁶²

Risk factors

There is no single cause of adolescent violence in the home; instead, as with other forms of family violence, it is the result of 'a range of multifaceted and interconnected dynamics'.⁶³

Adolescent violence in the home can be exacerbated by factors such as mental illness, the use of drugs and alcohol, and acquired brain injuries.⁶⁴ Local studies have shown that existing violence escalates with drug and or alcohol use, and that escalation is also associated with school refusal or being removed from school because of behavioural issues, particularly in the transition to secondary school.⁶⁵

Victoria Legal Aid told the Commission that young people using violence in the home often present with a number of complex behavioural, mental, physical and emotional issues:

There is usually, but not always, at least one of the following factors involved: neurobiological harm caused by developmental trauma (exposure to family violence or neglect), emotional harm caused by recent exposure to family violence or abuse, abandonment or chronic neglect, substance abuse, family breakdown, unresolved grief and loss. These experiences may manifest themselves in challenging adolescent behaviours. Children and young people are also still developing and can be experiencing undiagnosed mental health issues.⁶⁶

An interim evaluation of the Ballarat Adolescent Family Violence Program (Step Up), discussed below, shows the following proportion of co-occurring risk factors for the 39 adolescents participating in the program:

- ▷ 59 per cent had a history of experiencing family violence
- ▷ 46 per cent had experienced childhood trauma
- ▷ 49 per cent had behavioural or learning difficulties
- ▷ 28 per cent had mental health challenges
- ▷ 28 per cent had alcohol or other substance misuse
- ▷ 21 per cent had a disability (including acquired brain injury).⁶⁷

Children and young people with disabilities

The Commission heard that many young men who use violence in the home have an intellectual disability and their families have not received appropriate support to address issues associated with that disability.⁶⁸ Other disabilities identified in the research as present where adolescent violence has been used include autism spectrum disorder, attention deficit hyperactive disorder and various mental health disabilities.⁶⁹

Lack of support for parents of children with disabilities can have profound consequences. For example, a 2012 study found that parents may be forced to surrender care of their child after (usually a series of) violent incidents towards parents or siblings, which result in parents having to call the police.⁷⁰

This was not the first time I had called the police. Experience told me that child protection would not do anything about it because it was not a child being hurt, it was me. I knew that to get help I would have to say, 'I am going to kill him unless I get some help'. So that is what I told them.⁷¹

National Disability Services reported that:

It can be particularly challenging for families supporting children (mainly boys) with severe autism who exhibit behaviours of concern on a regular basis. These behaviours often become more violent from about 12 years onwards as they enter puberty and become physically stronger. The need for behaviour intervention programs can increase at this stage, and these are often not available.⁷²

Parents may surrender care of their children in response to 'seemingly insurmountable barriers' to support and as an attempt to protect the safety of the young person, and their family.⁷³ The Victorian Equal Opportunity and Human Rights Commission reported that these children 'end up living in respite facilities, in transitional houses and in out-of-home care settings such as residential or foster care'.⁷⁴ In its submission, the Youth Affairs Council of Victoria explained that as a result of limited access to therapeutic supports, young people with intellectual disabilities are ending up homeless when intervention orders are taken out against them.⁷⁵

In regards to adolescent mental health, Professor Patrick McGorry AO, Executive Director of Orygen National Centre of Excellence in Youth Mental Health, explained that adolescence is a high-risk period for mental ill-health, yet our current response can leave young people vulnerable.⁷⁶ He told the Commission that there is an absence of an effectively-resourced therapeutic response when a young person is in crisis, including when they are using family or other forms of violence. He observed that if mental ill-health is present, this is often not identified and violent situations typically result in a purely criminal justice response, rather than a health response.⁷⁷ Professor McGorry described the value of having specialist youth mental health practitioners to support first responders such as police:

We did have that operating through our youth access team. It still does exist, but it doesn't function in that optimal way anymore. But I definitely think that would be the optimal thing. I worked on that team myself, and when it was working well it was just an absolutely optimal way to work. The sort of people that were attracted to work in that mode were very special people as well. They had tremendous skills. They had great decision-making ability. They knew how to work with police. The police were very happy to work with them. The ambulances were the same. So I think it would be an excellent sort of state-wide model to build in.⁷⁸

In relation to the broader cohort of young people in contact with the justice system (not specifically family violence offending), Magistrate Jennifer Bowles proposed that Victoria should establish secure therapeutic residential facilities for young people suffering substance abuse and/or mental illness, based on programs operating in Sweden, Scotland, England and New Zealand.⁷⁹ She recommended that such a facility should be well located; employ highly competent staff; offer effective after-care programs and transition back into the community; and include external scrutiny/checks and balances in its design.⁸⁰

The current police and justice response to adolescent use of violence in the home is considered further below.

Link to previous experience of family violence

My son even ended up knocking me out ... DHHS took him from us. He learnt from his dad.⁸¹

The Commission was told that adolescents who use violence in the home are often victims (or have been victims) of family violence themselves.⁸² Experiencing family violence as a child is a strong predictor of adolescent male abusive behaviour.⁸³ In its submission, Victoria Police stated that a high percentage of children who used violence against a parent in 2014 had previously been victims of family violence.⁸⁴

The correlation between experiencing family violence during childhood and later perpetration of adolescent family violence means that the victims may experience violence at the hands of more than one person:

Women and children are re-traumatised by male adolescent violence in the home. Children may have experienced their father's violence, only to have their brother 'step into' this role when their father leaves.⁸⁵

The Commission was also told that children who experience family violence perpetrated by their father may blame their mother. This can contribute to their later use of violence against their mother, especially after separation:

When parents separate following violence, many children blame the victimised parent for the family break-up (frequently, this is actively encouraged by the perpetrating parent who tells his children "it's all your mother's fault") ... many such perpetrators have relationships with their children that are good in at least some respects. As such, children ... may genuinely miss their fathers, and blame their mothers for their fathers' absence in their lives.⁸⁶

In addition, where adolescent family violence occurs 'within a broader familial context of violence and disharmony', different types of family violence may co-occur and 'mutually shape' one another.⁸⁷ It may therefore be impossible to identify any linear cause and effect for adolescent family violence in these circumstances.⁸⁸

Even though adolescents who use violence in the home may have also been the victims of family violence, the majority of children who experience family violence will not go on to perpetrate family violence and some are 'especially critical of violence' as a result of their childhood experiences.⁸⁹ In addition, many adolescents who do use violence in the home do not go on to use violence in their later adult relationships.⁹⁰

Current responses and challenges

An important challenge identified in current responses to the use of violence in the home by adolescents is the broad lack of awareness and understanding of this particular type of family violence that currently exists. This section discusses what the Commission heard about this knowledge gap and the barriers victims experience when dealing with support services, police and the justice system. It also discusses police responses to adolescent violence in the home, and the conflicting views presented to the Commission about the effectiveness of police initiated FVIOs when dealing with children and young people in family violence incidents.

This section concludes with a discussion on the response of the Children's Court and the range of Children's Court and community programs currently available to adolescents who use violence in the home and their families.

Awareness of adolescent violence in the home

Mothers have identified isolation and lack of understanding by friends, family, the helping professions, and the justice system, as the most common obstacles in trying to address their child's violence.⁹¹ Literature on adolescent violence often highlights the importance of raising awareness in the community and amongst parents of this kind of family violence.⁹²

A consistent theme raised in submissions before the Commission and in relevant literature, is that the family violence, youth services, family services and justice sectors generally have limited understanding of adolescent family violence and are ill-equipped to address it.⁹³ Victoria Legal Aid noted in its submission that although there has been increased attention on adolescent family violence, 'the policy and legal response has not yet accommodated the different considerations that arise in this context'.⁹⁴

A 2012 scoping study of support services for adolescent violence in the home found that family violence prevention and support services are oriented towards adult-partner violence and rarely have capacity to respond to adolescents who use violence in the home.⁹⁵ Use of violence in the home by adolescents does not fall within the conventional definitions of family violence and services are often not alert to its prevalence.⁹⁶

Services that are oriented toward adult-partner violence often cannot provide an appropriate response to [adolescent violence in the home]. While much ground has been made in Victoria concerning the police, legal and social service response to family violence as a whole, the needs of victims, their families and the perpetrators of [adolescent violence in the home] often do not fit the mould that the service was built to address. As the perpetrators are also minors, the legal parameters of this issue are unclear and standard police procedures to family violence no longer apply.⁹⁷

In 2013, Victoria Legal Aid, Peninsula Health and the City of Greater Dandenong's Youth Services conducted a study into the experiences of adolescents whose use of violence in the home resulted in a criminal justice intervention. The study concluded that those working in the family violence and justice systems have limited understanding of the impact of adolescent family violence on family members and how to address such behaviour.⁹⁸

Kildonan UnitingCare recently consulted with parents who had experienced violence by their children, and found that:

The parents reported having nowhere to turn for help. Parents reported that family violence agencies would not help parents where the violence was committed by a child, youth services would not act against what they considered were the adolescents' interests, and parenting services lacked the skill to respond ...⁹⁹

Lack of awareness and understanding of adolescent violence in the home can leave parents feeling isolated and without help. Parents who attempt to rectify their adolescent's behavioural issues through involvement with services also report that these services did not address the abusive behaviour, which continued to escalate.¹⁰⁰

The Commission was also informed that simply addressing adolescent violence as part of a general response to adult family violence can impact negatively on young people.¹⁰¹ The Youth Affairs Council of Victoria stated in its submission that:

Victoria's recent moves towards a stronger, consistent justice response to family violence have (inadvertently) led to poorer results in relation to young people's use of violence in the home. Some services have reported a reduction in referrals of young people to programs which might have provided them with age-appropriate therapeutic case work to address their behaviour. Instead, incidents of violence by young people which are reported to the police tend to trigger a generic 'family violence' intervention ...¹⁰²

This may create further challenges when the young person has themselves been, or continues to be a victim of family violence. Kildonan UnitingCare submitted:

The family violence sector struggles with a 'both/and' approach – that children can be victims of family violence as well as offenders ... This struggle and the methodology of separating 'perpetrators' from 'victims' means families where an adolescent is violent frequently struggle to access any form of service support.¹⁰³

The Commission was also told that the seriousness of sibling violence is not recognised. The Commission heard evidence from Professor Feinberg that parents often believe it is normal or expected for siblings to fight.¹⁰⁴ Parents may not seek help for sibling abuse because of their desire to preserve the family.¹⁰⁵ The Commission also heard that if police are called they are sometimes reluctant to intervene in this type of violence because they view it as 'just a kid's fight'.¹⁰⁶

Police responses

Police responses to adolescent family violence reflect the legal status of children and young people as minors.

Section 2.4.2 of the Victoria Police Code of Practice into the Investigation of Family Violence recognises that use of violence in the home may largely be due to the previous victimisation of the child through exposure to family violence, bullying, mental health or substance abuse, and instructs police to consider these issues.¹⁰⁷ While the Code prioritises the safety of victims, the wellbeing of children is a key principle. Accordingly, police are required to consider these possible contributing factors when determining a course of action.¹⁰⁸

Under the *Family Violence Protection Act 2008* (Vic), police may only issue a family violence safety notice where they have reasonable grounds for suspecting that the respondent is an adult (18 years or older).¹⁰⁹ Similarly, police can only exercise their holding powers under the Act if the respondent is an adult.¹¹⁰

The options available to police when a report is made of adolescent violence in the home are to:

- ▷ issue an informal or formal warning to the adolescent
- ▷ make a referral to a family violence service, Child FIRST or to Child Protection (for example, where there is sibling abuse)
- ▷ take out a family violence intervention order against the young person
- ▷ charge the young person with a criminal offence.¹¹¹

Police discretion and intervention orders

Conflicting views were put to the Commission about the effectiveness of police-initiated family violence intervention orders that direct removal of the child from the home. Removing a child can be devastating for the young person and adversely affect their development, wellbeing and financial security, as well their ability to continue schooling.¹¹² FVIOs may also alienate a young person from their family, which can increase risk factors and decrease important protective factors.¹¹³

A 2013 Victorian study shows that police attendance was most positive for parent victims when this attendance resulted in a 'firm' result, such as an application for an FVIO, or removal of the adolescent from the family home for a limited period of time (even just a few hours).¹¹⁴ The study also shows that parents were most positive about the outcome where the adolescent was linked to and engaged with a support service to address the violence.¹¹⁵

Case study example

Victoria Legal Aid provided the following case study to demonstrate typical circumstances experienced by their young clients:

Ali is 16 years old and has been displaying concerning behaviour both at school and in the home over the last 12 months. His parents found some cannabis in his school bag, and attribute his drug use and behaviour to new class mates. Ali's parents have discussed this with the school principal, and have requested that Ali be moved to a different home class, but the school principal doesn't think there is a basis for this. Ali has been disruptive at school and been suspended a few times and he is now at risk of being asked to leave.

Ali is smoking cannabis after school most days with new classmates, and when he gets home he is aggressive and abusive to his parents and younger brother, and has thrown a toaster and intentionally broken a plate. Ali's mother takes him to see their local doctor to see if Ali can be assisted either with some counselling, or assessments, or even a mental health plan of some sort. The general practitioner provides Ali's mother with the Kids Helpline number and gives Ali a lecture about drug use. That week Ali's dad is able to collect him straight after class so that Ali can't smoke cannabis with his class mates.

In the following weeks, Ali's dad has to work afternoon shifts and can no longer collect him from school. Ali resumes smoking cannabis with his mates, who also talk him into experimenting with ICE. Ali comes home one day after school and sees his younger brother going through his room. He becomes angry and pins him against the wall by his neck, punches him in the head and threatens to kill him. Ali's mum is able to break up the incident, but calls the local police station to get some advice about what she can do. Police attend the home and apply for a family violence intervention order against Ali so that he doesn't commit family violence against his brother. Ali's mother only wanted advice from the police about how to manage his behaviour and drug use, and tries to reason with police not to take out a family violence intervention order but police say they have no choice.¹¹¹

The Commission heard that there is potential for police to play a positive role in addressing adolescent violence in the home, simply by attending the home and speaking to the young person. One individual explained the role that police played in addressing her nephew's violent behaviour:

The police were fantastic ... They explained to him that even though he feels he's defending himself when he damages items in the home or hits his sister or swears at his mother, Family Violence is a criminal offence and when he turns 16 it becomes even more dire legally ... this visit from the police was a godsend ... The violent outbursts have stopped. The visit from the police served not only to educate him about his actions, but also to show him the value of what is good in his life.¹¹⁶

By way of example, Taskforce Alexis, which is described in Chapters 13 and 15, includes a family violence response team (including an embedded family violence worker/social worker, a mental health response team and a youth crime prevention victimisation response (more commonly known as a proactive policing team)).¹¹⁷ In evidence Senior Sergeant Fiona Alexander, Officer in Charge, Integrated Response Team Initiative Taskforce Alexis, explained that where a police incident involves a young person using violence in the home, the response would be led by the family violence team but they would work in collaboration with the youth resource officers.¹¹⁸ These officers would 'get involved with the ongoing case management of that youth and see what services they can provide, provide some case management and then also make sure that they were involved in the appropriate services'.¹¹⁹

Victoria Legal Aid also expressed the view that initial police contact, if done well, can result in adolescents changing their behaviour.¹²⁰ However it raised concerns regarding police pursuing FVIO applications when this is not supported by the victim.¹²¹ It expressed the view that it is preferable for police to delay pursuing final intervention order applications to allow the adolescent to access support services as, during this period, the family situation may settle and the need for an FVIO may disappear (although an interim intervention order may remain in place during this time).¹²²

Victoria Police Assistant Commissioner for Family Violence Command, Dean McWhirter gave evidence that the significant shortage of crisis accommodation for adolescents using violence in the home 'represents a real challenge for police'.¹²³ Parents may be reluctant for the police to lay charges against their child but also want the violence to stop.¹²⁴ However, without any crisis accommodation options, police 'often need to leave the young person and parent in the home together'.¹²⁵

To get around current limitations, Assistant Commissioner McWhirter told the Commission that some police stations are doing 'voluntary time out' with young people in police stations by consent 'as an option of last resort but this is not ideal'.¹²⁶

In its written submission, Victoria Police recommended allowing police to respond immediately to those under the age of 18 years during an initial callout, through a 'range of options.' Victoria Police did not specify what these options might be.¹²⁷

Family violence intervention orders and young people

In regards to the making of FVIOs, the court may order that the young person is excluded from the home, but the court can only do so if satisfied that if the child is excluded from the residence the child will have appropriate alternative accommodation and appropriate care and supervision.¹²⁸ In considering these factors, the court may request a report from the Secretary of the Department of Health and Human Services¹²⁹ and must inform the Secretary if such a condition is made. This must occur even if the Secretary was not requested to provide a report to the court.¹³⁰

Children's Court

As discussed in Chapter 16, although either the Magistrates' or Children's Court may hear and determine an FVIO, where practicable applications involving a child—as an affected family member, protected person or respondent—are heard in the Children's Court.¹³¹

The Criminal Division of the Children's Court hears criminal matters against a child arising from a family violence incident. There are a range of sentencing options available including the following:

- ▷ dismissal and accountable undertaking
- ▷ good behaviour bond
- ▷ fine
- ▷ probation order

- ▷ youth attendance order
- ▷ youth supervision order
- ▷ youth residential centre order
- ▷ youth justice centre order.¹³²

In sentencing, a child's rehabilitative prospects and the need to preserve a child's familial relationships are priority considerations.¹³³

The Gain Respect Increase Personal Power program

This was an early intervention program funded through the (then) Department of Justice and available through the Children's Court for young males aged 13–17 years who had engaged in violent behaviour, including in the home (though the program was not specifically targeted at adolescent family violence).¹³⁴

The program was voluntary and available to young males who lived in certain local government areas and who were placed on a bond or order with conditions attached.¹³⁵ The program involved 12 counselling sessions, including aggression replacement therapy.¹³⁶ A family intervention was also available for parents, siblings and carers. An evaluation of the program found that it improved family and intimate relationships and reduced violent behaviour.¹³⁷ However, the program has now been defunded.¹³⁸

Victoria Legal Aid told the Commission that the Children's Court sometimes adjourns FVIO applications so that the young person can be assessed by the Children's Court Clinic.¹³⁹ This clinic undertakes psychological and psychiatric assessments of children and families. The clinic also conducts assessments relating to the impact of drug use on a young person and may make recommendations about appropriate treatment.

Diversion from court

Victoria does not have a legislated court-based youth diversion scheme for children charged with a criminal offence. Instead this currently occurs through police cautioning and referral to an informal diversion program—for example the ROPES program. The Commission heard that this informal system results in inconsistency across the state, with availability being largely dependent on a young person's geographic location.¹⁴⁰

The ROPES program

The ROPES program is a pre-plea diversion scheme for first-time offenders under 17 years of age. The program is not specific to family violence. It is a one-day program where the young offender and charging officer complete a ropes activity course together.¹⁴¹ The charging officer needs to give their consent before a young person is eligible to participate in the program, and will 'often only give this consent if the young person has admitted that they are guilty of the offence'.¹⁴² The court will dismiss all the charges against a young person following the successful completion of the program. Evaluations have found that 88 per cent of young people who have participated in the ROPES program do not re-offend.¹⁴³

To address this gap, the Children's Court received funding to deliver a 12-month Youth Diversion Pilot Program, which commenced in June 2015 in seven court locations across Victoria.¹⁴⁴ Jesuit Social Services is delivering the program in partnership with the Youth Support and Advocacy Service.¹⁴⁵

The diversion program is not specific to family violence. It targets those who have little or no history of offending and seeks to:

- ▷ provide support and intervention to young people who may be starting out on a path of offending
- ▷ divert these young people away from the criminal justice system
- ▷ assist young people to address any underlying problems that may lead to further offending.¹⁴⁶

The Children's Court refers young people for assessment of suitability for the program and the Court then receives a recommendation about an appropriate diversion plan, including any program components necessary to address the particular circumstances or needs of the young person.¹⁴⁷ The plans are 'broad-ranging to fit the circumstances of the accused and the offending behaviour, and will focus on links to family, school and community'.¹⁴⁸ The Court receives a report in relation to the young person's compliance and completion of the program.¹⁴⁹ Young people who successfully complete the program avoid having a finding of guilt recorded against them.¹⁵⁰

Judge Peter Couzens, former President of the Children's Court, has stated that the program is 'long overdue' and 'will offer young people an opportunity to address underlying causes contributing to their criminal behaviour with a view to diverting them from further offending'.¹⁵¹

Youth Justice Group Conferencing

Youth Justice Group Conferencing is a process that accompanies court proceedings involving young offenders. It has a rehabilitative focus and so is distinct from diversion schemes. If a child is found guilty of an offence, they may be eligible to participate in a group conference before the magistrate imposes a sentence.¹⁵² This involves the young person attending a conference with their lawyer, a police officer, and the convenor. Members of the young person's family, persons of significance to the child, the victim of the offence, and a representative or supporter of the victim.¹⁵³ The group conference provides the opportunity for all participants to discuss the offence and how it has affected them. Participants then discuss how the young person might repair the harm caused by their offending and prevent further offending.¹⁵⁴ The outcomes are documented in an outcomes plan which is attached to a report provided to the court. The magistrate then takes the report into account when sentencing the young person. If the court accepts the outcome plan, the young person is supported to implement the plan.¹⁵⁵

Youth Justice Group Conferencing is not a family violence-specific intervention; however, the Commission understands that existing youth justice group conferencing programs in Victoria include some cases of adolescent violence in the home.¹⁵⁶

Current programs for adolescents who use violence in the home and their families

Adolescent Family Violence Program

In 2011, Peninsula Health established the Keeping Families Safe program, using a grant from the Legal Services Board. This was the first program of its kind in Victoria. In November 2012, the Ian Potter Foundation provided funding to Child and Family Services Ballarat to develop a program called 'Step Up Victoria—Preventing Adolescent Violence in the Home'.¹⁵⁷ The program was piloted with 60 adolescents and their families in the Ballarat region.¹⁵⁸

As noted above, there are now three sites for these specialist adolescent and family services in Victoria—Geelong, Ballarat and Frankston funded by the Department of Health and Human Services. Each of these have different names.¹⁵⁹ For ease of reference we call these 'Adolescent Family Violence Programs' in the remainder of this chapter and in our recommendations.

These are therapeutic approaches that operate on a case management and group-work model, with each program aiming to deliver services to 48 young people and their families each year.¹⁶⁰ Each program runs for approximately four to six months, depending on the organisation and the group requirements.¹⁶¹ Police can make a L17 referral to these three programs.

The target group for the program is young people aged between 12 and 17 years of age and their families living within the designated program catchment area where:

- ▷ the young person is using violence against a parent or carer that is frequent and ongoing, resulting in the young person being at increased risk of homelessness, criminal justice involvement, disengagement from education and mental health vulnerability, and
- ▷ the parent/carers are likely, without additional support, to experience an increase in the frequency and severity of family violence, resulting in reduced safety and wellbeing (for themselves and other children living in the family home).¹⁶²

Priority is given to families being parented by a sole female parent or carer, Indigenous families, and families in which the young person has younger siblings.¹⁶³

The program uses cognitive behavioural and skill development strategies and involves adolescent group work, parent group work and multi-family group work.¹⁶⁴ It aims to increase the safety of all family members by preventing the escalation of family violence, supporting parents and assisting adolescents to improve their communication and problem solving skills.¹⁶⁵ The program is broadly based on the US court-mandated program Step Up.¹⁶⁶ The Commission was told that the US program has been evaluated several times and has been found to contribute to preventing violence and restoring family relationships.¹⁶⁷

The Victorian program has a number of features that differentiate it from other services such as Youth Support Service, men's behaviour change programs, Child FIRST and Integrated Family Services, namely a 'specific focus on adolescent family violence, and whole-of-family and integrated service delivery model using Victoria Police as the primary referral source'.¹⁶⁸ Unlike the US program, attendance is voluntary and is not linked to a court process such as an intervention order.¹⁶⁹

In a video submission to the Commission from a program, young males told of their experiences:

Most of the time when I was angry I used to take it out on Mum or I used to just go in my room and just smash it up I guess ... It used to happen a lot too because of what was going on in the house.¹⁷⁰

I started working with [Removed] probably a year and a half ago I think. He's really helped me a lot. Before I started seeing [Removed] I was really angry and used to fight with Mum a lot ... I met [Removed]. One day he took me for a kick of the footy and we started talking and I really opened up to him about what was going on. He's really helped me a lot with all my anger issues.¹⁷¹

An independent evaluation of Victoria's Adolescent Family Violence Program is currently being conducted by the Australian Institute of Criminology.¹⁷² An interim evaluation report, providing initial process review findings, was provided to the Commission. Initial findings suggest that the program is having a positive impact on family relationships. The main outcomes had been:

- ▷ improving adolescents' understanding of their violent behaviour, including identifying and managing triggers for violent or aggressive behaviour
- ▷ parent's increased confidence in managing the young person's behaviour
- ▷ a reduction in the nature and frequency of violence and aggression¹⁷³

Other positive initial findings include improved education, work and health outcomes for young people.¹⁷⁴

Participants attributed many of these positive changes to the support of their case manager, while some parents and carers reported difficulty in maintaining these positive outcomes over time. The Australian Institute of Criminology reports that 'this reflects the complex nature of adolescent family violence and the need for effective transition processes and ongoing support'.¹⁷⁵

Other community programs

A number of community programs have been developed to address the issue of adolescent violence in the home. The existence of these programs shows that community organisations are responsive to the issue of adolescent family violence. However, it is also apparent that there is no comprehensive system to assist families and young people using family violence; instead ad hoc programs have attempted to fill the gap.

Table 23.1 below lists programs that were raised in submissions.

Table 23.1 Examples of community programs that address adolescent violence in the home

Program	Provider	Scope	Location
Rebound ¹⁷⁶	EACH, in partnership with Victoria Police	Eight week program for young people aged 13–15 years experiencing instability in multiple environments (eg family, justice system, education). Covers positive choice-making, respectful relationships, identity and anger management. Uses outdoor activities to frame key messages.	Eastern Melbourne
Out of Bounds/ Who's in Charge/ Who's the Boss/ Parent Power ¹⁷⁷	Various providers run this program under different names Monash Youth and Family Services, and Connections Uniting Care offer a Who's in Charge program. As do Family Life Sandringham and Chelsea and Camcare Camberwell	A nine-session program for parents experiencing adolescent violence.	Various
Youth Services Mentor program ¹⁷⁸	Wyndham City Council	A program for young people aged 12–25 years who may be victims or users of family violence. Referrals are made by schools and parents.	South-western Melbourne
Breaking the cycle ¹⁷⁹	Anglicare Victoria	Group work program for parents of adolescents behaving in violent and abusive ways.	Across Anglicare Victoria's Victorian locations
Meridian ¹⁸⁰	Anglicare Victoria	Family counselling to families experiencing adolescent/child perpetrated family violence	Eastern Melbourne
Teenage Aggression Responding Assertively program ¹⁸¹	Berry Street	A free support group for parents experiencing adolescent violence in the home.	Local government areas of Banyule, Nillumbik, Whittlesea and Darebin
MATTERS program ¹⁸²	Berry Street	A service for families experiencing conflict. Involves children from age 8 and their families meeting together to work through issues in a safe environment.	Local government areas of Banyule, Nillumbik, Whittlesea and Darebin

The Commission heard positive feedback about these programs: for example, Anglicare Victoria's Meridian Program which provides family counselling in Melbourne's metropolitan east, and the Breaking the Cycle program, which is a group work program for parents offered across Anglicare Victoria's various locations.¹⁸³ Anglicare Victoria reported that these programs have been effective and that the group work model works best when run in parallel with family counselling (or as an alternative to it).¹⁸⁴

By using a family-therapy-based counselling approach that is informed about the causes and dynamics of A/CFV [adolescent/child-perpetrated family violence], Meridian has worked effectively with many families over nearly two decades. This work has enabled a great many adolescents to cease their use of violence against their family members, and helped families repair relationships between parents and children, and children and siblings. In the history of Anglicare Victoria's provision of this counselling service, though, we quickly came to understand that A/CFV presents particular challenges for intervention that are in many ways best met via a group work model that can either be run in parallel with family counselling for individual families, or even as an alternative to it ...

Working directly with parents in a group format ... is responsive to the fact that attempting to engage adolescents directly is usually unsuccessful, and that it is not only possible but indeed advisable to work to change adolescents' behaviour through the proxy of their parents, who hold responsibility for raising them.¹⁸⁵

Anglicare Victoria told the Commission that bringing parents together also helps to address feelings of shame and isolation and provides them with support networks.¹⁸⁶

Some programs have run as pilots only. Others have developed additional components, again on a trial basis. For example, in 2010, Inner South Community Health Service trialled an SMS pilot for parents attending their 'Who's the Boss' program. Those parents who consented were sent weekly or bi-weekly text messages reiterating the key message from that program that week.¹⁸⁷ Parents reported that the messages supported them to 'make changes and address their adolescent's abuse and violence.'¹⁸⁸ Parents felt that the support throughout the week helped them to remain firm as a parent, and brought affirmation to them.¹⁸⁹

The trial noted some limitations, for example for those who have low English proficiency and for those in rural areas with unreliable phone reception. It also noted that SMS support may not be appropriate in intimate partner violence 'as the violent partner may have access to victims' phones, as distinct from adolescent violence in the home where parents tend have more control than their children over their own property'.¹⁹⁰

The way forward

Currently the family violence system struggles with how best to juggle the competing needs of protecting the best interests of young people and the safety of their family, when an adolescent is using violence in the home.

Adolescent violence has some similarities with adult family violence, including that the majority of victims are female, and the significant barriers victims face seeking help.¹⁹¹ It can be just as terrifying and harmful. However, adolescent violence in the home also has unique characteristics and requires different responses.

Young people who use violence often experience a range of complex problems, which require a consistent and coordinated response from all relevant services, including youth services, Integrated Family Services, family violence services, police, courts, schools and health services.¹⁹² Without this 'parents, adolescents and families involved will continue to fall through the cracks in a system that has yet to acknowledge their unique needs'.¹⁹³ Current responses can exacerbate the violence and leave victims vulnerable.

All parts of the family violence system need to recognise that young people can be both victims and users of violence in the home, sometimes at the same time. Young people should not be stigmatised; nor should their parents and family members, whose safety is paramount. The underlying causes of the violence should be addressed to prevent any further violence and involvement in the criminal justice system. To achieve this, a much more comprehensive approach compared to the current patchwork of supports is required. This also means that family violence services need to become more responsive to adolescent use of violence in the home, and adolescent and family services need to be cognisant that intimate partner violence may be co-occurring in the home where the young person is using violence.

The Commission considers that priority should be given, wherever possible, to therapeutic and diversionary responses to adolescent violence. It should not be assumed that a young person will use violence forever, however if they and their families are not supported, families are left at risk and young people may continue their violent behaviours into adulthood. Nor should the harm that such violence causes to family members, including parents and siblings, be minimised, or victims blamed for the young person's use of violence.

The Commission makes findings below on the way forward in addressing adolescents' use of violence in the home.

Principles that should be applied to adolescent violence against family members

Having regard to the submissions and evidence put to the Commission and to the scholarship in this area, the Commission finds that adolescent violence in the home must be better recognised as a form of family violence, and so better resourced across all systems—including police, courts, youth justice, human services and specialist family violence, integrated family mental health, and disability services.

The Commission believes that the following principles should guide Victoria's approach to addressing adolescent violence in the home.¹⁹⁴

- ▷ There is a need to raise awareness about adolescent violence in the community, along with easy to find information about the options and services available to address adolescent violence.
- ▷ Adolescent violence in the home should be recognised by the family violence system as different from adult-perpetrated family violence.
- ▷ Involvement with the criminal justice system for adolescents who use violence in the home should be a last resort—therapeutic responses should be adopted. Priority should be given to specialist therapeutic responses that work with the young person and their families as early as possible. The underlying causes of the violence should be addressed to prevent any further violence and involvement in the criminal justice system.
- ▷ Responses should be flexible and tailored to the particular circumstances of each family. For example, the intensity of any intervention should be appropriate to the level of risk posed to family members.
- ▷ There is a need for an immediate response to adolescent violence in the home so that young people understand the consequences of their actions and family members can be protected.
- ▷ Removal of the young person from the family home should be avoided as much as possible. Where there is no other option but for the young person to leave the home, appropriate supported accommodation should be provided to them.
- ▷ Improvements need to be made to our justice system so that greater use can be made of diversionary and restorative options when the family wants this.

The importance of public awareness

The Commission heard that there is limited awareness of adolescent family violence within the broader community and that the causes and dynamics of this form of violence are often misunderstood. Parents have reported feeling blamed for their child's behaviour, which is often attributed to 'poor parenting'.¹⁹⁵ The Commission is concerned that such responses risk re-victimising parents by minimising the violence, and fail to address the young person's needs. The Commission is also concerned that the seriousness of sibling violence is not recognised.

Increasing community awareness could help change widely-held perceptions that discount adolescent violence as a way that adolescents 'act out', as well as general social resistance to viewing adolescent violence as a complex issue rather than a result of poor parenting.¹⁹⁶ In turn, this could help reduce feelings of guilt and blame felt by parents of adolescents who are violent.¹⁹⁷

The Commission considers that there are many ways to raise community awareness about adolescents' use of violence in the home that could be explored. These include:

- ▷ adapting existing information and awareness initiatives in the media, social media and online environments
- ▷ existing websites, such as Parentline,¹⁹⁸ Domestic Violence Lookout, 1800 Respect, Victoria Legal Aid, Victoria Police, Department of Health and Human Services and others, could provide more explicit information that identifies adolescent family violence, including violence against siblings, and recognises the differences between this type of violence and intimate partner violence.

In keeping with the Commission's recommendations elsewhere regarding online information, it is important that any awareness-raising activities, including websites or information campaigns, publicise the options available to family members and adolescents who use violence and assist them to find help.¹⁹⁹

Adolescent violence against family members is different to family violence perpetrated by adults

Adolescent violence in the home deserves dedicated policy, research and practice effort.

The Centre for Innovative Justice recently reported that adolescent violence against family members requires increased attention, 'both as a standalone subject and as a consideration in family violence policy'.²⁰⁰ The Commission agrees. There is limited research on the experiences of the victims of adolescent family violence and even less about the experiences of the adolescents themselves.²⁰¹ This is an area where greater policy attention and focus on interventions is clearly required.

The Commission notes that one of the contributing factors to services' limited understanding of adolescent violence in the home is the lack of practice frameworks to guide family violence workers and other practitioners in this area. For example, the current Family Violence Risk Assessment and Risk Management Framework (also known as the Common Risk Assessment Framework or the CRAF) was not designed to assess risk in this context.²⁰² Although the CRAF contains a definition of adolescent violence in the home, none of the examples used in the CRAF relate specifically to this. Similarly, the Family Violence Referral Protocol between the Department of Human Services and Victoria Police (2012–14) does not specifically mention adolescents who use violence in the home.²⁰³

This is a significant gap when effective risk assessment and management lies at the heart of Victoria's family violence response. The Commission makes recommendations regarding improvements to the CRAF in Chapter 6. As part of the review of the CRAF, appropriate risk assessment guidance should be developed, with accompanying workforce development, to assess risk and safety planning in relation to adolescent violence in the home.

A therapeutic response is required

Adolescence is a key life stage and early interventions for adolescents using violence in the home are crucial to prevent further violence and the risk of intergenerational violence.²⁰⁴

Rather than a criminal justice approach, a therapeutic approach is required. Research shows that young people who are diverted from the justice system are less likely to reoffend than those who go through the court system. In addition, 'the later a young person enters the criminal justice system, the less likely they are to have continued involvement'.²⁰⁵

The Commission considers that adopting a therapeutic approach is likely to better align with victims' wishes and recognise the status of young people as children before the law. A therapeutic approach is more likely to improve identification of individual risk factors, such as previous exposure to family violence, trauma, mental health, disability and other factors that have been linked to this form of family violence.

The Commission is also of the strong view that a much more deliberate effort by government is needed to ensure that young people with disabilities and their families, are supported where these issues are present in family violence.²⁰⁶ The Department of Health and Human Services should ensure that families with children with disabilities, including those with mental health disabilities, have the services they need so that the earliest possible interventions are available in response to young peoples' violence in the home.²⁰⁷

Research shows that targeted counselling and family therapy services are the most effective means of addressing adolescent family violence.²⁰⁸ The Commission heard that while there is 'a core of effective support groups, family therapy and specific family counselling' that address the issue of adolescent violence in the home, these services are limited in number and are at capacity.²⁰⁹ As with other responses to family violence, services are particularly limited in rural, regional and remote areas.²¹⁰

This represents a significant service gap in Victoria.²¹¹ As a result, adolescents do not always receive necessary interventions to prevent further violence and victims do not always receive appropriate support, placing their safety and wellbeing at risk.²¹²

The Victorian Government has recognised that specialist programs are required. The government's draft Adolescent Family Violence Program Service Model (2014) states that parents need 'a specific service to respond to adolescent family violence which, given its complexity and the need for attention to family safety, is not adequately addressed by parenting programs or youth-focused support services'.²¹³ The three pilot sites for programs are welcome, although statewide coverage has not yet been achieved.

Victoria Police and the courts face the same dilemma with a 'concerning absence of youth specific behavioural change programs available to young people, particularly young men'.²¹⁴

Adolescents are not eligible for men's behaviour change programs in Victoria. Although this can cause frustration for services and families seeking to find a program for a young person, the Commission considers that such programs targeted at adults perpetrating intimate partner violence are inappropriate and ineffective for young people using violence in the home against parents and/or siblings.

Adolescent violence against family members occurs in a specific context and requires interventions that treat it differently from adult-perpetrated family violence. Given young people's need for care and protection, services responding to adolescent family violence require a specialist approach.²¹⁵ This is complex work. However, the current ad hoc approach cannot continue—there is a need to expand on current services in order to develop a comprehensive statewide approach.

Extending Adolescent Family Violence Programs across Victoria

The Commission notes that a preliminary evaluation of the current Adolescent Family Violence Program demonstrates promising outcomes. The Commission recommends that if the outcomes of the final evaluation of the program are successful, then further extension of the program should be supported. Programs need to be geographically accessible and age, culture and gender appropriate.

Extending availability of programs for adolescents who use violence in the home would be an important achievement for Victoria as it would provide relief for families, police and the courts which currently have few options. In considering expansion of the program however, there are a number of practice issues that need to be considered.

Although it was intended that the program would include a specialist response to Aboriginal families, it has not been possible to deliver or evaluate this component of the program.²¹⁶ Given the over-representation of Aboriginal people in experiences of family violence generally, and the feedback the Commission heard from communities that use of violence in the home by Aboriginal young people was a growing problem, this is a significant gap.²¹⁷ If the Adolescent Family Violence Program is to be expanded then it will be necessary to dedicate resources for culturally safe, whole of family interventions adapted to the Aboriginal context and delivered by, or at the very least in effective partnership with, Aboriginal controlled community organisations.

At this stage, the Australian Institute of Criminology evaluation does not include data from Victoria Police collected from the program participants and a comparison group in regards to police attendance at incidents of adolescent violence against family members. Information about the numbers and nature of subsequent family violence call outs to police will be important in assessing the program's effectiveness.

Further, while these family-focused interventions have been shown to help divert young people from the criminal justice system and restore family relationships, such interventions have only been developed relatively recently and workers are still gaining experience in this area.²¹⁸

The program guidelines state that the program should not be offered if it is identified that adult family violence is also present, until this issue has been 'adequately addressed'.²¹⁹ However, an interim evaluation has found that violence between adult family members was frequently detected among families referred to the programs. Further 'the presence of violence between adult family members would not always be apparent at time of referral to the program, making it a difficult criterion to apply consistently'.²²⁰

This is an important consideration for practice. On the one hand it is particularly important to engage with families experiencing violence between adult family members because the programs could mitigate the impact of witnessing violent behaviours in the home on young people.²²¹ On the other hand, it may work against what the program is trying to achieve with the young person.

The Commission is of the view that, rather than excluding families where there is adult intimate partner violence, the prevalence of adult family violence highlights the need for specialist family violence capacity to be more effectively integrated into the program.²²² One way to facilitate this is by ensuring referrals (including police L17 referrals) to this program go through the Support and Safety Hubs recommended in Chapter 13.

As of 1 July 2018, these hubs will be the entry point to specialist family violence services and Integrated Family Services in local areas. The intake team at the hub will undertake a risk and needs assessment for both the young person using violence and other family members, and take responsibility for linking them into the range of services they need, including Adolescent Family Violence Programs and mental health, legal, disability and youth services.

The Commission would expect that the hubs would have strong links with providers of Adolescent Violence in the Home programs to facilitate assessment and placement into programs as quickly as possible. As Support and Safety Hubs will also be the intake point into specialist family violence services, family services and adult perpetrator programs, a more integrated suite of help should also be provided to families, including where necessary to mental health, disability and drug and alcohol services.

For this to be viable, however, Adolescent Family Violence Programs need to be available. We recommend that these programs be rolled out across the state within two years so that they are in place before the commencement of the hubs by 1 July 2018.

Recommendation 123

The Victorian Government, subject to successful evaluation of the Adolescent Family Violence Program, extend the program across Victoria [within two years].

An immediate response when adolescents use violence against family members

The Commission heard that, for most families, calling the police when a young person has used violence is an absolute last resort due to fear of the long-term consequences for the child. Parents and adolescents also report not understanding court processes or the outcomes for the adolescent if an intervention order is made.²²³

Police responses can have a significant influence on whether the violence continues. Attendance by police can help the young person to understand the seriousness of the violence, however if 'no action is taken, the adolescent may interpret police inaction as having legitimised their use of violence'.²²⁴

Victoria Police told us that 'there are few options' for police when responding to adolescent violence in the home.²²⁵ The Victoria Police Code of Practice for the Investigation of Family Violence notes this and includes very limited guidance for police who attend family incidents involving adolescent violence.²²⁶

As described above, family violence safety notices and police holding powers may only be applied to adults.²²⁷ This means that unless both the parents and the young person consent, the police cannot remove an adolescent from the family home.²²⁸ Victoria Police told us that in light of this, often the only real protective mechanism in response to adolescent family violence is for police to apply for an intervention order.²²⁹

Even where the young person and parents give permission for the young person to be removed from the home, there are very limited accommodation options for the young person, unless a friend or family agrees to have them.²³⁰ In some cases Child Protection might be involved and arrange accommodation through another family member or other form of out-of-home care.²³¹

If a young person is cast into homelessness—either couch surfing, living in a rooming house or staying with relatives—it is unreasonable to expect that they will get their lives back on track. The Commission heard that lack of suitable accommodation options for young people pervades our homelessness system, both for adolescents who use violence and the many more young victims of family violence.²³²

In addition, it should be noted that removing the young person from the family home can have adverse impacts on the young person's siblings, who may be traumatised by the separation from their brother or sister, particularly if their sibling has a disability and ends up in a poor-quality disability setting.²³³

Providing accommodation to these young people is vital to ensuring victim safety. However this must be provided in a context where the young person's legal status as a child is acknowledged and work can begin on providing therapeutic and practical support necessary to work towards the young person being able to return home safely. This is often what families want, but a circuit breaker is needed.

The Commission believes that investment is needed in supported accommodation options for these young people that can run alongside adolescent family violence programs and provide an immediate option for police and families. We do not consider that out-of-home care/residential care is an appropriate option for many of these children as this brings its own risks in terms of the wellbeing of children.²³⁴ Nor is the youth refuge system likely to be an option, as refuges are over-subscribed and the mix of children and young people who themselves are escaping violence, with a young person who is a user of violence, is inappropriate. Instead, creativity needs to be shown by government in developing alternative supported housing options. This might include rapid rehousing schemes for older adolescents into transitional housing stock managed by housing associations with support provided by a youth specialist, lead-tenant schemes or other longer term accommodation options, again with support from a youth specialist.

Recommendation 124

The Victorian Government develop additional crisis and longer term supported accommodation options for adolescents who use violence in the home. This should be combined with therapeutic support provided to end the young person's use of violence in the family [within two years].

Should Victoria Police be able to issue family violence safety notices?

An option for addressing adolescent family violence is to extend police powers to issue FVSNs to those under 18 years of age. The Commission is of the view that unless there are sufficient and accessible services to support the young person, then such an option is likely to be counter-productive, especially if we consider that children engaging in violent behaviour may sometimes be as young as 10 or 11 years old.

Giving these additional powers to police may intensify risk to the parent or other family members who may be even more reluctant to report the behaviour if they know the young person is likely to be removed from the home. At a bare minimum it would be necessary to have appropriate supported crisis accommodation for these young people. Victoria Police notes that even without expanded powers, alternative accommodation options would give police greater opportunity to intervene in incidents.²³⁵

On balance, the Commission considers that FVSNs and holding powers should not be extended to young people under 18 years of age. A preferred option is that Victoria Police retain their existing powers and investment is made in therapeutic supports to assist the young person to address their behaviour and keep the family safe.

Victoria Legal Aid suggests that youth police liaison officers could be trained in the specialist response necessary for supporting a young person and their family during this time. Even where such liaison officers do not attend the incident themselves:

... they could complete a formal interview with the young person and the family to assess the needs of the young person and the family, and to assess risk and the family dynamic and what, if any, referrals, supports and interventions may be appropriate.²³⁶

Such a role could potentially be attached to a family violence team, or at least linked with them, noting that family violence teams are increasingly focused on higher risk cases. Taskforce Alexis is one model where dedicated youth resource officers provide support to young people and their families following a police attendance at an incident where an adolescent has used violence in the home. There may be other models that can also achieve a similar result.

The Commission recognises that such a role can only achieve good outcomes if appropriate support services are available. This is not necessarily the case currently, due to demand pressures across various human services. Victoria Police suggests that a statewide network of youth-specific support options to which police could refer adolescents and their families would assist in addressing the underlying factors contributing to adolescent violence in the home.²³⁷ This is a sensible suggestion. Our view is that this could be achieved through the expansion of the Adolescent Family Violence Program.

To support this, we consider that the Victoria Police Code of Practice should be amended to include guidelines about police initiated intervention order applications against children and referral pathways for families experiencing adolescent violence in the home. The Code should prioritise cautions and diversion.

Recommendation 125

Victoria Police determine its baseline model for family violence teams and consider appointing dedicated youth resource officers to provide support to young people and their families following police attendance at an incident in which an adolescent has used violence in the home [within 12 months].

Improving justice system responses

Using court processes as an opportunity

As noted in Chapter 16 Children's Court applications for FVIOs are heard in children's court specific venues, such as the Melbourne Children's Court, and across magistrates' court venues (where the magistrate exercises his or her Children's Court jurisdiction in those venues). Depending on the court, there are separate lists for Children's Court FVIO hearings for children at each magistrates' court. This normally occurs on either a Children's Court listing day, or as part of the FVIO list. At smaller courts, Children's Court FVIOs may be heard in the general FVIO list or mention list. The Melbourne Children's Court (which is solely a children's court) has a listing day for police initiated applications.

Currently there are no court funded family violence specific services in the Children's Court, however applicant and respondent workers may work with young people as well as adults in those specialist courts where these positions are currently located and where magistrates are exercising the jurisdiction of the Children's Court in those venues. These services are currently available at Ballarat, Heidelberg, Frankston, Moorabbin, Sunshine, Werribee and Melbourne Magistrates' Courts. However, there is no similar role at the Melbourne Children's Court, which is a distinct venue.

Children's Court data shows that, of 1682 finalised original FVIO applications across Victoria in 2014–15, 307 (18 per cent) were finalised at the Melbourne Children's Court. In 2014–15, in the 307 original FVIO applications finalised at the Melbourne Children's Court, 199 respondents were aged 17 and under and a further 12 respondents were aged 18 or 19.²³⁸ In 2013–14 there were 422 Affected Family Members in FVIO applications heard in the Melbourne Children's Court.²³⁹

The Children's Court Clinic is available at the Melbourne Children's Court and is an example of the court's involvement as a trigger for a pathway into support. The Commission endorses this approach. However the clinic only applies in the criminal and family divisions of the court. It is not available in FVIO proceedings. Further, in criminal matters, referral to the clinic is reliant on the magistrate making a request for a Children's Court Clinic assessment, which may not occur if mental health and drug use issues are not in the mind of the magistrate or are not immediately present in the family violence incident. For these two reasons it is likely that the Children's Court Clinic is utilised in a relatively small number of cases where a young person is using violence in the home.

The Commission is of the firm view that where adolescents using violence against appear before the Children's Court in either the civil or criminal jurisdiction, the young person and their family must be provided with appropriate information about legal, community and case management options, counselling for both the young person and their family members, and referrals to other services.²⁴⁰ Currently however, if a young person is not already linked in with these sources of assistance, there is no dedicated staff member with family violence expertise at the Melbourne Children's Court to help facilitate this. Court Network may provide valuable support; however, these are voluntary positions with two people providing assistance²⁴¹ in what is a very busy court, dealing with a wide range of matters.

This is a significant gap that could be filled at relatively low cost. For example, the Children's Court could be funded to provide applicant and respondent workers at the Melbourne Children's Court, to assist applicants and respondents to manage the court process, understand the conditions of an order, and access necessary supports including through Support and Safety Hubs recommended in Chapter 13 and referral to Adolescent Family Violence Programs recommended above. These two staff would need to possess capability in working with young people and with those affected by family violence and would form part of a wider network of applicant and respondent workers in the specialist family violence magistrates' courts, effectively closing the loop on a current system gap and working in partnership with Court Network to provide comprehensive services at our state's busiest children's court.

This approach would be consistent with many families' wishes to get young people the help they need, as well as giving magistrates and police confidence that action is being taken to address the violent behaviour. Again, this is dependent upon scaling up adolescent-specific program responses and family violence capability in key areas, including drug and alcohol, mental health, family and youth services.

A further action that may assist those young people who use violence in the home where a mental health or substance misuse issue is also present, would be to expand the scope of the Children's Court Clinic to include FVIO respondents. This would require modelling to determine the resource implications of this change. It will also be important to consider any unintended consequences of such an extension of jurisdiction. The Commission encourages the Children's Court to undertake such a review.

Recommendation 126

The Melbourne Children's Court establish family violence applicant and respondent worker positions to assist young people and families in situations where adolescents are using violence in the home [within 12 months].

Greater use of diversion

Victoria is the only Australian state that does not have a legislated court-based youth diversion scheme, despite significant evidence about the benefits of diversion and its role in preventing criminalisation of children and young people.²⁴²

As noted earlier, without a legislative scheme, diversion currently occurs via a police referral, with a magistrate's consent to an informal diversion program, such as the ROPES program. The Commission is concerned that this has led to inconsistent practice across the state, geographic inequity and heavy reliance on police discretion.

The Commission welcomes the current 12-month Youth Diversion Pilot Program. This program should provide important insights into the operation of a comprehensive diversion scheme for young people.

The program will be independently evaluated in May 2016.²⁴³ The Victorian Government has not yet committed to expanding the program across the state.²⁴⁴ If the pilot is favourably evaluated then the Commission recommends that the scheme should be continued and implemented in a broader range of locations. Although the scheme is not family-violence specific, it may have a positive impact on addressing the use of violence in the home by young people and prevent future violent behaviour. The Commission also recommends that the program be established by legislation to ensure consistency with other Australian jurisdictions and to afford youth diversion the same status of adult diversion.

The Commission considers that before introducing any legislative diversion scheme for young people in Victoria, the findings of the recent review of the adult Criminal Justice Diversion Program by Magistrate Doherty should be considered.²⁴⁵

A feature of the adult scheme is that magistrates cannot grant diversion unless the prosecution consents.²⁴⁶ This effectively makes Victoria Police the gatekeepers of the scheme and affords them considerable discretion when deciding whether or not to recommend diversion. This raises a concern if some police choose not to utilise the scheme on the basis of their subjective opinions about the accused or the value of diversion.²⁴⁷ In considering this issue, Magistrate Doherty recommended that if appropriate, the Chief Magistrate should commence discussions with appropriate stakeholders with a view to amending the legislation to enable judicial officers to be the ultimate decision-maker about whether diversion will be allowed.²⁴⁸

It should also be noted that while criminal diversion may be appropriate and effective for adolescents using violence in the home, diversion for adult perpetrators of family violence has been criticised on the basis that it undermines the perpetrator's personal responsibility and the seriousness of family violence.²⁴⁹ Magistrate Doherty's review considered this issue and recommended that the adult scheme guidelines be amended to exclude family violence and personal safety order breaches 'generally, but not exclusively', from diversion.²⁵⁰ The same criticisms may not be applicable to young people using violence in the home, because they are children, and because of the unique circumstances that surround this type of family violence.

Recommendation 127

The Victorian Government, subject to successful evaluation of the Youth Diversion Program Pilot, establish a statutory youth diversion scheme [within two years].

Linking restorative justice with specialist adolescent violence programs

Adolescent violence against family members is an area that may also be suited to restorative justice approaches, as family members are more likely to be seeking a reparative response.²⁵¹

To date, Youth Justice Group Conferences have not had a specific focus on family violence. Linking Youth Justice Group Conferences with Adolescent Family Violence Programs could potentially provide a good model for the future for those young people who have been found guilty of an offence and where the family felt that this was a safe option.

As described earlier in this chapter, Youth Justice Group Conferencing is a process where prior to a magistrate imposing a sentence, a young person participates in a group conference, which for the purposes of this Commission would include the family as victims. The group discusses how the young person might repair and prevent further harm and develop an outcomes plan, which the magistrate would take into account when sentencing.

The Commission recognises that a Youth Justice Group Conference alone may not be sufficient to identify and or address underlying issues. Previous studies looking at youth justice conferencing and adolescent violence in the home have shown that cases require more than the standard youth justice conferencing model. They also require access to victim professional counselling and support, and therapeutic work with the young person.²⁵²

There are also specific risks of re-victimisation if youth group conferencing is not conducted carefully. However, a well prepared and facilitated group conference 'can challenge pro-violence and victim-blaming behaviors and model respectful behaviors. This would be reliant upon involving family support services *before, during and after* a group conference'.²⁵³

The Commission understands that preliminary work is under way on developing a pilot program to link Youth Justice Group Conferencing with some of the Adolescent Family Violence Programs currently being trialled in Victoria in recognition that effective intervention requires mutually reinforcing justice and therapeutic elements. This is a very positive development.

The Commission understands that such a program would involve more intense work when the Youth Justice Group Conference is convened, by adding a preliminary step of the young person engaging with an Adolescent Family Violence Program prior to the conference and subsequent attendance of the service provider at the conference. The program would then provide ongoing work with the young person and family as part of a typical outcome plan. Such a pilot could include elements of case management, individual and family therapeutic intervention, and a group program.

The Commission recognises that the development of such a pilot is in very preliminary stages and that important factors need to be resolved, including referral processes and protocols, and consent provisions to ensure that the participants (young people and families) understand the process and implications of participating or not. Training and support for both Youth Justice Group Conference convenors and practitioners in the Adolescent Family Violence Program would also be required. Given demand for programs, consideration of how to prioritise these cases in relation to other referrals to programs is required. These should not be insurmountable challenges however, and the Commission considers that efforts to combine therapeutic and justice processes through such a pilot would be a sound investment for the Victorian Government.

Recommendation 128

The Victorian Government trial and evaluate a model of linking Youth Justice Group Conferencing with an Adolescent Family Violence Program to provide an individual and family therapeutic intervention for young people who are using violence in the home and are at risk of entering the youth justice system [within two years].

Endnotes

- 1 Mary McKenna and Rosalie O'Connor, 'Walking on Eggshells: Child and Adolescent Violence in the Family' (Flinders University and Southern Junction Community Services, 2012) 2.
- 2 Crime Statistics Agency, 'An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14' (January 2016), 32, provided to the Commission by the Crime Statistics Agency on 8 January 2016.
- 3 Ibid 110.
- 4 Sarah Broadhead and Rita Francis, 'The Making of Good Men and Women: Responding to Youth Violence in the Home and its Harmful Impacts on Families and Communities in Western Australia—Summary Report' (Women's Health and Family Services, 2015) 8.
- 5 McKenna and O'Connor, above n 1.
- 6 Kildonan UnitingCare, Submission 770, 24.
- 7 Statement of Brandenburg, 21 July 2015, 13 [60], Attachment 2, 8.
- 8 For example, police incident data counts incidents rather than individuals, which means that a particular individual might be counted multiple times as a victim or perpetrator. Victoria Police data includes adolescent violence against parents as well as sibling to sibling violence. This data also captures all reported violence by children towards parents, including where the 'children' are adults. On the other hand, Children's Court and Magistrates' Court data counts respondents on original applications to avoid double-counting individuals.
- 9 Crime Statistics Agency, above n 2, 20.
- 10 Ibid Victoria Police data source, Tab 6, Table 6: Other parties by sex and age, July 2009 to June 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015.
- 11 Ibid.
- 12 Ibid 58, Children's Court data source, Tab 6, Table 6: Respondents on original FVIO applications by gender and age group, July 2009 to June 2014.
- 13 Ibid Victoria Police data source, Tab 14, Table 14: Parents as the affected family member where the other party is 17 years or younger, by gender of OTH and gender and age of AFM, July 2009 to June 2014 combined.
- 14 Ibid.
- 15 Ibid.
- 16 Ibid 27.
- 17 From 2009–10 to 2013–14 the Children's Court heard matters involving 3343 parents and step parents. Males were respondents in between 70 to 75 per cent of applications across a five year period: ibid 58, Children's Court data source, Tab 13, Table 13: Number of affected family members who were a Parent/Step-Parent to a respondent aged 17 years and younger, by gender, July 2009 to June 2014.
- 18 In the five year period to 30 June 2014, police recorded 4351 family violence incidents by young people aged 10 to 19 years (inclusive) against family members aged 17 years and younger. This analysis excludes incidents where the respondent's age is unknown. In 2009–10, recorded incidents of this type of family violence numbered 543 (19.8 per cent of total reported incidents that year involving affected family members aged 17 and younger). This increased to 1094 by 2013–14 (18.9 per cent of total reported incidents for that year involving affected family members aged 17 and younger): ibid Victoria Police data source, Tab 8, Table 8: Sex and age of other parties where affected family member is aged 17 years and younger, July 2009 to June 2014.
- 19 This analysis excludes incidents where the respondent's age or gender is unknown: ibid.
- 20 Ibid Children's Court data source, Tab 10, Table 10: Primary affected family members on original applications by relationship to respondent, July 2009 to June 2014.
- 21 For example, in 2013–14, the Children's Court finalised 475 original Family Violence Intervention Order (FVIO) applications against adults, compared with 1253 applications against child respondents (under 18 years of age): ibid Children's Court data source, Tab 6, Table 6: Respondents on original FVIO applications by gender and age group, July 2009 to June 2014.
- 22 Those aged 12 years and under accounted for 17 applications in 2013–14: ibid Tab 12, Table 12: Gender and age of respondent where the affected family member is 17 years and younger, July 2009 to June 2014.
- 23 Centre for Innovative Justice, 'Opportunities for Early Intervention: Bringing Perpetrators of Family Violence into View' (RMIT University, March 2015) 30. See also Kildonan UnitingCare, Submission 770, 23; Kathleen Daly and Dannielle Wade, 'Gender and Adolescent-to-Parent Violence: A Systematic Analysis of Typical and Atypical Cases' in Amanda Holt (ed), *Working with Adolescent Violence and Abuse Towards Parents: Approaches and Contexts for Intervention* (Routledge, 2016) 1.
- 24 Jo Howard, 'Adolescent Violence in the Home: The Missing Link in Family Violence Prevention and Response' (Stakeholder Paper 11, Australian Domestic and Family Violence Clearinghouse, September 2011) 3.
- 25 Jo Howard and Lisa Abbott, 'The Last Resort: Pathways to Justice—Adolescent Violence in the Home' (Peninsula Health, November 2013) 10.
- 26 Howard, above n 24, 4.
- 27 Department of Justice and Regulation, 'Improving Victoria's Response to Adolescent Violence in the Home: Discussion Paper—July 2015' (1 June 2015), 15, provided to the Commission by the Department of Justice and Regulation, 21 October 2015. Commission for Children and Young People, Submission 790, 13; Victorian Council of Social Service, Submission 467, 59.
- 28 Howard and Abbott, above n 25, 11.
- 29 Daly and Wade, above n 23, 4.
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- 31 Anglicare Victoria, Submission 665, 4–5; Victoria Legal Aid, Submission 919, 45; Youth Affairs Council of Victoria Inc, Submission 938, 11; Commission for Children and Young People, Submission 790, 13.
- 32 Department of Justice and Regulation, above n 27, 15 (citations omitted); Jo Howard et al, 'Use of SMS to Support Parents who Experience Violence from their Adolescents' (2010) 16(2) *Australian Journal of Public Health* 187, 191; Youth Affairs Council of Victoria Inc, Submission 938, 11.
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- 36 Abby Horsburgh, 'Adolescent Violence in the Home: A Scoping Study and Mapping of Victorian Services' (RMIT University, Good Shepherd Youth & Family Service, Social Policy and Research Unit, 2012) 4.
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- 39 Youth Affairs Council of Victoria Inc, Submission 938, 11.
- 40 Ibid.
- 41 Women's Mental Health Network Victoria Inc, Submission 417, 12.
- 42 Daly and Wade, above n 23, 4.
- 43 Youth Affairs Council of Victoria Inc, Submission 938, 11.

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- 48 Centre for Forensic Behavioural Science—Swinburne University; Victorian Institute of Forensic Mental Health (Forensicare), Submission 649, 13.
- 49 Anonymous, Submission 693, 1.
- 50 Statement of Feinberg, 9 July 2015, 2 [9].
- 51 Centre for Forensic Behavioural Science—Swinburne University; Victorian Institute of Forensic Mental Health (Forensicare), Submission 649, 6.
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- 53 Linette Etheredge, Submission 220, 6; Russell Pratt, Robyn Miller and Cameron Boyd, 'Adolescents with Sexually Abusive Behaviours and their Families: Best Interests Case Practice Model—Specialist Practice Resource' (Department of Human Services, June 2012) 13.
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- 55 Ibid 14.
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- 66 Victoria Legal Aid, Submission 919, 37.
- 67 Statement of Brandenburg, 21 July 2015, 13 [60], Attachment 2, 8.
- 68 Young People's Legal Rights Centre—Youthlaw, Submission 539, 2.
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- 74 Ibid 6.
- 75 Youth Affairs Council of Victoria Inc, Submission 938, 11–12.
- 76 Statement of McGorry, 20 July 2015, 3 [14].
- 77 Ibid 9 [40]–[43].
- 78 Ibid 1114 [26]–1115 [6].
- 79 Jennifer Bowles, 'What can be done? Residential Therapeutic Treatment Options for Young People Suffering Substance Abuse/Mental Illness' (The Winston Churchill Memorial Trust of Australia, February 2015) 6.
- 80 The report recommends that the Children's Court be able to make a new type of order following a relevant assessment: a Youth Therapeutic Order which would place the young person in a secure therapeutic community facility to detoxify and engage in treatment. There would be judicial oversight of the mandated treatment, and the young person would have access to education and training. The order could only be made as part of bail provisions, rather than as a substantive sentence. Such a regime would require legislative amendments: Bowles, above n 79, 6, 40–3, 52–3.
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- 82 Grampians Integrated Family Violence Committee, Submission 399, 10; Victorian Council of Social Service, Submission 467, 5; Grampians Integrated Family Violence Committee, Submission 399, 10.
- 83 Association of Child and Family Development, Submission 221, 2; Centre for Innovative Justice, above n 23, 30. See also MacKillop Family Services, Submission 895, 3; Horsburgh, above n 36, 4.
- 84 Victoria Police, Submission 923, 35.
- 85 Kildonan UnitingCare, Submission 770, 23.
- 86 Anglicare Victoria, Submission 665, 5. See also Howard and Abbott, above n 25, 33.
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- 94 Victoria Legal Aid, Submission 919, 36.
- 95 Horsburgh, above n 36, 34, cited in Caraniche, Submission 456, 4. See also Centre for Multicultural Youth, Submission 452, 3; Centre for Forensic Behavioural Science—Swinburne University; Victorian Institute of Forensic Mental Health (Forensicare), Submission 649, 5.
- 96 Howard, above n 24, 2.
- 97 Horsburgh, above n 36, 5. See also Victorian Council of Social Service, Submission 467, 59.
- 98 Howard and Abbott, above n 25, 59–60.
- 99 Kildonan UnitingCare, Submission 770, 24.
- 100 Howard and Abbott, above n 25, 5.
- 101 Youth Affairs Council of Victoria Inc, Submission 938, 11–12.
- 102 Ibid 11.
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107 Victoria Police, 'Code of Practice for the Investigation of Family Violence—Edition 3' (2014) 10.

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109 *Family Violence Protection Act 2008* (Vic) s 24(a).

110 Ibid s 13(b).

111 Victoria Legal Aid, Submission 919, 40.

112 Law Institute of Victoria, Submission 832, 19.

113 Centre for Multicultural Youth, Submission 452, 3.

114 In that study of the 15 Family Violence Intervention Orders taken out, only two excluded the young person from the home. Two adolescents subsequently breached the order resulting in one then being excluded from the home. The other outcome is unclear: Howard and Abbott, above n 25, 6.

115 One third of parents in the study 'noted the positive impact of their adolescent engaging with a support service as contributing to their reduction in abusive behaviour': Howard and Abbott, above n 25, 55.

116 Anonymous, Submission 25, 1.

117 Statement of Alexander, 5 August 2015, 2 [7].

118 Transcript of Alexander, 5 August 2015, 2002 [30]–2003 [6].

119 Ibid 2003 [6]–[10].

120 Victoria Legal Aid, Submission 919, 41.

121 'We consider that there a range of actions short of a final family violence intervention order which may be more appropriate in these circumstances and may be more consistent with the interests of the parent (or sibling) who want the violence to stop but want the relationship with the young respondent to continue': Victoria Legal Aid, Submission 919, 40–1.

122 Victoria Legal Aid, Submission 919, 41.

123 Statement of McWhirter, 27 July 2015, 37 [159].

124 Ibid 37 [160].

125 Ibid.

126 Ibid.

127 Victoria Police, Submission 923, 15.

128 *Family Violence Protection Act 2008* (Vic) ss 82–83.

129 Ibid s 84.

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163 Ibid.

164 Department of Health and Human Services, above n 159, 8. See also Centre for Innovative Justice, above n 23, 79.

165 Centre for Innovative Justice, above n 23, 79.

166 Department of Health and Human Services, above n 159, 9–10.

167 Kildonan UnitingCare, Submission 770, 24.

168 Department of Health and Human Services, above n 159, 9.

169 Ibid 43–44.

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171 Ibid.

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173 Department of Health and Human Services, above n 159, 72–4.

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219 Department of Health and Human Services, above n 159, 34.

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223 Howard and Abbott, above n 25, 6.

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- 227 *Family Violence Protection Act 2008* (Vic) ss 13(b), 24(a).
- 228 Kildonan UnitingCare, Submission 770, 24.
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- 230 Kildonan UnitingCare, Submission 770, 24.
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- 250 250 Magistrates’ Court of Victoria, above n 245.
- 251 251 Centre for Innovative Justice, above n 23, 79.
- 252 252 Howard and Abbott, above n 25, 15, citing Daly and Nancarrow, above n 59, 35–6.
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24 Family violence and the family law system

Introduction

The immediate response to family violence is predominantly a matter for state courts, which hear applications for family violence intervention orders, criminal matters and matters involving Child Protection. However, the family law system, which is a federal responsibility, oversees disputes arising from the breakdown of relationships. This includes parenting and property disputes. Family violence is a common feature of family law disputes, particularly those that end up in court.

The relationship between the family law courts and the state courts is therefore an important one for anyone navigating the court system as a result of the ending of a marital or de facto relationship that involves family violence.

The first section of this chapter provides an overview of the family law system as it relates to family violence and the interaction between the federal family law courts and the state courts. It also discusses the jurisdiction that some state courts have under the *Family Law Act 1975* (Cth).

The next section of this chapter canvasses some of the key issues raised in evidence before this Commission about the relationship between the federal family law system and the state courts' response to family violence. The most consistent issue raised with the Commission was that navigating the state and federal systems is often confusing for court users, and that this can jeopardise the safety of people affected by family violence.

Reforms to overcome the problems caused by having to navigate different systems and difficulties in navigation have already been examined in several inquiries. The results of these inquiries include, but are not limited to, the Australian and New South Wales Law Reform Commissions' 2010 report,¹ the 2015 interim report of the Family Law Council,² the 2015 evaluation of the 2012 amendments to the Family Law Act³ and most recently the Coronial Inquest into the death of Luke Batty.⁴ Recommendations in this area also date back to recommendations made in 2006 by the Victorian Law Reform Commission in its review of family violence laws.⁵

This Commission does not seek to revisit the work of previous bodies. The focus of our inquiry is on state laws and practices. We do, however, refer to some recommendations made in earlier inquiries and make recommendations to build upon or supplement their proposals for reform.

The Commission recommends a number of changes to the practice of the state courts to clarify the interaction between the state courts and the family law system, and to assist parties and their representatives to understand that interaction. We also make recommendations that the Victorian Government pursue with the Commonwealth Government the creation of a single database for family violence, child protection and family law matters for all state and commonwealth courts and agencies; a nationally consistent approach to family violence risk assessment; and formal information-sharing arrangements between the state courts and the federal family courts to coordinate the responses to family violence at a state and federal level.

Context and current practice

This section provides an overview of the family law system as it relates to family violence. It then outlines the circumstances in which state courts exercise jurisdiction under the Family Law Act.

The interaction between the federal family law system and the state courts in relation to family violence is a complex one. The division of responsibility between the Victorian courts and the federal family courts is a result of the division of legislative power between the states and the Commonwealth in the Australian Constitution.⁶ The state courts are responsible for making family violence intervention orders (FVIOs)⁷ and hearing and determining applications relating to the protection of children as part of Victoria's child protection system.⁸

As this first section outlines, family law disputes about parenting and property division are generally decided in the federal family system, but the state courts also have limited jurisdiction to determine property and parenting disputes under the Family Law Act. The challenges raised by this are canvassed in the Challenges and opportunities section that follows.

The federal family law system and family violence

Family violence is 'core business' in the federal family courts⁹ and research suggests that 'people affected by family violence and/or child abuse are the core client base of the formal parts of the federal family law system: family dispute resolution services, lawyers and courts'.¹⁰

The Commonwealth Family Law Act governs divorce, disputes regarding parental responsibility for children, and financial matters (such as the division of property) arising out of the breakdown of a relationship.

In Victoria, powers under the Family Law Act are exercised by:

- ▷ the Federal Circuit Court of Australia (FCC)
- ▷ the Family Court of Australia (Family Court)
- ▷ the Magistrates' Court of Victoria (Magistrates' Court).

The Children's Court of Victoria may also be able to exercise family law jurisdiction in certain circumstances: this is discussed further below.

The Family Court has been operating since 1976, and is a specialist court.¹¹ The FCC, which was formerly known as the Federal Magistrates' Court, opened in 2000.¹²

The Family Court and FCC, which are referred to collectively in this chapter as 'federal family courts', have registries in central Melbourne and Dandenong. All applications to the Family Court and the FCC are filed in the same location, and the courts have a common enquiry centre to provide information about both courts.¹³ In Victoria, the FCC's family law list operates in Melbourne, Dandenong, Ballarat, Bendigo, Castlemaine, Cobram, Geelong, Morwell, Hamilton, Mildura, Shepparton and Warrnambool.¹⁴

Since the creation of the FCC, the balance of family law work has shifted from the Family Court to the FCC.¹⁵ The FCC now hears approximately 85 per cent of family law disputes that come before the family law courts.¹⁶

The division of work between the Family Court and the FCC is governed by a protocol between the two courts.¹⁷ The protocol provides that the FCC ordinarily deals with all matters falling within its jurisdiction unless one of a number of specified criteria applies. These criteria include a serious allegation of sexual or physical abuse of a child, or allegations of serious controlling family violence. The Family Court hears cases where these allegations are made.¹⁸

Family law services

There are a number of ways for people to make parenting and financial arrangements following a separation that do not require involvement of the federal family courts.

If required, Commonwealth-funded services are available to assist with resolving disputes about care and contact arrangements for children. These include:

- ▷ family relationship centres which provide services such as family dispute resolution (FDR), information and referrals, counselling and parenting education
- ▷ FDR/mediation to resolve disputes, which is compulsory in parenting disputes before applying to a court to determine the dispute, with an exemption for cases of family violence¹⁹
- ▷ children's contact centres, which enable children of separated parents to have safe contact with the parent they do not live with where family violence or child abuse is an issue
- ▷ the Parenting Orders Program, which helps high conflict separated families to work out parenting arrangements
- ▷ family law counselling to help families discuss any issues to do with children and family during a relationship, separation or divorce
- ▷ Supporting Children After Separation programs, which provide counselling and support to children, young people, and their families.²⁰

There are also a range of pre-court processes used by parties to reach resolution of property disputes following separation. These include lawyer-to-lawyer negotiation, collaborative law processes, mediation and arbitration.²¹

FDR (usually mediation) is an important part of the family law process. It is compulsory for couples who have a parenting dispute to participate in FDR before applying to a court to determine the dispute,²² but an exemption applies where the court is satisfied there has been, or is a risk of abuse of a child or family violence.²³ A person who wants to rely on this exemption must also indicate to the court, in writing, that they have received information from a family counsellor or family dispute resolution practitioner about available services and options (including alternatives to court action) in circumstances of abuse or violence.²⁴

Where a person does not seek to rely on the family violence exemption from the outset of proceedings and embarks on compulsory FDR, a family dispute resolution practitioner must be satisfied that an assessment of the parties has been conducted and that dispute resolution is appropriate.²⁵ The practitioner must consider whether the ability of any party to negotiate freely in the dispute is affected by one of the following:

- ▷ a history of family violence (if any) among the parties
- ▷ the likely safety of the parties
- ▷ the equality of bargaining power among the parties
- ▷ the risk that a child may suffer abuse
- ▷ the emotional, psychological and physical health of the parties
- ▷ any other relevant matter.²⁶

If the family dispute resolution practitioner is not satisfied that it would be appropriate to commence or continue dispute resolution, the practitioner must not provide family dispute resolution²⁷ and may issue a certificate to that effect.²⁸

Family law reforms relevant to family violence

Major changes to the Family Law Act²⁹ and the practice of family courts came into effect in June 2012. The aim of these 2012 reforms was to improve the response of the family law system to family violence and, as a consequence, the ability of federal family law to protect children from harm.³⁰

The reforms were introduced in response to research that demonstrated the need for changes to the handling of family violence and child safety matters.³¹ Under previous reforms (in 2006), the Family Law Act had placed equal importance on promoting a meaningful relationship between a child and both parents and protecting the child from any harm.³² The 2012 amendments:³³

- ▷ require the court to give greater weight to 'the need to protect the child from physical and psychological harm from being subjected or exposed to abuse, neglect or family violence', than to the benefit to the child of having a meaningful relationship with both parents³⁴
- ▷ expand the definition of 'family violence' to include coercion and control and capture the full range of behaviour that constitutes family violence³⁵
- ▷ introduce obligations for advisers (including lawyers and other support service professionals)³⁶ to encourage a parent to act on the basis that the best interests of the child requires the child's protection from abuse, neglect or violence³⁷
- ▷ require a party to proceedings to advise the court of family violence orders and care arrangements made under child welfare laws³⁸
- ▷ impose an obligation on courts to actively inquire about the risk of family violence or abuse;³⁹ to ensure that orders are consistent with any family violence order and do not expose any person to an unacceptable risk of violence;⁴⁰ and to deal promptly with matters involving family violence allegations⁴¹
- ▷ remove the 'friendly parent' provision, which required courts to take into account the 'willingness and ability of each of a child's parents to facilitate and encourage a close and continuing relationship between the child and the other parent'.⁴² This provision had been criticised for failing to recognise that action may need to be taken by one parent to protect themselves and their child from family violence, for example, by avoiding contact with a violent ex-partner⁴³
- ▷ require a court, when assessing a child's best interests, to consider any state or territory family violence order that applies to the child or a member of the child's family.⁴⁴ Previously, a court was only required to consider these orders if they were final or contested orders.

In 2015, the Australian Institute of Family Studies evaluated the effect of these amendments by surveying judicial, legal and non-legal professionals across the family law system, asking parents about their experiences of the family law system, and extracting information from court files and published judgments.⁴⁵ The evaluation found that the reforms led to more professionals (including family dispute resolution practitioners/mediators, lawyers and court staff) asking parents about family violence and safety concerns. However, in 2014 close to three in 10 parents reported never being asked about these issues. The evaluation also found that the reforms resulted in a small increase in the proportion of parents disclosing family violence and/or safety concerns to family dispute resolution services, lawyers and courts, with a particular increase in fathers disclosing family violence and safety concerns to lawyers. Professionals also reported increased confidence in their ability to identify violence.⁴⁶

The evaluation also found that parents' perceptions of professional responses to family violence had not improved since the 2012 reforms.⁴⁷ This was mirrored by the views of professionals who doubted the capacity of the family law system to deal adequately with cases involving family violence.⁴⁸ The evaluation report observed that the addition of section 60CC(2A) to the Family Law Act, which requires the court to give greater weight to protecting a child from the risk of family violence, has had limited effect, especially where there was any ambiguity associated with the allegations of family violence or child abuse.⁴⁹ The evaluation also revealed concerns about the risk-screening tool used in the family law system.⁵⁰

Overall, the evaluation indicated that the 2012 reforms had a greater influence on identification and screening practices than they had on patterns in parenting arrangements.⁵¹

The 2015 Australian Institute of Family Studies noted:

The evidence of poorer wellbeing for children where mothers have safety concerns—across the range of parenting arrangements, but particularly acutely in shared care-time arrangements—highlights the importance of identifying families where safety concerns are pertinent and assisting them to make arrangements that promote the wellbeing of their children.

This evaluation has highlighted the complex and varied issues faced by separating parents and their children and the importance of having a range of services that can effectively respond. This requires a family law system that operates in a coordinated, timely and child-focused manner. Ultimately, while there are many perspectives within the family law system and, many conflicting needs, it is important to maintain the primacy of focusing on the best interests of children and protecting all family members from harm.⁵²

Family consultants

Family consultants are social workers or psychologists who are appointed by the family courts to assist the court in making decisions about children.⁵³ In cases involving children, family courts may order parties (and/or their children) to attend an appointment with a family consultant.⁵⁴ The court may also direct a more detailed report on any particular matters relevant to the proceedings.⁵⁵

The functions of the family consultant include assisting and advising people and courts in proceedings, as well as giving evidence in proceedings.⁵⁶ Their functions also include screening for family violence.⁵⁷ Family reports are admissible as evidence in court, as are records of all the family consultant's dealings with the family.⁵⁸

The 2012 reforms introduced new obligations for family consultants. In particular, if family consultants give advice or assistance to a person about matters concerning a child, the consultant must inform the person that they should regard the best interests of the child as the paramount consideration.⁵⁹ Family consultants must then encourage the person to act in a way that meets the child's best interests by giving priority to protection of the child from physical or psychological harm over the aim of ensuring the child has a meaningful relationship with both of his or her parents.⁶⁰

Family law injunctions

As discussed in Chapter 16, a victim of family violence can apply to the Magistrates' Court for an FVIO. An alternative to seeking an FVIO is an injunction for personal protection made under the Family Law Act.

A person who has experienced family violence can commence proceedings in a court exercising federal family law jurisdiction and seek an injunction for personal protection. The court may grant an injunction for the personal protection of a child, a parent, or a person who is to spend time with, or communicate with a child, or with whom the child is to live under a parenting order, or a person who has parental responsibility for the child.⁶¹ The orders that may be made under the Family Law Act are similar to an FVIO, for example, they may prohibit a person entering a home or workplace, or entering or remaining in a specified area.⁶²

If a police officer believes, on reasonable grounds, that an injunction for personal protection has been breached, the Family Law Act gives a state, territory or federal police officer⁶³ the power to arrest the respondent without a warrant.⁶⁴ The power to arrest provides relief to victims of family violence in limited circumstances. Once arrested, the police must bring the person before the federal family court by the close of business on the day following the arrest, or the first day after a weekend or public holiday.⁶⁵ The effect of the injunction is that once at court, the protected person makes an application to seek contravention of the injunction.⁶⁶ If they do not, the person who is the subject of the injunction will be released. The effect of an injunction can result in a range of sanctions, including imprisonment for serious breaches.⁶⁷

The Australian and New South Wales Law Reform Commissions have recognised that there are benefits to FVIOs over federal injunctions, including that police are more familiar with enforcing state protection order proceedings (FVIOs).⁶⁸ Research also suggests that injunctions for personal protection are 'inaccessible and ineffective, and therefore rarely used'.⁶⁹

In its submission, the Family Law Council noted that injunctions made by the federal courts are rarely enforced by state police,⁷⁰ despite the benefit to victims of seeking protective orders in one court rather than two:

... in situations where parties are already involved in litigation in the Family Court or Federal Circuit Court and they then need a family violence order, we suggest that it is of benefit to those parties and their children, and of benefit to the efficient administration of justice, that personal protection injunctions are made under the *Family Law Act*, and that they are capable of enforcement by State police. To do so avoids people experiencing family violence in this situation from having to issue new proceedings in the State Court.⁷¹

The Victoria Police Code of Practice for the Investigation of Family Violence does not reflect the fact that state police have the power to arrest for breach of an injunction. It states:

Use of Family Law Act injunction or restraining orders

If there are proceedings under way in the Family Court, the AFM [affected family member] may seek an injunction or restraining order under ss.68B or 114 of the *Family Law Act 1975*. However, due to jurisdictional boundaries between State and Commonwealth legislation and the complications in investigating Commonwealth offences, the preferred course of action is the seeking of an order under the FVPA [Family Violence Protection Act].

What police do if there is a contravention of a Family Law Act order

Victoria police can only investigate Commonwealth offences that are incidental to State offences. Therefore when any contravention of a *Family Law Act 1975* order occurs, Victoria Police refer the contravention to the Australian Federal Police. The Australian Federal Police do not enforce Family Law Act orders without process by the Family Court or Federal Magistrates' Court.⁷²

The Australian and New South Wales Law Reform Commissions have previously recommended that the Family Law Act be amended to provide that a breach of an injunction for personal protection is a criminal offence,⁷³ so as to clearly indicate to state authorities the need to enforce such orders.

The creation of this criminal offence would remove the onus from the victim of family violence to bring the application for contravention of the injunction. It would relieve the victim of having to undertake possibly costly family law proceedings to enforce the injunction and reinforce the message that family violence is not a private matter, but a criminal offence of public concern.⁷⁴

To date, the Commonwealth Government has opted not to implement this recommendation.

The Australian and NSW Law Reform Commissions also suggested that training for police in relation to their powers and duties under the Family Law Act would be beneficial, as would including injunctions for personal protection in the national personal protection order registration scheme to help make state and territory police aware of the existence of Commonwealth orders.⁷⁵

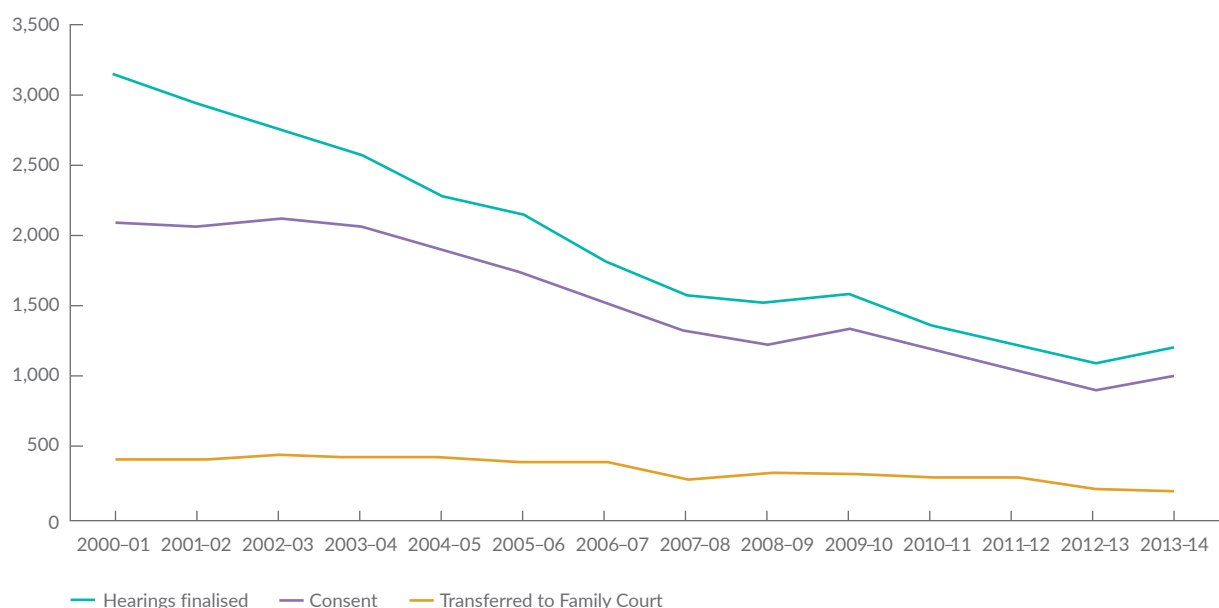
Victorian courts and the family law system

Magistrates' Court powers under the Family Law Act

Under the *Family Violence Protection Act 2008* (Vic), if a victim of family violence applies for an FVIO in the Magistrates' Court, they may be granted an FVIO with conditions regarding the respondent's contact with their children⁷⁶ and conditions directing the respondent to return the protected person's personal property.⁷⁷ Under the Family Law Act, the Magistrates' Court has limited jurisdiction to determine family law matters, including determining disputes regarding children⁷⁸ and property and financial matters.⁷⁹

As described in Chapter 16, the Magistrates' Court is challenged by high demand and limited resources. As a consequence, in recent years the court has significantly reduced the exercise of its family law jurisdiction. The number of family law matters finalised in the Magistrates' Court declined between 2000–01 and 2013–14, from just over 3000 to 1211.⁸⁰ The number of family law matters transferred to the family courts has also decreased over the same period.⁸¹

Figure 24.1 Family law matters, Magistrates' Court of Victoria, 2000–01 to 2013–14



Source: Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 23.

Parenting orders

Parenting orders set out care arrangements for children.⁸² People can agree to the court making consent orders about parenting matters.⁸³ If agreement cannot be reached, the dispute can be heard by a federal family court or, in limited circumstances, the Magistrates' Court.

The Magistrates' Court has the power to make final and interim parenting orders under the Family Law Act. These powers include:

- ▷ *Final parenting orders.* A magistrate has the power to make parenting orders by consent and has the power to hear contested matters if the parties consent to the matter being heard and determined in the Magistrates' Court.⁸⁴ Parties must first be informed that if they do not consent, the Magistrates' Court will be required to transfer the matter to the Family Court or FCC.⁸⁵
- ▷ *Interim parenting orders.* In the absence of consent, a magistrate has the power to make any order they consider necessary, such as an interim parenting order, before the matter is transferred to the Family Court or FCC.⁸⁶
- ▷ *Parenting plans.* In circumstances where the Magistrates' Court does have jurisdiction to make a parenting order, the Family Law Act provides that the court must have regard to the terms of the most recent parenting plan (if any) that has been entered into between the child's parents if doing so would be in the best interests of the child.⁸⁷ Parenting plans are written agreements between parents that are not legally enforceable,⁸⁸ but can be taken into account by the courts in making parenting orders.⁸⁹

Where the Magistrates' Court decides to make an FVIO, and the protected person or respondent is a parent of a child, the court must ask whether there is a Family Law Act order in place in relation to the child.⁹⁰ If the magistrate is satisfied that there is a parenting order in place, the magistrate is required to revive, vary, suspend or (in the case of final FVIOs only) discharge the parenting order to the extent that the parenting order is inconsistent with the FVIO,⁹¹ provided that there is new material before the Magistrates' Court that was not before the court at the time the existing parenting order was made.⁹² For example, a magistrate may suspend the operation of a parenting order that provides for the child to spend time with the respondent to the FVIO (the perpetrator), if there has allegedly been violence since the parenting order was made.

Currently, the Family Law Act limits the effect of an interim family violence order made by a magistrate to revive, vary or suspend a parenting order, to a maximum of 21 days.⁹³ Because of the time limitation, a person who believes their child is unsafe must go to a federal family court to have the earlier parenting order altered within the 21-day period.

When there is no parenting order under the Family Law Act, the Magistrates' Court can impose conditions about a child's contact with a respondent parent in an FVIO, if the court decides that contact with the parent will or may jeopardise the safety of the child.⁹⁴ Conditions in an FVIO may relate to arrangements for the child to live with, spend time with or communicate with the respondent, handover arrangements, and conditions relating to how care and contact arrangements can be negotiated.⁹⁵ FVIOs can remain in force for a period as specified in the order.⁹⁶ It is open to a parent to apply to a federal family court for a parenting order while an FVIO is in place. If a parenting order is made, conditions of that order will override any inconsistent conditions in an existing FVIO.⁹⁷

Property orders

The Magistrates' Court also has the power to hear cases relating to the division of property in family violence cases, both under the Family Law Act and the Family Violence Protection Act.

The Family Violence Protection Act permits magistrates to include personal property conditions in an FVIO.⁹⁸ Those conditions can include the return of property, and conditions requiring furniture and appliances to remain at a residence.⁹⁹ The Family Law Act gives magistrates the power to hear cases relating to division of property, up to a total value of \$20,000 or to an unlimited value with the parties' consent.¹⁰⁰ The monetary limit of the Magistrates' Court family law property jurisdiction increased from \$1,000 to \$20,000 in 1988.¹⁰¹

In their study of economic abuse, Camilleri, Corrie and Moore found that despite this power, magistrates often leave property matters to the family law courts:

There was no evidence of these mechanisms being used in the case studies. All financial and/or property matters were characterised as property issues which were left to the Family Court of Australia to deal with ...¹⁰²

It is not clear how many applications are brought in the Magistrates' Court for property settlements under the Family Law Act. However, given that the number of family law orders being made in the Magistrates' Court decreased overall from 2000–01 to 2013–14,¹⁰³ it is likely that fewer property settlement applications are being made to the Magistrates' Court.

Children's Court powers

The Family Division of the Children's Court of Victoria has jurisdiction to deal with both applications for FVIOs¹⁰⁴ and matters relating to Child Protection.¹⁰⁵

The Commission heard that there is uncertainty in Victoria as to whether the Children's Court also has power to make orders under the Family Law Act and whether the Court is a 'court of summary jurisdiction for the relevant provisions in the Family Law Act'.¹⁰⁶ The Magistrates' Court Bench Book and Family Law Manual both express some uncertainty as to whether the Children's Court has jurisdiction to hear Family Law Act matters.¹⁰⁷

In 2006, the Victorian Law Reform Commission recognised that:

It may be the case that the Children's Court decides that grounds for an intervention order are present for the adult, but not for the child. In this case, it may be necessary for the court to make an order about any child contact arrangements that may occur between the applicant and respondent. Alternatively, if the court makes an order on behalf of a child, it may be necessary to suspend a Family Court contact order if one already exists.¹⁰⁸

The Victorian Law Reform Commission recommended a legislative amendment to declare the Children's Court a court of summary jurisdiction so that it could exercise powers under the Family Law Act in the same way that the Magistrates' Court can exercise these powers.¹⁰⁹ This recommendation was not implemented by the Victorian Government.

Subsequent commissions and bodies have also made recommendations to give state children's courts Family Law Act jurisdiction. The Australian Law Reform Commission and the NSW Law Reform Commission's 2010 report recommended a variation to the Family Law Act,¹¹⁰ and the 2015 Family Law Council's interim report recommended that sections 69J and 69N of the Family Law Act be amended to remove doubt about the power of the Children's Court to make Family Law Act orders.¹¹¹ The Commission notes that despite many recommendations to amend the legislation, the Commonwealth Government has not yet made these amendments.

The Magistrates' Court and Children's Court in their joint submission, suggested that the amendments should be made.¹¹² They recommended that the Commission:

clarify the capacity of the Children's Court to exercise federal family law jurisdiction as a court of summary jurisdiction for the purposes of s69J of the Act (and associated amendments to the *Family Violence Protection Act 2008* to facilitate this).¹¹³

Challenges and opportunities

This section discusses the challenges raised in evidence about the interaction of the family law system and the state courts. These range from high-level concerns about the difficulty in navigating the dual systems, to practical concerns about aspects of their operation.

The Commission heard many criticisms of the federal family law system's response to family violence. While it is appropriate to acknowledge these criticisms, the Commission cannot investigate the accuracy of accounts of particular cases. The Commission also recognises that some submissions made to the Commission about experiences of the family law system may relate to experiences prior to the 2012 Family Law Act reforms.

Navigating multiple legal systems

The purpose of the federal family law system is to resolve private disputes arising out of the breakdown of relationships, including disputes about parental responsibility for children and financial matters.¹¹⁴ In family violence proceedings, the Magistrates' Court of Victoria focuses on maximising safety for 'children and adults who have experienced family violence', preventing and reducing risk and promoting 'the accountability of perpetrators of family violence'.¹¹⁵ The Victorian child protection system provides, among other things, for state intervention when a child is in need of protection.¹¹⁶

More than one court may be involved when there are children. A victim of family violence can apply for an FVIO in the Magistrates' Court and may be granted an FVIO with conditions regarding the respondent's contact with the children. The respondent (the perpetrator) may then file proceedings in the FCC for a parenting order. At the same time, Child Protection may file proceedings in the Children's Court on the basis that it has care and protection concerns for the children. The applicant, the respondent, and their children may all experience three separate courts and jurisdictions.

The issue of ‘fragmentation’ between court systems was a common theme in evidence before the Commission. The Family Law Council has commented that for families with complex legal needs, multiple court involvement is ‘confusing, repetitive and incoherent’.¹¹⁷

Disputes cannot be neatly divided into private and public areas of law and parties will often have to institute or be engaged in proceedings in various legal forums to have all of their issues determined ... The overlapping jurisdictions cause significant angst for the parties involved and considerable difficulties for the courts.¹¹⁸

Many people who made submissions and spoke to the Commission talked of the difficulties they have experienced as the result of having to deal with more than one court. In addition to the complexity, expense and confusion they experienced, their engagement with different courts required them to re-tell their story and re-justify their position. As expressed in an anonymous submission to the Commission:

The family court can't know about proceedings in criminal courts. Police intervention orders are somehow handled separately from magistrates' intervention orders, which are in turn handled separately from family court orders. Psychological and psychiatric assessments of both [Removed] and her children, obtained for one court, are not presentable in the next court; no, they have to be done again. Imagine how much time this takes and the stress this causes. Imagine getting [Removed] children, traumatised and intimidated by their father, to again and again re-tell their story.¹¹⁹

The involvement of so many parts of the justice system may also result in victims ‘falling into the gaps’. As observed by the Australian and NSW Law Reform Commissions:

the problems faced by victims required engagement with several parts of the system. Consequently ... these people could be referred from court to court, and agency to agency, with the risk that they may fall into the gaps in the system and not obtain the legal solutions—and the protection—that they require.¹²⁰

Other inquiries have considered various proposals to overcome the need for victims of family violence to navigate multiple legal systems. These include:

- ▷ establishing a single federal court to hear all matters relating to family violence¹²¹
- ▷ expanding the jurisdiction of family courts to include the power to make child protection orders¹²²
- ▷ giving some courts corresponding jurisdictions so they can decide cases under both systems.¹²³

Ultimately the Australian and NSW Law Reform Commissions recommended that jurisdictional fragmentation was best addressed by working within constitutional and practical limits and using the powers of federal and state courts dealing with family violence, child protection and family law matters, to create a more seamless system.¹²⁴

Magistrates’ exercise of family law powers

In their joint report, the Australian and New South Wales Law Reform Commissions observed that:

State and territory magistrates courts are often the first point of contact with the legal system for separating families who have experienced family violence. As such, the Commissions consider that it is important that state and territory magistrates courts can deal with as many issues relating to the protection of victims of family violence as possible.¹²⁵

The Commission heard that magistrates are reluctant to exercise their powers under the Family Law Act. Women's Legal Service Victoria submitted that:

There are a number of potential implications of a 'hands off' approach by the Magistrates' Court to family law issues. A culture of deference to FLA orders can result in Magistrates referring applicants to the Federal Circuit Court for matters that could be dealt with by the lower court. While we support the principle that the specialist family law jurisdiction is best placed to make orders relating to children this results in a 'revolving door' for women seeking protection, and the stress, cost and potential for re-traumatisation that flows from constant court appearances.¹²⁶

The reluctance of magistrates to exercise these powers may be due to:

- the complexity of the provisions and uncertainty about some aspects of both the FLA [Family Law Act] and FVPA [Family Violence Protection Act] provisions;
- a lack of time in busy family violence lists for Magistrates to adequately deal with issues related to parenting arrangements;
- lack of family law expertise of some Magistrates and
- inadequacy of the 21 day time limit applying to s68R variations in interim family violence matters.¹²⁷

The Springvale Monash Legal Service (SMLS) submitted that magistrates may be reluctant to use their powers under the Family Law Act because they believe that the family courts are better able to deal with parenting matters:

In one case in the Magistrates' Court, SMLS argued that the Court should use its power to vary a parenting order because the respondent was using a communication book required under the order to continue committing family violence. The magistrate refused to exercise that power indicating it was a 'family law matter'. This is not an isolated incident; indeed, in our experience, magistrates are frequently reluctant to use their powers based on an assumption or belief that such matters are best dealt with in either the Family Court or Federal Circuit Court. It is costly and time consuming for a victim to make a further application in the Family Court to limit or prevent a violent parent from spending time with a child.¹²⁸

Deputy Chief Magistrate Felicity Broughton of the Magistrates' Court of Victoria told the Commission:

The reality is we have family law jurisdiction. We have power to make interim orders, and we do, primarily in the country because of lack of access to Family Courts ... Clearly in metropolitan Melbourne you have the Dandenong registry and the Melbourne registry. So people don't come to the Melbourne Magistrates' Court in particular for parenting orders, which is the main sort of orders that are involved. We do get child support matters coming to our court. But really in this area that's probably the main reason. Can I also say the court does not get a cent to exercise its family law jurisdiction, but we recognise it's incredibly important in this area. So, notwithstanding that, we do the work where we can.¹²⁹

The Commission heard that more time, not just more resources, is needed for magistrates to exercise their powers under the Family Law Act, or to ensure that people are appropriately referred to a federal family court. Duty lawyers also need more time to advise people on these matters.¹³⁰

In order to simplify the decision-making process in disputes relating to children, the Family Law Council in its interim report recommended amendments to the Family Law Act to allow magistrates to prepare short-form judgments in support of interim parenting orders.¹³¹

Family law resources for magistrates

In Victoria, the Judicial College of Victoria publishes the Family Violence Bench Book, a resource funded by the Department of Justice.¹³² The Bench Book provides guidance to magistrates and other judicial officers on family violence and the exercise of their powers under the Family Violence Protection Act. It also contains content relating to the exercise of the Magistrates' Court's powers under the Family Law Act in family violence cases.¹³³ In its submission to the Commission, the Judicial College recommended that funding be made available to update this resource.¹³⁴

A National Family Violence Bench Book was announced by the Commonwealth Government, as recommended by the Australian and the NSW Law Reform Commissions.¹³⁵ The resource is expected to be available in June 2017.¹³⁶

The Magistrates' Court of Victoria and the Children's Court of Victoria told the Commission:

To respond to the complexity of family violence proceedings; magistrates, court staff and legal practitioners must have access to comprehensive and accessible cross jurisdictional specialist family violence professional development. A significant barrier has been that individual jurisdictions have been approached in silos. The impact is felt in different ways. For instance, in relation to magistrates and court staff, there are no dedicated federal resources to support the exercise of the family law jurisdiction in the state MCV and CCV. All professional development, including the creation of dedicated written materials is essentially produced from within existing resources. The court also understands that the JCV is not funded to provide professional development for the federal Family Law jurisdiction.¹³⁷

The Magistrates' Court is further assisted by the comprehensive Family Law Manual, developed by the Court to assist magistrates to exercise their limited jurisdiction to determine family law matters.¹³⁸ The Commission notes that this manual is yet to be updated regarding magistrates' powers to make property orders.

Further discussion regarding judicial education can be found in Chapter 40.

Application forms

To empower parties to FVIO proceedings to ask the Magistrates' Court to exercise its family law jurisdiction, the Australian and NSW Law Reform Commissions recommended that application forms for FVIOs should include an option for the applicant to seek the revival, variation, discharge or suspension of a parenting order.¹³⁹ A similar recommendation was made by former State Coroner, Judge Ian Gray, in the Luke Batty inquest:

I recommend that the Magistrates' Court of Victoria revise the form and content of FVIOs to ensure they are written in clear and unambiguous language. This should include clarity in relation to the operation of section 68R of the *Family Law Act 1975*.¹⁴⁰

The Australian and the New South Wales Law Reform Commissions also made recommendations about the exercise of state courts' jurisdiction to make property orders:

Recommendation 16–10 Application forms for protection orders under state and territory family violence legislation should clearly seek information about property orders under the *Family Law Act 1975* (Cth) or any pending application for such orders.

This recommendation has not been implemented in Victoria.¹⁴¹

The Commission notes that currently, if an applicant wishes to seek a parenting or property order in the Magistrates' Court, he or she may institute proceedings in that court by filing the same initiating application form that would be filed for equivalent proceedings in any federal family court. The initiating application form includes an option for the applicant to select or indicate that the form is being filed in a court 'other' than the Family Court, the FCC or the Family Court of Western Australia. The Commission further notes that neither the initiating application form or its information kit indicates that the applicant may seek the making of a parenting order or property order in a state magistrates' court.

Time limit on parenting orders

The Commission received several submissions regarding the inadequacy of the 21-day limit on orders made by the Magistrates' Court to revive, discharge, vary or suspend a parenting order upon the making of an interim FVIO.¹⁴²

Essentially, the onus is placed on the victim of family violence to apply to the federal family courts as soon as possible before the 21-day period expires, if they wish the effect of the order (for example, the variation or suspension of a Family Law Act order) to continue.¹⁴³

Judge Gray recommended to the Family Law Council that the 21-day time limit be removed, and that a magistrate's order to revive, discharge, vary or suspend a parenting order should operate until further order of the court.¹⁴⁴

Judge Gray's recommendation is reflected in the Family Law Amendment (Financial Agreements and Other Measures) Bill 2015. The Bill, which was introduced on 25 November 2015, proposes to remove the 21-day time limit and allow for orders to last until either the interim intervention order expires; a date specified in the order; or by further order of the court.¹⁴⁵ This effectively places the onus on the respondent to initiate the application to the Family Court to vary the terms of the order.

Property orders

The consequences of delayed property settlements for victims of family violence can be highlighted by the following case study provided to the Commission:

Issues to do with property settlement escalated Sean's violence. Katie wanted to buy Sean's share of the property from him and take over the mortgage so that she could stay in the home with their children. This was a real challenge given Katie's limited income and the fact that she is the primary carer for her children. Katie's brother offered to co-sign the mortgage so she could continue to live in the home. Sean also wanted this to happen, but had not sought any external advice and continued to drag out the process. Katie's lawyers needed to deal directly with Sean, which took more time and cost Katie more money.

In the meantime, Sean continued to harass Katie for money. Although Katie generally refused to give him money, he continued to harass her. The protracted nature of this property settlement caused Sean's violence against Katie to escalate.¹⁴⁶

Resolving property disputes in the federal family courts can be expensive. The Commission heard that 'the process in the Family Court and the [FCC] is excessively legalistic and onerous',¹⁴⁷ that it involves substantial costs, long delays and that many victims of family violence are simply not able to navigate it without legal assistance.¹⁴⁸

While Victoria Legal Aid can assist victims of family violence with resolving underlying family relationship issues relating to property, it is constrained in doing so.¹⁴⁹ Ms Nicole Rich, Director, Family, Youth and Children's Law Services at Victoria Legal Aid, noted that Victoria Legal Aid's 'guidelines focus principally on parenting matters. So there's very limited funding available for resolving property matters'.¹⁵⁰ Many submissions addressed these legal aid funding constraints.¹⁵¹

These barriers often result in victims foregoing their right to property, especially if the asset pool is small.¹⁵² A recent study on legal responses to economic abuse found that:

When settlement amounts were quite small, it was not worth spending the additional money to seek justice. Costs could be further compounded by abusers intentionally delaying settlement. This meant that women were further marginalised financially. The less they had, the less they ended up with.¹⁵³

Ms Helen Matthews, Principal Lawyer, Women's Legal Service Victoria, noted:

Private practitioners would not recommend taking on a matter unless the client was likely to gain a property settlement (non-superannuation) of not less than \$50,000. Many women are seeking the apportionment of debt rather than assets.¹⁵⁴

The high cost of litigation was also highlighted to the Commission:

... in my situation \$20,000 was admitted to by my ex-husband in total assets in Court, I settled for \$10,000, approximately \$8,700 was taken by legal fees leaving me with just under \$1,300, no house and no car. With only \$1,300 I had to re-establish a home for my children and myself. Within 12 months of separating my ex-husband had "found" \$150,000 to purchase an apartment.¹⁵⁵

In its submission, Women's Legal Service Victoria advocated the resolution of small property claims in the Magistrates' Court:

[WLSV] would support a court model that also allows for determination of small property pool claims (where the property pool is, for example, less than \$50,000). The reason for enabling a one court model to determine small property pool claims is that for women that experience significant disadvantage, the cost of pursuing a family law case for a car or access to a bank account with a small pool of savings or a share of their former partner's superannuation is simply not realistic. Yet, access to a small amount of money or a car or superannuation may well be critical to their recovery (particularly their financial recovery) from family violence.¹⁵⁶

Explaining orders

The Commission heard that court users were often confused about how an FVIO interacts with a Family Law Act order. A parenting order that provides for a child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with a child, overrides an FVIO to the extent of any inconsistency.¹⁵⁷ An exception to this is where a magistrate has power to revive, vary, discharge or suspend the parenting order.¹⁵⁸ A mother of three children who told the Commission she had endured 13 years of violence from her former husband, said:

Family Court orders overriding IVOs puts families at risk. Having to face an abuser each week in order to act within the law is a hideous experience and a practice only ordered in family matters. It is unnatural for a child to be driven to his father at the front of a police station by a scared and stressed mother. This is court ordered I was bound to do this. At these access visits he has suffered emotional, psychological and alleged physical and sexual abuse. My son was groomed and coerced by his father to attend these visits. He is now older and wise to this and no longer wants to see his father and at [removed] years old is frightened of him. Due to this court ordered unsupervised access my son now suffers from depression and anxiety and is unable to attend secondary school due to this.¹⁵⁹

The difficulties that people had in understanding the effect of orders were canvassed by Judge Gray. The inquest heard that Magistrate Goldsbrough issued a 'no contact' FVIO against Mr Greg Anderson, in relation to Ms Rosie Batty and her son Luke.¹⁶⁰ The FVIO conflicted with a parenting order made by consent in the Family Court over seven years earlier, which provided that Luke should have weekly contact with his father.¹⁶¹ Magistrate Goldsbrough suspended the operation of the Family Court order.¹⁶² Issues which arose in relation to this suspension included:

- ▷ for reasons that are unclear, the terms of the FVIO suspending the operation of the federal order were not reproduced in the FVIO¹⁶³
- ▷ Ms Batty was confused about how the suspension worked¹⁶⁴
- ▷ the suspended order and the FVIO were not served on Mr Anderson until after the 21-day suspension period and so the FVIO had no effect in relation to Luke¹⁶⁵
- ▷ as proceedings were not filed in a federal family court to have the parenting order amended, it was legally open to Mr Anderson to argue that he could rely on the Family Court order and the contact provisions in that order, despite any restrictions on his contact in the FVIO.¹⁶⁶

In its 2006 report, the Victorian Law Reform Commission recommended that:

When magistrates make an intervention order for a child or including a child, the magistrate should make it clear to the respondent that there must be no contact between the child and the respondent unless the Family Court or the Federal Magistrates' Court later decide otherwise. If there is a contact order in place, such orders should be suspended pursuant to section 68T of the *Family Law Act 1975*. This should be clearly stated on the intervention order.¹⁶⁷

The Commission notes that under the Family Law Act, when a court makes a parenting order, it has a duty to include in the order particulars of the obligations that the order creates and the consequences that may follow if a person contravenes the order.¹⁶⁸ The Act also requires the court to explain to a person who is not legally represented, the availability of programs to understand their responsibilities under the parenting order.¹⁶⁹

Under the Family Violence Protection Act, when a magistrate makes an interim FVIO, the appropriate registrar of the court has an obligation to provide the parties with a written explanation of the FVIO in a prescribed form, that includes how the order interacts with a Family Law Act order, or an order made under the *Children, Youth and Families Act 2005* (Vic).¹⁷⁰ The prescribed form also requires a written explanation of the purpose, terms and effect of the interim FVIO,¹⁷¹ when a court varies or suspends a family law order.¹⁷²

The Commission notes that when a final FVIO is made by the court, the court is required to explain to the protected person and the respondent, if they are before the court, the terms and effects of the FVIO, among other things.¹⁷³ There is no specific requirement that the court explain how that final order interacts with an existing Family Law Act order.

Access to comprehensive legal advice

Submissions received by the Commission argued that it was essential that victims and respondents to FVIOs receive legal advice on family law issues. Both parenting and property law matters may be complex and people affected by family violence may have difficulty in navigating these issues without legal assistance. As the Centre for Rural Regional Law and Justice found:

Often survivors were unaware of the available legal channels, and women and workers alike emphasised the need for greater access to affordable legal advocacy, not only preceding and on the court appearance date, but also to address women's unmet legal needs surrounding family violence and family law matters more generally, as well as property issues.¹⁷⁴

When parties appear in the Magistrates' Court in relation to FVIO proceedings, they may be unrepresented or represented by a duty lawyer or a community legal centre lawyer, who does not have the time or expertise necessary to provide them with comprehensive legal advice about family law matters. Victoria Legal Aid told the Commission:

Currently, duty lawyers at the Magistrates' Courts do not have the resources or time to screen all applicants and respondents for possible family law issues and provide advice or arrange warm referrals to a family lawyer. As part of our Family Law Legal Aid Services Review, Victoria Legal Aid is exploring ways to assist duty lawyers to identify family law issues, provide referrals to parenting dispute lawyers, and provide better continuity of service to these clients.

However, it is already clear that the pace of the current court environment and the demand pressures on our duty lawyer services mean the service cannot systematically accommodate the additional time that needs to be spent with applicants and respondents to undertake routine screening for family law and related legal issues. Additional resource investment in duty lawyer services will be required to enable the additional time required to be spent with each client to undertake an assessment and if appropriate make referrals without reducing existing services.¹⁷⁵

The Commission heard that the current demands on the Magistrates' Court make it untenable to effectively advise people about all their family law issues on the day they attend court:

You can't expect to resolve parenting arrangements on the day when you're trying to resolve the safety issues, and safety issues are paramount, so you have to resolve those first. At the same time, if you just then let people go and, they can figure it out for themselves, do they apply or not, et cetera, that's the problem, things can escalate because people get frustrated, people don't understand—people don't understand what's going on on both sides.¹⁷⁶

Victoria Legal Aid, in its 2015 Family Law Legal Aid Services Review, identified the need to make better use of the Magistrates' Court for client intake into family law services. The review recognised that the Magistrates' Court is a point of intervention to screen for family law issues and to provide effective referrals.¹⁷⁷ Victoria Legal Aid concluded that it:

... will review the way in which family violence duty lawyer services are provided with a view to enhancing intake opportunities at the Magistrates' Court for clients with family law legal need by supporting lawyers to screen more consistently for family law need.¹⁷⁸

The Commission also heard that very few lawyers practice across both federal and state courts. Magistrate Dotchin, Regional Coordinating Magistrate at Moorabbin Children's Court, told the Commission:

I [can] only think of two lawyers who regularly appear in the Children's Court who have got a family law practice. So they are mutually exclusive jurisdictions for the practitioners as a rule.¹⁷⁹

Lawyers who work only in one court may have an incomplete understanding of matters heard in other courts. Mr Andrew McGregor, Principal, Dowling McGregor Pty Ltd, told the Commission:

One of the criticisms that has been made about the current Children's Court model is the extent to which Children's Court lawyers do nothing but Children's Court work and associated criminal work. Similarly, there is a sense that family lawyers are unfamiliar with the Children's Court jurisdiction. As a result, when cases move between jurisdictions, there is often a need for new representation.¹⁸⁰

He suggested that:

One of the reasons that, at times, there has to be an outcome of new personnel is if the matter has come from the Family Court in which the Independent Children's Lawyer has argued for an outcome which is at odds with what the young person wants. The legal representative can't then come to the Children's Court and act on instructions, because the young person will not have confidence in that person performing in that different model.¹⁸¹

In my experience, the Children's Court work is fairly all-consuming and in most cases, where a matter [is] moved to the Family Court, I would not continue to act for the client but would instead provide a referral.¹⁸²

Hanover Welfare Services and HomeGround Housing Services (now Launch Housing) submitted that:

Some lawyers gave incorrect information based on the *Family Law Act (FLA) Part VII, 2006 'Shared Parental Responsibility'* clauses about 'hostile' parenting and the illegality of relocating with children—which do not apply in cases involving violence.¹⁸³

The Family Law Council interim report stated:

Many submissions called for joint training for staff and professionals from the different jurisdictions. Stakeholders generally suggested this should incorporate knowledge of processes and practice, not just law ... Others suggested a need for cross-professional development centred on increasing understanding of child abuse, family violence and trauma related issues, in addition to an understanding of the requirements of practice in the different jurisdictions.¹⁸⁴

Cross-examination in federal family court proceedings

The issue of cross-examination of victims of family violence by alleged perpetrators during federal family court hearings was raised with the Commission. The Family Court and FCC's joint submission to the Commission acknowledged that a lack of adequate legal aid funding means that parties, who may be victims of family violence, may have to conduct family law litigation on their own, against the perpetrator of family violence.¹⁸⁵

The Commission heard about the trauma victims of family violence can experience as a result of being cross-examined by the perpetrator:

... we had a four-day trial set with the Federal Circuit court in [Removed] for custody. I had a Barrister set to represent me though Legal Aid. At 5pm on the Friday before the Monday start date, I was advised that Legal Aid had pulled my funding for the Barrister so I had to represent myself in court. There was simply no time to find another legal representative so I found myself at 10am on the Monday morning in court with two large folders in front of me, having no idea what I had to do. I was in shock and dismay at this happening.

As my ex-husband had chosen to represent himself, he was allowed to cross-examine me on the witness stand. I believe that this day on the stand was possibly the most traumatic day that I have ever been through. He attempted to bribe me in the court room by saying to the judge 'I will be prepared to negotiate for custody of the children, if my wife drops the rape charges'.

I was exhausted and suffering from extreme anxiety and negotiated for custody on the second day of the trial. I was not able to cross-examine him, the witnesses I had called were sent home and the court reporter and psychiatrist were not called up. At the end of the two days, my ex-husband demanded that I pay for his court costs.¹⁸⁶

Unlike in the federal family courts,¹⁸⁷ in the Magistrates' Court of Victoria there are provisions to protect applicants in FVIO proceedings if a respondent wishes to cross-examine them in a hearing. The Family Violence Protection Act provides special rules for cross-examination of a 'protected witness'.¹⁸⁸

Where a respondent has not obtained their own legal representative and has been given reasonable opportunity to do so, 'the court must order Victoria Legal Aid to offer the respondent legal representation for this purpose'.¹⁸⁹ If a respondent refuses representation, and is not otherwise permitted to cross-examine the protected person, there are restrictions on the evidence the respondent can give in FVIO proceedings.¹⁹⁰

The court will also order Victoria Legal Aid to offer legal representation to applicants in FVIO proceedings for the purpose of cross-examination in cases where the respondent is prohibited from cross-examination, is legally represented, when the applicant witness is not represented, or the police have not brought the application to the court.¹⁹¹

Victoria Legal Aid told the Commission that in 2013–14, it provided 'court ordered representation for the cross examination only to 308 applicants and 192 adult respondents' in proceedings under the Family Violence Protection Act.¹⁹²

Responses to allegations of family violence

Victims of family violence told the Commission that allegations of family violence are given insufficient weight and consideration by the courts (predominantly the federal family courts), by lawyers, and by family court consultants. The Commission heard that people using both the federal and state court systems experience confusion when courts take different approaches to family violence:

Across the system, there are different approaches to how family violence is regarded and this is the by-product of the existence of different court cultures. This can be extremely confusing and distressing to the client whose journey through the separation may entail interaction with a number of courts. The client may experience how one court weighs, views and manages the issue of family violence. The client's matter may then progress through other courts or jurisdictional avenues such as a criminal case or through to the Family Courts. From the client perspective when they experience that different court culture, it is challenging for lawyers to help that individual understand why their personal experience is being, at best, homogenised or at worse, ignored, in another Court setting, why their very real fears and concerns are not being acknowledged or do not seem to factor into the decision making of that court.¹⁹³

The Commission heard that one of the reasons that different approaches to family violence are taken is that addressing family violence is 'segmented' in the court system, with the family courts assuming that family violence has (or will be) effectively dealt with in the Magistrates' Court.¹⁹⁴ Some victims of family violence told the Commission that the federal family courts and lawyers presume that alleged perpetrators of family violence should have contact with their children:

In what is effectively a 'mentions' hearing, I found it virtually impossible to tell my story. Having heard a handful of details in the limited time available, the judge quickly set her attention to the question of 'access', a word that is thrown around frequently in custodial and family violence matters. Rather than considering the best outcome for my son, I found that the judge's focus centred on the father's rights. She expressed concern that he had not had contact with his son for approximately two months. This fact was given precedence over my son's safety. The father of my child had previously threatened to kill him, had made a potential attempt to kill the day he drove towards us both and had the means to kill with his firearm. Yet here I was being forced to accept his 'right' to see his son, denying my son the right to safety.¹⁹⁵

The starting point of ... conferral between the lawyers was 50/50 custody. I considered this completely unacceptable. I wanted a no contact arrangement, but my barrister advised me not to ask the judge for no contact, implying that I would never be successful because my case was not 'bad' enough. I was advised that the consequences could be severe if I asked for no contact, including a result that my ex-husband would be awarded majority custody. I felt that not only was I battling the court system, but I was battling my own barrister. I refused to agree to 50/50 custody but constantly felt that I was pushing my barrister to follow my instructions.¹⁹⁶

Other submissions received by the Commission recounted that:

The first thing a woman is being told by the lawyer is 'you have to be careful you should not come across as a parent who does not want him to have contact—he can get full custody or shared custody' Straight away the woman is on the back foot and every decision she makes is based on fear. No one listens to the abuse and violence committed on her and the children—women are forced to agree to 'consent orders' by being threatened that if ... they don't agree it will go to trial and it will cost up to fifty thousand or more.¹⁹⁷

After telling my solicitor about the family violence my kids and I were put through, he told me "it can't have been that bad you stayed there [removed] years, it's not like he was knocking your teeth out when you conceived your kids", none of my evidence was ever looked at properly if at all and I was just left sitting in the court house corridors month after month to be told if I didn't agree to [removed] demands my kids would be tak[en] off me, and intimidated into signing orders I did not want to.¹⁹⁸

Fathers who have experienced the family court system also expressed concerns to the Commission:

In the early days we were both ordered to attend separate parenting courses, I attended mine, she did not. Later, when [removed] was about [removed], we were both ordered again to attend Parenting courses, again separately? In these sessions it became evident that there was an underlying assumption that both parents needed to wake up to themselves and learn to work together for the sake of the child and that the course would give us the tools to do this. The facilitators did not take into account the possibility that the mother could be a partner abuser and an active skilled alienator. I did my best to get across this point without pursuing the truth aggressively but they just didn't get it. I slipped back into deep depression during this period and had to seek some personal counselling—I was being abused again via the Family Court System.¹⁹⁹

The Commission also heard of the need for the courts and lawyers to manage parties' expectations of the family law system. For example, in FVIO proceedings, a magistrate may not allow contact for the respondent with a child but that may be a short-term arrangement and not necessarily indicative of the long-term care arrangements determined in the family law system. This can cause confusion about what to expect in each court.²⁰⁰

Some submissions to the Commission suggested that family consultants and family report writers do not understand the nature and dynamics of family violence and therefore do not give reports of violence sufficient consideration. It was put to the Commission that when victims spoke of family violence and expressed concerns for the safety of a child, they were sometimes regarded suspiciously:

Many women report that they are regarded suspiciously by court assessment report writers, and by lawyers, if they raise allegations of domestic violence or child abuse. Even if they have evidence, there are difficulties in making sure it is conveyed to decision makers, and some report that their lawyers warn them about making false allegations. It is very difficult to establish you are acting protectively in not wanting your child to have contact with an ex-partner. For the child, this is a no-win situation. This is even more the case if the allegations raised are about child sexual abuse.²⁰¹

In its submission, Women's Legal Service Victoria suggested that the lack of training in family violence has led to family consultants minimising or not believing the victim's story and using inappropriate and unsafe processes to interview children who have witnessed family violence.²⁰²

We have cases of family consultants requesting both parents attend an interview at their offices at the same time, despite the existence of an intervention order illustrating a lack of risk assessment and safety planning in high risk cases.²⁰³

The way to challenge the contents of a family report is to call the consultant as a witness and cross-examine them.²⁰⁴ Women's Legal Service Victoria believes there is scope for the introduction of an accreditation process for minimum standards for family consultants, which includes an oversight mechanism and an independent complaints process for review of the conduct of family consultants.²⁰⁵

The Commission notes that in 2015, the Family Court, the FCC, and the Family Court of Western Australia produced the *Australian Standards of Practice for Family Assessments and Reporting*, which are designed to promote good practice in conducting and reporting family assessment by family consultants.²⁰⁶

The standards require family consultants²⁰⁷ to have appropriate training, qualifications and experience to assess the impact and effects of family violence and exposure to family violence.²⁰⁸ In writing reports, family consultants are also required to conduct a full risk assessment relating to family violence and provide safety plans if necessary.²⁰⁹ Where family violence is established, the standards require family consultants to report on the violence, including the effect of the violence on the victim and children, any steps taken to protect the children from family violence, any acknowledgment, of or responsibility for the violence by the perpetrator, and whether a perpetrator who wishes to spend time with the children can 'reliably sustain that arrangement and how it will occur so that the child feels safe'.²¹⁰ Women's Legal Service Victoria submitted that these standards are a good first step but remain problematic because they are not binding on family consultants.²¹¹

The Family Court and FCC in their joint submission told the Commission of measures that are being taken in relation to family consultants' screening of family violence:

The family consultants are presently testing the use of a behaviourally based family violence screening questionnaire. It is an adaption of the Mediators' Assessment of Safety Issues and Concerns, Practitioner Version 2 (MASIC – 2P; Beck, Hotlzworth-Munroe and Applegate 2012) (MASIC). This is a questionnaire submitted by each party prior to an interview with the family consultant. Trials of the questionnaire were commenced in April 2015 by the courts at Melbourne and Brisbane. An evaluation will be completed by late 2015.²¹²

Claims of false allegations of family violence

The Commission was told that some people make unfounded allegations of family violence and that applications for FVIOs may be made to obtain a tactical advantage in the federal family courts. The Family Law Section of the Law Council of Australia said that:

In some circumstances, applications are made to gain a time or tactical advantage in an associated family law dispute. Because interim orders are obtained on an ex parte basis, and because they are quicker to obtain than orders in the Family Court or Federal Circuit Court (because of the delays in those courts), the Family Violence Protection Act process can be used to more quickly obtain sole use and occupation of a home, or to create a tactical advantage in relation to parenting matters.²¹³

At a community consultation, the Commission was told that the first awareness some men have of marital problems is 'when the police turn up to cart the man away' and suggested that this was a 'pre-emptive strike' to gain the tactical advantage in court proceedings.²¹⁴ The organisation 'Dads in Distress' made a similar claim in its submission.²¹⁵

It is a commonly held belief that women make false allegations about their male partner's use of violence. In the 2009 National Community Attitudes towards Violence Against Women Survey (NCAS), people were asked if they agreed with the statement 'women going through custody battles often make up or exaggerate claims of domestic violence in order to improve their case'. Fifty-one per cent of respondents said 'yes'.²¹⁶ In the 2013 NCAS, 53 per cent of respondents replied in the affirmative to this question.²¹⁷

Although some allegations of family violence may be misconceived or made for tactical reasons, there is little empirical evidence that people deliberately make false allegations of violence to obtain favourable dispositions in the federal family courts. The Commission notes that it is not easy to test whether allegations are false, partly because there are different ways to define and measure what a false allegation is, and because it is not always possible to distinguish deliberately false allegations from those which cannot be substantiated, or from allegations which contain inaccuracies or honest errors, but where there has not been deliberate deception.²¹⁸ Nonetheless, a 2013 review of a range of Australian and international studies on false allegations of family violence indicated that they are neither common, nor more likely to be made by women.²¹⁹

Claims that women make false allegations of family violence must also be evaluated in light of the fact that in 2013–14, around 66 per cent (n=23,216) of finalised FVIO applications to the Magistrates' Court of Victoria were initiated by the police.²²⁰ Further, the majority of FVIO matters heard by the Magistrates' Court of Victoria between 2000–01 and 2013–14 were consented to by respondents, with no admissions of the allegations made.²²¹ The assertion that false claims are made must also be considered in light of the context of significant under-reporting of family violence and evidence that seeking help from the legal system is a traumatic experience.²²²

The recent Australian Institute of Family Studies evaluation of the effect of the 2012 reforms of family law to give greater weight to family violence in parenting matters,²²³ also casts doubt on the allegation of widespread fabrication of family violence claims. The evaluation showed that since the reforms, there has been minimal change in the number of parents who took out orders from state courts to protect themselves against violence:

Notably, the analysis in the [Experiences of Separated Parents Study] of the extent to which parents reported taking out personal protection orders shows minimal change since the 2012 family violence amendments. There are two areas where statistically significant change has occurred. They are not consistent with the view that the use of personal protection orders for tactical reasons has increased since the 2012 family violence amendments. The biggest change has occurred in relation to mothers who experienced family violence since separation: in 2014 99% reported not having a personal protection order compared with 90% in 2012 ... For mothers who experienced family violence before, during and since separation, there was a 2 percentage point increase (to 4% overall) in the proportion of mothers who reported obtaining personal protection orders before and since separation. This indicates an increased reliance on personal protection orders for a small proportion of mothers reporting obtaining personal protection orders before and since separation ... The analysis does not show any statistically significant increases in fathers reporting taking out personal protection orders.²²⁴

Abuse of the family law system

No To Violence submitted that the family law system can be used by perpetrators to victimise women and children:

The family law system is a source of horrible 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, and much more.²²⁵

This accords with what the Commission heard from some victims of family violence in submissions and during community consultations:

I made the application to the family court. I endured [removed] years and [removed] trials in the family court and was subjected to the worst behaviour by barristers for and against my case, my ex husband and his family members. I believe that my ex husband attempted to control me and 'see' me [by] pushing the legal case for as long as possible, often refusing to make an agreement in respect to the children. If the children felt unsafe or didn't want to spend time with their father, my ex-husband would apply for a breach of contact orders against me, repeatedly attempting to drag me back to court and have me 'punished' by the court. He made repeated threats to my family members in person and via phone, stating he would not stop until he 'rubbed my face in the dirt'.²²⁶

A 2013 Deakin University study of women's experiences in the Magistrates' Court in Geelong, observed that it was common practice for respondents to appear at the first mention date requesting that a parenting plan be made by the court before they would consent to the making of an FVIO.²²⁷ The study found that this practice led to women feeling they had to negotiate arrangements to keep their children safe shortly after separation, when they were often frightened of the perpetrator.

Springvale Monash Legal Service referred to pressures placed on victims to agree to family law orders too soon before the court appearance:

In our experience a respondent can pressure the applicant to agree to contact under a written agreement that day. Sometimes the written agreement is drafted and signed hastily by the parties before the court decides whether a child is at risk. This makes little sense because if the court decides there is a risk then section 93 of the FVPA applies and the court cannot include a condition for contact between a child and the respondent.²²⁸

In its report, the Wyndham Legal Service and Good Shepherd Australia New Zealand state that 'abusers [can use] property settlement processes to continue to control their partners and former partners, including intentionally delaying settlement and offering unreasonable settlement amounts.'²²⁹ Wyndham Legal Service and Good Shepherd found that this is compounded by the prohibitive costs of legal representation in the Family Court to resolve economic abuse issues.²³⁰

Some of the tactics described in relation to property settlements included threatening violence unless partners dropped their claim; prolonging settlements; withholding relationship property information in order to drag out settlement; and cutting women off from assets so that they are not able to afford litigation.²³¹

The Commission notes that the Family Law Amendment (Financial Agreements and Other Measures) Bill introduced in November 2015, proposes an amendment to the Family Law Act to strengthen the court's powers to dismiss unmeritorious applications. That Bill proposes a new section in the Family Law Act²³² to allow the court to make a 'summary decree' in favour of a party, if it is satisfied that a party has no reasonable prospect of success in prosecuting or defending a proceeding.²³³ Such an amendment may go some way to help courts dismiss applications where it is clear that parties are using proceedings merely as a means to further perpetrate violence.

Information sharing

This section provides an overview of what the Commission heard about information-sharing issues which can arise between the federal family law system, Victorian state courts and the Victorian child protection system.

Access to court orders is not routinely or automatically shared between courts.²³⁴ In its submission to the Commission, the Victorian Government acknowledges the consequences for victims of family violence when information is not shared between jurisdictions:

There is also no data system in place that could capture both family violence intervention orders and family law orders. Therefore, victims who are involved in both intervention order and family law proceedings are often required to tell their story repetitively to different courts, lawyers, and counsellors working across the jurisdictions, and re-litigate the same issues in different forums. This results in duplication and re-traumatisation of victims.²³⁵

Magistrates may be unaware of federal family court proceedings

A magistrate who is hearing an FVIO application may not always be aware of orders, such as parenting orders, made by a federal family court.

Where a magistrates' court decides to make an FVIO and the protected person or respondent is a parent, the court must enquire as to whether there is a Family Law Act order or child protection order in force in relation to the child,²³⁶ but the magistrates' court may not have access to family court orders unless they are provided by the parties.²³⁷ The court is able to request copies of orders from the federal family courts but the information flow between the courts is currently a manual one, relying on court staff or a party to source the right documentation.²³⁸

Dr Karen Gelb's research, undertaken for the Commission (see Volume VII), highlights that:

... the lack of adequate information in some applications—especially around the associated orders—was a source of particular frustration for every magistrate interviewed and for many of the police prosecutors. Magistrates bemoaned the problem of 'silo data', and often had to ask about related family law or child protection matters, experiencing significant frustration when told the police did not know. The concern for magistrates was two-fold: they did not want to issue an order that would be contrary to an order already in place (especially with regard to child contact orders made under the *Family Law Act 1975* (Cth)), and they felt they could not adequately tailor an order without knowing what else was happening with the family. According to one magistrate, this lack of information means that 'it takes too long to work out what's going on'.²³⁹

Magistrate Kate Hawkins, Joint Supervising Family Violence Magistrate, Magistrates' Court of Victoria, told the Commission that, when hearing an application, magistrates 'don't have any way of directly accessing whether there's any family law orders'.²⁴⁰ Instead, that information is only provided to magistrates if a registrar or bench clerk makes further enquiries. Magistrate Hawkins explained that the process of information sharing with the Family Court or the Federal Circuit Court is 'quite an ordeal'.²⁴¹

Dr Gelb notes that:

The Magistrates' Court asks people who apply for a family violence intervention order whether they have previously sought or been granted any family law orders. Where a person discloses such an order, it is recorded in Courtlink. When the police apply for the family violence intervention order, however, this information is not available. The data relating to orders under the *Family Law Act 1975* (Cth) are therefore not a complete count of all people who have previously had family law orders; rather, they are an undercount to some (unknown) extent.²⁴²

Magistrates in the Children's Court may not be aware of proceedings or orders in other jurisdictions. Magistrate Dotchin told the Commission:

I talked about in the morning when I'm at Moorabbin and I open my file and I have really just two documents in front of me, the summary and the formal piece of paper about the grounds of the application. I do not have a copy of an intervention order that may be in existence that may be relevant. I don't have a copy of any reports from the Family Court or any reports at all from any other jurisdictions. I have none of that material before me. So the dissemination of this material does not occur at an early stage in the proceedings in the Children's Court. You are really bereft of that sort of information.²⁴³

The Magistrates' Court of Victoria and the Children's Court of Victoria suggested the following to improve information sharing between the courts:

14. Investment in a new case management system for the Magistrates' and Children's Courts to support the delivery of modern court services, enable fast and accurate exchange of information between agencies and replace resource intensive manual processing.
15. Develop systems that enable appropriate information to be shared across courts, family violence and justice agencies to manage risk and enable informed decision making, incorporating:
 - (a) single database for family violence, child protection and family law orders that can be accessed by each of the relevant courts
 - (b) access to reports used in other court jurisdictions.²⁴⁴

In its June 2015 interim report, the Family Law Council recommended the creation of a national database:

The development of a national database of court orders to include orders from the Family Court of Australia, the Family Court of Western Australia, the Federal Circuit Court of Australia, state and territory children's courts, state and territory magistrates courts and state and territory mental health tribunals, so that each of these jurisdictions has access to the other's orders.²⁴⁵

Information sharing is also part of *The Second Action Plan: Moving Ahead of the National Plan to Reduce Violence Against Women and Their Children 2010–2022*, which requires governments to improve information sharing across court processes.²⁴⁶

The federal family courts may be unaware of state court proceedings

The Commission also heard that judges in the federal family court system may not have information about proceedings in Victorian courts:

... the FCCA does not have before it all the evidence that the Magistrates' Court had when making an interim or final intervention order. This can create the perception and experience among clients that family violence is not given appropriate weight.²⁴⁷

The Victorian Bar and the Family Law Bar Association noted in their submission that the federal family courts need information about the nature of the family violence alleged, especially where the order has been made without admissions.²⁴⁸ The Law Institute of Victoria submitted that it is very difficult for family court judges to make parenting decisions without having a transcript of the evidence in a FVIO case in the Magistrates' Court:

Providing the federal family courts with the orders and a transcript of ex parte proceedings before the Magistrates' Court for an intervention order would reduce costs and delay for family law litigants in their family law proceedings and ensure the court has all the relevant information required to make parenting orders that are in the best interests of the children.²⁴⁹

Under section 60CF(1) of the Family Law Act, if a party to proceedings about a child is aware that a family violence order applies to the child or a member of the child's family, the party must inform the court of the order.²⁵⁰ However, a party to proceedings who is not legally represented may not be aware of that requirement or may fail to comply with it.

Family courts are also required to ask each party to the proceedings whether they consider that the child concerned, or the party, has been, or is at risk of being, subjected to family violence.²⁵¹ Unless the parties provide the information, federal family courts do not have direct access to FVIOs or access to transcripts of Magistrates' Court proceedings. Access to these documents is unlikely to occur if the parties do not have legal representation.²⁵²

The Family Law Council's interim report discussed the extent to which information sharing is permitted, in the context of prohibitions under the Family Law Act about the sharing of information between the courts, especially the provision for sharing of family consultant reports.²⁵³ This issue was also discussed in a roundtable hosted by the Commission.²⁵⁴

The Family Law Act prohibits publication of any account of Family Court proceedings which identifies a party or a witness to family law proceedings, or a person associated with²⁵⁵ or related to a party. The Family Law Act does not prevent communication with people concerned in any proceedings in any court, of any transcript of evidence or other document for use in connection with those proceedings.²⁵⁶

In considering the matters that must be taken into account in determining the best interests of the child for the purposes of making a family law order, such as a parenting order,²⁵⁷ if an FVIO has been made, family court judges must consider the inferences which can be drawn from the order, having regard to, among other things, its nature, the circumstances in which the order was made, evidence admitted in proceedings for the order and the court order itself.²⁵⁸

Information sharing between the child protection system and federal family courts

Information-sharing procedures between Child Protection and the federal family courts are formalised in legislation and a formal protocol.

Information sharing: Child Protection and the federal family courts

The Family Law Act imposes an obligation on a party to proceedings relating to a child to inform the court of a notification or report to Child Protection,²⁵⁹ a Child Protection investigation, or if the child is in the care of someone as a result of Child Protection proceedings.²⁶⁰ Where a family court has been informed of these matters, it can make an order requesting that Child Protection provide documents or information specified in the order.²⁶¹ Such information could include information about notifications to Child Protection of suspected abuse or family violence affecting the child, any assessments by Child Protection of investigations into notifications and the outcome of those investigations, and any reports commissioned by Child Protection in the course of investigating a notification.²⁶²

In 2011, the Department of Human Services (now DHHS) and the Family Court and FCC (then known as the Federal Magistrates' Court) entered into a protocol to facilitate information sharing between them.²⁶³ The protocol articulates both the statutory and non-statutory responsibilities of the courts and DHHS, so as to aid cooperation and effective communication.²⁶⁴

The protocol allows DHHS to obtain information about various matters, including the court orders which have been made and those which are being sought, by contacting the registry manager. The protocol allows for DHHS to access federal family court information when a child's family cannot provide the relevant information themselves.²⁶⁵

The protocol also details information exchange procedures for the federal family courts to access information from DHHS.²⁶⁶

Referrals from the federal family courts to Child Protection

In the Family Court, the Magellan case-management system deals with cases involving allegations of serious sexual or physical abuse of a child.²⁶⁷ The Magellan system involves strict timelines for managing the case, the provision of information from the child welfare authority to the Family Court and close liaison between external information providers, Child Protection and court personnel.²⁶⁸

In Victoria, the protocol's information-sharing provisions require DHHS to provide written reports to the Family Court regarding a child who is the subject of proceedings in a Magellan list. Upon receiving a request from the Family Court, Child Protection:

- (i) make a decision regarding the investigation of the notification in accordance with normal practice, and this protocol
- (ii) determine whether the department should intervene in the Family Court proceedings.²⁶⁹

Another way of providing information to the Family Court is the Notice of Risk procedure. Since 1995 there have been provisions in the Family Law Act to identify cases involving abuse of children²⁷⁰ and to impose an obligation on court personnel and other professionals associated with family court proceedings to notify the relevant child welfare authority if they suspect that a child has been abused or is at risk of abuse.²⁷¹ The current provisions came into effect in 2012.²⁷²

Under the Family Law Act 'an interested person' (including a party to the proceedings or an independent children's lawyer²⁷³ who is representing the interests of the child in the proceedings) is required to file a Notice of Risk if they allege the child has been abused or is at risk of being abused, and is to serve the notice on the other party to the proceedings (section 67Z reports).²⁷⁴ Additionally, if an interested person alleges that there has been family violence by one of the parties or a risk of family violence that is relevant to the court making or refusing to make an order, then they too must file a notice.²⁷⁵

If a notice is filed, the court must take certain actions promptly²⁷⁶ and if the notice includes allegations of child abuse, or risk of abuse, the registry manager must as soon as practicable notify the Secretary of DHHS.²⁷⁷ Child Protection treats this as a report that the person has significant concern about the wellbeing of a child, and then considers what action should be taken.²⁷⁸ This may include taking protective action, or deciding not to intervene further.

There are also provisions for voluntary reporting. Where a court officer, family counsellor, or family dispute resolution practitioner has reasonable grounds for suspecting that the child is or at risk of being abused, the person may notify DHHS (section 67ZA reports).²⁷⁹

There is also a discretionary power under the Family Law Act for the federal family law courts to request that the Secretary of a state child protection authority become a party to proceedings that affect, or may affect, the welfare of a child (section 91B requests).²⁸⁰

In her statement to the Commission, Ms Leanne Miller, Director of Child Protection West Division in DHHS, commented on the decrease in the number of section 91B requests to Child Protection:

It is possible that the reduction in the number of such requests is attributable to the increased presence of a Child Protection worker in court and the more timely sharing of information between courts and Child Protection. It is also possible that the increase in the use of s 67Z and s 67ZA reports means that Child Protection are invited to provide input via other channels.²⁸¹

In their joint submission, the Family Court and the FCC, noted:

Effective communication of information between the courts and child protection agencies also means that the courts can avoid unproductive s 91B requests that a child protection agency intervene in family law proceedings. Collaboration between the courts and the Victorian Department of Human Services has led to innovations such as the co-location of a Departmental Officer at the Melbourne and Dandenong registries. This has dramatically improved the ability of the courts to receive and exchange information in relation to family violence and child abuse.²⁸²

In 2015, the FCC made it compulsory for all parties to parenting cases to fill in a Notice of Risk form.²⁸³ Because of concerns that notices were not filed when they should have been, the FCC has required filing and service of a Notice of Risk with every application for a parenting order, regardless of whether it is alleged there is a risk to the child.²⁸⁴

The Family Court and FCC submitted that:

It is the experience of the Federal Circuit Court that by imposing an obligation on all parties to answer questions about risk issues has resulted in disclosures that might not have been given in their affidavits.²⁸⁵

It could be argued that the nature of this form and the model of reporting matters from the federal family courts to Child Protection may deter victims of family violence from raising safety concerns themselves for their children. Indicating family violence on the form will trigger an immediate report to Child Protection. This may have the effect of deterring notifications of family violence and may unnecessarily increase the number of family violence-related reports to the child protection system.

Nevertheless, there has been an increase in the number of reports to Child Protection from both the FCC and the Family Court over the past five years, with the total number of reports growing from 459 in 2010–11 to 2045 in 2014–15, an increase of about 450 per cent.²⁸⁶

Table 24.1 shows the number of reports from the federal family courts to Child Protection since 2009–10. It is noted that these reports apply to all forms of abuse and are not confined to children affected by family violence.

Table 24.1 Federal Family Courts Reports to Child Protection in Victoria

Year	Section 67Z (e.g. parties or independent child's lawyer, in family law proceedings)	Section 67ZA (e.g. family law professionals)	Section 91B (e.g. court requests for intervention in family proceedings)	Total
2009–10	304	5	188	497
2010–11	276	2	181	459
2011–12	471	5	241	717
2012–13	927	19	119	1065
2013–14	1174	32	74	1280
2014–15	1943	49	53	2045
Total	5095	112	856	6063

Source: Based on Statement of Miller, 26 July 2015, 18 [63].

The need to make information-sharing easier between Child Protection and the courts so as to support parents to obtain protective orders is further discussed in Chapter 11.

Co-location of a child protection practitioner in the family courts

In December 2012, the position of Child Protection Practice Leader (Family Law Liaison) was created in Victoria for a fixed term of two years.²⁸⁷ As part of the DHHS Office of Professional Practice, there are co-located senior child protection practitioners at Victoria Police and at the Melbourne and Dandenong registries of the federal family courts.²⁸⁸ The role supports the operation of the protocol which exists between DHHS and the federal family courts.²⁸⁹

The role was created jointly by the Family Court, the FCC and DHHS as a means of assisting courts in cases where child protection issues are raised and also to provide advice and leadership to child protection staff in relation to family law matters.²⁹⁰

The purpose of co-location is to:

... facilitate the exchange of timely, relevant information about child protection matters where families and children were engaged with the two systems: the Victorian state child protection system and the Commonwealth family law system. The facilitation of improved information sharing was aimed at enhancing decision-making about the best interests of children subject to action in the family law jurisdiction.²⁹¹

The Australian Institute of Family Studies evaluation of the co-located practitioner in the federal family courts found, among other things, that the co-located practitioners had a significant impact on fostering collaborative relationships and practices and on improving information sharing between the family law and child protection systems.²⁹² Some observations made by the AIFS include:

- ▷ The role of the co-located practitioner was highly valued by family law and child protection professionals.²⁹³
- ▷ The initiative led to improved timeliness and quality of information for both the family courts and DHHS, which in turn supported earlier and more informed decision making.²⁹⁴
- ▷ In particular, the Melbourne role provided an effective point of access to the other system for both family law professionals (mostly judge's associates, family consultants, registrars and independent children's lawyers) and child protection practitioners.²⁹⁵
- ▷ Improved timeliness of information, a benefit of which included fewer court adjournments which had positive results for parties.²⁹⁶
- ▷ The quality of information provided by DHHS has been improved through the co-located role, including by providing child protection practitioners with templates to respond to family courts notifications and with feedback on the information practitioners have provided.²⁹⁷

The evaluation also found that there was a need to strengthen processes for directing information flow between the family law system and the child protection system at organisational level, particularly in relation to information in child protection files that had been closed.²⁹⁸

The evaluation said that further clarity was needed to define the boundaries of the co-located Child Protection role, in order to ensure that seeking advice from the practitioners did not contribute to an excessive workload.²⁹⁹ One problem with the role was the lack of legislative authorisation for necessary information sharing.³⁰⁰

AIFS made several recommendations to strengthen systems and processes and to better facilitate and support information sharing. Those recommendations included reviewing the legislative barriers to information sharing.³⁰¹ The evaluation also recommended amendments to court rules, to enable reports and information from experts such as family consultants and independent children's lawyers to be routinely shared with the child protection system.³⁰²

Since the July 2015 AIFS evaluation, no legislative amendments have been made to either the Children, Youth and Families Act or the Family Law Rules as was recommended.³⁰³ DHHS has not indicated whether it intends to continue the placement of a child protection practitioner at the family law courts.

Further discussion about information sharing in Victoria can be found in Chapter 7.

Risk assessment

The risk assessment tool developed for use in family law processes is the DOORS (Detection of Overall Risk Screen).³⁰⁴ DOORS is an empirically-based, standardised screening framework for frontline workers, which uses a broad definition of risk.³⁰⁵

An AIFS evaluation of this tool found that many family law professionals, and particularly lawyers, had no exposure to DOORS and had never used it:

Methods and approaches used are a significant consideration when examining the issues associated with adequate screening. The data from participants in the current study suggest the DOORS screening tool—a practice strategy implemented to support better identification of family violence, child abuse and other risks—had a mixed reception and limited take-up. The evidence in this report suggests that a substantial proportion of professionals, particularly lawyers, reported that they had not had exposure to DOORS. Among those who reported that they had, only a small number reported using it in their day-to-day practice, with a majority of lawyers (51%) and non-legal professionals (69%) indicating that they rarely or never used it.³⁰⁶

The evaluation also found that family violence risk assessment practices across the family law system are inconsistent and require improvement.³⁰⁷

The Commission also notes that there is not a common risk assessment approach used across the federal family courts and state family violence system.

In its submission to the Commission, Eastern Access Community Health (now EACH), which operates family dispute resolution and other services under the federal Families and Communities Programme, notes that some programs are required to use the Family Violence Risk Assessment and Risk Management Framework (commonly known as the Common Risk Assessment Framework or CRAF) and others to use DOORS.³⁰⁸

The Commission also heard criticism of inconsistent use of the screening processes for family dispute resolution between practitioners and that there is an emphasis on screening for physical violence over psychological abuse.³⁰⁹

One of the goals of the Family Court and FCC's *Family Violence Plan 2014–2016* is to continue the development of a best-practice risk assessment tool for use by Child Dispute Services.³¹⁰ Additionally, supporting integrated systems is a national priority under the *Second Action Plan 2013–2016*, a stage of the *National Plan to Reduce Violence Against Women and Their Children*. The plan is looking at strengthening 'systems and service integration', through 'collaborative models of service delivery and information sharing protocols and risk assessment tools'.³¹¹

The Commission also notes that the Family Law Section of the Law Council of Australia provides continuing professional development to family lawyers, including in the area of family violence, and that it 'continually explores innovative and practical ways of raising awareness about family violence'.³¹² The professional development opportunities it has offered family lawyers in respect of family violence over recent years include sessions on family violence risk assessment screening tools and a two-part training session on the DOORS framework.³¹³

The need for a revised CRAF to be used throughout the Victorian family violence sector, including in the court system, is explored in Chapter 6.

Child contact centres

Some submissions to the Commission emphasised that demand for child contact centres far outstrips supply.³¹⁴ The Commission was told that in some cases, delays in accessing child contact centres meant that victims of family violence are forced to agree to unsafe contact arrangements in order to meet the terms of family law agreements or orders.³¹⁵

The Australian Children's Contact Service Association noted its concern that 'courts and post separation services are referring vulnerable family members to services where there is no assurance that baseline, safe service delivery is provided'.³¹⁶ The Association recommended that the Commonwealth Government regulate all child contact centres (not just those that are publicly funded), including an accreditation process incorporating the baseline standards in the *Children's Contact Service Guiding Principles Framework for Good Practice*.³¹⁷

The way forward

Various commissions of inquiry and advisory boards have made recommendations to improve the responsiveness of the family law system to family violence and to overcome the problems caused by the intersections between state and federal courts. Many of these recommendations have not been implemented.

We acknowledge the frustrations of those working within the court system who are confronting high demand with limited resources and who must navigate barriers to information sharing across jurisdictions. We also acknowledge the concerns of victims who have to navigate the complex intersection between state and federal jurisdictions.

It is disappointing that much of what has been recommended in past inquiries, which could substantially improve the experience of family violence victims and their children, has not been implemented and has had to be reiterated to the Commission. We urge the Victorian Government to recognise the need for reform in this area and to pursue the implementation of recommendations made by other inquiries in partnership with the Commonwealth Government. For that reason, we have recommended that the Victorian Government take up family law reforms with the Commonwealth Government.

It is important to note the limitations on the scope of this Commission's inquiry. Section 123 of the *Inquiries Act 2014* (Vic) provides that the Commission cannot enquire into, or exercise powers in relation to, courts. We therefore did not examine the outcomes of particular cases in the Magistrates' Court of Victoria, the Children's Court of Victoria, or the federal family courts. Nonetheless, we were grateful for submissions from individuals, organisations and the courts, and participation by family court representatives in this inquiry.

The recommendations below focus, as our terms of reference require, on making 'practical recommendations' to assist victims of family violence. For reasons we have explained, this chapter focuses on state laws and practices. However, substantial changes to federal law are needed to overcome the problem of system fragmentation which results in many people having to bring proceedings in both state magistrates' courts and federal family law courts.

The reforms required are complex because they may involve the interaction of state and federal laws. To bring about reform in this area, we believe that advocacy at state government level is required. In our view, the Victorian Department of Justice and Regulation would be well equipped to undertake the necessary work to pursue implementation of these recommendations. We consider it desirable that there be a delegated role created in the policy section of the Department of Justice and Regulation, to focus on the necessary federal and state negotiations required to bring about the relevant legislative changes.

Additionally, in Chapter 38 we have recommended that the Victorian Secretaries Board take responsibility for the planning and oversight of the family violence system. The Secretary of the Department of Justice and Regulation is a member of that board and should report to the VSB on the progress of efforts to ensure further reforms are made to the family law system at a Commonwealth level, to overcome the problems identified in this chapter.

Enforcing personal protection injunctions

The Commission agrees with the Australian and NSW Law Reform Commissions that breach of an injunction for the personal protection of an adult or child under the Family Law Act should be a criminal offence.

Victoria Police officers will be more likely to act on their power to arrest and to charge respondents for breaches of personal protection injunctions if a breach is a criminal offence. This will require amending the Family Law Act, which falls within the power of the Commonwealth Government alone.

The Victoria Police Code of Practice for the Investigation of Family Violence should be amended to reflect the ability of police to arrest for a breach of an injunction, as opposed to the matter simply being referred to federal police. This would help victims of family violence by overcoming the need for them to seek an FVIO if they have obtained an injunction in a family court. If police training is required to provide understanding about the amendment to the Code of Practice, then this should be undertaken by Victoria Police.

It may also be necessary for there to be a discussion between Victoria Police and the Australian Federal Police about their respective responsibilities in responding to family violence and family violence orders made in either state or federal courts.

Supporting state courts to exercise family law jurisdiction

Magistrates' Court

Parenting orders

As the first point of contact with the legal system for many victims, the Magistrates' Court should be able to deal with as many issues as possible relating to their protection. Magistrates should be encouraged and supported to exercise their family law jurisdiction, and parties should be advised that magistrates have the power to make some family law orders. We note that the exercise of federal jurisdiction by magistrates will have significant resource implications. The Victorian Government should negotiate how the Commonwealth Government might compensate the state for hearing federal cases.

Magistrates' exercise of their power to resolve parenting disputes in the Magistrates' Court will make it easier for families to resolve such matters without having to navigate both state and federal courts. We believe that magistrates should also be encouraged to exercise their Family Law Act jurisdiction and family law matters should be listed in the Magistrates' Court, whenever possible.

We acknowledge the concerns raised regarding magistrates exercising their powers to confirm parenting arrangements by consent in the Magistrates' Court too soon after an incident of violence or after separation. We caution against this. Magistrates should usually refrain from making parenting orders or sealing parenting plans by consent at a first mention date in FVIO proceedings. It will usually be inappropriate for parenting issues to be dealt with during the immediate crisis that follows separation after family violence, when the victim is having to cope with multiple problems. That being said, it will often be appropriate for the court to make a parenting order by consent as long as that consent is not obtained very shortly after a family violence incident, or without the parties receiving appropriate legal advice.

Property orders

The Commission received submissions and evidence and considered research which suggested that victims of family violence are put at a disadvantage when dividing property:

The share of property these women receive appears to reflect the practical difficulties they face in trying to negotiate a fair settlement with a violent former spouse—a situation where safety may be given precedence over the right to a fair share of the matrimonial property.³¹⁸

This is unfortunate because property settlements can assist victims of family violence to regain economic stability. Timely property settlements are 'fundamental to economic equality'.³¹⁹

Increasing the jurisdiction of the Magistrates' Court to determine the division of small amounts of property would enable victims and perpetrators to resolve property disputes quickly and in one court, if they have previously appeared in FVIO proceedings. This may help to ensure that victims of family violence will not abandon their claims. We consider that encouraging a court to determine small property claims will go some way to helping victims of family violence to become economically independent without being drawn into long and expensive federal property disputes.

We note that the monetary limit of the Magistrates' Court family law property jurisdiction has only been changed once—it was increased from \$1000 to \$20,000 in 1988.³²⁰ Accounting for inflation, \$20,000 in 1988 is equivalent to approximately \$45,000 today.³²¹ The Magistrates' Court of Victoria currently has jurisdiction to determine disputes over money or property up to the value of \$100,000,³²² which suggests a need for the Commonwealth Government to revisit the jurisdictional limit.

Support for magistrates

Magistrates need support to exercise their limited powers to make Family Law Act orders. Some magistrates may lack expertise in family law and are not confident in dealing with these issues. We consider that magistrates should have sound and up-to-date knowledge of federal family law in addition to knowledge and skills in the area of family violence, so that they are equipped to exercise their jurisdiction under both state laws and the Family Law Act.

We note that there are already comprehensive resources available to magistrates to exercise their Family Law Act jurisdiction, including the Family Law Manual and Family Violence Bench Book.

There are also practical constraints and features of the 'working culture' of magistrates' courts which need to be addressed to better assist magistrates to exercise their powers. These include addressing:

- ▷ the high case volume of cases, which give magistrates limited time to spend on each case and require them to give priority to immediate safety issues
- ▷ if a person is represented by a duty lawyer in FVIO proceedings, the lack of time to permit the lawyers to advise on, or screen for, family law issues.

The Commission makes recommendations in other chapters to help ease the burden on magistrates' courts that face high demand. These include:

- ▷ capping lists of family violence matters (see Chapter 16)
- ▷ ensuring all headquarter courts have the functions of Family Violence Court Division courts within two years (see Chapter 16). This will ensure that such courts will be well-equipped to handle family law matters
- ▷ requiring the Victorian Attorney-General to take into account, when appointing magistrates, the potential appointee's knowledge, experience, skills and aptitude for hearing cases involving family violence, including knowledge of relevant family law (see Chapter 40).

The Magistrates' Court should consider simplifying processes to enable magistrates to determine small claims more efficiently, so as to enable them to effectively hear Family Law Act property disputes. Consideration should be given to better incorporating federal dispute resolution processes.

Providing family law information to parties in FVIO proceedings

We note the difference in roles that the federal family courts and state magistrates' courts play in our justice system. The federal family courts have the role of determining a child's best interests as the paramount consideration when making a parenting order.³²³ In determining those best interests, they are required to consider the need to protect a child from physical or psychological harm and exposure to abuse, neglect or family violence.³²⁴ The Family Court and FCC are assisted in their decision-making by their Family Violence Best Practice Principles.³²⁵

On the other hand, the focus of the Family Violence Protection Act is to maximise safety for children and adults, prevent family violence and promote accountability of perpetrators.³²⁶ The role of the magistrate is to provide an immediate safety response to victims of family violence rather than to determine long-term care arrangements for children.

The existence of dual jurisdictions in the Magistrates' Court and the federal family courts is a source of confusion for people involved in FVIO proceedings. For example, a woman may have obtained an FVIO protecting her and her children, with conditions prohibiting contact for the children with the perpetrator. She may then have proceedings in a federal family court and leave that court with a parenting order that allows the respondent to have unsupervised contact.

People who access the Magistrates' Court may not know:

- ▷ that they can apply for a Family Law Act order in the Magistrates' Court
- ▷ what information they need to provide to obtain a family law order
- ▷ what a family law order means or how it relates to conditions under a FVIO
- ▷ that FVIO conditions may only operate for a short period, because long-term care arrangements may be dealt with, or overridden by, family law orders.

The joint Australian and NSW Law Reform Commissions have previously recommended that application forms for FVIOs should include an option for the applicant to seek the revival, variation, discharge or suspension of a parenting order.³²⁷ We agree with that recommendation, and further recommend that information about the Magistrates' Court's family law jurisdiction should be included in the application form for an FVIO (FVIO1). For example, in the 'Further Information' section of the form, applicants could be asked whether they are seeking a parenting order and told that such an order may be made with the consent of the other party. We consider that it is also necessary to provide information to both parties if they come to court as the result of a police-issued family violence safety notice.

Recommendation 60 in Chapter 16 discusses online material about the FVIO process. That online material and the Magistrates' Court website should also include comprehensive information about the ability to have some family law matters resolved in the Magistrates' Court.

The FV101 form and other information provided online and/or in hard copy should also direct applicants and respondents to the form they need to complete in order to make a federal family court application. Over time, it may be possible for the Magistrates' Court and the federal family courts to develop a common form for both purposes, or amend the federal family court initiating applications to make it clear that applications can be filed in state courts.

The FVIO could also include information about methods of resolving disputes about children and property outside court processes, for example, through the use of legally assisted family dispute resolution services.

Lack of understanding of orders made in the Magistrates' Court may lead to an escalation of violence, particularly when a respondent mistakenly believes that the effect of the order is to prevent him from having any contact with his children. Where orders have been made under both the Family Violence Protection Act and the Family Law Act, parties need to know how those orders interact, otherwise they may unintentionally breach the obligations that apply to them.

In the inquest into the death of Luke Batty, Judge Gray recommended that the Magistrates' Court revise the form and content of FVIOs to ensure they are written in clear and unambiguous language. This should include clarity in relation to the operation of section 68R of the Family Law Act.³²⁸ We support that recommendation.

We also recommend that the Family Violence Protection Act be amended to require magistrates to explain the effect of any orders they make under the Family Law Act and how those orders interact with FVIOs. Clear communication from the court is required to help parties understand the effect of orders. Magistrates are best placed to provide that explanation when they are able, or in situations where they cannot, lawyers should be required to provide that explanation. Currently the Family Violence Protection Act places that onus on registrars and only at the time that an interim FVIO is made. We consider it necessary for magistrates to explain how interim and final FVIOs interact with any Family Law Act orders.

Finally, we note the concerns expressed in relation to the 21-day time limit placed on orders made by a magistrate to revive, vary or suspend a parenting order.³²⁹ The Family Law Amendment (Financial Agreements and Other Measures) Bill 2015, which has been introduced into Federal Parliament, will address these concerns.

Children's Court

Although the Magistrates' Court has limited power to exercise Family Law Act jurisdiction, there are some doubts about whether the Children's Court also has that power. The Commission heard strong support for the need to clarify the Children's Court jurisdiction and allow it to exercise Family Law Act jurisdiction.

The Victorian Law Reform Commission, in its 2006 report, recommended that this could be achieved by amending the Children, Youth and Families Bill 2005 (as it was then) to enable the Children's Court to make, vary or discharge parenting orders.³³⁰ In our view, the Victorian Government should take immediate steps to make that amendment to the Children, Youth and Families Act.

We believe that it would also be desirable to also amend the Family Law Act to put the jurisdiction of the Children's Court of Victoria beyond doubt. A recommendation to this effect was recently made in the Family Law Council interim report.³³¹

Legal advice and representation

It is unsatisfactory that victims of family violence often have to negotiate parenting or property matters or appear in court without legal representation.

The Commission recognises the pressures on duty lawyers in the Magistrates' Court, because of the high volume of FVIO applications. We make recommendations in Chapter 16 to help alleviate that pressure. However, we do not envisage that duty lawyers will have the time to provide the in-depth legal advice applicants and respondents need to resolve family law issues.

We consider that legal assistance regarding family law advice, whether provided by Victoria Legal Aid, a community legal centre, or a private practitioner, should be connected to the FVIO process and should be available to parties to FVIO proceedings throughout the process. Ideally, this advice would occur off site and outside the court setting, which is focused more on the crisis response to family violence than on the additional 'wrap-around' services that a family also needs.

As discussed above, Victoria Legal Aid, in its 2015 Family Law Legal Aid Services Review, identified the need to make better use of the Magistrates' Court for client intake into family law services, and are reviewing the way that they enhance opportunities in family violence cases at the Magistrates' Court to screen better for family law needs.³³² It should be established practice for duty lawyers at the Magistrates' Court in FVIO proceedings to screen for family law needs and to refer parties to Victoria Legal Aid, community legal centres, private practitioners, dispute resolution services and other relevant services, so that parties can get advice on family law issues.

The provision of adequate legal services is crucial, and Victoria Legal Aid and community legal centres must be resourced. In Chapter 16, we make recommendations for increased funding for legal services.

The Commission also heard that a lack of access to legal representation across both the state and federal courts can put victims of family violence in a situation where they have to cross-examine perpetrators. Whether amendments should be made to the Family Law Act, similar to those provisions regarding cross-examination in Victorian FVIO proceedings, so as to better protect victims of family violence during cross-examination in court hearings, is a matter for the Commonwealth Government.

A shared understanding of family violence

A belief among lawyers and the wider legal system that allegations of family violence are commonly made in order to gain advantage in negotiating disputes about parenting may imperil the safety of victims of family violence and their children. Such attitudes minimise the extent of family violence in our community and the harm it causes. Understanding by the court and legal profession of the tactics used by perpetrators of violence to further perpetrate abuse is essential.

The Commission understands that there are few private lawyers who practise in both the family law and child protection jurisdictions. Family lawyers (other than independent children's lawyers appointed to represent children) may have limited understanding of family violence, while lawyers who act in child protection matters may have limited understanding of family law issues.

Lawyers who practise across jurisdictions can provide valuable knowledge and explanation to clients of what they can expect when they enter a new court process.

Best practice would see uniformity in approach amongst all courts—the family courts, the Magistrates' Court and the Children's Court—when responding to allegations of family violence. This would address the real concern that when 'a matter moves from one jurisdiction to another, the import of violence is not lost', that victims are safer and that perpetrator accountability is better assured.³³³ Our recommendation is designed to encourage lawyers to practise across jurisdictions.

The Commission acknowledges the concerns raised that family consultants do not always respond appropriately to allegations of family violence and the effect this has upon victims. Further education and training and accreditation of family consultants about the dynamics of family violence is a matter for the federal family courts, as are any processes to monitor and review their conduct.³³⁴ However, the Commission notes the importance of ensuring that parties to proceedings who have been affected by family violence have a clear understanding of the role of the family consultant. Family consultants are not there to make a determination as to whether violence occurred or not. That is a matter for a court to determine.

Improved information sharing

Information sharing is especially important in enabling federal and Victorian courts to identify and manage risks for victims of family violence and their children and to issue orders that are informed by orders issued or agreements made in other jurisdictions. We understand that another key benefit of information sharing is holistic service provision.³³⁵ Information sharing supports informed decision-making and helps reduce the effect of jurisdictional fragmentation. Information sharing may also help to reduce the need for victims of family violence to retell their story to multiple service providers.³³⁶

Over the past five years, numerous proposals have been made to improve information sharing between federal family courts, state courts and DHHS. The Family Law Council, in its interim report, supported the development of a national database of court orders to include federal family court orders, children's court orders and magistrates' court orders.³³⁷

The Commission supports the creation of a national database for state and federal courts. However, information exchange and access to the database in Victoria should extend further than providing access to court orders. It is also important that Victoria Police and Child Protection can access orders made in other jurisdictions, subject to appropriate qualifications to their access.

Though the streamlining of information regarding orders is important, so is access to information that supports the making of those orders. A national database should apply to relevant courts, police and Child Protection and should include the following information-sharing capabilities:

- ▷ The ability for each body to assess the status of proceedings that are currently being heard, or have previously been heard in other courts.
- ▷ The ability for each body to obtain copies of all court orders made in each jurisdiction, including interim orders and copies of family violence safety notices.
- ▷ The ability for each body to access copies of all judgments made in relation to orders, including short-form judgments and other judicial directions.
- ▷ The ability for each body to obtain copies of transcripts.
- ▷ The ability for each body to obtain copies of court applications and supporting documentation filed in proceedings, including copies of family violence safety notices, Child Protection disposition reports, reports filed as part of proceedings in the Magistrates' Courts Criminal Division, and family consultant reports made in the federal family courts.

The Commission acknowledges there may be natural justice implications when reports, prepared for a specific court, are being shared between courts for a different purpose. The Commission supports a greater information exchange between courts and the family violence system in general, as explained in Chapter 7, but acknowledges that if reports are shared between courts and there is evidence relevant to a court's determination, then parties may have to call a report writer for cross-examination purposes. Understanding of that process would be difficult for self-litigants. Careful thought would need to be given to the sharing of this information, with appropriate qualifications.

We acknowledge that the development of such a database may continue to take some time, so interim measures are needed in Victoria to improve information flow between the Magistrates' Court, the Children's Court, DHHS, the federal family courts and police. In Chapter 7, we recommend implementation of a new information-sharing regime to be included in the Family Violence Protection Act. This will go some way to addressing information sharing between these bodies.

However, we consider that a formal information-sharing arrangement should be agreed between the Magistrates' Court of Victoria, the Children's Court and each of the federal family courts as a priority. Additionally, the protocol³³⁸ between DHHS, the Family Court and the FCC should be updated. Each of these formal instruments should include reference to the information-sharing regime in the Family Violence Protection Act, once it has been enacted. Court protocols should be regularly reviewed.

The Commission also agrees with the Family Law Council recommendation³³⁹ that there be regular meetings between stakeholders. We suggest that stakeholders include representatives of the state and federal courts, DHHS, Integrated Family Services, family violence services, and service providers from the federal family relationship services program, to consider how information sharing difficulties can be resolved.

Although confidentiality requirements impose restrictions on the exchange of information between DHHS and the family courts, the co-location of child protection practitioners at the Melbourne and Dandenong registries of the Family Court and FCC has helped to ensure that Children's Court orders are brought to the attention of the family courts. DHHS should continue funding and supporting the co-location initiative.

Neither protocols nor legislative changes will bring about changes in practice unless child protection workers and court staff in state and federal jurisdictions are supported by information and training. Further recommendations on these matters are made in Chapters 7 and 40.

Risk assessment

Inconsistent risk assessment practices may increase the risk of harm and require victims of family violence to re-tell their stories many times. Recommendation 1 in Chapter 6 proposes that the CRAF be revised to include an actuarial tool and that the revised CRAF include evidence-based risk factor indicators that are specific to children.

It is both confusing and undesirable for federal family courts to use different risk assessment tools from the tools used by state bodies. This problem should be addressed at a Commonwealth level.

Child contact centres

The Commission acknowledges the concerns raised about the funding and accreditation of child contact services. While this is a Commonwealth matter, we wish to emphasise that access to supervised contact centres is important to ensure that victims of family violence, and children affected by family violence, have a safe environment in which to have contact with an alleged perpetrator where contact is ordered by the court.

Recommendations

Recommendation 129

The Secretary of the Department of Justice and Regulation liaise with the Secretary of the Commonwealth Attorney-General's Department on a continuing basis to advocate for the adoption of family law reforms that reduce fragmentation of jurisdictions in cases involving family violence.

Recommendation 130

Victoria Police amend the Victoria Police Code of Practice for the Investigation of Family Violence to refer to the existence of the Victoria Police power to arrest for breach of an injunction for personal protection under the *Family Law Act 1975* (Cth) and to encourage police to exercise that power. Victoria Police should provide training in relation to the existence of that power [within 12 months].

Recommendation 131

The Victorian Government, through the Council of Australian Governments Law, Crime and Community Safety Council, pursue amendments to the *Family Law Act 1975* (Cth) [within 12 months] to:

- ▷ provide that a breach of an injunction for personal protection is a criminal offence
- ▷ increase the monetary limit on the jurisdiction of the Magistrates' Court of Victoria to divide the property of parties to a marriage or a de facto relationship (section 46)
- ▷ make it clear that the Children's Court of Victoria can make orders under Part VII of the Family Law Act in the same circumstances as the Magistrates' Court of Victoria (sections 69J and 69N).

Recommendation 132

The Victorian Government amend sections 57 and 96 of the *Family Violence Protection Act 2008* (Vic) [within 12 months] to:

- ▷ require magistrates to give an applicant, and a respondent if the respondent appears before the court, an explanation of how a family violence intervention order interacts with any existing or new *Family Law Act 1975* (Cth) order or an order under the *Children, Youth and Families Act 2005* (Vic). This explanation should be given on the making of both an interim family violence intervention order and a final family violence intervention order
- ▷ if the court has varied, suspended, revoked or revived a Family Law Act order, require magistrates to explain the purpose, terms and effect on the family violence intervention order
- ▷ permit the court to request that the legal practitioner provide the requisite explanations when a person to whom the family violence intervention order is directed is legally represented
- ▷ if the parties do not appear before a magistrate, require the relevant court registrar to provide information in writing on the interaction between either an interim or final family violence intervention order and any applicable orders under the Family Law Act or the Children, Youth and Families Act.

Recommendation 133

The Victorian Government amend the *Children, Youth and Families Act 2005* (Vic) to clarify that the Children's Court of Victoria has the same jurisdiction to make *Family Law Act 1975* (Cth) parenting orders as the Magistrates' Court of Victoria [within 12 months].

Recommendation 134

The Victorian Government, through the Council of Australian Governments Law, Crime and Community Safety Council, pursue [within two years]:

- ▷ the creation of a single database for family violence, child protection and family law orders, judgments, transcripts and other relevant court documentation that is accessible to each of the relevant state, territory and Commonwealth courts and other agencies as necessary
- ▷ the development of a national family violence risk assessment framework and tool and consistent use of such a framework or tool by state, territory and Commonwealth courts, lawyers, government and non-government service providers.

Recommendation 135

The Magistrates' Court of Victoria consider revising the form and content of family violence intervention order court applications and documentation [within 12 months] to:

- ▷ ensure that when proceedings are filed with the court both the affected person and the respondent are informed of the Magistrates' Court's jurisdiction under the *Family Law Act 1975* (Cth). Such information should be available to parties in self-initiated applications and in proceedings initiated by a police family violence safety notice
- ▷ inform the applicant that the court may revive, vary, discharge or suspend a parenting order pursuant to section 68R of the Family Law Act.

Recommendation 136

The Magistrates' Court of Victoria and the Children's Court of Victoria consider pursuing a formal information-sharing arrangement or protocol with the Family Court of Australia and the Federal Circuit Court of Australia that is consistent with the new information-sharing regime in the *Family Violence Protection Act 2008* (Vic), as recommended by the Commission [within 18 months]. The protocol should clearly set out the purpose of and principles for information exchange and allow communication between the jurisdictions in relation to process. Among the information to be exchanged between courts should be relevant court documents such as court orders, judgments, court reports and transcripts. The protocol should be regularly reviewed.

Recommendation 137

The Department of Health and Human Services support on a continuing basis the co-located child protection practitioner initiative in the Victorian registries of the Family Court of Australia and the Federal Circuit Court of Australia.

Endnotes

- 1 Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence—A National Legal Response: Final Report*, ALRC Report No 114, NSWLRC Report No 128 (2010).
- 2 Family Law Council, 'Interim Report to the Attorney-General: In Response to the First Two Terms of Reference on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems' (June 2015).
- 3 Rae Kaspiew et al, Australian Institute of Family Studies (Cth), 'Evaluation of the 2012 Family Violence Amendments: Synthesis Report' (October 2015).
- 4 Coroners Court of Victoria, 'Finding into Death with Inquest: Luke Geoffrey Batty' (28 September 2015).
- 5 Victorian Law Reform Commission, *Review of Family Violence Laws: Report* (2006).
- 6 *Commonwealth of Australia Constitution Act 1990* (Cth) s 51.
- 7 *Family Violence Protection Act 2008* (Vic) s 42. The Children's Court of Victoria also hears applications for family violence intervention orders.
- 8 The Family Division of the Children's Court of Victoria hears these applications: *Children, Youth and Families Act 2005* (Vic) s 515.
- 9 Lawrie Moloney et al, 'Allegations of Family Violence and Child Abuse in Family Law Children's Proceedings: A Pre-Reform Exploratory Study' (Australian Institute of Family Studies, 2007) 110; Thea Brown, 'Magellan's Discoveries: An Evaluation of a Program for Managing Family Court Parenting Disputes Involving Child Abuse Allegations' (2002) 40 *Family Court Review* 320, 322.
- 10 Belinda Fehlberg et al, *Australian Family Law: The Contemporary Context* (Oxford University Press, 2nd ed, 2015) 130.
- 11 For discussion of the origins of the Family Court of Australia as a specialist and 'helping' court see Helen Rhoades, 'The Helping Court: Exploring the Therapeutic Justice Origins of the Family Court of Australia' (2011) 2(1) *Family Law Review* 17, 18–19.
- 12 Family Court of Australia and Federal Circuit Court of Australia, Submission 999, 2.
- 13 Family Court of Australia and Federal Circuit Court of Australia, 'Family Violence Plan 2014–16' (2014) 7.
- 14 Federal Circuit Court of Australia, *Victoria: Circuit Court Dates* <<http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/court-lists-and-circuits/daily-court-lists>>.
- 15 Family Court of Australia and Federal Circuit Court of Australia, Submission 999, 3.
- 16 *Ibid*.
- 17 Federal Circuit Court of Australia, *Protocol for the Division of Work between the Family Court of Australia and the Federal Circuit Court* (12 April 2013) <<http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/corporate-information/protocol-for-division-of-work-fcoa-fcc>>.
- 18 *Ibid*.
- 19 *Family Law Act 1975* (Cth) s 60I(7), (9)(b).
- 20 Family Relationships Online: Helping Families Build Better Relationships, *Family Law Services* <<http://www.familyrelationships.gov.au/Services/FamilyLawServices/Pages/default.aspx>>.
- 21 Fehlberg, above n 10, 479.
- 22 *Family Law Act 1975* (Cth) s 60I(7).
- 23 *Ibid* s 60I(9)(b).
- 24 *Ibid* s 60J(1). Under the *Family Law Act 1975* (Cth) s 60J(2) this requirement does not apply if the court is satisfied that there are reasonable grounds to believe that there would be a risk of child abuse if the application for the order was delayed, or that there is a risk of family violence by one of the parties to the proceedings.
- 25 *Family Law (Family Dispute Resolution Practitioners) Regulations 2008* (Cth) reg 25(1).
- 26 *Ibid* reg 25(2).
- 27 *Ibid* reg 25(4).
- 28 *Family Law Act 1975* (Cth) s 60I(8)(aa), (d).
- 29 *Family Law Legislation (Family Violence and Other Measures) Amendment Act 2011* (Cth).
- 30 Attorney-General's Department, *Family Violence* <<http://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyViolence/Pages/default.aspx>>.
- 31 Australian Law Reform Commission and New South Wales Law Reform Commission, above n 1; Richard Chisholm, Attorney-General's Department (Cth), 'Family Courts Violence Review' (November 2009); Monash University, University of South Australia, James Cook University, 'Family Violence and Family Law in Australia: The Experiences and Views of Children and Adults from Families who Separated Post-1995 and Post-2006' (prepared for the Attorney-General's Department (Cth), April 2010) Vol 2; Family Law Council, 'Improving Responses to Family Violence in the Family Law System: An Advice on the Intersection of Family Violence and Family Law Issues' (December 2009); Rae Kaspiew et al, Australian Institute of Family Studies (Cth), 'Evaluation of the 2006 Family Law Reforms' (December 2009).
- 32 Adiva Sifris and Anna Parker, 'Family Violence and Family Law: Where to Now?' (2014) *Family Law Review* 3, 5.
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- 34 *Family Law Act 1975* (Cth) s 60CC(2), (2A).
- 35 *Ibid* s 4AB.
- 36 *Ibid* s 60D(2).
- 37 *Ibid* s 60D(1)(b)(iii).
- 38 *Ibid* ss 60CF(1), 60CH(1).
- 39 *Ibid* s 69ZQ.
- 40 *Ibid* s 60CG.
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- 42 This provision was formerly at s 60CC(3)(c) of the *Family Law Act 1975* (Cth). See also Sifris and Parker, above n 32, 5.
- 43 Sifris and Parker, above n 32, 5.
- 44 *Family Law Act 1975* (Cth) s 60CC(3)(k).
- 45 Kaspiew et al, above n 3, vii.
- 46 *Ibid* ix–x, 44.
- 47 *Ibid* 35.
- 48 *Ibid* 51.
- 49 *Ibid* xi.
- 50 *Ibid* 37–8.
- 51 *Ibid* 81.
- 52 Australian Institute of Family Studies, *Evaluation of the 2006 Family Law Reforms: Executive Summary* <<https://aifs.gov.au/sites/default/files/publication-documents/executivesummary.pdf>>.
- 53 Family Court of Australia, *Family Consultants* (1 March 2013) <<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/publications/child+dispute+services/family-consultants>>.
- 54 *Family Law Act 1975* (Cth) s 11F.
- 55 *Ibid* s 62G(2).
- 56 *Ibid* s 11A.

57 Family Court of Australia and Federal Circuit Court of Australia, Submission 999, 15 [52].

58 *Family Law Act 1975* (Cth) ss 11C, 62G(8).

59 *Ibid* s 60D(1)(a).

60 *Ibid* s 60D(1)(b).

61 *Ibid* s 68B(1)(a)–(b). See also s 114 of the *Family Law Act 1975* (Cth) which relates to injunctions for the personal protection of a party to a marriage, which includes a void marriage.

62 *Family Law Act 1975* (Cth) s 68B(1)(c)–(d).

63 *Ibid* s 4 (definition of ‘police officer’).

64 *Ibid* ss 68C, 114AA.

65 *Ibid* s 114AA(3)(a)(i). See also *Family Law Act 1975* (Cth) s 114AA(7).

66 *Ibid* s 114AA(5).

67 *Ibid* ss 112AD(1), (2), (2A), 112AE.

68 Australian Law Reform Commission and New South Wales Law Reform Commission, above n 1, 59.

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70 Family Law Section—Law Council of Australia, Submission 863, 9.

71 *Ibid*.

72 Victoria Police, ‘Code of Practice for the Investigation of Family Violence—Edition 3’ (2014) 42 [5.14.2.2]–[5.14.2.3].

73 Australian Law Reform Commission and New South Wales Law Reform Commission, above n 1, 29.

74 *Ibid* 809.

75 *Ibid* 811.

76 *Family Law Act 1975* (Cth) s 92.

77 *Ibid* s 86.

78 *Ibid* ss 69J, 69N. The Magistrates’ Court of Victoria can determine children’s matters ‘including parenting orders, parenting plans, location and recovery of children, child maintenance and injunctions’: see Judicial College of Victoria, *Family Law Manual*, 1.2.

79 *Family Law Act 1975* (Cth), ss 39(2)–(6), 39B(2); Judicial College of Victoria, above n 78, 1.2.

80 Magistrates’ Court of Victoria and Children’s Court of Victoria, Submission 978, 23.

81 *Ibid*.

82 *Family Law Act 1975* (Cth) s 64DB.

83 Consent orders, although usually drafted by the parties, must be approved by the court. The *Family Law Rules 2004* (Cth) r 10.15 sets out the procedure for applying for consent orders.

84 *Family Law Act 1975* (Cth) ss 69J, 69N. See also Family Law Council, above n 2, 17.

85 *Ibid* s 69N(2).

86 *Ibid* s 69N(4).

87 *Ibid* s 65DAB.

88 *Ibid* s 63C(1).

89 *Ibid* ss 65DAB, 64D.

90 *Family Violence Protection Act 2008* (Vic) s 89(a).

91 *Ibid* s 90(2). See *Family Law Act 1975* (Cth) s 68R(4).

92 *Family Law Act 1975* (Cth) s 68R(3)(b).

93 *Ibid* s 68T(1).

94 *Family Violence Protection Act 2008* (Vic) ss 91–2.

95 *Ibid* s 92.

96 *Ibid* s 99. If no period is specified in the order, a final order remains in force until it is revoked by the court or set aside on appeal.

97 *Family Law Act 1975* (Cth) s 68Q(1).

98 *Family Violence Protection Act 2008* (Vic) s 86.

99 *Ibid*.

100 *Family Law Act 1975* (Cth) s 46(1).

101 The original limit of \$1000 was set by the *Family Law Act 1975* (Cth) s 46 when the original Act was introduced in 1975. The limit of \$20,000 was later introduced by the *Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1988* (Cth) s 26, as repealed by *Amending Acts 1980 to 1989 Repeal Act 2015* (Cth).

102 Owen Camilleri, Tanya Corrie and Shorna Moore, ‘Restoring Financial Safety: Legal Responses to Economic Abuse’ (A Joint Project of Good Shepherd Australia New Zealand and Wyndham Legal Service, 2015) 15.

103 As mentioned earlier in this chapter, the number of family law matters finalised in the Magistrates’ Court of Victoria decreased from just over 3000 in 2000–01 to 1211 matters in 2013–14: Magistrates’ Court of Victoria and Children’s Court of Victoria, Submission 978, 23.

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105 *Children, Youth and Families Act 2005* (Vic) s 515.

106 Transcript of Chambers, 7 August 2015, 2243 [5]–[12].

107 Judicial College of Victoria, *Family Violence Bench Book* (at 11 November 2014) 2.6.3; Judicial College of Victoria, above n 78, 1.7.

108 Victorian Law Reform Commission, above n 5, 259, 826.

109 *Ibid* xxxvii.

110 Australian Law Reform Commission and New South Wales Law Reform Commission, above n 1, 31.

111 Family Law Council, above n 2, 103–4.

112 Magistrates’ Court of Victoria and Children’s Court of Victoria, Submission 978, 64.

113 *Ibid* ix.

114 *Family Law Act 1975* (Cth) Long Title.

115 *Family Violence Protection Act 2008* (Vic) s 1.

116 *Children, Youth and Families Act 2005* (Vic) ss 1, 162.

117 Family Law Council, above n 2, 87.

118 Family Law Council, ‘Improving Responses to Family Violence in the Family Law System: An Advice on the Intersection of Family Violence and Family Law Issues’ (Commonwealth of Australia, Attorney-General’s Department, December 2009) 56.

119 Anonymous, Submission 683, 1.

120 Australian Law Reform Commission and New South Wales Law Reform Commission, above n 1, 52.

121 *Ibid* 144.

122 Family Law Council, above n 2, 102; Australian Law Reform Commission and New South Wales Law Reform Commission, above n 1, 146.

123 Australian Law Reform Commission and New South Wales Law Reform Commission, above n 1, 148–50. For discussion of this option, see Family Law Council, above n 2, 72.

- 124 Peel and Croucher, above n 69, 24.
- 125 Australian Law Reform Commission and New South Wales Law Reform Commission, above n 1, 57.
- 126 Women's Legal Service Victoria—02, Submission 940, 12.
- 127 Ibid.
- 128 Springvale Monash Legal Service, Submission 807, 12.
- 129 Transcript of Broughton, 5 August 2015, 1967 [5]–[20].
- 130 Family law and Victorian family violence system roundtable discussion, Melbourne, 21 September 2015.
- 131 Family Law Council, above n 2, 104.
- 132 Judicial College of Victoria, Submission 536, 11.
- 133 Judicial College of Victoria, *Family Violence Bench Book* (at 11 November 2014) <<http://www.judicialcollege.vic.edu.au/eManuals/FVBBWeb/index.htm#34143.htm>>.
- 134 Judicial College of Victoria, Submission 536, 5.
- 135 Senator The Hon George Brandis QC and Senator The Hon Michaelia Cash, 'National Family Violence Bench Book' (Media Release, 9 June 2015) <<https://www.attorneygeneral.gov.au/MediaReleases/Pages/2015/SecondQuarter/9-June-2015-National-Family-Violence-Bench-Book.aspx>>; Australian Law Reform Commission and New South Wales Law Reform Commission, above n 1, 46.
- 136 Senator The Hon George Brandis QC and Senator The Hon Michaelia Cash, above n 135.
- 137 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 55 (citations omitted).
- 138 Judicial College of Victoria, above n 78.
- 139 Australian Law Reform Commission and New South Wales Law Reform Commission, above n 1, 28.
- 140 Coroners Court of Victoria, above n 4, 110.
- 141 Department of Justice and Regulation, 'Recommendations in the Australian Law Reform Commission and the New South Wales Law Reform Commission Report: Family Violence—A National Legal Response' (October 2015), 18, produced by the State of Victoria in response to the Commission's Notice to Produce dated 13 October 2015.
- 142 *Family Law Act 1975* (Cth) s 68T(1). Women's Legal Service Victoria—02, Submission 940, 12.
- 143 Women's Legal Service Victoria—02, Submission 940, 13.
- 144 Coroners Court of Victoria, above n 4, 107.
- 145 Family Law Amendment (Financial Agreements and Other Measures) Bill 2015 (Cth), Schedule 2, pt 1 div 1 cls 1–2.
- 146 Wyndham Legal Service Inc—02, Submission 83, 40.
- 147 Statement of Smallwood, 10 July 2015, 8 [40].
- 148 See, eg, Transcript of Smallwood, 16 July 2015, 521 [4]–[12]; Centre for Rural Regional Law and Justice—Deakin University, Submission 511, Attachment 2, 117; Camilleri, Corrie and Moore, above n 102, 39–42; Emma Smallwood, 'Stepping Stones: Legal Barriers to Economic Equality After Family Violence' (Women's Legal Service Victoria, September 2015) 36–47.
- 149 Victoria Legal Aid, Submission 919, 2.
- 150 Transcript of Rich, 7 August 2015, 2297 [29]–[31]. See also Statement of Rich, 6 August 2015, 12–15 [50]–[58].
- 151 See, eg, Community consultation, Sandringham, 29 April 2015; Anonymous, Submission 54, 2; Anonymous, Submission 466, 4; Bethany Community Support, Submission 434, 19–20; Peninsula Community Legal Centre, Submission 447, 14; Victorian Bar Inc, Submission 985, 7.
- 152 Camilleri, Corrie and Moore, above n 102, 39. See also Smallwood, 'Stepping Stones', above n 148, 37. Smallwood also notes that: 'There is a risk that victims of violence will not pursue their property entitlements after leaving a violent relationship due to the fear of being directly cross examined by their abusive ex-partner. This impediment to obtaining a property settlement is likely to have a negative impact on a woman's prospects of recovery from family violence' (Smallwood, 'Stepping Stones', above n 148, 43).
- 153 Camilleri, Corrie and Moore, above n 102, 42.
- 154 Statement of Matthews, 5 August 2015, 6 [26]. See also Smallwood, 'Stepping Stones', above n 148, 37.
- 155 Anonymous, Submission 414, 13.
- 156 Statement of Matthews, 5 August 2015, 12 [61].
- 157 *Family Law Act 1975* (Cth) s 68Q(1).
- 158 Ibid s 68R(1)(a).
- 159 Anonymous, Submission 420, 3.
- 160 Coroners Court of Victoria, above n 4, 35.
- 161 Ibid 23.
- 162 Ibid 35.
- 163 Ibid 98 [544].
- 164 Ibid 35.
- 165 Ibid 41 [223]–[224].
- 166 Ibid 41 [225].
- 167 Victorian Law Reform Commission, above n 5, xlii.
- 168 *Family Law Act 1975* (Cth) s 65DA(2).
- 169 Ibid sub-s 65DA(3)(a). There are additional obligations under sub-s 65DA(3)(b) of the *Family Law Act 1975* (Cth) to explain the availability of location and recovery orders to ensure compliance with parenting orders. Subsection 65DA(5) of the *Family Law Act 1975* (Cth) dictates that where a party is legally represented, the court may request that the practitioner carry out the requirements under sub-ss 65DA(2)(a), (b), (3)(a) and (b).
- 170 *Family Violence Protection Act 2008* (Vic) s 57(1)(f).
- 171 Ibid s 57(1)(a).
- 172 Ibid s 57(1)(g).
- 173 Ibid s 96.
- 174 Centre for Rural Regional Law and Justice—Deakin University, Submission 511, 116.
- 175 Victoria Legal Aid, Submission 919, 71 (citations omitted).
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- 177 Victoria Legal Aid, 'Family Law Legal Aid Services Review—Final Report' (June 2015), 21, produced by Victoria Legal Aid in response to the Commission's Notice to Produce dated 5 June 2015.
- 178 Ibid 22.
- 179 Transcript of Dotchin, 7 August 2015, 2244 [5]–[8].
- 180 Statement of McGregor, 6 August 2015, 8 [38].
- 181 Ibid 8 [39].
- 182 Ibid 9 [40].
- 183 Hanover Welfare Services and HomeGround Housing Services, Submission 652, 17.
- 184 Family Law Council, above n 2, 91 (citations omitted).

185 Family Court of Australia and Federal Circuit Court of Australia, Submission 999, 13 [43]. For wider discussion about the difference between criminal and family law proceedings and cross-examination in those two contexts, see Family Court of Australia and Federal Circuit Court of Australia, Submission 999, 13 [44]–[55]. Also note the availability of duty lawyers in the federal family courts, including from Victoria Legal Aid, to provide representation on the day of hearing provided the party meets the eligibility test for a grant of legal aid: Victoria Legal Aid, Submission 919, 61.

186 Anonymous, Submission 54, 2.

187 Note the court's ability under the *Evidence Act 1995* (Cth) s 41 to disallow improper questions put to a witness in cross-examination.

188 *Family Violence Protection Act 2008* (Vic) s 70.

189 Ibid s 71 (emphasis added). See also Victoria Legal Aid, Submission 919, 60.

190 *Family Violence Protection Act 2008* (Vic) s 71(4). Also note the court's ability to disallow improper questions or questioning put to a witness in cross-examination: *Evidence Act 2008* (Vic) s 41.

191 *Family Violence Protection Act 2008* (Vic) s 72. See also Victoria Legal Aid, Submission 919, 60.

192 Victoria Legal Aid, Submission 919, 60.

193 Statement of Counsel, 5 August 2015, 3 [11].

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196 Ibid 3 [17].

197 Anonymous, Submission 739, 2.

198 Anonymous, Submission 100, 1.

199 Anonymous, Submission 234, 6.

200 Family law and Victorian family violence system roundtable discussion, Melbourne, 21 September 2015.

201 Doncaster Community Care and Counselling Centre Inc—Doncare, Submission 742, 15–16.

202 Women's Legal Service Victoria—02, Submission 940, 20.

203 Ibid.

204 Family Court of Australia, *Federal Court of Australia, Child Dispute Services: Fact Sheet—Family Reports* (1 November 2013) <<http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/reports-and-publications/publications/family-law/family-reports>>.

205 Women's Legal Service Victoria—02, Submission 940, 20.

206 Family Court of Australia, Federal Circuit Court of Australia and Family Court of Western Australia, 'Australian Standards of Practice for Family Assessments and Reporting' (February 2015) 6, 11.

207 Referred to as 'family assessors' under the standards. These standards cover family reports under *Family Law Act 1975* (Cth) s 62G. See *ibid* 6.

208 Family Court of Australia, Federal Circuit Court of Australia and Family Court of Western Australia, *ibid* n 206, 9.

209 Ibid 23.

210 Ibid 24.

211 Women's Legal Service Victoria—02, Submission 940, 20.

212 Family Court of Australia and Federal Circuit Court of Australia, Submission 999, 15 (citations omitted).

213 Family Law Section—Law Council of Australia, Submission 863, 4.

214 Community consultation, Melbourne 2, 22 May 2015.

215 Dads In Distress Support Services, Submission 493, 1.

216 VicHealth, 'Australians' Attitudes to Violence Against Women: Findings from the 2013 National Community Attitudes Towards Violence Against Women Survey' (September 2014) 13. There is no statistically significant difference between the responses to this question in 2009 and 2013. More than 10,000 people were interviewed in 2009 and more than 17,500 were interviewed in 2013.

217 Ibid.

218 See Richard Chisholm, 'Family Courts Violence Review' (prepared for the Attorney-General's Department (Cth), 27 November 2009) 47–48.

219 Michael Flood, *False Allegations of Sexual Assault and Domestic Violence* (prepared for VicHealth in August 2013) XY Online <<http://www.xyonline.net/content/false-allegations-sexual-assault-and-domestic-violence>>.

220 Crime Statistics Agency, 'An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14' (January 2016), 43, provided to the Commission by the Crime Statistics Agency, 8 January 2016.

221 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 20. The Commission notes that respondents may consent without admission to FVIOs for various reasons.

222 Fehlberg et al, *ibid* n 10, 163–4 (citations omitted).

223 These are discussed in the next section.

224 Kaspiew et al, *ibid* n 3, 69.

225 No To Violence; Men's Referral Service, Submission 944, 50.

226 Anonymous, Submission 17, 1.

227 Lucinda Jordan and Lydia Phillips, 'Women's Experiences of Surviving Family Violence and Accessing the Magistrates' Court in Geelong, Victoria: Phase 1 of the Family Violence and the Victorian Regional Magistrates' Courts Research Project' (Deakin University, Centre for Rural Regional Law and Justice, November 2013) 28.

228 Springvale Monash Legal Service, Submission 807, 10 (emphasis altered).

229 Camilleri, Corrie and Moore, *ibid* n 102, 39.

230 Ibid 15. Further issues were listed in the report. The issue of economic recovery of a victim of family violence is addressed in Chapter 21 of this report.

231 Wyndham Legal Service Inc—02, Submission 83, 42.

232 The Bill proposes a new s 45A be inserted into the Family Law Act: Family Law Amendment (Financial Agreements and Other Measures) Bill 2015 (Cth) cl 15.

233 Family Law Amendment (Financial Agreements and Other Measures) Bill 2015 (Cth) cl 15. These requirements are set out in sub-ss 1, 2, 3 of the proposed new s 45A of the Family Law Act.

234 See Law Institute of Victoria, Submission 832, 20–2.

235 State of Victoria, Submission 717, 48.

236 *Family Violence Protection Act 2008* (Vic) s 89.

237 Law Institute of Victoria, Submission 832, 20.

238 Magistrates roundtable discussion, Melbourne, 23 September 2015; Transcript of Hawkins, 4 August 2015, 1853 [26]–1854 [5].

239 Karen Gelb, 'Understanding Family Violence Court Proceedings: The Impact of Family Violence on the Magistrates' Court of Victoria' (Report prepared for the Royal Commission into Family Violence, Karen Gelb Consulting, November 2015) 65.

240 Transcript of Hawkins, 4 August 2015, 1853 [26]–[28].

241 Ibid 1853 [26]–1854 [5].

242 Gelb, *ibid* n 239, 19.

243 Transcript of Dotchin, 7 August 2015, 2244 [10]–[21].

244 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, viii.

245 Family Law Council, above n 2, 106.

246 Council of Australian Governments, 'Second Action Plan 2013–2016: Moving Ahead of the National Plan to Reduce Violence Against Women and Their Children 2010–2022' (June 2014) 29.

247 Statement of Counsel, 5 August 2015, 5 [20].

248 Victorian Bar Inc, Submission 985, 7 [19].

249 Law Institute of Victoria, Submission 832, 21.

250 A person who is not a party to the proceedings 'may' inform the court of a family violence order: *Family Law Act 1975* (Cth) ss 60CF(1)–(2).

251 *Family Law Act 1975* (Cth) s 69ZQ(1)(aa). The court must also ask whether the party considers that the child concerned has been, or is at risk of being, subjected to, exposed to, abuse, neglect or family violence.

252 Law Institute of Victoria, Submission 832, 20–1.

253 Family Law Council, above n 2, 88–9. See, eg, *Family Law Act 1975* (Cth) s 121.

254 Family law and Victorian family violence system roundtable discussion, Melbourne, 21 September 2015.

255 See, eg, *Family Law Act 1975* (Cth) s 121.

256 *Ibid* s 121(9)(a).

257 For the matters which must be taken into account see *Family Law Act 1975* (Cth) s 60CC.

258 *Family Law Act 1975* (Cth) s 60CC(3)(k).

259 If a non-party is aware of these matters the person may inform the Court: *Family Law Act 1975* (Cth) s 60CI.

260 *Family Law Act 1975* (Cth) ss 60CI(1), 60CH(1).

261 *Ibid* s 69ZW(1).

262 *Ibid* s 69ZW(4).

263 See Department of Human Services, 'Protocol Between the Department of Human Services, the Family Court of Australia and the Federal Magistrates Court' (May 2011).

264 *Ibid* 6.

265 *Ibid* 18 [10.2].

266 See, eg, *ibid* 19 [10.3].

267 *Ibid* 12.

268 *Ibid*.

269 *Ibid*.

270 The definition of 'abuse' in relation to a child under the *Family Law Act 1975* (Cth) includes assault, including sexual assault of a child or involving a child in sexual activity, serious neglect of the child, or causing a child to suffer serious psychological harm, including when that harm is caused by exposing a child to family violence: s 4.

271 See *Family Law Act 1975* (Cth) ss 67Z–67ZB.

272 See *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth) s 2.

273 *Family Law Act 1975* (Cth) s 67Z(4). Regulations can add other people to those required to notify a child welfare authority: *Family Law Act 1975* (Cth) s 67Z(4)(c).

274 *Ibid* s 67Z(2).

275 *Ibid* s 67ZBA. If a notice is filed under this section, 'the Registry Manager must deal with the notice as if it had been filed under s 67Z(2)': *Family Law Act 1975* (Cth) s 67ZBA(3)(b).

276 See *Family Law Act 1975* (Cth) s 67ZBB(3).

277 *Ibid* s 67Z(3).

278 Statement of Miller, 26 July 2015, 14 [46]–[48].

279 See *Family Law Act 1975* (Cth) s 67ZA.

280 *Ibid* s 91B.

281 Statement of Miller, 26 July 2015, 20 [72].

282 Family Court of Australia and Federal Circuit Court of Australia, Submission 999, 19 [63].

283 *Ibid* 16 [57].

284 *Ibid* 16 [57]–[58].

285 *Ibid* 16 [57].

286 Statement of Miller, 26 July 2015, 18 [63]. The family courts can request the Secretary of DHHS to intervene in parenting proceedings: *Family Law Act 1975* (Cth) s 91B.

287 Fehlberg et al, above n 10, 70.

288 Family Court of Australia and Federal Circuit Court of Australia, Submission 999, 19 [63].

289 Statement of Beaton, 12 October 2015, 5 [21.6(b)].

290 Fehlberg et al, above n 10, 70.

291 Liz Wall et al, Australian Institute of Family Studies (Cth), 'Evaluation of the Co-located Child Protection Practitioner Initiative' (July 2015) 6.

292 *Ibid* 80.

293 *Ibid* 98.

294 *Ibid* 103.

295 *Ibid* 60.

296 *Ibid* 62.

297 *Ibid* 65.

298 *Ibid* 102.

299 *Ibid* 97.

300 *Ibid*.

301 *Ibid* 102.

302 *Ibid*.

303 Section 205 and 206 of the *Children, Youth and Families Act 2005* (Vic) have not been amended, nor has the *Family Law Rules 2004* (Cth), as has been the case with the inclusion of rule 23.01A(5) of the *Federal Circuit Court Rules 2001* (Cth).

304 Fehlberg, above n 10, 149.

305 The Family Law Doors, *Detection Of Overall Risk Screen* <<http://www.familylawdoors.com.au/>>.

306 Kaspiew et al, above n 3, 45. Note the evaluation report does not specify how many people these percentages equate to. It provides that 653 professionals working across the family law system contribute to the data collection, but it is unclear how many answered this particular set of questions: Kaspiew et al, above n 3, 72.

307 *Ibid* 45.

308 EACH Social and Community Health, Submission 569, 15.

309 Sifris and Parker, above n 32, 12.
 310 Family Court of Australia and Federal Circuit Court of Australia, above n 13, 14.
 311 Council of Australian Governments, above n 246, 29.
 312 Family Law Section—Law Council of Australia, Submission 863, 10.
 313 Ibid 10–12.
 314 Cobaw Community Health, Submission 396, 5; Connections UnitingCare, Submission 398, 7; Wyndham City Council, Submission 518, 12; Family Life, Submission 758, 21.
 315 Anonymous, Submission 782, 3; Family Life, Submission 758, 21.
 316 Australian Children's Contact Services Association, Submission 194, 8.
 317 Ibid 4.
 318 Belinda Fehlberg and Christine Millward, 'Family Violence and Financial Outcomes after Parental Separation' in Alan Hayes and Daryl Higgins (eds), *Families, Policy and the Law: Selected essays on Contemporary Issues for Australia* (Australian Institute of Family Studies (Cth), 2014) 235.
 319 Transcript of Smallwood, 16 July 2015, 521 [25]–[27]; Smallwood, 'Stepping Stones', above n 148, 37.
 320 The original limit of \$1000 was set by the *Family Law Act 1975* (Cth) s 46 when the original Act was introduced in 1975. The limit of \$20,000 was later introduced by the *Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1988* (Cth) s 26, as repealed by *Amending Acts 1980 to 1989 Repeal Act 2015* (Cth).
 321 Reserve Bank of Australia, *Inflation Calculator* <<http://www.rba.gov.au/calculator/annualDecimal.html>>.
 322 *Magistrates' Court Act 1989* (Vic) ss 3, 100.
 323 *Family Law Act 1975* (Cth) s 60CA.
 324 Ibid s 60CC(2)(b).
 325 Family Court of Australia and Federal Circuit Court of Australia, 'Family Violence Best Practice Principles' (Edition 3.2, December 2015).
 326 *Family Violence Protection Act 2008* (Vic) s 1.
 327 Australian Law Reform Commission and New South Wales Law Reform Commission, above n 4, 110.
 328 Coroners Court of Victoria, above n 4, 110.
 329 *Family Law Act 1975* (Cth) s 68T(1).
 330 Victorian Law Reform Commission, above n 5, xxxvii.
 331 Family Law Council, above n 2, 103.
 332 Victoria Legal Aid, above n 177, 22.
 333 Statement of Counsel, 5 August 2015, 6–7 [24].
 334 Women's Legal Service Victoria—02, Submission 940, 21.
 335 Australian Law Reform Commission and New South Wales Law Reform Commission, above n 1, 1398.
 336 Ibid.
 337 Family Law Council, above n 2, 106.
 338 Department of Human Services, above n 263.
 339 Family Law Council, above n 2, 106.

25 Review of family violence-related deaths

Introduction

Family violence-related deaths are the most extreme and tragic manifestations of family violence. In recent years, those working in the family violence system and the community as a whole have been deeply shocked and saddened by a number of family violence-related homicides. They have been increasingly focused on finding ways to better respond to and prevent these deaths. The jurisdiction of the Coroners Court has provided a significant opportunity to review the ways in which services respond to family violence and to identify the improvements that can be made. The inquest into the death of 11 year old Luke Batty, for example, resulted in a series of recommendations to prevent family violence and family violence-related deaths.

The Commission heard from a number of family members of people who have been killed by perpetrators of family violence.¹ Most of these victims were women killed by their partners. We reflect on the experiences of these families in Chapter 2. We acknowledge their terrible loss and their exceptional courage and generosity in helping us with our work.

The purpose of this chapter is to provide an overview of what we know about family violence-related deaths, and to consider the processes by which family violence-related deaths are investigated, and how those processes might be strengthened and supported. Other chapters in this report deal with particular aspects of family violence-related deaths and ways to prevent family violence.

The first section of this chapter outlines what is known about family violence-related deaths, including intimate partner homicide, the killing of a child by a parent or guardian ('filicide'), and suicide. Research shows that intimate partner violence is the most common cause of family violence-related deaths, followed by filicide. Intimate partner homicides often involve a recorded history of family violence. The data also shows a link between suicide and family violence. A substantial number of suicide deaths each year involve women with a reported history of family violence and men who are perpetrators of family violence. The section then considers the function of the Coroners Court in reviewing family violence-related deaths, and of the Commission for Children and Young People in reviewing the deaths of children who have had involvement with Child Protection.

The second section of this chapter considers particular issues raised by stakeholders about the way in which the current framework for the review of family violence-related deaths operates. Some of these issues relate specifically to inquests and investigations conducted by the Coroners Court. Other issues concern the need for additional funding to support data and research collection, as well as the scope of the Commission for Children and Young People's power to conduct child death inquiries.

It is the Commission's view that although there is scope for improvement, the overall framework for the review of family violence-related deaths in Victoria is sound. In the final section of this chapter the Commission recommends that the Victorian Systemic Review of Family Violence Deaths should be statutorily established and allocated funding that is adequate to achieve its aims. The review can place a unique focus on specific cases and contribute to our understanding of family violence. It can also address gaps in research to ensure that opportunities for the prevention of family violence-related deaths are identified and pursued.

Context and current practice

This section outlines what is known about family violence–related deaths. It also briefly considers the mechanisms in Victoria to investigate family violence–related deaths, namely: coronial investigations and inquests by the Coroners Court; the Systematic Review of Family Violence Deaths by the Coroners Court; and Child Death Inquiries by the Commission for Children and Young People.

Much of the information about family violence–related deaths is expressed in statistics and figures. Information of this kind is obviously invaluable. Yet it is important to remember that these numbers and figures represent human lives that have been tragically lost in violent circumstances.

Family violence–related deaths

‘Domestic homicides’² are recorded by the Australian Institute of Criminology’s National Homicide Monitoring Program.³ The NHMP relies primarily on police offence records and state coronial findings. The most recent NHMP report covers the period from 1 July 2010 to 30 June 2012.

As shown in Table 25.1, of the 96 homicide incidents in Victoria during the reporting period, almost a third were domestic homicides. As shown in Figure 25.1, across Australia intimate partner incidents were most common, followed by filicide.

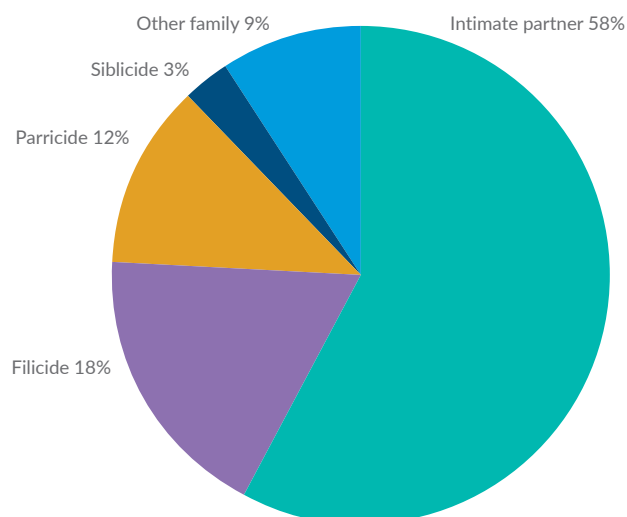
Table 25.1 Homicide: relationship to perpetrator, by jurisdiction, 2010–12 (percentages)

Type of homicide	NSW (n=148)	Vic (n=96)	Qld (n=96)	WA (n=66)	SA (n=36)	Tas (n=9)	NT (n=24)	ACT (n=4)	National (n=479)
Domestic	39	31	49	30	36	22	67	50	39
Acquaintance	33	44	27	47	36	78	29	0	37
Stranger	12	9	8	11	17	0	4	50	11
Unclassified	16	16	16	12	11	0	0	0	14

Note: Percentages might not add to 100 due to rounding.

Source: Australian Institute of Criminology, National Homicide Monitoring Program 2010–12.⁴

Figure 25.1 Australia-wide domestic homicide incidents, by sub-classification, 2010–12



Source: Australian Institute of Criminology’s National Homicide Monitoring Program.⁵

In May 2015, the Australian Institute of Criminology published a research note on 'domestic/family homicide in Australia' which provides deeper analyses of this specific homicide type.⁶ The following results are of particular note:

- ▷ Of the 2631 homicide incidents across Australia documented by the NHMP over the 10 years from 2002–03 to 2011–12, 1088 (41 per cent) were domestic/family homicides, involving 1158 victims and 1184 offenders.⁷
- ▷ Intimate partners accounted for 23 per cent of all homicide victims recorded since 1 July 2003.⁸
- ▷ Most victims of domestic/family homicide (60 per cent) were female; they accounted for 75 per cent ($n=488$) of all intimate partner homicides. However, males were more likely to be victims of filicides (56 per cent, $n=132$), homicides committed by their child ('parricides') (54 per cent, $n=73$), sibling killings ('siblicides') (80 per cent, $n=32$) and homicides in other family relationships (70 per cent, $n=64$).⁹
- ▷ One-third ($n=366$) of domestic/family homicides and 44 per cent ($n=289$) of intimate partner homicides involved a recorded history of domestic/family violence that may have included a current or former protection order.¹⁰

The Australian Institute of Criminology also explored the prevalence of associated factors (see Table 25.2).¹¹ These included a prior history of domestic or family violence; the offender being on bail, parole or probation; perpetrator suicide before or after arrest; and the involvement of drugs or alcohol in a particular incident.¹² In Chapter 6 we discuss improvements to risk assessment and management, including recommendations made by the Coroner in this regard.

Table 25.2 Additional characteristics in homicide incidents, 2002–03 to 2011–12

Characteristic	Intimate partner		Filicide		Parricide		Sibicide		Other family		All other homicides	
	<i>n</i>	%	<i>n</i>	%	<i>n</i>	%	<i>n</i>	%	<i>n</i>	%	<i>n</i>	%
Prior history of domestic violence	289	44	41	22	23	18	3	8	10	12	n.a.	
Offender on bail, parole or probation at time of incident	40	6	5	3	6	5	1	3	4	5	112	9
Offender suicided prior to or following arrest	75	11	29	16	5	4	0	0	2	2	25	2
Incident involving presence of alcohol—victim	226	35	2	1	30	23	21	57	25	30	627	41
Incident involving presence of alcohol—offender	235	36	20	11	27	21	17	46	35	42	509	40
Incident involving presence of alcohol—victim and offender	180	28	2	1	17	13	17	46	23	28	379	30
Incident involving presence of drugs—victim	122	19	12	7	10	8	10	27	13	16	405	26
Incident involving presence of drugs—offender	78	12	34	18	16	13	3	8	5	6	213	17
Incident involving presence of drugs—victim and offender	51	8	4	2	1	1	3	8	3	4	102	8

Note: Offender *n* relates to the primary offender in each incident. For relationship category 'all other homicides' only 1268 incidents involved an identified offender.

Source: Tracy Cussen and Willow Bryant, 'Domestic/Family Homicide in Australia' (Research in Practice No 38, May 2015) 7 citing Australian Institute of Criminology, National Homicide Monitoring Program 1989–90 to 2011–12.

The Commission was also told that family violence–related homicides tend to be more common post-separation.¹³

The NHMP adopts a constrained definition of homicide.¹⁴ By contrast, the first report of the Victorian Systemic Review of Family Violence Deaths carried out through the Coroners Court, which counts family violence–related deaths in Victoria over an 11-year period, adopts a more nuanced definition; it includes instances of criminal negligence, and cases where criminal responsibility did not arise, for example, because of mental impairment or circumstances of self-defence.¹⁵

The VSRFVD published a report in 2012. As outlined in Table 25.3, it identified 288 ‘relevant’ deaths in Victoria between 1 January 2000 and 31 December 2010. Consistent with national data, the largest group of these deaths (136 deaths or 47.2 per cent) were intimate partner homicides, with the next most common category being filicides (75 deaths or 26 per cent).

Table 25.3 VSRFVD-relevant homicides by sex of deceased and nature of relationship with offender

Nature of relationship	Sex of deceased					
	Female		Male		Total	
	<i>n</i>	%	<i>n</i>	%	<i>n</i>	%
Intimate partner	103	68.7	33	23.9	136	47.2
Parent–child	26	17.3	49	35.5	75	26.0
Other familial	12	8.0	22	15.9	34	11.8
Non-familial (bystander)	0	0.0	22	15.9	22	7.6
Sexual relationship	9	6.0	12	8.7	21	7.3
Total	150	100.0	138	100.0	288	100.0

Source: Coroners Court of Victoria, *Victorian Systemic Review of Family Violence Deaths: First Report* (2012) 25.¹⁶

Aboriginal and Torres Strait Islander peoples and family violence–related deaths

The research shows that Aboriginal and Torres Strait Islander people are over-represented as victims and perpetrators in intimate partner homicides.¹⁷ A further research note by the Australian Institute of Criminology centred on ‘Indigenous and non-Indigenous homicide in Australia’.¹⁸ The note highlighted that between 1989–90 and 2011–12:

- ▷ Domestic/family homicides accounted for 67 per cent (*n*=511) of all homicide incidents where both victim and offender were Aboriginal and/or Torres Strait Islander persons.¹⁹
- ▷ Thirty-eight per cent of all homicide incidents where both victim and offender were Aboriginal and/or Torres Strait Islander persons were intimate partner homicides, compared with 20 per cent for non-Indigenous homicides.²⁰
- ▷ Seventy-eight per cent of all female Aboriginal and/or Torres Strait Islander homicide victims, and 44 per cent of all male Aboriginal and/or Torres Strait Islander homicide victims were victims of domestic/family homicide.²¹ By comparison, the rates for non-Indigenous women and men in the same period were 64 per cent and 22 per cent respectively.²²

Filicide

Filicide, or the killing of a child by a parent or guardian, is a form of family violence.²³ Approximately 27 children are killed by a parent in Australia each year.²⁴ Professor Margarita Frederico, Associate Professor and Graduate Research Coordinator in Social Work and Policy at La Trobe University, gave evidence that this is a high rate of filicide compared to the UK and Canada.²⁵ Based on the data in the 2015 Australian Institute of Criminology analysis of family violence homicides, filicide was the only category of family violence homicides in which women accounted for the majority (52 per cent) of perpetrators.²⁶

The Monash University Filicide Project undertook a study into the issue of filicide in Victoria and found that in the decade 2000 to 2009 there were an average of 5.7 filicide deaths per year in Victoria.²⁷

The most common factor present in perpetrator groups in cases of filicide was mental illness.²⁸ The study also found that parental separation was a key factor in many cases of filicide and that most perpetrators had had prior contact with community services, suggesting the need for services to improve their capacity to identify and support families at risk of filicide.²⁹ The third most common factor was family violence.³⁰

'Retaliatory' filicide can occur in the post-separation period, where perpetrators who are motivated by anger against an intimate partner project that onto the child.³¹ The Supreme Court of Victoria told the Commission that:

The Court has in recent years seen a number of murders of children following the end of the parents' relationship, each motivated by the resentment of the father about that event and some in the midst of an ongoing family law dispute.³²

There have been a number of filicides perpetrated by fathers in recent years following separation from the child's mother.³³

The Monash University Filicide Project told the Commission that family violence often co-exists with filicide, although research into filicide is 'embryonic'.³⁴ One study found that for those children killed by their step-father, family violence was often present, with many of these children and their mothers having suffered abuse before the child was killed.³⁵ Some mothers who had committed filicide had been victims of family violence perpetrated by the child's father.³⁶ Some fathers who had committed filicide had perpetrated violence against the children's mother, and even more had abused the child before their death.³⁷

The Monash University Filicide Project also told the Commission that filicide is generally considered within the child protection framework instead of the family violence framework.³⁸ In addition, although the individual tragedies of child deaths as a result of filicide are recognised by the community when they occur and investigated by a coroner, the deaths are often not examined beyond that and there is no adequate development of policies, programs or professional expertise to address the issue of filicide.³⁹ The issue of the uptake of recommendations from death reviews is discussed further below.

Other issues relating to family violence perpetrated by parents towards their children are considered in Chapters 10 and 11.

Suicide

There is a link between suicide and family violence. An examination by the Coroners Court of Victoria of the Victorian Suicide Register showed that about a quarter of 550 suicide deaths each year from 2009 to 2012 involved women and of these, nearly 35 per cent (or approximately 50 deaths) had a reported history of family violence.⁴⁰ Studies have shown that women who are sexually abused by an intimate partner are more likely to suffer suicidal thoughts and depression compared with women who have experienced other physical violence.⁴¹ Sexual assault in the context of family violence is discussed in greater detail in Chapter 12.

The Coroners Court also found that a significant number of men who committed suicide during that period had a history of family violence (as perpetrators).⁴² Many would have had contact with the police within 12 months of their deaths.⁴³ The Commission notes the recent finding by the Coroners Court in the Inquest into the Death of Andrew Stanyer, which discussed prevention opportunities within Victoria Police.⁴⁴

Reviews of family violence–related deaths

The Commission heard about the following mechanisms to investigate family violence–related deaths in Victoria:

- ▷ coronial investigations and inquests
- ▷ the Systemic Review of Family Violence Deaths by the Coroners Court
- ▷ child death inquiries by the Commission for Children and Young People.

These mechanisms are discussed below.

Coronial investigations and inquests

The Coroners Court of Victoria is a specialist court empowered to investigate certain types of death. The purpose of these investigations is to consider ways that similar deaths may be prevented in the future. The *Coroners Act 2008* (Vic) provides that a coroner has jurisdiction to investigate a family violence death and to make recommendations to any Minister, public statutory authority or entity, relating to issues of public health and safety and the administration of justice.⁴⁵

The Coroners Court can hold an inquest into any death it is investigating.⁴⁶ In exercising the discretion to hold an inquest, a coroner may take into account a number of factors; for example, whether the cause of death cannot be established without an inquest, the efficient use of resources by the coroner and whether an inquest is likely to uncover systemic defects or risks not already known.⁴⁷

A person may request an inquest; the coroner must respond in writing, providing reasons for their decision.⁴⁸ Guidelines on when inquests are held have recently been published by the court.⁴⁹

In certain circumstances the Coroners Court must hold an inquest into a death (subject to exceptions, such as where a person has been charged with an indictable offence in relation to the death). These include where:

- ▷ the coroner suspects the death was the result of homicide, or
- ▷ the deceased was, immediately before death, a person placed in custody or care, or
- ▷ the identity of the deceased is unknown.⁵⁰

Roughly five per cent of all coronial investigations (including those not involving family violence) proceed to an inquest.⁵¹ Even where a matter does not proceed to an inquest, it is still subject to investigation.⁵² During the inquest, the coroner may call on witnesses and interested parties may provide the coroner with statements or documents.⁵³ At the end of the inquest the coroner completes a finding, which sets out the identity of the person who died, where and when the death occurred and the circumstances of the death, if possible.⁵⁴ The finding can also include recommendations to improve public health or safety or the administration of justice.⁵⁵ Where a recommendation is made to a private or public organisation, that organisation is required to respond to the coroner within three months.⁵⁶

The Coroners Court publishes a breakdown of statistics on the responses it receives to its recommendations in its annual report.⁵⁷

To support families during the process, the Coroners Court has family liaison officers who can also provide referral information for relevant agencies.⁵⁸ In addition, its website has information on the coronial process.⁵⁹

Victorian Systemic Review of Family Violence Deaths

In 2009 the Victorian Systemic Review of Family Violence Deaths began running in the Victorian Coroners Court to assist with coronial investigations into family violence-related deaths. The aims of the VSRFVD are to:

- ▷ examine the context in which family violence-related deaths occur
- ▷ identify risk and contributory factors associated with family violence
- ▷ identify trends or patterns in family violence-related deaths
- ▷ consider current systemic responses to family violence
- ▷ provide an evidence base for coroners to support the formulation of recommendations aimed at preventing and reducing family violence.⁶⁰

The Coroners Court told the Commission:

... the VSRFVD seeks to improve the understanding of the human and systemic factors specific to a death to identify opportunities to improve systems, policies and service responses for both victims and perpetrators of family violence ... efforts are expended to engage with stakeholders, experts and the wider community for the purpose of informing the VSRFVD and connecting it to relevant family violence initiatives in Victoria.⁶¹

The first report of the VSRFVD considered case reviews of deaths attributable to homicide, homicide-suicide and suicide in the context of family violence. In addition, incidents in which family violence was identified as a contributory factor without being the immediate cause of death, were examined.⁶²

The Coroners Court recently received \$1.2 million in funding to support the VSRFVD, beginning in July 2015 for four years.⁶³ This funding has allowed the court to re-establish resourcing at the level it had when the review was first established.⁶⁴ It had received initial funding to set up the process and another block in 2014 but there has not been a consistent funding stream.⁶⁵

The VSRFVD is part of the Australian Domestic and Family Violence Death Review Network, which is aligned to the National Plan to Reduce Violence Against Women and their Children.⁶⁶ A central component of the VSRFVD involves data collection and analysis of family violence-related deaths. The VSRFVD receives expert advice and consultative support from a Reference Group, which is comprised of members from both government and non-government organisations.⁶⁷

Recently a panel was established to allow representatives from the family violence sector to contribute to coronial family violence case reviews and to strengthen the recommendations given to coroners.⁶⁸

The Coroners Prevention Unit supports coroners in their prevention role and the work of the VSRFVD.⁶⁹ In particular, the CPU:

- ▷ draws on a range of material (e.g. literature, legislation, policies and guidelines) to apply to the death under investigation⁷⁰
- ▷ records standardised information, including information on contributing factors, in a surveillance system in the areas of suicide (the Victorian Suicide Register), drugs and homicide (the Victorian Homicide Register)⁷¹
- ▷ performs quantitative and qualitative analyses based on this information in combination with policy analysis and stakeholder consultation, to provide advice to coroners on recommendations.⁷²

Child death inquiries by the Commission for Children and Young People

The Commission for Children and Young People is required by the *Commission for Children and Young People Act 2012* (Vic) to conduct inquiries in relation to a child who has died in certain circumstances.⁷³

The CCYP must conduct inquiries in relation to a child who has died and who was a child protection client at the time of their death or within 12 months before their death.⁷⁴ The inquiry must relate to the 'services' provided or which failed to be provided to the child before their death.⁷⁵

The CCYP also has a discretionary power to conduct inquiries concerning the safety and wellbeing of any vulnerable child or young person, including those who have died.⁷⁶ Again, the inquiry must relate to the ‘services’ provided or which failed to be provided to the vulnerable children or young persons.⁷⁷

The purpose of these inquiries is to improve policies and practices relating to child protection and the safety and wellbeing of children and young people.⁷⁸ Recommendations are made to the relevant Minister and Secretary of the Department of Health and Human Services.⁷⁹

The power of the CCYP to conduct these inquiries is additional to the powers of the police or coroner to investigate the death of the child.⁸⁰

The CCYP told the Commission that of the 54 inquiries it conducted between 2013 and 2014, family violence was a theme in 32, or nearly 60 per cent, of inquiries, which demonstrates the intersection between family violence and child abuse and neglect.⁸¹ Ms Brenda Boland, Chief Executive Officer at the Commission for Children and Young People, gave evidence that inquiries are generally carried out where there has been substantial involvement by Child Protection or serious errors in risk assessment that are likely to have resulted in the death of the child.⁸²

Child death inquiry reports are not made publicly available.⁸³ However, they are sent to relevant agencies and are discussed with the parents involved.⁸⁴ The Commission was told that limiting the release of the reports encourages cooperation and candour by the parties involved in the inquiry and is respectful of the family’s situation.⁸⁵ General themes and statistics are identified in annual publications.⁸⁶

Challenges and opportunities

This section discusses the evidence given to the Commission about the importance of family violence-related death reviews. Some stakeholders also raised particular issues about the way in which the current framework operates. Some of these issues relate specifically to inquests and investigations conducted by the Coroners Court. Other issues concern the need for additional funding to support data collection and research as well as the scope of the CCYP’s power to conduct child death inquiries. These are discussed in turn.

Importance of family violence-related death reviews

The Commission heard how a strong family violence-related death review process can identify the risk factors that led to the deaths and how these risks could be addressed.⁸⁷ In particular, the Commission was told that a strong review process can generate information that could inform the risk assessment framework, including the refinement of the Family Violence Risk Assessment and Risk Management Framework known as the Common Risk Assessment Framework or (CRAF), which is discussed in more detail in Chapter 6.⁸⁸

The Coroners Court submitted that the VSRFVD’s first research report identified the people who had contact with the service system six months prior to their death.⁸⁹ The Commission heard how information from death review processes could help better identify intervention points in situations of family violence⁹⁰ and lead to the development of strategies that reduce the incidence of family violence.⁹¹

The Coroners Court

The Federation of Community Legal Centres noted the importance of ensuring that all family violence-related deaths are thoroughly investigated, especially for the families of the deceased.⁹²

The Commission heard from the former State Coroner, Judge Ian Gray that an inquest is only one means to further a coronial investigation.⁹³ Judge Gray explained that the provisions in the Coroners Act are designed to avoid unnecessary duplication of investigations and to take account of the emotional burden that holding an inquest would place on interested parties.⁹⁴

The Federation also told the Commission about delays in the police conduct of coronial investigations and perceived conflicts of interest when police investigate deaths with which their colleagues have been involved.⁹⁵

Dr Lyndal Bugeja, Manager of the Coroners Prevention Unit at the Coroners Court, gave evidence about coronial investigations taking time, for example due to a pending criminal proceeding and/or the CPU having to follow up and review information, including medical records and statements.⁹⁶ Dr Bugeja stated that where a death does not involve a criminal process, there are stringent timelines around investigations by the police and a process of following up briefs that are not provided promptly.⁹⁷ Dr Bugeja also noted other steps the Coroners Court is taking to expedite the process; for example, by ensuring that the court is provided with briefs of evidence earlier.⁹⁸

The Commission also heard about challenges for bereaved families because of delays, a lack of information on their right to participate and difficulty accessing legal aid or advice.⁹⁹ The Federation submitted that support for such families should be improved.¹⁰⁰ The Federation recently started a project to help families bereaved by family violence-related deaths to access legal and other assistance during the coronial process.¹⁰¹

The Federation also told the Commission that there is a lack of monitoring of whether, or how, services respond to coronial recommendations, particularly those made before 1 November 2009 (after which responses to coronial recommendations became mandatory).¹⁰²

In Chapter 38 the Commission proposes the establishment of the Family Violence Agency, and articulates the functions of the agency, which include monitoring family violence-related reforms and developments. Monitoring the adoption and implementation of the Coroners Court recommendations could be part of that function.

Funding for the Victorian Systemic Review of Family Violence Deaths

The Commission heard from both the Federation of Community Legal Centres and the Coroners Court that insufficient funding for the VSRFVD is hampering its efforts. The Federation stated that the potential of VSRFVD has not been realised, due largely to a lack of resources; for example, it has not produced a research report since 2012.¹⁰³ It also noted that a lack of funding has affected the role of the CPU.¹⁰⁴ It submitted that the VSRFVD should be statutorily established with secure, adequate funding.¹⁰⁵

The Coroners Court also indicated that ongoing research support would help the Coroners Court to realise the potential for its Victorian Suicide Register to contribute to a reduction in deaths related to family violence. The Coroners Court said that the Register could generate the information necessary to develop a better understanding of men who have perpetrated family violence and commit suicide.¹⁰⁶ It also stated that the Register could contribute more broadly to a reduction in family violence-related deaths.¹⁰⁷ A better understanding of the precipitants of violent behaviour together with investigating solutions and better access to services might mitigate this risk.¹⁰⁸ The Commission notes that the Victorian Suicide Register's current funding expired in October 2015.¹⁰⁹

The Coroners Court also told the Commission that given its family violence resources have been focused on coronial investigations, the development of its surveillance system for family violence homicide has not progressed as quickly as it could have.¹¹⁰ The Coroners Court stated that at this stage, its system contains basic descriptive statistics on the frequency and nature of family violence homicide but that substantial work needs to be done on the risk factors associated with these deaths. The Coroners Court submitted that gathering this information and linking it to other sources of data across the health, legal, community welfare and specialist family violence services is critical to formulating family violence interventions in Victoria and has the potential to reduce the number of family violence-related deaths.¹¹¹ It recommended that the court be provided with additional resources to lead a prevention-oriented research program, through an expansion of the VSRFVD.¹¹²

Child death inquiries by the Commission for Children and Young People

The Commission heard some support for extending the statutory requirement to conduct child death inquiries. Currently if a child was not a child protection client (or was not a child protection client in the 12 months prior to their death) the CCYP is not required to inquire into their death. For example, children who are in contact with Child FIRST are not included in the requirement.¹¹³

An inquiry by the CCYP must also relate to the 'services' provided or that have failed to be provided to the child before their death.¹¹⁴ The Commission heard that the CCYP takes the view that police and courts are excluded from the inquiries concerning the death of child protection clients because they are not defined to be services.¹¹⁵ In cases where a child dies more than 12 months after being a client of Child Protection, and the involvement of Child Protection (and indeed other agencies) may be relevant to their death, it is open, however, to a coroner to consider the role and responsibilities of these agencies.

Professor Chris Goddard, Director of Child Abuse Prevention Research at Monash University, discussed the importance of reviewing cases to find out why children were not known to Child Protection.¹¹⁶ Professor Goddard suggested that such reviews would also provide an opportunity to examine practices by other parties besides Child Protection, such as the police.¹¹⁷ He expressed support for having a review process for all child deaths due to abuse and neglect.¹¹⁸

Concern was also expressed about expanding these inquiries. The then Commissioner for Children and Young People, Mr Bernie Geary OAM cautioned that such inquiries could lose their focus on Child Protection if they were extended to other cases.¹¹⁹

Enhancing national data collection in family violence-related deaths

The Commission heard about gaps in data collection on family violence-related deaths. For example, the Royal Australasian College of Surgeons noted that there was no flag for family violence-related deaths in the National Coronial Information System.¹²⁰ The National Coronial Information System is an internet-based data storage and retrieval system for Australian and New Zealand coronial cases.

During the preparation of this report, the Commission was told by the Australian Human Rights Commission that it had started work on a project to help standardise family violence death data and reporting across Australian jurisdictions.¹²¹ The project has a particular focus on addressing violence against women as a matter of human rights and sex discrimination, and reviewing the impact of laws, policies and programs in this area on Aboriginal and Torres Strait Islander peoples. The project's stakeholders include Commonwealth, state and territory ministers, coroners, family violence death review teams and specialist family violence service providers.

Part of the project's aim is to help redress current gaps in data collection. A further role for the project is to raise awareness of the need to record, monitor and make recommendations about family violence-related deaths in the Commonwealth jurisdiction, and the need for a system to monitor coronial recommendations directed to Commonwealth agencies. At the date of writing, the final report is forthcoming.

The way forward

Prevention of family violence-related deaths is the responsibility of the whole system. Our discussion in other chapters about risk assessment and risk management; the need to focus on perpetrators as well as victims; the need for improved data collection and research, and careful and timely information sharing between courts, police and specialist services; as well as the need for improvement within these organisations, is grounded in an awareness that failing to prevent the occurrence and escalation of family violence can result in death.

Reviews of family violence-related deaths have the potential to actively contribute to solutions that reduce family violence in all its forms. Investigations of family violence-related deaths can produce critical information through data collection and analysis that helps to identify intervention points, inform responses and ultimately improve safety. While there is scope to improve aspects of the current approach to reviewing family violence-related deaths, the Commission is of the view that the current framework is sound.

The Coroners Court

In relation to the Federation of Community Legal Services' concerns about what matters proceed to inquest, the Commission considers that the current criteria for requiring an inquest are sufficient to ensure that all family violence-related deaths are thoroughly investigated. As noted by Judge Gray, an inquest is only one means to further a coronial investigation. Even when a matter does not proceed to an inquest, it is still subject to investigation. The Commission notes that guidelines recently published by the court on when inquests are held should provide greater transparency in the process.

Concerns were expressed to the Commission about delays in the conduct of coronial investigations. It is important that coronial investigations be conducted in a timely manner. Delay in the conduct of investigations can cause bereaved family members additional distress. The Commission heard that there can be various reasons for delay, including a pending criminal proceeding and the Coroners Prevention Unit having to follow up and review information. The Commission notes that the Coroners Court is taking steps to expedite the process; for example, by ensuring that the court is provided with briefs of evidence earlier. The Commission hopes these efforts will have a positive impact.

The Commission also notes that the Federation of Community Legal Centres has recently started a project to help families bereaved by family violence-related death to access legal and other assistance during the coronial process, and that the Coroners Court has family liaison officers who provide assistance and information to families. The Commission encourages the Coroners Court to consider any other opportunities for proactive engagement with bereaved family members.

Child death inquiries by the Commission for Children and Young People

The Commission heard some support for extending the statutory requirement for the Commission for Children and Young People to conduct child death inquiries. However, in our view, broadening the criteria for child death inquiries may mean conducting inquiries into situations that involve a determination of whether other agencies or factors have played a role in a child's death. This is complex, multi-faceted work which, in the Commission's view, requires the broader focus and expertise of the Coroners Court's family violence death investigation process. We consider that the existing process is already sufficient for the investigation of child deaths, and there is no necessity to expand the nature of child death inquiries by the Commission for Children and Young People.

Funding for the Victorian Systemic Review of Family Violence Deaths

The Commission considers that the Victorian Systemic Review of Family Violence Deaths process has clear benefits. It can bring a high level of skill and expertise to examining the deaths of children and adults who die in the context of family violence, adding to our knowledge of family violence and encouraging continuous improvement. The Commission heard about gaps in current research and data collection on family violence-related deaths. The VSRFVD has the potential to address gaps in research and data collection to ensure that opportunities to prevent family violence-related deaths are identified and pursued. The Commission also welcomes the Australian Human Rights Commission's project to help standardise family violence death data and reporting across Australian jurisdictions.

The Commission anticipates that with adequate and certain funding the VSRFVD will be able to ensure the most efficient and meaningful approach to examining family violence-related deaths in Victoria.

We recommend that the VSRFVD should therefore be statutorily established with funding that is sustained and adequate to achieve its aims. Funding should ensure that the Coroners Court is able to lead a prevention-orientated research program through an expansion of the VSRFVD.

Recommendation 138

The Victorian Government establish a legislative basis for the Victorian Systemic Review of Family Violence Deaths and provide adequate funding to enable the Coroners Court of Victoria to perform this function [within 12 months].

Endnotes

- 1 See, eg, Phil Cleary, Submission 470; Wendy and John Thompson, Submission 1000; Chawla Family, Submission 422; Jesse O'Donnell, Submission 380; Craig O'Donnell, Submission 657; Kerryn Robertson, Submission 219; Del and Veronica St Clair, Submission 155; Natalie Suleyman—Member for St Albans, Submission 733.
- 2 An incident involving the death of a family member or other person from a domestic relationship. This includes intimate partner homicides, filicides (children being killed by custodial or non-custodial parents, including step-parents), parricides (where a child kills a custodial or non-custodial parent), sibling homicides and 'other family' homicides (cousins, aunt/uncle, grandparent, etc). Willow Bryant and Tracy Cussen, 'Homicide in Australia: 2010-11 to 2011-12: National Homicide Monitoring Program Report' (Monitoring Reports No 23, Australian Institute of Criminology, 2015) 5.
- 3 Ibid.
- 4 Ibid 8.
- 5 Ibid 7.
- 6 Tracy Cussen and Willow Bryant, 'Domestic/Family Homicide in Australia' (Research in Practice No 38, Australian Institute of Criminology, May 2015) 2–3, 6–7.
- 7 Ibid 2.
- 8 Ibid.
- 9 Ibid 3.
- 10 Ibid 6.
- 11 Ibid 7.
- 12 Ibid.
- 13 Transcript of Miller, 14 July 2015, 135 [3]–[4]; Transcript of Plunkett, 23 July 2015, 1300 [15]–[20]. See also Coroners Court of Victoria, 'Victorian Systemic Review of Family Violence Deaths: First Report' (November 2012) 32; Alison Wallace 'Homicide the social reality' (New South Wales Bureau of Crime Statistics and Research, Attorney General's Department, 1986) 112.
- 14 All cases resulting in charges of murder or manslaughter; all murder-suicides classed as murder by police; and all other deaths classed by police as homicides, whether offender apprehended or not: Bryant and Cussen, above n 2, 1.
- 15 Coroners Court of Victoria, above n 13, 7, 13.
- 16 Ibid 25.
- 17 Tracy Cussen and Willow Bryant, 'Indigenous and Non-Indigenous Homicide in Australia' (Research in Practice No 37, Australian Institute of Criminology, May 2015) 1.
- 18 Ibid 2, 5, 7.
- 19 Ibid 2, 3.
- 20 Ibid.
- 21 Ibid 5.
- 22 Ibid.
- 23 Monash Filicide Project—Monash University, Submission 167, 3.
- 24 Debbie Kirkwood, 'Just Say Goodbye—Parents Who Kill Their Children in the Context of Separation' (Discussion Paper No 8, Domestic Violence Resource Centre Victoria, January 2012) 15.
- 25 Transcript of Frederico, 14 October 2015, 3635 [12]–[18].
- 26 Cussen and Bryant, Homicide in Australia, above n 2, 3.
- 27 Monash Filicide Project—Monash University, Submission 167, 3, 21.
- 28 Transcript of Brown, 14 October 2015, 3636 [2]–[14].
- 29 Monash Filicide Project—Monash University, Submission 167, 10–11 citing Thea Brown, Danielle Tyson and Paula F Arias, 'Filicide and Parental Separation and Divorce' (2014) 23(2) *Child Abuse Review* 79, 84–5.
- 30 Transcript of Brown, 14 October 2015, 3636 [2]–[14].
- 31 Kirkwood, above n 24, 37; see also, Myrna Dawson, 'Canadian Trends in Filicide by Gender of the Accused, 1961–2011' (2015) 47 *Child Abuse & Neglect* 162, 173.
- 32 Supreme Court of Victoria, Submission 705, 4 (citations omitted).
- 33 See *R v Farquharson* [2010] VSC 426 [43]; *R v Freeman* [2011] VSC 139 [17]; *R v Acar* [2011] VSC 310 [61]; *R v Mihayo* [2014] VSC 652 [82]–[83].
- 34 Monash Filicide Project—Monash University, Submission 167, 7.
- 35 Ibid citing Brown, Tyson and Arias, above n 29, 79.
- 36 Ibid.
- 37 Ibid.
- 38 Ibid 3.
- 39 Ibid.
- 40 Coroners Court of Victoria, Submission 382, 7.
- 41 See, eg, Rochelle Braaf, 'Preventing Domestic Violence Death: Is Sexual Assault a Risk Factor?' (Research & Practice Brief 1, Australian Domestic and Family Violence Clearinghouse, October 2011) 3.
- 42 Coroners Court of Victoria, Submission 382, 7.
- 43 Coroners Court of Victoria, 'Finding into Death with Inquest: Andrew Stanyer' (16 December 2015) 12 [65].
- 44 Ibid 14–15 [71]–[75].
- 45 *Coroners Act 2008* (Vic) ss 1(c), 72(2), pt 4, div 1—Investigation of Deaths; Coroners Court of Victoria, Submission 382, 5.
- 46 *Coroners Act 2008* (Vic) s 52(1).
- 47 Coroners Court of Victoria, *Guidance on when Inquests are Held* (24 February 2015) <http://www.coronerscourt.vic.gov.au/resources/ecc3cddf-a96c-48c6-9846-233c427ac633/guidance+on+when+inquests+are+held_march+2014.pdf>.
- 48 Letter from State Coroner to Commissioner Neave, 3 July 2015, 2.
- 49 Coroners Court of Victoria, above n 47.
- 50 *Coroners Act 2008* (Vic) s 52(2), (3).
- 51 Coroners Court of Victoria, *Death Investigation Process* (11 December 2015) <<http://www.coronerscourt.vic.gov.au/home/coronial+investigation+process/death+investigation+process/>>.
- 52 State Coroner, above n 48, 1.
- 53 Coroners Court of Victoria, *Inquests Coroners Court* <<http://www.coronerscourt.vic.gov.au/resources/f669f163-7d0e-4ab9-aabc-cdb5fbd831a0/inquests+6pp+dl+2013+lr.pdf>>.
- 54 *Coroners Act 2008* (Vic) s 67(1).
- 55 Coroners Court of Victoria, '2013–14 Annual Report' (2014) 6.

56 *Coroners Act 2008* (Vic) s 72(3).

57 See, eg, Coroners Court of Victoria, above n 55, 40.

58 *Ibid* 25.

59 Coroners Court of Victoria, *Welcome to the Coroners Court of Victoria* (4 January 2016) <<http://www.coronerscourt.vic.gov.au/home/>>; Coroners Court of Victoria, above n 53.

60 Coroners Court of Victoria, *Family Violence Investigations* (15 January 2015) <<http://www.coronerscourt.vic.gov.au/home/coronial+investigation+process/family+violence+investigations>>. See also, Coroners Court of Victoria, Submission 382, 5–6.

61 Coroners Court of Victoria, Submission 382, 6.

62 Coroners Court of Victoria, 'Victorian Systematic Review of Family Violence Deaths' (First Report, November 2012) 31–2.

63 Transcript of Bugeja, 14 October 2015, 3605 [31]–3606 [8]; Department of Treasury and Finance, '2015–16 Budget Paper No 3: Service Delivery' (2015) 5.

64 Transcript of Bugeja, 14 October 2015, 3616 [1]–[10].

65 *Ibid* 3615 [25]–3616 [10].

66 Council of Australian Governments, 'Second Action Plan 2013–2016: Moving Ahead of the National Plan to Reduce Violence Against Women and Their Children 2010–2022' (June 2014) 39–40.

67 Coroners Court of Victoria, Submission 382, 6–7.

68 Transcript of Bugeja, 14 October 2015, 3616 [11]–3617 [2]; Federation of Community Legal Centres, Submission 958, 58.

69 Coroners Court of Victoria, Submission 382, 19–20; Transcript of Bugeja, 14 October 2015, 3605 [31]–3606 [8].

70 Coroners Court of Victoria, Submission 382, 19–20.

71 *Ibid*.

72 *Ibid* 9.

73 *Commission for Children and Young People Act 2012* (Vic) s 34; Commission for Children and Young People, Submission 790, 25.

74 *Commission for Children and Young People Act 2012* (Vic) s 34(1).

75 *Ibid* s 34(2).

76 *Ibid* s 37(1), (3).

77 *Ibid* s 37(2).

78 *Ibid* s 31.

79 Transcript of Boland, 14 October 2015, 3689 [19]–[31].

80 *Commission for Children and Young People Act 2012* (Vic) s 33.

81 Commission for Children and Young People, Submission 790, 25.

82 Transcript of Boland, 14 October 2015, 3686 [5]–[10].

83 *Ibid* 3690 [3]–[18].

84 *Ibid*.

85 *Ibid* 3691 [12]–[22]; Transcript of Geary, 14 October 2015, 3691 [23]–[26].

86 Transcript of Geary, 14 October 2015, 3690 [16]–[18].

87 Domestic Violence Resource Centre Victoria, Submission 945, 36.

88 *Ibid*.

89 Coroners Court of Victoria, Submission 382, 10.

90 *Ibid*.

91 Federation of Community Legal Centres, Submission 958, 56.

92 *Ibid* 59.

93 State Coroner, above n 48, 1.

94 *Ibid* 2.

95 Federation of Community Legal Centres, Submission 958, 58–9.

96 Transcript of Bugeja, 14 October 2015, 3621 [20]–3622 [3], [10]–[29].

97 *Ibid* 3622 [4]–[9].

98 *Ibid* 3621 [20]–3622 [3].

99 Federation of Community Legal Centres, Submission 958, 59.

100 *Ibid*.

101 *Ibid*.

102 *Ibid* 60.

103 *Ibid* 57–8.

104 *Ibid* 57.

105 *Ibid* 11.

106 Coroners Court of Victoria, Submission 382, 13.

107 *Ibid* 7.

108 *Ibid*. The Commission understands that ANROWS will be publishing a report on the health and wellbeing implications of domestic violence, including in relation to depression and suicide.

109 Coroners Court of Victoria, Submission 382, 13.

110 *Ibid* 9.

111 *Ibid* 9, 20.

112 *Ibid* 20.

113 Transcript of Boland, 14 October 2015, 3687 [1]–[7].

114 *Commission for Children and Young People Act 2012* (Vic) ss 34(2), 37(2).

115 Transcript of Boland, 14 October 2015, 3688 [13]–[16].

116 Transcript of Goddard, 14 October 2015, 3668 [14]–[23], 3672 [27]–3673 [7].

117 *Ibid* 3675 [11]–[20].

118 *Ibid* 3668 [31]–3669 [7], 3675 [11]–[20].

119 Transcript of Geary, 14 October 2015, 3692 [5]–[19].

120 Royal Australasian College of Surgeons, Submission 381, 3.

121 Australian Human Rights Commission, *Deaths from family and domestic violence* (18 September 2015) <<https://www.humanrights.gov.au/our-work/family-and-domestic-violence/projects/deaths-family-and-domestic-violence>>.

Glossary

Affected family member	A person who is to be protected by a family violence intervention order. This terminology is also used by Victoria Police to describe victims of family violence.
Affidavit	A written statement made under oath or affirmation.
Applicant	A person who applies for a family violence intervention order (or other court process). This can be the affected family member or a Victoria Police member acting on behalf of the affected family member.
Applicant support worker	A worker at some magistrates' courts who advises and assists an applicant with court procedures (for example, applying for a family violence intervention order).
Bail	The release of a person from legal custody into the community on condition that they promise to re-appear later for a court hearing to answer the charges. The person may have to agree to certain conditions, such as reporting to the police or living at a particular place.
Breach	A failure to comply with a legal obligation, for example the conditions of a family violence safety notice or family violence intervention order. Breaching a notice or order is a criminal offence. In this report the terms 'breach' and 'contravention' are used interchangeably.
Brokerage	A pool of funds allocated to a service provider to purchase goods and/or services for its clients according to relevant guidelines. For example, brokerage funds could be used to pay for rental accommodation, health services and other community services.
Child	A person under the age of 18 years.
CISP	The Court Integrated Services Program is a case-management and referral service operating in certain magistrates' courts for people who are on bail or summons and are accused of criminal offences.
Cold referral	A referral to a service where it is up to the client to make contact, rather than a third party. For example, where a phone number or address is provided to a victim.
Committal proceeding	A hearing in the Magistrates' Court of Victoria, to determine if there is sufficient evidence for a person charged with a crime to be required to stand trial.
Contravention	A breach, as defined above. In this report, the terms 'breach' and 'contravention' are used interchangeably.
Criminogenic	Producing or leading to crime or criminality.
Culturally and linguistically diverse	People from a range of different countries or ethnic and cultural groups. Includes people from non-English speaking backgrounds as well as those born outside Australia whose first language is English. In the context of this report, CALD includes migrants, refugees and humanitarian entrants, international students, unaccompanied minors, 'trafficked' women and tourists. Far from suggesting a homogenous group, it encompasses a wide range of experiences and needs.
Culturally safe	An approach to service delivery that is respectful of a person's culture and beliefs, is free from discrimination and does not question their cultural identity. Cultural safety is often used in relation to Aboriginal and Torres Strait Islander peoples.
Directions hearing	A court hearing to resolve procedural matters before a substantive hearing.

Duty lawyer	A lawyer who advises and assists people who do not have their own lawyer on the day of their court hearing and can represent them for free in court.
Ex parte hearing	A court hearing conducted in the absence of one of the parties.
Expert witness	A witness who is an expert or has special knowledge on a particular topic.
Family violence intervention order	An order made by either the Magistrates' Court of Victoria or the Children's Court of Victoria, to protect an affected family member from family violence.
Family violence safety notice	A notice issued by Victoria Police to protect a family member from violence. It is valid for a maximum of five working days. A notice constitutes an application by the relevant police officer for a family violence intervention order.
Federal Circuit Court	A lower level federal court (formerly known as the Federal Magistrates' Court). The court's jurisdiction includes family law and child support, administrative law, admiralty law, bankruptcy, copyright, human rights, industrial law, migration, privacy and trade practices. The court shares those jurisdictions with the Family Court of Australia and the Federal Court of Australia.
First mention	The first court hearing date on which a matter is listed before a court.
Genograms	A graphic representation of a family tree that includes information about the history of, and relationship between, different family members. It goes beyond a traditional family tree by allowing repetitive patterns to be analysed.
Headquarter court	In the Magistrates' Court of Victoria, there is a headquarter court for each of its 12 regions at which most, if not all, of the court's important functions are performed. All Magistrates' Court headquarter courts have family violence intervention order lists.
Heteronormative/heteronormatism	The assumption or belief that heterosexuality is the only normal sexual orientation.
Indictable offence	A serious offence heard before a judge in a higher court. Some indictable offences may be triable summarily.
Informant	The Victoria Police officer who prepares the information in respect of a criminal charge. The informant may be called to give evidence in the court hearing about what they did, heard or saw.
Intake	A point of entry or 'doorway' into a service or set of services.
Interim order	A temporary order made pending a final order.
L17	The Victoria Police family violence risk assessment and risk management report. The L17 form records risks identified at family violence incidents and is completed when a report of family violence is made. It also forms the basis for referrals to specialist family violence services.
Lay witness	A witness who does not testify as an expert witness.
Mandatory sentence	A sentence set by legislation (for example, a minimum penalty) which does not permit the court to exercise its discretion to impose a different sentence.
Other party	A term used by Victoria Police to describe the person against whom an allegation of family violence has been made (the alleged perpetrator).

Prescribed organisation	An organisation empowered to share information relevant to risk assessment and risk management under the Commission's recommended information-sharing regime to be established under the <i>Family Violence Protection Act 2008</i> (Vic). Such organisations could include, for example, Support and Safety Hubs, specialist family violence services, drug and alcohol services, mental health services, courts, general practitioners and nurses. The proposed regime is discussed in Chapter 7.
Protected person	A person who is protected by a family violence intervention order or a family violence safety notice.
Recidivist	A repeat offender who continues to commit crimes despite previous findings of guilt and punishment. In this report this term is also used to describe perpetrators against whom more than one report of family violence has been made to Victoria Police, including where no criminal charge has been brought.
Registrar	An administrative court official.
Respondent	A person who responds to an application for a family violence intervention orders (or other court process). This includes a person against whom a family violence safety notice has been issued.
Respondent support worker	A worker based at some magistrates' courts who advises and assists respondents with court procedures, (for example, a family violence intervention order proceeding).
Risk assessment and risk management report	A Victoria Police referral L17 form, completed for every family violence incident reported to police.
Risk Assessment and Management Panels	Also known as RAMPs, these are multi-agency partnerships that manage high-risk cases where victims are at risk of serious injury or death. These are described in Chapter 6.
Summary offence	A less serious offence than an indictable offence, which is usually heard by a magistrate.
Summons	A document issued by a court requiring a person to attend a hearing at a particular time and place.
Triable summarily	Specific indictable offences that can be prosecuted in the Magistrates' Court of Victoria, subject to the consent of the accused and the magistrate.
Universal services	A service provider to the entire community, such as health services in public hospitals or education in public schools.
Warm referral	A referral to a service where the person making the referral facilitates the contact—for example, by introducing and making an appointment for the client.
Young person	A person up to the age of 25 years.

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