



Royal Commission
into Family Violence

Summary and recommendations

March 2016

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Contents

| | |
|------------------------------|----|
| Summary | 1 |
| The Commission's task | 1 |
| The Commission's conclusions | 5 |
| The way forward | 14 |
| Overview of the report | 17 |
| Recommendations | 45 |

Report and recommendations

Volume I

Acknowledgements

1 The Royal Commission and its work

2 The nature, dynamics and effects of family violence

3 Key family violence data

4 Family violence policies and service responses: a brief history

5 Systems overview

6 Risk assessment and management

7 Information sharing

Appendix A Letters Patent and terms of reference

Appendix B Amendment to Letters Patent

Appendix C Statement of expenditure

Appendix D Witness list

Appendix E Hearing modules

Appendix F Lay witnesses

Appendix G Roundtable discussions: topics and participants

Volume II

8 Specialist family violence services

9 A safe home

10 Children and young people's experience of family violence

11 Family violence and the child protection system

12 Sexual assault and family violence

13 Pathways to services

Volume III

14 Police: front-line operations and workforce

15 Police: leadership, resourcing and organisational systems

16 Court-based responses to family violence in Victoria

17 Offences and sentencing

18 Perpetrators

Volume IV

19 The role of the health system

20 Recovery: health and wellbeing

21 Financial security

22 Restorative justice for victims of family violence

23 Adolescents who use family violence

24 Family violence and the family law system

25 Review of family violence-related deaths

Volume V

Family violence and diversity

26 Aboriginal and Torres Strait Islander peoples

27 Older people

28 Culturally and linguistically diverse communities

29 Faith communities

30 Lesbian, gay, bisexual, transgender and intersex communities

31 People with disabilities

32 Male victims

33 Rural, regional and remote communities

34 Women in prison

35 Women working in the sex industry

Volume VI

36 Prevention

37 The workplace

38 Sustainable and certain governance

39 Data, research and evaluation

40 Industry planning

41 Investment

Appendix H Cost categories of PwC report

Appendix I The Victorian Government's budget for specialist family violence services, 2014–15

Appendix J Funding in the Victorian Government 2015–16 Budget for family violence initiatives

Appendix K List of the activities and activity sub-elements for family violence service providers who receive funding

Volume VII Commissioned research

An overview of family violence in Victoria: findings from the Victorian Family Violence Database 2009–10 to 2013–14

Understanding family violence court proceedings: the impact of family violence on the Magistrates' Court of Victoria

Summary

Family violence can cause terrible physical and psychological harm, particularly to women and children. It destroys families and undermines communities. Sometimes children who have directly experienced family violence or have been exposed to it go on to become victims or perpetrators of violence later in life, so that the effect of family violence is passed to the next generation.

Recognition of the harm family violence causes, and of the need to invest in family violence reforms to assure the future wellbeing and prosperity of all Victorians, resulted in the establishment of this Royal Commission into Family Violence on 22 February 2015.

In announcing the Victorian Government's intention to establish the Royal Commission, the Premier declared that family violence was 'the most urgent law and order emergency occurring in our state and the most unspeakable crime unfolding across our nation'. The Premier also acknowledged that 'more of the same policies will only mean more of the same tragedies'.

The Commission was established in the wake of a series of family violence-related deaths in Victoria—most notably the death of 11-year-old Luke Batty, who was killed by his father on 12 February 2014 after years of abusive behaviour directed at Luke's mother, Ms Rosie Batty. Since then there have been other family violence-related deaths.

The establishment of the Royal Commission is an acknowledgement of the seriousness with which the Victorian community has come to regard family violence and its consequences for individuals and families—it reflects our growing awareness of its scale, a recognition that existing policy responses have been insufficient to reduce the prevalence and severity of the violence, and the priority the community is prepared to accord it in order to address the problem.

The Commission's task

As specified in its terms of reference, the Commission's task was to identify the most effective ways to:

- ▷ prevent family violence
- ▷ improve early intervention so as to identify and protect those at risk
- ▷ support victims—particularly women and children—and address the impacts of violence on them
- ▷ make perpetrators accountable
- ▷ develop and refine systemic responses to family violence—including in the legal system and by police, corrections, child protection, legal and family violence support services
- ▷ better coordinate community and government responses to family violence
- ▷ evaluate and measure the success of strategies, frameworks, policies, programs and services introduced to put a stop family violence.

The Commission was asked to make practical recommendations to achieve these outcomes.

What is family violence?

For the purpose of the Commission's inquiry, 'family violence' is defined in section 5 of the *Family Violence Protection Act 2008* (Vic):

... family violence is—

- (a) behaviour by a person towards a family member of that person if that behaviour—
 - (ii) is physically or sexually abusive; or
 - (iii) is emotionally or psychologically abusive; or
 - (iv) is economically abusive; or
 - (v) is threatening; or
 - (vi) is coercive; or
 - (vii) in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person; or
- (b) behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to in paragraph (a).

The Family Violence Protection Act defines 'family member' broadly. Family violence can occur in any familial relationship—for example, between current or former intimate partners who are or were married or in de facto relationships, in heterosexual and same-sex relationships, between parents (or step-parents) and children, between siblings, and between grandparents, grandchildren, uncles, aunts, nephews, nieces and cousins. It can also occur in relationships that are considered to be 'family-like'—for example, in certain cultural traditions or between a person with a disability and their unrelated carer.

The most common manifestation of family violence is intimate partner violence committed by men against their current or former female partners. This violence can also affect children. It is the form of family violence that we know most about, and it is the key focus of most services and programs.

Family violence in the context of other relationships—including in extended families, by siblings, against men and in same-sex relationships—is also covered by the Family Violence Protection Act and falls within the scope of the Commission's inquiry.

Why does family violence occur?

The terms of reference do not require the Commission to determine why family violence occurs but, by way of background, they do set out important factors that are relevant:

The causes of family violence are complex and include gender inequality and community attitudes towards women. Contributing factors may include financial pressures, alcohol and drug abuse, mental illness and social and economic exclusion.

As part of our inquiry we studied much of the literature that discusses the social and individual factors that give rise to family violence. Understanding these factors provides a basis for making well-informed decisions about the measures that should be taken to prevent and respond to family violence.

There is no doubt that violence against women and children is deeply rooted in power imbalances that are reinforced by gender norms and stereotypes. Factors such as intergenerational abuse and trauma, exposure to violence as a child, social and economic exclusion, financial pressures, drug and alcohol misuse and mental illness can also be associated with family violence. These factors can combine in complex ways to influence the risk of an individual perpetrating family violence or becoming a victim of such violence.

There are, of course, debates about the extent to which these factors cause or exacerbate family violence, and part of this relates to the need to ensure that those who use violence take responsibility for their own behaviour and that victims are not blamed for the abuse they endure. The Commission did not seek to resolve these debates. Instead, it concluded that if we are to reduce the incidence, severity and impact of family violence in the short, medium and long-term, a multi-faceted strategy is needed to take account of the complex interactions between all relevant factors.

The challenge is to direct our attention to all the risk factors for all forms of family violence, while ensuring that people from particular communities are not stigmatised and that perpetrators are not absolved of responsibility for their conduct.

The Commission's work in context

This Commission did not operate in a vacuum. Our work comes on the back of decades of local and international research, activity and advocacy on the part of people who are experts in their fields and committed to preventing family violence and mitigating its effects. The Commission's work proceeded concurrently with other reviews and analyses covering the same and related subject matter and alongside a rapidly evolving evidence base and ongoing policy development and practice changes.

The Commission did not seek to comprehensively document or replicate the detail or breadth of all this other work or to substitute its own analysis for the work that has preceded its own. Our function was to provide advice to the Victorian Government, drawing on the literature reviewed, an examination of the current arrangements in Victoria for preventing and responding to family violence, and the views and experiences of people throughout the state. We used the existing evidence base to guide our deliberations, to document the foundational principles for a range of approaches and policies, and to explain the basis for our proposals.

This report describes the primary priorities for reform and the principles that must underpin future strategies, policies and programs aimed at dealing with family violence. The Commission also emphasises matters that require urgent attention and proposals that will take some time to implement. Detailed policy development, service design and implementation need to occur in partnership with those who work directly with individuals and families affected by family violence and those who have expertise in a range of relevant disciplines.

Active participation by all involved will be essential if we are to build a shared understanding of, and commitment to, the objectives of the reforms.

The Commission's process

The Commission informed itself in a variety of ways during the course of its inquiry—including through community consultations, written submissions, public hearings, data collection, literature reviews, commissioned research and discussions with experts.

In keeping with its terms of reference, the Commission had particular regard to the need to establish a culture of non-violence and gender equality and to shape appropriate attitudes towards women and children. Again in keeping with the terms of reference, it took account of the needs and experiences of children and young people, older people, Aboriginal and Torres Strait Islander peoples, people from culturally and linguistically diverse backgrounds, gay, lesbian, bisexual, transgender and intersex people, people living in regional and rural communities, people with disabilities, and people with complex needs.

The Commission's involvement with individuals directly affected by family violence was especially influential. The majority of the personal accounts, in writing or in person, were from women who had experienced physical, sexual, emotional and/or financial abuse by their male partners, sometimes over years or decades. Many people also spoke of the abuse they had suffered from family members when they were children.

The Commission met with women in metropolitan, suburban and regional areas; we heard from women who were well educated and financially comfortable and from women who had struggled for their entire lives with poverty and disadvantage; we spoke with women from many cultural backgrounds and faith communities; and we met with Aboriginal and Torres Strait Islander women who had endured family violence both as children and as adults and whose sons and daughters are now in violent relationships.

The Commission heard from women whose capacity to live full and productive lives has been shattered as a result of the sustained abuse they have experienced in their relationships and families. Women who, with the support of other family, friends, peers and support services, have become empowered to lead fulfilling, violence-free lives showed us there can be hope for the future.

The Commission also heard from men with a range of different perspectives on family violence. Some of them had experienced family violence, including as children, or were close to people who had; some had perpetrated family violence; and some spoke of their experience of court proceedings in which they had been accused of being violent.

Families whose loved ones have been killed by family members told us of their experiences. The Commission was impressed and moved by the dignity, insight and conviction of these families. It is extraordinary that, having suffered such loss, they had the courage and the generosity to help us in our work—to explain their sense of what happened and why, to point to gaps and failings in systems' responses, and to suggest possible ways of preventing further deaths. The Commission is grateful to these families for their heartfelt and considered contribution.

These personal accounts were fundamental to helping the Commission reflect on measures that are needed to reduce the risk of family violence and to respond to the needs of those affected. They also helped us to critically assess current approaches and practices.

In this report we try to reflect the force and diversity of the accounts and contributions received throughout the inquiry. Inevitably, it was impossible to do complete justice to the personal experiences contributed by people in written submissions or in consultations. Many people who told us their stories—often recounting in detail the abuse they have suffered—did so on the condition that we treat those stories as confidential. As a result, the report does not specifically mention these individuals, even though their experiences helped shape the Commission's views. We trust that the quotes and witness statements included in the report go some way to conveying the authenticity of the many voices we heard. Our recommendations are based on the expectation that services and systems will be attentive to, and respectful of, the diverse experiences and needs of each person affected by family violence.

During the inquiry the Commission also met with hundreds of people who come in contact with victims and perpetrators of family violence throughout Victoria—among them police members, specialist family violence workers, lawyers, magistrates, court-based support workers, people working in crisis accommodation facilities, youth workers, counsellors, people working on the front line in child protection and family services, doctors, maternal and child health nurses, and teachers. We were struck by the commitment, knowledge and expertise they brought to the consultation process—and quite obviously to their daily work. Despite the very great pressures they work under and the complexity of that work, all came with huge optimism and vigour and a commitment to the people they assist and to the task of ending family violence. The Commission was also enormously assisted by the input of those working in peak bodies, and in the areas of policy, research and advocacy throughout the family violence system. We learnt a great deal from them.

The Commission is indebted to the Aboriginal Elders and community members who shared their insights and suggestions with us. They told us about the creative and effective early intervention and response initiatives that are being implemented by and for their communities. These practices taught the Commission much about the types of community-based family violence strategies that are needed.

The Commission heard myriad and broad-ranging—and sometimes divergent—views about how best to prevent and respond to family violence. It was our task to listen to all perspectives, to find common ground, and to identify constructive ways of improving responses to family violence in the future.

The Commission's conclusions

There is no comparison between the response today and that of 2000. We can point to the failures today—and there are many. However, the failures of the system should not be confused with lack of progress. We have come a long way from women self-referring, women not reporting to police, from police not drawing the dots between family violence and crime and domestic murder. I acknowledge how far we have come since those dark days. The days of an isolated women's service response are gone.¹

Victoria has been at the forefront of family violence policy development and reform in Australia for the past 15 years and has been influential in propelling reforms in other Australian and international jurisdictions. This work has been driven by and has built on decades of grassroots work and advocacy by the women's movement. Significant elements of the Victorian response to family violence remain sound. However, there are serious limitations in the existing approach. We are not responding adequately to the scale and impact of the harm caused by family violence.

Strong foundations

Victoria has strong foundations on which to build its future response to family violence, including:

- ▶ the Family Violence Protection Act, which reflects sound objectives and principles, and provides a comprehensive definition of family violence and the relationships in which it can arise
- ▶ the seriousness with which Victoria Police now regards family violence—for example, through the development of the Code of Practice for the Investigation of Family Violence, the establishment of family violence teams, and the leadership it has shown in transforming the way police respond to family violence incidents
- ▶ the Victorian Family Violence Risk Assessment and Risk Management Framework, or Common Risk Assessment Framework (the CRAF), which has been influential in building a shared understanding of family violence and in helping people working with victims of family violence to understand their roles and responsibilities
- ▶ the development of Risk Assessment and Management Panels to proactively monitor perpetrators in family violence cases identified as high risk
- ▶ the approaches adopted by the Magistrates' Court in the Family Violence Court Division and specialist courts including the provision of services to applicants and respondents in relation to family violence intervention orders
- ▶ a network of dedicated specialist family violence services across the state, including those that respond to victims from diverse communities. These services provide a range of supports to women and children, and contribute unique skills and knowledge about family violence risk that guide the broader system response
- ▶ the development of the Indigenous Family Violence 10 Year Plan: Strong Culture, Strong Peoples, Strong Families that is overseen by the Indigenous Family Violence Partnership Forum
- ▶ expertise in primary prevention programs and initiatives that has been developed under the leadership of organisations such as VicHealth, women's health services and Our Watch
- ▶ the increased focus of key universal services, such as health services, and targeted services such as Child FIRST and Integrated Family Services, in working with vulnerable families
- ▶ family violence regional integration committees that bring together key services, including family violence services, Child Protection and Victoria Police to foster a more comprehensive response to victims and perpetrators of family violence
- ▶ the Victorian Government's contribution to the national research institute ANROWS to build the evidence base for effective responses to family violence
- ▶ significant research and legislative and policy reform relevant to sexual assault, which has expanded our understanding of and improved our response to family violence.

System limitations

Despite these strong foundations, the Commission identified gaps and obstacles that are limiting the effective implementation of laws, policies, and programs:

- ▶ All parts of the system—support services, police, courts—are overwhelmed by the number of family violence incidents now reported. Services are not currently equipped to meet this high level of demand, which undermines the safety of those experiencing family violence and their potential for recovery.
- ▶ The many different forms and manifestations of family violence are insufficiently recognised, and responses are not tailored to the particular circumstances and needs of diverse victims.
- ▶ There is a lack of targeted resources to meet the specific needs of children and young people who have experienced family violence.
- ▶ The current response to family violence largely assumes that women will leave their home when family violence occurs. For those who must leave, homelessness and housing systems cannot guarantee a safe place to stay or a permanent home that is affordable. For those who remain at home, monitoring of the perpetrator is inadequate.
- ▶ Key personnel in universal systems, such as health services and schools, are not adequately equipped to recognise that family violence may be occurring and often do not know what to do when it is identified.
- ▶ The range of services a victim might need at different times, including at points of crisis and beyond, are not as well coordinated as they should be, particularly when these services are located in different systems—for example, the health and justice systems. Gaining access to support can be difficult for victims, and service responses remain inconsistent and hard to navigate.
- ▶ Efforts to hold perpetrators to account are grossly inadequate. Victims are too often left to carry the burden of managing risk. Insufficient attention is given to addressing perpetrators' individual risk factors.
- ▶ The safety of victims is undermined by inadequate methods for sharing information between agencies about perpetrator risk. This is exacerbated by outdated information technology systems.
- ▶ Too little effort is devoted to preventing the occurrence of family violence in the first place, and to intervening at the earliest possible opportunity to reduce the risk of violence or its escalation. Similarly, there is not enough focus on helping victims recover from the effects of violence and rebuild their lives.
- ▶ The Victorian Government does not have a dedicated governance mechanism in place to coordinate the system's efforts to prevent and respond to family violence or to enable an assessment of the efficacy of current efforts.
- ▶ There is inadequate investment in measures designed to prevent and respond to family violence.

Some of these problems can be addressed through improving existing approaches so that they can be responsive to new circumstances and reflect best practice. But new approaches are also required.

Transforming our response

We have an opportunity to transform the way in which we address family violence in Victoria. This will require new ways of thinking and collaborating.

The advocates who have gone before have asked the public and policy makers to listen, and to understand the devastating prevalence and impacts of family violence.

I think, as a whole, we are now listening and understanding. We understand, to a much greater extent than ever before, that family violence exists, its prevalence and impacts are devastating and shame us all, and that family violence affects individuals, the community and, ultimately, our nation. The challenge is to move forward, from this point, into a time of making changes and finding solutions.

In my view, we are in the middle of a paradigm shift. To take us forward, we need to hear from voices with ideas for change and with ideas for solutions. These might be different voices from those that have gone before.²

The Victorian Government must strengthen innovation in the development and implementation of family violence policy and foster collaboration between different service systems. The sound foundations in Victoria's family violence system, and the numerous pockets of best practice in different settings around the state have evolved as a result of people working together in the face of significant demand. Their efforts, and the efforts of others in the community who are ready to play a greater role in addressing family violence, must be harnessed and supported.

In addition to working in partnership with family violence practitioners, the Victorian Government should facilitate input from victims, as well as from experts from a broad range of disciplines including related health and human services, risk assessment, criminology and forensic psychology, communications, information technology, program evaluation and workforce development, to ensure that family violence policy benefits from the best knowledge and expertise. Similarly, people working in other sectors and disciplines need to be supported to identify ways in which preventing family violence can be incorporated as a part of their own work.

Broadening responsibility for addressing family violence will require each sector or component part of the system to reinforce the work of others, to collaborate with and trust others, to understand the experience of family violence in all its forms, to look outwardly, and be open to new ideas and new solutions. Currently, different sectors and service systems operate according to distinct underlying principles, service delivery models and theoretical frameworks, which can create barriers to service integration, collaboration and innovation. However, just as women's services came together with police in the early 2000s to overcome scepticism about each other's roles and objectives and to forge a partnership that saw family violence become a priority for the justice system, there is great potential for progress to be made in building dialogue and partnership broadly across sectors.

New approaches to addressing family violence should be guided by and take into account the following.

Reflecting the experience of victims

The strategy to address family violence must continue to recognise that most family violence incidents occur in the context of intimate partner relationships. The significant majority of perpetrators are men, and the significant majority of victims are women and their children. This recognition has implications for prevention and response activities, which must focus on the ways in which gender inequality and community attitudes underpin family violence.

At the same time, the strategy must take into account the many other manifestations of family violence, such as violence against children, parents, siblings and older people, and violence in same-sex relationships. More work is needed to identify how best to meet the needs of these specific groups of victims.

Family violence policy and services must also take account of the particular experiences of people from Aboriginal and Torres Strait Islander communities, which are compounded by discrimination and trauma associated with historical and ongoing injustices.

They must also respond to the fact that people from different cultures and backgrounds can find it even more difficult to report family violence and locate appropriate help and support than other Victorians. They must also address barriers, both physical and attitudinal, faced by women and children with disabilities who experience family violence.

Policy makers and others responsible for the design, responsiveness and efficacy of the family violence system should hear directly from victims who have recent experience of the system so that improvements can be made.

A more sustained focus on supporting children and young people

A child who lives with violence is forever changed, but not forever 'damaged'—and there is a lot we can do to improve their future prospects.³

Current policy does not pay sufficient attention to the effects of violence on children. Supporting children and young people must be central to family violence policies.

Family violence can have serious effects on children and young people but they do not always receive necessary support. There is insufficient focus on their needs and on the therapeutic and other interventions they may require to mitigate the effects of the violence. Although children are remarkably resilient, and many who experience violence and abuse go on to lead full and productive lives, there are many who will need counselling and/or other support to overcome the impacts of the abuse, which may otherwise render them vulnerable to becoming a victim of family violence as an adult, or using violence themselves. If we do not provide this support, the effects of family violence suffered by children may be carried on to the next generation.

All services must be responsive to victims' needs

Unless agencies and services are able to respond to the needs of victims in a timely and appropriate way, they can do more harm than good. This can dissuade victims from seeking help, or expose them to further risk.

When victims initially disclose family violence (or factors indicating its presence), many people do not know what to do. It is common for victims to receive advice or responses that fail to identify the level of risk they are facing or the types of expert assistance they might require, or that can be dismissive of or minimise their experience. As a first step, the experience of victims should be acknowledged. As Ms Batty remarked:

I'd like to hear 'you're not to blame for this' not 'why didn't you leave?' If someone has come from a hateful space then the first thing they need to have reinforced is that they're not to blame, and start lifting the stigma.⁴

At present, sources of expert advice and assistance for family violence victims are not readily visible:

I didn't know how to tell those close to me I needed help. I didn't have a language to describe what was wrong in my relationship. I didn't know who to call or who to see or which hotline to ring. I felt so stupid. It was all in my head. I wish there had been information campaigns on TV or on the radio, that told me what abuse is and what a healthy relationship isn't. I wish I had known that all of the services for women experiencing domestic violence looked after women experiencing all kinds of violence, not just physical violence. I wish my doctors and my psychologists and my psychiatrists and maternal and child health nurses had asked me about my relationship with my husband, if I had ever considered leaving, and if it was fear that prevented me from going. I wish someone had recognised the power divide between him and myself. I wish they'd recognised my depression and anxiety as a deep sense of worthlessness, and fear that had been instilled in me, by him, over years. I wish they'd said, the problem isn't you. It is his behaviour. I wish that I'd been able to protect my children from seeing what he did to me.⁵

Victims might want and need a range of different outcomes for themselves, their families and the perpetrator. Some victims might need support from services immediately after disclosing violence and will then be able to recover with the help of friends and family. Other victims will have been exposed to violence during childhood or to multiple forms of abuse over long periods. Some might have associated difficulties with alcohol or drug use, or physical and mental illness. Many victims will want to have no further contact with the perpetrator; some will continue to have contact with the perpetrator because of ongoing arrangements with children; some will want to remain in their relationship.

An individualised approach that provides tailored and specialised responses is required. This means that services need to embrace complexity and be equipped to respond nimbly to the diverse experiences of family violence. Agencies and services responding to family violence need to develop and incorporate the knowledge, skills and expertise to work with clients who experience family violence in all its forms, in a variety of relationships, and against the background of their individual circumstances.

Services must work better together

Getting help should not depend on the particular entry point chosen by the victim.

Victims of family violence might disclose the violence to family or friends or approach a range of different service providers. They might tell a teacher, a general practitioner, a dentist, a counsellor or a maternal and child health nurse about the violence. They might call the police when violence is occurring or report it later. They might approach a registrar at a local court, or a community legal service or a private legal practitioner. They might contact Child Protection, which might refer them to Child FIRST. People who make the decision to tell someone about the violence often find the responses of police, courts, government agencies and service providers inconsistent and may not receive the advice they need to obtain further support.

All services that come into contact with family violence victims should be equipped to identify, and in some cases, assess and manage risk, and to ensure that victims are supported. Mainstream services such as health services, must be able to identify risk and refer victims to services that can provide more comprehensive support, such as specialist family violence services.

Universal service systems that are available to all community members are ideally placed to play a much greater role in identifying family violence at the earliest possible stage. Associated systems such as Integrated Family Services, mental health and drug and alcohol services, aged care, and the health and education systems must play a more direct role in identifying and responding to family violence. In order to achieve this, mainstream services will need to boost their family violence capability. These workforces need to recognise signs that family violence may be occurring and know what to do next to ensure safety.

There must be clear entry points into, and pathways between, different parts of the system, to make the experience of seeking help as supportive and seamless as possible. The system should be structured to assist those with multiple and interdependent needs to navigate the services they need, and equip people with more straightforward needs to directly access the services they require.

Individual service elements needed by a victim during both the crisis and the recovery phases are often 'siloed', requiring victims to navigate complex systems by themselves at a time when they may be under acute stress. Those without access to a case manager are not guided or assisted in finding or using all of the services they need, for example, housing, counselling, legal services, and therapeutic programs for themselves and their children.

Siloing can reduce the effectiveness of each service or make some services totally ineffective. For example, it is unlikely that a woman can take full advantage of trauma counselling if she and her children are living in their car. Siloing also ignores the need for services to reinforce each other so that the victim has a line of sight to recovery. For example, the current approach seen in the provision of crisis, transitional and longer term housing often creates further dislocation and uncertainty for victims who are already in a state of extreme stress. This can exacerbate the effects of the violence itself and can sometimes result in victims returning to abusive relationships.

Closer relationships must be built between all the services that support victims of family violence. Agencies need to be active in co-locating and joining together with other agencies to provide services, and government should support them in doing so.

People in rural, regional and remote parts of the state must be able to have easy access to the services they need. This calls for flexibility and adaptability in the way services are delivered.

To have an effective system, all components need to be appropriately funded. Increasing funding on its own, though, without attention to operational changes and broader system design, will not sufficiently improve the situation.

A sustained focus on effective perpetrator interventions

I ask, why is it that we have [the] responsibility for safety on the victim's shoulders? Why are we constantly talking about victims rather than the perpetrator, and not questioning his behaviour? Why is it she has to hide or move or uproot herself or her family and he is able to have a beer with his mates and no one is challenging his behaviour?⁶

When police and other justice systems don't respond seriously and pro-actively it sends a powerful message to perpetrators that they are free to do as they wish and that there will be no consequences or accountability for their violence.⁷

Family violence policy must aim to stop violence at its source. It should never be regarded as the victim's responsibility to stop family violence: those who use violence should always be held responsible for their actions.

Efforts to keep victims safe must be strengthened through a consistent and rigorous approach to perpetrator accountability. Bringing perpetrators into view and assisting them to change behaviours is essential to reducing family violence.

The current response to perpetrators remains under-developed, despite the establishment of initiatives such as family violence teams within Victoria Police, and Risk Assessment and Management Panels, which aim to keep high-risk perpetrators in view.

Crime Statistics Agency analysis conducted for the Commission indicated that a relatively small number of recidivist perpetrators account for a disproportionate number of family violence incidents attended by Victoria Police. These perpetrators were more likely than others to be recorded by police as being unemployed, depressed or as having used drugs.

Many breaches of intervention orders are not prosecuted. Perpetrators are not deterred from continuing to abuse their victims if police and court responses are inconsistent, delayed and uncertain. As a consequence, victims remain responsible for managing their own safety—staying ever vigilant to breaches of intervention orders and navigating ongoing threats or contact by perpetrators—even after they have sought protection from the justice system.

Some perpetrators may be able to change their behaviour with an appropriate level of support or as a result of a particular style of behaviour change program; others will need more tailored and intensive assistance, including those with a mental illness or problems with drug and alcohol use. Other perpetrators will continue to pose unacceptable risks to their family members, requiring stricter justice system-based interventions.

A greater focus on perpetrators will require the collaboration of key agencies and experts such as Victoria Police, the courts, Corrections Victoria, Child Protection, men's behaviour change program providers, family violence services, drug and alcohol and mental health practitioners, criminologists and forensic psychologists. Key areas of attention must involve improving risk assessment and management; monitoring perpetrator behaviour; harnessing the authority of the courts; working with perpetrators in ways that help them take responsibility, change their behaviours and address any specific risk factors that contribute to their use of violence; exploring different program models; and delivering programs and other interventions that are proven to work. Exploring options for expanding perpetrator interventions must build on, and not detract from, the important work that has already been done to ensure that men take responsibility for their violence against women and their children.

Moving beyond a crisis response

The reforms introduced in the 2000s had a clear focus on improving the justice response and in connecting police, court and specialist family violence service responses in order to maximise victims' safety.

The existing focus on crisis response and justice system mechanisms must be matched by a similar focus on, and investment in, prevention, early intervention and recovery.

There are numerous examples of family violence prevention, early intervention and recovery programs around the state, but these are piecemeal and often left to small community organisations to develop and implement. Government must commit to supporting these measures on a larger scale if we are to create the conditions necessary to reduce the incidence and effects of family violence.

Family violence prevention, early intervention and recovery measures need to be reinforced by measures that support and build the capabilities and resilience of individuals, families and communities. Family violence occurs in all communities, but its incidence and severity can escalate when people do not have the social and economic conditions they need to thrive or they are deprived of the conditions that are protective against family violence risk. Family violence can result in individuals and families being stuck in cycles of trauma and dislocation, which undermines their capacity to live full lives and contribute to their communities.

Prevention

If we are to prevent family violence we must change the attitudes and social conditions that give rise to it. There is a need to implement primary prevention strategies that are designed to dismantle harmful attitudes towards women, promote gender equality and encourage respectful relationships. Because family violence takes many forms, a variety of approaches is required. Some programs should be addressed to the Victorian community as a whole, others to particular population groups and places. Educating young people about respectful relationships must be a core part of the Victorian Government's long-term prevention strategy.

Only a small amount of government funding goes to prevention. Prevention activities are often funded for short periods. But changing behaviours and attitudes is a complex and lengthy process, which requires long-term investment. Failure to give greater priority to prevention efforts risks condemning future generations to the plight of today's victims of family violence. Unless we pay serious and sustained attention to prevention initiatives, the service system will remain overwhelmed and under-resourced.

Victoria has contributed significantly to researching and testing interventions designed to prevent violence against women and children and has been recognised internationally for this work. Although research about what prevention strategies are the most effective is ongoing, there is a strong base on which Victoria can build.

Early intervention

There has also been little support for programs aimed at protecting victims before violence escalates and intervening to ensure someone does not go on to be violent. Our systems do not do enough to support individuals and families to live violence-free lives.

There has been insufficient emphasis on intervening at points where people may be willing to participate in programs that could contribute to a reduction in family violence across the community, for example programs that support new parents.

Universal service systems that are available to all community members are ideally placed to have a much greater role in identifying and effectively responding to family violence at the earliest possible stage. We also need to build the capacity of family services, housing, employment, mental health and drug and alcohol services to identify violence and provide support before the violence gets worse.

In Victoria a number of areas of good and promising practice in local communities and hospital and other health settings provide the basis for developing more widespread programs.

Recovery and resilience

Women who have experienced family violence demonstrate extraordinary resilience and strength; this is apparent in the way that they manage the risk presented by the perpetrator and in the lengths they go to protect the safety of their children and other family members.

At the same time as ensuring the safety of victims, the system should aim to promote their recovery and resilience, so that a previous experience of family violence does not shape their lives forever. Victims want to rebuild their lives, participate in economic and social life, see their children thrive and be confident about their future.

Some victims may be able to recover with the help of family and friends, while others will need additional support to achieve these goals. As is the case for most Victorians, stable housing and employment, and participation in community life, are central to the wellbeing of victims of family violence and to their ability to build a good life for themselves and their children or other family members. The Government must ensure there are individually tailored measures to support victims to recover from the effects of family violence. Depending on their circumstances, this may require support to attain economic security and independence, secure housing, and health and wellbeing.

Family violence must be a core area of responsibility for government

Government and its departments and agencies must treat family violence as a core area of responsibility, instead of a problem that can be addressed through programs that exist at the margins of portfolios or solely through small specialist units. This will require a genuine commitment to a whole-of-government approach to stop family violence, support victims and hold perpetrators accountable.

Stopping family violence requires a multi-faceted, sustained effort by government. This effort cannot be effective without strong leadership, bipartisan support and partnership with the community.

In the past, policy and funding responses to family violence have often reflected an assumption that family violence is something that affects only a relatively small number of people from certain demographic groups. The development and resourcing of responses have not kept pace with our understanding of the prevalence and pervasiveness of family violence in all sections of our community. Similarly, there has been little analysis of the impact that high rates of family violence have on the operations of, and inter-relationships between, associated systems such as Child Protection, family services, sexual assault services, and universal services such as health and education.

At present, the Victorian Government does not have a system which co-ordinates and oversees implementation of responses to family violence. There is a lack of clarity about the principles and objectives that guide our response to family violence, and around the roles, responsibilities and lines of accountability of each department, agency, organisation and sector involved in responding to family violence. We are not clear about what success looks like or how to measure it.

A whole-of-government response calls for the police, courts, human services and other relevant service providers to share information from different systems. Clear information-sharing arrangements are also vital to ensure that decision makers are fully informed about the circumstances of individual cases, so that victims' safety and wellbeing is protected.

Substantial investment

Addressing family violence requires a strategy that has short, medium, and long-term objectives. This effort will have substantial funding implications for government. Robust forecast modelling needs to be done. Although strategies aimed at preventing family violence should deliver returns on investment in the longer term, there is an immediate need to increase investment in key parts of the family violence system, both to meet current demand and to implement major reforms.

The Victorian Government does not know how much in total it spends on dealing with family violence. Nor does it collect the data necessary to understand how all parts of the system are responding to family violence. This has implications for the ways in which policies and services are developed, funded, implemented, coordinated and reviewed. It also makes it difficult to measure whether specific interventions and strategies are reducing the prevalence of family violence or its impact on victims.

The government must prioritise funding for family violence initiatives and reforms. This may require investigating options for redirecting existing revenue sources towards family violence expenditure, identifying new revenue sources, and exploring the possibility of entering into partnership agreements with the Commonwealth Government, in areas of overlapping responsibility. In the Commission's view, there is widespread support in the Victorian community for treating family violence reform as a problem that warrants an immediate and tangible response. We believe that a reconsideration of funding priorities or the identification of new revenue sources to meet this goal would be widely accepted, provided their impact is distributed broadly and equitably.

Development and use of technological solutions

Technology is becoming increasingly important in the area of family violence. Not only do we need swift solutions to combat the ways perpetrators use mobile phones, social media platforms and surveillance devices to stalk and harass their victims—we also need to identify ways in which emerging technologies and resources can be used, alongside other measures, to do the following:

- ▷ support and empower victims—for example, by increasing their personal security or by facilitating safe and secure access to advice and information, and to the courts
- ▷ deter perpetrators from further offending for example through devices that record contact with victims
- ▷ link people in remote locations to service providers
- ▷ streamline and standardise risk assessment processes
- ▷ facilitate information sharing about individual cases between police, the courts and other parts of the family violence system
- ▷ coordinate processes and share practice knowledge across different systems and sectors
- ▷ enable data collection
- ▷ educate and equip members of the community to identify and respond to family violence.

Harnessing community effort

There is an unprecedented level of commitment across the community to preventing family violence and supporting victims. This momentum to stop violence should be harnessed.

Ending family violence requires a shift in the attitudes of individuals and in community attitudes that allow violence to be excused, justified or condoned. All Victorians have a role to play in deciding what is acceptable and unacceptable in the communities we share. Together, we create the culture that has a powerful influence on the behaviour and practices of individuals.

I think changing the culture is about raising awareness in the public domain to such a level that what we learn can't be unlearned, and what we know can't be unknown. I think it is imperative to raise this issue to the point where everyone knows it's an issue, everyone knows the statistics and everyone understands the different forms of family violence.⁸

Leaders in the economic, social and civic spheres of the community, as well as those who have experienced family violence, need to be engaged in building community awareness and determining the initiatives that are going to work for their community and how they should be pursued. These strategies should be targeted to all the places where people live, learn, work and play.

Workplaces, sporting clubs, faith communities and other social networks need to be supported so that they know how to respond when they become aware that someone is experiencing family violence or being abusive towards their family members. These settings also need to be environments that combat violence-supporting attitudes and promote respectful relationships.

There is a growing understanding of the value of investing in education, and in our children and young people. Schools are central points of interaction between parents, educators and young people. Respectful relationships education programs offer enormous promise for transforming the attitudes and behaviours of future generations.

I understand that a lot is asked of schools; we expect schools to fix many social problems and address all kinds of issues in their curriculum. However, I think schools do play an enormous role in terms of creating cultural norms. Further, schools are extremely relevant as they form the basis of years of social interactions and development of relationship skills. Children practise their relationship skills from a very young age, as soon as they can communicate, and spend a large proportion of their time doing so in the school environment. As a result, it is very important for schools to take an active role in addressing not only the specific issue of family violence but the broader issues of gender equity and respectful relationships.⁹

Networks and partnerships at the regional level—such as family violence regional integration committees and Indigenous Family Violence Regional Action Groups, and the work of women’s health centres—have played a particularly important role in building capacity and fostering collaborative networks in local areas.

Local councils offer a key platform for supporting community action. Local and state governments should foster collaboration and innovation in the development and implementation of community strategies designed to address family violence. Efforts already being made by communities that have been shown to be effective must be supported through the provision of guidance, resources and infrastructure support, as well as the dissemination of practice knowledge.

There is no quick fix to the prevention of family violence in our community. However, the right plan financed for the long term and supported by grass roots community campaigns and ownership will work.¹⁰

The way forward

The Commission makes a number of findings about the adequacy of current policies, systems and processes aimed at preventing and responding to family violence in Victoria. Drawing on all the evidence received, we outline a strategy for addressing family violence in the future and propose a set of practical recommendations—for the Victorian Government, other organisations and the community more broadly—to implement that strategy.

Our recommendations are directed at improving the foundations of the current system, seizing opportunities to transform the way that we respond to family violence, and building the structures that will guide and oversee a long-term reform program that deals with all aspects of family violence. Some of the recommendations focus on problems that can be resolved in the shorter term; others will require continued commitment and effort if they are to bring about change in the medium or longer term.

Many of the recommendations reflect an endorsement of important existing strategies that could be improved with renewed attention and oversight. The Commission also recommends a number of new approaches and structures. The full set of recommendations appears at the end of this summary. The recommendations also appear throughout the report in relevant chapters. The Commission’s strategy is not reliant on one central initiative: it depends on many initiatives. It is vital that these are coordinated and integrated rather than implemented in a piecemeal manner.

New approaches: a snapshot

The Commission's recommendations for new approaches cover the following:

- ▶ Support and Safety Hubs in local communities throughout Victoria, to make it easier for victims to find help and gain access to a greater range of services
- ▶ new laws to ensure that privacy considerations do not trump victims' safety—with a Central Information Point to funnel information about perpetrators to the Hubs
- ▶ an immediate funding boost to services that support victims and families, additional resources for Aboriginal community initiatives and a dedicated funding stream for preventing family violence
- ▶ a 'blitz' to rehouse women and children forced to leave their homes, supported by expanded individual funding packages
- ▶ an expanded investigative capacity for police and mobile technology for front-line police, including a trial of body-worn cameras
- ▶ more specialist family violence courts that can deal with criminal, civil and family law matters at the same time
- ▶ stronger perpetrator programs and increased monitoring and oversight by agencies
- ▶ family violence training for all key workforces—including in hospitals and schools
- ▶ investment in future generations through expanded respectful relationships education in schools
- ▶ an independent Family Violence Agency to hold government to account.

The terms of reference asked the Commission to consider the need to identify short, medium and long-term improvements to Victoria's current response to family violence. For this reason, we have sought to identify timeframes for implementation of most of our recommendations.

In several cases the Commission has recommended implementation by a specified date. We have done this for recommendations that lay the foundations for the future of the family violence system—for example, the establishment of Support and Safety Hubs, the Central Information Point and the Family Violence Agency, as well as completion of the review of the CRAF and implementation of the revised framework.

In most other recommendations we have sought to identify timeframes within which implementation would be desirable. In many cases we have specified timeframes of 12 months, two years or five years, with some other recommendations contemplating plans lasting 10 years. Generally, we have contemplated that amendments to Victorian legislation should be achieved within 12 months.

In setting the timeframes for this latter group of recommendations, the Commission has been mindful of the urgency of the need for reform, and sensitive to the practicalities of implementing a wide range of reforms which are inter-related. However, the timeframes are not intended to be rigid prescriptions, but rather to provide a guide to government about whether the recommendations should be implemented in the short, medium or longer term. Timeframes for implementation will inevitably be influenced by a range of factors, including the need to consult with stakeholders and the community and to stage various elements of the reforms.

In some cases no timeframe has been specified because the recommendation relates to something that should be ongoing (for example, annual reporting by Victoria Police about the prosecution of family violence offences) or because it relates to a process that already has its own timeframe (for example, those that relate to existing reviews or inquiries).

The Commission received a great many proposals for reform. Some of them related to the underlying frameworks in associated areas of policy, such as housing and homelessness, child protection, family law, liquor regulation and mental health. Others related to matters specific to a particular program or a particular geographic location. The Commission took all these proposals into account in its deliberations. Its efforts, however, have been primarily directed at formulating future directions for family violence reform and policy development. For this reason it has not been possible to reflect on or resolve every issue raised during the inquiry. The Commission hopes, though, that the outcomes of the inquiry will provide opportunities for the discussion and possible resolution of many of the matters people raised with us.

The Commission was allocated a budget of \$36 million for its inquiry, and expended approximately \$13.5 million. In conducting its inquiry the Commission was very conscious of the significant current demand on family violence services, and has sought to carry out its functions cost efficiently. The Commission has recommended an immediate increase in funding for a range of family violence services to respond to the current crisis in demand. Although the balance of the Commission's budget will only go a small way towards addressing the current crisis, we believe its direct allocation to family violence services would be a fitting first step in implementing the Commission's recommendations.

The future: a sustained effort to find solutions

The Commission is acutely aware of the complexities associated with preventing and responding to family violence. There is no simple solution; no single source of expertise; no guarantee that solutions advanced today will continue to be the most appropriate solutions in the future. At the core of the Commission's recommendations, therefore, is a call for a long-term approach—one that is bipartisan, requires all parts of government to work together, and involves the entire community. It must include people with experience of family violence and expertise in the responses needed; it must be reflective about policy and program successes and failures; and it must be able to adapt to new knowledge and circumstances.

Preventing and responding to family violence is difficult and demanding. The attitudes and behaviours that cause and contribute to such violence are deeply embedded in our society. So, too, are the attitudes and behaviours that implicitly or expressly tolerate it. Community attitudes that misconstrue or condone family violence have powerful impacts: they compound the shame that victims feel and dissuade them from making disclosures and seeking assistance, and they give licence to perpetrators to continue their abuse. The findings of the National Community Attitudes towards Violence Against Women Survey and research commissioned by the Commonwealth Government to guide a future national campaign to prevent violence against women and their children, suggest that these attitudes are disturbingly common in our society—particularly among young people.

On the other hand, the surge of community interest in combatting family violence, the public discourse about acceptable attitudes towards women, continuing measures for preventing and responding to violence, and the confidence this gives to victims to come forward, make us optimistic that the community effort required to transform our collective attitudes to family violence can be harnessed.

Solving family violence is not a technical science. It calls for sustained human effort and a shared commitment to building a culture of non-violence and gender equality, in which all individuals are afforded dignity and respect. The Commission is confident that, through collaborative effort—on the part of government, non-government organisations and the community—the cultural change necessary to prevent family violence in the long term is possible.

Overview of the report

This section provides an overview of each of the chapters in this report. These chapters are the evidence base for the actions the Commission recommends to consolidate the foundations of our current response to family violence and to implement required changes.

Nature, dynamics and effects

Family violence can occur in a variety of contexts, the majority of which are intimate partner relationships, with the violence being perpetrated by a man against a woman. Family violence differs from other forms of violence: it is generally underpinned by a pattern of coercion, control and domination by one person over another. In the case of intimate partners, the coercion may begin immediately after a relationship begins; in others it creeps up, sometimes masked by flattery and charm. Family violence can involve emotional, psychological or financial abuse as well as physical abuse. Among the tactics used by perpetrators can be limiting access to money, isolating a woman from family and friends, threatening to publish private information, and exercising excessive control over a woman's activities or even her general appearance. These measures are designed to erode the victim's self-confidence and make them unduly dependent on the other person.

Pregnancy and separation (or attempted separation) are examples of times of heightened risk for the onset or exacerbation of intimate partner violence. Often the violence continues after separation: either directly, through continued stalking, assaults or harassment, or in more indirect ways—for example, by withholding child support, delaying a property settlement or dragging out legal proceedings. In recent times, technology-facilitated abuse—for example, surveillance and monitoring using phone apps and other software—has emerged as a new way of stalking victims even after the relationship has ended.

Children are also frequently victims of family violence, either directly or as a result of being exposed to violence against their mothers.

For most victims, family violence is part of a longer-term pattern, rather than a one-off event. The pattern often involves an escalation of the violence, so that unacceptable behaviour becomes 'normalised' over time or a person's mental wellbeing is eroded to the point that they come to believe they deserve the violence.

Family violence has long-lasting and serious effects. Physical injuries can be debilitating and lifelong. But the violence also takes an enormous toll on a person's mental health and wellbeing: it can be very difficult to recover and rebuild after being belittled, denigrated and made to feel worthless, sometimes for years.

The negative effects of family violence can be particularly profound for children, who can carry into adulthood the burden of being victimised themselves or witnessing violence in their home.

We know, of course, that some people do not have the opportunity to escape or recover from family violence: the number of family violence-related deaths is high. These victims are mourned by families, friends and communities, many of whom fight to raise awareness of the devastating impacts of family violence, to maintain the legacy of their loved ones.

We know, too, that family violence victims—including children—demonstrate enormous resilience in the face of great adversity. Many of these survivors go on to live full and happy lives, develop healthy relationships and use their experiences to help others.

Key family violence data

Although much has been done to improve our understanding of the extent to which family violence is occurring in our community, a great deal of the violence remains hidden. This is largely because many people, and some victims, do not recognise that what is happening is in fact family violence, others choose not to report it or are unable to, and sometimes incidents are not recorded as family violence or are not recorded at all.

The following are some of the main trends that emerge from existing family violence data:

- ▶ Family violence disproportionately affects women and children, and the majority of perpetrators are men.
- ▶ Female victims are more likely to be a current or former partner of the perpetrator, while men are more likely to experience violence in different familial relationships—for example, as a son or a sibling.
- ▶ Some groups are at greater risk of family violence or experience it at increased rates. This includes Aboriginal and Torres Strait Islander peoples and women with disabilities.
- ▶ These and other groups face particular barriers in seeking and obtaining help; they include people from culturally and linguistically diverse backgrounds and people living in rural, regional or remote areas.

Although it is not clear whether the prevalence of family violence (that is, the proportion of the population who have experienced such violence at least once) is increasing, we do know that there has been greater reporting of family violence, leading to an increase in incidents being recognised. In Victoria this has been evident in the increased number of reports to police and the number of family violence intervention orders being issued. The increase in incidents is also placing enormous pressure on family violence specialist services, family services, crisis accommodation and housing services, and legal and health services.

History of the family violence system

The family violence system in Victoria has developed during the past four decades, emerging from the efforts of women's groups in the 1970s to provide support to women and children experiencing family violence. Historically, family violence services have been closely linked with homelessness services, which began to emerge at about the time the first women's refuge was established. It was not until the late 1980s that measures to address family violence began to be reflected in legislation, and it took until the 2000s for there to be significant momentum in support of law and policy reform in Victoria. A key instigator of this wave of reform was Ms Christine Nixon APM, Chief Commissioner of Police, who initiated a review of all Victoria Police policies relevant to violence against women.

The decade that followed saw a range of policy reforms and initiatives aimed at developing understanding of and addressing family violence—including adult and child sexual assault. The 2005 report of the Statewide Steering Committee to Reduce Family Violence, *Reforming the Family Violence System*, led to many important reforms, and in 2008 the Family Violence Protection Act, which reflected best-practice knowledge of the nature and dynamics of family violence, was enacted. This decade also saw comprehensive work performed by the Victorian Indigenous Family Violence Task Force and Aboriginal communities. The Task Force's 2003 report was a landmark in Victorian Aboriginal policy, vividly describing the scale and impact of family violence in Aboriginal communities and establishing sound principles for prevention and response grounded in community action.

Family violence has attracted a greater degree of government attention in recent years at both the federal and state and territory levels—often as a result of tireless efforts on the part of women's services and survivors of family violence. In 2011 the Commonwealth, in partnership with the states and territories, launched the National Plan to Reduce Violence against Women and their Children 2010–2022. The National Plan continues to guide policy and service responses.

Overview of the family violence system

There is no single pathway into the family violence system. There are myriad entry points, and overlapping service systems at both the state and federal levels provide services to those experiencing family violence.

Police, justice and family violence services operate on the front line to respond to instances of violence. Specialist family violence services are integral to supporting women and children by providing crisis accommodation, casework, counselling, psychological support and dedicated family violence programs. Specialist programs and interventions designed to help perpetrators cease their violent behaviour are also provided through men's behaviour change programs.

Victoria Police is responsible for responding to family violence incidents and taking steps to ensure the safety of victims. This can extend to issuing family violence safety notices or seeking family violence intervention orders on behalf of victims, arresting perpetrators and investigating family violence-related crimes. Legal services play an important role in ensuring that all parties understand their rights and obligations. Courts are responsible for issuing intervention orders, and for sentencing family violence offenders.

Other services and systems also work with those affected by family violence. Among them are services designed to protect the welfare of children and support families at risk or in crisis—for example, Child Protection and Integrated Family Services. Many people experiencing homelessness have been victims of family violence, and in some circumstances perpetrators are required by court orders to leave the family home. In these situations housing and homelessness services might be engaged to provide crisis accommodation or support a person in their transition to long-term, stable housing. Services for victims—including specialised services for victims of sexual assault—also play a crucial role in providing support and helping people find their way through the justice and social services systems.

Over the years there have been system-wide improvements to the way family violence is dealt with. However, elements of the family violence system response remain 'siloes' and fragmented, leading to inaccessibility and complexity for people seeking help. Increased demand has placed enormous pressure on these services, limiting the scope to clarify and improve service pathways and develop collaborative efforts.

Risk assessment and management

A consistent approach to risk assessment and risk management is vital for protecting victims' safety. Risk assessment and management mechanisms help practitioners identify whether a person might be at risk of experiencing family violence, determine the risk of the violence recurring or escalating, and initiate a tailored response aimed at reducing or mitigating that risk. All parts of the service system have an important role in identifying and knowing how to respond to family violence. Because many victims do not seek support from police or family violence services, equipping health and other universal service systems to identify family violence risk and provide support to victims and their children, is essential.

The Victorian Risk Assessment and Risk Management Framework (referred to as the Common Risk Assessment Framework, or the CRAF), introduced in 2007, was the first framework of its kind in Australia and was one of the foundational elements of the Victorian family violence reforms implemented in the mid-2000s. One of the strengths of the system to date has been that police must conduct the CRAF-based risk assessment at family violence incident scenes.

The CRAF provides a solid basis for assessing and managing the risk of family violence, but it needs to be revised in order to redress concerns about and barriers to its effective implementation. The Victorian Government has announced that the CRAF will be reviewed. This review should be completed by the end of 2017 to ensure that the foundations are laid for the introduction of the Commission's recommended Support and Safety Hubs. The next iteration of the CRAF should include weighted indicators to allow practitioners to determine whether the level of risk is low, medium or high, to help guide the risk management response. It should also include evidence-based risk indicators specific to children.

A number of factors are impeding a shared and coordinated approach to risk assessment and risk management. Among these factors are legislative and practice obstacles to information sharing, current demand levels, the need for greater guidance about identifying and managing perpetrator risk, and missed opportunities for using service agreements and standards to require CRAF implementation by service providers. The practice guidance material that forms part of the CRAF needs to be reviewed to support the assessment of risk for all victims, including children, and to place greater emphasis on monitoring perpetrator behaviour.

To support consistent and widespread use of the CRAF, or a CRAF-aligned mechanism, the Commission recommends that the Family Violence Protection Act be amended so that prescribed agencies—such as the police, Child Protection, community and health services and Integrated Family Services—are required to align their risk assessment policies and practices with the CRAF. The government will need to ensure that adequate funding is allocated to equip workforces to adopt the revised CRAF.

Among the risk management strategies adopted in Victoria has been the development of two Risk Assessment and Management Panels, or RAMPs, providing a coordinated multi-agency approach and dedicated case management to service women and children at imminent risk of serious injury or death from family violence. The proposed roll-out of the RAMPs across the state must be completed as a matter of priority. The Commission acknowledges that a major obstacle in the way of completing this process is the need for legislative change to permit and support information sharing: we make recommendations in order to overcome this obstacle.

Managing the dangers posed by perpetrators is also achieved through effective monitoring by the police, the courts and corrections agencies. A perpetrator register scheme is being considered by other jurisdictions in Australia but, because of concerns about the effectiveness of such schemes in ensuring victim safety, and pending the results of a trial in New South Wales, the Commission does not recommend the introduction of such a register.

Information sharing

Sharing information about risk within and between organisations, is crucial to keeping victims safe. It is necessary for assessing risks to a victim's safety, preventing or reducing the risk of further harm, and keeping perpetrators 'in view' and accountable.

Despite the importance of information sharing, agencies in the family violence system do not share information routinely or systematically. A number of barriers impede organisations from sharing information, among them the complex legislation that governs privacy and information sharing, current information-sharing practices, and outdated information technology systems.

The Commission recommends the introduction of a specific family violence information-sharing regime under the Family Violence Protection Act. The purpose of the regime, which would in part be based on a successful model in New South Wales and existing information-sharing provisions relating to Child Protection, would be to provide clear authority for relevant prescribed organisations to share information.

The Commission also recommends the establishment of a Central Information Point to facilitate sharing information. This will involve the co-location of relevant agencies (such as Victoria Police) that will be able to access their respective organisations' databases to obtain and collate crucial information for managing risk. The Central Information Point would provide information, primarily about perpetrators, to the proposed Support and Safety Hubs and other key agencies so that they can engage in safety planning with the victim.

It is also necessary to clarify ways of developing an information-sharing culture; this would include producing guidance material and developing an awareness campaign. Finally, there are outdated IT systems within Victoria Police, the Magistrates' Court of Victoria, Corrections Victoria and the Department of Health and Human Services. These need to be improved so that the systems can communicate with each other.

Specialist family violence services

Specialist family violence services focus on keeping women and children safe and helping them recover from violence. They are an integral part of Victoria's response to family violence. The specialist family violence services sector began as a network of community-based women's refuges established in the 1970s and has expanded to provide a range of support services for women and children. These include performing risk assessments, safety planning, case management, provision of information and referrals, and advocacy for complex matters such as legal and financial affairs and health and wellbeing needs.

Underpinning the work of specialist family violence services is an understanding of the characteristics, dynamics and impacts of family violence and expertise in risk assessment and risk management. Women told the Commission they valued the support of specialist family violence services—especially when there was continuity of contact and flexibility to adapt to needs that change with time. The Commission was also told, however, that many women found the service system difficult to navigate and did not know where to start or how to find the right service. This is partly because of the complexity of referral pathways.

Demand is one of the toughest challenges facing specialist family violence services in Victoria. The number of people reporting family violence incidents to police has grown substantially in recent years, and the consequent increase in demand has had a dramatic effect on specialist family violence services, as well as on the police and the courts. The level of funding for specialist family violence services has not kept pace with the increase in demand for these services. This has led to strained and ad hoc service responses and has had a number of effects on the way services are delivered. Services have had to divert resources from case-management support to process the increased number of police referrals. This risks referrals being heavily triaged, with only the most serious being attended to. In this way, opportunities to intervene early, before the violence escalates, are lost.

In addition to demand pressures, there are shortfalls in the provision of tailored responses to victims, after-hours support, working with families when the perpetrator remains in the home, and dealing with the longer term effects of family violence. A strong message in the evidence received by the Commission was that each person's experience of family violence differs, and that people need different services and supports to recover. The current system is, however, based on program requirements rather than having the flexibility to respond to women's and children's individual needs. People called for a broader range of options to support victims of family violence, as opposed to the current 'one-size-fits all' approach.

The capacity of specialist family violence services should be increased, so that they can move from managing demand to meeting demand. An immediate funding boost for specialist family violence services—including funding to expand after-hours responses—is required. Alleviating immediate demand pressures should allow services to focus on what they do best, which is helping women and children stay safe and rebuild their lives. At the same time it should allow services to concentrate on new and better methods of service delivery, enhancing staff capability and improving access to victims who face specific barriers.

Family members and friends are often the first to become aware of family violence. It is important that the community has ready access to information and resources about how to recognise and respond to family violence. The range of materials is currently inadequate, as information is not readily accessible or sufficiently detailed to equip people to take steps to safely address the violence. For this reason, the Commission recommends that additional information for friends and family be made available through a new or existing website.

A safe home

Family violence often disrupts victims' housing security—whether they stay in their own home or need to leave and find alternative accommodation. This exacerbates the effects of the violence, adversely affects children's education, health and wellbeing, and disrupts victims' social and economic participation. It also often results in homelessness. In many cases victims feel they have no alternative but to remain in, or return to, abusive relationships.

In the past the conventional response to family violence has been for women and their children to leave home and enter crisis accommodation. There has been a more recent move to try to keep victims safe at home (when it is their choice to stay there and it is safe to do so) and to remove the perpetrator from the home instead. This approach has been accompanied by a range of initiatives (referred to as 'safe at home measures') aimed at increasing the level of security and related supports to enable victims to stay at home safely. Evaluations of safe at home measures suggest that they are most successful when they combine technologies with case management and support services and are backed up by effective risk assessment and justice responses.

Despite the potential of these approaches, the reality is that a high proportion of victims are forced to leave their homes and seek alternative accommodation. The Commission heard consistent evidence about problems with the existing housing response to family violence. The availability of crisis accommodation is limited because of capacity restraints, eligibility requirements and other barriers to access, meaning victims end up in ad hoc emergency accommodation such as motels, caravans, rooming houses and, in some areas even tents. If they do gain access to a refuge, some older style communal refuges are not well suited to accommodating a wide range of families with varying needs.

Often victims need to leave their local communities and the things that are important to them—school, work, friends, and so on—in order to be safe and find housing. The remainder of the trajectory into transitional or longer term accommodation, or both, is beset by a range of systemic problems such as a one-size-fits-all approach, limited availability of social housing stock, long waiting lists, and discrimination and lack of affordability in the private rental market.

As a consequence, the system is clogged, and many victims become stuck at the crisis or transitional stage, with no pathways out. There is an urgent need to address the housing response to family violence. The Commission recommends a 'blitz' on rehousing family violence victims who are stuck in crisis and transitional housing, and the implementation of a substantial program of individualised packages to fund rental subsidies and other associated costs that will open up access to private rental properties for people fleeing violent relationships, and support them in sustaining ongoing tenancies. Such a process will build on existing Family Violence Flexible Support Packages to usher in a new approach—one that greatly expands the range of available housing and is tailored to victims' individual circumstances, choices and goals.

The Commission also recommends substantial expansion of 'safe at home' programs throughout Victoria, measures to improve crisis accommodation options—including moving towards 'core and cluster' style refuges, phasing out the use of ad hoc crisis accommodation, and improving responses for victims with diverse needs.

Children and young people

Children experience family violence as direct victims or through witnessing it in the home; as adolescents they can also experience violence in intimate relationships. Family violence has severe short and long-term effects on children and young people. It can sometimes result in behavioural and mental health problems, disrupted schooling, homelessness, poverty, and intergenerational family violence. However, many children and young people display resilience in the face of family violence, and a range of factors engender and support this strength.

Children and young people are often described as the 'silent victims' of family violence because family violence services have historically focused on the safety and wellbeing of women (or women and their children). The Commission was informed that, despite Victoria's legal framework recognising children's right to safety and wellbeing, and specific legislative protections for children who experience family violence, the specific needs of children and young people are often overlooked. They are rarely treated as victims in their own right.

Universal services that work with children and young people—for example, maternal and child health services, early childhood services, schools and health service providers—often lack the knowledge and expertise to identify and respond when children and young people are experiencing family violence. For Integrated Family Services (including its intake point, Child FIRST), escalating demand and lack of funding and resources, combined with difficulties with referral pathways, mean that these services are failing to provide the often intensive support required by families and children who have experienced family violence. The few child and youth-centred services that exist are at capacity and not supported in any systemic way. There is also a lack of suitable accommodation for young people who are forced to leave their home, and this includes young mothers.

The right of children and young people to live free from violence should be a fundamental element of family violence policy and practice. The current family violence system fails in responding to them despite many years of advocacy by family violence services and others. The Commission makes a series of recommendations aimed at increasing the availability of therapeutic interventions, counselling and early intervention programs for children and young people and of youth-appropriate accommodation for young people escaping family violence. Other recommendations relate to engaging and supporting young people, workforce training and development, and specifically addressing the rights and needs of children and young people in updating service standards for specialist family violence services.

Family violence and the child protection system

Doctors, nurses, teachers and some others are required to report serious concerns about a child's welfare to Child Protection, which has a statutory responsibility to take steps to protect children who have suffered or are likely to suffer significant harm. Children who are subjected to violence may not reach the threshold for protective intervention. Child Protection may refer some of these children and their parents to other services, including specialist family violence services, Child FIRST and Integrated Family Services, but this does not always occur.

Some parents approach Child Protection for help for family violence, while others do not report the violence because of fear that their children will be removed. Aboriginal and Torres Strait Islander children are over-represented in the child protection system. Policies of child removal in these communities have contributed to the mistrust that can make Aboriginal and Torres Strait Islander victims of family violence reluctant to report family violence.

Past child protection practice often required women in violent relationships to separate from a violent partner to protect their children, even though this is a time when violence often escalates. Women have borne the burden of managing risks to themselves and their children, although doing so may be impossible. Current efforts to ensure that child protection practitioners have a better understanding of family violence so that risk can be assessed and managed, and women are given appropriate support, must be strengthened. Requiring victims to make non-statutory undertakings or take other steps to monitor the behaviour of the perpetrator is misguided and ineffective. There should be no onus on victims of family violence to manage risk; it is the unacceptable nature of perpetrators' behaviour that should be the focus of attention.

Greater collaboration between Child Protection and specialist family violence services and Integrated Family Services is necessary to ensure that families experiencing family violence do not fall between the cracks. The Commission's recommendations are intended to ensure that families affected by violence are kept safe and offered appropriate support, even if the statutory threshold for Child Protection intervention is not reached.

Sexual assault and family violence

Sexual assault is a common form of family violence, recognised in the CRAF as being an indicator of heightened family violence risk. As with other forms of family violence, intra-familial sexual assault is under-reported, and women and children are overwhelmingly the victims.

Despite the fact that family violence and sexual assault often coincide, workers in the health, criminal justice and specialist family violence services often fail to ask about sexual assault, treating it as different from, and somehow separate to, other forms of family violence. There is also a 'siloing' of family violence and sexual assault service sectors, which can lead to victims having to repeat their stories multiple times, and to confusion for referral agencies and service providers as well as victims. Sexual assault service providers are experiencing high demand for their services and are inadequately resourced to help victims of sexual assault and young people displaying sexually abusive behaviours, who often have multiple and complex needs.

The Commission recommends short-term measures for encouraging a more integrated response to intra-familial sexual assault. It also recommends a comprehensive review of the family violence and sexual assault—in the longer term to consider whether these services should be fully integrated. The family violence system must take account of the co-occurrence of family violence and sexual assault. Additionally, early intervention services for children and young people displaying sexually abusive or problematic behaviours should be adequately resourced for all age groups, and the therapeutic treatment orders regime in the Children's Court should be extended to include young people aged 15 to 17 years.

Pathways to services

Victims and perpetrators of family violence gain access to and use services in many ways. The main points of entry into the system are the police, specialist family violence services, Child Protection, Child FIRST, perpetrator programs, legal services, magistrates' courts, specialist services such as sexual assault and homelessness services, and universal services such as general practitioners, maternal and child health nurses and schools. The diversity of entry points can make it difficult for people to find the full range of services that they need.

Services for people affected by family violence are not always visible to the victims or to the services that need to refer victims. The situation is made more complex by the 'siloed' nature of services that work with people affected by family violence. Although the Commission learnt of admirable examples of service collaboration and local partnerships, these relied on local relationships and initiative, rather than strong statewide and system-level arrangements. In addition, separate formal police referral pathways for victims, perpetrators and children work against a whole-of-family approach and contribute to perpetrators' lack of visibility throughout the system.

The current arrangements need to be reformed. The different pathways that victims, children and perpetrators follow should be brought together, so that the system as a whole is characterised by a much stronger eye on the perpetrator, a clearer focus on the needs of children, greater attention to the needs of the adult victim, and a simpler means for families—in all their forms—to obtain the help they need, when they need it.

In order to achieve this, the Commission recommends introducing Support and Safety Hubs in each of the 17 Department of Health and Human Services local areas. A single, area-based and highly visible intake point will make it easier for victims of family violence to find help quickly. Intake should be built around one referral for each family, accompanied by individual assessments for the perpetrator, the victim and any children. This will give services and police the information they need about the risks to, and needs of, various family members.

The hubs will replace the current 23 Child FIRST intake points, the 19 L17 contact points for specialist family violence services, and the 20 L17 contact points for men's behaviour change programs. They will not, however, replace specialist services providing casework, support and accommodation; rather, they will provide intake and initial case coordination until people are placed with those services. Specialist family violence services, Integrated Family Services and perpetrator interventions will continue to be supported to operate and deliver services in a collaborative way. Safe Steps and the Men's Referral Service will continue to receive referrals out-of-hours, and the Victims Support Agency will continue to receive police referrals for male victims.

The proposed Support and Safety Hubs build on the reforms of the mid-2000s by bringing information about the entire family to one place, ensuring that services flow according to need and that each family member receives the appropriate specialist response. For the Support and Safety Hubs to be successful, however, other reforms are essential—in particular, amending the privacy regime, reforming the CRAF, establishing a Central Information Point, rolling out the RAMPs, and undertaking comprehensive workforce planning under the recommended industry plan.

Police: front-line operations and workforce

Police are an important part of the front-line response to family violence and are often the first point of contact for family violence victims. The Commission acknowledges the enormous improvements in the Victoria Police response in the past 15 years—moving from a situation in which family violence was largely viewed as a private matter to one in which the police response is governed by the Code of Practice for the Investigation of Family Violence.

However, the police response to family violence is inconsistent in relation to, for example, risk assessment and management, charging perpetrators for contraventions of intervention orders, and data-recording and data-sharing. Problems associated with cultural norms and attitudes among some police members are also apparent.

These inconsistencies and shortcomings must be remedied by improving training and processes in relation to L17 risk assessments, reviewing and strengthening police practice in identifying the primary aggressor, and establishing a Family Violence Centre of Learning with external academic governance. A revised approach to education and training, with an emphasis on well-trained supervisors, on-the-job learning and better access to specialist family violence teams for support, advice and quality assurance, will increase members' understanding of the nature and dynamics of family violence and the importance of accurate risk assessment and risk management. It will also improve their ability to deal sensitively with family violence in the general population and among marginalised groups.

To improve compliance with the Code of Practice, Victoria Police must build capacity for pro-active, comprehensive quality assurance practices through station-level random file audits and case reviews. The Commission also recommends regular independent audits of organisation-wide compliance.

Victims will not have confidence in Victoria Police's capacity to respond to family violence if the organisation itself and individual members tolerate sexism and violence against women. For this reason, the Commission endorses Victoria Police's steps to encourage cultural change in keeping with the recommendations of the Victorian Equal Opportunity and Human Rights Commission's Independent Review into Sex Discrimination, Sexual Harassment, including Predatory Behaviour, in Victoria Police. Complementary to this, Professional Standards Command should review Victoria Police policies and procedures relating to family violence affecting its members—as both victims and perpetrators.

Police: leadership, resourcing and organisational systems

Escalating demand is placing a heavy strain on general duties police, and this is having flow-on effects for the resourcing of Victoria Police's family violence response. Recidivist family violence offenders take up a disproportionate amount of police resources, and criminal investigations often fall to general duties police. Outdated administrative and IT systems burden police with time-intensive procedures—for example, the requirement for police to personally serve intervention orders on respondents—and limit their access to vital information in the field.

While ensuring that family violence is core business for all police members, there is also a need for increased family violence specialisation, and for investigative and intelligence units and tasking and coordination committees to have a stronger focus on family violence, so that it has higher priority in resourcing decisions.

The Violence against Women and Children Strategy should be revised so that it clearly expresses the vision, strategic objectives, key actions, roles and responsibilities in Victoria Police's response to family violence. Family Violence Command should also set performance measures for policing of family violence at the regional level. The Commission recommends a stronger focus on recidivist and high-risk offenders and on improving organisational capacity for criminal family violence investigations. It also makes recommendations to strengthen family violence specialisation, provide a clear career path for police members with an interest in family violence policing, and adopt a more consistent approach to resourcing family violence teams.

Additionally, recommendations are made to lift the administrative burden on front-line police, including through deployment of mobile technology in the field. Police should continue to be tasked with undertaking personal service of intervention orders, where possible, however there might be instances where alternatives methods are appropriate.

A number of potential new powers are discussed. The Commission proposes a trial of body-worn cameras for collecting statements and other evidence from family violence incident scenes. The Commission does not recommend that police be given power to issue family violence intervention orders in the field. Instead it considers that this proposal should be revisited after five years, provided the recommendations aimed at improving the police response to family violence have been implemented and have had the desired effect.

Court-based responses to family violence in Victoria

For many victims and perpetrators of family violence, courts are central to their experience of the family violence system. Despite some improvements in recent years in the responsiveness and expertise of Victoria's state courts in responding to family violence, increases in demand have led to chronic infrastructure deficiencies and unsustainable demand on court-based professionals and services—in particular, in many of Victoria's magistrates' courts.

Many court users and court-based professionals and services expressed concern about the complexity of applying for an intervention order, access to court-based services, court safety, delays before and between hearings (which sometimes lead to serious risks to the applicant's safety and wellbeing), unevenness in magistrates' understanding of family violence, and consistency of procedures and outcomes in the courts. Additionally, some of the procedural and jurisdictional features of the courts have the potential to produce adverse consequences in family violence proceedings.

The Commission recommends that the Magistrates' Court continue its move to a more therapeutic and specialised approach to family violence that supports victims and promotes perpetrators' compliance with court orders. It proposes that within five years family violence matters should be heard in specialised courts, which should also have the ability to hear related matters involving the same family.

The Commission's recommendations seek to build on what works, and to reduce the trauma, delay and complexity of court proceedings. This will involve initiatives such as streamlining the application process and improving list management strategies, improving court infrastructure to make the court experience safer and less traumatic, increasing the use of remote witness facilities, and improving information technology so that courts are more efficient and the court workforce can focus less on throughput and manual tasks and more on serving court users and the magistracy.

Offences and sentencing

Historically, responses to family violence have been marked by a tendency to dismiss, trivialise and misunderstand family violence. In the criminal justice system this view has sometimes been manifest in a reluctance to charge or prosecute family violence-related offences and in the imposition of inadequate, inconsistent or ineffective sentences. Apart from putting women and children at risk in particular cases, these attitudes and practices, particularly when publicised, can reinforce poor community attitudes towards violence against women. There are, however, some indications that attitudes and practices are evolving.

People hold differing views about the role of sentencing in family violence crimes: some favour greater reliance on longer custodial sentences; others do not consider this a desirable or effective means of protecting the community or of punishing, deterring and rehabilitating offenders.

In the absence of comprehensive sentencing data, we do not have a clear sense of whether sentences for family violence offences are more or less severe than sentences imposed for the same offences outside the family violence context. Sentencing Advisory Council data and commentary on sentencing for breach of family violence intervention orders suggests that, despite some reported improvements in the prosecution of general and aggravated contravention offences, the Magistrates' Court continues to rely on fines and other low-end orders, even for aggravated offences.

The Commission considered potential changes to offences (including creating a distinct offence of family violence) and sentencing laws (including mandatory minimum sentences for family violence offenders), suggestions for improving bail laws, and ways of improving the collection of data on family violence-related offending, as well as the way the criminal law deals with women who commit homicide in response to family violence.

Introducing new offences and sentencing provisions often has only a symbolic effect and does not result in changes in practice. Whatever laws we have will be only as effective as those who enforce, prosecute and apply them. Improving these practices—through education, training and embedding best practice and family violence expertise in the courts—is likely to be more effective than simply creating new offences. Of course, there will be cases when a substantial term of imprisonment is necessary and appropriate. Nonetheless, evidence on the limited effectiveness of imprisonment as a means of deterring offenders, rehabilitating offenders and reducing crime is sufficient to highlight the complexity of this subject.

There is, however, scope to improve current practices and processes in relation to bail hearings and sentencing in family violence matters. The Commission recommends implementing a means to ensure that offences committed in the context of family violence are appropriately 'flagged' to inform interventions for perpetrators as well as policy and research; amending current law and practice in bail matters; and commissioning research into the improved use of existing sentencing options. Consideration should be given to the Director of Public Prosecutions identifying a suitable case in which to seek a guideline judgment from the Court of Appeal on sentencing for family violence offences.

Perpetrators

Holding perpetrators to account is a basic objective of family violence laws, policies and services. A common conceptualisation of perpetrator accountability entails keeping the perpetrator in view and responding appropriately and consistently to their conduct. This can be achieved in several ways—through rigorous risk assessment and management, through attitudinal and behaviour change interventions, or through restrictive and punitive justice system interventions and community condemnation. At a more personal level, it can also be achieved by a perpetrator gaining insight into their conduct and acknowledging its impact on their family.

The most common programmatic intervention for perpetrators in Victoria is referral to a men's behaviour change program. We do not know the extent to which existing programs are successful in changing an individual's behaviour and attitudes or in keeping victims safe. What we do know is that there are insufficient programs to cater for all men who are referred to them; there is little or no follow-up to monitor completion of a program; and there is inadequate oversight of the quality of programs or for assessing the appropriateness of the methodologies used. Existing programs do not cater for different cohorts of perpetrators and are not designed to respond to the needs of perpetrators for whom group work is unsuitable.

Confronting the factors that make perpetrators violent, including attitudes to women and community tolerance for violence, is crucial. Factors such as childhood exposure to violence, mental illness and drug and alcohol misuse can also fuel or exacerbate family violence. The Commission was told there is emerging consensus among experts about the need for perpetrator interventions that deal with both gender-related issues and other risk factors. Closer working arrangements between men's behaviour change programs and forensic, mental health and drug and alcohol services are needed for perpetrator programs to have the best prospects for success.

The Commission has concluded that there is insufficient breadth and diversity in perpetrator interventions in Victoria. More work is needed to develop a suite of interventions and programs that are implemented according to the latest knowledge and evidence about their efficacy in managing risk, achieving behaviour and attitude change, reducing re-offending and meeting the needs of victims. The interventions and programs must also be subject to an effective compliance and oversight scheme.

The Commission makes recommendations aimed at developing a more integrated approach to perpetrators of family violence; one that fosters collective responsibility among government and non-government agencies, the community and individuals for denouncing perpetrators' use of violence and expecting and helping them to cease being violent. All organisations and agencies that have contact with perpetrators need to work towards a set of common objectives and principles and need to understand and reinforce each other's roles and responsibilities in keeping victims safe.

The Commission recommends that the Victorian Government establish an expert committee to advise on perpetrator interventions. Based on that advice it should fund, trial and evaluate a range of perpetrator interventions including options that are suitable for perpetrators from diverse communities, take account of any related criminogenic factors, and focus on helping perpetrators understand the effects of violence on their children. The minimum standards for men's behaviour change programs also need to be updated; a compliance framework and accreditation process for program providers should be established; and processes for better monitoring compliance with court orders mandating attendance at behaviour change programs should be developed and implemented.

The role of the health system

Health professionals are in a unique position to identify and respond to family violence. Some victims of family violence will not contemplate engaging with a specialist family violence service but will interact with health professionals at times of heightened risk for family violence—for example, during pregnancy or following childbirth—or seek treatment for injuries or medical conditions arising from violence they have experienced. Failing to identify signs of family violence or minimising disclosures by patients can have a profound impact on victims and deter them from seeking help in the future.

A range of health services interact with people experiencing family violence, among them hospitals, general practitioners, maternal and child health services, mental health and drug and alcohol services, pharmacists and ambulance officers. There are many reasons for health professionals failing to inquire about family violence or lacking confidence in responding to disclosures: a lack of family violence training and awareness, inadequate referral options, and time pressures, for example, can all contribute to missed opportunities to intervene and offer support to victims.

A number of programs and initiatives recognise the links between family violence and health care—for example, partnerships between health and legal services, multi-disciplinary approaches and co-location of health and family violence services, research projects examining the impact of health interventions on women experiencing violence, and other tool kits and resources designed to support health-care workers. Despite these pockets of innovation and best practice, there is a lack of overall cohesion and consistency in the way health professionals respond to family violence. There is no health system-wide approach.

Most people place considerable trust in health professionals' advice. Such advice can help victims come to recognise family violence, make safety plans and gain access to the services they need. The Commission makes a range of recommendations to improve health sector responses, through strengthened screening and risk assessment procedures, greater workforce training and development, and better coordination and information sharing between different parts of the health-care system. This should be underpinned by clear political and professional leadership to ensure that awareness of, and the ability to respond to, family violence are central components of comprehensive patient care.

Recovery: health and wellbeing, financial security

The effects of family violence are severe—reducing victims' physical and mental health and wellbeing, their capacity for social and economic participation, and their ability to live free from fear. Whether the violence first occurs during the relationship, after separation or after the relationship has ended, or throughout all these stages, its effects can be long term and can damage victims' lives in many ways.

Current responses to family violence do not sufficiently emphasise recovery and restoration and may even impede it. This may be due to the historical focus on ensuring the immediate safety and security of victims of family violence and the demand pressures services are under. However, safety is only the start—the ultimate objective of the family violence system must be that victims, including children, can recover and thrive at their own pace.

Recovery requires a broad range of mutually reinforcing interventions and strategies. Whether it is bringing up children, pursuing further education, re-establishing a career or re-connecting socially, victims should be provided with the information, support and opportunities they need to rebuild their lives.

The Commission considers that three pillars of recovery—secure and affordable housing, financial security, and health and wellbeing—are essential.

The first pillar of recovery is housing. Safe and affordable housing is central to stabilising a victim's life. Without the certainty of knowing where they will live, a victim cannot plan for the future: if they are not returning home, they need to know where their children will go to school, how they themselves will get to work, or even where they might seek work. With stable accommodation they can turn their mind to rebuilding their own and their children's lives and (re)connecting with the community. The Commission recommends expanded housing assistance in the form of private rental assistance, rental subsidies and material assistance to establish a new home. Such support should be explicitly linked to consideration of education and employment assistance to build women's economic security and resilience.

The second pillar of recovery is financial security. Women who have lived with a violent partner are more likely than other women to experience financial difficulty, and many women experience poverty as a result of family violence. The associated abuse can be financial in nature (defined by law as economic abuse) or can be characterised by other forms of family violence that affect a victim's financial wellbeing. A range of factors can exacerbate victims' experience of financial insecurity—among them difficulty obtaining child support payments, tenancy problems, a lack of control over household finances, and credit, utility and car-related debt incurred by the perpetrator.

Securing paid employment can help victims of family violence become financially secure and recover from the economic and non-economic consequences of family violence. Victims should have access to education and employment assistance through the greater use and availability of individualised funding packages. The Commission also makes recommendations to improve the understanding of economic abuse, support financial literacy, address family violence-related debt, protect personal property, reform tenancy law and support long-term economic recovery.

The third pillar of recovery is health and wellbeing. The trauma of family violence can result in poor mental and physical health outcomes, increased risk of clinically-significant depression and anxiety disorders, post-traumatic stress disorder, loss of self-confidence, isolation and, for some, the misuse of alcohol and drugs. Support is crucial in allowing victims who experience family violence to begin to regain the health and wellbeing lost amidst the trauma and violence they have experienced. Evidence provided to the Commission highlighted the importance of trauma-sensitive therapeutic interventions in assisting in victims' recovery and the ability to make use of victim schemes such as the Victims Assistance Program and the Victims of Crime Assistance Tribunal.

The Commission recommends that the Victorian Government increase the number and range of counselling services available to victims in the state, and that the program of Flexible Family Violence Packages be expanded to facilitate greater access to counselling, psychological services and opportunities to strengthen social connections, as well as other appropriate health and wellbeing supports.

By focusing on these three pillars of recovery, the Commission's vision is for a system that responds flexibly to changing needs and diverse experiences of violence and ensures that family violence no longer defines victims or their futures.

Restorative justice

The Commission learnt that some victims of family violence are dissatisfied with current court processes or find them traumatic, often because the processes fail to adequately meet victims' needs for participation, having a voice, validation, offender accountability and restoration. A number of organisations working with family violence victims urged the Commission to consider whether a restorative justice approach to family violence should be introduced in Victoria, in addition to making essential reforms to the court system. Restorative justice processes can provide opportunities for a victim to confront the perpetrator in a safe environment to describe what impact the abuse has had on them; for the perpetrator to acknowledge the harm they have caused; and for the parties to decide what action might be taken to repair the harm.

There are a number of potential benefits associated with a restorative justice approach:

- ▶ its potential to deliver better outcomes for victims than the adversarial justice system because it is able to provide a forum for victims to be heard on their own terms and offers a process that is tailored to individual women's needs, and informed by their own choices
- ▶ its particular relevance in those cases where the victim does not wish to separate from the perpetrator but wants the abuse to stop, or where violence has been used by an adolescent against their parents
- ▶ the prospect of encouraging perpetrators to acknowledge the impacts of their behaviour and to recognise its effects on the victim.

The Commission examined this matter carefully, particularly in light of concerns that such an approach might be manipulated by perpetrators and could undermine the important gains that have been made in ensuring that family violence is treated as a public concern rather than simply a private matter between individuals.

The Commission is persuaded that, with robust safeguards in place and as an additional option for (not a substitute or precondition for) pursuing action through the courts, a restorative justice process should be made available to victims who wish to pursue such an option. Restorative justice processes have the potential to meet a broad range of victims' needs that might not always be met through the courts and to help victims recover from the impact of the abuse they have suffered.

The development of a restorative justice approach should proceed cautiously. In consultation with victims' representatives and experts in restorative justice, the Department of Justice and Regulation should develop a framework and pilot program for the delivery of restorative justice options for victims of family violence that are victim-driven, incorporate robust safeguards, are guided by international best practice, and are delivered by suitably skilled and qualified facilitators.

Adolescents who use family violence

Adolescent family violence is a distinct form of family violence; it can include child-on-parent violence, sibling violence, and problem sexual behaviour. Although the reporting of adolescent family violence has increased in recent years, it still accounts for a relatively small proportion of overall family violence incidents recorded by Victoria Police.

Adolescents' use of family violence can co-exist with family violence perpetrated by a parent or other family member and can also be a manifestation of disability, including adolescent mental ill-health.

Parents are often reluctant to report their children's behaviour to the police because of feelings of shame and self-blame or because they fear their child might get a criminal record. This can leave the parents feeling isolated and helpless.

Adolescent family violence differs from that perpetrated by adults and requires a specialist response; one that is far more comprehensive than the current patchwork of supports. At present there is no systemic response to the needs of these young people and their families, although there are a number of positive initiatives operating in local areas.

Priority should be given to early intervention therapeutic and diversionary responses. The Victorian Government is trialling a community Adolescent Family Violence Program in three locations. The program aims to increase the safety of all family members by preventing the escalation of violence, supporting parents and improving the adolescent's communication and problem-solving skills. The initial evaluation findings are positive. If the final evaluation shows success in improving victim safety and changing behaviour, this program should be made available throughout Victoria. The Victorian Government is also trialling a youth diversion program in the Children's Court: if successful, this program should also be expanded throughout Victoria.

Removal of the young person from the family home should be avoided as much as possible, but if there is no other option, the young person should be offered appropriate supported accommodation.

Family violence and the family law system

Family violence is often central to the work of the federal family law courts, which are responsible for adjudicating parenting and other disputes following partners' separation. The Commission was told of the difficulties faced by family violence victims who sometimes had to go to a magistrates' court to obtain a family violence intervention order and then go to a federal family court to resolve disputes about their children.

The fragmentation between state courts and the federal family law courts was a source of considerable concern: many people commented that their experience of family violence is given insufficient weight and consideration in the federal family law courts. Some people also feel conflicted by a desire to protect children from the harmful behaviour of the other parent, without wanting to appear unfavourable or obstructionist to a judicial decision maker. Others reported that perpetrators of violence used family court proceedings to maintain previous patterns of coercion and control.

Building on the findings of a number of previous inquiries examining the intersection of family violence and family law, the Commission makes recommendations aimed at encouraging and supporting state magistrates to exercise their family law jurisdiction and helping parties and their representatives understand the interaction between the state courts and the family law system. The Commission also recommends that the Victorian Government should pursue reforms to the *Family Law Act 1975* (Cth) through the Council of Australian Governments.

Review of family violence-related deaths

Family violence-related deaths are the ultimate tragedy of family violence. They are not uncommon, and intimate partner homicide is the most common form.

Three principal mechanisms exist for investigating family violence-related deaths in Victoria: 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.

While there is scope to improve some aspects of the current approach to family violence-related death reviews, the Commission is of the view that the current framework is sound. We consider that the current criteria for requiring an inquest are sufficient to ensure that all family violence deaths are properly investigated and note that the Coroners Court recently published guidelines on this matter.

In the Commission's view the Victorian Systemic Review of Family Violence Deaths is a valuable way of reducing the risk of further deaths. It should be statutorily established, with funding that is sustained and adequate to ensure that the Coroners Court can expand the review.

Family violence and diversity

The Commission explored the experiences and needs of people from diverse backgrounds and communities who experience family violence. The circumstances of Aboriginal and Torres Strait Islander peoples, people living in rural, regional and remote communities, older people, people who are part of culturally and linguistically diverse communities, lesbian, gay, bisexual, transgender and intersex people, people with disabilities, male victims, women prisoners and women who work in the sex industry, make their experience of family violence different to that of other members of the Victorian community. People within these communities can face multiple and intersecting barriers to reporting family violence as well as in finding appropriate help and support.

A comprehensive family violence policy must ensure better services and responses for all people who experience family violence, regardless of their background, identity or membership of a particular community.

The Commission makes a series of recommendations aimed at building and ensuring accessible, inclusive and non-discriminatory service delivery and expanding understanding of the complexity of family violence in a range of communities. In particular, we recommend that specialist bodies—Seniors Rights Victoria, InTouch Multicultural Centre against Family Violence and Women with Disabilities Victoria—be funded to provide training and advice to family violence service providers and universal services, to enable them to respond effectively to the needs of older Victorians, people from culturally and linguistically diverse communities and people with disabilities.

Practice standards should be reviewed and updated to specify providers' obligations to provide non-discriminatory services, and family violence community awareness and prevention programs should use language, imagery and messaging that reflect the diversity of the Victorian community. The industry plan for family violence prevention and response should require agencies and service providers to engage in learning and development to achieve inclusive and non-discriminatory practices and to develop the diversity of their own workforces.

Aboriginal and Torres Strait Islander peoples

Family violence rates among Aboriginal and Torres Strait Islander peoples are higher than rates among non-Aboriginal Australians, with Aboriginal women and children at greatest risk. Not only are Aboriginal and Torres Strait Islander peoples disproportionately affected by family violence, they face unique barriers to obtaining support, whether from mainstream or from culturally appropriate services. Many Aboriginal people are apprehensive and reluctant to seek assistance from mainstream agencies, partly because of the discrimination, racism and lack of understanding some Indigenous people experience when doing so. The effects of trauma associated with dispossession, child removal and other practices also inform Aboriginal peoples' distrust of agencies such as police and Child Protection.

The Commission was informed that the family violence system—the police, the courts, specialist family violence services and men's behaviour change programs—requires a better understanding of the nature and forms of family violence in Aboriginal communities. One theme that came through strongly in the Commission's consultations was the importance of involving Aboriginal community controlled organisations and tailoring justice system responses that recognise the history and culture of Aboriginal peoples.

While progress has been made since publication of the Indigenous Family Violence Task Force in 2003 and the Indigenous Family Violence Ten Year Plan in 2008, the evidence before the Commission was that there should be more support for efforts to reduce the unacceptable levels of family violence and its devastating impacts in Aboriginal communities. Many Aboriginal people want to use Aboriginal service providers, but the full potential of Aboriginal community controlled organisations to prevent and respond to family violence has not been realised. The Commission was also told that there has been insufficient investment in culturally appropriate early intervention initiatives to strengthen families and reduce the number of Aboriginal children who are removed from their families.

Significant increased investment in these Aboriginal community controlled services—in particular, in targeted prevention and early intervention initiatives for Aboriginal communities, as well as culturally sensitive services to respond to Aboriginal families in crisis—is an urgent priority.

Older people

Older people experience various forms of family violence—intimate partner violence (which may be a continuation of earlier abuse or begin when the person is older); violence perpetrated by adult children or other family members; or violence at the hands of a carer who is in a 'family-like relationship' with them. As with people in other age groups, family violence against older people can be physical, psychological, emotional or sexual, and the majority of victims are women. Older people can, however, be at particular risk of economic or financial abuse.

Family violence against older people tends to be under-reported. Older people face particular barriers to obtaining the support they need when experiencing family violence—for example, a reluctance to report the violence because of shame, fear of not being believed, financial reliance on the perpetrator, a desire to preserve family relationships, fears about who will care for them, and problems obtaining crisis and other accommodation. Workers often have difficulty identifying and responding suitably to older people who are experiencing family violence, particularly if the person does not want to report the violence to police.

Just as prevention of family violence needs a focus on gender, prevention of family violence against older people needs to expose and respond to ageism. As long as older people are seen as less capable, dependent and not valued for their contribution to society, family violence against them will remain hidden. The Commission recommends building community and service providers' awareness about family violence against older people through targeted information campaigns and training, including consideration of risk and safety planning as part of the CRAF review, and ensuring that relevant workers complete certified training in identifying and responding to family violence. Options for a Victoria Police trial of a dedicated family violence and elder abuse response team in one local service area should also be examined.

Culturally and linguistically diverse communities

People from culturally and linguistically diverse communities are more likely than people of Anglo-Australian background to face barriers to obtaining help for family violence.

The effects of family violence experienced by people from CALD communities, including recent arrivals, are compounded by a range of factors associated with the experience of migration and resettlement, as well as systemic barriers to seeking and obtaining help. The impact of family violence on CALD victims who do not have permanent residency is particularly severe because they have very limited or no access to support and can be at greater risk of coercion and control by sponsoring spouses and other family members.

In addition to forms of family violence experienced in all communities, there are some specific forms of family violence experienced by women in some CALD communities—for example, forced marriage, female genital mutilation, and dowry-related violence. These forms of abuse are not readily recognised as constituting family violence.

Both mainstream universal services and specialist family violence services struggle to provide culturally appropriate, responsive services for CALD victims, and the services that are designed specifically for CALD victims are limited. There are also limited opportunities for men from CALD communities to participate in behaviour change programs that are culturally specific or in their own language.

The availability of professional and independent interpreting and translating services is inadequate. Professional accreditation standards for interpreters should be amended to incorporate minimum requirements relating to understanding the nature and dynamics of family violence.

The Commission makes recommendations to strengthen the capacity of mainstream and specialist services to identify and respond to the needs of family violence victims from CALD communities, to improve practices and policies relating to the use of interpreters in family violence-related cases, and to include forced marriage and dowry-related abuse as statutory examples of family violence in the Family Violence Protection Act.

Faith communities

Faith leaders and organisations have direct and influential contact with many members of the Victorian community, and their guidance and intervention are often sought when family violence is being experienced. Faith leaders can play an important role in educating communities about family violence, reinforcing community standards in relation to respect, dignity and non-violence, and providing practical advice and other assistance to people in need.

The faith leaders the Commission consulted demonstrated a strong commitment to responding to family violence that occurs in their communities. They also acknowledged, however, that they and their colleagues and communities require assistance in learning how to recognise and prevent family violence and respond appropriately. This lack of awareness and knowledge limits their ability to support those experiencing family violence.

The Commission heard that some attitudes and practices, and inadequate or ill-informed responses by faith leaders, risk exposing victims to further and sustained abuse by family members. Women experiencing family violence can face barriers to seeking help in their faith community because of particular religious beliefs—for example, about divorce or gender roles.

The Commission recommends that the Office of Multicultural Affairs and Citizenship's Multifaith Advisory Group and the Victorian Multicultural Commission, in partnership with women from faith communities and expert family violence practitioners, develop training packages on family violence and sexual assault for faith leaders and communities. This training should build on existing work, reflect leading practice in responding to family violence, and include information about referral pathways for victims and perpetrators. The Commission also acknowledges the importance of mainstream family violence services understanding and being sensitive to people's religious and cultural needs. It therefore proposes that the development of resources and revised practice standards for specialist family violence services and men's behaviour change programs be guided by advice from the Multifaith Advisory Group and from women from faith communities.

The Commission was informed about a number of initiatives led by different faith communities with the aim of preventing and responding to family violence. Building on this work, the Commission recommends that faith leaders and communities establish processes for examining the ways in which they currently respond to family violence in their communities and whether any of their practices operate as deterrents to the reporting or prevention of, or recovery from, family violence or are used by perpetrators to excuse or condone abusive behaviour.

Lesbian, gay, bisexual, transgender and intersex communities

The family violence experiences of lesbian, gay, bisexual, transgender and intersex people and the barriers they face in obtaining services are distinct from those of other victims of family violence. They also differ within these various communities. LGBTI people may also experience distinct forms of family violence, including threats to 'out' them.

Although there has been little research into family violence in LGBTI relationships, the existing research suggests that intimate partner violence may be as prevalent in LGBTI communities as it is in the general population. The level of violence against transgender and intersex people, including from parents and other family members, appears to be particularly high.

There are a variety of barriers to LGBTI people reporting and seeking help, including homophobia, transphobia and a fear of discrimination. The level of awareness of LGBTI experiences and needs is limited among police, in the courts, among service providers and in the community generally. As a result, LGBTI people can feel invisible in the family violence system.

The Commission recommends the development of LGBTI-specific resources, programs and targeted community education campaigns and identification of research priorities and effective prevention strategies. We also recommend measures to encourage service providers to adopt inclusive practices, through a review of the standards for family violence service providers. In the context of its commitment to review equal opportunity laws, the Victorian Government should also take into account concerns expressed about the potential for discrimination against LGBTI people seeking assistance in relation to family violence.

People with disabilities

Although there is no reliable data on the prevalence of family violence against people with disabilities, statistics and anecdotal evidence suggest there is a high level of violence against people with disabilities, particularly women. For some women, family violence is the direct cause of their disabilities.

People with disabilities can experience family violence from intimate partners and other family members and—as a result of the broad definition of ‘family member’ in the Family Violence Protection Act—non-related carers and co-residents in disability services in some circumstances. There are unique barriers to reporting family violence for people with disabilities, along with barriers to obtaining support (in particular access to crisis accommodation) and recovery. Disability workers are not always aware of the nature and dynamics of family violence and might not be in a position to identify it or respond effectively.

Effective responses to the unique experience of family violence for people with disabilities require family violence to feature in existing disability policy and practice frameworks, such as the State Disability Plan, the National Disability Insurance Scheme Quality and Safeguarding Framework, and disability service standards and protocols.

The Commission makes a number of recommendations about access to services for women and children with disabilities who are experiencing family violence—for example, that all refuge accommodation be made fully accessible within five years. The Commission supports the Ombudsman’s call for mandatory training for disability workers at all levels and recommends that family violence be specifically incorporated in this training. Other recommendations include: improving oversight of the disability services sector, redesigning the Victoria Police L17 form to ensure that disability information to guide service delivery is collected, improving support and accessibility for people with disabilities in courts, improving data collection at the federal and state levels, and supporting research into acquired brain injury and family violence.

Male victims

Men and women have different experiences as victims of family violence. Men are more likely to be the perpetrators of family violence in intimate partner relationships, but can also be victims of family violence. Men can also be victims of violence when they are children or as older people, and violence can be used against them by adolescent or adult children, siblings and other family members. The data suggests that responses seeking to address the highest risks to men (including homicide) should focus on the risk posed by parents, siblings and other family members, rather than by female intimate partners.

The Commission was informed about barriers to, and shortcomings in services for, male victims of family violence and heard that complaints by men about family violence are sometimes disbelieved, not taken seriously or treated with indifference. Like all victims of family violence, male victims should have their experiences acknowledged and have access to appropriate responses. There are opportunities to improve the understanding of male victims and services for them.

The Commission concluded that, although resources should not be diverted from women and children, who constitute the majority of victims, the family violence system needs to respond more supportively to male victims of family violence. The Commission recommends that in identifying and responding to the needs of family violence victims, the Victorian Government should take steps to identify and take account of the needs of male victims—including male children, older men who are victims of elder abuse by family members, and gay, bisexual and transgender men.

Rural, regional and remote communities

Family violence is more prevalent in some rural, regional and remote communities than in metropolitan areas. The problems it presents in metropolitan Melbourne are exacerbated in the state's rural, regional and remote communities as a result of isolation, cultural factors and service limitations. Victims can be reluctant to seek help when the police, court staff and the relevant services know the perpetrator. Intertwined with this can be a fear that the victim's (or the perpetrator's) circumstances will become more widely known in their community and could result in ostracism.

There is an increasing awareness of family violence in non-urban communities and a growing commitment to seeking to prevent and respond to it. Various plans and initiatives are in progress, many of them initiated and led by the local communities themselves. The social connectedness and resilience in rural, regional and remote communities offer great potential. At the same time, these communities face significant challenges in addressing family violence that demand an active and adequately resourced response.

The Commission heard that dispersed populations and the long distances between population centres in rural, regional and remote communities mean that in some areas specialist family violence services are available only on a part-time basis or if the victim has the ability to travel long distances. This can result in what is effectively a denial of service. No matter how desirable it might be, ensuring that there are stand-alone specialist family violence services in every non-metropolitan community would be financially prohibitive. For this reason the Commission recommends that universal services that already have good geographic coverage in these communities—such as health practitioners, maternal and child health services, hospitals, schools and other education providers—be supported to build their capacity to respond to family violence. Many of these universal services already have a broad reach across their communities and, with support from people with relevant specialist knowledge, they could build on their existing reputation and networks to improve outcomes in rural, regional and remote communities.

Effective and strategic use of technology has the potential to assist in disseminating information and providing services to victims of family violence and to communities. Government and service providers should consider funding technological solutions to better meet the specific needs of these communities, as well as ensuring that communications technology infrastructure is in place to support this.

The Statewide Family Violence Action Plan proposed by the Commission should take account of, and give priority to addressing, the particular difficulties and needs of those experiencing family violence in rural, regional and remote communities when formulating policies, planning, developing structures and allocating funding. The government should foster collaboration between services in rural, regional and remote communities through flexible contractual and funding arrangements.

Women in prison

Family violence is experienced in the childhood and early years of many women in prison and can disproportionately affect them in their adult life. Women can be imprisoned as a result of the direct and indirect effects of family violence: some women might commit crimes as a result of a history of childhood violence or other trauma or under duress or coercion from a violent partner. Their partner may pursue them while they are in prison or they may be at risk of violence when they leave. Women in these situations need support while they are in prison, to help them overcome the effects of trauma and avoid re-offending.

Understanding the circumstances that contribute to the incarceration of women who have experienced family violence is important, in part because it casts light on the specific difficulties they can face in prison. The Commission recommends that further efforts be made to identify women prisoners with a history of family violence, so that they can be offered support to deal with trauma and other effects of violence.

Serving time in prison can disrupt efforts to promote recovery from previous family violence. More therapeutic initiatives and support programs that can support victims' recovery from family violence are needed in prisons. The continued provision of a wide range of programs for female prisoners by Corrections Victoria in the prison environment requires both adequate funding and continued support.

On release from prison, victims of family violence often experience risks to their safety and recovery, in addition to the challenges experienced by all prisoners. The Commission recommends that Corrections Victoria refer women to relevant family violence services and inform post-release support services if a prisoner has a history of family violence, so that post-release accommodation arrangements do not place the prisoner at risk. Similarly, planning for the release of male perpetrators from prison should ensure that their family members are not placed at further risk of violence.

Women working in the sex industry

Women who work in the sex industry who have experienced family violence face particular challenges when seeking support, as a result of stigma and discrimination. Research and anecdotal evidence suggest that some women enter the sex industry as a consequence of experiencing family violence and are more likely to be exposed to violence while working in the industry.

The effect of family violence on sex workers' health and wellbeing can be particularly severe. These women require specific policy and practice interventions to give them access to the supports and services they need. It is important these services recognise the diversity of experience of women who work in the sex industry.

There are serious shortcomings in how police and the family violence system respond to the experience of women who work in the sex industry. In light of this, the Commission recommends that Victoria Police amend its Code of Practice for the Investigation of Family Violence to describe the additional challenges faced by women who work in the sex industry when reporting family violence to the police, and how to provide support when investigating family violence perpetrated against these women.

Prevention

Preventing family violence is essential for the health and wellbeing of our community and requires widespread cultural change. There are no 'quick fixes': a long-term perspective and sustained effort and investment are needed. This is one of the most complex and intractable problems confronting the Victorian Government and the Victorian community.

If we do not tackle the problem of family violence at its source and become better at preventing it from occurring in the first place, communities and the systems that support them—police, courts and other services—will continue to be overwhelmed. We need to give as much attention to prevention as we do to the other parts of the family violence system.

Leadership from the Victorian Government is essential, but action by the government alone will not be sufficient. To create a culture of non-violence and gender equality, ordinary Victorians must come together to change attitudes and behaviours. Everyone in the community has a role to play—individuals and all types of organisations.

One of the most consistent messages received by the Commission concerned the opportunity to use the education of children and young people to prevent family violence in the future. In all the community consultations with victims of family violence, specific communities and people who work in family violence-related fields, throughout metropolitan Melbourne and in rural, regional and remote Victoria, people stressed the value of teaching children and young people about respectful and healthy relationships.

Respectful Relationships Education in schools should be enhanced and be made a mandatory part of the curriculum in every school and at all year levels. This is a unique and important opportunity to help us move towards a family violence-free society. Done well, this will be a flagship component of the Victorian Government's family violence prevention strategy, but successful implementation will require careful phasing, substantial training and support for schools, and monitored implementation within a whole-of-school approach.

Involving communities in the task of preventing family violence is also essential. Whether communities are defined by a geographic place, a workplace, or a population group with a shared ethos and interests, the culture they establish can have a powerful influence on the behaviour of individuals. Cultural change will not happen without community-led prevention action.

Prevention strategies so far have focused mainly on dealing with addressing gender inequality by, among other things, challenging gender norms and attitudes towards women. Prevention programs also aim to develop and promote respectful relationships generally, to change broader social attitudes to the use of violence, and to create home environments that model for children non-violent and respectful behaviour. On this basis, measures that have been developed to prevent intimate partner violence against women provide the foundations for preventing other forms of family violence—such as abuse of children, older people, parents and siblings—but more work is needed to augment our understanding of how best to prevent these specific forms of violence.

Prevention programs are most effective when they form part of a coordinated approach. The Commission therefore recommends that the Victorian Government adopt a prevention strategy as a priority component of a Statewide Family Violence Action Plan. That strategy should be implemented in the 12 months following the delivery of this report. It should be aligned to the government's proposed Gender Equality Strategy. In addition, a mechanism for overseeing family violence prevention work in Victoria should be established, providing specialist advice and support to government and the community.

The workplace

Workplaces reflect the breadth and diversity of the community and offer an important opportunity to reach people who are affected by family violence, to provide support for them, and to help them take steps to secure their safety. They are also important sites for preventing and responding to family violence because the effects of violence reach into workplaces and because attitudes and cultures that prevail in workplaces can influence the level to which violence against women is supported or condoned.

The Commission supports workplace-based initiatives to prevent and respond to family violence. Much work has been done to harness workplaces' capacity to deal with such violence, including through the introduction in some workplaces of an entitlement to paid family violence leave and programs to help individual staff and managers recognise and respond to the signs that an employee might be experiencing violence at home. Such programs also offer an opportunity to build a respectful and gender-equitable workplace culture.

The Commission recommends that the Victorian Government model best-practice workplace policies. It should ensure that its plan to include family violence leave in all public sector enterprise agreements is accompanied by access to suitable support services and is supported by adequate training for managers and staff. The Victorian Government should implement policies and programs to equip staff to recognise and respond to signs of family violence and to build a respectful and equitable workplace culture. The Commission also identifies ways in which the government can encourage and support all non-government workplaces in taking action to prevent and respond to family violence. The Commission recommends that the government support moves to introduce a mandated entitlement to family violence leave in workplace relations laws, make relevant tools and resources available to workplaces through an online portal, and investigate options for using regulatory frameworks, such as those relating to occupational health and safety and equal opportunity, to support all Victorian employers in implementing best-practice family violence policies.

Sustainable and certain governance

Governance arrangements—the structures and processes designed to oversee system performance and policy development and implementation—take on particular importance in the family violence setting. Family violence is a complex problem, so there is no discrete, stand-alone system that can take responsibility for effectively preventing and responding to it. Instead, a number of overlapping systems, involving a broad range of government and non-government agencies working together in a coordinated manner, are required. If these overlapping systems are not underpinned by strong governance arrangements, family violence reforms will be ineffective. At the systemic level, family violence policy can ‘fall between the gaps’ and fail to attract the policy attention and investment it requires and deserves. Individuals seeking to engage with agencies or services can be confronted by unnecessary complexity, confusion, duplication, service gaps or inconsistent practices that might compromise their safety or compound the effects of the violence, or both.

In Victoria, governance arrangements underpinning the family violence system to encourage greater coordination and integration were established in the mid-2000s and have evolved both centrally and regionally since that time. Family violence is now a matter considered at various levels of government, including in Cabinet and at regular meetings of departmental secretaries. Family violence regional integration committees, consisting of people working in the broader service sector, police and others, have been established to support coordinated responses at the local level.

Despite these developments and the growing focus on family violence, the Commission was told that responsibility for family violence remains fragmented and diffused across different government departments and agencies. There is a lack of accountability, oversight and clear and shared goals for the system. The lack of collective ownership has contributed to family violence falling to the margins in policy making and investment decisions, without any means of measuring and evaluating the performance of the system as a whole. This has created uncertainty and dislocation in the service sector, which ultimately affects victims.

The Commission recommends a governance framework that makes family violence—particularly victims’ views and experiences—a central consideration for all levels of government, including local councils, provides strong leadership and supports effective and coordinated strategies to address family violence. The framework should be characterised by the following:

- ▶ a bi-partisan standing parliamentary committee on family violence
- ▶ a Cabinet standing sub-committee chaired by the Premier of Victoria
- ▶ a requirement for all ministers to report regularly on the risks and opportunities in their portfolio relevant to family violence
- ▶ Victorian Secretaries Board oversight of government administration arrangements for family violence policy
- ▶ a family violence unit located in the Department of Premier and Cabinet
- ▶ a Statewide Family Violence Advisory Committee and Indigenous Family Violence Partnership Forum
- ▶ family violence regional integration committees supported by regional integration coordinators
- ▶ an independent Family Violence Agency established by statute
- ▶ mechanisms for ensuring that the voices of victims are heard and are used to guide policy development and service delivery.

The Commission recommends that the Victorian Government prepare a Statewide Family Violence Action Plan, to guide implementation of the Commission’s recommendations. A new Family Violence Agency should be established to monitor and report on implementation of the recommendations in this report and of the Action Plan. The Family Violence Agency would also have functions relating to the provision of expert advice on family violence, applied research, policy and evidence reviews, and the capacity to conduct own-motion inquiries into the operation of the family violence system.

Data, research and evaluation

There are serious gaps in our knowledge about the characteristics of victims and perpetrators of family violence and about how the systems that respond to such violence are working. These gaps restrict the government's ability to respond to family violence effectively and to plan for the future, and could well result in ineffective or wasteful expenditure on some responses and insufficient expenditure on others. They also inhibit attempts to direct prevention and early intervention initiatives to areas where action is needed most.

Some of the current data gaps and deficiencies relate to individuals. These include a failure to record experiences of family violence in different settings and difficulty tracing individual journeys through the system, poor recording of demographic information and limitations in survey data, a lack of focus on children, and limited data on perpetrators of family violence. Other deficiencies relate to the departments, agencies and services that deal with family violence—a focus on outputs rather than outcomes, inconsistencies in the quality and regularity of evaluation, and difficulties measuring change, unmet demand and prevention initiatives. Collectively, shortcomings in these areas make it difficult for government and service providers to assess how many people in Victoria are experiencing family violence, what the precise nature of their experiences are, and how they can best be assisted.

The Commission recommends improved governance of data collection practices and standards, and the development of shared outcomes—among other things, to facilitate implementation of the Victorian Government's proposed Family Violence Index. The Commission also recommends the improvement of existing resources (such as the Victorian Family Violence Database), introduction of better evaluation practices, and the continuation of support for national research into family violence.

Industry planning

Family violence touches the lives of tens of thousands of Victorians, yet there has never been a comprehensive assessment of the other workforce needs of the specialist family violence system or the implications for workforces such as the police and the legal, health, human services, Child Protection and education systems.

For too long family violence has been treated as marginal to human services and other systems. If the community is serious about addressing family violence, and if the recommendations of this Commission are to be implemented, there must be investment in the people who work directly with victims and perpetrators. They are fundamental to the success of our reforms.

There are problems associated with high demand and urgent need across the system, and the Commission particularly acknowledges the commitment, knowledge and expertise of the hundreds of practitioners who respond to these demands and this need each day. To build on their work, the Commission proposes that the Victorian Government develop and implement a 10-year industry plan to deal with ongoing shortcomings. For example, in the case of specialist services, the plan should address qualifications, remuneration, career paths, and vicarious trauma. The plan should also build practice that is sensitive to diversity and rewards collaboration across sectors.

The industry plan must take account of family violence capability in the justice, health, education and human services areas in recognition that all these professions have a role to play in addressing family violence. The Commission also makes a number of recommendations about important actions that can be taken in the short term to build capability throughout legal, family violence and universal services as well as non-family violence-specific services, and to improve service delivery for both victims and perpetrators.

Investment

Although we do not know the full cost of family violence to the Victorian Government's budget, it is clear that the economic and social costs of family violence are substantial. The government advised the Commission that it allocated \$80.6 million for specialist family violence services and prevention programs in 2014–15. This figure does not take into account the costs incurred by other service systems that respond to family violence—such as the courts, police, Child Protection, child and family services, hospitals and Corrections. The government does not have a method for calculating those costs.

Funding for specialist family violence and other relevant services has not kept pace with the substantial growth in demand that has arisen as a result of greater awareness and reporting of family violence. This has resulted in a system that is under great pressure—with scarce resources diverted to managing referrals and reduced capacity to provide vital assistance to victims, their children and perpetrators.

This deficiency in funding partly reflects inadequate planning to guide investment decisions. There is no routine or robust forecasting of the extent of family violence services required. The bulk of specialist family violence funding focuses on incident response: prevention and recovery are poorly funded. Adequate investment in both these areas should be viewed as offering an opportunity to create savings in the longer term.

In addition to inadequate funding, the Commission found that budget processes render family violence expenditure invisible in the state budget: there are almost no performance measures to show how the government's investment is tracking. Additionally, at the contractual level, funding arrangements are complex and fail to meet the needs of the system they are designed to serve.

The Commission proposes changes to budget structures and departmental processes to make expenditure on family violence more transparent and to facilitate measurement of the efficacy of policies and programs across government, as well as in contractual arrangements with providers.

The Commission calls for an immediate increase in funding to prevent family violence, help victims recover, and help perpetrators change their behaviour. Longer term investment should be determined by a robust modelling of demand, service and funding requirements. The funding required to adequately meet demand and implement the Commission's proposed reforms will be substantial. This might require government to reconsider its funding priorities, to explore the possibility of entering into partnership agreements with the Commonwealth Government in areas of overlapping responsibility, or to identify new revenue sources to contribute towards funding the reforms. It is the Commission's view that there would be widespread support in the Victorian community for increasing the investment in immediate and tangible family violence reforms.

Endnotes

- 1 Statement of Cumberland, 8 July 2015, 7 [32].
- 2 Ibid 10 [45]–[47].
- 3 Hanover Welfare Services and HomeGround Housing Services, Submission 652, 34.
- 4 Community consultation, Melbourne, 21 May 2015.
- 5 Anonymous, Submission 672, 1.
- 6 Statement of Batty, 6 August 2015, 2 [8.3].
- 7 Wendy and John Thompson, Submission 1000, 2.
- 8 Statement of Batty, 6 August 2015, 5 [22].
- 9 Ibid 4 [14].
- 10 Benalla Family Violence Prevention Network, Submission 131, 4.

Recommendations

Risk assessment and management

The Royal Commission recommends that:

Recommendation 1

The Victorian Government review and begin implementing the revised Family Violence Risk Assessment and Risk Management Framework (known as the Common Risk Assessment Framework, or the CRAF) [by 31 December 2017] in order to deliver a comprehensive framework that sets minimum standards and roles and responsibilities for screening, risk assessment, risk management, information sharing and referral throughout Victorian agencies. The revised framework should incorporate:

- ▷ a rating and/or weighting of risk factors to identify the risk of family violence as low, medium or high
- ▷ evidence-based risk indicators that are specific to children
- ▷ comprehensive practice guidance.

The framework should also reflect the needs of the diverse range of family violence victims and perpetrators, among them older people, people with disabilities, and people from Aboriginal and Torres Strait Islander, culturally and linguistically diverse and lesbian, gay, bisexual, transgender and intersex communities.

Recommendation 2

The Victorian Government amend the *Family Violence Protection Act 2008* (Vic) [within 12 months] so that it:

- ▷ empowers the relevant minister or secretary to approve a Family Violence Risk Assessment and Risk Management Framework (and roles and responsibilities, standards and practices under it) for family violence risk assessment in Victoria
- ▷ sets out the principle that 'prescribed organisations' and agencies contracted by the Victorian Government to provide family violence services (if not otherwise prescribed organisations) are required to align their risk assessment policies, procedures, practices and tools with the Family Violence Risk Assessment and Risk Management Framework as approved by the relevant minister or secretary.

Recommendation 3

The Victorian Government implement the revised Family Violence Risk Assessment and Risk Management Framework and develop a sustained workforce development and training strategy as part of the recommended family violence industry plan [from 1 January 2018]. The framework should provide for:

- ▷ minimum standards and core competencies to guide identifying, risk assessment and risk management practice in family violence specialist services, mainstream services and universal services
- ▷ whole-of-workforce training for priority sectors—including general practitioners and hospital, mental health, drug and alcohol, child protection, aged care and disability workers—that takes into account and aligns with their roles and standards of practice.

Recommendation 4

The Victorian Government facilitate the roll-out of the Risk Assessment and Management Panels, or RAMPs, as a priority [within 12 months], ensuring that this includes:

- ▷ adequate resourcing and support—case management and links to long-term support
- ▷ standardised referral guidance, to be used by all agencies, that is aligned to the revised Family Violence Risk Assessment and Risk Management Framework to identify high-risk cases for referral to RAMPs
- ▷ organisational and practice guidelines for effective RAMP operation, supported by a targeted workforce development and training program
- ▷ processes for supporting oversight by Regional Family Violence Integration Committees
- ▷ implementation oversight by the Cabinet Family Violence Sub-committee and the Victorian Secretaries Board Family Violence Sub-committee.

Information sharing

The Royal Commission recommends that:

Recommendation 5

The Victorian Government amend the *Family Violence Protection Act 2008 (Vic)* to create a specific family violence information-sharing regime [within 12 months]. The new regime should be consistent with the guiding principles and design elements described in this report.

Recommendation 6

The Victorian Secretaries Board Family Violence Sub-committee oversee a working group consisting of representatives of 'prescribed organisations' covered by the recommended information-sharing regime and the Office of the Privacy and Data Protection Commissioner [within 12 months of the legislative amendments]. The working group should:

- ▶ identify priority areas for the development of an information-sharing culture throughout the family violence system
- ▶ develop an awareness campaign to explain the new information-sharing regime to prescribed organisations
- ▶ coordinate the production of any guidelines or guidance material created to support the new information-sharing regime and help prescribed organisations put their information-sharing arrangements into operation
- ▶ help prescribed organisations update information-sharing protocols and memorandums of understanding and deliver internal training on information sharing.

Recommendation 7

The Victorian Government establish a secure Central Information Point. Led by Victoria Police, it should consist of a co-located multi-disciplinary team with representatives from Victoria Police, the courts (registry staff), the Department of Health and Human Services and the Department of Justice and Regulation (Corrections Victoria) who are authorised to obtain information from their respective databases [by 1 July 2018]. A summary of this information should be available to the Risk Assessment and Management Panels, the recommended Support and Safety Hubs, the 24-hour crisis telephone service Safe Steps and the Men's Referral Service to permit effective assessment and management of risk in individual cases.

Recommendation 8

The Victorian Secretaries Board ensure that proposed upgrades to key Magistrates' Court of Victoria, Victoria Police, Corrections Victoria and Department of Health and Human Services information technology systems equip these systems [by 1 July 2018] to:

- ▶ share information for the purposes of risk assessment and management in individual cases of family violence
- ▶ permit the use of system data for the purpose of evaluating the effectiveness of outcomes from implementation of the Commission's recommendations and the recommended Statewide Family Violence Action Plan
- ▶ participate in the Central Information Point.

Recommendation 9

The Victorian Government examine options for the development of a single case-management data system to enable relevant agencies to view and share risk information in real time [within 12 months].

Specialist family violence services

The Royal Commission recommends that:

Recommendation 10

The Victorian Government expand an existing website or create a new website [within two years], to provide information for:

- ▷ victims of all forms of family violence—including victims who face particular barriers to obtaining help—about where and how they can seek help
- ▷ families, friends and community networks, to help them recognise family violence, support victims and support perpetrators who are seeking help to change their behaviour.

This information should relate to both help during the crisis period and recovery in the longer term.

Recommendation 11

The Victorian Government provide additional funding for specialist family violence support services to deal with the current crisis in demand and to ensure that victims of family violence receive appropriate support [within 12 months].

Recommendation 12

Pending the establishment of the recommended Support and Safety Hubs, the Victorian Government expand funding for after-hours responses—including the capacity to activate a face-to-face crisis response when required—in each of the 17 Department of Health and Human Services regions [within 12 months].

A safe home

The Royal Commission recommends that:

Recommendation 13

The Victorian Government give priority to supporting victims in safely remaining in, or returning to, their own homes and communities through the expansion of Safe at Home-type programs across Victoria [within two years]. These programs should incorporate rental and mortgage subsidies and any benefits offered by advances in safety devices, with suitable case management as well as monitoring of perpetrators by police and the justice system.

Recommendation 14

The Victorian Government increase the number and range of crisis and emergency accommodation that is available by using a wider range of service models—including head leasing of premises—with priority being given to rural, regional and remote areas [within 12 months].

Recommendation 15

The Victorian Government support service providers in phasing out the communal refuge model [by 31 December 2020] and replacing it with accommodation that promotes safety, is accessible to people with disabilities, provides private units and enables connections with the community, work and school (core and cluster model). To facilitate the transition, the Victorian Government should provide a capital fund to assist service providers with business case development, design options and implementation (including construction of redesigned accommodation) and fund interim arrangements to avoid loss in service delivery during refurbishment or redevelopment.

Recommendation 16

The Department of Health and Human Services review the contractual arrangements (including funding levels) for crisis supported accommodation to remove barriers for particular groups, such as women with no income and women and children with disabilities [within 12 months].

Recommendation 17

The Victorian Government expand the provision of Family Violence Flexible Support Packages [within 12 months]. These packages should provide to victims assistance beyond the crisis period and should include longer term rental and mortgage subsidies where required, along with assistance for costs associated with securing and maintaining counselling, wellbeing, education, employment, financial counselling and other services designed to assist housing stability and financial security.

Recommendation 18

The Victorian Government give priority to removing current blockages in refuge and crisis accommodation and transitional housing, so that victims of family violence can gain stable housing as quickly as possible and with a minimum number of relocations, are not accommodated in motels and other ad hoc accommodation, and spend on average no longer than six weeks in refuge and crisis accommodation [within two years].

Recommendation 19

The Victorian Government establish a Family Violence Housing Assistance Implementation Task Force consisting of senior representatives from the public and commercial housing sectors and family violence specialists [within 12 months]. The task force, which should report through the Minister for Housing to the Cabinet Family Violence Sub-committee, should:

- ▷ oversee a process designed to remove blockages in access to family violence crisis accommodation by rapidly rehousing family violence victims living in crisis and transitional accommodation
- ▷ design, oversee and monitor the first 18-month phase of the proposed expanded Family Violence Flexible Support Packages (including rental subsidies)
- ▷ quantify the number of additional social housing units required for family violence victims who are unable to gain access to and sustain private rental accommodation
- ▷ subject to evaluation of the proposed expanded Family Violence Flexible Support Packages, plan for the statewide roll-out of the packages (including rental subsidies) and the social housing required.

Recommendation 20

The Victorian Minister for Housing, Disability and Ageing report annually to the Parliamentary Committee on Family Violence [within two years] on:

- ▷ the extent of unmet housing demand among people affected by family violence—including the average and range of current stays by women and children in crisis and transitional accommodation
- ▷ progress in meeting the benchmark of six weeks in crisis accommodation
- ▷ proposed actions for meeting the continuing housing demand from people affected by family violence.

Children and young people’s experience of family violence

The Royal Commission recommends that:

Recommendation 21

The Victorian Government ensure that all refuge and crisis accommodation services catering to families have adequate resources to meet the particular needs of the children they are accommodating, including access to expert advice and secondary consultations in supporting children [within 12 months].

Recommendation 22

The Victorian Government amend the *Family Violence Protection Act 2008* (Vic) to establish a rebuttable presumption that, if an applicant for a family violence intervention order has a child who has experienced family violence, that child should be included in the applicant’s family violence intervention order or protected by their own order [within 12 months].

Recommendation 23

The Victorian Government give priority to funding therapeutic interventions and counselling—including age-appropriate group work—for children and young people who are victims of family violence [within two years]. In particular:

- ▶ The Homeless Children’s Specialist Support Service (or a program with similar features) should be extended beyond four service areas to be available statewide and be available to specialist family violence services.
- ▶ Eligibility for the Take Two program and similar intensive therapeutic programs should be introduced for children and young people affected by trauma associated with family violence who are not in the statutory child protection system.

Recommendation 24

The Victorian Government support and fund youth homelessness and other youth services providers in developing and implementing a broader range of supported accommodation options for young people experiencing family violence [within two years].

Family violence and the child protection system

The Royal Commission recommends that:

Recommendation 25

The Department of Health and Human Services, together with Victoria Police, develop and strengthen its current practice guidelines to facilitate further engagement with perpetrators of family violence [within 12 months] with the aim of:

- ▷ exhausting all efforts to interview the alleged perpetrator of the violence
- ▷ protecting the safety of child protection practitioners who must work with alleged perpetrators of family violence
- ▷ developing 'feedback loops' with Victoria Police and other relevant agencies—including the recommended Support and Safety Hubs, once established—in order to obtain and share information about family violence perpetrators and so assist with risk assessment and risk management.

Recommendation 26

The Department of Health and Human Services develop and strengthen practice guidelines and if necessary propose legislative amendments to require Child Protection—in cases where family violence is indicated in reports to Child Protection and is investigated but the statutory threshold for protective intervention is not met—[within 12 months] to:

- ▷ ensure the preparation of a comprehensive and robust safety plan, either by Child Protection or by a specialist family violence service
- ▷ make formal referrals for families to relevant services—including specialist family violence services, family and child services, perpetrator interventions, and the recommended Support and Safety Hubs, once established
- ▷ make formal referrals for children and young people to specialist services—including counselling services—if children or young people are affected by family violence or use violence.

Recommendation 27

The Department of Health and Human Services revise and strengthen its risk management practice guidelines and procedures for circumstances when a report to Child Protection has indicated the presence of family violence [within 12 months]. Practice and procedural guidelines should be updated to require the child protection practitioner to:

- ▷ without delay, obtain from Victoria Police and any specialist family violence service all police referrals (L17 forms) and the results of any risk assessments that have been performed in relation to the child who is the subject of the report and their parents or other relevant family members
- ▷ ensure that the full text of any risk assessment is recorded in the Child Protection Service's Crisis Referral Information System notes
- ▷ without delay, provide to Victoria Police the results of any risk assessment completed by the department that indicates a risk of family violence to a child or young person, so as to support Victoria Police in bringing an application for a family violence intervention order in the Magistrates' Court of Victoria. The department should ask that police provide feedback on whether an application to the court has been made.

Recommendation 28

Pending finalisation of the recommended information-sharing regime, the Department of Health and Human Services liaise with the Magistrates' Court of Victoria to develop an information-sharing protocol to ensure that, when a parent seeks a new or amended family violence intervention order or *Family Law Act 1975* (Cth) order in the Magistrates' Court of Victoria, information held by the department in relation to family violence risk is provided to the court [within 12 months]. Where necessary, a child protection practitioner should be made available to give evidence.

Recommendation 29

The Department of Health and Human Services require child protection practitioners to participate in training and professional development about the nature and dynamics of family violence and the department's practice guidelines dealing with family violence.

Recommendation 30

The Victorian Government amend section 327 of the *Crimes Act 1958* (Vic) to require the Director of Public Prosecutions to approve a prosecution for the offence in cases where the alleged offender is a victim of family violence and consider legislative amendments to reconcile section 327 of the *Crimes Act* and section 493 of the *Children, Youth and Families Act 2005* (Vic) [within 12 months].

Sexual assault and family violence

The Royal Commission recommends that:

Recommendation 31

The Victorian Government ensure funding of specialist family violence and sexual assault services to facilitate their collaboration [within two years] by:

- ▷ promoting and, if necessary, resourcing shared casework models
- ▷ establishing secondary consultation pathways
- ▷ participating in the recommended Support and Safety Hubs
- ▷ developing guidelines and protocols for facilitating information sharing
- ▷ participating in joint education and training.

Recommendation 32

The Victorian Government review [within five years] family violence and sexual assault services to determine whether and, if so, how family violence and sexual assault responses should be unified.

Recommendation 33

The Victorian Government ensure that the Sexually Abusive Behaviours Treatment Service and other suitable treatment programs are available for all age groups up to and including 17-year-olds and resource enhanced delivery of the programs across Victoria [within two years].

Recommendation 34

The Victorian Government amend the *Children, Youth and Families Act 2005 (Vic)* to extend the therapeutic treatment order regime to young people aged 15 to 17 years, so that the Children's Court of Victoria can order attendance at appropriate programs [within two years].

Pathways to services

The Royal Commission recommends that:

Recommendation 35

Pending the establishment of the recommended Support and Safety Hubs, the Victorian Government provide additional resources to ensure that the costs of processing and responding to police referrals (L17 forms) received by women's specialist family violence service L17 referral points are fully and discretely funded [within 12 months].

Recommendation 36

Pending the establishment of the recommended Support and Safety Hubs, the Victorian Government ensure that Integrated Family Services has sufficient resources to respond to families experiencing family violence [within 12 months].

Recommendation 37

The Victorian Government introduce Support and Safety Hubs in each of the state's 17 Department of Health and Human Services regions [by 1 July 2018]. These hubs should be accessible and safe locations that:

- ▷ receive police referrals (L17 forms) for victims and perpetrators, referrals from non-family violence services and self-referrals, including from family and friends
- ▷ provide a single, area-based entry point into local specialist family violence services, perpetrator programs and Integrated Family Services and link people to other support services
- ▷ perform risk and needs assessments and safety planning using information provided by the recommended statewide Central Information Point
- ▷ provide prompt access to the local Risk Assessment and Management Panel
- ▷ provide direct assistance until the victim, perpetrator and any children are linked with services for longer term support
- ▷ book victims into emergency accommodation and facilitate their placement in crisis accommodation
- ▷ provide secondary consultation services to universal or non-family violence services
- ▷ offer a basis for co-location of other services likely to be required by victims and any children.

Recommendation 38

The Victorian Government, in establishing the Support and Safety Hubs, provide additional funding [within three years] to allow for:

- ▷ co-design of the hubs with local providers
- ▷ appropriate infrastructure, including technology
- ▷ establishment of integrated intake teams with expertise in family violence, family and children's services, and perpetrator assessment
- ▷ appointment of an advanced family violence practitioner to provide practice leadership and secondary consultation
- ▷ capacity to activate an after-hours face-to-face crisis response where required
- ▷ provision of secondary consultation by other specialist organisations, including Aboriginal community controlled organisations, to the intake team.

Recommendation 39

The Victorian Government, on the basis of demand forecasting, provide sufficient funds to specialist family violence services and Integrated Family Services to allow them to support people referred by a Support and Safety Hub, maintain their safety and help them until their situation has stabilised and they have the support necessary to rebuild and recover from family violence [by 1 July 2018].

Recommendation 40

The Victorian Government revise relevant policy frameworks and service standards in the light of the new Support and Safety Hubs and the redesigned service system. This includes revising standards for family violence service providers (including men's behaviour change programs) and key health and human services that respond to family violence, as well as the Victoria Police Code of Practice for the Investigation of Family Violence [by 1 July 2018].

Police: front-line operations and workforce

The Royal Commission recommends that:

Recommendation 41

Victoria Police amend the Victoria Police Code of Practice for the Investigation of Family Violence to ensure that it provides suitable guidance on identifying family violence primary aggressors [within 12 months]. This includes:

- ▷ procedures for amending the Law Enforcement Assistance Program (LEAP) when a service provider or a Support and Safety Hub subsequently informs Victoria Police that a person is not the primary aggressor
- ▷ provision of details of specialist support available to assist in identifying the primary aggressor.

Victoria Police should provide training at all appropriate levels on the amended requirements relating to identifying primary aggressors.

Recommendation 42

Victoria Police establish a Family Violence Centre of Learning with external academic governance to improve family violence education at all levels in the organisation [within two years].

Recommendation 43

Victoria Police ensure that specialist family violence position holders perform regular random file and case reviews in order to monitor compliance with the Victoria Police Code of Practice for the Investigation of Family Violence and other important procedural requirements relating to family violence—for example, in relation to investigations of contraventions of family violence intervention orders. Victoria Police should set timing targets for these file and case reviews [within 12 months].

Recommendation 44

The Victorian Government and Victoria Police establish a regular cycle of comprehensive and independent audits of Victoria Police's compliance with the Victoria Police Code of Practice for the Investigation of Family Violence. The results of the audits should be published, and include, among other things, any divisional variation and the measures that will be taken to resolve any concerns.

Recommendation 45

Victoria Police's Professional Standards Command review Victoria Police policies and procedures relating to police employees and family violence [within 12 months]. The review should consider:

- ▷ the adequacy of and any necessary improvements to current policies and procedures
- ▷ best-practice approaches and model policies developed in other Australian jurisdictions and internationally
- ▷ potential synergies with Victoria Police's response to the Victorian Equal Opportunity and Human Rights Commission's independent review of sex discrimination and sexual harassment in Victoria Police.

Police: leadership, resourcing and organisational systems

The Royal Commission recommends that:

Recommendation 46

Victoria Police revise its Violence Against Women and Children Strategy and amend it to cover all forms of family violence, a diverse range of victims and all areas of operations and governance [within 12 months].

Recommendation 47

Victoria Police develop a new family violence performance management and reporting framework, with a broader range of quantitative and qualitative performance measures [within 12 months] against which it reports annually and publicly, on a statewide, regional and divisional basis.

Recommendation 48

Victoria Police's Family Violence Command set performance measures for policing of family violence at regional levels, taking into account demand for family violence policing at police service area and divisional levels. Regional assistant commissioners should report to the Chief Commissioner of Police and Executive Command through the Family Violence Command against these performance measures [within 12 months].

Recommendation 49

Victoria Police adapt its career structures to reflect family violence as core business [within two years] by:

- ▷ providing an organisational structure for specialist family violence positions
- ▷ providing a clear career progression path for members who have a continuing interest in family violence policing—including through gazetting additional positions
- ▷ having positions with appropriate ranks to represent family violence policing in key operational and strategic management forums and processes
- ▷ ensuring that resourcing models and processes enable police in specialist family violence roles to perform their functions
- ▷ considering involving non-sworn employees with relevant skills in incident response
- ▷ recruiting personnel from a broader range of disciplines—such as social work, psychology or specialist family violence services.

Recommendation 50

Victoria Police's Family Violence Command develop a core set of functions to be delivered by all family violence teams in Victoria. This should form the operating model for resourcing decisions from 1 July 2017. Thereafter, Victoria Police should move towards a centralised model of resource allocation for family violence, placing family violence on a footing similar to that of road policing.

Recommendation 51

Victoria Police's Family Violence Command evaluate current localised models for family violence teams and from 1 July 2017 roll out preferable operating models in areas with similar family violence incident patterns.

Recommendation 52

Victoria Police develop a model to strengthen the investigation of family violence offences and focus additional specialist investigative and intelligence resources on serious family violence offending [within 12 months]. Victoria Police should develop performance measures for the revised approach, against which it reports annually and publicly. To improve the investigation of family violence, Victoria Police should:

- ▷ embed investigators in family violence teams where appropriate
- ▷ ensure that investigation and response teams take on or actively oversee investigations
- ▷ give tactical and divisional intelligence support to family violence teams
- ▷ give family violence team members access to the field investigator's course
- ▷ equip first responders with technology that will facilitate timely on-site evidence capture
- ▷ ensure that family violence advisors are involved with divisional tasking and coordination committees and that advisors are of an appropriate rank to participate effectively.

Recommendation 53

The Chief Commissioner of Police report in the Victoria Police annual report on the revised model(s) for and progress in strengthening the investigation of family violence offences.

Recommendation 54

The Victorian Government and Victoria Police deploy mobile technology for police members, including capability to use the Law Enforcement Assistance Program (LEAP), complete and despatch police referrals (L17 forms), take victim and witness statements, and process and issue family violence safety notices in the field—recognising that this is contingent on the adequacy of Victoria Police's broader IT environment [within three years].

Recommendation 55

In order to improve the supervision of the service of family violence intervention orders, Victoria Police [within 12 months]:

- ▷ amend the Victoria Police Manual and Code of Practice for the Investigation of Family Violence to provide clearer guidance on and increased supervision of service of family violence intervention orders
- ▷ establish procedures for giving priority to the service of family violence intervention orders on high-risk perpetrators or those suspected of avoiding service—including tasking family violence teams to effect service or seeking relevant court orders, or both
- ▷ provide training at all appropriate levels on the amended requirements relating to service of orders
- ▷ regularly and publicly report on performance in the service of family violence intervention orders.

Recommendation 56

The Victorian Government—working with Victoria Police, the courts and other relevant stakeholders—trial and evaluate the use of agencies or service providers other than Victoria Police and court registrars to effect personal service of applications for family violence intervention orders [within two years].

Recommendation 57

The Victorian Government amend the *Family Violence Protection Act 2008* (Vic) to extend the ability of the Magistrates' Court of Victoria and the Children's Court of Victoria to order service of applications for family violence intervention orders and orders in the first instance other than by personal service, if the court is satisfied that alternative service:

- ▷ is likely to be effective
- ▷ will not result in an unacceptable risk to the safety of the protected person or any other person
- ▷ is, in all the circumstances, appropriate [within 12 months].

Recommendation 58

Victoria Police conduct a trial in two divisions of the use of body-worn cameras to collect statements and other evidence from family violence incident scenes [within 12 months]. The trial should be supported by any necessary legislative amendment to ensure the admissibility of evidence collected in criminal and civil proceedings. It should also be subject to a legislative sunset period, evaluation and the use of any evidence only with the victim's consent.

Recommendation 59

The Victorian Government consider [after five years] whether Victoria Police should be given the power to issue family violence intervention orders in the field, subject to the recommended Statewide Family Violence Advisory Committee and Family Violence Agency advising that Victoria Police has made significant improvements to its response to family violence, taking into account the Commission's recommendations.

Court-based responses to family violence in Victoria

The Royal Commission recommends that:

Recommendation 60

The Victorian Government ensure that all Magistrates' Court of Victoria headquarter courts and specialist family violence courts have the functions of Family Violence Court Division courts [within two years]. These courts should therefore have:

- ▷ specialist magistrates, registrars, applicant and respondent workers to assist parties in applications for family violence intervention orders and any subsequent contravention proceedings
- ▷ dedicated police prosecutors and civil advocates
- ▷ facilities for access to specialist family violence service providers and legal representation for applicants and respondents
- ▷ power to make counselling orders under Part 5 of the *Family Violence Protection Act 2008 (Vic)*
- ▷ remote witness facilities for applicants
- ▷ the jurisdictional powers of the Family Violence Court Division under section 41 of the *Magistrates' Court Act 1989 (Vic)*, including the power to make parenting and property orders under the *Family Law Act 1975 (Cth)*.

Recommendation 61

The Victorian Government legislate to ensure that, subject to exceptional circumstances and the interests of the parties, all family violence matters are heard and determined in specialist family violence courts [within five years].

Recommendation 62

The Victorian Government enact legislation and take other steps as necessary to support the capacity of the Magistrates' Court of Victoria (and, where relevant, the Children's Court of Victoria) to grant family violence intervention orders speedily and with due regard to the interests of justice and the safety of affected family members.

The Victorian Government consider [within two years]:

- ▷ transferring some of the jurisdiction of the Magistrates' Court of Victoria to another forum—for example, fines and traffic infringements
- ▷ expanding the range of matters that can be determined on the papers—that is, without an in-person hearing
- ▷ funding the appointment of a greater number of judicial registrars to deal with certain matters or classes of matters.

The Magistrates' Court of Victoria (and, where relevant, the Children's Court of Victoria) consider whether the caseload of magistrates could be better managed [within two years] by:

- ▷ re-assigning some family violence intervention order applications currently heard at the Melbourne Magistrates' Court to the Neighbourhood Justice Centre
- ▷ delegating authority to judicial registrars to deal with certain matters or classes of matters under the *Family Violence Protection Act 2008 (Vic)*—for example, allowing them to grant adjournments or make interim orders and/or substituted service orders.

The Victorian Government should take any necessary action to implement these recommendations if the Magistrates' Court of Victoria advises this is desirable.

Recommendation 63

The Magistrates' Court of Victoria (and the Children's Court of Victoria) consider establishing an 'e-registry' as a central online file-management portal and an offsite contact centre for managing registry-related queries [within five years].

Recommendation 64

The Magistrates' Court of Victoria staff hold a daily coordination meeting before hearings begin in a family violence list [within 12 months]. The purpose of the meeting would be to give priority to high-risk cases, ensure that interpreters are available, liaise with legal representatives to manage conflicts, and liaise with applicant and respondent support workers.

Recommendation 65

The Magistrates' Court of Victoria develop and implement a process [within two years] of equipping court staff to actively manage the family violence list, having regard to risk assessment and management factors, and provide to magistrates the information the Commission recommends in this report.

Recommendation 66

Victoria Police ensure that before applying for a family violence intervention order the relevant magistrate receives an affidavit (prepared by the police prosecutor or civil advocate) [by 31 December 2017] specifying:

- ▷ any previous family violence intervention orders relevant to the affected family member and respondent
- ▷ whether the respondent is on bail for any offence and the conditions of any such bail
- ▷ whether any previous family violence intervention orders have been breached
- ▷ whether there are previous or forthcoming criminal proceedings, and the status of any such proceedings
- ▷ whether there have been previous family violence incident reports (L17 forms) relating to the same parties
- ▷ relevant risk factors relating to the current incident—including a status update on any risk factors described in the L17 relating to the application
- ▷ the family violence intervention orders sought by police and whether the affected family member consents to those orders.

A Victoria Police representative—for example, the police prosecutor, a civil advocate or the family violence court liaison officer—should discuss the particulars of the affidavit with the affected family member before the hearing.

Recommendation 67

The Magistrates' Court of Victoria registry, in all police-initiated applications for family violence intervention orders, provide to the magistrate a summary indicating the status of any related proceedings in the Children's Court of Victoria (or vice-versa), the Family Court of Australia and/or the Federal Circuit Court of Australia. If information is not available from other jurisdictions, this should be stated. In non-police initiated family violence intervention orders, the Magistrates' Court registry should also provide the information recommended to be provided by Victoria Police in an application initiated by it. The Magistrates' Court registry should also adopt a practice of providing risk assessments made by applicant and respondent support workers to magistrates as a matter of course [by 31 December 2017].

Recommendation 68

The Magistrates' Court of Victoria consider for each court [within 12 months]:

- ▷ capping lists of family violence matters at a level that allows magistrates sufficient time to hear each matter
- ▷ staggering family violence lists to provide greater guidance to parties as to when cases will be heard
- ▷ increasing the number of days dedicated to listing family violence matters
- ▷ introducing benchmarks for the maximum amount of time parties should wait for a listed family violence matter to be heard.

Recommendation 69

The Victorian Government, through the Council of Australian Governments Law, Crime and Community Safety Council, pursue the expansion of resourcing for legal services, including Victoria Legal Aid and community legal centres, to resolve the current under-representation by and over-burdening of duty lawyer services in family violence matters [within 12 months].

Recommendation 70

The Victorian Government fund and complete works to ensure all Magistrates' Court of Victoria headquarter courts [within five years]:

- ▷ provide safe waiting areas and rooms for co-located service providers
- ▷ provide accessibility for people with disabilities
- ▷ provide proper security staffing and equipment
- ▷ provide separate entry and exit points for applicants and respondents
- ▷ provide private interview rooms for use by registrars and service providers
- ▷ provide remote witness facilities, to allow witnesses to give evidence off site and from court-based interview rooms
- ▷ provide adequate facilities for children and ensure that courts are 'child-friendly'
- ▷ use multi-lingual and multi-format signage
- ▷ use pre-existing local facilities and structures to accommodate proceedings or associated aspects of court business—for example, for use as safe waiting areas.

Prior to all family violence matters being heard and determined in specialist family violence courts, the Victorian Government should fund and complete works to ensure that those magistrates' courts (and children's courts) that deal with a high volume of family violence-related matters have similar capacity.

Recommendation 71

The Victorian Government amend section 69 of the *Family Violence Protection Act 2008* (Vic) and section 363 of the *Criminal Procedure Act 2009* (Vic) [within three years] to provide that the court must permit a family violence victim to give evidence from a place other than the courtroom by means of remote technology that enables communication with the courtroom, unless the victim wishes to give evidence from the courtroom.

Recommendation 72

The Victorian Government consider legislative amendments to permit the use of video- and audio-recorded evidence in family violence-related criminal proceedings involving either adults or children [within 12 months].

Recommendation 73

The Magistrates' Court of Victoria (and the Children's Court of Victoria) produce multimedia information about the family violence intervention order process that can not only be viewed online but can also be shown in court waiting areas to complement the development of 'plain language' family violence intervention order forms and simplified order conditions [within 12 months].

Recommendation 74

The Magistrates' Court of Victoria roll out an online application form (based on the Neighbourhood Justice Centre's online application form) for all applicants for a family violence intervention order across Victoria [within two years].

Recommendation 75

The Victorian Government legislate to permit the County Court of Victoria to strike out an appeal in circumstances where the appellant does not appear at a pre-appeal mention, is served with notice that the appeal will be struck out if the appellant does not attend the next mention date, and the appellant does not attend the next mention date [within 12 months].

Recommendation 76

The Victorian Government amend section 31 of the *Family Violence Protection Act 2008* (Vic) to stipulate that the first mention date for a family violence safety notice must be no later than 14 days after the notice, or form of notice, is served [within 12 months].

Recommendation 77

The Department of Justice and Regulation convene a committee, including representatives of the Magistrates' Court of Victoria, Victoria Legal Aid and Women's Legal Service Victoria, to investigate how family violence intervention orders by consent are currently negotiated and develop a safe, supported negotiation process for victims [within three years].

Recommendation 78

The Victorian Government repeal the unproclaimed provisions of the *Family Violence Protection Amendment Act 2014* (Vic) providing for interim family violence intervention orders with an automatic finalisation condition (self-executing orders) [within 12 months].

Offences and sentencing

The Royal Commission recommends that:

Recommendation 79

The Victorian Government legislate to empower courts to make interim family violence intervention orders on their own motion at any point during criminal processes—including bail proceedings and sentencing [within 12 months].

Recommendation 80

The Victorian Government [within 12 months] take the following action:

- ▷ encourage bail decision makers to seek, and prosecutors to provide, information on relevant risks of family violence in relation to a bail application
- ▷ whether by amendment to the *Bail Act 1977 (Vic)* or by other means, provide that before setting or amending bail conditions, a bail decision maker must take into account:
 - ▷ whether there is a family violence safety notice or family violence intervention order in place. If so, the decision maker should ensure that the bail conditions are compatible with the notice or order conditions, unless to do so would pose a risk to the victim and/or protected person
 - ▷ in matters relating to family violence, whether there is a risk of family violence that could be managed by appropriate bail conditions or a family violence intervention order, or both
- ▷ add an avoidance of doubt provision in section 4 of the *Bail Act* to state that an unacceptable risk of committing an offence or endangering the safety or welfare of the public may include an unacceptable risk of perpetrating family violence whilst on bail
- ▷ enact legislation to ensure that, if a warrant for the arrest of an accused is issued, bail conditions continue to operate until the arrest warrant is executed and the person is brought before the court.

Recommendation 81

The Victorian Government ensure that offences committed in the context of family violence are appropriately 'flagged' [within two years]—for example, by:

- ▷ enhancing current links between Victoria Police's, courts' and Corrections Victoria's databases
- ▷ amending the *Family Violence Protection Act 2008 (Vic)* to deem criminal offences committed in the context of family violence to be 'family violence offences' for the purposes of being recorded in relevant databases.

Recommendation 82

The Victorian Government review section 125A of the *Family Violence Protection Act 2008 (Vic)* to determine whether the 28-day period within which contravention relating to the same person must occur to establish this offence should be extended [within 12 months].

Recommendation 83

The Sentencing Advisory Council report on the desirability of and methods for accommodating 'swift and certain justice' approaches to family violence offenders in Victoria's sentencing regime [within 12 months].

Recommendation 84

The Director of Public Prosecutions consider identifying a suitable case in which to seek a guideline judgment from the Court of Appeal on sentencing for family violence offences [within two years].

Perpetrators

The Royal Commission recommends that:

Recommendation 85

The Victorian Government [within 12 months]:

- ▷ map the roles and responsibilities of all government and non-government agencies and service providers that have contact with perpetrators of family violence
- ▷ confirm the principles that should inform the programs, services and initiatives required to respond to perpetrators of family violence who pose a high, medium or low risk to victims.

Recommendation 86

The Victorian Government convene a committee of experts on perpetrator interventions and behaviour change programs [within 12 months] to advise the government on the spectrum of programs, services and initiatives that should be available in Victoria—in the justice system and in the community—to respond to all perpetrators across varying forms and risk levels of family violence. The committee should consider men’s behaviour change programs, clinical models such as cognitive behaviour therapy, strengths-based programs and fathering-specific models, online programs, and services for perpetrators from diverse communities. The expert advisory committee should consist of members with expertise in a variety of disciplines and practice approaches and with experience in working directly with perpetrators and victims of family violence, including those from diverse communities.

Recommendation 87

The Victorian Government, subject to advice from the recommended expert advisory committee and relevant ANROWS (Australia's National Organisation for Women's Safety) research, trial and evaluate interventions for perpetrators [within three years] that:

- ▷ provide individual case management where required
- ▷ deliver programs to perpetrators from diverse communities and to those with complex needs
- ▷ focus on helping perpetrators understand the effects of violence on their children and to become better fathers
- ▷ adopt practice models that build coordinated interventions, including cross-sector workforce development between the men's behaviour change, mental health, drug and alcohol and forensic sectors.

Recommendation 88

The Victorian Government provide dedicated funding for future perpetrator programs. These should include evaluation studies to establish longer term effectiveness and assist in improving program design in the long term [within three years].

Recommendation 89

The Secretary of the Department of Justice and Regulation approve a broader range of service providers to provide counselling services to perpetrators who are subject to a counselling order issued by the Magistrates' Court of Victoria under section 130 of the *Family Violence Protection Act 2008* (Vic). Such service providers should have expertise in the interplay between family violence and drug and alcohol misuse or mental illness, provided the purpose of the counselling remains within the scope of the statutory objectives of Part 5 of the Act [within three years].

Recommendation 90

The Victorian Government, working with the courts and providers of men's behaviour change programs, establish an improved process for monitoring the attendance of perpetrators who are ordered to participate in behaviour change programs and the outcomes of their participation in those programs [within 12 months].

Recommendation 91

The Victorian Government, in consultation with No To Violence [within 12 months]:

- ▷ review and update the Men's Behaviour Change Programs Minimum Standards to reflect research findings, national and international best practice, and the central importance of partner contact work
- ▷ develop a compliance framework, incorporating an accreditation process, for providers of men's behaviour change programs.

Recommendation 92

The Victorian Government ensure that, pending the implementation of an expanded range of perpetrator interventions, funding for men's behaviour change programs is sufficient to meet demand from those required to attend under a counselling order issued under Part 5 of the *Family Violence Protection Act 2008 (Vic)* and those who volunteer to attend such programs [within 12 months].

Recommendation 93

The Victorian Government ensure that the terms of reference of the current review of the *Liquor Control Reform Act 1998 (Vic)* consider family violence and alcohol-related harms. The review should involve consultation with people who have expertise in the inter-relationship between family violence and alcohol use.

The role of the health system

The Royal Commission recommends that:

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].

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].

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].

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].

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].

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.

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].

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].

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.

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].

Recovery: health and wellbeing

The Royal Commission recommends that:

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].

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].

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.

Recovery: Financial security

The Royal Commission recommends that:

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].

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 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.

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.

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].

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].

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].

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].

Restorative justice for victims of family violence

The Royal Commission recommends that:

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].

Adolescents who use family violence

The Royal Commission recommends that:

Recommendation 123

The Victorian Government, subject to successful evaluation of the Adolescent Family Violence Program, extend the program across Victoria [within two years].

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].

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].

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].

Recommendation 127

The Victorian Government, subject to successful evaluation of the Youth Diversion Program Pilot, establish a statutory youth diversion scheme [within two years].

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].

Family violence and the family law system

The Royal Commission recommends that:

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.

Review of family violence-related deaths

The Royal Commission recommends that:

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].

Family violence and diversity

The Royal Commission recommends that:

Recommendation 139

The Victorian Government fund Seniors Rights Victoria, InTouch Multicultural Centre Against Family Violence and Women with Disabilities Victoria [within 12 months] to:

- ▶ provide training to equip specialist family violence service providers and providers of universal services to recognise and provide appropriate services to older Victorians, people from culturally and linguistically diverse communities and people with disabilities who experience family violence
- ▶ build partnerships with and provide advice to specialist family violence service providers and providers of universal services to enable them to respond effectively to the needs of people in these communities.

Recommendation 140

The Department of Health and Human Services review and update standards for family violence service providers (including men's behaviour change programs) [within two years]. The standards should specify providers' obligation to develop suitable services for diverse communities, consistent with their obligation to provide non-discriminatory services under the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* and the *Equal Opportunity Act 2010 (Vic)*.

Recommendation 141

The Victorian Equal Opportunity and Human Rights Commission issue a guideline under section 148 of the *Equal Opportunity Act 2010 (Vic)* to guide service providers in meeting their obligation to act inclusively and avoid discrimination when delivering services to all people who are affected by family violence. The guideline should apply to family violence service providers (including men's behaviour change programs), as well as to universal and mainstream organisations [within 12 months].

Recommendation 142

The Victorian Government ensure that family violence community awareness and prevention programs and activities use language, imagery and messaging that reflect the diversity of the Victorian community [within two years]. Prevention work should be developed in consultation with relevant communities and be evaluated in order to refine future practice. Inclusiveness of diversity should also be an important consideration for corporate and philanthropic funders of such programs and activities.

Recommendation 143

The Victorian Government ensure that the proposed Victorian Family Violence Index measures, as far as possible, the extent of and response to family violence in different communities.

Aboriginal and Torres Strait Islander peoples

The Royal Commission recommends that:

Recommendation 144

The Victorian Government implement the recommendations of the mid-term evaluation of the Indigenous Family Violence Ten Year Plan [within two years].

Recommendation 145

The Victorian Government [within two years]:

- ▶ continue to work in partnership with Aboriginal communities to develop a statewide strategic response to improving the lives of vulnerable Aboriginal children and young people
- ▶ increase investment in programs that provide 'wrap-around' support to parents and children, especially in the first five years of life, so that the trajectory into child protection for these vulnerable families is interrupted and reversed
- ▶ expand the Aboriginal component of Child FIRST to reduce the high rates of removal of Aboriginal children and provide consistency across Victoria
- ▶ examine factors that influenced the decline in admissions into out-of-home care in Outer Gippsland, Mallee, Goulburn and North Eastern Melbourne so that lessons can be learnt and applied to future policy and practice.

Recommendation 146

The Victorian Government give priority to providing adequate funding to Aboriginal community controlled organisations [within 12 months] for:

- ▷ culturally appropriate family violence services for Aboriginal women and children
- ▷ family-centred services and programs—including programs that focus on cultural strengthening—therapeutic child-centred programs, and one-door integrated services where family members can obtain a range of supports
- ▷ culturally appropriate legal services for victims and perpetrators, to meet the increased demand for services and the need for statewide coverage
- ▷ crisis accommodation and support options for Aboriginal women and children based on core and cluster-style and best-practice models with access to longer term housing
- ▷ culturally appropriate services for Aboriginal men who perpetrate family violence—including access to suitable accommodation
- ▷ early intervention and prevention actions in Aboriginal communities—including whole-of-community activities and targeted programs.

Recommendation 147

The Victorian Government, on the basis of the advice of the Indigenous Family Violence Partnership Forum, give priority to major service models for evaluation using culturally appropriate outcome measures, methodologies and providers [within three years]. The Victorian Government should also ensure that all Aboriginal family violence interventions are evaluated in a culturally appropriate manner and that this is adequately resourced to ensure that Aboriginal service providers have the capacity to support such an evaluation [within 12 months].

Recommendation 148

The Victorian Government ensure that funding agreements for mainstream family violence organisations incorporate a requirement for services to conduct cultural safety reviews and action plans in all areas of operations, governance, workforce and relationships with the community. Investment in Aboriginal service providers will be necessary to support this [within 12 months].

Recommendation 149

The Melbourne Magistrates' Court resume the Koori Family Violence and Victims Support Program [within 12 months].

Recommendation 150

The Victorian Government, subject to the approval of the Aboriginal Justice Forum and inclusion of any necessary safeguards, extend the jurisdiction of the Koori Magistrates and County Courts to include offences where it is alleged that the defendant has contravened a family violence intervention order [within 12 months].

Recommendation 151

The Victorian Government ensure that Koori Family Violence Police Protocols are implemented in the remaining identified sites, with adequate resources and support provided to Elders and other community members providing cultural education to police in all sites (including those where protocols currently operate) [within two years].

Recommendation 152

Victoria Police, the Department of Health and Human Services, the Department of Justice and Regulation and the Department of Education and Training improve the collection of Indigenous-specific data relating to family violence so that this can be shared with communities, organisations and governance forums to inform local, regional and statewide responses [within 12 months].

Older people

The Royal Commission recommends that:

Recommendation 153

The Victorian Government resource the development and delivery of information on family violence using channels such as seniorsonline, information distributed with Victorian Seniors Cards, Seniors Week and the Seniors Information Centre [within 12 months].

Recommendation 154

The Victorian Government, through the Council of Australian Governments, encourage the Commonwealth Government [within 12 months] to:

- ▷ ensure that the Human Resource Management Standard in the Community Care Common Standards Guide specifies that workers delivering services must have successfully completed certified training in identifying family violence and responding to it
- ▷ review the existing Community Services Training Package courses relevant to providing ageing support to ensure that each course has a core, rather than elective, unit that adequately covers all manifestations of family violence.

Recommendation 155

Victoria Police, with advice from the Priority Community Division, scope options for a trial of a dedicated family violence and elder abuse response team in one Victoria Police local service area. The team should have the capacity to investigate financial abuse [within two years].

People from culturally and linguistically diverse communities

The Royal Commission recommends that:

Recommendation 156

The Victorian Government amend section 6 of the *Family Violence Protection Act 2008 (Vic)* to expand the statutory examples of family violence to include forced marriage and dowry-related abuse [within 12 months].

Recommendation 157

The Victorian Government update its guidelines on policy and procedures in using interpretative services to specifically deal with family violence—in particular, the risks of using perpetrators, children and other family members as interpreters, as well as using the same interpreter for both perpetrator and victim [within 12 months].

Recommendation 158

The Magistrates' Court of Victoria allocate specific funding for family violence interpreters and develop court guidelines for booking interpreters in family violence matters [within 12 months]. Among other things, the guidelines should take account of the following:

- ▷ an early process for checking whether parties require an interpreter
- ▷ a practice of booking two interpreters if both parties require an interpreter
- ▷ a presumption that wherever possible a female interpreter will be booked for a female party.

Recommendation 159

Victoria Police [within 12 months]:

- ▷ amend the Code of Practice for the Investigation of Family Violence to emphasise the risks associated with using children as interpreters and using the same interpreter for both perpetrator and victim, as well as to provide practical guidance to officers on the use of interpreters
- ▷ provide training at all appropriate levels on the amended Code of Practice requirements relating to interpreters.

Recommendation 160

The Victorian Government, as a member of the National Accreditation Authority for Translators and Interpreters Ltd, work with the other members of the authority to ensure that accreditation and testing processes and approval of translator and interpreter courses require an understanding of the nature and dynamics of family violence [within two years].

Recommendation 161

The Department of Health and Human Services, in collaboration with the Victorian Multicultural Commission, community organisations and other relevant bodies, develop a strategy for informing service providers, specialist family violence services and other community organisations about the health impacts of female genital mutilation, emphasising that it can be a form of family violence and a criminal offence [within 12 months].

Recommendation 162

The Victorian Government, through the Council of Australian Governments, encourage the Commonwealth Government to broaden the definition of family violence in the *Migrations Regulations 1994* (Cth) so that it is consistent with the *Family Violence Protection Act 2008* (Vic) and to ensure that people seeking to escape violence are entitled to crisis payments (regardless of their visa status) [within 12 months].

Faith communities

The Royal Commission recommends that:

Recommendation 163

The Office of Multicultural Affairs and Citizenship Multifaith Advisory Group and the Victorian Multicultural Commission, in partnership with expert family violence practitioners, develop training packages on family violence and sexual assault for faith leaders and communities [within three years]. These packages should build on existing work, reflect leading practice in responding to family violence, and include information about referral pathways for victims and perpetrators. The training should be suitable for inclusion as part of the pre-service learning in various faith training institutes, as well as the ongoing professional development of faith leaders.

Recommendation 164

The Department of Health and Human Services consult with the Office of Multicultural Affairs and Citizenship Multifaith Advisory Group, the Victorian Multicultural Commission and women from faith communities as part of its review of standards for specialist family violence service providers (including men's behaviour change programs), to ensure that these standards and the associated services take account of the needs of people in faith communities who experience family violence [within two years].

Recommendation 165

Faith leaders and communities establish processes for examining the ways in which they currently respond to family violence in their communities and whether any of their practices operate as deterrents to the prevention or reporting of, or recovery from, family violence or are used by perpetrators to excuse or condone abusive behaviour.

Lesbian, gay, bisexual, transgender and intersex communities

The Royal Commission recommends that:

Recommendation 166

The Victorian LGBTI Taskforce, supported by relevant experts, provide advice [within two years] on the following:

- ▷ research priorities relating to the nature and prevalence of and the most effective responses to family violence in LGBTI communities
- ▷ effective prevention strategies
- ▷ the review of the standards for family violence service providers—including men's behaviour change programs
- ▷ intersections between family violence and health and wellbeing initiatives.

Recommendation 167

The Victorian Government require all funded family violence services to achieve Rainbow Tick accreditation [by 31 December 2018]. This should be achieved by means of a staged approach, using workforce training and LGBTI equity auditing followed by full accreditation. An evaluation should be conducted to determine whether all family violence services are suitably responsive to and inclusive of LGBTI people [by 31 December 2019].

Recommendation 168

The Victorian Government provide funding [within 12 months] for the following:

- ▷ development and maintenance of legal and other resources for lesbian, gay, bisexual, transgender and intersex communities to support the identification and reporting of family violence, along with information about safe, accessible sources of support
- ▷ shared community education campaigns via LGBTI and family violence services to encourage LGBTI people who are experiencing family violence to seek help
- ▷ provision of training and advice to specialist family violence services
- ▷ for those LGBTI victims who cannot remain in their home, assistance with obtaining safe accommodation.

Recommendation 169

The Victorian Government, in the context of its commitment to review equal opportunity and birth certificate laws, examine the need to clarify relevant provisions of the *Equal Opportunity Act 2010* (Vic) to remove any capacity for family violence accommodation and service providers to discriminate against lesbian, gay, bisexual, transgender and intersex Victorians [within 12 months].

People with disabilities

The Royal Commission recommends that:

Recommendation 170

The Victorian Government adopt a consistent and comprehensive approach to the collection of data on people with disabilities who experience or perpetrate family violence. This should include collecting data from relevant services—for example, incident reports made to the Department of Health and Human Services by disability services when family violence has occurred [within two years].

Recommendation 171

The Victorian Government fund research into the prevalence of acquired brain injury among family violence victims and perpetrators [within two years].

Recommendation 172

The Victorian Government fund training and education programs for disability workers—including residential workers, home and community care workers, interpreters and communication assistants and attendant carers—to encourage identification and reporting of family violence among people with disabilities [within two years].

Recommendation 173

The Victorian Government, through the Council of Australian Governments Disability Reform Council, encourage the Commonwealth Government and the National Disability Insurance Agency to ensure that all disability services workers involved in assessing needs and delivering services have successfully completed certified training in identifying family violence and responding to it. This could include further developing and mandating the units on family violence and responding to suspected abuse in the Community Service Training Package [within five years].

Recommendation 174

Victoria Police, in the redesign of the police referral (L17) form, ensure that disability data is collected, including on the type of disability and the support required. Training should be provided to help police members identify how and when to make adjustments for people with disabilities [within 12 months].

Recommendation 175

The Judicial College of Victoria provide training to judicial officers in order to raise awareness and encourage consistent application of section 31 of the *Evidence Act 2008 (Vic)*, which allows courts to make adjustments to the way people with disabilities may be questioned and give evidence [within 12 months].

Recommendation 176

The Department of Health and Human Services review the funding model for crisis supported accommodation to remove barriers for women and children with disabilities [within 12 months].

Recommendation 177

The Victorian Government, in phasing out communal refuges, ensure that replacement accommodation contains disability-accessible units (universal design), where carers can be accommodated as needed and adaptations for children with disabilities are made [within five years].

Recommendation 178

The Victorian Government extend eligibility for the Victorian Disability Family Violence Crisis Response to assist people with disabilities who are victims of family violence and are not eligible for services under the *Disability Act 2006 (Vic)* but who nevertheless require assistance. Such eligibility should apply when these individuals do not have access to alternative supports [within 12 months].

Recommendation 179

The Victorian Government encourage the National Disability Insurance Agency, in the transition to the National Disability Insurance Scheme, to provide flexible packages that are responsive to people with disabilities experiencing family violence. These packages should incorporate crisis supports and assistance for rebuilding and recovering from family violence [within two years].

Male victims

The Royal Commission recommends that:

Recommendation 180

The Victorian Government publicise and promote the Victims Support Agency in any information campaign relating to family violence as the primary source of assistance for male victims. The agency should also provide appropriate online resources for male victims [within 12 months].

Recommendation 181

The Victims Support Agency continue to receive all police referrals (L17 forms) relating to male victims, including after the establishment of the Support and Safety Hubs. The agency and all other relevant support services should develop joint arrangements to ensure that male victims of family violence are supported in obtaining the help they need [within two years].

Rural, regional and remote communities

The Royal Commission recommends that:

Recommendation 182

The Victorian Government and other relevant parties, in designing the recommended Statewide Family Violence Action Plan and implementing the Commission's other recommendations:

- ▷ give priority to reducing family violence in rural, regional and remote communities
- ▷ improve access to services by victims and perpetrators of family violence in such communities
- ▷ investigate and fund the use of technological solutions to provide access to service providers—among them those with experience in safety planning and counselling
- ▷ when contracting for and funding services in these communities, recognise:
 - ▷ the importance of building the capacity of universal services to deliver family violence services in order to facilitate an effective, locally based response
 - ▷ the need for flexibility in contracting and funding arrangements in order to facilitate collaboration between different services and providers.

Women in prison

The Royal Commission recommends that:

Recommendation 183

Corrections Victoria review the current processes for identifying female offenders at risk of or with a history of family violence and respond through therapeutic interventions and education programs [within 12 months].

Recommendation 184

Corrections Victoria ensure that therapeutic interventions such as individual counselling and group-based programs such as Out of the Dark are available for all women in prison who have experienced family violence [within 12 months].

Recommendation 185

Corrections Victoria [within 12 months]:

- ▶ inform post-release support services if a prisoner has a history of family violence victimisation to ensure that post-release accommodation arrangements do not place the prisoner at increased risk
- ▶ refer prisoners who have been victims of family violence to family violence services when they are being released.

Women working in the sex industry

The Royal Commission recommends that:

Recommendation 186

Victoria Police amend the Victoria Police Code of Practice for the Investigation of Family Violence to describe the difficulties women in the sex industry face in reporting family violence to police and how to take those difficulties into account when investigating family violence perpetrated against these victims [within 12 months].

Prevention

The Royal Commission recommends that:

Recommendation 187

The Victorian Government ensure that the Commission's recommended Statewide Family Violence Action Plan includes a primary prevention strategy [within 12 months] that should:

- ▶ be implemented through a series of three-year action cycles
- ▶ refer to actions to be taken and be accompanied by performance measures
- ▶ guide and be guided by the Victorian Government's Gender Equality Strategy
- ▶ be supported by dedicated funding for family violence primary prevention.

Recommendation 188

The Victorian Government resource an initiative (either inside or outside government) [within 18 months] to:

- ▷ oversee prevention of family violence activities in Victoria
- ▷ provide policy and technical advice to policy makers—including government—on primary prevention
- ▷ provide to organisations technical advice and expertise on building primary prevention in their organisations and within communities
- ▷ coordinate research that builds evidence around the primary prevention of all forms of family violence
- ▷ ensure that accredited workforce development training in primary prevention is available through registered training organisations.

This Victorian initiative should be undertaken in close collaboration with Our Watch, ANROWS (Australia’s National Organisation for Women’s Safety) and other relevant bodies.

Recommendation 189

The Victorian Government mandate the introduction of respectful relationships education into every government school in Victoria from prep to year 12. Implementation should be staged to ensure school readiness and to allow for ongoing evaluation and adaptation. It should be delivered through a whole-of-school approach and be consistent with best practice, building on the evaluation of the model being tested by the Department of Education and Training through Our Watch [within five years].

The workplace

The Royal Commission recommends that:

Recommendation 190

The Victorian Government ensure that the inclusion of family violence leave in all public sector enterprise agreements is accompanied by access to suitable support services and referrals, as well as adequate planning, training and resources to equip managers and human resources staff to communicate and implement the leave entitlements.

Recommendation 191

The Victorian Government, through the Council of Australian Governments, encourage the Commonwealth Government to amend the National Employment Standards in Part 2-2 of the *Fair Work Act 2009* (Cth) to include an entitlement to paid family violence leave for employees (other than casual employees) and an entitlement to unpaid family violence leave for casual employees [within 12 months].

Recommendation 192

On receipt of Our Watch's Workplace Equality and Respect Project final report, the Victorian Government should:

- ▷ begin implementing best-practice workplace programs in all public sector workplaces in order to:
 - ▷ enable them to build respectful and gender equitable cultures
 - ▷ ensure that they have suitable policies for family violence victims
 - ▷ provide adequate responses to and not allow for collusion with family violence perpetrators
 - ▷ build skills and support staff in taking bystander action
- ▷ support the maintenance of the project's proposed web-based portal or database of program models, tool kits, training resources and packages for application and use in all workplaces
- ▷ review and report on options for using existing regulatory frameworks and government procurement policies to support all Victorian employers in implementing best-practice family violence policies [within 12 months of receipt of the final report].

Sustainable and certain governance

The Royal Commission recommends that:

Recommendation 193

The Victorian Government establish a governance structure for implementing the Commission's recommendations and overseeing systemic improvements in family violence policy [within two years]. The structure should consist of:

- ▷ a bipartisan standing parliamentary committee on family violence
- ▷ a Cabinet standing sub-committee chaired by the Premier of Victoria
- ▷ a family violence unit located in the Department of Premier and Cabinet
- ▷ a Statewide Family Violence Advisory Committee
- ▷ Family Violence Regional Integration Committees, supported by Regional Integration Coordinators
- ▷ an independent Family Violence Agency established by statute.

Recommendation 194

The Cabinet Family Violence Sub-committee advise Cabinet on the Statewide Family Violence Action Plan based on the Commission's recommendations and be responsible for:

- ▷ specifying outcomes for achievement relating to prevention, early intervention and responses to family violence, supporting victims (including in their long-term recovery), and holding perpetrators to account
- ▷ proposing priorities for expenditure
- ▷ setting performance targets.

The sub-committee should report regularly to Cabinet on progress in implementing the plan [within 18 months].

Recommendation 195

The Victorian Government require all ministers to report regularly on the risks and opportunities in their portfolio relevant to family violence. The charter letters of all ministers should require them to consider the effect of proposed policies or legislation in their portfolios on the Statewide Family Violence Action Plan and family violence [within 12 months].

Recommendation 196

The Victorian Secretaries Board institute working arrangements—for example, the establishment of a sub-committee—to support effective oversight of family violence prevention and responses. Membership of the sub-committee should include the Secretaries of Treasury and Finance, Justice and Regulation, Health and Human Services, and Education and Training, the Chief Commissioner of Police and the Chief Executive Officer of Court Services Victoria. The sub-committee should be chaired by the Secretary of the Department of Premier and Cabinet [within 12 months].

Recommendation 197

The Victorian Secretaries Board advise the government [within 12 months] on all measures to be taken to develop, implement and coordinate the Statewide Family Violence Action Plan (including any adaptations that should be made to the plan in the future), among them:

- ▶ preparation of a 10-year industry plan for family violence prevention and response
- ▶ areas where joint budget bids should be made in order to give effect to new proposals
- ▶ collection, sharing and use of information to enhance system performance
- ▶ means of ensuring aligned policy development and implementation, as well as avoiding gaps and overlaps in departmental service provision
- ▶ oversight, development and adaptation of regional structures to give effect to the Statewide Family Violence Action Plan
- ▶ development of processes for identifying Commonwealth and state and territory funding expended on matters relevant to family violence—including funding expended on universal services that are relevant to family violence and the cost of grants made for family violence-related projects
- ▶ a strategy for purchasing or modifying data collection systems relevant to family violence—including systems used by Victoria Police, the Magistrates' Court of Victoria, the Children's Court of Victoria and the Department of Health and Human Services—to ensure there is capability to link information relevant to the safety of victims of family violence and their children.

Recommendation 198

The Victorian Government establish a family violence unit within the Department of Premier and Cabinet to support the work of the Cabinet Family Violence Sub-committee, the Victorian Secretaries Board, and the Statewide Family Violence Advisory Committee. The unit will lead whole-of-government work with other departments and policy units with family violence responsibilities (including the Office for Women) and should be responsible for ensuring that Victoria meets its obligations under the National Plan to Reduce Violence against Women and their Children [within 12 months].

Recommendation 199

The Victorian Government establish an independent statutory Family Violence Agency [by 1 July 2017] to:

- ▷ monitor and report on implementation of the Commission's recommendations and of the Statewide Family Violence Action Plan
- ▷ provide expert policy advice on family violence at the request of Cabinet, the Premier or the Victorian Secretaries Board
- ▷ undertake and commission applied research, policy and evidence reviews and conduct own-motion inquiries into the operation of the family violence system
- ▷ liaise with relevant Commonwealth government and national agencies in developing policy and practice to enhance primary prevention efforts and improve responses to family violence
- ▷ establish a means by which service providers can share information about programs
- ▷ liaise with the Crime Statistics Agency and other agencies to coordinate data collection and sharing for the purposes of assessing the overall performance of systems that respond to family violence.

Recommendation 200

The Victorian Government re-establish the Violence against Women and Children Forum as the Statewide Family Violence Advisory Committee to advise the government on family violence policy and service provision [within 12 months]. The committee should include representation from experts, victims of family violence and system advocates with perspectives on both prevention of and support for victims of family violence. Consultation with the committee should inform the evolution and implementation of the Statewide Family Violence Action Plan.

Recommendation 201

The Victorian Government and agencies that respond to family violence identify and develop safe and constructive ways to ensure that the voices of victims are heard and inform policy development and service delivery [within two years].

Recommendation 202

With the advice of the Family Violence Agency, the Victorian Secretaries Board Family Violence Sub-committee consider how to ensure that local council performance measures are used to encourage local council activities designed to prevent family violence and to assess the outcomes of any services they provide to victims and perpetrators of family violence [by 1 July 2018].

Data, research and evaluation

The Royal Commission recommends that:

Recommendation 203

The Victorian Government work with organisations it funds to provide family violence services, to improve evaluation standards [within 12 months] by, among other things:

- ▶ ensuring that where an evaluation is anticipated or expected, resources are provided to allow for the evaluation, including funding for the evaluation itself and for the design and/or implementation of processes and systems to support data collection
- ▶ ensuring that the initial period for which a program is funded contains a period of service delivery that is long enough to support a thorough evaluation of the program
- ▶ resourcing those delivering initiatives to conduct 'action research' during the life of the program, so that adaptations can be made to improve data collection and service delivery
- ▶ publishing evaluation outcomes where appropriate.

Recommendation 204

The Victorian Government work with the recommended Family Violence Agency and the Crime Statistics Agency to improve statewide family violence data collection and research [by 1 July 2018], including through:

- ▶ setting a strategic direction and addressing recurrent data gaps
- ▶ developing a statewide data framework, informed by relevant Commonwealth standards—for example, relevant Australian Bureau of Statistics frameworks such as the National Data Collection and Reporting Framework guidelines and ANROWS (Australia's National Research Organisation for Women's Safety) guidance. This should include shared data definitions and performance indicators, guidelines on the collection of demographic information—in particular, on older people, people with disabilities and people from Aboriginal and Torres Strait Islander, culturally and linguistically diverse and lesbian, gay, bisexual, transgender and intersex communities—and shared best-practice and auditing standards and procedures to foster consistency and quality among Victorian data sets
- ▶ exploring opportunities for data linkage between existing data sets and other enhancements to increase the relevance and accessibility of existing data
- ▶ holding regular stakeholder meetings to review the function and quality of the Victorian Family Violence Database.

Recommendation 205

The Crime Statistics Agency maintain and develop the Victorian Family Violence Database and consider what additional data sets should be incorporated in the database, how links between all relevant data sets can be created, and how the database can otherwise be developed [within 18 months].

Recommendation 206

The Victorian Government continue to fund ANROWS (Australia's National Organisation for Women's Safety) to do research in relation to preventing and responding to family violence.

Industry planning

The Royal Commission recommends that:

Recommendation 207

The Victorian Government develop or commission the development of a 10-year industry plan for family violence prevention and response in Victoria, to be delivered by 31 December 2017, with commensurate funding for workforce transition and enhancement to begin from that date. The plan should cover:

- ▶ the workforce requirements of all government and non-government agencies and services that have or will have responsibility for preventing or responding to family violence—among them specialist family violence services, perpetrator interventions, police, legal and justice services, and universal and secondary service systems
- ▶ remuneration, capability and qualifications, workforce diversity, professional development needs, career development and workforce health.

Recommendation 208

The Australian Association of Social Workers amend the Australian Social Work Education and Accreditation Standards to require that a 'working with family violence' subject be required as a component of the core curriculum in all social work undergraduate degrees [within two years].

Recommendation 209

The Victorian Government include in the 10-year industry plan for family violence prevention and response a staged process for the introduction of mandatory qualifications for specialist family violence practitioners, so that no later than 31 December 2020 all funded services must require family violence practitioners to hold a social work or equivalent degree [within five years].

Recommendation 210

The Victorian Government encourage the Commonwealth Government to extend the HECS-HELP benefit scheme to graduates employed in specialist family violence services and associated services (such as community legal services that provide legal services to victims of family violence) [within 12 months].

Recommendation 211

The Victorian Government ensure that advanced family violence practitioner positions are established at each of the 17 recommended Support and Safety Hubs [by 1 July 2018]. As an immediate measure, additional resources should be provided to existing services, so that they can provide additional secondary consultation to universal services until the practitioner positions are established.

Recommendation 212

The Victorian Government determine the best means of delivering comprehensive workforce development and interdisciplinary learning about family violence across the health, human services and justice sectors. This should include consideration of the New South Wales Education Centre Against Violence model [within two years].

Recommendation 213

The Victorian Government establish family violence principal practitioner positions in the Department of Health and Human Services, the Department of Education and Training and the Department of Justice and Regulation [by 31 December 2016].

Recommendation 214

The Victorian Attorney-General consider, when recommending appointments to the magistracy, potential appointees' knowledge, experience, skills and aptitude for hearing cases involving family violence, including their knowledge of relevant aspects of federal family law [within 12 months].

Recommendation 215

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

Recommendation 216

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

Investment

The Royal Commission recommends that:

Recommendation 217

The Victorian Government introduce in the 2017–18 State Budget additional output performance measures relating to the prevention of family violence and the assistance provided to victims and perpetrators in order to increase the visibility of family violence in budgetary processes.

Recommendation 218

The Victorian Government, in preparing the Statewide Family Violence Action Plan, consider whether further changes should be made to budget systems to better reflect the central role of government in preventing and responding to family violence [within 12 months].

Recommendation 219

The Victorian Government [within 12 months]:

- ▷ commission or itself perform rigorous and consistent measurement of the cost of family violence to government, the community and individuals
- ▷ require departments and agencies to establish consistent methods of collecting data—including data on costs incurred by generalist services—on activities relating to family violence prevention and response and include that information in their annual reports.

Recommendation 220

The Victorian Government ensure that the recommended Statewide Family Violence Action Plan emphasises prevention, early intervention and supporting the long-term recovery of victims. It should also identify the funding that will be required to pursue these goals [within 18 months].

Recommendation 221

In the 2016–17 State Budget the Victorian Government give priority to:

- ▶ providing an immediate funding boost to increase the capacity of specialist family violence services and Integrated Family Services to respond to existing demand
- ▶ implementation of the Commission's recommendations that relate to that budget period.

Recommendation 222

The Victorian Government treat the extension of the National Partnership Agreement on Homelessness as a matter of urgency and pursue it immediately with the Commonwealth Government [within 12 months].

Recommendation 223

The Victorian Government develop a demand-modelling tool or set of indicators to be used for planning how government as a whole and relevant departments and agencies themselves (including those providing or funding universal services) respond to family violence [within two years]. Budget processes should take account of the cost of forecast demand.

Recommendation 224

The Victorian Secretaries Board develop and promulgate principles for purchasing services that will contribute to achieving the goals of the Statewide Family Violence Action Plan [within 18 months]. These principles should include:

- ▶ measures to encourage service providers to collaborate in order to enable clients to receive a broader range of services
- ▶ ways of simplifying pathways of support
- ▶ ensuring victims and their children have access to a comprehensive range of services, regardless of where they live in Victoria
- ▶ allowing sufficient time for piloting, evaluation and adaptive management of new programs.

Recommendation 225

The Victorian Government require departments and agencies to introduce measures of contractual performance by service providers that more accurately reflect the objectives of ensuring victims' safety, preventing family violence and supporting those affected by it, and keeping perpetrators accountable [within 12 months].

Recommendation 226

Victorian government departments and agencies establish processes for regular overview and evaluation of funded services and programs, based on the recommended principles adopted by the Victorian Secretaries Board. The processes should involve independent experts as well as departmental staff [within 12 months].

Recommendation 227

The Victorian Government investigate options for increasing its capacity to invest in preventing and responding to family violence, including by:

- ▷ redirecting existing revenue sources towards family violence expenditure
- ▷ identifying new revenue sources
- ▷ exploring the possibility of entering into a partnership agreement with the Commonwealth Government in areas of overlapping responsibility.

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into Family Violence

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into Family Violence

Volume I

Report and recommendations

March 2016

Royal Commission into Family Violence Volume I

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The Hon. Marcia Neave AO – Commissioner
Patricia Faulkner AO – Deputy Commissioner
Tony Nicholson – Deputy Commissioner

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Royal Commission
into Family Violence

The Hon. Linda Dessau AM
Governor of Victoria
Government House Drive
Melbourne Victoria 3004

29 March 2016

Your Excellency

In accordance with the Letters Patent dated 22 February 2015 and amended Letters Patent dated 23 December 2015, we have the honour of presenting to you the report and recommendations of the Royal Commission into Family Violence.

Yours sincerely,

The Hon. Marcia Neave AO
Commissioner

Patricia Faulkner AO
Deputy Commissioner

Tony Nicholson
Deputy Commissioner

Contents

| | |
|---|-----|
| Acknowledgements | vii |
| 1 The Royal Commission and its work | 1 |
| 2 The nature, dynamics and effects of family violence | 15 |
| 3 Key family violence data | 47 |
| 4 Family violence policies and service responses: a brief history | 63 |
| 5 Systems overview | 75 |
| 6 Risk assessment and management | 95 |
| 7 Information sharing | 155 |
| Appendix A Letters Patent and terms of reference | 205 |
| Appendix B Amendment to Letters Patent | 209 |
| Appendix C Statement of expenditure | 211 |
| Appendix D Witness list | 213 |
| Appendix E Hearing modules | 221 |
| Appendix F Lay witnesses | 223 |
| Appendix G Roundtable discussions: topics and participants | 267 |
| Glossary | 271 |

Acknowledgements

Together with my fellow Commissioners, Patricia Faulkner AO and Tony Nicholson, we thank the many people who contributed to the work of the Commission. Some of these contributors have been personally affected by family violence, others came from organisations that provide support to victims of family violence and work with perpetrators. We are very grateful to all those who attended our community consultations, who made submissions to the Commission, who appeared at our public hearings, and who attended our roundtables.

In just over a year the Commission had to establish an office, appoint staff, absorb submissions, conduct consultations and public hearings and undertake research and analysis. Some staff members were with us for the whole of the Commission's term, others joined us for extended periods, and yet others contributed intensely over short periods. We could not have completed our final report without the extraordinary dedication, knowledge and hard work of all of these people. We thank them all.

The Commission's Chief Executive Officer, Mary Polis, provided exceptional leadership, advice and support. She managed Commission staff with calm and confidence, and her intellectual rigour and ideas contributed to all aspects of the report. As well as overseeing the operations of the Commission, she drafted a number of chapters and gave helpful guidance on the structure of others. She also liaised with government.

From the beginning the Commission was aware of the benefit of learning from the many dedicated people who have worked in the area of family violence over many years, as well as the importance of hearing from people affected by family violence. We also sought to inform the community about the prevalence and effects of family violence and to encourage individuals and organisations to become involved in its prevention. Our Director of Community Engagement, Annie Tinney, was responsible for overseeing our community consultation and submission processes. Annie brought a wealth of experience about policy development and community engagement processes. She oversaw the production of our final report, and managed our support team so that they were able to meet tight deadlines, despite their heavy workload. The work she did and her advice to the Commissioners was invaluable.

Lana Kolyunski took primary responsibility for arranging visits around Victoria and contacting local groups to identify the individuals and organisations with whom we should consult, as well as making sure this was a sensitively handled process. Annie and Lana were ably supported by Clare Cartledge, Emma Choy, Amy Shields and Lucy Larkins, who were unfailingly professional and adept in helping to organise our consultations, manage our submission process, assist with report production and respond to the many queries we received about the work of the Commission. Tracey Matters, our Media and Communications Manager, was vital in raising awareness of the problems of family violence with the public, and liaising with the press, especially during the public hearings. Tracey played a significant role in ensuring the quality of the design and printing the final report.

An effective response to family violence requires familiarity with a very wide range of subject areas. The Commission also had to understand and absorb the vast amount of information collected through our consultations, submissions, public hearings and roundtables. Our Research and Policy Team, headed by Michelle Burrell, rose to that challenge. Michelle challenged received wisdom and came up with original policy ideas. She inspired and supported the members of her team, oversaw the production of all drafts of the chapters in our report and wrote a number of chapters herself. Her ideas, enormous energy and leadership played a major role in shaping the final report.

Our researchers and writers included Rachael Green, Anthony Lawrie, John Maloney, Elda Colagrande, Hilary Little, Sally Finlay, Jacinth Pathmanathan, Becky Batagol, Alexia Staker, Amber Witcher and Dana Rechtman. We benefited greatly from their expertise, dedication and sheer hard work, which frequently involved them working late at night and over weekends. Tim McCarthy, our part-time librarian managed the large number of Commission resources. Our researchers were supported by a number of other contributors and a knowledgeable and skilled group of editors, led by Sam Horsfield, Kristie Dunn and Chris Pirie. Our thanks also go to the Crimes Statistics Agency for assistance with the statistics in the final report.

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Our Counsel Assisting, Mark Moshinsky QC, now the Honourable Justice Moshinsky, Rachel Ellyard and Joanna Davidson, assisted the Commission during our public hearings in July/August and October 2015. Together with our legal and research teams, they identified the major issues to be explored and the witnesses who were called. The team was required to adapt hearing procedures to the policy nature of our terms of reference and did so superbly. The process of hearing witnesses concurrently to test differences of opinion enabled us to hear from a very large number of experts over a comparatively short period. The work of our legal team and Counsel Assisting helped us to refine our policy thinking in many ways.

Our thanks go to my Executive Associate, Joanna Rolfe, a former family lawyer who was well informed on the subject content and has magnificent organisational skills. Joanna performed many different functions, including providing high level support to all three Commissioners, drafting chapters for the final report, and assuming the lead on tipstaff duties during hearings. We are very grateful for her work.

We thank our corporate services team, headed by Kaye Fox, who managed all of the Commission's procurement and operational requirements. Kaye was ably supported by Pia Lindgren and Lisa Burke who together attended to the wellbeing of our team throughout the year. The Commission received considerable support from icourts, notably Kirsty Duncan and Ashley White, with our submission processes, public hearings and report compilation. The Commission received valuable IT support from Louis Carstens and Asanka Ranawaka from Dimension Data.

Finally, we thank the capable and dedicated interns, junior law graduates and other people who performed particular tasks for the Commission over short periods. We have not mentioned them by name, but acknowledge their substantial contribution.

The Hon. Marcia Neave AO
Commissioner

1 The Royal Commission and its work

Establishment

Family violence is a pervasive social harm, which blights the lives of many Victorians. To build on past reforms and to propose new ways of preventing family violence and supporting victims, the Royal Commission into Family Violence was established by Letters Patent issued by the Governor of Victoria, on advice from the Premier, on 22 February 2015. The Letters Patent appointed The Hon. Marcia Neave AO as Commissioner and Chairperson and Ms Patricia Faulkner AO and Mr Tony Nicholson as Deputy Commissioners.

This was the first royal commission to be established and conducted under the *Inquiries Act 2014* (Vic).

The terms of reference for the inquiry are set out in the Letters Patent (see Appendix A). The Commission was asked 'to inquire into and report on how Victoria's response to family violence can be improved by providing practical recommendations to stop family violence'. The terms of reference required the Commission to do the following:

- ▷ examine and evaluate strategies, frameworks, policies, programs and services and establish best practice for four areas—the prevention of family violence; early intervention to identify and protect those at risk of family violence and prevent the escalation of family violence; support for victims of family violence and measures to redress the impacts on victims, particularly on women and children; and accountability for perpetrators of family violence
- ▷ investigate means of ensuring systemic responses to family violence, particularly in the legal system and by police, corrections, child protection, legal and family violence support services—including reducing re-offending and changing violent and controlling behaviours
- ▷ investigate how government agencies and community organisations can better integrate and coordinate their efforts
- ▷ make recommendations on how best to evaluate and measure the success of strategies and programs put in place to stop family violence.

The Commission was also asked to consider the need to establish a culture of non-violence and gender equity and the needs and experiences of all those affected by family violence—among them children; older people; Aboriginal and Torres Strait Islander communities; culturally and linguistically diverse communities; gay, lesbian, bisexual, transgender and intersex communities; regional, rural and remote communities; and people with disabilities and complex needs. In addition, the Commission was asked to consider the necessity for short, medium and long-term solutions to the problem of family violence and the need for coordination across jurisdictions.

The Commission was originally asked to report its findings and recommendations to the Governor of Victoria by 29 February 2016. On 23 December 2015, following a request by the Commission, the Governor amended the Letters Patent to extend the reporting date to 29 March 2016. Appendix B is the amendment to the Letters Patent.

The Letters Patent authorised the Commission to incur expenses and financial obligations up to \$36 million. The Commission's estimated total expenditure was \$13.5 million. A statement of expenditure appears at Appendix C.

The Commission's processes

The Commission's processes reflected the distinctive nature of the terms of reference, which called for recommendations on matters of policy, rather than factual findings about particular past events. It was, therefore, important to consult victims of family violence and people and organisations with experience in assisting victims and perpetrators of family violence. The Commission also held expert roundtable discussions to canvass policy considerations relevant to such violence. This occurred alongside the formal processes of receiving evidence from witnesses during the public hearings that are more commonly associated with royal commissions.

The Commission was operating during a period of frequent changes to policy and practice and continuing community discussion about family violence. We adapted our program and lines of inquiry as new research findings were released and new initiatives were announced. Some changes closed off areas of inquiry; for example, we did not consider enforcement of interstate family violence intervention orders because this requires the involvement of all states and territories and is being pursued by the Council of Australian Governments.

The Commission also aimed to ensure that it raised awareness about the prevalence, incidence and effects of family violence and about the activities and deliberations of other organisations working to address it. The public hearings were broadcast live over the internet, and submissions, witness statements and hearing transcripts were published on our website.

Although the task was challenging, a number of positive factors contributed to the Commission's ability to conduct a detailed and thorough inquiry. First, we were able to build on an existing body of knowledge, research and analysis. Secondly, we learnt from people with expertise in and experience of current responses to family violence, both in Victoria and elsewhere, who came to us with an enormous optimism, vigour and commitment to the people they assist and to the task of ending family violence. We learnt a great deal from them. Thirdly, we worked in an environment in which the general community also shared a commitment to improving Victoria's response to family violence and a willingness to work towards this objective.

Because the Commission's task was to identify practical measures for improving the response to family violence, the public hearings, submissions and consultations focused on identifying good practices and on improving system-wide responses to family violence. Although the people we consulted had the shared goal of reducing and preventing family violence and reducing its damaging effects, they did not necessarily agree on how to achieve that goal. The Commission was committed to exploring competing views and contested ideas and to facilitating constructive debate. We hope, as a result, that people have found new areas of common ground and new opportunities for collaboration.

We were conscious that our processes placed demands on organisations that struggle daily to meet high demand for their services and have few or no resources to dedicate or divert to things such as writing submissions and attending consultations and hearings. Many services and individuals have been calling for reform of family violence policy for years—if not decades.

We were also aware that, by inviting individuals to share their experiences of family violence, there was a risk we would delay their recovery from its effects. Throughout the inquiry we aimed to deal supportively and respectfully with people affected by family violence and to make their experience of being heard as positive as possible.

Submissions

The Commission called for written submissions responding to its terms of reference and fixed a closing date of 29 May 2015. This date was chosen to give people as much time as possible to prepare their submissions, while ensuring that we were able to read and analyse the submissions before the public hearings began in July 2015.

On 31 March 2015 the Commission released an issues paper to guide organisations and individuals in the preparation of their submissions. The paper posed a series of questions arising from the terms of reference that people could use for guidance if they wished. No format was prescribed for the submissions: they could be typed or handwritten and lodged through the Commission's website or provided by email, post or hand delivery. We also provided an assisted submissions service for people who could not easily make written submissions; they were able to make their submission orally, and it was written up by a member of the Commission's staff.

The Commission was keen to receive submissions from a wide range of individuals and organisations—including people directly affected by family violence, those working in services that assist people experiencing violence, representatives of government agencies, business and the community, and experts working in relevant fields. In all, 968 submissions were received. Of these, 491 were from individuals and 477 were from organisations. Thirty-three people made assisted submissions. After the submissions had been read and analysed, and requests for confidentiality or anonymity taken into account, the majority of submissions were published on the Commission's website. This was done on a rolling basis.

The submissions covered a wide variety of topics, reflecting the breadth of the terms of reference, the complexity of the factors that affect family violence, and the diversity of experience, expertise and interest in family violence. They played a very important part in the work of the Commission, contributing directly to the questions examined during the public hearings and in roundtables, and are drawn on extensively in this report.

The Commission is indebted to all who prepared submissions and grateful for the efforts people made to bring relevant, thoughtful material to our attention. We are particularly grateful to the individuals who used their personal, often traumatic, experiences as a basis for proposing changes to policy and service responses to family violence. Some did so by writing their own submissions; others' stories were provided by organisations that compiled case studies. These accounts ensured we were constantly reminded of the personal toll of family violence and of what had or had not helped people affected by such violence.

Community consultations

The Commission held most of its community consultation sessions between 21 April and 7 July 2015. (Several sessions were held after this to accommodate sessions that could not be scheduled during the main consultation phase.) A four-week campaign plan to advertise the consultations began on 13 April 2015. For safety reasons, we did not disclose the locations, dates or venues of the consultations in advertisements, which appeared in Melbourne and regional newspapers; instead, people interested in attending were asked to call the Commission's inquiry line to register their interest. In addition to the public advertisements, the Commission liaised with the Regional Integration Coordinators funded by the Department of Health and Human Services to ensure that information about the consultations was circulated through local family violence services and networks.

Nearly 850 people attended the 44 consultation sessions, which were held in 21 locations in metropolitan Melbourne and regional Victoria. They included individuals who had experienced family violence as well as representatives of organisations working in the family violence system.

The people the Commission heard from who had directly experienced family violence included people from Aboriginal and Torres Strait Islander communities, women from culturally and linguistically diverse communities, women with disabilities, older people abused by family members, women in prison, sex workers, and men who had been affected by family violence or who had themselves been violent. People attending the sessions were invited to speak of their experiences—where they had first sought help, what had worked well for them, what had not worked well, and what improvements might be made in future. The discussions were generally held in small groups, with the commissioners moving from table to table to listen and ask questions. Psychologists attended each of the sessions to provide support when necessary.

In the consultations with people who come in contact with family violence through their work, the Commission heard from representatives of specialist family violence services and mainstream organisations, judicial officers, child protection workers, police, academics, maternal and child health nurses and other health professionals, faith leaders, teachers, lawyers, court staff, people working with children and young people, and representatives of Aboriginal and Torres Strait Islander communities and the lesbian, gay, bisexual, transgender and intersex communities. Generally, people attending the sessions were invited to choose their preferred topic of discussion—prevention and early intervention or safety and accountability. The topics were then discussed in small groups, each group being asked to consider three or four questions. As with the other sessions, the commissioners moved from table to table to listen and ask questions. A plenary was held at the end of each session. A spokesperson from each table reported back to the whole group on the main three or four areas for improvement identified at their respective tables. At the end of the plenary Commissioner Neave summarised the feedback.

Professional facilitators were engaged to facilitate the majority of the consultation sessions, and Commission staff attended all sessions to act as scribes at each of the tables. Information from the consultations, along with that from written submissions, helped shape the public hearings program and witness list, and was also used in the development of this report and the Commission's recommendations.

The consultations afforded individuals and organisations an opportunity to express their views and offer their ideas in an open and informal way. Often the process also led to individuals affected by family violence, as well as people working in the area of family violence, meeting each other for the first time. After some of the meetings participants told us they intended to maintain these contacts. The Commission hopes that some of these relationships have continued: as well as eliciting valuable information, the consultations were intended to encourage informal contact and information sharing between service providers who might not otherwise have worked together.

The Commission thanks all those who attended the consultation sessions and shared their experiences and expertise.

Briefings and site visits

The Commission received informal briefings from experts and visited a range of organisations during the course of its inquiry. The following people provided briefings:

- ▷ judges and magistrates
- ▷ chief executives and other leaders of both specialist organisations in the family violence sector and mainstream services involved with family violence
- ▷ senior representatives of Victoria Police
- ▷ senior representatives of government and statutory bodies
- ▷ academics and researchers
- ▷ individuals directly affected by family violence-related homicides
- ▷ representatives with expertise in particular aspects of family violence systems in New South Wales, South Australia, Tasmania, the Australian Capital Territory (including Commonwealth government representatives), New Zealand, the United Kingdom and the United States.

The Commission conducted site visits at a number of locations:

- ▷ Dandenong, Frankston, Ballarat and Kyneton Magistrates' Courts
- ▷ specialist family violence services—including refuges
- ▷ the premises of Aboriginal and Torres Strait Islander organisations
- ▷ schools
- ▷ police stations
- ▷ sexual assault multi-disciplinary centres
- ▷ the premises of mainstream organisations providing family violence services
- ▷ a session of a men's behaviour change program
- ▷ classroom observation of family violence training at the Victoria Police Academy.

It also visited South Australia, New South Wales and the Australian Capital Territory.

The Commissioner spent an afternoon and evening following a police van and observing how Victoria Police members respond to family violence incidents. Both Deputy Commissioners also spent time speaking to police members at different stations and observing general police duties and police family violence teams. In addition, Commission staff and Counsel Assisting participated in a training session on the Family Violence Risk Assessment and Risk Management Framework (also known as the Common Risk Assessment Framework or the CRAF), conducted by Domestic Violence Resource Centre Victoria.

These visits and briefings were invaluable in bringing to life matters canvassed in the more formal processes. They alerted us to the practical problems that arise when supporting victims of family violence and allowed us to ask detailed questions of experts. This helped guide the development of our research agenda and the content of our public hearings. Everyone who spoke to the Commission in this informal way was generous with their time and insights.

Public hearings

As noted, the task of this Royal Commission was to set directions for future family violence policy, rather than carrying out a forensic investigation into the cause or occurrence of a particular event with a view to determining fault or liability. Public hearings were used to highlight policy debates about the best way forward, and witnesses were sometimes asked to give evidence alongside each other in order to explore differences in proposed policy approaches.

Although the primary purpose of all the Commission's processes was to identify how responses to family violence could be improved, we also sought to increase community awareness of the nature, dynamics, prevalence and effects of family violence. We took this into account in arranging the public hearings, issuing regular press releases describing the evidence given at the hearings and streaming the proceedings live on the internet—except for the evidence of lay witnesses, whose evidence was subject to restricted publication orders. Transcripts of proceedings and relevant witness statements were placed on our website on the working day following each day of hearings.

In March 2015 the Commission appointed Mr Mark Moshinsky QC (now the Hon. Justice Mark Moshinsky), Ms Rachel Ellyard and Ms Joanna Davidson as Counsel Assisting the Commission. Their primary role was to oversee the public hearing process, including developing topics for discussion, selecting and preparing witnesses, and examining witnesses. They also attended several community consultation sessions, and the Commission briefed them in detail about subjects raised throughout the consultations, in submissions and in the relevant literature. The Commission expresses its gratitude for the hard work, expertise and assistance of its Counsel.

The Commission invited applications for leave to appear. The only party granted leave to do so was the State of Victoria, which assisted in the selection of state witnesses, prepared the witness statements and attended the hearings but, by agreement, left the questioning of witnesses to Counsel Assisting and the commissioners. This contributed to the Commission operating in a non-adversarial manner, which was consistent with its function of making recommendations on policies and systems reform. We are most grateful for the cooperation of Ms Rowena Orr QC, Counsel for the State of Victoria, and her team, who helped us achieve this goal.

Twenty-five days of public hearings were held during a four-week period in July–August 2015 and a week in October 2015. Two-hundred and twenty individual witnesses gave evidence, sometimes on multiple occasions (see Appendix D). Many witnesses appeared as members of panels; 13 witnesses appeared via video link and two by telephone.

The hearings were organised around 23 modules that focused on specific topics (see Appendix E) but did not cover or purport to cover all the matters to be considered by the Commission. Some of the matters in this report were not covered in the public hearings. Where appropriate, such topics were discussed at roundtables or through other forms of consultation.

The Commission invited eight individuals who had direct experience of family violence, either as a victim or, in one instance, as someone who had used violence, to give evidence about their experiences of current responses to family violence. A ninth person provided a written statement. The Commission refers to these witnesses as 'lay witnesses', and they were all assigned pseudonyms. The purpose of their evidence was to highlight strengths and weaknesses in services' and agencies' responses to family violence. Eight of the nine lay witness statements are presented in Appendix F; for safety reasons, one of the statements remains unpublished.

The Commission is very grateful to all people who provided statements and appeared as witnesses. They contributed substantial amounts of time to the hearings process, both in the preparation of their witness statements in advance and on the day or days of their attendance. The Commission offers particular thanks to front-line staff in organisations and agencies, who candidly and generously explained their work and insights, and to the individuals who so bravely described private and traumatic experiences in the hope that this would help others in the future.

Roundtable discussions

The Commission held six roundtable discussions on specific topics in the period between the two blocks of public hearings. The aim was to delve more deeply into topics that had been touched on in the public hearings. A list of roundtable discussions and the individuals who attended is provided in Appendix G.

Each roundtable discussion was attended by between six and 11 participants, as well as commissioners and staff of the Commission. Among the participants were judges, magistrates, academics, current and former representatives of government agencies, policy-makers and service providers. The sessions were kept confidential in order to facilitate the candid exchange of views and ideas. The information gathered was, however, used in preparing this report and the Commission's recommendations. The contents of the sessions are referred to throughout the report, but comments are not attributed to individual participants.

Commissioned research

In addition to relying on the work of our research team, we commissioned two pieces of research—a report on family violence trends in Victoria from 2009–10 to 2013–14 and a report on the impact of family violence proceedings in the Magistrates' Court of Victoria.

The Victorian Family Violence Database trend report 2009–10 to 2013–14

The Victorian Family Violence Database operated between 1999 and 2010 and was the repository for data from a range of sources—Victoria Police, the Magistrates' and Children's Courts, the Magistrates' Court Family Violence Division Courts and specialist family violence courts,¹ the Victims of Crime Helpline and the Victims Assistance and Counselling Program, the Department of Health and Human Services Integrated Risk Information database, the Victorian Supported Accommodation Assistance Program (now the Specialist Homelessness Services Collection), Victorian public hospital emergency departments, the Victorian Civil and Administrative Tribunal, and Victoria Legal Aid.

The most recent publication from the database, covering the period 1999 to 2010, was released in 2012, which means there has been no publicly available compilation of trend data for a number of years. Although the database had many limitations, its cessation has been a major loss for effective policy making. During this time data has continued to be collated, but information has generally been reported separately by each department and agency. Even within the same department or agency there is often more than one database and limited capacity for linking the information held in each source. For example, the Magistrates' Court holds data in separate civil and criminal law databases that are not linked.

To overcome this problem, the Commission sought data from departments under notices to produce and from Victoria Police, agencies, and the Magistrates' and Children's Courts. We then engaged the Crime Statistics Agency to analyse the data and report on family violence trends for the five years from July 2009 to June 2014. This data appears throughout the Commission's report. The agency's report appears in full in Volume VII.

The Commission thanks the Crime Statistics Agency for performing this complex task in a very short time. We would also like to thank the Australian Institute of Health and Welfare for its contribution to the CSA's work.

We note that the Victims Support Agency is working towards the production of more regular and focused data reports from the Family Violence Database (collated by the CSA). This is a positive development.

Understanding family violence proceedings in magistrates' courts

In recent years there has been a big increase in the number and complexity of family violence-related matters initiated in the Magistrates' Court of Victoria. This has placed unprecedented pressure on the operations of the court and on court users. The Commission wanted to gain a better understanding of the substance and outcomes of particular hearings than could be understood from existing data, as well as of the daily impact of family violence cases on the court and its lists. As part of that, we sought to determine whether courts have sufficient capacity to give adequate time and attention to each matter, provide a considered and appropriate outcome, and ensure safety for victims. This information was used to inform many of the recommendations made in this report.

In collaboration with the Magistrates' Court, the Commission engaged Dr Karen Gelb, a researcher and criminologist, to conduct the research, which involved observation of a number of courts in metropolitan and regional locations and analysis of de-identified case data. Access to individuals' files was restricted to court personnel, so ethics approval was not required.

The courts were chosen on the basis of a 'typical' spread of family violence cases in each type of court. The locations chosen were as follows:

- ▷ Ballarat, Family Violence Division—a large regional court; the region's headquarter court; 1044 family violence intervention order applications finalised in 2014–15²
- ▷ Geelong—a large regional court; the region's headquarter court; neither a Family Violence Division nor a specialist court; 1879 FVIO applications finalised
- ▷ Wangaratta—a mid-size regional court; neither a Family Violence Division nor a specialist court; 334 FVIO applications finalised
- ▷ Maryborough—a small regional court; neither a Family Violence Division nor a specialist court; 142 FVIO applications finalised
- ▷ Melbourne—a large metropolitan court; the region's headquarter court, with specialist family violence services; 2656 FVIO applications finalised
- ▷ Sunshine—a busy suburban court, with specialist family violence services; 2907 FVIO applications finalised
- ▷ Dandenong—a large suburban court; neither a Family Violence Division nor a specialist court but does have community-based family violence service providers; the busiest court for finalised FVIO applications in 2014–15, with 3228 finalised applications.³

The research methodology included interviews with judicial officers, court staff, duty lawyers from Victoria Legal Aid and community legal services, police, representatives of specialist family violence services, Court Network volunteers and representatives of other services at each court. Applicant and respondent workers were also interviewed in locations where these services are provided. The Commission thanks participants—and, in particular, the Magistrates' Court of Victoria—for their cooperation and assistance.

Information gathered as a result of Dr Gelb's research appears throughout this report. Her full report is presented in Volume VII.

Interaction with government

The Victorian Government established the Royal Commission Engagement Secretariat within the Department of Premier and Cabinet to coordinate and oversee the government response to the Commission. The Commission's chief executive officer and other staff members met regularly with officers from the secretariat to facilitate access to data and documents. Additionally, the Commission was briefed by government representatives from time to time on work being done in the area of family violence while the Commission was operating.

The Commission also entered into protocols with the government and Victoria Police to define the processes for production of relevant documents. The protocols provided for preliminary discussions to be held with departmental and agency officers to identify the data sets and documents held across government. This was followed by formal requests (including the serving of notices to produce) for production of materials in accordance with the provisions of the Inquiries Act.

Liaison with courts

Along with other agencies and services, Victorian courts play a central role in responding to family violence, protecting those at risk of violence and holding perpetrators to account.

Section 123 of the Inquiries Act provides that a royal commission cannot inquire into or exercise any powers in relation to (among other persons or bodies) a Victorian court, a member of the staff of Court Services Victoria in connection with the performance of judicial or quasi-judicial functions of a Victorian court, and the Director of Public Prosecutions.

The Victorian courts and Court Services Victoria voluntarily made a substantial contribution to the Commission's inquiry through presenting written submissions, providing informal briefings, facilitating court visits, attending roundtable discussions, and providing data and documents. In addition, the President of the Children's Court and four magistrates participated in the Commission's public hearings.

The Commission also received valuable input from the Family Court of Australia and the Federal Circuit Court of Australia through a joint submission and informal briefings. We also arranged a roundtable with judges of the Family Court and the Federal Circuit Court to discuss family violence issues that can arise in the interaction between Family Court, Magistrates' Court and Children's Court proceedings.

The Commission did not seek to inquire into any particular case or the performance of any particular judicial officer of a Victorian court. Similarly, although section 123 does not specifically refer to the Family Court of Australia or the Federal Circuit Court of Australia, the Commission did not seek to inquire into any particular case or the performance of any particular judicial officer of those courts.

Since potential legislative, policy and practice reforms might affect the role and function of the courts, the Commission considered matters relevant to the general operation of these courts without seeking to formally inquire into them. The voluntary contributions of these courts gave the Commission an understanding of their administrative structures, policies, practices and future plans. These are relevant to family violence and the current legal framework. The Commission took into account the perspectives of relevant judicial officers about possible areas for reform and their possible consequences for the courts.

Terminology

A glossary appears at the end of each volume of this report. It is useful, though, to discuss here some of the primary expressions the Commission uses in connection with family violence, affected communities, the police, the courts and service providers.

Language describing violence

'Family violence' is the term used throughout this report to refer to a wide range of behaviours, as defined in the *Family Violence Protection Act 2008* (Vic). The definition is discussed in Chapter 2.

In submissions and evidence some people referred to 'violence against women', 'domestic violence' or 'intimate partner violence'. These terms also appear in the literature. When the Commission is quoting from primary materials it uses those terms as they appear; otherwise, 'family violence' is the expression of choice.

'Domestic violence' is sometimes used to refer to acts of violence between intimate partners and violence in the context of family relationships; it is used in legislation in other jurisdictions and in some parts of the service system in Victoria. 'Intimate partner violence' is commonly used to highlight the predominant manifestation of the violence, which is in the context of intimate partner relationships.

Language about victims and perpetrators

State and national policy and the non-government service sector primarily use the terms 'victim', 'victim/survivor' and 'women and their children who experience violence'.

In Victoria, the majority of applications for family violence intervention orders are now made by Victoria Police. In the case of a police-made application for a family violence intervention order, the term 'affected family member' is used to describe the person who is to be protected by the order, while the term 'other party' is used to describe the person against whom the order is sought. In applications not involving the police, the word 'applicant' is used to describe the person seeking the order and 'respondent' is used to describe the person against whom it is sought. The word 'defendant' is used to describe a person being prosecuted for a family violence offence; the word 'offender' is used to describe a person who has been found guilty of such an offence.

Apart from when legal proceedings are being described, the Commission generally uses the term 'victim' of family violence throughout its report, since this is the term most commonly used in the community. The Commission recognises that some people consider 'victim' problematic because it suggests that people who have experienced family violence are helpless or lack the capacity to make rational choices about how to respond to the violence. The Commission uses 'victim/survivor' to specifically describe people who have experienced sexual assault, which is consistent with the Centres Against Sexual Assault terminology and general terminology in this field.

A broad range of terminology is used in relation to people who use violence, including 'perpetrators' and 'men who use violence'. 'Perpetrator' is the term used in state and national policy. The phrase 'men who use violence' is sometimes used by the non-government sector in Victoria, including organisations that run men's behaviour change programs; this phrase recognises that the majority of family violence that occurs is violence perpetrated by men against women, and it places responsibility for the violence with the man who uses it.

For the purposes of this report, the Commission uses the terms 'people who use violence', 'men who use violence' and 'perpetrator' interchangeably—except when specifically referring to adolescents or women who use violence.

In using the terminology just described, the Commission recognises that family violence should not define victims and their futures. Nor should it define the perpetrator for life: the aim must be to end that individual's use of violence.

Language describing communities

Aboriginal and Torres Strait Islander peoples

In this report the Commission is generally referring to family violence in Aboriginal, not Torres Strait Islander, communities. For this reason we usually refer to Aboriginal peoples and communities rather than to Aboriginal and Torres Strait Islander peoples and communities. This also reflects the language of the majority of the submissions presented to the Commission. In using 'Aboriginal peoples and communities', the Commission does not intend to exclude Torres Strait Islander peoples and communities from its deliberations and recommendations.

When citing publicly available research or data, however, the Commission adopts the terminology used in the original document; this includes using 'Indigenous', 'Koori' and 'Koorie'. 'Koori' and 'Koorie' are also used if inquiry participants used those terms in submissions, consultations or evidence. South-eastern Victorian Aboriginal people use 'Koori' to define a collective Aboriginality. The Commission acknowledges, however, that Aboriginal and Torres Strait Islander peoples from throughout Australia live in Victoria and the word 'Koori' does not accurately describe all these people.

Culturally and linguistically diverse communities

The term 'culturally and linguistically diverse communities', or 'CALD', is used throughout the report to reflect the fact that the Victorian population is diverse. The Commission recognises that in considering prevention and responses to family violence the distinct identity of each community needs to be considered.

If primary sources use the terms 'non-English speaking', 'ethnic', 'refugee and newly arrived communities' or 'religious communities', the Commission uses that terminology as it appears in the source.

Faith-based communities

'Faith-based communities' is used in recognition that people of various faiths might not come within the description 'culturally and linguistically diverse communities' and might have distinctive experiences of family violence. Some members of faith communities come from CALD backgrounds; others do not.

Disability

The term 'disability' is used in this report to reflect the language in the *Equal Opportunity Act 2010* (Vic) and the Convention on the Rights of Persons with Disabilities.

The term 'cognitive impairment' is used if the primary material uses that term; otherwise, the specific disability is referred to—for example, intellectual disability or acquired brain injury.

'Mental illness' is used throughout the report as this is the terminology generally used in the community, although the Commission acknowledges 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.

The Commission adopted a social definition of disability in the knowledge that, although a person might have a disability, it is often society's reaction to the disability that prevents the person's full participation in society and this is what has the disabling effect.

People who have experienced transphobia or homophobia

The term 'lesbian, gay, bisexual, transgender and intersex', commonly abbreviated to LGBTI, is used in many submissions and other primary sources. The Commission recognises that transgender and intersex people have traditionally been aligned in the literature with gay, lesbian and bisexual people because of shared or similar experiences of discrimination. Sexuality, gender identity and (non-binary) physical sex characteristics are, however, fundamentally different, and people in these communities should not be treated as though they form a homogenous group who all have the same experiences.

'Sexual orientation' refers to sexual and emotional attraction to people of a particular sex or sexes. In this report the Commission uses the terms 'lesbian', 'gay' and 'bisexual', although we recognise that community members can use other terms to describe themselves. When we refer to lesbian, gay and bisexual young people we use the term 'same-sex attracted';⁴ for transgender and intersex young people we use the term 'gender diverse'.

'Transgender' is an umbrella term that is used to describe a person whose gender identity differs from their physical sex as recorded at birth. 'Transitioning' refers to the process whereby a transgender person embarks on the changes that will ultimately mean living as a member of another sex. This is sometimes referred to as the person 'affirming' their gender because transitioning means they start the process of living in what they identify as their true gender. The Commission recognises that, for people who are transitioning, or affirming their gender, having their identity fully recognised in all areas of life is a crucial part of the experience of living as an individual of their affirmed gender.

'Sex' refers to a person's physical sex characteristics. The Commission recognises that sex is not binary and includes people who are intersex, people who are a combination or are on a spectrum of being male and female, and people who identify as being physically indeterminate.

'Intersex' refers to people who are born with physical, hormonal or genetic features that are neither wholly female nor wholly male, are a combination of female and male, or are neither female nor male.

Although 'gender identity' has a specific meaning under the Equal Opportunity Act, more broadly the term refers to identifying as male or female as defined by social and cultural behaviours and assumptions about identity, roles and appearance.

Language describing ‘the system’

The Commission uses the term ‘family violence system’ to refer to the many different organisations and services that victims and perpetrators of family violence might encounter as a result of family violence. This includes the police, the courts, specialist family violence services including men’s family violence services; it can also include other services working with the victim or perpetrator as part of the response to family violence—for example, Child FIRST and Integrated Family Services, Child Protection; health, education, legal and housing services; and Corrections Victoria.

The term ‘response’ is used to refer to action taken after violence occurs—for example, provision of crisis accommodation, counselling and support; police and civil and criminal justice responses; and perpetrator interventions.

‘Perpetrator interventions’ incorporates a broad range of responses for perpetrators, among them responses ordered by a court and other programs that provide education and rehabilitation for perpetrators, such as men’s behaviour change programs.

‘Primary prevention’ is the term the Commission uses to describe action that seeks to prevent violence occurring. Such action can be aimed at the population as a whole or be tailored to particular groups or communities. ‘Early intervention’—sometimes referred to as ‘secondary prevention’—is directed at individuals and groups who display signs that they may use violence or of being subject to violence. Early intervention forms part of response.

Victoria Police uses the term ‘police member’. Most people who presented submissions or gave evidence to the Commission used ‘police officer’, and the two expressions are used interchangeably in the report.

Endnotes

- ¹ For more information about the Magistrates' Court Family Violence Divisions and specialist family violence courts see Chapter 16.
- ² Includes original and secondary applications (applications to vary, extend and revoke).
- ³ Note that there will generally be multiple court visits before a matter is finalised—this is explored further on Chapter 16. See Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, Attachment 2.
- ⁴ As reflected in 'Writing Themselves In: A National Report on the Sexuality, Health and Well-Being of Same Sex Attracted Young People', and the approach adopted in other publications addressing young people's sexuality, the Commission adopts the expression "same-sex attracted" so as not to make any assumptions that same-sex attraction, feelings and behaviours necessarily entail the adoption of a particular form of identity. This is not intended to suggest that young people do not have the right or capacity to identify themselves as gay, lesbian, bisexual or otherwise: Lynee Hillier et al, 'Writing Themselves In: A National Report on the Sexuality, Health and Well-Being of Same Sex Attracted Young People' (Monograph Series No 7, La Trobe University, 1998) 12.

2 The nature, dynamics and effects of family violence

Introduction

This chapter provides an introduction to the nature, dynamics and effects of family violence in order to provide some context for the remainder of the report. It begins with a brief review of the legal definition of family violence in Victoria, before exploring how such violence is frequently a manifestation of power and control over the victim.

The legal definition of family violence is not confined to violence by males against their female intimate partners. However, the majority of reported violence falls into that category and much of the research into family violence focuses on it. Indeed, many of the submissions the Royal Commission received were also about intimate partner violence. This is reflected in the discussion in this chapter.

This chapter also considers forms of family violence that are not well understood—for example, emotional abuse, financial abuse and sexual violence as well as perpetrators' increasing use of technology to dominate and control victims and as a form of stalking. Also discussed are times of heightened risk for family violence—in particular, post-separation and pregnancy.

This chapter also speaks of the impact of family violence. Words on a page do not, however, convey the deep terror and fear that victims expressed to the Commission. No words can capture the lengths to which some victims of family violence—especially women caring for children—have to go to keep themselves, their children and sometimes other family members safe and to re-establish their lives.

Defining family violence

As a consequence of the Victorian Law Reform Commission's *Review of Family Violence Laws*,¹ a new definition of family violence was included in the *Family Violence Protection Act 2008* (Vic). This definition recognises that violence need not be physical to cause harm and to keep a victim living in fear. As well as including various forms of violence, the Act covers a wide range of relationships, reflecting the diversity of familial and kin relationships in our society.

1. For the purposes of the Family Violence Protection Act, family violence is:
 - (b) behaviour by a person towards a family member of that person if that behaviour—
 - (i) is physically or sexually abusive; or
 - (ii) is emotionally or psychologically abusive; or
 - (iii) is economically abusive; or
 - (iv) is threatening; or
 - (v) is coercive; or
 - (vi) in any other way controls or dominates the family member and causes that family member to feel fear for the safety and wellbeing of that family member or another person.
 - (b) behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to in paragraph (a).²

2. Family violence includes the following behaviours:
 - (a) assaulting or causing personal injury to a family member or threatening to do so;
 - (b) sexually assaulting a family member or engaging in another form of sexually coercive behaviour or threatening to engage in such behaviour;
 - (c) intentionally damaging a family member's property, or threatening to do so;
 - (d) unlawfully depriving a family member of the family member's liberty, or threatening to do so;
 - (e) causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the family member to whom the behaviour is directed so as to control, dominate or coerce the family member.³
3. To remove doubt, it is declared that behaviour may constitute family violence even if the behaviour would not constitute a criminal offence.⁴

The meaning of 'family member' is broad. It covers both biological relationships and relationships arising from marriage, a de facto partnership or an 'intimate personal relationship'.⁵ It also includes a child who regularly resides with the other person or has previously done so (for example, a foster child) and a child of a person who has or has had an intimate family relationship with the relevant person.⁶ Further, it covers current and former relationships.⁷ An intimate relationship can exist regardless of whether the relationship involves or has involved a sexual relationship and regardless of the sex or gender identity of the people in the relationship.⁸

People living in the same house, people living in the same residential facility and people reliant on care can also be covered. The Act expands the definition of family member to include a person whom the victim regards or regarded as being 'like a family member' if it was reasonable for the victim to hold that view, given the circumstances of the relationship.⁹ For example, this could cover the carer of a person with a disability if the person regards the carer as a family member. It could also include the relationships between residents in aged care or disability accommodation where there are social or emotional ties between them.¹⁰

Additionally, the Act acknowledges that Aboriginal and Torres Strait Islander communities' definitions of the 'nature and forms of family violence are broader than those used in the mainstream'.¹¹ The definition of family member specifically includes a person who, 'under Aboriginal or Torres Strait Islander tradition or contemporary social practice, is the person's relative'.¹²

A clear and comprehensive definition of family violence is important for both practical and symbolic purposes. To define conduct as family violence is to express the community's shared condemnation of that conduct. It also determines the circumstances in which police can seek an intervention order on behalf of a victim and when a magistrate can make an order to protect a victim. Chapter 16 discusses these remedies.

Overall, the Commission found solid support for the definition of family violence in the Family Violence Protection Act, as well as for legal recognition of the range of family and kin relationships that exist in modern communities. Nevertheless, many in the community still do not recognise emotional abuse and economic abuse as family violence. The same applies to violence other than between intimate partners—for example, adolescent violence against parents and those cases of elder abuse and abuse of people with disabilities not involving intimate partnerships. These situations are discussed throughout this report.

Why do people say family violence is gendered?

The Commission was not asked to inquire into the causes of family violence. The Commission's terms of reference state:

Family violence is the most pervasive form of violence perpetrated against women in Victoria. While both men and women can be perpetrators or victims of family violence, overwhelmingly the majority of perpetrators are men and victims are women and children.

The causes of family violence are complex, and include gender inequality and community attitudes towards women. Contributing factors may include financial pressures, alcohol and drug abuse, mental illness and social and economic exclusion.

In Victoria three-quarters of victims in family violence incidents attended by police are female and 77 per cent of perpetrators recorded by police are male.¹³

The Commission's terms of reference also reflect current research about population-level risk factors and individual risk factors for intimate partner violence, which is the most common form of family violence and the one we know most about. This evidence was recently reviewed for UN Women and Our Watch; the review found that violence-tolerant attitudes and gender inequality are underlying or 'root' causes of violence against women.¹⁴ This is unsurprising. We are social beings and we are influenced by the world around us and what society teaches us. This includes stereotypes and social norms that dictate 'appropriate' behaviour for men and women.

Stereotypes about men and women are reinforced through practices such as social tolerance of discrimination and the idea that violence against women is sometimes justified by women's behaviour—for example, if a woman has sex with another man. Gender inequality is itself influenced by other forms of inequality such as race, disability, socio-economic status, geography and the impacts of colonisation. For this reason prevention efforts need to focus on these population-level risks, or root causes, in order to address the conditions in which violence against women can thrive. This and the evidence relating to prevention are discussed in Chapter 36.

It is also important to distinguish between *population-level* risk factors and *individual* risk factors. Among the individual risk factors associated with the perpetration of family violence are alcohol and drug misuse, mental illness, and exposure to violence as a child. But not all people who have had these experiences perpetrate violence, and men who have not had these experiences can still be violent towards women. We must also consider perpetrators' attitudes and beliefs—which are reinforced by broader social norms in the community and institutional settings and their experiences with peers, colleagues and friends, all of which help to make them the people they are—if we are to understand how best to respond to family violence.

Responding to individual risk factors is an important way of working out how best to target interventions to tackle family violence. It does not excuse violence or allow people to avoid taking responsibility for their behaviour. Individual risk factors are discussed throughout this report—for example, in chapters dealing with risk assessment and management, perpetrator interventions, the health system, including mental health and drug and alcohol services, and specific population groups.

Because population-level and individual-level risk factors are interrelated, preventing family violence requires mutually reinforcing approaches at the population, community, institutional and individual levels.

The dynamics and nature of family violence

He set out to destroy me on every level possible. Physically, mentally, emotionally and spiritually. All of it was intentional and planned.¹⁵

Family violence is not about 'losing it', being nagged or having too many drinks. The Commission received hundreds of submissions from people who have lived with, and continue to live with, the terror of family violence. And those submissions have a common theme—that the violence is a tool used to gain control over them.

Coercion, control and domination

My husband was of the opinion that when he married me he owned me. I became part of his chattels and that is how I had to live my life, by his rules, and they were 'do as I say, not as I do'.¹⁶

Submissions argued that the abuser's need to maintain control and dominance lies at the core of every abusive relationship.¹⁷ The Commission heard that in the vast majority of family violence cases this is grounded in the false belief that the abuser is entitled to control the victim and to use violence to achieve this. The UK Home Office provides some useful guidance about understanding controlling or coercive behaviour:

Controlling or coercive behaviour does not relate to a single incident, it is a **purposeful pattern of behaviour** which takes place over time in order for one individual to **exert power, control or coercion over another**.¹⁸

Many women who participated in consultations or made submissions said they did not understand that what was happening to them was family violence, particularly when the violence had not yet escalated to the point of causing serious physical injury. Sometimes they did not realise it was family violence until service providers or others pointed out these patterns of control and coercion.

Other victims described how what first appeared as love and attention turned into violence:

It was a whirlwind romance, where he won me over with his charm and intelligence, putting me on a pedestal. We ... moved [in] together within a few weeks of dating. The abuse wasn't immediate but started to show around six months into the relationship. It was an insidious creep of abuse. So slow that I just thought it was a normal part of a relationship.¹⁹

Controlling strategies can be 'indirect, subtle and psychologically traumatic, involving threats of harm, humiliation and insults, and financial or legal abuse'.²⁰ Tactics in addition to those just discussed include the following:

- ▷ controlling access to money
- ▷ using debt to control the victim
- ▷ controlling what she wears, her make-up or physical appearance
- ▷ cutting off the phone
- ▷ forbidding contact with neighbours, colleagues or friends
- ▷ restricting access to transport or cars
- ▷ threatening to reveal or publish private information
- ▷ using the justice system against the victim by making false or vexatious allegations.²¹

Additional tactics involve making a person give up employment or education, forbidding them to attend English language classes, and generally isolating them from the world beyond the perpetrator.²²

Perpetrators often seek to reinforce isolation and, as family and friends become more distant, the violence escalates and the victim's identity and self-worth are eroded by the perpetrator:

... the reality of real family violence is that there are no friends—you've been systematically isolated from them—you can guarantee that your partner didn't like them for some reason or they could see what the perpetrator was really like. They are intimidated and afraid or overwhelmed by your disclosure of abuse, scared that they will be affected or their own children will be in danger by being associated with you. They are long gone.²³

The crime is not as simple as just the crime, there is so much more in play. The control over aspects of your life has such a wide reach. The control in the day to day isn't taken as seriously as physical violence. You lose friends, you're not able to maintain new friends and new partners. It gets to the point where not even your own parents will have you stay the night because they're scared for their own safety.²⁴

In some cases described to the Commission the perpetrator's need to dominate his family entailed physically imprisoning women and children in the home: 'I was put under "house-arrest" for a period of [removed] weeks for defying him. He took my mobile phone, home phone, computer, and car keys to keep me isolated for this time'.²⁵

These controlling behaviours can also imprison women emotionally:

The most distressing thing I lost was me, my [self-worth]. Couldn't think straight, even to the point I couldn't write out a shopping list: I couldn't concentrate. I was always worried that I may do or say the wrong thing. It is so hard to describe to you the mental torment, always questioning yourself. Never being able to comprehend that this person who is supposed to love me can hurt you so badly.²⁶

Violence and coercion in the relationship can also force women to assume culpability for their partner's offences: '[She] took a drug offence for [her partner] ... even the police said they knew she hadn't done it'.²⁷ Or it can strike at the heart of the woman's reproductive autonomy:

He forced her to have an abortion. Her sister-in-law made the appointment. He told the GPs that she was poorly educated and that he signed papers on her behalf. She tried to commit suicide a number of times.²⁸

In short, the perpetrator dictates what the victim does, whom they talk to and see, where they go and what they think:

Scapegoating, blaming me for everything, saying I deserved it (the abuse) and it was my fault, I was a bad mother, locking me and the children out of the house. There were a few occasions I had to sleep outside with the dogs. Walking on eggshells ... He would come in to work all the time, if I was 10 minutes late from work he would ask why. I had to eventually leave my employment; was sick all the time and mentally exhausted. [I] wasn't allowed to have my own opinion, everything I said was wrong or stupid. Would get very agitated when he saw me happy ...²⁹

Abusers of parents may also attempt to dominate and control them. At a consultation with older victims, a woman told the Commission that her son, who was physically aggressive to her, had told her friends and police that she had dementia. After she had paid his very considerable debts he arranged for her to come to his own doctor for an assessment, without speaking to her doctor. He did so in an attempt to force her to execute a power of attorney in order to gain access to her money.³⁰

A pattern, not an event

Although every experience is unique, family violence is not a one-off incident for many victims.³¹ It is a pattern of behaviour that involves an escalating spiral of violence. This can include physical and sexual abuse, as well as psychological, emotional and financial abuse—all designed to intimidate, undermine, isolate and control. It can also include violence or threats of violence against children, other family members and pets.³² Ultimately, it can be lethal:

It is the prevalence and the all-encompassing awareness that you are living with something that is dangerous—life threatening. That fact slowly and methodically eats away at your self-awareness and ability to make decisions. All your decisions are about self-preservation and how safe you are from day to day and hour to hour. That is why you stay. It is safer to stay than to leave.³³

Nationally, ANROWS (Australia's National Research Organisation for Women's Safety) has reported that the Australian Bureau of Statistics' Personal Safety Survey shows that, of those women who had experienced multiple incidents of physical assault by a male perpetrator since the age of 15 years, two-thirds reported that the assaults were all perpetrated by the same man. That suggests that one in nine of these women—that is, 961,500 women—in Australia had experienced multiple assaults by the same man.³⁴

Dr Karen Gelb, a researcher and criminologist, who conducted research for the Commission, found that, of the family violence cases she observed in magistrates' courts, on average more than half (53 per cent) involved people with a history of family violence, although it is not known whether that history involved the same perpetrator.³⁵ Dr Gelb's report, which was not limited to cases involving intimate partner violence, is presented in full in Volume VII. Data analysis by the Crime Statistics Authority (including police data on recidivism rates, discussed in Chapter 15) also does not delineate between the circumstances in which repeat offending occurred within a single relationship or occurred against multiple victims.

Times of heightened risk

It is well established that the risk of intimate partner violence escalates at specific times—for example, during pregnancy or on separation (or attempted separation). It can also occur at times of natural disaster, as discussed here. Further information on risk assessment and management is provided in Chapter 6.

Pregnancy

Pregnancy and the early post-natal period are times of adjustment and change, when the risk of violence is elevated.³⁶ Pregnancy can trigger the use of violence by a man against his partner or can exacerbate existing violence in the relationship, particularly if the pregnancy is unplanned or unwanted.³⁷ Family violence in this context has been linked to the perpetrator feeling that his primacy in the relationship is being undermined.³⁸ Studies of the correlation between pregnancy and family violence tend to measure the prevalence of physical violence during pregnancy, but sexual and emotional abuse can be equally damaging to both the woman's and the child's safety and wellbeing.³⁹

The ANROWS analysis of data from the Australian Bureau of Statistics' Personal Safety Survey shows that, among women who had experienced intimate partner violence since the age of 15:

- ▶ More than 400,000 Australian women experienced partner violence during pregnancy.⁴⁰
- ▶ An estimated 180,600 women had experienced violence by a current cohabiting partner and were pregnant at some time in that relationship. Approximately one in five (21.7 per cent, $n=39,100$) of these women experienced violence during their pregnancy.⁴¹
- ▶ Of the 39,100 women who did experience violence by a current cohabiting partner during pregnancy, three out of five (61.4 per cent, $n=24,000$) experienced violence for the first time when they were pregnant.⁴²

An analysis of hospital data shows that at least 11 per cent of the women admitted to hospital for intimate partner violence-related assaults were pregnant, with some evidence suggesting that the abdomen-pelvic area of pregnant women was over-involved in these assaults compared with women who were not pregnant.⁴³ The Commission notes it is likely that the hospital data significantly under-reports family violence in this and other contexts.

Separation (or attempted separation)

Separation (or attempted separation) by a woman from her partner is also a time of heightened risk for family violence: 'Indeed, the period after separation can be a very dangerous time for a victim, because the perpetrator may perceive a loss of control over her and may become more unpredictable'.⁴⁴

For women who have not previously experienced physical violence in the relationship, physical violence often starts or escalates during the separation period.⁴⁵ '[U]ncharacteristic acts of violence' can occur in response to the separation or other traumatic post-separation events.⁴⁶ If the relationship is characterised by a history of violence, the violence can persist after separation and often escalates; it can culminate in the man killing his former partner and/or children.⁴⁷

Separation is therefore recognised in the Family Violence Risk Assessment and Risk Management Framework (often called the Common Risk Assessment Framework or CRAF) and similar risk assessment processes used internationally as a time of heightened risk for family violence against women and children, including the risk of death.⁴⁸

For women who are experiencing family violence, the high risk periods include immediately prior to taking action, and during the initial stages of or immediately after separation. Victims who stay with the perpetrator because they are afraid to leave often accurately anticipate that leaving would increase the risk of lethal assault. The data on time-since-separation suggests that women are particularly at risk within the first two months.⁴⁹

An Australian Institute of Family Studies investigation found that violence commonly occurs in separated (and separating) families. Of 4959 responding mothers:

- ▷ 26 per cent reported being physically hurt by their partner before separation
- ▷ 39 per cent reported that they had experienced emotional abuse alone from their partner before or during separation.⁵⁰

Of 4918 responding fathers:

- ▷ 16.8 per cent reported being physically hurt by their partner before separation
- ▷ 36.4 per cent reported that they had experienced emotional abuse alone from their partner before or during separation.⁵¹

Violence after separation can include financial abuse, which is 'a particularly common strategy used to control partners post-separation and has long-term implications for survivors' economic security'.⁵² The Commission heard that financial control and manipulation begin at separation for many women—particularly in relation to withholding child support payments and property settlement.⁵³ As discussed in Chapter 21, family violence is a significant contributor to women's poverty. Fear of the financial consequences for themselves and their children can lead women to stay in the relationship or to return to it.

Victims told the Commission that after the relationship has ended some perpetrators then use the legal system as a form of violence.⁵⁴ One woman described this to the Commission: 'I am still experiencing family violence but it comes on letterhead from his lawyer'.⁵⁵ Women's Legal Service Victoria described this as 'systems abuse':

Procedural fairness is a key component of the family violence jurisdiction. We recognise that appropriate mechanisms must be available in the intervention order process for perpetrators to challenge allegations of family violence, make cross-applications and seek review of judicial decisions. There is, however, a category of cases where court mechanisms are abused by the perpetrator for the purposes of continuing to exercise power and control over the victim ...

It is difficult to measure the impact this course of action has on victims who are forced to come back to court on multiple occasions to justify the need for an intervention order. It requires them to tell their story multiple times to multiple Magistrates, court staff and duty lawyers. The trauma and feelings of powerlessness to stop abuse perpetrated through the system have a profound effect on the physical and emotional well-being of victims as well as their ability to heal and recover from their experiences.⁵⁶

It has separately been reported that more than half of parenting matters in the family law system involve allegations of family violence.⁵⁷ Dissatisfaction with family law processes was one of the strongest messages the Commission received from the submissions and consultations. Both men and women criticised the system, although women more commonly described feeling re-victimised by being disbelieved or being cast in a negative light as a result of their former partner manipulating court processes to their own ends,⁵⁸ whereas men often cited gender bias as a problem.⁵⁹ Access to children was frequently nominated as a way of controlling victims after separation:

And I'm so glad I left him. But I am still scared when he threatens me at my door at handovers. I am still scared he won't return my children to me safe and well. I am still married to him because he won't sign the divorce papers. I still feel trapped by him. I can't afford legal fees to protect my rights in court. I am trapped by the system. It doesn't stop.⁶⁰

They know the game, they know the law, they take the children, they lie in court, and they take custody despite the violence. They make it their business and they thrive on the court process.⁶¹

The Council of Single Mothers and their Children echoed the sentiments of many:

Too often though children become the vehicle these men use to maintain an abusive presence in the mother's life. Children are used to monitor and control women's behaviour and sometimes become the device through which men inflict the violence ...⁶²

Women who share parental responsibilities with an abusive partner or ex-partner are particularly vulnerable to non-physical forms of violence and threats ... Perpetrators of violence often deliberately misuse the systems that have been set up to help families such as the Child Support system and Family Court to maintain control over women and children.⁶³

Access and control through children can take on a particular nature for some migrant women who are especially vulnerable because of the insecurity of their immigration status. The Australian Muslim Women's Centre for Human Rights told the Commission that perpetrators use children to manipulate their victims by:

- threatening to send children back to countries of origin marked by war, civil unrest or regular and unpunished acts of violence against women by community or family
- threatening to or actually abducting the children, perhaps returning them to the country of origin where women may have no legal entitlement to custody
- threatening to or actually harming the children
- taking money that she intended to support family members in her home country
- raising the immigration status of a woman in custody cases, to undermine the woman's case for custody and divert the court's attention away from family violence.⁶⁴

The Commission was also told that perpetrators can delay property settlement so as to financially exhaust victims through legal fees in family courts and that they use this tactic to force women to agree to an outcome that is not in their best interests:⁶⁵ 'He was also hindering the transfer of property to me. Assets were not transferred to me for some 2 years.'⁶⁶

The family law system and its intersections with family violence are discussed in depth in Chapter 24.

Natural disasters

Studies have shown increases in levels of family violence in communities affected by natural disasters, both in Australia and elsewhere.⁶⁷ A 2009 study reported a four-fold increase in intimate partner violence following Hurricane Katrina.⁶⁸ It has also been reported that New Zealand police had a 53 per cent increase in call-outs to domestic violence incidents over the weekend of the Canterbury earthquake in 2010.⁶⁹

A 2012 study interviewed 29 women who experienced the Victorian Black Saturday bushfires in 2009. In that study 16 women spoke about family violence—14 in reference to their own relationship and two in reference to the relationships of close relatives (a sister and a daughter). For nine women the violence was a new experience since the fires, while for six the violence had escalated or there had been an isolated incident many years earlier. One woman had left her violent partner before the fires, and when he returned after the fires he resumed his violent behaviour. All but one of the 16 women who experienced violence after the fires said they were afraid of their partner.⁷⁰

Forms of violence

Family violence can take many forms. The Commission heard in submissions, at community consultations and in the hearings of the varied experiences of family violence. This section explores some of these forms of violence, including emotional and psychological abuse; physical and sexual violence; financial abuse; technology-facilitated abuse and stalking. All these forms manifest as part of the perpetrators' desire to control the victim.

Emotional and psychological abuse

I am the victim of emotional and economic abuse. I have never had visible bruises yet the terror and alarm I experienced was no different to a victim with visible bruising.⁷¹

The ABS Personal Safety Survey shows that over 2.1 million women in Australia have experienced at least one incident of emotional abuse by a former or current cohabiting partner since the age of 15 years.⁷² This is one in four women in Australia. Approximately 1.8 million women reported that they had experienced emotional abuse from a partner they were no longer in a relationship with.⁷³ This is one in five women.

Emotional abuse is almost always an aspect of intimate terrorism, but is rarely part of uncontrolled violence. And it is most definitely not the same as hurting someone's feelings. People can be deeply hurt by their partners, through thoughtlessness, anger, even infidelity or the end of a relationship without suffering emotional abuse. [Emotional abuse] is a very specific and deliberate form of emotional damage, designed to destroy any feeling of independence or self-worth, and thereby make someone easy to control and manipulate.⁷⁴

The ABS Personal Safety Survey also notes that approximately 1.2 million men have experienced emotional abuse from a current or previous partner since the age of 15. This is about one in seven men in Australia.⁷⁵

Section 7 of the Family Violence Protection Act defines 'emotional or psychological abuse' as behaviour that 'torments, intimidates, harasses or is offensive to the other person'.⁷⁶ Emotional abuse often forms part of the pattern of controlling behaviours. This is reflected in some of the examples of emotional abuse given in section 7 of the Act—preventing a person from making or keeping connections with family, friends or culture (including cultural or spiritual ceremonies or practices); preventing a person from expressing their cultural identity; repeated derogatory taunts, including racial taunts; and so on.

Forms of emotional abuse can differ in different circumstances. For example, for women in culturally and linguistically diverse or faith communities, emotional abuse can include:

- ▷ calling her racist names
- ▷ accusing her of abandoning her culture
- ▷ threatening to harm someone in her family in Australia or in her country of origin
- ▷ hiding or destroying important legal papers, such as her passport or her children's passports or birth certificates
- ▷ destroying her personal belongings from her country of origin
- ▷ convincing her that in Australia family violence is not unlawful
- ▷ convincing her that if she seeks police, welfare or the courts' assistance he will automatically receive legal custody of the children
- ▷ accusing her of marrying him for migration purposes only and threatening to or actually reporting her to immigration authorities
- ▷ blaming her for breaking up their family and community if she leaves him
- ▷ threatening deportation
- ▷ refusing to file or withdrawing immigration papers.⁷⁷

Threatening to withhold medication is also recognised as emotional abuse⁷⁸ and is a form of abuse often reported by women with disabilities.⁷⁹ In some circumstances withholding of medication can be life threatening: 'The next day I only attended the police station because he dissolved my chemotherapy medication and I needed to get it'.⁸⁰

The Family Violence Protection Act provides an example specific to the lesbian, gay, and bisexual communities—namely, threatening to disclose a person's sexual orientation to family or friends against the person's wishes.⁸¹ The following are other examples:

- ▷ telling a partner they will lose custody of their children as a result of being 'outed'
- ▷ using homophobia as a tool for control—for example, telling a partner they will be unable to gain police assistance or support from services because the system is homophobic
- ▷ telling a partner they deserve the abuse because they are LGBTI
- ▷ telling a partner they are not a 'real' lesbian, gay or bisexual
- ▷ disclosing or threatening to disclose HIV status.⁸²

The psychological damage inflicted by emotional abuse of a partner can be very serious, and emotional abuse inflicted on children by a parent can have lasting effects. Yet many in the community still do not recognise it as family violence:

Media, authorities and even family violence campaigns sensationalise physical violence—as they should. Literature tells us there are other forms of abuse and most organisations are aware, but in all my time away from my ex-husband, I have yet to encounter any professional who truly understands the other types of family violence. These are no less significant or dangerous than physical violence. There is a vast level of education that needs to be conducted to ensure society understands there are other types of family violence and these have just as much of [a] lasting impact as physical violence.⁸³

On the surface there appears to be no crisis. There is no imminent danger. Except for the slow, mental torture which causes the constituent to believe that she really is useless and perhaps her husband is right, and that she is insane. The psychological abuse has been so oppressive that it has triggered suicidal ideation in one constituent.⁸⁴

Victims may not recognise such abuse as family violence or feel less deserving of help. This was a strong theme in community consultations and submissions:

I didn't know what I was experiencing was domestic violence—it was psychological, controlling. He would clean his guns in front of me. He killed my animals.⁸⁵

I didn't think I was in domestic violence. I didn't feel I was entitled to it because he did not bash me. I thought there were women out there who needed help more. It's the perception of domestic violence, it's the image of a woman beaten bloody. So I didn't feel like I deserved the help.⁸⁶

Others felt the abuse was less serious than physical violence.⁸⁷ Perpetrators can also think that, because they are not physically hitting their partner or child, their behaviour does not amount to violence:

I never actually hit my wife, there was a lot of yelling and screaming, threatening behaviour, hitting walls ... It took her a long time to figure out what was actually going on. Over that 18 years, the longer it went on, the more it occurred, the plainer she saw things.⁸⁸

The Commission was informed that the nature of the violence experienced often had an impact on the police response. Some women reported that abuse that was not visible, was minimised, or was not acted on by police.⁸⁹

Ignoring patterns of controlling behaviour and focusing only on physical violence trivialises the abuse victims endure and traps them in violence. It can also have lethal consequences. A UK study found that controlling behaviour is a particularly important feature in child homicides: 'It is the extent of control over the whole family rather than the frequency of physical violence that indicates that such fathers are at high risk of killing children'.⁹⁰

Thus, '[c]ritical gaps still exist in the lack of shared understandings of family violence as coercive control'.⁹¹ This can lead to victims being ignored, not taken seriously or not believed when they do seek help.

Physical and sexual violence

He would strangle me—take me to black-out and bring me back. He would put a knife to my throat and draw blood just because he could.⁹²

The Commission was told that physical violence often does not occur until the relationship is well established, and for many women, remains a terrifying threat.⁹³ Victims spoke of the repeated, horrific violence they had experienced. To protect victims' safety and privacy, much of this evidence was given in confidence and cannot be reproduced. Some women, however, felt able to provide insights into their experience anonymously:

During all this time he was physically abusing me I had black eyes, chipped bones in my arm he ripped clothes off me and belted me time and time again ... [on] one occasion he started to belt and drag me from one end of the house to the other I ran to get out he tore my clothes off and threw me into the garden in the mud then dragged me out by my hair, I begged him to stop I didn't want to die. I went to the shower and curled up on floor he came and dragged me out and kept beating me I ended up in the garden again covered in mud I crawled to the door he just kicked and punched me until I just [lay] there, all because I didn't stay and drink with him and his friends at a [removed] break up. The police attended many times. Every time I would go to charge him he begged me not to.⁹⁴

Cho[k]ing, spilling hot drinks on me, pushing, flicking cigarettes, spitting, pushing me off beds and chairs. Smashing my head against walls. Whilst going to the toilet he would push me off the seat. Push me over in the shower, Verbal threats: calling me names; slut ... arsehole, cunt, and many more. He said he would bury me in a hole and threaten to shoot me. Always threatening to hurt my children, family and animals. Throwing objects at me. Throwing me out of the house in the nude, locking the door and not letting me in for 3 hours ...⁹⁵

The majority of the victims of family violence who told their stories to the Commission were women, but we also heard from men who often described violence they experienced as children:

My childhood can be best characterised as one of violence; perpetrated daily. I cannot recall a time where I did not see violence, hear violence or feel anxious about the next violent episode. The violence was perpetrated by my mother towards my father, but also to us as children.⁹⁶

Sexual abuse by an intimate partner is a major form of family violence and is a risk factor for death, including homicide and suicide.⁹⁷ Sexual violence also occurs in disability or aged care relationships and in same-sex relationships.⁹⁸

Some of the victims who came forward to the Commission described the use of sexual violence, including rape in marriage, to degrade and humiliate them:

I would be woken up at 4 am to him trying to put his penis in my mouth. Scared, I didn't know where to go or where to run.⁹⁹

... when I wasn't able to give to him anymore (sex or whatever because I was in pain) he would get violent with me if I refused to give him sex. He said that it was a man's need/right. I would curl up on the edge of the bed terrified [he would ask for sex].¹⁰⁰

It was awful. I tried not to react. I hoped he had been satisfied. That it would buy me further safety.¹⁰¹

Victoria Police has noted that children are over-represented as the victims of family violence sex crimes, and it is highly likely that there is substantial under-reporting of family violence-related child sexual abuse.¹⁰²

Victims may find sexual violence particularly difficult to disclose. The Commission was reminded that 'often the sexual abuse is left under the table because of the additional layers of shame.'¹⁰³ Or it might not be recognised as family violence or a crime.¹⁰⁴

A lay witness explained that she did not know there could be rape in marriage:

I was then pregnant with the third child and I went to a different doctor and he said, 'Would you like me to file a report for the police?' I asked him 'What for?' He goes, 'These injuries, they look like they are from rape'. I said, 'It's not from rape, it's my husband'. He pressed further. He asked, 'What do you mean it's not rape it's your husband?' I said, 'Rape is from a stranger or an intruder'. And he said, 'No, rape is when you do not want sex and they force themselves'. I said, 'But it's my husband. What right do I have to say no?' ... The doctor said something that really resonated, it really sunk in and impacted me enough to make a massive change, in which he said, when I told him, 'I signed the dotted line that my body is his', and the doctor said, 'And he signed the dotted line to love and protect'. It was like a light globe just switched on ...¹⁰⁵

Even allowing for under-reporting, in at least two regions in Victoria more than half the clients who sought sexual assault counselling from Centres Against Sexual Assault were doing so for reasons associated with family violence.¹⁰⁶ Some clients were both survivors of child sexual abuse and people experiencing intimate partner violence.¹⁰⁷ For example, Northern Centre Against Sexual Assault submitted 'many CASA clients fall into the category of people who have experienced sexual assault and family violence on multiple occasions and throughout their lives'.¹⁰⁸

The stigma resulting from rape can be further entrenched if pregnancy follows. Research also suggests an association between family violence and termination of pregnancy and that there can be a repetitive cycle of termination.¹⁰⁹ Additionally, findings indicate that a woman concealing a pregnancy from her violent partner is also at risk of family violence and that this is linked to higher rates of murder and suicide.¹¹⁰

Mr Bernie Geary, OAM, the former Commissioner for Children and Young People noted:

It would be very difficult to assess how many pregnancies may occur as a result of sexual assault, when this is being used as a form of family violence within an intimate partner relationship, given the highly sensitive nature of such information and the strong likelihood that women would be too embarrassed and ashamed to make such a disclosure. The social assumption that any pregnancy occurring within a relationship is desired by both parties is also very strong. Furthermore, women may be very concerned to protect their unborn child from the stigma of being a product of sexual assault, regardless of what their own feelings about the pregnancy might be.¹¹¹

Financial abuse

Some perpetrators deny their partners economic freedom as a form of control. The Commission heard that this involves exercising control over finances during a relationship, and that this can continue, or frequently begin, after separation.

Many people do not realise that economic abuse is recognised as a form of family violence in Victorian legislation, and it can be used as grounds to apply for a family violence intervention order:¹¹²

In the approx. [removed] years we lived together I cannot remember a time that I did not have to ask for money to help pay the bills. At that stage I did not know there was such a thing as economic abuse.¹¹³

Perpetrators restrict women's access to funds by keeping bank accounts in their own name only or providing to their partner an allowance out of which she is expected to cover the costs of running a household, including buying groceries, paying bills and meeting expenses for children:

[He] would accuse me of spending his money, (even though I was working too). Got to the stage I couldn't even write a shopping list; was fearful if I would spend too much. Would say I was hopeless with the finances and would keep money from me. I wasn't allowed to buy essentials for myself or the children. Would not allow me to get food from the fridge and pantry because he bought it.¹¹⁴

One victim, described in a journal article on economic abuse, used her part-time salary as a nurse to meet the entire family's expenses while her partner spent his full-time salary on himself.¹¹⁵ Another stated that she was made to live frugally while her partner withdrew money from accounts and investments, including joint accounts, without her consent:

He wasted large amounts of money daily. I discovered a hidden spending pattern of daily withdrawals of money from ATMs and movement of large sums of money from our pension funds.¹¹⁶

Some perpetrators do not allow their partners to work and in that way achieve financial independence.¹¹⁷ Others harass victims at their workplace, making it difficult for them to stay employed.¹¹⁸ In addition to the immediate financial problems this causes, this can affect women in later life because they have inadequate superannuation after retirement.¹¹⁹

Economic abuse can be linked to car ownership, when perpetrators incur traffic and parking fines in vehicles registered in their partner's name.¹²⁰ The Commission also heard that perpetrators coerce their partner into taking out loans for cars, mortgages and credit cards in her own name or adding her name to or co-signing a loan to make her jointly liable for the debt:

[I was] responsible for all of the debt from our relationship. This included debt he had accrued in my name, and debt I accrued in my name as I was always encouraged to take out credit in my name as I had steady employment.¹²¹

Another form of economic abuse involves threatening to have essential services such as electricity, gas and water disconnected or leaving women with unpaid bills for these services.¹²² The Commission was also informed that perpetrators who kept accounts in their name alone would arrange for essential services to be cut off when they moved out and force their former partner to pay re-connection fees for the services.¹²³

Ms Jenny Blakey, Manager, Seniors Rights Victoria gave evidence to the Commission that financial abuse is the most common form of family violence against older people dealt with by her organisation. She estimated that about 61 per cent of calls to Seniors Rights Victoria relate to financial abuse.¹²⁴ Adult children with older parents can coerce their mothers, and their fathers, into entering financially dangerous arrangements such as using the family home as security for a loan.¹²⁵

I took out a reverse mortgage in 2006 to pay his debts. His friend at a bank helped him sort out his debt. But in 2009 he was in debt again and told me to take out another loan. I took out a reverse mortgage, had bills and rates issues from my son. I became concerned that I would not have a house.¹²⁶

Family violence against older people is discussed in Chapter 27. Chapter 21 further explores economic abuse.

Technology-facilitated abuse

SmartSafe project

Domestic Violence Resource Centre Victoria's SmartSafe project identified the following behaviours as examples of technology-facilitated stalking and abuse that can constitute family violence:

- ▶ threatening or abusive phone calls
- ▶ repetitive threatening or abusive text messages and emails
- ▶ checking or hacking email accounts
- ▶ monitoring internet use
- ▶ 'revenge porn', whereby a person distributes or posts false, humiliating, intimate or sexualised videos or photos without the other person's consent
- ▶ spreading rumours about the person or impersonating them online
- ▶ harassing or threatening the victim or the victim's friends and family on social networking sites such as Facebook and Twitter or dating, chat and games sites
- ▶ tracking the victim's location through apps and 'find my phone' services
- ▶ geotagging of photographs taken with smartphones
- ▶ smartphone spyware.¹²⁷

He installed a camera in our bedroom. I had purchased an emergency phone and he was able to locate it from seeing me hide it in my bedroom drawer, through the camera.¹²⁸

Perpetrators' use of technology to control, intimidate, stalk and harass victims is a 'rapidly growing problem' and was frequently raised as a concern in consultations and submissions.¹²⁹ Victoria Police submitted:

The widespread use of mobile phones has made it easier for perpetrators to harass, stalk and intimidate their victims. Over the past five years, intimate partner violence related harassment offences have increased more significantly than any other offence category. Although these offences predominantly relate to phone calls, text messages and emails, there were also several instances of tracking devices being used ... As technology becomes more affordable and readily used, family violence incidents involving these technologies will increase.¹³⁰

This is consistent with evidence given at the Senate Inquiry into Domestic Violence in Australia, where family violence workers stated that technology is increasingly being used 'to surveil, to harass, to stalk and to hurt women and children'.¹³¹ This form of family violence also extends to preventing, restricting or monitoring victims' use of technology:¹³²

I was isolated, he controlled all the money, tracked my phone calls, checked my mobile phone frequently and had a key-tracking program on my computer, banning me from going to certain websites.¹³³

Technology-facilitated abuse has particular implications for specific populations, such as Aboriginal and Torres Strait Islander women, women from culturally and linguistically diverse backgrounds, and women with disabilities.¹³⁴ Perpetrators exploit social isolation and language barriers and deliberately isolate culturally and linguistically diverse women further by 'restricting their access to technology, which women often relied on to stay in contact with friends and family'.¹³⁵

Indigenous women may need to use technology to keep connected to their mob, culture and community but this can place their whereabouts/situation known to the perpetrator if they also have the same connections.¹³⁶

It is difficult to obtain information about the extent of technology-facilitated abuse.¹³⁷ The SmartSafe project published a study of technology-facilitated stalking in family violence in 2013.¹³⁸ This study found that, of 44 women who responded to an online survey question about stalking experiences, 80 per cent reported receiving text messages that made them feel afraid, 65 per cent reported receiving calls that made them feel afraid, 63 per cent reported being made to feel they were being watched or tracked, and 51 per cent reported they were being followed. Of the 46 women who responded to the entire online survey, 20 per cent said their partner had downloaded apps to their phone.¹³⁹

A 2015 survey of family violence workers found as follows:

- ▷ Ninety-eight per cent of 546 workers surveyed had clients who had experienced technology-facilitated abuse.¹⁴⁰
- ▷ The most common technology was text messages—often large volumes of text messages sent in one day.¹⁴¹
- ▷ Thirty-four per cent of workers saw the use of GPS trackers on smartphone apps 'often' or 'all the time'; an additional 40 per cent stated that it happened 'sometimes'. These figures are higher than those for the 2013 study, when 29 per cent of workers identified the use of GPS-tracking technologies for stalking. This could mean workers are now more aware of this type of abuse and/or that the technology is increasingly being used by perpetrators of family violence.¹⁴²

As with other forms of family violence, technology-facilitated abuse occurs both within relationships and after separation, but it can escalate once the victim leaves the relationship.¹⁴³ One study found that technology-facilitated stalking is mostly used to stalk victims after separation¹⁴⁴:

He's been stalking me since October. A couple of times I went out at night and he'd follow me there and then break into the house and cause damage there. I don't go out. My phone was syncing with his and I didn't realise. One time when he broke in he stole my laptop and he'd set up my cloud so he had access to all things on my phone ...¹⁴⁵

My ex had also put an app on my iPhone called Find my iPhone. He had been tracking me without me knowing even after we separated. My [removed] found it about a month after he left.¹⁴⁶

As the Council of Australian Governments noted, 'Too often technology is being used to facilitate abuse against women. There is an opportunity to turn this around and use it instead to keep women and their children safe'.¹⁴⁷ In December 2015 COAG agreed to pursue 'actions to limit technology-facilitated abuse' and committed to a national summit in the final quarter of 2016 to profile best practice and review progress.¹⁴⁸

Stalking

Although stalking is a problem for many family violence victims, it is not well understood.

Submissions noted that many in the community perceive partner stalking as less serious than stranger stalking—particularly when victims try to report such behaviour as a contravention ('breach') of an intervention order.¹⁴⁹ One reason for this could be that technology-facilitated abuse has been normalised as a result of the increasing use of technology in relationships.¹⁵⁰

Citing findings from the 2013 National Community Attitudes towards Violence Against Women Survey, Victoria Police submitted, 'Fewer Australians consider harassment by repeat phone contact as a form of intimate partner violence when compared to 2009'.¹⁵¹ The survey results show that 37 per cent of respondents reported it was acceptable ('always acceptable' or 'rarely or sometimes acceptable') to track a female partner by electronic means without their consent, and 14 per cent reported such behaviour was 'not serious'.¹⁵²

Studies show that partner stalking often lasts much longer than stalking done by strangers or acquaintances.¹⁵³ Stalking is also linked to other forms of family violence, including sexual abuse and emotionally abusive or controlling behaviour.¹⁵⁴ The Centre for Forensic Behavioural Science and Forensicare submitted:

... recent research with stalkers assessed at Forensicare and followed up via Victoria Police files showed that approximately one-third of ex-intimate stalkers have had contact with police for family violence during their prior relationship with the victim.¹⁵⁵

Stalking and other forms of technology-facilitated abuse have a major effect on women's mental and physical wellbeing and on their daily routines, parenting and workforce participation.¹⁵⁶ Eighty-four per cent of the 39 women who responded to this question in the 2012 SmartSafe project reported that stalking affected their mental health and wellbeing:¹⁵⁷

Women talked about the invasiveness of technology-facilitated abuse and stalking because of its spacelessness; they were confronted with it anytime they logged into social media or email accounts or used their phone, tablet or computer.¹⁵⁸

Fear can therefore be heightened by the use of mobile technologies. By stalking a person for 24 hours a day, perpetrators can create a sense of 'omnipresence' that 'erodes [spatial] boundaries' and makes the victim feel it is impossible to escape the perpetrator.¹⁵⁹ For example, perpetrators sometimes place GPS tracking units in cars, bags and prams:¹⁶⁰

During the course of our relationship he informed me it was easy to purchase surveillance equipment off the internet and he knew how to install it due to the training he'd received within his employment.¹⁶¹

Victims feel they no longer have access to a 'safe space' away from the perpetrator, even after separation and relocation.¹⁶² This is particularly dangerous when they seek safety at a secure refuge, and the tracking and stalking can pose a risk not only to the victim herself but to other women and workers at the refuge.¹⁶³

The SmartSafe project found that perpetrators commonly bombarded victims with text messages to ensure their 'continual presence' in victims' lives:¹⁶⁴

Some perpetrators text and phone repeatedly, creating dread and fear in the victim that the harassment will never end. Some women receive only one text or call daily or weekly, but this can be equally as terrifying in the context of their specific domestic-abuse history.¹⁶⁵

Women living in rural, regional and remote Victoria can be particularly affected by technology-facilitated violence. They may be easier to find than women in metropolitan areas, and thus they may experience increased danger and safety risks and might be under greater surveillance as a result of being tracked by the perpetrator.¹⁶⁶ They may also have less access to police and other support services.¹⁶⁷

The Centre for Regional Law and Justice submitted:

The degree and amount of abusive messages sent could be extreme and it was not uncommon for perpetrators to commission people in their network (friends and family members) to engage in technology-facilitated abuse and or stalking. Sometimes survivors had proof of the perpetrator's identity, sometimes this was concealed. Several women told us that they received calls from people they believed to be their abuser or in their abuser's network, impersonating police officers, trying to intimidate women who were pursuing formal responses to family violence.¹⁶⁸

In addition, perpetrators use isolation to dominate and control their victims, and a sense of this can be conveyed through the use of technology. SmartSafe found that perpetrators would isolate women from their support networks by harassing family and friends through social media or by causing women to change their phone numbers or close down their social networking accounts to stop the abuse.¹⁶⁹ Isolation and lack of social support after traumatic experiences are associated with increased levels of psychological distress.¹⁷⁰

The effects of family violence

Living with the terror of family violence can have devastating effects on the health and wellbeing of victims in both the immediate and the long term. The Commission examined the effects of this violence, focusing on the cumulative and long-term effects and the effects on children, while also acknowledging the resilience of victims. The Commission also considered family violence-related deaths.

The effects on adults

As well as the physical scars resulting from the violence, victims of family violence can also experience a range of mental health difficulties, among them post-traumatic stress symptoms, depression, anxiety, eating disorders, sleep problems and self-harming behaviour.¹⁷¹ For many victims, these have long-term consequences.

Psychological effects

Victims of family violence and their supporters told the Commission about their experiences of serious psychological harm, suicidal thoughts and, in some cases, the suicide of a person who had been a victim of family violence.¹⁷² In a community consultation session, one woman told the Commission:

I've been fortunate in that I haven't been successful in ending my life. I've used spirit and determination to come out of that. But the causation comes out of family violence—the abuse, and not being believed. Seeing the impact on my children.¹⁷³

In addition, Lifeline submitted:

An examination of several published studies finds that those who experience domestic violence are 4.5 times more likely to attempt suicide. The experience of traumatic stress itself can foster suicidal thoughts and ideation, in part due to the reduced coping capabilities, and because of the perceptions that there is 'no way out'.¹⁷⁴

Many victims described to the Commission the experience of psychological harm during and following family violence. These included emotional and psychological breakdowns, changes in eating and sleeping patterns, anxiety and depression:¹⁷⁵

I suffer from PTSD since I left him, I have trouble sleeping, and experience nightmares nearly every night. I have severe anxiety attacks, almost constant headaches, and tiredness. I have trouble concentrating and focusing.¹⁷⁶

The mental health effects of family violence are further examined in Chapter 20.

Victims can experience a range of other psychological and emotional harms, including lack of self-esteem and misplaced feelings of guilt:¹⁷⁷ 'My self-esteem became so small. I spent my life trying to work out what I was doing wrong'.¹⁷⁸ These feelings were commonly experienced by women who told the Commission they felt they had failed when they could not ensure the safety of their children from the violence of the perpetrator:

Obviously the children and I are extremely distressed and I feel like I am a failure as a mother and a human being as I am unable to protect my children from a violent, volatile, abusive, manipulating, threatening and controlling father.¹⁷⁹

Others told the Commission they frequently felt unsafe and had constant fears for their own safety and that of their children. To protect themselves, women explained that they became hyper-vigilant. Living for prolonged periods in this heightened state of vigilance and security can be an exhausting and isolating experience:

I felt like I slept with one eye open and one eye closed for this period. It was only recently that I could afford to put a security door on my place.¹⁸⁰

When someone calls up and asks your name and address, an overwhelming fear comes over you. Worried that you will be found and brings it all up.¹⁸¹

On one occasion he laughed and told me '200 Meters is a joke to a [removed] anyhow'. I still to this day 3 years on find myself looking all around me when I go outside ... even when I am at home near a window.¹⁸²

For victims who relocate for safety reasons, the experience of 'resettlement brings with it financial burden, emotional distress, physical upheaval and social disconnect[ion]'.¹⁸³ In its submission Domestic Violence Victoria identified additional barriers to recovery after relocation:

There is an assumption that once they are in a refuge that they are now 'safe', but often their experience of refuges mean[s] that they are in an unfamiliar location, children are restricted from attending their usual school and are out of contact with the support provided by their communities, friends and family as well as experiencing continuing disruptions to their daily family life.¹⁸⁴

Others described beginning to believe the negative comments voiced by the perpetrator.¹⁸⁵ One woman spoke of the effect of violence and trauma on her independence and confidence:

I don't know how to function anymore as I don't have someone making decisions for me because of the control he had over me. I was in a 15-year controlling relationship. Unless I have an appointment to go to I don't get out of the house.¹⁸⁶

As noted, perpetrators of family violence often isolate the victim, which can alter the victim's perspective on what is acceptable behaviour.¹⁸⁷ Some victims choose to withdraw to manage their own safety, but this can add to their sense of social isolation:

For 3 months I became totally compliant. Everything he asked for I said 'yes' to. I went to work but went into a shell and quietly had a nervous breakdown. Not once in the 3 months did he see me naked, I slept on the edge of the bed, I lived in fear of making him angry. He later told a friend that our marriage had never been better.¹⁸⁸

For some victims, the effects of family violence are amplified because of the disadvantages they experience as a result of their cultural and linguistic background, disability, age, race, sexuality, gender identity or socio-economic status. One woman told the Commission:

I was still in the house but people were throwing beer bottles at the house in the night and my family in India were being threatened. I moved to a friend's place and he started calling from a private number to my friend's house asking where I was. But because I didn't have an IO [intervention order] I couldn't go to court. The Department of Immigration said because an IO wasn't done, they needed doctors' reports. I gave them that and they took two years to decide whether I was a victim of DV. And I was interviewed by a psych from Department of Immigration ...¹⁸⁹

These social, psychological and cognitive harms are not experienced in isolation but are compounded by continuing exposure to family violence.

Physical effects

Many victims described physical forms of violence as having a long-term and often debilitating effect. In a joint submission, EDVOS; Safe Futures Foundation; Safe Steps; WISHIN; and the Victorian Women's Trust described their observations of the brutality of physical violence:

Men hit women, kick, punch and slap them and slam their heads into walls. Men throw women across the room, rape them after a beating or in front of other family members, pull out their hair, bite and scratch them, burn and brand them with hot implements, throw objects at them, tie them up and torture them with blades and cigarettes. Sometimes men use drugs and alcohol coercively or covertly to reduce the woman's capacity to resist. Men tie up women and lock them in car boots and drive them around 'for a bit of a scare'. For one woman, we learned that her husband had done this to her three times in a week.¹⁹⁰

The Commission heard that women often experience head, face and neck injuries as a consequence of repeated physical violence to this part of the body.¹⁹¹ Women attending the Commission's community consultations spoke about a range of effects of these head- and face-related injuries, including loss of eyesight and hearing.¹⁹²

... comes home and kicks me in the head – breaks my optic nerve – blood everywhere. He came back the next day – my eyes are closed – I can't see – he never said sorry. He sat me on the seat of the car – I had to wear an eye patch. Two weeks later - I got the keys, went to the hospital. They said the injury was like a high impact car accident – they said they could not have helped me (save my eye).¹⁹³

The retina detached in my left eye and I have had laser surgery. I have tinnitus in my left ear. I have lost a quadrant of sight in my left eye. I have a cataract in my left eye, to be operated on next year. In ongoing physiological terms I have a worsening semi facial tremor over the whole left side of my face that requires bi-monthly neurological intervention and caused me to take early retirement from my profession in 2013 as the twitches were too embarrassing to bear all day in public.¹⁹⁴

Broken noses, broken ribs and other breaks were frequently reported to the Commission.¹⁹⁵ Repeated head, face and neck trauma, as well as once-only incidents, can lead to acquired brain injury, and are increasingly being recognised as going undiagnosed in many family violence victims.¹⁹⁶ Chapter 20 discusses acquired brain injury.

The Commission heard about cases of calculated and cruel physical violence intended to debilitate the victim:¹⁹⁷

At first it was bending of my fingers so that they swelled – to the point I could often not use fingers for weeks on end because of the damage.¹⁹⁸

She was the one that used to beat me in to unconsciousness more times than I can recall. The beatings were mostly over the head, hands and feet as she was determined to cripple me.¹⁹⁹

For some victims, the effects of the physical violence have necessitated intensive rehabilitation over long periods.²⁰⁰ Many victims told us, however, that it is years later when the signs of physical violence on the body begin to show:

What I wanted to say was how much ongoing medical costs I now have all these years later. When a right-handed man repeatedly strikes you over many years you bear the damage on the left side. Your head snaps to the right. Again and again. Your spine tells the story.²⁰¹

Children and young people as victims

To my parents, I was a trouble maker who was nothing but an inconvenient and difficult child who was never satisfied. I felt horribly unloved. It was such a desultory, dank, fetid and oppressive atmosphere that I came to the conclusion that my sisters and I must have been products of rape. Many years later after I'd escaped, I remember cowering when I saw my father on a bus. After his death, I cowered again because I saw someone who looked like him.²⁰²

Children can be affected by family violence directly by being the target of the violence or indirectly through exposure to family violence or its effects in the home. Both circumstances can have a profound impact on the wellbeing of children and young people.²⁰³ The Commission was told about the effects of family violence and sexual violence on children and young people's wellbeing. It was said they often continue to be affected in their adult life:

My father was, and still is, an alcoholic. Throughout my childhood, he physically, verbally and emotionally abused my mother, my two siblings and me. At the time, I felt that the death of at least one of us was inevitable, rather than probable ... My father's behaviour has affected every aspect of my life. It negatively impacted my school attendance, results and participation in extracurricular activities, such as sport, debutante balls and formals. It prohibited me from making and maintaining friendships. It has limited my opportunities and crushed my self-confidence.²⁰⁴

My experiences as both a victim/survivor as well as being in a family where sexual violence and abuse has occurred has been difficult not only due to the impacts of the abuse itself but also because of the isolation myself and members of my family felt after the abuse. As victims of the abuse both directly and indirectly we have been made to feel ashamed, labelled and lost.²⁰⁵

For many adults with a traumatic history such as this, the long-term effects are debilitating:

To this day my anger is hard to control. It has got me in trouble with the law and courts. Because of this I isolate myself from everyone and I can't hold a relationship or trust anyone. I even try to end my life many many times.²⁰⁶

Incredibly sadly, the negative impact of my early life on my ability to understand boundaries in relationships came to a head two years ago when I was myself in an incredibly horrible abusive relationship.²⁰⁷

A victim of sexual abuse by her father said:

Even now at [removed] years of age I am distressed to write this. The sense of powerlessness and being different has never left me. I will often feel all wrong and have to leave. I cannot join in conversations as I do not have a shared experience with others. I am deeply ashamed and try so hard to remember how it started, perhaps I am somehow to blame. I can remember when I started to menstruate and he said we now had to be very careful. I still have this sense we were somehow in partnership.²⁰⁸

While many submissions described parents' use of violence, the Commission also heard from a number of people who experienced violence at the hands of a sibling. One submission described this as follows:

Although he never escalated (while still a child or teen) to serious violence, well not enough to put me in hospital and ... get the adults on his case, the constant and unpredictable attacks meant that I lived in a constant state of hyper-alert terror, with the attendant self-loathing, low self-esteem and depression that *every* victim of domestic violence knows far too well.²⁰⁹

The Commission heard many other stories of family violence perpetrated against children and young people and its often devastating impacts.

As noted, children can be affected by family violence as a result of being exposed to it or by indirectly experiencing its harmful impacts on the family. Although it is difficult to assess the full extent of children's exposure to family violence, it is apparent that a substantial number of children are affected. In Victoria in 2013–14 in 34 per cent ($n=22,376$) of family violence incidents recorded by police there was at least one child present,²¹⁰ and in the five years to 30 June 2014 the number of children listed as victims on family violence intervention order applications increased by 20.6 per cent to 23,332 children.²¹¹ The ANROWS analysis of the ABS Personal Safety Survey shows that since the age of 15, over half a million Australian women have children who saw or heard partner violence.²¹²

Victorian law recognises that, even when children are not the direct object of family violence, exposing them to it is itself a form of family violence.²¹³ Exposure can occur in many different ways—not only when children directly witness the violence. Among the examples given in the Family Violence Protection Act are when a child overhears threats of physical abuse of a family member, comforts or provides assistance to a family member who has been physically abused, cleans up a site after property has been intentionally damaged, or is present when police members attend an incident involving physical abuse.²¹⁴

Children can also be exposed by knowing or sensing that their mother is fearful.²¹⁵ The Commission for Children and Young People submitted:

Direct witnessing of incidents is not the only form of exposure that professionals should be concerned about, as there are a multitude of ways that children may experience family violence. Children may be just as traumatized, or even more, by incidents that they did not witness, but are aware have occurred due to physical injuries or threats to a family member or pet ... We know from horror films that when the imagination 'fills in the gaps', the experience may be more terrifying.²¹⁶

There is increasing recognition that children exposed to family violence are not passive 'witnesses' and that they suffer lasting effects even if they are not the direct object of the violence or do not directly witness it.²¹⁷ Children are highly sensitive to their environment and will register even subtle changes in their primary caregiver's emotional state or the atmosphere at home:²¹⁸

My children did not usually witness overt events (my husband would pick his moments and wait until we were alone to verbally and emotionally abuse me), however they were picking up on the 'atmosphere' in the home which was becoming increasingly hostile. To give an example, both of them approached me at different times, and totally out of the blue began asking me whether I wanted to be cremated or buried and telling me they didn't want to die ... I questioned them carefully thinking it may be part of the usual childhood fascination with death ... But they couldn't account for where their questions had come from. I knew in my heart it was to do with the more sinister atmosphere in our home ...²¹⁹

Children are exposed to emotional abuse when their mother is the target of violence:

Dad's controlling behaviour meant that I feared him much of the time. He only needed to look at me in a stern way and I would be shaking. Mum and Dad were often 'at war'—a very cold war so that the bulk of my childhood I would describe as tension-filled. I was well cared for with no doubts of my parents' love for me but Dad's controlling behaviour left me with soulscars I have been working with for a long time ... Some of the things I can look back at and can now identify as abuse are things like shouting at my Mum to 'just shut up' when she was expressing an opinion. This was reinforced by Dad when he demanded Mum to read stories that reinforced this idea that wives need to be happy with whatever their husbands say or do ... the scary stares, stonewalling with no response from Dad for weeks—Dad sleeping on the couch for all this time, carping at mum for going to work. Wives (this wife in particular) should be happy to be dependent on whatever Dad brought home, threatening mum with committing suicide if she ever left him and controlling mum's outings and getting snide remarks or cold treatment if she came home even a bit later than was expected.²²⁰

Exposure can begin from birth, or even in utero, and can have immediate and long-term psychological and behavioural impacts and health and socio-economic effects. The child's ability to trust and relate to others can be adversely affected, which in turn can affect future relationships.²²¹

There is some evidence that exposure to family violence as a child can lead to intergenerational transmission of violence: children exposed to family violence are more likely to hold attitudes that justify their own use of violence.²²² This does not, however, mean children exposed to violence will inevitably become perpetrators as adults or that they will necessarily suffer negative consequences in their lives: many children and young people demonstrate remarkable resilience in the face of family violence.²²³ Resilience is discussed below.

Cumulative effects

The Commission was informed that health and wellbeing effects are not experienced in isolation. They are complex and interrelated, can be experienced during a violent relationship, and can continue post-separation. One woman, who asked to keep her identity confidential, described having to leave the family home and the children's school, change names, and cease contact with friends for safety reasons. This was trauma additional to the experience of family violence.²²⁴

The Commission was told about a range of factors, particularly related to dealing with the legal and service systems, that compound women's experience of harm and delay or prevent the recovery process:

Women are moved out of their region for safety reasons but can then be far away from the court – resulting in many having transport issues, mobility issues, language issues, children to consider.²²⁵

I have to go to court every second week. I am trying to study, but I keep having to miss classes. I have spent the last three months in and out of court.²²⁶

I don't think the police station, when you have an IVO, the onus is on you to report every breach. It can take that person two minutes to breach and you have to sit there, sometimes up to two hours, reporting each breach and that's very taxing.²²⁷

I find having to retell this part of my life over and over with different organisations reimpacts and is adding to cumulative harm, so having the support from services I have known in [removed] to be of great assistance to me.²²⁸

It was said that the cumulative effect of these harms on health and wellbeing, in addition to economic insecurity and lack of employment and secure housing, contributes to poverty and homelessness. One person explained:

Depression is a really hard battle. But I don't need any more conflicting issues with psychologist people. Financially I can't afford to feed us. I can't afford to get our shower fixed. We didn't have a heater for 4 or 5 years. I just can't afford it. To me that's some sort of physical impact.²²⁹

Dr Rhonda Cumberland, Chief Executive Officer, Good Shepherd Australia New Zealand, described the current system's failure to engage with victims and recognise the cumulative impact of multiple forms of harm:

I have been distressed as I've worked in this field to see how many women do become trapped in the system. Again it's an unintended consequence, but we do think about crisis and resolving a crisis situation, and professionals who work in this area, any practitioner will know that once you've stabilised the crisis, the more that you move into a hardship circumstance or something that's stable, the system soon tires of you and forgets about you. It's in that forgetting and in that fatigue that women's capacity to get out of the system, that genuine empowerment of women fails to take place, and it does mean for long periods of time. You often only have sort of small windows to get the re-engagement to happen, to get the reconnections to happen. Once those windows close, it's highly unlikely that women can re-engage to the extent that they could have if there were an earlier intervention.²³⁰

Long-term effects

As noted, the trauma and the health and wellbeing effects of family violence often remain long after the violence itself ends.²³¹ This impedes recovery. The Commission received submissions from victims who had suffered family violence a considerable time ago and were still suffering from its consequences decades later:

A heavy sadness continues to fill my soul, as how do you ever fully recover from such a cowardly, dangerous, intentional and reckless act? Words really fail me when attempting to describe how this crime has affected us. I constantly relive every word, every hurt, every moment. Arguably, the most damaging aspect of the assault is the ongoing trauma from being betrayed by the person that I thought I could love and trust. This inhumane attack turned my world upside down and all order completely disappeared. The wounds remain, in time the mind covers them with scar tissue and the pain [lessens]. But it is never gone. The nightmares remain, the fear stays and the words still go unspoken. The damage is irreversible and forever-lasting.²³²

On a final note, my poor choice in a partner has cost me my career, health, financial security, happiness, dreams and hope for the future. On a daily basis I deal with the impact on my ex's behavior on my children and fear the impact this will have on them in the long term.²³³

Several submissions and community consultation participants described intense physical reactions and/or aversions to particular objects that reminded them of experiencing violence:

I cannot wear anything around my neck at the moment. If it wasn't for me kicking him, I would be dead. If I put something on it feels like I'm choking. Plus the knives. I only have one knife in my house at the moment because my son tried to stab me.²³⁴

Constant anxiety inside me. On high alert every time the phone rang or I got mail. Hearing cars, smelling cigarette smoke etc. were triggers for me, my body would stop working and I would panic.²³⁵

The Royal Australian and New Zealand College of Psychiatrists submitted that 'the most profound and long lasting effects of FV are those related to mental ill health. Chronic stress such as that seen in FV leads to neuro-biological impacts which in turn produce mental illness and physical illness'.²³⁶ The Commission was informed that psychological trauma caused by family violence can lead to ongoing cognitive and behavioural problems, including post-traumatic stress disorder:²³⁷

My children and I have all been diagnosed with severe post-traumatic stress disorder. It manifests differently in all of us but includes depression and anxiety disorders. Our lives are tainted by what happened to us and that never goes away ... I look at my children and how they struggle with the mental health issues of growing up in a house where violence was routine and where verbal abuse was dished out constantly and I blame myself always. I live with the shame and the guilt of not being able to protect them or myself, and I live with the knowledge that the person who inflicted this damage will never answer for it.²³⁸

The Commission was also informed that many women with extensive histories of family violence are being diagnosed with a condition called 'complex trauma disorder', which has symptoms affecting cognition and emotional wellbeing.²³⁹ The importance of 'trauma-informed care' in responding to the needs of victims of family violence was highlighted to the Commission.²⁴⁰ This is discussed in Chapter 19.

Resilience

Although hundreds of women described their experiences and the trauma caused by family violence, the Commission was struck by the enormous resilience and strength victims displayed both during and after the violence:

I am stronger and [more] empowered than ever before, and I am now completing my dual diploma in Community Services and Case management to achieve my goal, (and passion) to work in the family violence sector to help women and children recover from family violence and rebuild their lives, it can be done, and I have done it.²⁴¹

The Commission heard about the positive health and wellbeing outcomes of victims who were supported, both personally and professionally. Often, strong support networks from family, friends and professionals were crucial and served to increase a victim's resilience and enhance their sense of wellbeing:

I experienced physical, emotional, and spiritual abuse in the relationship. I can testify that complete recovery is achievable and attainable but it requires a lot of hard work. You cannot handle the situation in isolation; you need friends, family and counsellors to pull you through. It takes a lot of courage and strength to walk through it. You will have setbacks along the way provided you keep heading in the right direction that is all that it counts.²⁴²

I thank you for giving me this opportunity to submit my personal experience with family violence, I would like to add that I am doing fantastic now, this was 3 years ago, and with the amazing support of my family, children and psychologist, and my wonderful new partner, I have been able to heal, and not be a victim but a survivor.²⁴³

The Commission's findings are supported by those of a number of studies that highlight the resilience of victims of family violence and their ability to 'recover' from experiences of violence. The Australian Longitudinal Study on Women's Health found that younger women who had previously experienced partner violence had better mental health than women who had experienced violence more recently.²⁴⁴ A South Australian study that assessed 59 women who had experienced family violence for post-traumatic stress disorder, anxiety and depression showed a significant reduction in symptoms at a 12-month follow-up.²⁴⁵

Although children and young people disproportionately experience the effects of family violence, they too display great resilience: research shows that many children who experience such violence do as well as children who have not experienced it.²⁴⁶

The lasting impacts of family violence and men's violence against women is life long, however women, children and families have the ability to survive this and even thrive after the violence has occurred. What is crippling for individuals and families is a lack of support which would otherwise enable them to return to work, continue to study, maintain relations and participate in everyday life again. We need to minimise the impact violence can have on the lives of those directly impacted by violence and the family and friends who support them ... I would like all women and their families who have experienced violence to feel like they have somewhere to go, someone to call and to feel that they have a bright future ahead of them after the abuse has occurred.²⁴⁷

The resilience of children and young people is discussed in more detail in Chapter 10.

Family violence–related deaths

I grabbed [the] children and hid them in the back bedroom as I thought this would be the safest place if he tried to get in the flat. I rang the Police, as I was on the phone I heard a large gunshot and a Scream. I quickly tried to explain to the Police and hung up the phone, At that moment my Daughter came running out of the back bedroom and tried to look through the venetian blinds. I grabbed hold of her and we all just sat together in the bedroom until the Police arrived. MY HUSBAND SHOT HIMSELF DEAD. I was told by the Police that there were [removed] bullets in the gun. They believed that he had planned one bullet for each of us.²⁴⁸

Fiona, a mother of four from Melton West, had been at the Sunshine Magistrates' Court for an intervention order hearing. She had attended a nearby women's refuge before she was tragically killed by her ex-partner outside Sunshine Shopping Centre.²⁴⁹

On Saturday he rang [removed] and told her he had been injured in a football accident and asked her to return to their apartment to help him. Unfortunately she agreed to stay overnight to make sure he was OK, but by the morning she was dead brutally murdered by him ... the memory of the loss of our beloved, gentle daughter and sister ... continues to haunt us to this day.²⁵⁰

My sister ... was in a number of abusive relationships. She ended up committing suicide about five years ago. My sister never sought any type of help in any way.²⁵¹

Nikita Chawla was a beautiful, kind-hearted, gentle, energetic and ambitious young woman with a passion for performing arts and dance. Her life was taken in a brutal act of domestic violence perpetrated on 9 January 2015. She was 23 years old. She had her whole life ahead of her.²⁵²

Kelly loved life and just living – that was taken away from her and us; her family.²⁵³

The Commission received several submissions from family members of people who had been killed by other family members, some in recent years and others some time ago. Most of these cases involved women who were killed by their male partners or ex partners. The Commission met privately a number of bereaved families who spoke of the devastating impact of their loved one's—and in one case loved ones'—death. In each case the course of events leading to the death had involved a history of family violence. In some cases the family violence was known to family members, police, the courts and specialist family violence services during the victim's lifetime; in others, the victim had not disclosed or had only partially disclosed the occurrence or extent of the violence they had suffered.

The Commission was moved and impressed by the insight and conviction of these families. The Commission is grateful for the detailed and considered contribution it received from these families. The stories they told illuminated the very grave consequences that gaps and failings in the system's response to family violence can have. Their courage in revisiting the circumstances that had led to the death of their daughter or son, sister or parents was remarkable, as was the clarity with which they were able to identify ways that system failings might be addressed to spare other individuals and families a similar fate.

As shocking as the statistics on family violence–related deaths are, the Commission would like to acknowledge that the statistics outlined in this section cannot convey the grief the families have felt for the loss of their loved ones. 'Domestic homicides'²⁵⁴ are recorded by the Australian Institute of Criminology's National Homicide Monitoring Program.²⁵⁵ Of the 96 homicide incidents in Victoria between 1 July 2010 and 30 June 2012, almost a third were domestic homicides.²⁵⁶ Nationally, women constituted 76 per cent of the victims of intimate partner homicides, 50 per cent of homicides by parents, 52 per cent of homicides by children, and 25 per cent of other family homicides.²⁵⁷

There is a demonstrable link between family violence, homicide and suicide:

- ▶ Each year in Victoria about 40 per cent of all deaths attributed to homicide occur between parties in an intimate relationship or familial relationship (this includes adults and children). That is about 25 deaths a year.²⁵⁸
- ▶ Between 2009 and 2012 almost 35 per cent of women who died through suicide had a reported history of family violence. That is about 50 deaths a year.²⁵⁹
- ▶ A large number of men who died from suicide in Victoria between 2009 and 2012 had a history of family violence. Many men had a history of perpetrating such violence. There were approximately 110 deaths annually of men with a history of family violence.²⁶⁰ The Commission was cautioned, however, that the relationship and mediating factors between perpetration of family violence and suicide are not well understood.²⁶¹

The Coroners Court of Victoria identified 288 family violence-related deaths in the state between 1 January 2000 and 31 December 2010—in total, 150 females and 138 males.²⁶² The Coroners Court submitted to the Commission:

Coronial investigations of family violence homicides have also identified that third parties and professionals are often aware of the occurrence of family violence, however for various reasons have not notified any authority. This finding is replicated amongst those exposed to family violence who subsequently die from suicide, with almost 85% of these women having discussed their exposure to violence with either professionals or family and friends.²⁶³

As might be expected, the coronial investigations of family violence homicide have revealed that many parties involved in fatal family violence incidents had previous contact with the justice system. Many had contact with the police, courts and/or community corrections within six months of the fatal event. In addition, in some incidents, the perpetrator of family violence had a current family violence intervention order against them at the time of the fatal event. There was evidence of perpetrators breaching the conditions of the order in close proximity to orders having been made, as well as further violence occurring that was not reported to police. While family violence intervention orders are an integral part to improving victim safety, for a proportion of cases, it is evident that an intervention order does not result in an end to violence. As demonstrated here, this can be to the extent that a fatal outcome occurs.²⁶⁴

Some deaths are also indirectly linked to family violence, and the impacts are not known or understood until some time later, if at all. These include

- ▶ premature deaths from chronic illness, disability or injury linked to childhood neglect or to serious or sustained violence in adulthood
- ▶ deaths linked to neurological or psychiatric conditions caused or exacerbated by violence
- ▶ deaths caused by substance misuse, which itself can be linked to experiences of family violence.

In Chapter 25, we consider the role of the Coroner and the value of systemic death reviews conducted by that office.

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3 Key family violence data

Introduction

Family violence is a pervasive and pernicious problem in our society. Although it takes many forms, the most common type of family violence is intimate partner violence, which is mainly perpetrated by men against women. There has been more research done on this type of violence than on violence against other family members.

Chapter 2 provides an overview of the nature and dynamics of family violence, the different forms it can take, the times of heightened risk, and some of the effects of such violence.

This chapter explains some of the limitations of the data used throughout this report—the greatest problem being the widespread under-reporting of family violence. This is more fully explored in Chapter 39 but, for now, it is sufficient to say that our understanding of family violence is hindered by under-reporting, by a lack of capacity in various workforces to identify family violence, by gaps in recorded data on the impact of family violence for particular groups and communities, and by the ways in which people interact with different services and systems that aim to prevent or respond to family violence.

Acknowledging these limitations, it is important to explain some terms that can assist in the reading of the data used throughout this report—terms such as ‘prevalence’ and ‘incidence’. Efforts have been made in recent years to understand more about the prevalence of family violence. Although it is not clear whether its prevalence is increasing, there has been a marked increase in the reporting of it, and this is reflected in family violence incidence data for Victoria. This increased incidence puts extraordinary pressure on the systems and services that deal with family violence.

While we know that family violence can involve people of all ages and backgrounds, we share what we know about demographic trends of both perpetrators and victims of family violence.

Finally, this chapter also discusses some of the primary statistics that are often relied on throughout this report.

Terminology

- ▶ The terms ‘affected family member’ and ‘other party’, as used by the police, refer respectively to a person to be protected by a family violence intervention order (the victim) and a person against whom such an order is made (the perpetrator); the terms ‘applicant’ and ‘respondent’ are used by the courts.
- ▶ Throughout this chapter the terms ‘victim’ and ‘affected family member’ are used interchangeably. Similarly, the terms ‘respondent’ and ‘perpetrator’ are used interchangeably—recognising that there might not have been any findings of guilt in respect of the ‘perpetrator’, who could therefore be called an ‘alleged perpetrator’.
- ▶ The formal term for breaching a family violence intervention order is a ‘contravention’; it is, however, commonly described simply as a ‘breach’. These terms are used interchangeably in this chapter and throughout the report.

Data limitations

A great deal of family violence is hidden. People might not report their experience of it or it might be reported in a way that obscures its nature or extent, for example by reporting an injury, but not attributing it to violence (sometimes called ‘hidden reporting’). When people do report family violence, the services and organisations that collect the information might not record it properly or consistently (sometimes called ‘under-recording’).¹

Many varied and complex factors lie beneath hidden reporting and under-recording, among them the following:

- ▷ shame, fear and stigma
- ▷ practical or technical barriers—such as the way surveys and service providers pose questions and the language and setting in which the questions are asked
- ▷ factors that create additional barriers—such as linguistic and cultural barriers, geographical isolation, disability or homelessness—making people less visible in data collection
- ▷ not recognising certain behaviours—particularly emotional or economic abuse—as constituting family violence
- ▷ a lack of capacity among multiple systems and services to identify family violence.

Population survey data does, however, reveal the extent to which people might not report family violence. For example, the Australian Bureau of Statistics' Personal Safety Survey (ABS Personal Safety Survey) shows that, of people who had experienced violence by a current partner (estimated to be 66 per cent [$n=237,100$] women and 34 per cent [$n=119,600$] men), 25.6 per cent of women and 54.1 per cent of men said they had never told anyone about violence by a current partner, and 39 per cent of women and 70.3 per cent of men said they had never sought advice or support in connection with a current partner's violence.²

The ABS Personal Safety Survey also found that, of those people who had experienced violence by a previous partner (estimated to be 1,267,200 women and 336,300 men), 6.7 per cent of women and 20.9 per cent of men said they had never told anyone about previous partner violence, and 23.9 per cent of women and 47.6 per cent of men said they had never sought advice or support in connection with previous partner violence.³

Even when people do report family violence, information about them can be incompletely or inaccurately recorded. For example, some data sets might not record particular demographic characteristics or might record them unreliably or inconsistently.⁴ In addition, organisations and service providers can collect data differently, so it can sometimes be difficult to draw robust conclusions about trends or patterns.

Further, information about services and organisations themselves is often limited, which makes it hard to measure performance, forecast demand, and determine effective measures to reduce or prevent family violence.

The prevalence of family violence

In the context of this inquiry, the term 'prevalence' refers to the proportion of people in a population who have experienced family violence, or a particular manifestation of it, at least once. Prevalence data is usually derived from examining the proportion of family violence at a particular time—much like a data snapshot. This is different from 'incidence', which is a more dynamic measure that examines the rate and pattern of incidents, often expressed per 100,000 people. Incidence is discussed further shortly, under the heading 'The incidence of family violence'.

The Personal Safety Survey

The Australian Bureau of Statistics' Personal Safety Survey is arguably the most comprehensive source of data on the prevalence of interpersonal violence in Australia.⁵ It does have limitations, though; for example, it includes only adults, and it does not include people such as those living in residential care settings and people experiencing homelessness.

The survey focuses on men's and women's experiences of physical and sexual violence, emotional abuse, stalking and sexual harassment. The ABS conducted the survey in 2012 and 2005; a precursor survey, the Women's Safety Survey, was conducted in 1996. In 2012, 17,050 respondents completed the survey, 2,404 of them being in Victoria.⁶

The ABS Personal Safety Survey asked about respondents' experiences of physical, sexual and emotional violence in the preceding 12 months and since the respondents were 15 years old. For physical and sexual violence, the survey records the respondent's relationship with the perpetrator, thus producing an estimate of the prevalence of violence perpetrated by parents, children, siblings, partners and other relations. The survey uses the term 'partner' to describe a person with whom the respondent was living or with whom they lived at some point in a married or de facto relationship; 'partner violence' excludes violence perpetrated by a 'boyfriend/girlfriend or date'.⁷

The survey defines 'physical violence' and 'sexual violence' to include physical and sexual 'assaults' and 'threats'. Physical assault involves the use of physical force intended to harm or frighten. This includes being pushed, grabbed, punched, shoved, slapped, kicked, bitten, choked, dragged, stabbed, shot, or struck with a vehicle; it excludes contact during sport. Physical threat involves an attempt, threat or suggestion of intent to inflict physical harm made face-to-face and where the victim believed it was able and likely to be carried out. It includes threats to carry out the listed examples of physical violence.⁸

Sexual assault is defined to involve acts of a sexual nature carried out against the victim's will through force, intimidation or coercion or any attempt to do this. It includes rape, attempted rape, aggravated sexual assault and indecent assault. Unwanted sexual touching was separately considered under 'sexual harassment'. Sexual threat includes face-to-face threats of a sexual nature where the victim believed the threats able and likely to be carried out.⁹

Emotional abuse is defined as follows:

... when a person is subjected to certain behaviours or actions that are aimed at preventing or controlling their behaviour with the intent to cause them emotional harm or fear. These behaviours are characterised in nature by their intent to manipulate, control, isolate or intimidate the person they are aimed at. They are generally repeated behaviours and include psychological, social, economic and verbal abuse.¹⁰

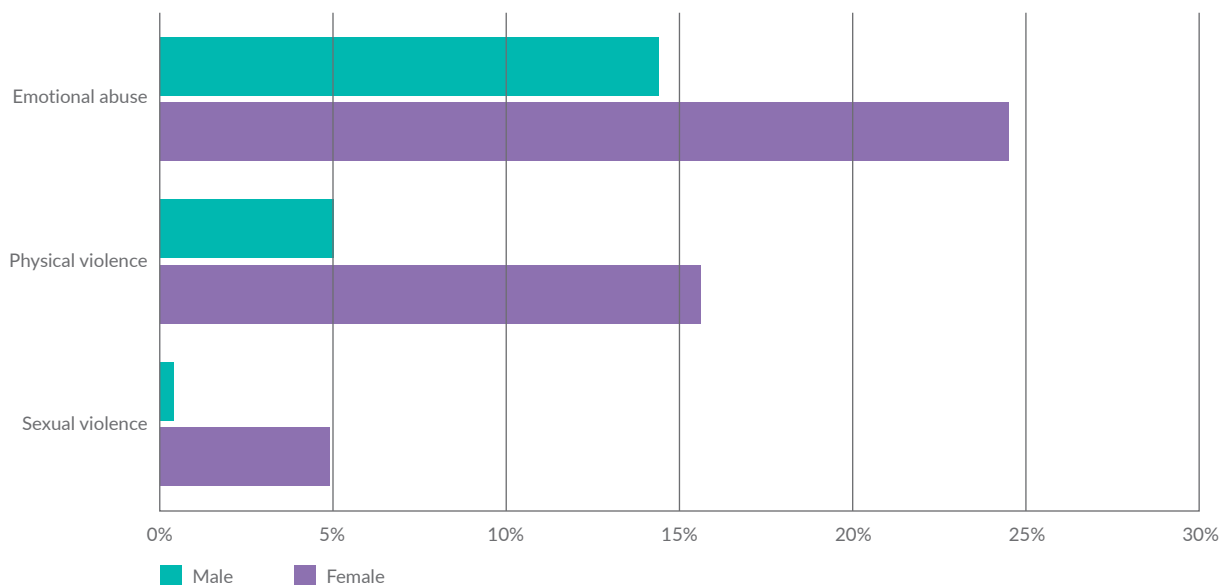
What the survey tells us

Figure 3.1 show some statistics from the ABS Personal Safety Survey. The figures reported are estimates of the proportion of the total adult male and female population of Australia (as opposed to the proportions of survey respondents). The data demonstrates that the Victorian and national prevalence of women's experience of partner violence in the 12 months preceding the survey are comparable, at 1.5 per cent of the female population.¹¹

The 'violence' figure and the subsets of 'physical violence' and 'sexual violence' include violence perpetrated by both strangers and family members. These figures place family violence in context and demonstrate that, while men experience overall higher rates of physical violence, women are more likely to experience both physical and sexual violence at the hands of a partner or ex-partner, parents, children, siblings and other relatives or in-laws. They also show that intimate partner violence is markedly more common than other forms of family violence. The next most prevalent form of family violence is that perpetrated by parents against children.

Figure 3.1 shows the estimated proportions of men and women who had experienced family violence (emotional, physical and sexual) since the age of 15 years and the relationship they had with the person committing the violence.¹² It demonstrates that the majority of family violence occurs in the context of an intimate partner relationship and that women are more likely to experience it than men.

Figure 3.1 Experience of emotional, physical or sexual family violence by a partner or ex-partner since the age of 15: Australia, 2012



Source: Australian Bureau of Statistics, 'Personal Safety Survey, Australia, 2012' (Catalogue No 4906.0, Australian Bureau of Statistics, December 2013), Table 4.

Measuring change over time can be difficult, partly because of changing approaches to asking questions and defining concepts between different surveys. ANROWS (Australia's National Research Organisation for Women's Safety) has reported, however, that the proportion of women experiencing violence perpetrated by a cohabiting partner in the 12 months preceding both the 2005 and 2012 ABS Personal Safety Surveys did not change, remaining at 1.5 per cent.¹³

To gain a sense of how the data compares internationally one can refer to the World Health Organization (WHO), which in 2010 estimated rates of intimate partner violence against women who have been in a relationship by region.¹⁴ The World Health Organization uses a narrower definition of physical and sexual violence than the ABS Personal Safety Survey by excluding threats of violence other than those involving a weapon but a broader definition of intimate partner, by including dating and informal partnerships. Like the ABS Personal Safety Survey, it measures experiences of intimate partner violence from the age of 15 years. The high-income region, which includes Australia, has a 23.2 per cent prevalence rate; this compares with the 23.6 per cent found in the ABS Personal Safety Survey.¹⁵ The average of all regions is about 30 per cent.¹⁶

The ANROWS analysis

In October 2015 ANROWS produced an additional analysis of the ABS Personal Safety Survey, including several hundred new statistical items related to violence against women.¹⁷ Among the main findings from its analysis are the following.

Characteristics of partner violence

- ▶ *Prevalence.* When the definition of 'intimate partner' is broadened to include non-cohabiting partners (boyfriend, girlfriend or date), one in four women—an estimated 2,194,200 women in Australia—had experienced violence by a male intimate partner since the age of 15 years. This is three-quarters of the total estimate for women who have experienced violence by a known male: family violence against women is overwhelmingly perpetrated by partners. An estimated 0.3 per cent of women have experienced violence by a female intimate partner. Rates of cohabiting partner violence in the 12 months preceding the survey were highest among women aged 25 to 34 years.
- ▶ *Pregnancy and children.* Since the age of 15 an estimated 400,000 women experienced violence by a cohabiting partner during pregnancy, and over half a million reported that their child had seen or heard partner violence.
- ▶ *Employment and financial impacts.* One in four employed women who experienced physical assault by a male cohabiting partner took time away from work as a result of their most recent incident of assault, and over half a million (seven out of 10 women who experienced violence in a previous relationship) abandoned property or assets when they moved away after a violent relationship ended.¹⁸

If the analysis is broadened to capture data on violence more generally, it becomes apparent that gender is a significant variable when considering different patterns of violence.¹⁹ For example, while we know that men are more likely to be victims of general (non-family) physical violence—one in two men have experienced physical violence since the age of 15, compared with one in three women—this type of violence is more likely to occur at the hands of men and outside the family home.²⁰ By contrast, violence against women is more likely to be perpetrated by an intimate partner.

Characteristics of general (non-family) violence

- ▶ *Perpetrators.* Both women and men are over three times more likely to be physically assaulted by a man than by a woman.
- ▶ *Place.* A man is most likely to experience violence in a place of entertainment; a woman is more likely to experience it in her home.
- ▶ *Multiple episodes.* An estimated 1.7 million women had experienced multiple incidents of physical violence by a male perpetrator since the age of 15. Two-thirds of these reported that the violence was perpetrated by the same man. In the 12 months preceding the survey women with disabilities were more likely than women without disabilities to experience multiple incidents of violence by a male perpetrator.²¹

The incidence of family violence

As noted, the term ‘incidence’ is used to capture the rate at which family violence occurs over time. Examining incidence helps us identify trends or patterns that might help to guide service responses. It is distinct from a consideration of ‘incidents,’ which is the number of separate and individual occurrences of an event—for example, police attending a house to respond to an incident of family violence. In this case, incidence is the rate at which the number of police attendances is increasing or decreasing.

In addition to the prevalence data provided by the ABS Personal Safety Survey, agencies, departments and services collect statistics that provide measures of the incidence of reported family violence.

Incidence has been calculated differently in some of the data sets discussed in this section. Victoria Police data measures incidence as the number of family violence incidents (police attendances for family violence) recorded in a specific period, so each time a victim (or another person) reports an incident of family violence it will be counted. Victoria Police also extrapolates these figures to gain a prevalence rate per 100,000.

The high-level data from the Magistrates’ Court and the Children’s Court reports all applications (original, extension, variation and revocation) for family violence intervention orders. The sections that report on the demographic characteristics of affected family members and respondents are based only on original family violence intervention order applications, so there is no double-counting of affected family members and respondents. This latter approach aligns with an alternative definition of incidence—the number of new cases of family violence in a particular period—that has been used in some studies.²²

Recent years have seen a marked increase in recorded cases of or cases related to family violence in many data sets. This does not necessarily mean, however, that family violence has become more prevalent. Increases in recorded cases might reflect higher reporting rates or improved skill or effort in identifying family violence. It is important to remember that many incidents of family violence go unreported. Nevertheless, the figures in this section show that extraordinary pressure is being placed on our systems and services.

As noted in Chapter 1, Victoria’s Family Violence Database collected incidence data from a range of sources between 1999 and 2010. It produced major reports in 2002, 2005, 2008, 2009 and most recently in 2012. This database was, however, not operational in the following years, resulting in an absence of publicly available compiled trend data.

To resolve this problem, and to advance our understanding of the nature and extent of family violence, the Commission engaged the Crime Statistics Agency to produce an updated set of family violence statistics for the five years from 1 July 2009 to 30 June 2014, based on analysis of all the data sources contained in the Family Violence Database.²³ The agency’s findings are included throughout this report. These and related matters are discussed in more detail in Chapter 39.

The following section looks at some primary indicators of incidence, beginning with the law enforcement and justice system and moving to other systems and services such as health, accommodation and specialist family violence services.

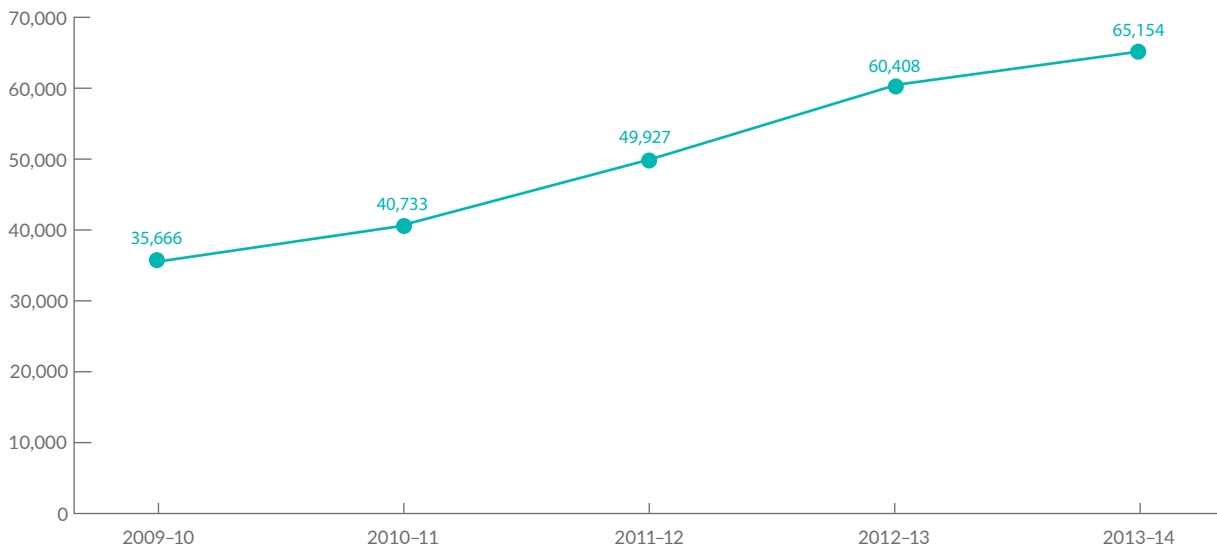
Legal and law enforcement indicators

Family violence incidents recorded by police

Many people affected by family violence in Victoria come into contact with police as a result of the violence. About 30 per cent of family violence intervention order applications are, however, made by victims directly to the courts, and these applications therefore do not appear in police statistics.²⁴

When police respond to a family violence incident, they complete a risk assessment and risk management report, known as an L17 form. The number of family incidents—incidents for which an L17 is completed—is therefore a valuable measure of the incidence of reported family violence. The number of ‘family incidents’ increased by about 83 per cent between 2009–10 and 2013–14 (see Figure 3.2).²⁷ There has been a 71 per cent increase in the rate per 100,000 population of police family violence reports over this five-year period, from 653.1 to 1115.3.²⁵ A further increase was seen in 2014–15, when there were 70,906 family incidents recorded by police, which equates to a rate of 1191.5 per 100,000 population.²⁶ The data is discussed further in Chapter 15.

Figure 3.2 Number of family violence incidents recorded on an L17 form by Victoria Police, 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), Table 3: Family incidents recorded and family incident rate per 100,000 population—Victoria Police, July 2009 to June 2014, 24, provided to the Commission by the Crime Statistics Agency, 8 January 2016.

Recidivist perpetrators

As part of its work in response to the Commission’s request, the Crime Statistics Agency analysed 10 years of Victoria Police data relating to recidivist (alleged) perpetrators of family violence.

- ▶ From 1 July 2004 to 30 June 2014 police recorded 403,991 L17 forms involving 197,822 perpetrators. The majority (63 per cent, $n=125,044$) of these perpetrators were recorded on only one L17 form.
- ▶ Recidivist perpetrators had a disproportionate impact on the volume of family incidents recorded by police: 13 per cent ($n=25,092$) of perpetrators were recorded in more than four incidents each and seven perpetrators were recorded in more than 50 incidents each.
- ▶ Overall, despite accounting for nine per cent ($n=16,914$) of all unique perpetrators, those involved in five or more incidents accounted for 34 per cent ($n=136,349$) of all family incidents. The Crime Statistics Agency did not consider the extent to which individual perpetrators repeat violence against one or multiple victims.²⁸

Chapters 15, 18 and 39 provide more detailed information about the problem and incidence of family violence recidivism.

Family violence intervention orders

The number of family violence intervention order applications heard by the Magistrates' and Children's Courts of Victoria is one measure of family violence.

Between 2009–10 and 2013–14 the number of FVIO applications finalised by the Magistrates' Court increased by 34.5 per cent, from 26,124 to 35,147.²⁹ Figure 3.3 shows the increase in FVIO applications finalised in the Magistrates' Court and the proportion that were original matters, applications for extension, applications for revocation and applications for variation, between 2009–10 and 2013–14.

Figure 3.3 Number of FVIO matters finalised in the Magistrates' Court, 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), Magistrates' Court of Victoria data source, Tab 1, Table 1: Finalised Family Violence Intervention Order applications by type of application, July 2009 to June 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015.

Focusing on original applications, the Crime Statistics Agency found that there were some 42,333 affected family members listed on original applications in 2009–10 and 52,777 in 2013–14, an increase of almost a quarter. There were 29,987 respondents in 2013–14, a 30.2 per cent increase on 2009–10.³⁰

Figure 3.4 shows an increase in the number of finalised FVIO applications made to magistrates' courts by police. Police-initiated applications now account for 66 per cent ($n=23,216$) of FVIO applications, up from 52 per cent ($n=13,670$) in 2009–10.³¹

Figure 3.4 Proportion of FVIO applications initiated by police and affected family members, 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), Magistrates' Court of Victoria data source, Tab 3, Table 3; Number of Family Violence Intervention Order applications by complainant, July 2009 to June 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015.³²

The number of finalised FVIO applications in the Children's Court of Victoria increased by 33 per cent between 2009–10 and 2013–14, from 1407 to 1872.³³

If a person contravenes (breaches) a family violence intervention order—for example, by perpetrating further family violence—this is a criminal offence which can result in prosecution in the Magistrates' Court.³⁴ In their joint submission, the Magistrates' and Children's Courts of Victoria noted that since 2004–05 the number of contravention proceedings heard in magistrates' courts has more than trebled, reaching 6331 in 2013–14.³⁵ This does not necessarily reflect an increase in people breaching intervention orders or the fact that the intervention order system is failing. It could be that police are increasingly acknowledging the seriousness of breaches and acting on them or that women are more likely to call police if a breach occurs, or both.

Breaches of family violence intervention orders, even if they do not involve behaviours that are considered criminal, can cause profound fear and distress to victims. Further, prosecuting breaches adds to the burden of family violence on our criminal justice system. Breaches are discussed in Chapters 14 and 17.

Family violence-related crimes and the higher courts

The Director of Public Prosecutions submitted that in the last three reporting years approximately 1200 matters prosecuted by the Victorian Public Prosecution Service in the higher courts were nominated as family violence matters. The offences included homicide, assault, sexual offences and substantive breaches of intervention orders. About 10 per cent ($n=23$) of the 250 murder cases prosecuted in this period were related to family violence.³⁶ Family violence-related deaths and the Coroners Court are discussed in Chapter 25.

The demand for health, accommodation, legal and specialist services

Many other systems and services deal with victims and perpetrators of family violence. They are discussed throughout this report; this section outlines the main findings from the Crime Statistics Agency data and other sources relating to various services.

Homelessness assistance

The Specialist Homelessness Services Collection collates state-based data on the provision of services to people who are homeless or at risk of homelessness, including women escaping family violence and their children. These sources include the majority of the women's specialist family violence services. The SHSC replaced a different data set that was compiled for the Supported Accommodation Assistance Program, in July 2011. Since that time the number of support periods provided to all clients in Victoria has increased by 46.7 per cent, from 128,694 in 2011–12 to 188,775 in 2013–14, and the number of those seeking assistance for family violence reasons has increased from 50,586 to 74,292.³⁷

The proportion of those support periods given to clients seeking assistance for family violence has remained relatively stable: in 2013–14, 39 per cent ($n=74,292$) of all people seeking assistance from specialist homelessness services did so for family violence reasons.³⁸

From July 2011 to June 2014 an average of 83 per cent of clients seeking assistance for family violence reasons were women.³⁹

These figures could be affected by under-reporting: for example, a person might tell the service provider the cause of their immediate need for assistance (such as financial hardship) but might not disclose the relationship between that immediate need and family violence (or even if it has been disclosed, it may not be recorded).

Family violence services funded by the Department of Health and Human Services

The Department of Health and Human Services uses a platform called the Integrated Reporting Information System, or IRIS, for its service providers funded for family violence counselling (that is, women's and children's services and men's behaviour change programs).

In 2013–14 men's behaviour change programs and women's and children's family violence counselling⁴⁰ agencies in Victoria recorded 25,786 individual clients, generating 26,168 cases. (Cases can be closed for a number of reasons, so there can be more than one case per client.)⁴¹

Overall case numbers have increased by 218 per cent since 2009–10, from 8229 to 26,168. Of the 26,168 cases in 2013–14, 97 per cent recorded at least one family violence issue (two per cent did not record an issue and one per cent recorded no family violence issue).⁴²

More specifically, from 2009–10 to 2013–14 IRIS recorded a 446.9 per cent increase, from 3771 to 20,624, in the number of clients 'accessing' men's behaviour change programs and an 11.7 per cent increase, from 3963 to 4425, in clients accessing women's and children's family violence counselling.⁴³ It should be noted in the case of men's behaviour change programs, 'accessing' may be anything from a phone call through to the completion of a men's behaviour change program. Demand associated with women's family violence services is discussed in Chapter 8; demand for men's behaviour change programs is discussed in Chapter 18.

Legal services

The Crime Statistics Agency reports that in the five years from July 2009 there has been an 8.5 per cent increase in services provided by Victoria Legal Aid where the primary matter was related to family violence. VLA provided 21,172 such services in 2013–14.⁴⁴ VLA told the Commission its duty lawyer services are at saturation point, have not kept pace with the number of applications for intervention orders, and cannot meet the increase in demand for such services without additional resource investment.⁴⁵

In addition to Victoria Legal Aid, community legal centres and private practitioners (who might be funded by VLA) also provide legal services. The Federation of Community Legal Centres' submission reported that '[t]he number of new family violence cases opened by community legal centres increased by 85% between 2008/09 and 2013/14'.⁴⁶

Health

The impact of family violence on the health system can be obscured by under-recording, misdiagnosis, lack of identification or confidentiality requirements. This is discussed further in Chapters 19 and 39.

Demographic characteristics of perpetrators and victims

Family violence occurs in many different settings and is associated with people of all ages, genders, physical and intellectual abilities, socio-economic status, race, cultures and sexualities. Different groups and individuals have different experiences of family violence, however, and not everyone is affected in the same way or to the same extent. This section highlights some of what the data shows about the demographic characteristics of perpetrators and victims, noting the major limitations shared by all data sets, when it comes to capturing diversity.

Gender

Family violence disproportionately affects women and children, and a disproportionate number of men are perpetrators. The Crime Statistics Agency report provides statistics on this.⁴⁷

During the five years from July 2009 to June 2014 the proportion of male to female other parties (respondents) and male to female victims has remained relatively stable throughout agencies that contribute to the Victorian Family Violence Database. It continues to demonstrate an over-representation of women as victims of family violence:

- ▶ In family incidents for which an L17 was completed, three-quarters of affected family members (victims) were female and one-quarter were male.
- ▶ In family incidents for which an L17 was completed, 77 per cent of other parties (perpetrators) were male and 23 per cent female.
- ▶ Of the total finalised applications for family violence intervention orders in the Magistrates' Court, 78 per cent of respondents were male and 22 per cent female.

The following applies for 2013–14:

- ▶ Two-thirds ($n=323$) of patients presenting to emergency departments for family violence reasons were female and a third ($n=162$) were male; similarly, 69 per cent ($n=11,141$) of family violence victims making use of the Victims Assistance Program were female and 31 per cent ($n=5052$) were male.⁴⁸ As outlined in Chapter 19, emergency department figures are likely to under-report family violence involvement in patient presentations.
- ▶ In applications for family violence intervention orders in the Magistrates' Court, 64 per cent ($n=33,951$) of affected family members were female and 36 per cent ($n=18,826$) were male.⁴⁹
- ▶ In applications for family violence intervention orders in the Children's Court, 65 per cent ($n=1683$) of affected family members were female and 35 per cent male ($n=910$).⁵⁰

In connection with relationships between victims and perpetrators, Crime Statistics Agency data shows that in each of the relevant data sets during the five years from July 2009 to June 2014 the relationship of the victim to the perpetrator varied depending on the gender of the victim, women being more likely to be a current or former partner of a male perpetrator:

- ▶ In family incidents recorded by police, female affected family members were more likely to be a current or former partner of the other party, as opposed to male affected family members, who were more likely to have a different familial relationship to the other party (for example, as a son or a sibling). In 2013–14, 68 per cent ($n=33,766$) of female affected family members were a current or former partner of the other party, whereas only 48 per cent ($n=7545$) of male affected family members were a current or former partner of the other party.⁵¹
- ▶ Similarly, in applications for family violence intervention orders in the Magistrates' Court female victims were more likely to be in a current or former partner relationship with the respondent than male victims. In 2013–14, 73 per cent ($n=16,465$) of female affected family members were in a current or former partner relationship and 10 per cent ($n=2155$) were a parent of the respondent. Fifty-two per cent ($n=3819$) of male affected family members were in a current or former partner relationship, 14 per cent ($n=1051$) were the parent or step-parent of the respondent, and 10 per cent ($n=769$) were a sibling.⁵²

Children and young people

The ANROWS analysis of the 2012 ABS Personal Safety Survey confirms that since the age of 15, over 400,000 women have experienced partner violence during pregnancy.⁵³ The survey also revealed that most women who had children in their care during a violent relationship said that children were exposed to the violence.⁵⁴

Child victims

While the proportion of family violence incidents in which a child was present has remained relatively steady, there has been an increase in the number of children listed as affected family members on family violence intervention order applications. This could be because Victoria Police is now likely to list children as affected family members when it seeks an intervention order

- ▶ In 34 per cent ($n=22,376$) of all family incidents recorded by Victoria Police in 2013–14 there was at least one child present. This proportion remained relatively stable in the period 2009–10 to 2013–14.⁵⁵
- ▶ In the five years from July 2009 to June 2014 the number of affected family members aged 17 and under listed on FVIO applications in the Magistrates' Court increased by just over 20 per cent—from 19,353 in 2009–10 to 23,332 in 2013–14. Of these 23,332, 50 per cent were male and 50 per cent female.⁵⁶

Child and young people other parties

- ▶ In 2013–14 approximately two-thirds (65 per cent; $n=780$) of male respondents on family violence intervention order applications in the Children's Court were aged between 15 and 19 years; 13 per cent ($n=153$) were aged from 10 to 14 years.⁵⁷
- ▶ From July 2009 to June 2014, 11,861 child other parties with adult parent affected family members were recorded on police L17 forms (a relatively small proportion of overall numbers).⁵⁸
- ▶ Department of Health and Human Services data shows that in 2013–14 there were 82,073 reports to Child Protection, of which 37,492 had family violence indicated at the time of reporting.⁵⁹

Children and young people as victims of family violence are discussed in Chapter 10. Matters relating to adolescents using family violence are discussed in Chapter 23.

Groups and communities

Particular population groups tend to experience higher levels of family violence or particular manifestations of family violence, are more vulnerable to the impacts of family violence, and face greater barriers to obtaining support.

Situations pertaining to specific groups and communities are discussed in Chapters 26 to 35. Here, it is worth noting the following:

- ▶ Some groups and communities experience family violence at increased rates. For example, there is evidence that Aboriginal and Torres Strait Islander peoples might be at least 6.5 times more likely to report being a victim of family violence-related offending than non-Aboriginal and Torres Strait Islander peoples,⁶⁰ and Aboriginal and Torres Strait Islander women are 34.2 times more likely to be hospitalised as a result of family violence.⁶¹ We also know that under-reporting of family violence is common in these communities.
- ▶ In the 2008 Coming Forward survey of 390 lesbian, gay, bisexual and transgender Victorians, 35 per cent of women and 29 per cent of men reported experiencing partner violence or abuse and more than half of these respondents reported being physically attacked.⁶²
- ▶ Some groups and communities can be more vulnerable to particular manifestations of family violence. For example, up to one in 20 older people can experience elder abuse, and for about half of them that abuse might be in the form of financial abuse.⁶³
- ▶ Women with disabilities are at greater risk of family violence.⁶⁴ In the report of its Systemic Review of Family Violence Deaths, the Victorian Coroners Court notes that people with disabilities can face specific barriers because of:

... communication and language barriers; a lack of appropriate transport and accommodation options for victims immediately fleeing violence; reliance on family members to provide care who may also be the perpetrators of violence; and in some instances, an absence of recognition as to their victimisation status.⁶⁵

- ▶ Victims from culturally and linguistically diverse backgrounds can face language and cultural barriers when seeking to engage with services. This can lead to the continuation of or an escalation in violence.
- ▶ Victims living in rural, regional and remote areas can have limited access to services and more limited means of leaving a violent relationship. This too can lead to the continuation of or an escalation in violence.

The data has its deficits and gaps in relation to these and other groups and communities; these can arise from under-reporting, from biases or omissions in data sets, or from assumptions or misapprehensions on the part of those collecting the data.

More broadly, statistics rarely capture the complexities that mediate people's contact or involvement with the family violence system—their lack of familiarity with or trust in the system; the inability of mainstream services and systems to respond flexibly and appropriately to their needs; and discrimination they might face in daily life and in multiple circumstances or organisations. These complexities are considered elsewhere in this report. The Commission is mindful of the implications they have in understanding the incidence and prevalence of family violence in our community.

Endnotes

- 1 Australian Bureau of Statistics, 'Defining the Data Challenge for Family, Domestic and Sexual Violence, Australia, 2013' (Catalogue No 4529.0, Australian Bureau of Statistics, February 2013) 14–15.
- 2 Australian Bureau of Statistics, 'Personal Safety, Australia, 2012' (Catalogue No 4906.0, Australian Bureau of Statistics, December 2013) Table 23, Table 24.
- 3 Ibid.
- 4 See, eg, Statement of Jackomos, 9 July 2015, 11–12 [51]–[55].
- 5 Peta Cox, 'Violence Against Women: Additional Analysis of the Australian Bureau of Statistics' Personal Safety Survey, 2012' (Horizons Research Report Issue 01, Australia's National Research Organisation for Women's Safety, October 2015) 6.
- 6 Australian Bureau of Statistics, 'Personal Safety Survey, Australia: User Guide, 2012' (Catalogue No 4906.0.55.003, Australian Bureau of Statistics, May 2014).
- 7 Ibid.
- 8 Ibid.
- 9 Ibid.
- 10 Ibid Glossary.
- 11 In this context, partner is defined as a current or ex-partner with which the respondent does live or has lived, and excludes boyfriends, girlfriends and dates. The survey does not report the percentage of Victorian males who have experienced partner violence in the 12 months preceding the survey. The survey only reports the percentage of Victorian males who have experienced violence by a perpetrator who was known to them (3.5 per cent), or by a stranger (6.9 per cent). Australian Bureau of Statistics, above n 2, Tables 3.1, 3.2.
- 12 This graph has been prepared from a table in the ABS Personal Safety Survey. In that table it was stated that where a person has experienced both physical and sexual violence they are counted separately for each type of violence they experienced but are counted only once in the aggregated totals. It should also be noted that the result relating to males experiencing violence by their son or daughter has a substantial margin of error and should be used with caution.
- 13 Cox, above n 5, 84.
- 14 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) 17.
- 15 The definition of intimate partner used here for the Australian context includes current and previous partners with whom the respondent resided, as well as boyfriends, girlfriends and dates. Cox, above n 5, Table A1; *ibid* 17.
- 16 World Health Organization, above n 14, 31. These figures do not include emotional abuse or violence. Although the ABS Personal Safety Survey figures are not directly comparable, Australia may have a slightly lower proportion of women who have experienced physical or sexual assault by an intimate partner since the age of 15.
- 17 Cox, above n 5.
- 18 *Ibid* 78, 80, 86, 99–101, 116, 123.
- 19 *Ibid* 2.
- 20 *Ibid* 22, 24, 37.
- 21 *Ibid* 4, 128.
- 22 Access Economics, 'The Cost of Domestic Violence to the Australian Economy' (prepared for the Office of the Status of Women (Cth), 2004) 6–7.
- 23 Crime Statistics Agency, 'An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14' (January 2016) 18. The report includes data from 11 data sources, extracted from six different agencies, all of which use different counting units and methodologies to collect and report on family violence. The sources are: Victoria Police, Magistrates' and Children's Courts, Specialist Family Violence Court Services, Department of Health and Human Services—Integrated Reports and Information System (RIS) and Victorian Emergency Minimum Dataset (VEMD), Victims Assistance Program, Victims of Crime helpline, Victoria Legal Aid, Specialist Homelessness Services Collection and Supported Accommodation Assistance Program.
- 24 State of Victoria, Submission 717, 12.
- 25 The L17 form is completed when police attend a family violence incident, or when a family violence incident is reported to them. If more than one incident is attended, or reported, more than one L17 form will be completed: Victoria Police, 'Code of Practice for the Investigation of Family Violence—Edition 3' (2014) 17.
- 26 Crime Statistics Agency, above n 23, Table 3: Family incidents recorded and family incident rate per 100,000 population—Victoria Police, July 2009 to June 2014, 24.
- 27 Crime Statistics Agency, *Family Incidents* (1 December 2015) <<http://www.crimestatistics.vic.gov.au/home/crime+statistics/year+ending+30+june+2015/family+incidents>>.
- 28 Crime Statistics Agency, above n 23, 105–6.
- 29 *Ibid* 41. See also Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 20.
- 30 Crime Statistics Agency, above n 23, 45–6.
- 31 *Ibid* 43. See also Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 44.
- 32 There is also a very small number of FVIO applications initiated by 'other'. It is not known who initiates these applications and they are omitted from this figure.
- 33 Crime Statistics Agency, above n 23, 52.
- 34 *Family Violence Protection Act 2008* (Vic) s 123.
- 35 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 21.
- 36 Statement of Champion, 11 August 2015, 3.
- 37 Crime Statistics Agency, above n 23, Specialist Homelessness Services Collection data source, Tab 1, Table 1: Number of support periods by whether client ever identified family violence as a reason to seek assistance, July 2011 to June 2014. Support periods do not equate to numbers of people. An individual may require (and receive) more than one support period.
- 38 Crime Statistics Agency, above n 23, Specialist Homelessness Services Collection data source, Tab 1, Table 1: Number of support periods by whether client ever identified family violence as a reason to seek assistance, July 2011 to June 2014.
- 39 Crime Statistics Agency, above n 23, 98–9.
- 40 Family violence services are also known as family violence counselling for women and children. It does not represent all family violence services; the majority of which are funded through homelessness funding.
- 41 Crime Statistics Agency, above n 23, 72–6.
- 42 *Ibid* 72.
- 43 *Ibid* 76.
- 44 *Ibid* 92. See also Victoria Legal Aid, Submission 919, 57.
- 45 Victoria Legal Aid, Untitled, provided by Victoria Legal Aid to the Commission, 20 January 2016.
- 46 Federation of Community Legal Centres, Submission 958, 19.

- 47 Crime Statistics Agency, above n 23, 12–13.
- 48 Ibid 83, Victims Support Agency data source, Tab 3, Table 2: Number of family violence victims by gender and age group.
- 49 Ibid 45.
- 50 Ibid Children’s Court data source, Tab 9, Table 8: Affected family members on Original FVIO Applications.
- 51 Ibid 29–30.
- 52 Ibid 47–8.
- 53 Cox, above n 5, 101.
- 54 Ibid 102.
- 55 Crime Statistics Agency, above n 23, 35.
- 56 Ibid 49.
- 57 Ibid 58. The Children’s Court has jurisdiction over respondents aged 10 to 17 at the time of the relevant incidents (and it continues to have jurisdiction for such matters until the respondents turn 19).
- 58 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.
- 59 Department of Health and Human Services, ‘Data Request Summary’ (9 June 2015), Worksheet 1, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 5 June 2015, clarified on 4 February 2016. It is noted that family violence may be present but not necessarily evident at the time of a report or the reason for the protective intervention and may have been identified at later stages of involvement with Child Protection. It is also noted that where family violence is present this may not be the reason for the substantiation and that action- causation cannot be imputed.
- 60 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 13, citing Koori Justice Unit, Department of Justice, ‘Indigenous Family Violence Regional Action Group and Regional Aboriginal Justice Advisory Committee Joint Workshop’ (March 2013)– based on 2011–12 data.
- 61 Ibid 4.93 Table 4A.11.22.
- 62 Victorian Gay & Lesbian Rights Lobby, Submission 684, 2 citing William Leonard et al, ‘Coming Forward: The Underreporting of Hetrosexist Violence and Same Sex Partner Abuse in Victoria’ (Monograph Series No 69, La Trobe University, Australian Research Centre in Sex, Health and Society, 2008) 45.
- 63 Department of Health, ‘Elder Abuse Prevention and Response Guidelines for Action 2012–14’ (2012) 3.
- 64 Sara-Beth Plummer and Patricia A Findley, ‘Women With Disabilities’ Experience with Physical and Sexual Abuse: Review of the Literature and Implications for the Field’ (2012) 13(1) Trauma, Violence and Abuse 1.
- 65 Coroners Court of Victoria, ‘Victorian Systemic Review of Family Violence Deaths: Summary of Homicides and VSRFVD Investigations’ (2015) 40 (citations omitted).

4 Family violence policies and service responses: a brief history

Introduction

Women's groups and services have been providing a response for women and children affected by family violence since at least 1974, when Victoria's first women's refuge was established. Mechanisms for responding have been evolving ever since, reflecting an extraordinary period of activity at community and government levels. This is largely a consequence of women's services' persistent efforts to raise the profile of family violence in Victoria.

The first main round of reforms occurred in the early and mid-2000s. Since then, improvements have included legislative reform, changes to policy and government strategy, and practice and operational developments. Further reforms, including legislation and policy changes at the state and territory and federal levels, continued to progress even during the time of the Royal Commission.

The recommendations of this Commission will build on all this work.

Policies and responses until 2015 in Victoria

Government policies and service responses to family violence in Victoria have been shaped by history and the efforts of women to bring this problem into the open to gain the recognition it deserves. Today many of the individuals and organisations that originally put family violence on the government policy agenda still play a leading role in providing services to women and children affected by such violence.

After the introduction of the Commonwealth's *Homeless Persons Assistance Act 1974* (Cth) government funds began to be applied to homelessness services providing food and shelter.¹ In 1974 Women's Liberation Halfway House was established as Victoria's first women's refuge; it was a donated house and relied on rostered volunteer staffing. Several other Victorian refuges were established during the next few years.² In 1977 full government funding from both state and Commonwealth governments was provided for these refuges³ after a period of some funding from various philanthropic trusts and government departments. By the end of 1979 there were 16 funded refuges in Victoria.⁴

Throughout the 1980s women's services and the refuge movement continued to work to keep women safe in the face of community silence and little interest from the justice system. The *Crimes (Family Violence) Act 1987* (Vic) was a response to women's efforts to bring the problem of family violence into the open:

As women began challenging traditional stereotypes, they also began raising awareness about the impact and prevalence of domestic violence. Government acknowledges that long before family violence received widespread media attention and community outrage, women's-based family violence services were among the first advocates of the need to respond to violence in the home.⁵

The period from 2000 to 2005 saw an important change in family violence policy in the state. The appointment of Ms Christine Nixon APM as Chief Commissioner of Police in 2001 led to a Victoria Police review of all the organisation's policies dealing with violence against women and children. The resultant report, *Violence Against Women Strategy—A Way Forward*, noted:

There was persuasive evidence to indicate that police response did not meet community and victim expectations and that significant gaps exist. Although the review identified instances where police were achieving a form of best practice, the preponderance of evidence related to the negative or below-standard response by police to family violence and, in some cases, sexual assault.⁶

This accords with Domestic Violence Victoria's statement in its submission to the Commission:

Historically, police responded to family violence as a private matter, ignoring or minimising it – largely mirroring mainstream community views. It was commonplace for women seeking crisis support to report unhelpful, dismissive and uninformed responses from police.⁷

At around the time of the appointment of Chief Commissioner Nixon, the Women's Safety Strategy 2002–2007 was launched. This was the first comprehensive strategy on violence against women issued by any Victorian government since the early 1980s, and it brought 11 ministers and their government departments together, working within a single policy framework.⁸ As recommended in the Women's Safety Strategy, a Statewide Steering Committee to Reduce Family Violence, co-chaired by Victoria Police and the Office of Women's Policy in the Department of Premier and Cabinet, was established.⁹ The committee's membership included departmental and peak body representatives, family violence and sexual assault service providers, and other representatives of the justice system;¹⁰ their task was to decide 'what an integrated system means and the components that are necessary to ensure that an integrated response by the justice system and the victim support services can be achieved'.¹¹

With Chief Commissioner Nixon setting a new agenda for Victoria Police, major policy and operational changes to Victoria Police's responses to family violence followed.¹² Police engaged in discussions with family violence services about how to respond to family violence, and this provided a platform for a wider policy conversation within both government and the broader community. At that time the primary focus was on violence against women and children. Figure 4.1 shows a time line of some of the important government, including Victoria Police, reforms in response to family violence. Victoria Police also greatly improved its response to sexual assault and child abuse during this period, bringing reforms relating to family violence and sexual assault together in its Violence Against Women Strategy, which was adopted in 2002.¹³

The 2004 Victorian Law Reform Commission report *Sexual Offences: Law and Procedure Final Report* resulted in a number of key policy developments during this period:

- ▶ Victoria Police established sexual offence and child abuse investigation teams, with specialist detectives and a specific training program.
- ▶ The establishment of multi-disciplinary centres involving Victoria Police, the Department of Health and Human Services, the Centres Against Sexual Assault and the Victorian Institute of Forensic Medicine as 'a 'one-stop shop' for victims of sexual offences which combine service providers in one physical location'.¹⁴

In 2006 the Sexual Assault Reform Strategy was introduced to improve the investigation of sexual assault and child abuse.¹⁵ The model has since been expanded and evaluated (see Chapter 12 for further information). Many other family violence-specific (and sexual assault) policy and legislative changes were also introduced by successive Victorian governments during this period, among them the following:

- ▶ In 2002 the peak body for family violence services, Domestic Violence Victoria, was established.¹⁶
- ▶ Following the appointment of the Indigenous Family Violence Task Force in 2001, the Victorian Indigenous Family Violence Strategy was developed in 2002. The strategy involved a community-led partnership with government, with the aim of reducing family violence in Aboriginal and Torres Strait Islander communities. The taskforce delivered its report to government in 2003.¹⁷
- ▶ In 2002 the Victorian Law Reform Commission was assigned the task of reviewing the state's family violence laws.
- ▶ In 2004 Victoria Police launched the Code of Practice for the Investigation of Family Violence and introduced the risk assessment and risk management report (the L17) for all reported incidents of family violence. In 2004 Victoria Police also created two specialist family violence roles: family violence advisors and family violence liaison officers.¹⁸
- ▶ The Victorian Government established the Indigenous Family Violence Partnership Forum in 2005.¹⁹ Aboriginal family violence regional action groups, known as IFRAGs, were also set up throughout the state to support action against family violence in Aboriginal communities.²⁰
- ▶ In 2005 the defence of provocation as a partial defence to murder was abolished in Victoria.²¹

- ▷ The Family Violence Court Division was created in the Magistrates' Court and began sitting at Heidelberg and Ballarat in 2005.²² Since that time, the magistrates' courts at Melbourne, Sunshine, Werribee, Frankston and Moorabbin have become specialist family violence services courts.²³
- ▷ Also in 2005, the Statewide Steering Committee to Reduce Family Violence released its *Reforming the Family Violence System* report. This landmark document outlined an intention to build an 'integrated family violence system' that would bring together all the major services to ensure that 'women receive an appropriate response, regardless of the pathway through which they choose to receive assistance'.²⁴ Following the report's release, a funding reform package was developed, with the aim of strengthening and integrating approximately 70 agencies dealing with family violence in Victoria.²⁵ Domestic Violence Victoria described the report in the following terms:

This document paved the way for the reforms. Key elements included: a guiding set of principles; a focus on integration across the three main systems—police, justice and the family violence service system, and developing common practices and processes to ensure consistent responses by individual agencies.²⁶
- ▷ Domestic Violence Victoria established the Code of Practice for Specialist Family Violence Services for Women and Children in 2006.²⁷
- ▷ In 2006 the Victorian Law Reform Commission handed down its report identifying a number of deficiencies in the system of family violence intervention orders under the *Crimes (Family Violence) Act 1987 (Vic)* and recommended the introduction of a new Family Violence Act, which ultimately became the *Family Violence Protection Act 2008 (Vic)*.²⁸ The Act covered all forms of family violence and was not confined to protecting women and children. In his Second Reading Speech for the Family Violence Protection Bill, Attorney-General The Hon. Rob Hulls MP stated that the Bill 'makes it crystal clear that family violence is not just a private issue—it is a public problem and requires a strong legislative response'.²⁹
- ▷ In response to the *Reforming the Family Violence System* report, new arrangements were made to encourage a more integrated approach to family violence, focusing on violence against women and children. This included the following:
 - ▷ a lead minister charged with coordinating the whole-of-government response to family violence³⁰
 - ▷ a Family Violence Ministers Group of relevant portfolio ministers³¹
 - ▷ a cross-government interdepartmental committee reporting to the relevant ministers³²
 - ▷ a whole-of-government unit supporting the interdepartmental committee, the Minister and the ministerial structures³³
 - ▷ family violence regional integration committees that included representatives from family violence services, family services, police, corrections, court services, Aboriginal and Torres Strait Islander services, community legal services, homelessness services and local government³⁴
 - ▷ regional integration coordinators to support these regional structures³⁵
 - ▷ a Family Violence Statewide Advisory Committee chaired by Victoria Police and the primary department overseeing the family violence reforms.³⁶

Some of these structures remain; others no longer operate as originally intended.

- ▷ In the *Reforming the Family Violence System* report the need for consistent risk assessment, information sharing and cooperation between agencies had been emphasised.³⁷ This led to the development of a multi-sector, cross-government Family Violence Risk Assessment and Risk Management Framework—referred to as the Common Risk Assessment Framework, or CRAF—which was launched in 2007.³⁸ The CRAF provided the basis for extensive training and practice reform in the mainstream and specialist family violence sectors. It and other protocols aimed at supporting consistent responses to family violence became an important part of the new system.
- ▷ In 2007 VicHealth (the Victorian Health Promotion Foundation), published *Preventing Violence before It Occurs: A Framework and Background Paper to Guide the Primary Prevention of Violence against Women in Victoria*, which had been commissioned by government.³⁹ VicHealth's work in primary prevention of violence against women has since been internationally recognised.

- ▶ In June 2008 the Indigenous Family Violence Ten Year Plan: Strong Culture, Strong Peoples, Strong Families was launched.⁴⁰ The plan, the first of its kind in Australia, built on the reform process that had begun in 2002. The Indigenous Family Violence Partnership Forum continues to play an important role in providing a link between the community and government:

The partnership forum is a forum for ongoing, high level dialogue between government departments and Aboriginal communities about the needs of Aboriginal communities in confronting issues of family violence. It is attended by senior representatives from government and Aboriginal Community members, to ensure that Aboriginal voices are heard at senior levels of government where programs to address Aboriginal family violence are developed.⁴¹

- ▶ Also in 2008, the Commonwealth Government's White Paper on homelessness was released. It recognised that homelessness could be reduced by improving support for women and children to stay in their own homes when it is safe to do so.⁴² This led to the National Partnership Agreement on Homelessness which commenced in 2009 (and has been subsequently renewed, most recently in 2015) which Victoria was a signatory to and which gave priority to women and children experiencing family violence.⁴³ The agreement also funded some family violence services to deliver Safe at Home programs, which are designed to help victims of family violence remain in their homes where possible.⁴⁴
- ▶ *A Right to Respect: Victoria's Plan to Prevent Violence against Women 2010–2020* was released in 2009.⁴⁵ Its purpose was to implement a recommendation in a VicHealth report for a whole-of-government primary prevention plan that was both cross-government and whole-of-community in scope.⁴⁶ A Right to Respect recognised that primary prevention was an essential step in eliminating violence against women and had a particular focus on family violence and sexual assault.
- ▶ Also in 2009, the Victoria Police strategy *Living Free from Violence—Upholding the Right: Victoria Police Strategy to Reduce Violence against Women and Children 2009–2014* was released.⁴⁷
- ▶ In 2010 the government released *A Right to Safety and Justice: A Strategic Framework to Guide Continuing Family Violence Reform in Victoria 2010–2020*. This document highlighted the need to strengthen reform efforts and improve perpetrator accountability, risk assessment, risk management, data, workforce capacity and the system's response to children.⁴⁸ The framework was designed to consolidate and build on the 2005 reforms.
- ▶ After a change of government in 2010, *Victoria's Action Plan to Address Violence against Women and Children, Everyone Has a Responsibility to Act 2012–2015*, was published.⁴⁹ It proposed a single work plan to consolidate the three previously separate policy areas of family violence, sexual assault and the prevention of violence against women, as well as addressing other forms of violence against women, such as sex trafficking.
- ▶ In 2013, following some years of development, Koori Family Violence Police Protocols for Mildura, Darebin and Ballarat were launched.⁵⁰ The protocols aimed to strengthen the police response to incidents of family violence in Aboriginal communities.⁵¹
- ▶ In October 2014, the Victorian Government introduced *Ending Violence Against Women and Children: Further Initiatives for Victoria's Action Plan to Address Violence Against Women and Children 2012–2015*.⁵² This strategy outlined a range of initiatives to 'prevent violence against women and children before it occurs, keep victims of violence safe and hold perpetrators to account', and was supported by \$150m government funding.⁵³ The new government, elected in November 2014, deferred spending the majority of this investment⁵⁴ in line with its election commitment to establish a Royal Commission to inform future decisions.⁵⁵ The 2015–16 Budget allocated additional funding over five years for a range of family violence services and programs, including this Commission.⁵⁶ Much of the funding was for one year only pending this Royal Commission's report (see Chapter 41 for more information).
- ▶ After the election in November 2014 the State Government appointed a Minister for the Prevention of Family Violence.⁵⁷ It also announced the establishment of the Royal Commission into Family Violence.⁵⁸

Figure 4.1 Family violence-specific reforms, 2002 to 2014

| | |
|---|---|
| 2002 | |
| Women's Safety Strategy 2002–2007 launched, recommending establishment of a statewide Steering Committee to Reduce Family Violence | Statewide Steering Committee to Reduce Family Violence co-chaired by Victoria Police and the Office of Women's Policy established |
| Indigenous Family Violence Strategy established | |
| 2003 | |
| Indigenous Family Violence Taskforce delivers report to government | |
| 2004 | |
| Victoria Police Code of Practice for the Investigation of Family Violence launched | Ten sergeants appointed as full-time regional family violence advisors |
| Family violence liaison officers available at all 24-hour police stations | Victoria Police risk assessment and risk management report introduced (L17) |
| 2005 | |
| Indigenous Family Violence Partnership Forum established | Defence of provocation as a partial defence to murder was abolished in Victoria |
| Family Violence Court Division created in Magistrates' Court (Heidelberg and Ballarat) | <i>Reforming the Family Violence System</i> report released by the Statewide Steering Committee to Reduce Family Violence |
| 2006 | |
| Domestic Violence Victoria established code of practice for specialist family violence services | Victorian Law Reform Commission's report on family violence released |
| Regional committees and governance structures established | |
| 2007 | |
| Launch of CRAF, the Common Risk Assessment Framework for assessing risks against women | |
| 2008 | |
| <i>Family Violence Protection Act 2008 (Vic)</i> came into effect, including the introduction of family violence safety notices | <i>Strong Culture, Strong Peoples, Strong Families—Indigenous Family Violence Ten Year Plan</i> launched |
| 2009 | |
| <i>A Right to Respect: Victoria's Plan to Prevent Violence against Women 2010–2020</i> released | <i>Living Free From Violence—Upholding the Right: Victoria Police Strategy to Reduce Violence Against Women and Children 2009–2014</i> released |
| National Partnership Agreement on Homelessness between the Commonwealth and state and territory governments commences | |
| 2010 | |
| <i>A Right to Safety and Justice: A Strategic Framework to Guide Continuing Family Violence Reform in Victoria 2010–2020</i> released | |
| 2012 | |
| Action Plan to Address Violence against Women and Children, <i>Everyone Has a Responsibility to Act 2012–2015</i> published | |
| 2013 | |
| Koori Family Violence Protocols launched (Mildura, Ballarat and Darebin) | |
| 2014 | |
| <i>Ending Violence Against Women and Children: Further Initiatives for Victoria's Action Plan to Address Violence Against Women and Children 2012–2015</i> introduced | Royal Commission into Family Violence announced |
| Minister for the Prevention of Family Violence appointed | |

The history of the family violence system for Aboriginal and Torres Strait Islander communities

In its submission to the Commission, the Koori Caucus outlined a number of strategic policies and initiatives that have been established through the commitment between Victorian Aboriginal communities and the Victorian Government. The following provides an excerpt of some of those initiatives:

- In June 2000, the *Aboriginal Justice Agreement* was established to reduce the over-representation of Aboriginal people in the youth justice and criminal justice system.
- In October 2001, the Victorian Indigenous Family Violence Task Force was established to raise community awareness of Aboriginal family violence and engage communities in the development in local responses.
- In 2002, the Victorian Government released the *Framework for the Development of the Victorian Indigenous Family Violence Strategy*: a partnership approach between the Indigenous community and government to support the development of the community-led Victorian Indigenous Family Violence Strategy.
- In 2002, as part of the strategy 10 Indigenous Family Violence Regional Action Groups were established across the state, each with an Indigenous Family Violence Support Worker employed to provide ongoing support.
- In 2003, the Indigenous Family Violence Community Initiative Fund (CIF) was established. The fund provides annual grants amounting to \$650,000 to support Aboriginal community-based projects that aim to prevent, reduce and respond to family violence.
- In December 2003, the *Indigenous Family Violence Task Force Final Report* was delivered to the Victorian Government, highlighting 28 recommendations for immediate action.
- In October 2004, the government released the Victorian Government response to the Victorian Indigenous Family Violence Task Force Final Report which outlined the Victorian Government's commitment to support and build on the recommendations of the task force.
- In April 2005, The Indigenous Family Violence Partnership Forum (IFVPF) was established to enable Aboriginal communities to address Aboriginal family violence in partnership with the Victorian Government. A key goal of the forum was to oversee the development and implementation of a 10-year plan to reduce family violence.

The IFVPP has resulted in the partnership that exists today, which is strengthened by the following government strategies that directly respond to issues relating to Aboriginal family violence within the current policy context including:

- **Strong Culture, Strong Peoples, Strong Families: towards a safer future for Indigenous families and communities 10 year plan 2008–2018** outlines a 10-year vision to make Victoria a safer place for Aboriginal families. It is a living document that will guide, inform and direct joint efforts of the Aboriginal community and the Victorian Government to reduce Aboriginal family violence. It provides a strategic framework to assist services that address Aboriginal family violence in the short, medium and long term and led to the development of the Indigenous Family Violence Primary Prevention Framework in 2012.
- **Family Violence Risk Assessment and Risk Management Framework:** the Aboriginal contextualisation of the Family Violence Risk Assessment and Risk Management Framework, which involved the development of training materials to better equip professionals and practitioners to identify risk factors associated with family violence and respond appropriately to Aboriginal people experiencing family violence. The materials were piloted in Dandenong, Geelong and Mildura during 2013–14.

Other related policies were the *Victorian Aboriginal Affairs Framework 2013–2018*, *Aboriginal Justice Agreement Phase 3* and the *Cultural Competency Guidelines for Family Violence Services*.⁵⁹

Changes occurring during the Royal Commission

The Victorian Government and its agencies continued to make important policy announcements about family violence during the term of this Royal Commission. Among the milestones and announcements were the following:

- ▷ In March 2015 Victoria Police announced the establishment of the first Family Violence Command in an Australian police jurisdiction, headed by Assistant Commissioner Dean McWhirter.⁶⁰
- ▷ In May 2015 the government announced the plan to develop the Family Violence Index, designed to bring together data from a range of areas to measure how well family violence is being addressed.⁶¹
- ▷ In August 2015 the government announced that in 2016 respectful relationships education would be introduced into the school curriculum from foundation to year 10.⁶²
- ▷ Also in August 2015 the government announced that a best-practice model clause for family violence leave would be developed for inclusion in all Victorian public sector enterprise agreements.⁶³
- ▷ In October 2015 the government announced \$50,000 in funding for the Women's Health Association of Victoria to help prevent family violence and launched a new online guide developed by Women's Health Victoria to support regional prevention planning.⁶⁴

Between November and December 2015 the government made the following announcements:

- ▶ In November 2015 it announced it would provide to Our Watch \$900,000 to manage a Workplace Equality and Respect Project to help Victorian workplaces build the policies and practices they need to prevent violence.⁶⁵
- ▶ Also in November 2015, the government launched a consultation paper for Victoria's gender equality strategy recognising the links between gender inequality and women's safety.⁶⁶
- ▶ Still in November 2015, the government announced the allocation of \$12 million over four years to fund Family Violence Flexible Support Packages to assist with expenses faced by people escaping family violence. Packages of up to \$7000 were to pay for things such as rental or relocation costs, furnishings, clothing and books for children, and security measures to improve safety at home.⁶⁷
- ▶ Grant funding of \$365,000 was allocated for the roll-out of an online family violence intervention order application to the busiest magistrates' courts in Victoria. An online form has been piloted since mid-2015 by the Neighbourhood Justice Centre.⁶⁸
- ▶ In December 2015 the government announced the development of a new module for school year 10—focusing on gender, power and media—that will build on the two respectful relationships modules for years 8 and 9.⁶⁹ It also announced continued funding for the Partners in Prevention program (through Domestic Violence Resource Centre Victoria), which aims to build the capacity of staff to support schools delivering respectful relationships education.⁷⁰
- ▶ Also in December 2015, the government announced the development of a new memorial to honour the lives of victims and survivors of family violence in the City of Melbourne as a joint Victorian Government and City of Melbourne project.⁷¹
- ▶ Still in December, the Victorian Equal Opportunity and Human Rights Commission released the report of its independent review of sexual harassment and discrimination in Victoria Police.⁷² This report reflects on the importance of redressing gender inequality within Victoria Police to ensure community confidence in the policing of family violence.⁷³
- ▶ In late December 2015 the government provided its response to the former State Coroner, Judge Gray's findings in relation to the death of Luke Batty.⁷⁴

The national response

The Commonwealth Government directly provides a range of universal programs and initiatives, that are relevant to people affected by family violence. These include social security, Medicare, the Pharmaceutical Benefits Scheme, and the family law system, including the Family Court of Australia and the Federal Circuit Court of Australia.⁷⁵ It also directly funds a range of programs and activities that are specifically related to family violence. For example, it has committed about \$200 million to the *National Plan to Reduce Violence against Women and Children 2010–2022* between 1 July 2009 and 30 June 2017.⁷⁶

Additionally, the Commonwealth provides funding to the states and territories for the delivery of a variety of services. This can include funding contributions towards universal services such as education and health. In the case of family violence, the Commonwealth's role is largely through funding contributions under the following arrangements:

- ▶ The National Affordable Housing Agreement Specific Purpose Payment contributes towards the cost of Victoria's social housing (including public housing) and homelessness assistance.⁷⁷ The majority of specialist family violence services are funded through the homelessness stream⁷⁸ including women's refuges and specialist family violence support services (also referred to as 'outreach' and 'case management'). In 2015–16 the Commonwealth funding to Victoria under the agreement is \$329.9 million.⁷⁹
- ▶ The National Partnership Agreement on Homelessness provides funding for measures designed to reduce homelessness, including family violence-related homelessness. Victoria's contribution in 2015–16 is \$30.4 million;⁸⁰ the Commonwealth contribution is \$22.8 million.⁸¹ The two-year extension of the agreement, until 30 June 2017, gives priority to front-line services focusing on women and children experiencing family violence and on homeless youth.
- ▶ The National Partnership Agreement on Legal Assistance Services provides funding to legal aid commissions in each jurisdiction, including for responses to family violence-related matters. In 2015–16 funding to Victoria under the agreement was \$47.9 million.⁸²

In the past four years there has been increased national recognition of the need to develop policies for preventing and responding to family violence. In 2011 the Commonwealth Government, in partnership with the states and territories, announced the National Plan to Reduce Violence against Women and Children 2010–2022.⁸³ Endorsed by the Council of Australian Governments, the plan consists of four three-year action plans and is supported by all states and territories, which will develop their own implementation plans.⁸⁴ The Commonwealth and the states and territories have nominated a number of areas to focus on as part of the second action plan. These include prevention, responses for people who have diverse experiences, supporting innovative services and integration, improving perpetrator interventions, and continuing to build the evidence base for future family violence reform.⁸⁵

Two national bodies were established as a result of the national plan:

- ▶ Australia's National Research Organisation for Women's Safety, ANROWS, a national research body with contributions from all jurisdictions⁸⁶
- ▶ Our Watch, a national foundation to prevent violence against women and their children. Our Watch was established by Victoria and the Commonwealth in 2013 and now includes contributory funding from the Northern Territory, South Australia and Tasmania.⁸⁷

In January 2015, Ms Rosie Batty was appointed 2015 Australian of the Year in recognition of her efforts in campaigning against family violence following the death of her son, Luke, at the hands of his father.⁸⁸

In the same month the former Prime Minister announced that the question of violence against women and their children would be discussed as part of the Council of Australian Governments' agenda, and a new COAG advisory panel would be formed; the panel was to be chaired by former Victoria Police Chief Commissioner Mr Ken Lay APM, and Ms Batty was appointed a founding member.⁸⁹ At the April 2015 COAG meeting the following milestones were announced for 2015:

- ▶ A national domestic violence order scheme would be agreed, under which domestic violence orders will be automatically recognised and enforceable in any state or territory of Australia.
- ▶ COAG would consider national standards to ensure that perpetrators of violence against women are held to account at the same standard throughout Australia.
- ▶ Progress would be reported on a national information system that will enable courts and police in different states and territories to share information on active domestic violence orders (called family violence intervention orders in Victoria). New South Wales, Queensland and Tasmania were to trial the system.
- ▶ COAG would consider strategies for tackling the increased use of technology to facilitate abuse of women and for ensuring that women have adequate legal protections against this form of abuse.
- ▶ All governments would jointly contribute to a \$30 million national campaign to reduce violence against women and their children and potentially for associated increases in services.⁹⁰

At its December 2015 meeting the Council of Australian Governments agreed to the following:

- ▶ standards to ensure that interventions with perpetrators are effective throughout Australia
- ▶ actions to limit technology-facilitated abuse
- ▶ introduction of a national domestic violence order scheme so that DVOs issued in one state are recognised in all others, with every jurisdiction committing to introduce laws to give effect to this in the first half of 2016
- ▶ development of a comprehensive national DVO information-sharing system that police and the courts will be able to use for evidentiary purposes or to enforce DVOs, noting this will take several years to implement fully
- ▶ in the short term, establishment of an interim information-sharing system that will provide to police and the courts information on all DVOs that have been issued but will not have the same evidentiary or enforcement capacity as the proposed permanent system
- ▶ the holding of a national summit on preventing violence against women and their children in the final quarter of 2016 to profile best practice and review progress.⁹¹

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5 Systems overview

Introduction

There is no single pathway into the family violence system. There are myriad entry points and overlapping service systems with whom victims and perpetrators have contact and receive services. The 2005 Statewide Steering Committee to Reduce Family Violence report on reforming the family violence system acknowledged that it was important for all service systems to respond to the needs of women seeking help.¹ In practice, the main focus of reforms to date has been on the police, justice and family violence service systems, which are often the first line of response to family violence. One of the arguments put forward in the Commission's report, however, is that family violence requires a whole-of-government approach and that reforms are needed in all the service systems that work with victims and perpetrators.

The systems that are briefly outlined in this chapter (and covered in more detail elsewhere in the report) include Victoria Police; specialist services that cater primarily but not exclusively for the needs of women (and their children) who are victims of family violence; the courts and legal services; the child protection system, which protects children at risk of abuse (including as a result of family violence); and Integrated Family Services that have been established to support families and divert people who might otherwise enter the statutory child protection system. Also briefly described are housing and homelessness services, sexual assault services, and victim support services. Other relevant services, such as drug and alcohol, mental health and other health services, are described in Chapter 19, while relevant aspects of the corrections system are discussed in Chapter 18. Governance arrangements are outlined in Chapter 38.

Points of entry

The process of seeking assistance for family violence is not linear: there are many entry points into the systems which assist those affected by family violence.² The following are examples of how victims can enter the system:

- ▶ They can disclose the violence they have experienced to a person or organisation that comes into contact with them for other reasons. Many of these are generalist service providers—for example, hospitals, general practitioners or other health practitioners, maternal and child health nurses, or teachers or school counsellors. This can result in the victim and her children being referred to another service or services.
- ▶ They can seek legal advice from a lawyer.
- ▶ They can seek help from the police, who might respond by issuing a family violence safety notice or seeking an intervention order on behalf of the victim(s) and/or charging the perpetrator with a criminal offence.
- ▶ They can contact a specialist family violence service for advice and assistance, either directly or via a referral from another service.
- ▶ They might be contacted by a specialist family violence service after police have made a family violence risk assessment and management report and referral (known as an L17).
- ▶ They can go directly to a magistrates' court to seek a family violence intervention order.
- ▶ They might seek entry to a refuge through a specialist family violence service or through a homelessness access point.
- ▶ They might tell a friend or family member or someone from whom they are receiving pastoral care.

Children can connect with family violence services in several ways:

- ▶ Through their parents—for example, if their mother has entered the system as described above.
- ▶ They could seek help directly—for example by telling a teacher or doctor about the violence or if they are adolescents, by approaching a refuge.
- ▶ An adult, friend or family member might alert police, Child Protection or Child FIRST.
- ▶ Their school or early childhood service might recognise signs of violence and contact a parent or notify Child Protection or Child FIRST.
- ▶ The evidence of violence might be noticed by a maternal child health nurse or health practitioner.

Perpetrators—that is, people who use violence—can connect with family violence services in some of the following ways:

- ▶ They might seek assistance, either of their own volition or at the urging of a friend or family member.
- ▶ They might be a respondent on a family violence intervention order and be required to attend a magistrates' court.
- ▶ They might be contacted by a specialist family violence service after police have made an L17 referral.

Perpetrators might be required to participate in a men's behaviour change program as part of a magistrate court order, a community correction order or as a parole condition.

The systems just noted are complex and difficult to navigate—for people working in the field, for victims, for family members trying to help someone affected by violence, and for perpetrators who are seeking help to change their behaviour or ordered to attend a program by a court. This complexity means that people can be referred from one organisation, government department or non-government agency to another in order to address all of their needs, often at a time of crisis.

Victoria Police

Victoria Police members can be the first point of contact for people experiencing family violence. The quality of the police response influences victims' confidence in reporting family violence and seeking help.³

The Victoria Police Code of Practice for the Investigation of Family Violence lists the main functions of police in responding to family violence:

- ▶ maximise the safety and support to those involved
- ▶ identify and investigate incidents of family violence and prosecute individuals accused of criminal offences arising from family violence
- ▶ assist in the prevention and deterrence of family violence in the community by responding to family violence appropriately.⁴

Victoria Police has developed a series of specialist roles dedicated to family violence work, although all front-line officers do a considerable amount of this work.⁵ Among the specialist positions are 17 family violence advisors and a family violence liaison officer at every 24-hour police station.⁶ The Family Violence Command, established in March 2015, has overall responsibility for monitoring Victoria Police's organisational response to family violence, maintaining accountability, and improving police responses to family violence, sexual assault and child abuse.⁷

Victoria Police attended more than 65,000 family violence incidents in 2013–2014.⁸

The Code of Practice for the Investigation of Family Violence and the Victoria Police Manual⁹ set out how Victoria Police members are required to fulfil their functions with respect to family violence.¹⁰ Under the Code, police must perform a risk assessment.¹¹ They can then adopt one or more of the following approaches.

Family violence safety notices and intervention orders

The Code of Practice states that police should pursue civil options—that is, apply for a family violence safety notice or a family violence intervention order—whenever the safety, welfare or property of a family member appears to be endangered by another family member (even without the agreement of the victim).¹²

- ▷ A family violence safety notice enables police to place immediate restrictions on a perpetrator—with similar effect to that of an intervention order—for up to five working days.¹³ The FVSN also serves as an application for a family violence intervention order and as a summons for the alleged perpetrator to appear in court.¹⁴ Police make the application on behalf of the victim, but victims are often told they need to attend the court to give evidence in support of the order.¹⁵
- ▷ Most safety notices result in the issuing of a final family violence intervention order by a court.¹⁶ An FVIO is a civil order, and it can include a range of conditions designed to protect the safety of the affected person and prohibit a person from engaging in family violence.¹⁷ If police intend to apply for an FVIO against a person or to vary an existing order, they can exercise certain powers to ensure the safety of a person or to preserve their property: they can direct the alleged perpetrator to go to or remain at a particular place (for example, a police station) or to remain in the company of a police member or another person. If a person refuses or fails to comply with a direction, they can be apprehended and detained for up to six hours or for a longer period if this is authorised by the court.¹⁸ In addition, if a person breaches an FVIO—for example, by visiting a place from which they have been excluded—this is a criminal offence that can result in prosecution in the Magistrates' Court.¹⁹ Formally, this is called a contravention order, although the term often used is 'breach'.

Police members must assess the interests of children independently from those of their parents since the best interests of the child are paramount and children might have different needs.²⁰ Children can be included on FVIO applications for the victim if their needs are similar. In some cases a separate application might be required for a child.²¹

In 2013–14 police issued 8288 family violence safety notices and applied for 11,091 family violence intervention orders;²² they took such action in about one-quarter of all family violence incidents they attended.²³ In the same year about two-thirds of total family violence intervention order applications were made by Victoria Police, the remaining one-third being made by affected individuals.²⁴

Criminal prosecution

The police are responsible for investigating and prosecuting criminal offences arising from a family violence incident (including breaches of FVIOs) in the Magistrates' Court. In 2013–14 Victoria Police laid charges in respect of 27,701 family violence incidents—43 per cent of all incidents²⁵ (including breaches of existing FVIOs).²⁶

The Code of Practice highlights the importance of prosecuting breaches of family violence safety notices and family violence intervention orders: failure to do so could convey the idea that the notice or order is not taken seriously, potentially leading to further offending, abuse and possible harm. The code states:

FVIOs and FVSNs must be strictly interpreted and enforced. There is no such lawful term as a 'technical' contravention and police must lay charges for any contravention ...²⁷

Decisions to prosecute are based on the evidence gathered and should not be a subjective assessment by the responding police as to the seriousness of the contravention.²⁸

In some cases the perpetrator might be charged with an offence (such as rape or attempted murder) that must be prosecuted in the County or Supreme Court rather than the Magistrates' Court. The Director of Public Prosecutions authorises the laying of the charge, and there will be committal proceedings in the Magistrates' Court to decide whether the alleged perpetrator should go to trial. This is discussed further in Chapter 16.

Police referrals

Formal referrals: L17s

Police must make a formal referral via a risk assessment and risk management report (known as an L17) if they consider that assistance is required. The Code of Practice notes that formal referrals are appropriate where, for example, police intend to pursue criminal or civil options or where there is a future risk of violence or to address recidivism.²⁹

The services receiving the L17 will then make contact with the victim or, in the case of men's services, the perpetrator. L17s for male victims are sent to the Victims Support Agency.³⁰ Typically, multiple L17s will be sent in relation to the same incident, to accommodate the needs of victims, perpetrators and any children.

Referrals occur in accordance with the Family Violence Referral Protocol between the Department of Health and Human Services and Victoria Police.³¹ The Code of Practice stresses that referrals are in addition to, and do not replace, the pursuit of criminal charges or seeking of civil protection in response to family violence.³²

When children are present

The Code of Practice and the Referral Protocol stipulate multiple referral pathways when children are affected by family violence:

- ▷ Police may make a report to Child Protection if they believe a child or young person is otherwise in need of protection within the meaning of the *Children, Youth and Families Act 2005* (Vic) (there are circumstances when they must do this).³³
- ▷ If a child is included on a victim's referral to a family violence service, the service will conduct a risk assessment in relation to the child (and refer the child to Child FIRST, if required).
- ▷ Police may make a referral to Child FIRST if they are concerned about the welfare of a child but have not otherwise made a referral to Child Protection or a family violence service.³⁴

Child Protection, Child FIRST and family services play an important part in protecting children who are the direct targets of family violence and children who are affected by violence directed at a parent (usually the mother). The majority of referrals are directed to Child Protection rather than Child FIRST: in 2013–14 there were 11,042 referrals to Child Protection compared with 1901 referrals to Child FIRST.³⁵ However, referrals to Child FIRST have grown significantly since the introduction of a protocol between Victoria Police and Child FIRST.³⁶ Child FIRST is discussed later in this chapter.

Informal referrals

Informal referrals occur when police attending an incident give parties the contact details of services they might want to contact. The Code of Practice states that informal referrals can be appropriate if no evidence is available to pursue a criminal or civil option and there are no immediate concerns for the victim's or a child's safety or welfare.³⁷ Informal referrals are being used less and less frequently by police, with the majority of all incidents now resulting in formal referrals.³⁸

Specialist family violence services

Most specialist family violence services respond to the needs of women and children experiencing family violence committed in the context of an intimate partner relationship. This is largely attributable to family violence services responding to where the demand is greatest. There are relatively few services specifically for people who experience other kinds of family violence—for example, older people who are subjected to violence by their children. There are no specific services for people from lesbian, gay, bisexual, transgender and intersex communities who are subjected to family violence. These groups are discussed in Chapters 8, 27 and 30.

Specialist family violence services (both men's and women's services) are funded by the Victorian Government, usually through the Department of Health and Human Services, to provide specific services.³⁹ The services are generally provided by a broad range of non-government community service organisations.

Men's behaviour change programs, men's case-management services, programs for adolescents who use violence and treatment services for sexually abusive behaviours could also be regarded as family violence services. These are discussed in Chapters 18 and 23.

Specialist family violence services for women and their children

Women and their children's specialist family violence services consist of the following:

- ▷ a statewide 24-hour telephone service—called Safe Steps Family Violence Response Centre
- ▷ specialist family violence support services—also referred to as 'case-management services', 'outreach services' and 'women's services'
- ▷ crisis and emergency accommodation
- ▷ family violence counselling for women and children.

Key frameworks governing family violence services

The work of specialist family violence services is informed by various policy frameworks:

- ▷ the Code of Practice for Specialist Family Violence Services for Women and Children (September 2006)
- ▷ the Homelessness Services Guidelines and Conditions of Funding (May 2015)
- ▷ the Family Violence Risk Assessment and Risk Management Framework, also known as the Common Risk Assessment Framework, or the CRAF.

The Code of Practice states that the role of specialist family violence services includes the following:

- ▷ supporting women in making informed choices for themselves and their children in relation to their circumstances
- ▷ helping women and children improve the safety of their accommodation or establish safe accommodation while maintaining connections with friends, family and community supports
- ▷ minimising disruption to children's lives by ensuring they are linked to communities and schools.⁴⁰

The Code and the Homelessness Services Guidelines state that family violence services are principally provided to women and children who are experiencing an immediate crisis, recovering from experiences of violence and abuse, or at risk of being unsafe in the family environment.⁴¹

The homelessness services objectives are to increase safety and wellbeing for women and children and acknowledge and support women in their efforts to gain control over their lives.⁴² The principles that underpin the practice are giving priority to the safety of women and children, supporting their choices, and holding perpetrators accountable for their actions.⁴³

The CRAF provides the overarching policy guidance relating to risk assessment and management.

Statewide 24-hour information and referral service

In Victoria Safe Steps Family Violence Response Centre operates a 24-hour a day telephone information and support service for women and children who have experienced or are experiencing family violence. Workers complete risk assessments, help women develop safety plans, and refer them to support options in the community—including specialist family violence support services and generalist services, such as community health centres. The crisis line receives about 55,000 telephone calls a year.⁴⁴ We do not know how many different women this number covers.

In addition to the statewide telephone information and referral service, Safe Steps also provides:

- ▶ a referral point for receiving L17 forms from Victoria Police for women who require immediate support and accommodation
- ▶ a main entry point into women's refuge accommodation
- ▶ emergency accommodation—a three-bedroom crisis accommodation unit provided in partnership with three local services and access to other emergency housing—for people unable to gain access to a refuge
- ▶ for women and children awaiting suitable accommodation, accommodation in motels. The Housing Establishment Fund is used for this.

In addition, the Commonwealth Government funds 1800 RESPECT, a 24-hour crisis and trauma counselling service offered by telephone and online for people who are currently experiencing or have experienced sexual assault, domestic or family violence.⁴⁵ This service can also refer people to Safe Steps or to specialist family violence support services in their area.

Specialist family violence support services

Specialist family violence support services provide support and assistance for women and their children in order to keep them safe. There are 28 of these services in Victoria. They range from single stand-alone services to medium-sized services offering a suite of family violence responses and other services located in large community support agencies.

Receipt of L17s and other referrals

All 28 regional specialist family violence services receive referrals from a range of sources, among them Victoria Police, Child Protection, family services, health care service providers (including general practitioners and maternal and child health nurses), schools, legal services and individuals who have experienced violence.

Nineteen services (18 services plus Safe Steps) act as contact points for Victoria Police L17 referrals in their area. Most services triage all referrals on the basis of a risk assessment using the information available at the time of referral (such as the L17 form), although the way in which various services perform this task can differ. The service then tries to make contact with the woman to offer help.

Case management

Case management (also referred to as 'outreach') is the core function of specialist family violence support services, involving risk and safety planning based on a woman's needs over time. This is performed by workers who have been trained in the dynamics, nature and impacts of family violence. These staff work with women to identify their specific needs, which can include the following:

- ▶ access to therapeutic or counselling programs—for women or their children
- ▶ housing—including referral to refuges or other accommodation options
- ▶ follow-up with police—including arranging retrieval of items from a woman's house
- ▶ referral to legal assistance
- ▶ support to attend court in order to obtain a family violence intervention order
- ▶ liaising with services including Child FIRST/family services and Child Protection.

Depending on a woman's needs, workers also liaise with community health services; maternal and child health services; schools; mental health, alcohol and other drugs services; and accommodation providers—particularly homelessness services, Centrelink and others. They will also help women find employment, education and training.

Some specialist family violence support services are funded to provide intensive case-management support for women at high-risk. This is, however, a relatively small component of the system.⁴⁶

High-risk family violence response

Risk Assessment and Management Panels (RAMPs) are part of the Victorian Government's commitment to responding to women at high risk of family violence. Pilot projects were established in 2012, and RAMPs are currently being rolled out across the state.

RAMPs aim to manage risk for women and children at serious and imminent risk of death or injury from family violence. They bring together agencies such as Victoria Police, corrections, health, Child Protection and housing and specialist family violence services to share information and plan for safety.⁴⁷ The high-risk response service includes additional case-management capacity in existing specialist family violence services to support women and children at high risk.

There are a range of different brokerage funds—discretionary funds that can be applied to goods and services—that are available to women. There are also a number of other local initiatives that aim to help women and children at high risk. This is discussed in Chapter 6.

Safe at Home programs

The Department of Health and Human Services funds some specialist family violence support services to deliver Safe at Home programs using National Partnership Agreement on Homelessness funding. The funding covers specialist workers to assess the safety needs and level of support required for women and children to stay in their own homes, as well as brokerage funds that can be used to stabilise housing or increase home security by, for example, installing deadlocks, screen doors, security lighting and home alarms.⁴⁸

There has been an increasing focus in recent years on programs designed to keep women and children safe at home. The availability and delivery of Safe at Home programs is discussed in Chapter 9.

Crisis and emergency accommodation

Refuges

Refuges are intended to provide short-term accommodation for women and children in the immediate crisis period after they leave a violent partner. The expected length of stay is six weeks, although this is frequently exceeded because there is nowhere else for the women to go.

The 24-hour access point for entry into refuges is Safe Steps, although individual refuges often have local arrangements. Usually, women can be admitted to refuges only during business hours. If a refuge does not accept a referral, Safe Steps will refer the woman to another refuge, until a suitable placement is found. It is not known how long this process takes, but it is uncommon for women to go directly from home to a refuge. Women either remain at home, or in other arrangements such as with friends, pending a vacancy or are placed in ad hoc emergency accommodation, as discussed shortly.

In Victoria there are 31 refuge sites, consisting of 54 individual properties⁴⁹ that can accommodate about 105 families, depending on family size:⁵⁰

- ▷ Eighteen of these refuges are 'communal' facilities, with communal kitchens and living areas,⁵¹ and can accommodate 69 families.⁵²
- ▷ Thirteen are known as 'dispersed', or 'cluster', refuges—co-located self-contained properties supported by one community service organisation⁵³ and able to accommodate at least 36 families.⁵⁴
- ▷ Three are specifically for Aboriginal women and their children—one located in metropolitan Melbourne and two in regional, rural and remote Victoria.⁵⁵

The Victorian Government advised the Commission that 20 of the 31 refuges are 'high security', meaning that their addresses are not disclosed on the Department of Health and Human Services housing database.⁵⁶

Women's experiences of refuge accommodation are discussed in Chapter 9.

Emergency accommodation properties

There are currently 57 Crisis Accommodation Program properties in Victoria dedicated to accommodating women and children who have experienced or are experiencing family violence.⁵⁷ The properties are generally administered by refuges and form part of the suite of emergency accommodation options; refuge staff provide support to families using these properties.

The Victorian Government informed the Commission that intake to Crisis Accommodation Program properties is determined by the individual organisation.⁵⁸ In some instances a community service organisation that operates both a refuge and a CAP property will transfer a family from a high-security refuge to a CAP property as a 'step down' until alternative safe housing can be arranged.⁵⁹ Women experiencing family violence can also gain access to emergency accommodation through the homelessness service system (discussed further below). This is often the pathway for women who do not want to disclose family violence and/or for whom family violence is not the current crisis issue.

Ad hoc accommodation

Because the demand for refuge accommodation usually exceeds capacity, women unable to remain safely at home or who do not have other options (such as staying with family or friends) are often placed in ad hoc accommodation such as hotels, motels, boarding or rooming houses or caravans until a refuge vacancy or other suitable accommodation becomes available.

In 2014–15 only about 19 out of 455 women (and their accompanying children) who were referred to Safe Steps were accommodated directly in a refuge.⁶⁰ It is estimated that 97 to 100 per cent of people need to spend at least one night in a motel awaiting supported accommodation.⁶¹ This data does not include women who are experiencing family violence but who might have gained access to ad hoc emergency accommodation through a homelessness Initial Access and Planning service. Ad hoc accommodation is funded through the Housing Establishment Fund.⁶²

Family violence counselling

Family violence counselling—both individual and group counselling—offers support to women and children experiencing or recovering from family violence. Women can refer themselves to counselling or be referred by a service provider.

Among the services provided are assessment, information, education, support and other help for women seeking intervention orders through the courts. The services are provided by community service organisations, some of which may also be providers of specialist family violence support services.

At the statewide level a minimum of 30 per cent of family violence counselling services are intended to be provided for children and young people affected by family violence.⁶³

In 2014–15, \$5.8m was allocated for around 4200 clients, with help for a further 7500 occasions of assistance for services delivered by Court Network.⁶⁴

Services for perpetrators and adolescents who use violence

The main program-based intervention available to men who use violence comes in the form of men's behaviour change programs, which are specialist group-based counselling sessions of a 'psycho-educational' nature run over a minimum of 12 weeks.⁶⁵ Men attend voluntarily (although this can be as a result of referral by a court) or a court might order them to attend. Places for voluntary participants are limited, and waiting times range from one to seven months: about 700 men in Victoria were on waiting lists as at March 2015.⁶⁶

In the criminal context, a perpetrator can be ordered to attend a behaviour change program through the sentencing process, as a condition of either a community correction order⁶⁷ or parole.⁶⁸ Perpetrators in custody can also participate in prison-based programs.

Chapter 18 discusses perpetrator programs in the community and correctional settings.

The Adolescent Family Violence Service, which operates at three sites, provides family-based case-management and group-based support to young people aged between 12 and 17 years who use violence at home.⁶⁹ These services are discussed in Chapter 23.

Services for specific populations

Some programs for victims of family violence focus on specific population groups. In other cases organisations that provide general services for a specific population group assist people in relation to family violence, for example Seniors Rights Victoria.

There are specific family violence services for Aboriginal and Torres Strait Islander peoples, including three refuges, case-management services, and a specialist prevention and legal service,⁷⁰ the Aboriginal Family Violence Prevention and Legal Service Victoria. Many Aboriginal and Torres Strait Islander service providers receive funding for services for both victims and perpetrators.⁷¹

InTouch Multicultural Centre Against Family Violence provides multilingual and culturally sensitive assistance, information, and legal and migration services to victims of family violence from culturally and linguistically diverse backgrounds.⁷²

Women with Disabilities Victoria, the peak body for women with disabilities in the state, provides advocacy and information services for women experiencing family violence.⁷³

Chapters 26, 28 and 31 provide more information about services available for specific populations.

Courts and legal services

For many victims and perpetrators of family violence the court process is a central part of their involvement with the family violence system. Different courts have different roles in responding to family violence and have developed specialised responses in recent years as a consequence of the increase in the volume and complexity of family violence-related matters.

The jurisdictional framework

A number of areas of the law can address matters that directly or indirectly relate to family violence. For present purposes, the following broad areas are relevant:

- ▷ family violence intervention orders
- ▷ criminal matters arising both from FVIO breaches and from criminalised forms of family violence such as physical and sexual violence
- ▷ civil matters such as tenancy, guardianship, employment, and debt disputes where family violence is a factor
- ▷ applications for financial assistance by victims of family violence.⁷⁴

In Victoria, jurisdictional responsibility for these areas is divided among a range of courts and tribunals, including the Magistrates' Court of Victoria, the Children's Court of Victoria, the County Court of Victoria, the Supreme Court of Victoria, the Victorian Civil and Administrative Tribunal, and the Victims of Crime Assistance Tribunal.

Family violence intervention orders

The *Magistrates' Court Act 1989 (Vic)* and the *Children, Youth and Families Act 2005 (Vic)* provide that family violence intervention order applications—including applications for interim and final orders and applications for extensions, variations and revocations of FVIOs—must be made in the Magistrates' Court or the Children's Court.

Either the Magistrates' Court or the Children's Court may hear FVIO applications involving a child.⁷⁵ Where practicable, however, applications involving a child respondent are heard in the Children's Court.⁷⁶

Appeals against intervention orders are usually heard in the County Court.⁷⁷

Criminal matters

Each of the Magistrates', Children's, County and Supreme Courts hears some family violence-related criminal matters.

Criminal offences in Victoria are divided into summary and indictable offences.⁷⁸ Magistrates' courts have jurisdiction to hear less serious summary offences and some indictable offences (with the consent of the parties and if considered appropriate by the court).⁷⁹ Other more serious indictable offences can be heard only in the County or Supreme Courts (see Chapter 17).

The Children's Court's Criminal Division has wide jurisdiction to hear and determine criminal matters involving children aged 10 to 17 years at the time of offending (and under 19 when proceedings begin), including committal proceedings and charges on summary offences. It may hear and determine summarily any indictable offences except death-related offences, which are usually heard through the adult court system.⁸⁰

FVIO proceedings can be heard and determined by the Children's Court when they are related to proceedings before it. The maximum penalty that may be imposed in the Children's Court is two years' detention in a youth justice centre, even when the legislation creating the offence allows for the imposition of a higher maximum penalty. The maximum total effective sentence that may be imposed for multiple offences determined at the same hearing by the court is three years' detention.⁸¹ Further sentencing options in the Children's Court are fines, dismissal of charge without conviction, good behaviour bonds, and probation.

Other civil matters

The following are examples of other courts and tribunals that may hear civil matters:

- ▶ The Victims of Crime Assistance Tribunal considers applications for financial assistance made by victims of crime. An estimated quarter of such applications were from family violence victims in 2014–15.⁸²
- ▶ In the Victorian Civil and Administrative Tribunal family violence issues can arise in tenancy matters or in allegations of financial abuse, exploitation or neglect of people with disabilities, or older people.⁸³
- ▶ The Coroners Court has jurisdiction in connection with fatalities, including those relating to family violence.⁸⁴

Chapters 16 and 25 provide further information about these issues.

Court-based programs, services and systems

The Magistrates' Court

The Magistrates' Court of Victoria is the busiest court in the state, handling about 90 per cent of all cases that come before Victorian courts. There are 53 magistrates' courts in 12 regions in the state. Each region has a headquarter court, and some have multiple satellite courts.⁸⁵

The centrepieces of the Magistrates' Court's response to family violence are the Family Violence Court Division courts at Ballarat and Heidelberg⁸⁶ and the Specialist Family Violence Services courts at Melbourne, Frankston, Sunshine and Werribee,⁸⁷ which were established in 2005–06. The capacity to mandate participation in men's behaviour change programs has now been extended to Frankston and Moorabbin courts, which have been allocated applicant and respondent workers.⁸⁸

The Family Violence Court Division and Specialist Family Violence Services courts have a range of similar features including trained family violence registrars, applicant (and in most cases respondent) support workers, co-located legal and non-legal support services, dedicated police prosecutors for police-initiated applications and family violence training for magistrates and staff. They were designed to deal specifically with the problems raised by family violence but, in view of the number of such courts in the state and the prevalence of family violence, the majority of family violence matters are dealt with in the mainstream magistrates' courts.

The Magistrates' Court is in the process of rolling out applicant and respondent support workers to all headquarter courts and has allocated specialist family violence registrars to all headquarter courts.⁸⁹

Beyond the Family Violence Court Division and Specialist Family Violence Services courts, most magistrates' courts and all headquarter courts set aside specific days each week for family violence matters. The Magistrates' Court also provides a 24-hour after-hours service for urgent FVIO matters.

A variety of services are available—either statewide or in a limited subset of magistrates' courts—that are not specific to family violence but are commonly used by parties in such proceedings. Examples are:

- ▷ The Court Integrated Services Program and the CREDIT/Bail Support Program⁹⁰—these are case management and referral services for people who are on bail or summons and are accused of criminal offences. Both seek to address underlying issues experienced by the accused (such as drug and alcohol misuse, homelessness and health issues).
- ▷ Court Network—a volunteer service which provides onsite support, information and referrals to individuals in some 18 Magistrates' Courts in Victoria. Court network volunteers 'walk the floor', assisting people in Court where a need is recognised. They also see clients referred from services outside court.
- ▷ The Youth Justice Court Advice Service (which is also offered in the higher courts)—assists people aged 18 to 20 in the courts for criminal matters.
- ▷ The Child Witness Service—which seeks to ameliorate the trauma experienced by children who are providing evidence. The service is staffed by social workers and psychologists and also provides remote witness facilities so that the child does not have to give evidence in front of the accused.⁹¹ CWS is located in Melbourne, but also supports children in rural regions via outreach and visits to witnesses at local court locations.⁹² Although the program is not family violence-specific, 275 of the 615 new referrals to the service in 2014–15 involved a family violence incident.⁹³

The Children's Court

The Children's Court of Victoria is a specialist court with two divisions. The Family Division hears applications relating to the protection and care of children who are at risk as well as applications for family violence intervention orders; the Criminal Division hears matters pertaining to criminal offending.⁹⁴

No court-funded family violence-specific services operate in the Children's Court.⁹⁵ With the exception of the Melbourne Children's Court, however, the Children's Court sits in Magistrates' Court venues.

Within the Children's Court several services and programs are offered that people involved in family violence-related Children's Court matters may use. Examples include a specialist list at Melbourne Children's Court that facilitates the intensive management of certain cases involving child sexual abuse (the 'D List'),⁹⁶ the Children's Court Clinic,⁹⁷ and child protection conciliation conferences.⁹⁸

Issues specific to the Children's Court are considered in Chapter 11.

The Victorian Civil and Administrative Tribunal

Depending on where the proceedings take place, parties to VCAT proceedings can also have some access to Magistrates' Court facilities and services. VCAT employs a family violence support worker in the Residential Tenancies Division who is able to help clients in all tribunal lists with family violence-related matters. The worker can explain VCAT procedures, offer practical assistance during a person's attendance at the tribunal, and provide referrals to community-based services.

VCAT's Melbourne venue has a dedicated client office and remote witness room, along with security staff and closed-circuit surveillance. Security is more limited at suburban and regional venues, although the option exists to attend a hearing via telephone.⁹⁹

The Neighbourhood Justice Centre

The Neighbourhood Justice Centre is a multi-jurisdictional court that opened in 2007 in Collingwood, Melbourne. It sits as a magistrates' court, a children's court, the Victorian Civil and Administrative Tribunal and the Victims of Crime Assistance Tribunal and has a wide range of co-located legal and non-legal services, among the latter being services for Aboriginal and Torres Strait Islander peoples and people of culturally and linguistically diverse backgrounds, support for people with disabilities (including physical, intellectual and mental health disabilities), and employment and training, drug and alcohol and other specialist support services.

The higher courts

The County and Supreme Courts have limited specific services for dealing with family violence. Security staff and screening can be used and can be increased or modified to suit the needs of specific individuals or matters. There might, however, be no advanced indication that a case involves family violence, which makes it difficult to suitably manage such cases.

Of note is the Supreme Court's role in administering 'funds in court', which are ordered by courts and tribunals to be paid to beneficiaries who are either children or people with disabilities or injuries that give rise to a need for assistance in managing their affairs. A significant proportion of beneficiaries are successful Victims of Crime Assistance Tribunal applicants—the court reported that '[a]pproximately half of all beneficiaries at any one time are children who have received money from VOCAT'¹⁰⁰—and some will be victims of family violence. Others might have become beneficiaries for other reasons but have subsequently experienced family violence.

Legal services

Both applicants and respondents are able to obtain free information and advice on family violence matters through Victoria Legal Aid's free information and advice telephone service, Legal Help, which in 2013–14 provided assistance in 8432 family violence matters and made 4247 referrals.¹⁰¹

VLA also provides (or provides for) free duty lawyer services at all major metropolitan magistrates' courts and most rural and regional courts.¹⁰² Services range from providing information—for example, explaining the type of matter being heard and the potential outcomes—to providing advice, negotiating with the other party to a dispute, making referrals, and representing parties in court.

These services are provided under a 'mixed model', with services provided by lawyers from VLA, community legal centres¹⁰³ and the private profession. The aim of this is to ensure fewer conflicts of interest and greater coverage of the courts. In many cases VLA lawyers will act for respondents and community legal centres for applicants, subject to any conflicts of interest.¹⁰⁴

Defendants in criminal proceedings arising out of family violence can also receive means-tested legal assistance. VLA can also be ordered to provide legal assistance in certain circumstances so that a protected witness can avoid being cross-examined by a respondent.¹⁰⁵ VLA also provides some advice and representation (including for children) in family law and child protection matters and offers community legal education services.¹⁰⁶ In 2013–14 it provided 14,796 family violence legal services to 11,269 clients.¹⁰⁷

Other organisations and services—such as Women's Legal Service Victoria, the Victorian Aboriginal Legal Service, the Aboriginal Family Violence Prevention and Legal Service Victoria, and InTouch Multicultural Centre Against Family Violence—provide legal services to clients in particular population groups.¹⁰⁸

Further information about the courts and legal services is in Chapter 16.

Child Protection

Child Protection is part of the Victorian Department of Health and Human Services. Child Protection receives and may investigate reports about children and young people where there are significant concerns for their wellbeing, or where Child Protection believes that a child or young person is in need of protection.¹⁰⁹ Where reports are investigated and substantiated, Child Protection may work with a family and/or other services to address concerns identified to keep children safe.¹¹⁰ In some cases, Child Protection may seek protective orders in the Children's Court of Victoria.

In 2013–14 family violence was indicated in 37,492 reports to Child Protection.¹¹¹ Out of the total number of reports from police to Child Protection for that year (24,139), family violence was indicated in 17,481 reports; 14,032 of the 17,481 reports came from police via the L17 process.¹¹² As at 30 June 2014 there were 7,070 children or young people in out-of-home care placements (the placement system for children and young people removed from the care of their family) in Victoria. Of these children and young people, family violence was indicated in 3400 cases.¹¹³ Chapter 11 discusses the child protection system.

Integrated Family Services

The Victorian Government funds Integrated Family Services as the major program responsible for helping vulnerable families experiencing difficulties that adversely affect their parenting and family life, which in turn can affect a child's safety, stability or development. Family violence is one of these difficulties along with significant parenting problems, pressure due to mental ill-health, substance abuse or lack of support.

In 2013–14 there were 96 community-based child and family services funded by the Department of Health and Human Services to provide Child FIRST and Integrated Family Services in Victoria.¹¹⁴ The programs had a combined budget of \$93.7 million in 2013–14.¹¹⁵

Child FIRST

Child FIRST—the FIRST standing for Family Information, Referral and Support Teams—is a central referral point to a range of community-based family services and other programs within each of the 23 catchment areas across Victoria. Child FIRST is the intake point for family services; that is, there is no eligibility re-assessment for referred families.¹¹⁶

Child FIRST can be directly approached by families, as well as receiving referrals from concerned third parties on behalf of families. It provides information about relevant services, assessments of children and families' needs and risks to help determine what services are required and referrals to relevant services.

Child FIRST teams each have a child protection worker co-located there to help provide consultation on specific cases, and work in partnership with IFS to engage families as appropriate, including joint visits where appropriate.¹¹⁷

Family Services

Family services are for those vulnerable children and young people whose development has been affected and/or in respect of whom concerns are escalating which, unaddressed, may lead to a referral to Child Protection.¹¹⁸

Family services work with families to enhance parenting capacity and skills, parent-child relationships, child development, and social connectedness. This assistance can include counselling, as well as in-home support and group work, and can also include secondary consultations with other services. Case workers provide assistance in accordance with a child and family action plan, which is largely based on the assessment carried out by Child FIRST. The aim is to improve parenting capacity and skills and strengthen parent-child relationships, child development and social connectedness through a range of means, including working with individuals and groups. Assistance is delivered both in the home and by outreach to wherever is appropriate. It can be provided directly or through brokerage funds.¹¹⁹

Housing and homelessness services

The specialist homelessness service system was designed to 'secure housing for people at risk of or experiencing homelessness, through meeting immediate material needs and working with people within a case management model to address any issues that have contributed to their homelessness.'¹²⁰

Homelessness services (other than the specialist family violence services discussed above, even though most of these services are also funded through homelessness funding) play an important role in responding to family violence.¹²¹

They include homelessness access points (also known as Initial Assessment and Planning services) which provide an assessment and referral to relevant homelessness services in the area. These can be important entry points for women who may not wish to seek assistance through specialist family violence services as they may not be willing to disclose family violence or the risks of violence may not be immediate or current.

Homelessness services assist people in a number of ways. They may provide an immediate crisis response by arranging crisis accommodation in a refuge, or emergency accommodation in a motel, rooming house or caravan park. They may also assist people to access transitional housing, which is subsidised housing for up to 12 months for people who are homeless or at risk of homelessness. A person needs to be linked into a support service in order to be eligible for a transitional property.¹²²

Homelessness services also assist people to secure longer term housing, including applications for social housing. Social housing provides subsidised rental housing for people on low incomes who meet income and asset eligibility criteria, including women who have left family violence. The two main forms are public housing (through the Department of Health and Human Services with rent capped at 25 per cent of combined eligible household income),¹²³ and community housing (provided by non government organisations with income and asset limits that are generally higher than public housing and tenants generally pay no more than 30 per cent of their combined household income).¹²⁴ As at June 2015 there were 85,199 social housing dwellings (64,866 of which were public housing).¹²⁵

Homelessness services are also available to perpetrators requiring alternative accommodation in order to comply with a family violence intervention order or safety notice excluding them from the home.

These services are discussed in Chapter 9.

Services for sexual assault

In Victoria the specialist sexual assault sector consists largely of government-funded Centres Against Sexual Assault, along with multi-disciplinary centres that were introduced as part of the 2006 Sexual Assault Reform Strategy. There are also therapeutic treatment programs for children and young people exhibiting sexually abusive behaviours.

CASAs have been operating since 1979, assisting children, young people and adults who have experienced sexual assault.¹²⁶ This includes sexual assault that happens within a family violence context. The Victorian Government told the Commission that sexual assault services include crisis care, casework, advocacy and group work.¹²⁷ Crisis care includes an after-hours telephone service (the Victorian Sexual Assault Crisis Line), crisis intervention, counselling and advocacy as well as liaising and coordinating support with other services such as police. Counselling, advocacy and support is also provided to adult survivors of childhood sexual assault. CASAs can provide community education, training and specialist consultation to other services. Some CASAs are also funded as providers of family violence counselling for women and children.

There are currently six MDCs in Victoria.¹²⁸ These are essentially 'one-stop shops' for victims of sexual assault, with co-located Victoria Police Sexual Offences and Child Abuse Investigation teams, Department of Health and Human Services Child Protection practitioners and CASA counsellors/advocates.¹²⁹ MDCs also have links to forensic medical staff, and from 2014–15, MDCs have been extended to include community health nurses who will support victims/survivors and refer them to appropriate community services.

In addition to these services, the Sexually Abusive Behaviours Treatment Services program funded by the Department of Health and Human Services, provides voluntary therapeutic services for children and adolescents who exhibit problem sexual behaviour and sexually abusive behaviour.¹³⁰ The Victorian Government advised that it funds 11 agencies to provide these services in Victoria.¹³¹ SABTS may be accessed in a number of ways, including self referral, and referral from a community agency, school or Child Protection.¹³² The Children's Court can make referrals to the program for 10 to 14 year-olds, after making a Therapeutic Treatment Order.¹³³ If convicted of a sexual offence, young offenders can be ordered to participate in therapeutic treatment with the Male Adolescent Program for Positive Sexuality.¹³⁴

Chapter 12 provides more detail about sexual assault services.

Victim support services

The Victorian Government's Victims of Crime Helpline, provided by the Victims Support Agency, offers information, advice and support for victims and their families. The line operates from 8.00 am to 11.00 pm seven days a week and is the access point to a range of free services aimed at helping to manage the impact of crime on victims.¹³⁵ Male victims of family violence are referred to this service.¹³⁶ The Victims Support Agency also funds and coordinates the Victims Assistance Program, which provides case-management support to victims of crime¹³⁷ and is delivered by community agencies throughout Victoria.¹³⁸

The Witness Assistance Service in the Office of Public Prosecutions provides support to adult witnesses in criminal trials; the Child Witness Service provides support to children who are witnesses in criminal trials.

Commonwealth agencies

Although family violence and associated services are generally provided at the state and territory level, a range of Commonwealth agencies are relevant to family violence systems. As noted, the Commonwealth provides funding for a variety of state services; Chapter 4 provides details of the Commonwealth's role in this regard.

The Family Court and the Federal Circuit Court seek to resolve legal disputes flowing from family separations, such as disputes relating to parenting and financial circumstances (including child support). The Federal Circuit Court hears the bulk of family law matters; more complex cases and appeals are heard by the Family Court.¹³⁹

In addition to providing parenting and other benefits and entitlements, Centrelink offers one-off crisis payments for people experiencing difficult or extreme circumstances. This can include victims of family violence.¹⁴⁰

The way forward

A royal commission necessarily invites consideration of how existing services and systems might work more effectively. There has been considerable progress in meeting the needs of victims of family violence over the past 16 years, though further improvements are needed. This sentiment was captured by Dr Rhonda Cumberland, Chief Executive Officer of Good Shepherd Australia New Zealand, who noted:

There is no comparison between the response today and that of 2000. We can point to the failures today – and there are many. However, the failures of the system should not be confused with a lack of progress. We have come a long way from women self-referring, women not reporting to police, from police not drawing the dots between family violence and crime and domestic murder. I acknowledge how far we have come since those dark days. The days of an isolated women's service response are gone.¹⁴¹

Some submissions noted that, while the foundational policies and legislation underpinning the family violence response in Victoria are sound, the potential of the initiatives has not been fully realised. For example, the Federation of Community Legal Centres observed:

The [Family Violence Protection Act] is widely regarded as a best practice model in terms of the legal protections offered and its purpose, which is to prevent and reduce family violence, prioritise the safety of victims, and hold perpetrators accountable for their use of violence. Seven years on provides opportunity to reflect on how the legislation is working in practice.¹⁴²

Court Network also highlighted concerns about implementation of the reforms—specifically, that this has occurred in an ad hoc way and has lacked the resources to effectively respond to demand.¹⁴³

Fragmentation and ‘silos’ among service providers were often raised as a concern in connection with the existing systems’ response to family violence. Domestic Violence Resource Centre Victoria remarked:

Despite efforts at integration over the past decade, the system has continued to fail many women. The system still operates in separate ‘silos’, women are unable to smoothly navigate the system, women with diverse needs are being left behind by this system, and significant barriers to integration remain.¹⁴⁴

The Commission heard that, although the various elements of the family violence system response have worked together to accommodate burgeoning demand, the increased volume of reported family violence has made it difficult to provide effective responses. Further reform is necessary to prevent family violence in all its forms and to ensure that all the systems that come into contact with family violence victims respond to their needs. System reform is also required to ensure that those who are violent are held responsible and accountable for their behaviour and helped to change.

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- 5 Transcript of Tucker, 3 August 2015, 1566 [3]–[9].
- 6 Victoria Police, Submission 923, Attachment 3, 38.
- 7 Statement of McWhirter, 27 July 2015, 9 [37]–[38].
- 8 Crime Statistics Agency, 'An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14' (January 2016) 24.
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- 14 *Family Violence Protection Act 2008* (Vic) s 31.
- 15 Victoria Police, Code of Practice, above n 4, 39 [5.12].
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- 26 In 2013–14 Victoria Police laid charges in 27,701 of a total 65,154 family violence incidents. Breaches of family violence intervention orders are included in the total 27,701 charges laid: *ibid*.
- 27 Victoria Police, Code of Practice, above n 4, 28.
- 28 Ibid 29.
- 29 Ibid 44.
- 30 No To Violence; Men's Referral Service, Submission 944, 25.
- 31 Department of Health and Human Services, 'Family Violence Referral Protocol between the Department of Health & Human Services and Victoria Police—2015' (June 2015) produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.
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- 34 Victoria Police, Code of Practice, above n 4, 45–7.
- 35 Crime Statistics Agency, above n 8, 40.
- 36 Crime Statistics Agency, above n 8, Table 16: Total Referrals Made Following a Family Incident – Victoria Police, July 2009 to June 2014, 40.
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- 38 In 2009–10 there were 14,109 informal referrals made by Victoria Police for female affected family members compared with 5,103 in 2013–14, representing a 47.5 per cent decrease. This is compared with an increase of 317 per cent in formal referrals for female affected family members during the same time period. Crime Statistics Agency, above n 8, Victoria Police Data Source, Tab 31, Table 31: Referrals Made by Victoria Police by Police Region and Gender of the Affected Family Member, July 2009 to June 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015.
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- 40 Domestic Violence Victoria, 'Code of Practice for Specialist Family Violence Services for Women and Children: Enhancing the Safety of Women and Children in Victoria' (2006) 32.
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- 42 Department of Health and Human Services, above n 41, Part 5, 14.
- 43 Ibid.
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- 45 National Sexual Assault, Domestic and Family Violence Counselling Service, *About Us* (2015) 1800RESPECT <<https://www.1800respect.org.au/about/#link1>>.
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- 48 Homelessness Taskforce, Department of Families, Community Services and Indigenous Affairs (Cth), 'The Road Home: A National Approach to Reducing Homelessness' (2008) 33.
- 49 Statement of Rogers, 20 July 2015, 12 [78].
- 50 Ibid 12 [79].
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67 *Sentencing Act 1991* (Vic) s 48D(3)(f).

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70 Transcript of Singh, 20 July 2015, 858 [31]–859 [6].

71 Statement of Turfrey, 16 July 2015, 13–14 [55].

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73 Women with Disabilities Victoria, Submission 924, 3.

74 Note that coronial matters and other work done by the Coroners Court of Victoria is considered in Chapter 25, and family, parenting and Child Protection matters are discussed in Chapter 11.

75 That is, a person aged under 18 years when the application is made: see *Family Violence Protection Act 2008* (Vic) s 4 (definition of 'child').

76 Ibid s 146. The Children's Court may also hear and determine FVIO matters not involving children if they are related to FVIO or Child Protection proceedings before it: *Family Violence Protection Act 2008* (Vic) ss 147–147A.

77 *Family Violence Protection Act 2008* (Vic) ss 114–15.

78 *Sentencing Act 1991* (Vic) s 112.

79 As well as committal proceedings for matters to be tried in the higher courts. See *Magistrates' Court Act 1989* (Vic) s 25; *Criminal Procedure Act 2009* (Vic) ss 28–9; *Sentencing Act 1991* (Vic) s 112.

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98 Trained mediators (accompanied by a Koori co-convenor where Aboriginal and Torres Strait Islander children and their families are involved) assist families to resolve disputes and avoid a court hearing where possible. Anecdotal indications from mediators suggest that a majority of those attending conferences have, or have had, an FVIO in place between some family members: Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 16.

99 Victorian Civil and Administrative Tribunal, Submission 164, 3–5.

100 Supreme Court of Victoria, Submission 705, 3.

101 Victoria Legal Aid, Submission 919, 58.

102 Ibid, 13.

103 The Federation of Community Legal Centres reports that 20 of its member centres provide legal services in some 29 Magistrates' Courts. See Federation of Community Legal Centres, Submission 958, 14.

104 Victoria Legal Aid, Submission 919, 13.

105 *Family Violence Protection Act 2008* (Vic) s 71.

106 Victoria Legal Aid, Submission 919, Foreword.

- 107 Ibid, 57.
- 108 See, eg, Women's Legal Service Victoria—01, Submission 940, 14 ; Victorian Aboriginal Legal Service, Submission 826, 1; Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 11; InTouch Multicultural Centre Against Family Violence, Submission 612, 3.
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- 110 Department of Health and Human Services, *Protective Intervention Policy* (29 February 2016) <<http://www.cpmmanual.vic.gov.au/policies-and-procedures/phases/protective-intervention/protective-intervention-policy>>.
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- 125 CASA Forum, Submission 828, 1.
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6 Risk assessment and management

Introduction

Assessing the risk that a person will be subjected to family violence and then appropriately managing that risk, underpins all efforts to uphold safety for victims of family violence and to hold perpetrators of family violence to account.

Risk assessment and management tools provide a way of thinking and talking about family violence risk with a person. These tools are a lens through which practitioners gain a clearer picture of the victim's experience and what action is required. They can help a practitioner to understand why a victim may stay with a perpetrator, how what at first may have seemed loving attention has become control and domination, and why a victim may be scared to disclose the violence.

Before 2007 there was no common risk assessment and management approach for the family violence system in Victoria. In 2007, the Victorian Government introduced the Family Violence Risk Assessment and Risk Management Framework (known as the Common Risk Assessment Framework, or the CRAF) to enable risk assessments to be conducted whenever a person at risk of or experiencing family violence makes contact with a service. The government is currently reviewing the CRAF.

This chapter considers the extent to which the CRAF has met its aims and where improvements might be required. It also looks at how we can better support risk assessment and management practices for those at all levels of risk.

The first section of this chapter explores current risk assessment and management practices in Victoria, including the application of the CRAF and multi-agency risk management practices to date. This includes the Risk Assessment and Management Panels, or RAMPs, currently being rolled out across the state to respond to women and children at highest risk of family violence. It also provides an overview of risk assessment and management practices in other Australian jurisdictions and internationally, which could help guide the Victorian Government's review of the CRAF.

The second section of this chapter identifies some of the matters commonly raised before the Commission in connection with gaps in Victoria's approach to family violence risk. The Commission was informed that the CRAF provides essential guidance on risk assessment but that its consistent application has been hindered by a lack of strong leadership from government. The Commission also heard that the CRAF does not do enough to support risk assessment for children and victims of non-intimate partner violence and that risk management strategies do not place enough focus on perpetrators.

In the final section of the chapter, after considering all the evidence before it, the Commission proposes a way forward. It recommends a number of changes to enhance the CRAF as a best-practice framework and to support its use. The Commission proposes a means for ensuring that risk assessments in important locations such as health services and courts are aligned with the CRAF, and that training in risk assessment and management be provided to the various service providers that frequently come into contact with victims and perpetrators of family violence. It further recommends a number of measures to support the effective statewide roll-out of RAMPs.

During the Commission's deliberations, Victoria Police advised that it is trialling a new triage tool to assess levels of risk and better respond to family violence in parts of western Melbourne. Victoria Police has a unique role in risk assessment and management. Police are often the first responders to family violence incidents. Because of their investigative functions, they also have a central role in monitoring and managing perpetrators. The Commission provides its view on the proposed model, recognising that the trial is yet to commence.

Context and current practice

'Risk assessment' refers to the process of identifying whether a person is at risk of family violence and then determining the likelihood that they will be affected by violence or, if violence is already occurring, that it will escalate.¹ Although risk assessment cannot eliminate the possibility that unpredicted events will occur, it does allow for informed and tailored responses that can reduce the risk that the person will be harmed.

Various service providers perform family violence risk assessments when they come into contact with women, children and families; these include specialist family violence services, mainstream services such as health and family services, and police and justice services. Some might detect the risk of family violence and make a referral to a service provider who is better equipped to perform a full risk assessment. The tools used to identify and respond to risk can therefore differ according to the role and function of the practitioner assessing the risk and the service context.

Although risk assessment is a central part of the work of service providers who come into contact with families, victims constantly assess and manage their own risks. Many women take steps to anticipate and manage a perpetrator's behaviour over a long period before seeking support. Victims' assessment of their own level of risk has been found to be an accurate predictor of the recurrence of family violence, with a predictive value similar to that of more formal risk assessment approaches.² A multi-site, four-year follow-up evaluation of US perpetrator treatment programs found that:

Women's perceptions of safety and the likelihood of re-assault [emerged as the] most consistent and strongest risk marker. In fact, the women's predictions were as useful as all the batterer characteristics combined.³

This finding was reinforced by former State Coroner, Judge Ian Gray, quoting from Mr Rodney Vlasis of No To Violence during the inquest into the death of Luke Batty: 'sound risk assessment practice requires that where there is ambiguity or inconsistency [in verbal reports of fear] [a] risk assessment should err on the side of caution when the victim is significantly afraid'.⁴

Sometimes, however, it is not advisable to depend solely on a victim's assessment of her risk. Some women might not disclose or might minimise the extent of violence in an effort to manage the perpetrator. For example, a woman might fear that if she discloses the violence, the risk to herself or her children will escalate.⁵ Service providers must therefore also use professional judgment and consider identified risk factors for family violence in order to make an effective risk assessment.⁶

The risk assessment process can also give a victim the chance to recognise her situation as violent, acknowledge her experience and position, prevent her from blaming herself for the situation, and take action to achieve her own safety. By describing the perpetrator's behaviour during a risk assessment, a woman can 'obtain some clarity about the abuse she is experiencing and shrug off some of the blame the abuser has levelled at her':

It may be the first time that a woman has had an opportunity to think about her situation objectively, in terms of the risk the abuser poses to her, and her children. Because she is fearful of the abuser, the notion of 'risk' makes sense to her, however it is often the first time she has heard that kind of objective terminology. In this way, risk assessment can also serve as a therapeutic exercise for women.⁷

Risk assessment is not a 'one-off' exercise.⁸ The risk of family violence can fluctuate over time, and it can escalate rapidly. New risk assessments are required whenever circumstances change for victims or perpetrators—for example, when the victim is planning to leave the violent relationship or when she separates from her partner, when the perpetrator is about to be released from custody, when Family Court proceedings have begun, when the perpetrator becomes aware that the victim has sought support, or when the victim is pregnant or gives birth.

Given the dynamic nature of risk, a risk assessment requires regular review. Each time a service provider makes contact with a woman, they should be doing a risk assessment. Service providers can ask 'last time we spoke, I asked you how scared you were on a scale of one to five and you said three. How are you feeling now?' If she responds with 'four', a service provider will want to know what has happened in the interim. And when the level of risk is reviewed or revised, there is also a need to revisit the woman's safety plan.⁹

Approaches to risk assessment

There is no definitive method of assessing the risk of family violence. As the Melbourne Research Alliance to end violence against women and their children noted, 'risk assessment is an art rather than a science and should be considered preventative rather than predictive'.¹⁰

Within the human services field, approaches to risk assessment have included the following:

- ▷ a clinical approach—exercising professional judgment
- ▷ an actuarial approach—using scales or matrices based on a retrospective analysis of risk
- ▷ a structured professional judgment approach—in which clinical and actuarial approaches are used in combination.¹¹

The actuarial method relies primarily on predictive risk factors taken from empirical research. These risk factors are assigned a numerical value and a total risk score is generated. This score provides an indication of the probability that an individual will re-offend in the foreseeable future. While training is recommended before a person uses any risk assessment tool, the literature stresses the particular importance of training in the proper use of actuarial tools.¹²

One strength of the actuarial approach is that the tools use consistent criteria; this means findings can be replicated easily, which supports consistent data collection.¹³ An actuarial approach can, however, also limit the assessor to a fixed set of factors, which could lead them to ignore other information or potentially minimise factors that professional judgment would identify as critical.

A structured professional judgment approach is accepted as more accurate than the other approaches on their own, since it is more flexible than the actuarial approach, is more consistent and transparent than unstructured clinical judgments, and allows for the use of professional judgment.¹⁴ Most current frameworks for assessing family violence, including the Family Violence Risk Assessment and Risk Management Framework, also known as the Common Risk Assessment Framework or CRAF, promote a structured judgment approach.¹⁵

Given the complexity and dynamic nature of risk, and the fact that many service providers, beyond specialist family violence services, might be required to identify and assess a risk of family violence, the Commission heard that different risk assessment approaches should be available:

The structured professional judgment tool ... on balance has more utility, but it requires a higher level of training and expertise and of course all of these tools are only as good as the information they are based on ... in an ideal situation you would be able to use an actuarial tool for people who are unable to train their expertise to make in-depth decisions, but then you would have the opportunity to have a more comprehensive assessment, say when a particular matter is referred to a risk assessment panel or other body, where a multi-disciplinary team can actually look at a range of factors to make decisions and then use that information to help manage change.¹⁶

The important role of risk assessment tools in guiding the professional judgement of even very experienced practitioners, was also stressed to the Commission:

... if you have a really good assessor, they have that checklist in their head of 20 factors that are on the danger assessment tool and are asking the woman about those factors and therefore she comes through with roughly the same information, but in a way it's because there is a very good assessment done on the basis of some quite detailed questioning, which is different from someone coming in and just going, 'Tick the box, have you experienced domestic violence'.¹⁷

As noted by Professor Cathy Humphreys, Professor of Social Work at the University of Melbourne, the lack of certainty in risk assessment means that the information gathered through a risk assessment tool constitutes only one information source:

... you will have a lot of people that look very high risk that in fact may have stopped themselves for a range of reasons from continuing their violence. Similarly, you will have people that look pretty low risk who then do atrocious things. You can't necessarily use the tools or even professional judgment to predict some of that. So when we are thinking about what's the role of risk assessment and risk management it's a very helpful guide, but it's not the whole story.¹⁸

The Commission is also aware of caveats in relation to the use of risk assessment tools:

Firstly, the priority on the most dangerous perpetrators may leave many women and children without an adequate and safe intervention. Secondly, the risk factors are indicative not predictive and serious cases may be left out of a system which only prioritises intervention to high risk cases. Thirdly, risk assessment may be seen as an end in itself, rather than a mechanism through which to inform the management of risk. Finally, the risk assessment and risk management needs to actively enhance the policing response and not overwhelm police with administrative paperwork ...¹⁹

Risk assessment tools can be targeted to victims (for example, the CRAF), perpetrators, or both. Importantly, the CRAF sets out risks associated with both victimisation from family violence and perpetration of family violence. Most of the risk factors for victims and perpetrators are similar, although in relation to actuarial tools the way risk factors are weighted can be different.²⁰

The Commission was also told about the role of 'self-assessment' tools for women that could operate as an adjunct to formal risk assessment. For example, the University of Melbourne is testing an interactive web-based health relationship tool and safety decision aid called 'I-DECIDE'.²¹ The tool is for women who are not able to seek help or disclose violence to their health practitioner. It is being tested through a randomised controlled trial to determine whether it is accessible and useful.²² This tool is discussed in Chapter 19. Examples of risk assessment approaches used in other jurisdictions are outlined in Table 6.2.

Risk management

Effective risk management is complex and requires familiarity with and cooperation between a number of different professionals working in different agencies, each with a different skill set and mandate.²³ It requires formal partnerships between agencies, and other mechanisms for supporting coordinated responses to the risk or occurrence of family violence.²⁴

Risk management (for both victims and perpetrators) is also most likely to be effective when 'operating in the context of coordinated community responses', where entire communities are responsible for responding to family violence, not just individual practitioners or agencies.²⁵

Risk management for victims

Use of a risk assessment tool alone cannot guarantee a victim's safety. Risk assessment must lead to effectively managing risk, 'otherwise it is a useless exercise in sharing information to no effect'.²⁶ Risk management requires 'a system, not just a tool, and highly skilled people to identify and manage those risks'.²⁷

Risk management strategies for victims of family violence include developing safety plans; putting ongoing risk assessment mechanisms in place; arranging accommodation for victims; ensuring that victims have access to support services, such as counselling and legal advice; taking legal action against the perpetrator; developing protocols between services working with the victim and with the perpetrator, so that perpetrators can be monitored;²⁸ and referring high-risk cases (where victims are at risk of serious injury or death) to multi-agency case-management panels such as Risk Assessment and Management Panels (RAMPs).

Technology is increasingly being used alongside other supports to assist risk management. Such technology includes safety cards and watches, CCTV and use of alarms.²⁹ The BSafe program is a personal alarm system with an in-built GPS that can connect the user to an operator by pressing a button. It allows for a victim to be easily located.³⁰ The Safe-T-Card has an alarm button, an in-built GPS and audio and/or video streaming capacity.³¹ Chapter 9 discusses these devices and provides details of the Victorian Government's recent announcement of a \$900,000 pilot to trial the implementation of safety devices and casework support in a number of regions.³²

Risk management for children is also important. The Department of Health and Human Services guide *Working with Families where an Adult is Violent* provides useful information for practitioners working with families where family violence is occurring. The guide acknowledges the gender-based nature of family violence and provides evidence about the effects of family violence on children and parenting.³³ The guide provides some contextual information about family violence against children, namely that mothers are the most common perpetrators of child abuse, which is defined to include neglect.³⁴ The guide notes that where women have a history of violence, they are more likely to physically abuse their children than women who do not have this history; depression is also a risk factor.³⁵

Risk management of perpetrators

Although the 'perpetrator ultimately controls the risks of family violence',³⁶ risk management of perpetrators is a relatively new field.³⁷ Among current risk management strategies for perpetrators are referral to men's behaviour change programs, legal responses, and monitoring perpetrator activity through information sharing between agencies.

Greater monitoring of perpetrators was a recommendation of Judge Gray in the report of his inquest into the death of Luke Batty. The Commission was told that risk management of perpetrators with a high level of offending is best left to police, the courts and Corrections Victoria.³⁸ Recent research conducted with family violence perpetrators in correctional settings suggests that the following are effective strategies for managing perpetrators with a high level of offending:

- (1) quick and judicious adjudication of cases;
- (2) careful monitoring of correctional outcomes via regular court reviews or specialized probation/parole programs;
- (3) continued safety planning for victims and risk management for perpetrators;
- and (4) vigilant supervision involving consequences for those who fail to complete mandated batterer intervention programs.³⁹

Managing perpetrator risk can involve the following:

- ▷ monitoring or supervising known perpetrators to provide current information on their whereabouts, intentions and vicinity to victims. This can be done through CCTV, GPS monitoring or partner contact via men's behaviour change programs. Supervision could include restricted activity, such as attendance at programs, or communications restrictions⁴⁰
- ▷ interventions that require physical separation from victims—for example, justice responses such as exclusion from the home, intervention orders or being remanded—and service responses such as crisis accommodation or support from respondent workers
- ▷ interventions to minimise and eliminate risks—including men's behaviour change programs and programs aimed at responding to other individual risk factors such as alcohol and drug misuse.

Risk management of perpetrators has increasingly become part of the role of Victoria Police family violence teams, which have evolved to focus on recidivist and high-risk perpetrators.⁴¹ Risk management of perpetrators by police is described further in Chapter 15, but in summary it includes:

- ▷ passive or overt monitoring such as Law Enforcement Assistance Program (LEAP) alerts and enforcement tools respectively
- ▷ family violence 'person of interest' flags in the LEAP database to alert police, who come into contact with the person, of their status
- ▷ management plans tailored to individual circumstances and implemented by a family violence team.⁴²

Police family violence teams have also implemented a number of local, multi-agency initiatives (see the section 'Multi-agency risk management').

These initiatives draw on the expertise of other services to manage recidivist and high-risk perpetrators. The Commission was told that the development of RAMPs has enabled a more targeted focus on perpetrator interventions, including through information exchange with community-based agencies:

The reality is that we spend the majority of the time at the RAMP talking about accountability. The data we have indicates that the more we are able to make a perpetrator accountable and visible, whether through compliance with an order, active treatment or imprisonment, the more the woman's experience of safety increases.⁴³

The RAMP acts as a kind of spotlight on the perpetrator. It sends a really clear message to him and to the broader community, that 'we are watching you.' No matter where you go across these sectors, we know about you. The RAMP creates a web of accountability. If we are serious about increasing accountability for men, then losing the information gap, as the RAMP does, is critical.⁴⁴

Recidivist and high-risk perpetrators

Recidivist and high-risk perpetrators require ongoing risk assessment and risk management. Recidivist perpetrators are those who frequently commit family violence or breach family violence intervention orders. High-risk perpetrators are those who commit severe family violence or whose use of violence has or is escalating.⁴⁵ This group is distinct from recidivists because high-risk perpetrators might not necessarily use frequent violence. For example, a sizable minority of family violence homicides are not preceded by other violence.⁴⁶

Analysis of police data shows that between July 2004 and March 2015 police assessed repeat violence as 'unlikely' for 45 per cent ($n=4599$) of perpetrators who went on to repeat violence and as 'likely' for 55 per cent ($n=5532$). Police predictions using the L17 form are therefore 'slightly better than chance' at predicting recidivism.⁴⁷

Victoria's Risk Assessment and Risk Management Framework

The Family Violence Risk Assessment and Risk Management Framework (often referred to as the Common Risk Assessment Framework or the CRAF) was introduced in 2007 as part of the Victorian Government's ongoing investment 'in the development of an integrated family violence system ... that incorporates both specialist family violence and mainstream service providers'.⁴⁸ It was developed after consultation with more than 500 stakeholders, among them the police, the courts, family violence specialist services, and a diverse range of other service providers.⁴⁹

The Commission heard that the CRAF was designed so that professionals across a wide range of organisations could consistently identify and assess the risk of family violence and manage family violence through the provision of appropriate and timely responses to victims and holding perpetrators to account for their actions.

More than a practice tool, the CRAF was initially intended also as a tool for integration across the various sectors of the family violence system in Victoria. The use of CRAF was intended to establish a shared understanding and approach, not only to risk assessment and risk management, but also to responses to family violence in general. It is a key driver of an effective family violence system, supporting women and children's safety and violent men to be held accountable.⁵⁰

The CRAF was the first statewide risk assessment and management model to be used in Australia.⁵¹ Dr Rhonda Cumberland, Chief Executive Officer of Good Shepherd Australia New Zealand, described to the Commission how the family violence sector assessed risk before the CRAF was introduced:

As workers, it was frightening to know the risks women faced and to know at the same time how little was available to assist them. We did not have the knowledge, the systems, the tools, and the skills to respond effectively. We made many mistakes. We removed women not just from their homes but from their communities. The system required that women leave their jobs. We took children out of school for long periods of time and often required them to change schools. We did not know then how to assess women's risk.⁵²

The CRAF is used by police and other services to assess the level and nature of risk in family violence incidents. It guides the identification of risk, through determining vulnerabilities and other factors (for example, pregnancy, access to weapons) that could contribute to determining the level of risk in a particular context.

It was developed to provide guidance to practitioners from a range of sectors working with victims of family violence and while it includes the risk factors for perpetrators, it was designed to use with victims. The CRAF employs the definition of family violence in the *Family Violence Protection Act 2008* (Vic).⁵³ Whilst acknowledging that both men and women can be perpetrators and victims of family violence, the CRAF uses gendered terminology and refers to victims as women and children and perpetrators as men, reflecting that the most prevalent form of family violence is intimate partner violence perpetrated by men against women.⁵⁴

The CRAF principles

The CRAF is built around six principles or components:

A shared understanding of risk and family violence among all service providers. An integrated service response to family violence depends on all agencies speaking a common language in terms of risk assessment and family violence, and having a common understanding of what underpins family violence—including what constitutes family violence, the ways family violence can affect women and children, and factors affecting the likelihood and severity of family violence.

A standardised approach to recognising and assessing risk. All victims of family violence in Victoria should receive a consistent level and quality of service from the range of family violence service providers, regardless of where they enter the system.

Appropriate referral pathways and information sharing. The various services that work with and help protect women and children must engage effectively with each other as well as with services that work with men who use violence. Inter-agency communication, referral and information sharing are essential to responding to risk and to continuing case management.

Risk management strategies. Victims are linked with support services and case managed where appropriate, and the service system works together to respond to and reduce violence.

Consistent data collection and analysis. Data is collected and analysed to determine the prevalence of family violence, identify common entry points into the family violence system, identify under-represented groups, and guide future service delivery.

Quality assurance. Organisations using the CRAF should monitor its application and supervise staff and ensure that new staff are trained to use the CRAF and that ongoing staff receive regular professional development relating to understanding family violence and effectively using the framework.⁵⁵

The CRAF includes three practice guides to support different practitioners to identify and manage risk, depending on their role:⁵⁶

- ▶ *Practice Guide 1: Identifying Family Violence.* This is for use by professionals working in mainstream settings, including health care providers, teachers and Centrelink officers, who encounter people they think might be victims of family violence. The guide contains a set of possible indicators of family violence, questions to identify family violence, advice on how to ask these questions, and steps to take if family violence is identified—for example, referring the victim to a specialist family violence service or arranging ongoing opportunities to monitor and discuss the violence.
- ▶ *Practice Guide 2: Preliminary Assessment.* This is for use by professionals who work with victims of family violence but for whom responses to family violence are not their primary business—for example, Victoria Police, professionals in court and legal settings, and Child Protection officers. The guide helps these professionals perform a preliminary risk assessment to determine the level of risk to and the safety requirements for the victim.
- ▶ *Practice Guide 3: Comprehensive Family Violence.* This is for use by specialist family violence professionals, among them specialist family violence services, men's behaviour change programs, family violence counsellors, refuge services, and specialist family violence courts. The guide helps these professionals perform a comprehensive risk assessment to determine the level of risk to the victim and to make provision for securing the victim's safety and meeting their recovery needs.⁵⁷

In summary, the practice guides set out what is expected of various professionals in relation to risk assessment and management, depending on their role and responsibility. Practitioners using practice guides 2 and 3 are directed to determine the level of risk to an individual by:

- ▷ supporting the victim to assess her own level of risk
- ▷ considering evidence-based risk factors
- ▷ exercising professional judgment.⁵⁸

Domestic Violence Resource Centre Victoria told the Commission:

[The] CRAF uses a Structured Professional Judgment Approach that strikes a balance between actuarial methods and clinical decision-making. It draws on evidence-based frameworks while also taking account of case-specific situations and contexts that are not considered using a strictly actuarial tool. This approach promotes consistency through an evidence-based framework, but allows the flexibility to encompass the unique characteristics of each case, including the perspective of the victim.⁵⁹

Evidence-based risk factors

The development of the CRAF was based on research and evidence about factors associated with the likelihood of violence recurring and a victim being injured or killed by a perpetrator of family violence.⁶⁰ Nationally and internationally, current family violence risk assessment tools are largely based on an analysis of adult family violence homicides and serious assault cases.⁶¹ Given that the majority of victims of family violence homicides are women and perpetrators a male partner or ex-partner, the majority of risk assessment tools have been designed to assess male violence against female intimate partners.⁶² Table 6.1 identifies the risk factors for family violence adopted by the CRAF.

Table 6.1 Risk factors affecting the likelihood and severity of family violence

| Risk factors for victims |
|---|
| <p><i>Pregnancy and new birth</i></p> <p>Family violence often begins or intensifies during pregnancy and is associated with increased rates of miscarriage, low birthweight, premature birth, foetal injury and foetal death. Family violence during pregnancy is regarded as a significant indicator of future harm to the woman and her child.</p> |
| <p><i>Depression and mental ill-health</i></p> <p>Victims with a mental illness may be more vulnerable to family violence.</p> |
| <p><i>Drug and/or alcohol misuse or abuse</i></p> <p>Victims may use alcohol or other drugs to cope with the physical, emotional or psychological effects of family violence; this can lead to increased vulnerability.</p> |
| <p><i>Has ever verbalised or had suicidal ideas or tried to commit suicide</i></p> <p>Suicidal thoughts or attempts indicate that the victim is extremely vulnerable and the situation has become critical.</p> |
| <p><i>Isolation</i></p> <p>A victim is more vulnerable if she is isolated from family, friends and other social networks. Isolation also increases the likelihood of violence and is not simply geographical. Other examples of isolation are systemic factors that limit social interaction or support and the perpetrator not allowing the victim to have social interaction.</p> |
| Risk factors for perpetrators |
| <p><i>Use of weapon in most recent event</i></p> <p>Use of a weapon indicates a high level of risk because previous behaviour is a likely predictor of future behaviour. A weapon is defined as any tool used by the perpetrator that could injure, kill or destroy property.</p> |
| <p><i>Access to weapons</i></p> <p>Perpetrators who have access to weapons, particularly guns, are much more likely to seriously injure or kill a victim than perpetrators without access to weapons.</p> |
| <p><i>Has ever tried to choke the victim</i></p> <p>Strangulation or choking is a common method used by male perpetrators to kill female victims.</p> |

| Risk factors for perpetrators |
|---|
| <p><i>Has ever threatened to kill the victim</i></p> <p>Evidence suggests that a perpetrator's threat to kill a victim is often genuine.</p> |
| <p><i>Has ever harmed or threatened to harm or kill children</i></p> <p>Evidence suggests that where family violence is occurring, there is a likelihood of increased risk of direct abuse of children in the family. Children are adversely affected through experiencing violence directly and by the effects of violence, including hearing and (or) witnessing violence or through living in fear due to a violent environment.</p> |
| <p><i>Has ever harmed or threatened to harm or kill pets or other animals</i></p> <p>A correlation between cruelty to animals and family violence is increasingly being recognised. Because there is a direct link between family violence and pets being abused or killed, abuse or threats of abuse against pets may be used by perpetrators to control family members.</p> |
| <p><i>Has ever threatened or tried to commit suicide</i></p> <p>Threats or attempts to commit suicide have been found to be a risk factor for murder–suicide.</p> |
| <p><i>Stalking of the victim</i></p> <p>Stalkers are more likely to be violent if they have had an intimate relationship with the victim. Stalking, when coupled with physical assault, is strongly connected to murder or attempted murder. Stalking behaviour and obsessive thinking are highly related behaviours.</p> |
| <p><i>Sexual assault of the victim (including rape, coerced sexual activity or unwanted sexual touching)</i></p> <p>Men who sexually assault their partners are more likely to use other forms of violence against them.</p> |
| <p><i>Drug and/or alcohol misuse or abuse</i></p> <p>A serious problem with illicit drugs, alcohol, prescription drugs or inhalants leads to impairment in social functioning and creates a risk of family violence. This includes temporary drug-induced psychosis.</p> |
| <p><i>Obsession/jealous behaviour towards victim</i></p> <p>Obsessive and/or excessive jealous behaviour is often related to controlling behaviours and has been linked with violent attacks.</p> |
| <p><i>Controlling behaviours—for example, the perpetrator telling the victim how to dress and who they can be friends with, controlling how much money they can have, and determining when they can see friends and family or use the car</i></p> <p>Men who think they 'should be in charge' are more likely to use various forms of violence against their partner.</p> |
| <p><i>Unemployment</i></p> <p>Unemployment is associated with an increased risk of lethal assault, and a sudden change in employment status—such as being terminated—might be associated with increased risk</p> |
| <p><i>Has ever harmed or threaten to harm the victim</i></p> <p>Psychological and emotional abuse has been found to be a good predictor of continued abuse, including physical abuse. Previous physical assaults also predict future assaults.</p> |
| <p><i>Has ever harmed or threatened to harm or kill other family members</i></p> <p>Threats by the perpetrator to hurt or cause actual harm to family members can be a way of controlling the victim through fear.</p> |
| <p><i>Previous or current breach of an intervention order</i></p> <p>Breaching intervention order conditions indicates the defendant is not willing to abide by the orders of a court. Such behaviour should be considered a serious indicator of increased risk of future violence.</p> |
| <p><i>Depression/mental health</i></p> <p>Murder–suicide outcomes in family violence have been associated with perpetrators who have mental health problems, particularly depression.</p> |
| <p><i>History of violent behaviour</i></p> <p>Perpetrators with a history of violence are more likely to use violence against family members. This can occur even if the violence has not previously been directed towards family members. Other victims may have included strangers, acquaintances and/or police officers. The nature of the violence may include credible threats or use of weapons, and attempted or actual assaults. Violent men generally engage in more frequent and severe family violence than perpetrators who do not have a violent past.</p> |

Relationship factors

Recent separation

For women who are experiencing family violence, the high-risk periods include immediately before taking action, and during the initial stages of or immediately after separation. Victims who stay with the perpetrator because they are afraid to leave often accurately anticipate that leaving would increase the risk of lethal assault. The data on time since separation suggests that women are particularly at risk within the first two months

Escalation—an increase in severity and/or frequency of violence

Violence occurring more often or becoming worse has been found to be associated with lethal outcomes for victims.

Financial difficulties

Low income (less than that required to provide for basic needs) and financial stress, including a gambling addiction, are risk factors for family violence.

Note: Blue denotes higher risk.

Source: Department of Human Services, Family Violence: Risk Assessment and Risk Management Framework and Practice Guides 1-3—Edition 2 (April 2012), 26-28.

The CRAF emphasises that risk factors should not be used as a 'checklist' for ascertaining the level of risk; instead, they should provide the basis for a discussion with the victim. The CRAF also states that these factors might interact in varied and complex ways and that, 'despite the co-occurrence of certain factors with family violence, none is causal'.⁶³ Professional judgment should be exercised in relation to whether a factor is relevant to risk in the victim's context. For example, if the perpetrator has a diagnosed mental health problem but is currently treated and well, this risk factor 'should not add significant weight to the assessment'.⁶⁴ The assessor should, however, 'enquire about what helps the man to stay well, and the likelihood of this wellness continuing'.⁶⁵

Assessing risks to children

The current version of the CRAF stresses that exposure to family violence can have a serious impact on children's current and future physical, psychological and emotional wellbeing⁶⁶ and that practitioners must consider children as victims to be assessed in their own right, separate from their mother.⁶⁷ The CRAF includes some discussion of and reference to specific indicators of family violence, sexual abuse and neglect of children,⁶⁸ as well as prompting questions and service pathways for children.⁶⁹ It does not include any specific risk factors for children.⁷⁰

The CRAF notes that all interventions with children and families across the child and family services sector (which includes Child Protection, out-of-home care and Integrated Family Services) are guided by the Department of Health and Human Services' Best Interests Framework for Vulnerable Children and Youth, and emphasises practitioners' mandatory obligations to report to Child Protection when a child is deemed to be at risk.⁷¹ The 2014 Department of Health and Human Services child protection practice guide, Working with Families Where an Adult is Violent: Best Interests Case Practice Model, also provides advice to practitioners in relation to assessing risks to children.⁷² This guide emphasises the link between family violence and child abuse and that effective interventions require collaboration between family violence services and Child Protection.⁷³

Assessing perpetrator risk

At the time of its development, the CRAF provided a new focus on perpetrator behaviour as central to guiding risk assessment.⁷⁴ An underpinning principle of the CRAF is that 'perpetrators should be held accountable for their use of violence and challenged to take responsibility for their actions'.⁷⁵ The CRAF states that 'collecting information on perpetrators—and especially any indicators of future or continuing risk—is a responsibility shared by all professionals'.⁷⁶

The CRAF provides a structured assessment guide intended to capture relevant information about perpetrator behaviours reported by victims that can be shared across the family violence system to support risk management.⁷⁷ The CRAF refers to other guides for assessing and responding to perpetrator risk, such as standards developed by men's behaviour change programs and the Victoria Police Code of Practice for the Investigation of Family Violence.⁷⁸

In 2009 the then Department of Human Services developed a Framework for Comprehensive Assessment in Men's Behaviour Change Programs to align with the CRAF.⁷⁹ This more recent framework provides guidance about interviewing and working with men, assessment for group programs, risk management practice, and interviewing victims.⁸⁰ It includes risk factors for perpetrators but does not provide a specific perpetrator risk assessment tool. The Commission was unable to determine the level of uptake and use of this framework.

When entering prison, Corrections Victoria's intake and screening for both 'General Offenders' and 'Serious Violent Offenders' also screens for family violence-related offending.⁸¹ Those eligible for offending behaviour intervention and who are identified as having committed a family violence-related offence have the Spousal Assault Risk Assessment tool administered as part of their clinical assessment.⁸² The Risk-Need-Responsivity model, which is discussed in more detail in Chapter 18 underlies the use of the SARA tool.

Implementing the CRAF across the family violence system

Since 2007, funding of \$4.7 million has been provided to implement the CRAF, and in 2014-15 the Victorian Government committed \$800,000 a year ongoing to develop and further implement the CRAF.⁸³ Originally developed and managed by the Office of Women's Policy, the CRAF is currently managed by the Department of Health and Human Services. It was updated in 2012 and is available in both hard-copy and digital formats, as well as online on *The Lookout* family violence practitioner website and the department's website.⁸⁴

The Commission was informed that the CRAF was originally developed as one of the foundational initiatives to progress an integrated family violence system.⁸⁵ An essential aspect of ensuring this integration has been described as an effective 'whole of government authorising environment' for the use of the CRAF.⁸⁶ This included commitment and leadership at a ministerial level, oversight from senior government executives, a central family violence policy unit, and strong partnership and advisory structures with the non-government sector to ensure the CRAF's broad use.⁸⁷

Training for people who use the CRAF

Statewide workforce development and training in using the CRAF was rolled out from 2008. From 2008 to 2010 and from 2011 to 2013, Domestic Violence Resource Centre Victoria, Swinburne University and No To Violence delivered this training.⁸⁸

The Commission was told that over 6500 professionals have attended CRAF training since 2008.⁸⁹ These workers have come from a wide range of sectors—including sexual assault services, Child FIRST and Integrated Family Services, Child Protection, homelessness services, disability services, counselling and mediation services, Aboriginal family violence services, the Magistrates' Court and Corrections Victoria.⁹⁰ Training has been delivered to mixed groups of practitioners from various sectors, to foster shared understanding, inform the group of other sectors' roles, and encourage the building of regional networks.⁹¹

Victoria Police advised the Commission that police attendance at CRAF training is arranged by region. There is no central record of the numbers of police who have attended training.⁹² Victoria Police indicated that family violence training was provided from 2008-09 to support implementation of the *Family Violence Protection Act 2008* (Vic). The training included risk assessment information congruent with the CRAF and was provided to 6013 police members between 2008-09 and 2010-11.⁹³ Corrections Victoria also advised the Commission that approximately 560 of its community correctional services staff were trained between 2009-10 and 2013-14.⁹⁴

Evaluation of the training program

The CRAF training program was evaluated in 2009⁹⁵ and then again in 2012.⁹⁶ The 2009 evaluation found that effective training coverage was achieved for specialist family violence services and that sector-wide training coverage was achieved for magistrates' court registrars and maternal and child health nurses.⁹⁷ Both evaluations found that the training was effective in increasing participants' understanding of risk assessment, risk management, safety planning, questioning and overall competence in responding to family violence.⁹⁸

The integrated cross-sector training approach was also seen as beneficial:

Participants and other stakeholders valued a cross-sectoral and regional approach to training and recognised the positive role it plays in developing an integrated and coordinated family violence service system.⁹⁹

The evaluations recommended targeting training to additional sectors including mental health, drug and alcohol, primary health services, and legal and education services.¹⁰⁰ The evaluation noted there had been 'low engagement of culturally and linguistically diverse services and Indigenous services statewide in training'.¹⁰¹ The Commission heard that CRAF training should also be reviewed to more effectively respond to diverse populations.¹⁰²

Further developments

A project to support the development of Aboriginal-specific training materials to supplement the existing CRAF materials was piloted in three locations in 2013–14.¹⁰³ Overseen by the Indigenous Family Violence Partnership Forum, development of an Aboriginal contextualised CRAF was reported as one of the specific achievements in the mid-term evaluation of the Indigenous Family Violence 10 Year Plan.¹⁰⁴

The Commission was advised that additional resources have been developed to make the CRAF more relevant to professionals working with culturally and linguistically diverse communities.¹⁰⁵ A project was also funded to improve the guidance within the CRAF for effectively working with culturally and linguistically diverse communities.¹⁰⁶

A CRAF Professional Development Strategy, first developed in 2009 and managed as part of the broader CRAF project in the Department of Health and Human Services, has focused on incorporating the CRAF into the tertiary education curriculum. The Commission was told that curriculum materials are currently being trialled by Swinburne University of Technology for a number of its community work areas and courses.¹⁰⁷

Another CRAF implementation project has involved training and workshops for general practitioners.¹⁰⁸

The Victorian Government has further advised the Commission that in 2015–16, it will:

- ▷ deliver 59 training sessions in cross-sectoral risk assessment and risk management and up to 480 sessions in Identifying Family Violence regional sessions (in 2015–16 and 2016–17)
- ▷ develop risk assessment and risk management e-learning modules to supplement face-to-face training
- ▷ expand *The Lookout* website¹⁰⁹ to increase technical capacity and support communities of practice.¹¹⁰

The Commission understands that the first e-CRAF training module, 'Understanding family violence', is now online at *The Lookout* and that three further modules are in development.¹¹¹

Aligning risk assessment practices across agencies

One of the aims of the CRAF is to establish a shared understanding of the risks associated with family violence in order to facilitate information sharing between agencies and government departments and to 'enable uniform risk assessment processes and appropriate referrals to take place anywhere in the system'.¹¹² The Victorian Government told the Commission that this aim is 'far from complete', although there have been a number of efforts to improve the consistency of risk assessment practice across sectors.¹¹³

Victoria Police currently uses a risk assessment approach, as recorded in a family violence risk assessment and risk management report (referred to as an L17 form), that was developed before the CRAF but that aligns with the framework.¹¹⁴ The Commission heard that this alignment has served the Victorian system well.¹¹⁵

I think one of the strengths of the Victorian system to date has been that we have kept the police and the wider family violence service system roughly on the same page in terms of risk assessment, that the risks that are outlined in the L17 parallel the risks outlined in the Common Risk Assessment Framework.¹¹⁶

Other service providers that have aligned their practices and tools with the CRAF include the following:

- ▶ *Maternal and child health nurses.* These practitioners use CRAF-based family violence identification and referral processes in their Key Age and Stage Framework.
- ▶ *Primary care partnerships.* The partnerships have incorporated family violence screening and referral tools, based on the CRAF, in their practice manual and service coordination tool templates.
- ▶ *Alcohol and drug treatment services.* Services have included family violence identification and assessment and CRAF recording templates in their 'Adult Alcohol and Other Drug Screening and Assessment Instrument: Clinician Guide' and the supporting module.
- ▶ *Magistrates' Court registrars.* Elements of the CRAF are reflected in the forms used by all registrars and applicant support workers to help parties with applications for family violence intervention orders.¹¹⁷

Victoria Legal Aid told the Commission that it is currently working on the implementation of a 'safety and risk identification tool' as part of its Family Violence Service Delivery and Education Framework,¹¹⁸ which aligns with the CRAF and will be implemented across the organisation. The Family Dispute Resolution Service has a separate family violence risk assessment and management process.¹¹⁹

The CRAF has also been used as part of *Strengthening Hospitals' Responses to Family Violence*, discussed in Chapter 19.¹²⁰

Review of the CRAF

During the period of the Commission's deliberations, the Victorian Government announced a review of the CRAF. The tender request for the first stage of the review was released in January 2016. The objective of the first-stage review is '[to] provide an evidence base to inform the redevelopment of a best practice framework and suite of dynamic risk and need identification, assessment and management tools through the lens of family violence'.¹²¹

The tender document states that this will include an assessment of the use of the CRAF in a range of workforces, perceptions of its usability, and perceptions of victims of family violence in relation to risk assessment and management in different settings.¹²² This first-stage review component is to be completed by May 2016.

The broader review will also consider redeveloping the CRAF in order to provide a ‘best practice framework and suite of tools for family violence risk assessment and management and a corresponding implementation strategy’.¹²³ The government noted that the scope of this will include:

- ▷ effective risk assessment in the emerging area of technology-facilitated family violence
- ▷ risk management
- ▷ improving training in the use of the CRAF
- ▷ responding to the needs of diverse communities—including culturally and linguistically diverse and Aboriginal communities
- ▷ responding to other forms of family violence
- ▷ assessing risk for children and young people
- ▷ assessing risk for perpetrators
- ▷ information sharing, particularly in relation to the perpetrator.¹²⁴

The Victorian Government’s response to Judge Gray’s report on his inquest into the death of Luke Batty emphasised that the CRAF review will include strategies for embedding use of the CRAF in organisational practice—for example, its inclusion in service agreements as a requirement of funding.¹²⁵

Trial of police triage tool

As discussed in Chapter 14, Victoria Police members are at the front line of the response to family violence in Victoria, and they routinely perform risk assessments using the L17 form. In advance of the Department of Health and Human Services review of the CRAF, Victoria Police will trial a series of actuarial risk assessment and triage tools for use by police members attending family violence incidents. The trial will begin by June 2016.¹²⁶

These tools, developed by the Centre for Forensic Behavioural Science at Swinburne University of Technology, will be used by police members attending family violence incidents and by police family violence teams to determine the level of specialist police response required for an incident.¹²⁷

Two tools have been developed using L17 data for 2013–14. The data was analysed to identify the most significant factors in predicting a subsequent police call-out to a family violence incident between the same two people within 12 months.¹²⁸ Prior history of family violence was also included in the analysis, using LEAP data.¹²⁹

The first tool is called the Victoria Police Screen and Assessment of Family Violence Risk: Screening Version, or VP-SAFvR:SV. It is a ‘front-line’ triage instrument that allows responding police members to ‘categorise family violence cases as low, moderate or high concern’. This will be used by all police in Altona, Footscray, Williamstown and Werribee when they attend a family violence incident. It requires police to answer 13 questions, each worth one point.¹³⁰

If an incident scores three or less, police members will not proceed to conduct a full risk assessment, will not make a formal referral, and will not refer the incident to the family violence team.¹³¹ If an incident scores four or more, a full risk assessment will be carried out using a (revised) L17.¹³² The police member will also make a formal referral by sending the L17 to the appropriate contact point, in keeping with the Victoria Police Code of Practice for the Investigation of Family Violence.¹³³ The incident will be escalated to the family violence team in that police division for further triage and assessment using other instruments (described below).

By adopting a threshold score of four, the Centre for Forensic Behavioural Science estimates that 50 per cent of all police incidents will be referred to the family violence team for further assessment.¹³⁴

There is an option for police members to override the point assessment if the incident has not scored the requisite four points but, using their professional judgment, the police consider the matter requires escalation to the family violence team.¹³⁵ Further, 'these categories will not influence the criminal prosecution response'.¹³⁶ The Code of Practice must be followed.

The second tool is called the Victoria Police Screen and Assessment of Family Violence Risk, or VP-SAFvR, which will be used by the family violence team to determine which incidents require a 'standard preventative follow-up' or 'a more intensive level of assessment and management'.¹³⁷

This tool will identify cases that are more likely to experience severe family violence involving the same two people over 12 months. 'Severe family violence' is defined as either frequent or physical violence. Frequent is defined as at least three further family violence incidents involving the same two people in succeeding 12 months.¹³⁸ Physical family violence is defined by the presence of any charge for a violent offence involving both the two people in the original incident in the succeeding 12 months.¹³⁹

Incidents scoring below a threshold of four will be followed up by the station family violence liaison officer in consultation with the family violence team.¹⁴⁰ Those scoring above the threshold will receive another assessment using a structured professional judgment risk assessment instrument, the B-SAFER.¹⁴¹ Each of these cases will receive a 'priority case management plan'.¹⁴²

Using four as the threshold will result in approximately 25 per cent of all family violence incidents—that is, half of those referred to the family violence team for further screening—receiving a 'comprehensive risk assessment and management plan from the Family Violence Team'.¹⁴³

The Commission understands that the Centre for Forensic Behavioural Science will deliver training modules to family violence team members before the trial begins. These initial training modules will be evaluated and refined into a 'combined online and offline suite of training that can be used to train future FVT members across Victoria'.¹⁴⁴ The documentation provided to the Commission does not mention training for front-line police members in the trial area, although development of online training is identified for 2017.¹⁴⁵

This is a three-year project; the final report and evaluation are to be completed by December 2018. An initial evaluation of the 'frontline triage instrument' will be completed by December 2016.¹⁴⁶

The Commission discusses this trial further in 'The way forward' section of this chapter.

Multi-agency risk management in Victoria

At the time the CRAF was developed, thinking about what was required across the system to effectively manage risk was in its very early stages. The CRAF therefore provides limited guidance in relation to strategies for continuing risk management.¹⁴⁷ 'Victoria has been stronger on agreeing the process for risk assessment rather than necessarily agreeing the process for escalated risk management'.¹⁴⁸

Some legislative and policy developments since the introduction of the CRAF that have supported risk management include the following:

- ▷ increased investment by government and the non-government sector to enable women and children to stay safely at home if they choose, with legislative changes¹⁴⁹ and funding for targeted programs—for example, Safe at Home-type programs
- ▷ greater understanding of how the current privacy laws can assist or inhibit risk management
- ▷ reports from the Victorian Systemic Review of Family Violence Deaths—particularly highlighting situations where relevant information was available before the death but was not shared, sometimes because of legislative restrictions on the exchange of information or incompatible data systems.

In addition, a number of practical initiatives have been introduced in response to gaps in effectively managing risk. These responses have to date focused primarily on high-risk family violence cases. They include the introduction of case-management triage models involving Child Protection, family violence and family services and the inclusion of family violence workers at police stations and in police family violence teams.¹⁵⁰ These responses are discussed in Chapter 13.

Since 2007, Victoria Police has employed specialist family violence teams in areas particularly affected by family violence. The Enhanced Family Violence Service Delivery Model, announced in 2011, provided for the statewide roll-out of family violence teams, and there are now 32 teams in the state.¹⁵¹

The primary responsibilities of family violence teams are to provide an immediate specialist response to a family violence incident; to provide a secondary response unit to support primary police units; to proactively investigate and case-manage recidivist offenders, affected family members of recidivist offenders and high-risk clients; and to investigate criminal offences, including breaches of family violence intervention orders.¹⁵²

The Commission learnt that there is considerable variation in how Victoria Police family violence teams operate on the ground—including in their approaches, staffing and reporting structures.¹⁵³ Family violence teams are discussed in detail in Chapter 15.

Other important developments in multi-agency risk management have been the creation of RAMPs and local multi-agency partnerships to manage high-risk cases.

Risk Assessment and Management Panels

The pilot programs

Multi-agency, coordinated responses to women and children at imminent risk of family violence were formally introduced in 2011 with the introduction of two Strengthening Risk Management pilot projects, one in the City of Hume and the other in the City of Greater Geelong.¹⁵⁴

Drawing from models in similar jurisdictions—in particular, South Australia and the United Kingdom¹⁵⁵—the pilot projects aimed to:

- ▷ test the implementation and delivery of coordinated multi-agency approaches to strengthen family violence risk assessment and management
- ▷ trial new integrated governance arrangements, roles and responsibilities and new ways of working collaboratively
- ▷ increase the accountability of men who use violence and engage with them to change their behaviour.¹⁵⁶

Each pilot had two main components—early identification of women and children at highest risk and referral of high-risk cases to a specialist Risk Assessment and Management Panel. One RAMP coordinator, Ms Bernadette McCartney, Executive Manager, Community Support, Bethany Community Support, described the task thus:

... essentially what the RAMP do is upon the identification of a woman and her accompanying children, if that's the case, [as being] at the highest risk of being seriously injured and/or killed, they are referred into a multi-agency, multi-sector panel, which comprises ... a number of different sectors which include specialist family violence services for men and for women. Victoria Police, Corrections Victoria, in our instance, the Magistrates' Court, Child Protection, Child FIRST, Barwon Community Legal Service, Barwon Health's clinical drug and alcohol, clinical mental health and drug and alcohol services, and homelessness services and the Office of Housing.¹⁵⁷

The RAMPs involved in the pilots met monthly and as required, to share information, assess the level of risk of referred cases, and coordinate risk management action plans. Data shows that during 17 months, 55 cases involving about 90 children, were referred to 26 RAMP meetings.¹⁵⁸

The two pilots were evaluated in 2012 and 2013. The evaluation found that the pilots had achieved the primary aim of reducing risk and improving safety for women and children at highest risk, with comparatively better outcomes achieved for those women supported by RAMPs than for those supported by case management alone.¹⁵⁹ The evaluation also showed that use of RAMPs allowed for more comprehensive risk assessment and management plans, extended knowledge among important sector partners of the family violence risks, and greater coordination compared with the 'traditional' response of the family violence service system.¹⁶⁰ RAMPs led to numbers of intervention orders more than doubling and to improvements in processes aimed at keeping victims safe.¹⁶¹

The evaluation further noted that the allocation of additional case-management resources to the pilot agencies enabled higher rates of engagement with high-risk households because workers had more time to persist in making contact and engaging with women.¹⁶² The evaluation concluded that strengthened risk management was needed throughout Victoria to further protect victims at imminent risk of serious injury or death and to reduce the incidence of severe and repeated family violence. Among other things, the evaluation recommended:

- ▷ a strong authorising environment and whole-of-government commitment to risk management—including high-level multi-departmental endorsement and support, and formalised guidelines
- ▷ the establishment of RAMPs at regional and sub-regional levels across the state
- ▷ RAMPs to be constituted by members who are senior in their organisations to ensure that decision making is streamlined
- ▷ police either chairing or co-chairing RAMPs with specialist family violence services
- ▷ for each RAMP, a coordinator role that is located in specialist family violence services
- ▷ a greater focus on managing perpetrators.¹⁶³

The evaluation found that the traditional case management response for men was inappropriate for this high-risk dangerous target group,¹⁶⁴ with monitoring of the perpetrator, information sharing and collaboration with the justice system, being required areas of focus.¹⁶⁵

It pointed out that the development of memorandums of understanding and formal agreements covering the sharing of confidential information between RAMP members was challenging for both pilots.¹⁶⁶ Difficulties in developing shared understanding about which cases were 'eligible' for a RAMP were also noted. As a result, it took more than a year for the two RAMPs to reach a consensus on the definition of 'risk of serious harm or lethality'.¹⁶⁷ The evaluation cautioned that in relation to a statewide roll-out of the RAMPs:

... without clearer guidelines to differentiate high risk of serious harm or lethality, [this] would likely result in different interpretations due to the influence of individual (strong) views, time spent debating risk levels and eligibility, and possible adverse impacts on working relationships.¹⁶⁸

The evaluation recommended that an actuarial tool and framework be developed to assist with differentiating level and type of risk—not only for the purposes of the RAMP but also in a broader effort to build understanding of risk management beyond the family violence sector.¹⁶⁹ It also emphasised that the collaborative practices built within the RAMP had positive effects on communication and working relationships outside the immediate RAMP membership.¹⁷⁰

Expansion of the RAMPS

On the basis of the success of the pilot programs, in October 2014 the Department of Health and Human Services allocated \$17.3 million over four years for the statewide expansion of the initiative so that there would be a RAMP in each of the 17 departmental local areas.¹⁷¹ The Commission was told that the dedicated annual funding for RAMPS amounts to between \$177,500 and \$285,000 per site in the statewide roll-out.¹⁷²

RAMP funding is expected to provide case-management support to approximately 816 women and their children, on the basis of one case management worker supporting 48 high-risk clients a year and each RAMP coordinator convening 12 RAMP meetings a year.¹⁷³

The Commission heard that the Department of Health and Human Services has developed a number of mechanisms for supporting the implementation of the RAMPS, among them the following:

- ▷ a memorandum of understanding across key government agencies to implement multi-agency RAMPS throughout Victoria
- ▷ local agreements between the Department of Health and Human Services (a 'RAMP Local Deed') and the lead family violence agency
- ▷ development of the Strengthening Risk Management program and operational guidelines
- ▷ operational oversight and reporting through the Department of Health and Human Services at the divisional and local area level
- ▷ oversight by the whole-of-government Family Violence Interdepartmental Committee.¹⁷⁴

The Commission understands that progress on the roll-out to date has included selecting providers, recruitment of the RAMP coordinators, developing guidelines and a memorandum of understanding between the Departments of Health and Human Services, Justice and Regulation (through Corrections Victoria) and Education and Training and Victoria Police.¹⁷⁵

The Commission also understands that the RAMP program has developed a more detailed RAMP referral tool.¹⁷⁶ The tool lists CRAF indicators, as well as other perpetrator risk factors known to affect the seriousness of risk.¹⁷⁷ Specialist training support is being provided to all RAMPS through Domestic Violence Victoria, No To Violence and Domestic Violence Resource Centre Victoria.¹⁷⁸

Other local multiagency partnerships for managing high-risk

In addition to RAMPS, a number of other models and approaches have been developed for dealing with victims and their children at high-risk of family violence.

The High-Risk Response Conference, Melbourne northern region¹⁷⁹

The conference is a twice-monthly police-led multi-agency information-sharing meeting to review high-risk cases.¹⁸⁰ It has reviewed 600 cases since 2013. The meetings provide 'opportunities for strong relationship building, networking and collaboration across Family Violence service delivery agencies, where there hasn't been previously'.¹⁸¹

The Repeat Police Attendance and High-Risk Program, Melbourne eastern region

Since March 2014 the Repeat Police Attendance and High-risk Program has brought together the Eastern Domestic Violence Service and Victoria Police to engage with high-risk victims of family violence via dedicated EDVOS domestic violence advocates.¹⁸² Police and EDVOS staff make joint visits to women identified as at high risk and jointly develop safety and response strategies.¹⁸³

The High-Risk Client Strategy, Melbourne western region

The High-Risk Client Strategy is a coordinated multi-agency response to managing the immediate safety and welfare needs of women identified as being at high risk of serious injury or death as a consequence of family violence.¹⁸⁴ In contrast with RAMPs, the woman concerned is always included in High-Risk Client meetings at which her situation is discussed. An evaluation of the strategy found this is a successful feature of the model.¹⁸⁵ Under the strategy, case-management services were provided for 16 women during the two-year pilot.¹⁸⁶

Risk assessment and management in other jurisdictions

In order to put the evidence it received about risk assessment and management into a broader context, the Commission reviewed risk assessment and management responses in a number of jurisdictions in Australia and internationally.

Australian initiatives

All Australian jurisdictions have some degree of integrated response to family violence (and sexual assault) and have assigned priority to and focused on different elements of risk assessment and risk management practice. Table 6.2 provides a brief overview of some of these practices.

The Commission notes that South Australia and Western Australia have common risk assessment frameworks that have been developed at the government level and that New South Wales has adopted the Domestic Violence Standard Assessment tool, which is used by police. It further notes that the Tasmanian model entails an integrated IT platform that provides for information sharing between police and family violence services and that the South Australian model is supported by a central information portal whereby all police reports of family violence incidents can be accessed and assessed for risk by multi-agency teams (MAPs) led by South Australia Police. South Australia and New South Wales also have multi-agency panels or safety meetings similar to the Victorian RAMPs.

The New South Wales trial of the family violence disclosure scheme

In 2012, following the murder of Clare Wood by her former partner who had previous convictions for family violence, the United Kingdom introduced what is referred to as 'Clare's Law'. Clare's Law allows the police to disclose information to certain members of the public about a history of violent offending by a new or existing partner if that disclosure might help protect a person from criminal abuse or harm. The scheme establishes conditions under which police may disclose this information, either on application by a person's intimate partner or a third party (such as a potential victim's parent) or unilaterally (without an application having been made). The former is characterised as a 'right to ask' and the latter as a 'right to know'.

On 6 March 2015, the New South Wales Government announced that a scheme based on Clare's Law would be implemented in NSW; on 14 October of that year, following public consultations, a model for piloting the scheme was announced.

Under the scheme:

- ▷ The 'primary person' is a person who is in or was formerly in an intimate relationship with the 'subject' and is concerned about the subject's safety.
- ▷ A 'third party' is a person who is concerned about the 'primary person'; for example, they could be a family member, a friend, a guardian or a professional working with the family.
- ▷ The 'subject' is the person in an intimate relationship with the 'primary person'. It is this person whose history of family violence and related offences may be disclosed.¹⁸⁷

The scheme will be piloted in four New South Wales Police Force local area commands from early 2016.¹⁸⁸ Either a primary person or a relevant third party can make an application at a police station in one of the four pilot areas. New South Wales Police reviews applications and conducts criminal record checks to determine whether a relevant conviction that requires a disclosure exists. A conviction will be disclosed if the subject has a relevant offence¹⁸⁹ in their criminal history.

New South Wales Police will perform a risk assessment of the primary person using the Domestic Violence Safety Assessment Tool in order to identify any threats or serious threats. If a serious threat to the life, health or safety of any person is identified as a result of the assessment, a 'fast-tracked disclosure' will be made.¹⁹⁰ If there is no relevant conviction to disclose, the primary person will be informed of the outcome. The New South Wales documentation states '[T]his should not create a false assurance and applicants will be advised that they should remain vigilant and report any future concerns'.¹⁹¹

Victoria Police supports the development of a similar register in Victoria, noting:

As a person enters into a new relationship, they are generally only aware of their partner's history based on what that person tells them. Recognising that a person may have concerns about certain attitudes or behaviours that their partner starts to display, or what they might start to hear from other sources, the Royal Commission may consider a legislative regime based on the English 'Clare's Law' ... such an initiative could break the all too common pattern of perpetrators harming successive partners and avoid exposing unwitting adults and children to known perpetrators of family violence.¹⁹²

Table 6.2 Risk assessment and management in Australian jurisdictions: a sample

| System elements | South Australia | New South Wales | Tasmania | Western Australia |
|----------------------------------|---|---|--|--|
| Common risk assessment | A domestic violence risk assessment form is used to assess high risk of serious injury or death. The form includes weightings that allow workers to calculate a risk score. Police and all government services and specialist domestic violence and homelessness services use the same form. The form was introduced as part of the state's response to high-risk cases (the Family Safety Framework). | The Domestic Violence Safety Assessment Tool. At this stage police must use the tool. Other services have the option to use their own tools or professional judgment. | Police members use a risk assessment screening tool, which was developed in 2004 and evaluated in 2009. | The Family and Domestic Violence Common Risk Assessment and Risk Management Framework is a standardised approach to identifying, assessing and responding to family violence. Used by a range of government agencies and community sector services, including family and domestic violence specialist services, it was originally adapted from the Victorian CRAF and uses a structured professional judgment approach. |
| Type of risk assessment | The domestic violence risk assessment form is an evidence-based, actuarially scored tool; it includes victim narratives about severity, and the assessor also applies professional judgment. | The Domestic Violence Safety Assessment Tool is actuarially scored. | The risk assessment screening tool is actuarially scored. | The framework combines three elements to determine the level of risk—the victim's assessment of risk, evidence-based risk factors, and a practitioner's professional judgment. It is not an actuarial approach. |
| Formal referral pathway (police) | The primary entry point to domestic violence support services is the Domestic Violence Gateway, which conducts an assessment and refers to regional services. If referred by another agency such as police, information including risk level is shared. | All police Domestic Violence Safety Assessment Tool forms go electronically to a central referral point run by Victims Services. This database does an automatic sort and referral by gender and postcode every morning and diverts these referrals to the appropriate regional intake points. | Operational police use the risk assessment screen tool on attending all family violence incidents. A report is generated within the Family Violence Management System report. | Family and Domestic Violence Response Teams are a partnership between police, child protection and family support and domestic violence services. The teams aim to improve victim safety by triaging cases for prompt and early intervention following a police-call out to a domestic violence incident. |
| Response to high-risk (meetings) | Women and children assessed to be at high risk are referred to a local family safety meeting attended by a range of agencies and services such as police, Child Protection, victim support, health, mental health, education, drug and alcohol services, housing and women's domestic violence services. Nineteen Family Safety Meetings operate across the state and are regionalised to each Police local service area. SA Police chairs the meetings, which aim to share information under a specially developed information sharing protocol and to implement an action plan for each referral. | NSW has local Safety Action Meetings. Currently, six meetings cover nine local area commands. A further six sites will be rolled out in the first quarter of 2016. The Local Coordination Points contact clients, conduct a secondary risk assessment, provide case coordination for the client and provide secretariat support for Safety Action Meetings. | Police refer all matters to a multi-agency Integrated Case Coordination group, which provides ongoing case management. Weekly ICC meetings occur in each of the four police districts and are attended by all Safe at Home Services. All Safe at Home services have access to the Family Violence Management Systems reports, as well as the shared platform Safe at Home Management System. | Multi-agency case management is an integrated, interagency approach to supporting people at risk of injury, harm or death due to family violence. The approach involves information sharing between agencies and the development of a multi-agency safety plan to reduce identified risks. Multi-agency case management provides a platform for agencies to share information, develop comprehensive risk assessments, plan strategies to mitigate risks, and work towards child and adult victim safety and perpetrator accountability. Multi-agency case management is also important for creating transparency and accountability between agencies in relation to their roles and responsibilities in responding to family and domestic violence. |

| | | | | |
|---------------------------------|---|---|---|--|
| IT systems and/or platforms | <p>South Australia has a co-located model called MAPS. All police family violence incident reports (both criminal and the 'domestic abuse' reports) are automatically uploaded overnight into MAPS. These are reviewed and assessed by the MAPS multi-agency team (police, education, child protection, corrections, housing and health). Follow-up is referred back to the regional services. Note that this is not a shared platform; rather, it is one into which other parts of the system can have input.</p> | Police, central and local coordination points can log into a database and see all the referrals and entries that are relevant to them. | Shared information platform between police, Child Protection and family violence services. All Safe at Home services can view and input into this platform (note that these are government services). The common IT platform is accessible by all ICC members, and includes the initial Family Violence Management System report and other information on victims, children and perpetrators provided by services. | A shared database known as the Triage Application has been developed to support the operations of the Family and Domestic Violence Response Teams, including recording outcomes. |
| Privacy and information sharing | <p>South Australia does not have information privacy legislation. Instead, the South Australian Cabinet has issued an administrative instruction requiring government agencies and contracted service providers to comply with a set of Information Privacy Principles.</p> <p>Consistent with the administrative instruction, the South Australian Ombudsman has issued Information Sharing Guidelines for Promoting Safety and Wellbeing to provide a consistent approach to information sharing where there are threats to safety and wellbeing.</p> | <p>The Crimes (Domestic and Personal Violence) Act 2007 was amended to insert a new part (Part 13A) to allow information sharing and improve integrated responses to domestic violence. Service providers must adopt the provisions and standards set out in a protocol to share information under Part 13A and the protocol.</p> | Section 37 of the Family Violence Act 2004 provides that an information custodian within the meaning of the Personal Information Protection Act 2004, acting in good faith, does not commit a breach of that Act by reason only of collecting, using, disclosing or otherwise dealing with personal information for the purpose of furthering the objects of the Family Violence Act. (Section 3 deals with the Act's objects, stating that in the administration of the Act the safety, psychological wellbeing and interests of people affected by family violence are the paramount considerations.) | Section 70A of the Restraining Orders Act 1997 and regulation 15 of the Restraining Orders Regulations 1997. Other governing documents include a bilateral schedule in place between the Department for Child Protection and Family Support, Western Australia Police and not-for-profit organisations; a memorandum of understanding on information sharing between agencies with responsibilities for preventing and responding to family and domestic violence in Western Australia; and a tripartite schedule between the Department for Child Protection and Family Support, the Department of Corrective Services and Western Australia Police—Collaboration and Exchange of Information on serious domestic violence offenders. |
| Feedback loops | Both the Family Safety Framework meetings and the MAPS process have follow-up and accountability mechanisms to assess if actions have been taken. | Timed alerts in the shared database send reminders if action is not taken. | Occurs via Integrated Case Coordination meetings, and cross-agency information is accessible on the shared IT platform. Feedback can and will be elevated through the multi-agency governance structure when required. | |

| System elements | South Australia | New South Wales | Tasmania | Western Australia |
|-----------------|--|-----------------|--|--|
| Other matters | <p>The SA model involves a standard risk assessment format with high-risk matters being referred to a Family Safety Meeting and all agencies contributing agency information to form a collaborative safety action plan to mitigate risk.</p> <p>The MAPs model is being reviewed by the SA Office for Women.</p> <p>The Domestic Violence Gateway hosts the Domestic Violence Serial Offender Database, which collates information from the regional domestic violence service to assist in identifying serial offenders to ensure accuracy of risk levels.</p> | | <p>Integrated case coordination occurs under Safe at Home in relation to all 'active' family violence 'cases'—not just those that are high risk.</p> <p>Police laptops allow members to remotely generate Family Violence Management System reports and process and issue police family violence orders.</p> <p>Safe Families Tasmania is led by Tasmania Police, and will co-locate officers from multiple government agencies—including the Departments of Police and Emergency Management, Justice, Health and Human Services, and Education—in a single unit providing timely responses to family violence.</p> <p>Safe Families Tasmania will collect evidence across government to aid prosecution of offenders and support people experiencing family violence. It will also perform interagency case assessment for families experiencing family violence.</p> | <p>The second edition of the Common Risk Assessment and Risk Management Framework was released in November 2015. It extends the original framework and includes:</p> <ul style="list-style-type: none"> ▷ an updated policy context ▷ new information and resources to strengthen information sharing, referral pathways and collaborative case management ▷ strengthened practice guidance about engaging with and responding to perpetrators for the purpose of assessing and managing risk ▷ a modified risk assessment tool to better align with the risk assessment process, with provision made for recording of the victim's assessment of the level of risk and professional judgment. |

Source: Information received by the Commission from relevant jurisdictions.

National developments

Developing national frameworks for supporting common risk assessment practice is a recommendation in the National Plan to Reduce Violence against Women and their Children 2010–2022.¹⁹³ It is also a recommendation of the 2010 Australian Law Reform Commission and New South Wales Law Reform Commission report, Family Violence—A National Legal Response, particularly for the family law system.¹⁹⁴

The Royal Commission understands that recent risk assessment frameworks developed at the national level for the Federal Circuit Court were not developed in consultation with the states and make limited reference to state family violence risk assessment frameworks. The Commission received submissions that highlighted the importance of risk assessment in the family law system.¹⁹⁵ Research shows that professionals in the federal family law system do not always assess family violence risk and that lawyers do not routinely ask clients about family violence, yet they nonetheless feel confident in their ability to identify violence, as do practitioners of family dispute resolution.¹⁹⁶

There has been a significant increase in the number of reports to child protection authorities by the federal family courts—both the Federal Circuit Court of Australia and the Family Court of Australia—in the past five years (see Chapter 11). In particular, there has been a dramatic increase in the number of reports to child protection authorities from the Federal Circuit Court, which hears the majority of family law matters, since the introduction of a new ‘Notice of Risk’ form in early 2015. This is discussed in Chapter 24.

The risk assessment tool developed for use in family law systems is called DOORS—the Detection of Overall Risk Screen.¹⁹⁷ The Commission learnt that DOORS has a broad definition of ‘risk’. An evaluation of 2012 Family Law amendments found that DOORS has received a ‘mixed reception and limited take up’.¹⁹⁸ DOORS is discussed further in Chapter 24.

International risk assessment methods

The United States, Canada and the United Kingdom have developed a number of family violence risk assessment tools.¹⁹⁹ Four of them have been tested for ‘predictive validity’ in multiple research studies (see Table 6.3). Most of the risk factors used are similar for all the tools, although the way the factors are weighted to inform actuarial assessments varies.

Table 6.3 Family violence risk assessment tools and their existing strengths and limitations²⁰⁰

| Tool | Description | Evaluation |
|--|---|---|
| Danger Assessment | Developed in the United States, the danger assessment was designed to specifically address the likelihood of death or life-threatening injury occurring in the context of intimate partner violence. It is a weighted scoring system, but the developer does not recommend cut-off scores for decision making. | One of the oldest measures still commonly used. One of the better tested tools, with acceptable internal consistency and good test-retest reliability. Further independent testing is needed, including of the measure's applicability to different cultural groups. ²⁰¹ Recommended as a good tool to use with victims since it allows them to understand their own levels of risk. |
| Domestic Violence Screening Inventory (DVSI and DVSI-R) | Developed and used in the United States, the DVSI was designed to be a brief risk assessment tool, to be completed alongside a criminal history review. Produces an overall score indicating likelihood of imminent risk of violence. | Uses 12 social and behavioural factors found to be statistically related to domestic violence recidivism. No independent validity studies to date. Authors have reported statistically significant predictive validity of DVSI and concurrent and predictive validity of the DVSI-R. |
| Ontario Domestic Assault Risk Assessment | 13-item tool derived empirically from a list of potential risk factors from over 500 police files. Uses actuarial scores of risk of repeated domestic violence. Used with perpetrators, not victims. Male offenders are placed in one of seven categories of risk. | Correlated with Danger Assessment and Spousal Assault Risk Assessment. Distinguishes between recidivists and non-recidivists of wife assault. Authors caution against use for predicting lethal family violence. |
| Spousal Assault Risk Assessment | Developed in Canada, this is a widely used structured judgment tool, used to guide professional judgment rather than as a test in itself. | Twenty items were developed after a review of the empirical literature on wife assault and clinician's evaluations of male wife abusers. One of the few tools for which validity is supported by independent studies. Uses an inclusive definition of spousal assault. It is not limited to acts that involve injury or death, nor particular legal status of relationships or gender of victim or perpetrator. A Brief Spousal Assault Form for the Evaluation of Risk contains 10 items, designed for use within the criminal justice system. |

Source: Adapted from Elly Robinson and Lawrie Moloney, 'Family Violence: Towards a Holistic Approach to Screening and Risk Assessment in Family Support Services' (Briefing No 17, Australian Family Relationships Clearinghouse, 2010) 11.

In addition to the tools shown in Table 6.3, the Commission notes one tool specific to highlighting risks for children. In the United Kingdom, the Barnardo's Risk Matrix supplements risk assessment in cases where families are known to be experiencing family violence.²⁰² It is not an actuarial tool; it is designed to inform clinical practice and decision making, with the child as its focus. It has not been subjected to rigorous testing.²⁰³

International multi-agency approaches

The Commission reviewed developments in coordinated approaches to identifying and responding to family violence risk in other jurisdictions. In particular, developments in the United States and the United Kingdom have had a significant influence on developments in Australia. Most jurisdictions are advancing coordinated multi-agency approaches to some degree, and drawing from the lessons from coordinated community responses, such as domestic violence coordinating councils, the Duluth model in the United States, and the multi-agency risk assessment conferences in the United Kingdom.

Although many of the principles and elements of these responses are similar, a recent ANROWS (Australia's National Research Organisation for Women's Safety) review of multi-agency risk approaches to violence against women highlighted that the main differences between approaches relate to the formality of governance frameworks, whether the approach is supported by legislation, whether the model is supported by standard protocols, and the nature of the relationship between statutory and non-government agencies.²⁰⁴ The review also found that a challenge common to all approaches was that marginalised communities have difficulties gaining access to service systems.²⁰⁵

Multi-agency Risk Assessment Conferences

Victoria's RAMPs are broadly based on the multi-agency risk assessment conferences introduced in the United Kingdom in 2003.²⁰⁶ There are currently 250 MARACs in operation across England and Wales.²⁰⁷

MARACs comprise representatives of key organisations who meet regularly to respond to high-risk victims of family violence through the development of multi-agency safety plans. These core agencies are generally police, family violence services, health, corrections, probation, housing and children's services.²⁰⁸

Three principal roles support the operation of MARACs—the chairperson (93 per cent of MARAC chairs are police); the MARAC coordinator (providing coordination and administrative support); and independent domestic violence advocates.²⁰⁹ Advocates act as representatives for victims at meetings, and are the victims' primary point of contact.²¹⁰ Domestic Violence Victoria has called for the funding of advocate roles in Victoria.²¹¹ Family violence advocates are discussed in Chapter 8.

The MARAC uses a standardised assessment referral form (the CAADA DASH). A referral is triggered by the number of ticks on the form combined with professional judgment. The majority of MARACs meet monthly, although more frequently if required.²¹² Evaluations suggest that areas core to the MARACs' effectiveness were enhanced information sharing, appropriate agency representation and strong partnership links; and the role of the independent advisor in representing and engaging the victim in the process.²¹³ In addition, leadership through the MARAC chair and effective coordination through a MARAC coordinator were also key to effective practice.²¹⁴

Evaluations have indicated the potential of MARACs to improve victims' safety and reduce re-victimisation, noting that the findings are constrained given the evaluations have not included a control group.²¹⁵

Multi-agency Safeguarding Hubs

The Commission was also informed about multi-agency safeguarding hubs.²¹⁶ The MASH model was developed in the United Kingdom in 2011 to respond more effectively to children at risk of abuse and violence. While there are a number of different MASH models in operation, some include permanently co-located multi-disciplinary teams, with staff from child protection services, police, health, housing, and youth offending services.²¹⁷

Team members collate information from their respective agencies in order to guide the screening of all referrals of children and families. This intake system replaces intake by child protection services.²¹⁸ MASH involves an agreed process of risk assessment and dissemination of information to the appropriate agency for necessary action.²¹⁹

Information technology systems are streamlined under the MASH model. For example, in Devon a MASH partnership with a software provider led to pioneering technology, called MASHProtect, which has played a crucial role in facilitating the identification of vulnerable children.²²⁰

The confidentiality of information is maintained by designating MASH teams 'sealed intelligence hubs', with protocols applied to disseminating information outside the hub.²²¹

The Commission learnt that, although the MASH model is a screening mechanism for all child protection referrals, triage approaches that aim to filter and direct family violence referrals—particularly the large volume of notifications received from the police—are developing simultaneously in some local authorities. Stanley and Humphreys note that these triage approaches are consistent with models being trialled in the northern region of Melbourne.²²²

Challenges and opportunities

This section provides an overview of the issues commonly raised before the Commission in relation to risk assessment and management. Among the challenges identified are inconsistencies in implementation of the CRAF; gaps in the current risk assessment and management frameworks, including discussions of proposals for a new actuarial or tiered tool and whether the CRAF should be validated; and obstacles to sharing information.

Inconsistencies in applying the CRAF

The Commission was advised that the CRAF is an invaluable framework and that it has been enthusiastically adopted and applied by a range of service providers. Berry Street submitted:

It has been invaluable to have a common risk assessment framework of practice and a common risk assessment form with common evidence-based risk factors to assess risk and safety and as a tool to aid discussion with clients and other service systems. The CRAF framework provides a very clear directive that risk assessment is not implemented as a 'checklist form' but rather, a gender aware, culturally sensitive, trauma-informed engagement is necessary. When assessing a client's risk and protective factors, we need to ask questions and collaboratively find solutions. The expertise of the women experiencing violence is central to the CRAF; however, the risk factors and professional judgement of the practitioner making the assessment are all equally weighted elements. It is stressed that risk assessment is an ongoing process. The CRAF document cannot be underestimated for its significance and effectiveness.²²³

However, a number of submissions noted problems with the implementation and application of the CRAF.²²⁴

In the absence of a strong authorising and monitoring environment, some services and sectors have developed their own versions of the CRAF, which means that women who have similar risk levels can encounter different service responses according to where they live.²²⁵ Domestic Violence Resource Centre Victoria submitted:

... there has been a noticeable 'CRAF drift' in Victoria, where some key agencies are adapting and adopting CRAF in their own tools or procedures. DVRCV understands from training participants that some family violence services are using shortened or 'rapid risk assessment' processes and tools. This could be seen to be the result of a highly pressured system, but the potential danger is that the core features of CRAF are being watered down or used in an ad hoc way by a variety of agencies.²²⁶

The Commission heard that a further consequence of the lack of a strong authorising environment is that services' differing levels of understanding of family violence and differing approaches to assigning priority to risk assessment (which the CRAF aimed to correct), have persisted:

... for example, forensic drug and alcohol services where a male client may be referred because of involvement with the criminal justice system and may also be a perpetrator of family violence, but the training and the mandate of that drug and alcohol worker may be to be an advocate for that man as a client. So the drug and alcohol worker will seek to address the drug and alcohol issue, but not see it as relevant to address the man's use of family violence, and may actually, for example, support the man in court to contest an intervention order or may actually give a very positive report about the drug and alcohol use and ignore the fact that he is aware that there is still active family violence going on.²²⁷

As outlined, the CRAF was designed to provide risk assessment and management guidance to suit a range of professionals according to their level of engagement with victims of family violence.²²⁸ The Department of Health and Human Services advised the Commission that at present all government-funded service providers are required to use the CRAF under their service agreements.²²⁹ However, the Commission heard that there are variations in CRAF competency throughout the family violence system and that increased training for the range of professionals that may use the CRAF is needed to develop core skills and competencies relevant to their particular role.²³⁰

Safe Steps Family Violence Response Centre acknowledged that there have been some efforts to 'increase competency among general practitioners, maternal and child health nurses and other professionals', but an effective response from these service providers 'relies on individual practitioners going out of their way to access this information'.²³¹ Similarly, Domestic Violence Resource Centre Victoria submitted that applying the CRAF consistently depends 'on the retention of each trained individual and their level of motivation and skills'.²³²

The Eastern Metropolitan Region Regional Integration Committee informed the Commission:

In recent years, the CRAF's strategic intent has been squandered, with it being moved into the then Department of Human Services, which did not provide strategic whole of government leadership in the family violence area. Moreover, recent government initiatives such as the Children and Youth Area Partnerships and Services Connect not having been required to incorporate CRAF into their design and implementation, the CRAF has been vastly underutilised and is now poorly maintained and promulgated. Both initiatives lacked credible policy linkages with the family violence reform, or had any requirement for CRAF to form part of their platforms, notwithstanding the prevalence of family violence amongst the intended beneficiaries.²³³

The Commission learnt that mechanisms to ensure that the full range of services use the CRAF are insufficient²³⁴ and are not mandated.²³⁵

While awareness of CRAF has been notably effective in improving the response to family violence in many non-specialist services that formally had a haphazard approach, the use of CRAF and its application within and across sectors is inconsistent. Clear direction and operational advice is required to ensure that CRAF is truly a tool for integration.²³⁶

Managing all levels of family violence risk

Responding to high-risk family violence cases is an essential part of the risk management response, however the vast majority of women and children will not be assessed as being at high risk, will not be referred to a RAMP and will not receive intensive case management. The Commission heard that there is therefore a gap in responding to victims at lower levels of risk. This is a concern for three primary reasons:

- ▷ Risk assessment is an imprecise science and it is impossible to always predict levels of risk.
- ▷ Focusing solely on high-risk cases can create a perverse incentive to wait until risk escalates to that threshold before the required strategies are put in place.²³⁷
- ▷ Living with any level of family violence has significant cumulative negative impacts on the health and wellbeing of individuals and families.

The Commission heard that the elements of good risk management are the same at all levels of risk, and comprehensive guidelines, policies and resources to support effective risk management strategies are required.²³⁸ The need for an integrated and effective system response for all was a common theme, 'as the vast majority of those experiencing family violence will never be referred to a RAMP or receive intensive case management'.²³⁹ The Victorian Government submitted:

While it is important to strengthen the identification of family violence in a range of universal and secondary services, we also need to provide interventions that aim to prevent violence from escalating. This will include improving the capacity of professionals in a range of sectors (such as maternal and child health, family services, health services and homelessness services) to work with people experiencing family violence in a way that maintains safety and minimises the impact of violence.²⁴⁰

In the report on his inquest into the death of Luke Batty, Judge Gray emphasised that ensuring the level of risk is appropriately assessed requires clarity about organisational roles and responsibilities for risk management—in particular, the role of Victoria Police:

... reform in this area must recognise the various roles each organisation has within the system. Police officers as frontline responders are called upon to make an assessment, largely based on their operational and their practical policing experience and their training. Consequently, the risk assessment tool Victoria Police use needs to have the focus on rendering the parties safe, and ensuring that there are some effective police interventions at first instance which secure a safe outcome for all concerned, and allows Victoria Police [to be] in a position to both notify and engage its partners to ensure a more considered response.²⁴¹

Determining the level of risk with an actuarial or tiered tool

The Commission was informed that the absence of an actuarial or tiered tool to identify the level of risk makes it more difficult to achieve a consistent approach about the threshold for referral to a RAMP²⁴² and to ensure that all women and children are responded to in a consistent and timely way.²⁴³

The Commission was also told that, while the CRAF provides a summary of risk factors for victims and perpetrators, it does not present this information in a usable format that can be applied easily by a practitioner.²⁴⁴ Mr Scott Widmer, Executive Director, Service Design and Operations Division, Department of Health and Human Services, noted:

... a validated tool that weights risk to produce a risk score or otherwise inform an assessment of risk ... has the potential to be particularly useful for professionals using Practice Guide 1 or 2 who may not feel sufficiently confident to analyse risk without further guidance.²⁴⁵

The need for an actuarial tool was raised in the 2013 evaluation report of the Strengthening Risk Management project that led to the RAMP model. The evaluation supported the development of an actuarial tool within the CRAF for use by specialist family violence services:

Development of an actuarial tool, to be used in conjunction with the CRAF, could assist workers to assess (or quantify) 'highest risk' and imminence, and would support the effective roll out of the RAMPs. This approach would need to be supported by eligibility guidelines and training.²⁴⁶

The absence of such a tool in Victoria makes it more difficult to achieve a consistent approach within RAMPs, and across all RAMPs, about the threshold for referral. There are concerns that a more rigorous assessment approach, is required to support sharing of confidential information at RAMPs.²⁴⁷

As discussed, Victoria Police is about to commence a trial of an actuarial tool. The Commission was advised that actuarial tools for police could be appropriate, given that the level of demand on the system for assessing and managing family violence risks is currently overwhelming the response: 'A validated tool could assist front line police to ask appropriate questions at the FV incident and provide greater guidance for risk assessment and management'.²⁴⁸

Ms Catherine Plunkett, RAMP Development Officer from Domestic Violence Victoria, told the Commission that she was concerned about Victoria Police using an actuarial tool without a significant boost to the quality and quantity of their training in family violence risk assessment and management.²⁴⁹

While there was cautious support from agencies in relation to Victoria adopting an actuarial tool or tiered approach, the Commission also heard the need for clear safeguards if this were to be implemented, such as the need for:

- ▷ formal guidance and extensive training
- ▷ clarity about the role of the first responder's use of the tool when these responders are not specialist family violence services
- ▷ effective monitoring to manage the risk of inaccurate assessments
- ▷ oversight to ensure that the tool is not used only to identify high-risk cases or as a de facto demand management tool.²⁵⁰

Others told the Commission that the three pillars of risk assessment within the CRAF—using professional judgment, evidence-based risk indicators, and the victim's own assessment of risk—are important to maintain.²⁵¹

Gaps in the CRAF

The Commission was advised that the CRAF needs to be updated to reflect current best practice in assessing and managing risk.²⁵² Among the concerns commonly raised in the evidence presented to the Commission were the need for a greater focus on risk assessment for children and victims of family violence where the violence does not occur in an intimate partner relationship; and the need for a renewed focus on risk assessment of perpetrators.

Risk factors for children

Many inquiry participants noted the need to strengthen current practice in relation to risk assessment for children.²⁵³ The Commission heard that many service providers find it difficult to assess the risk of family violence to children and that this is inadequately accommodated in the CRAF. One reason for this difficulty is that perpetrators who are violent towards their partner often have no history of violence towards their children, and often women themselves do not believe that their children are at direct risk from the perpetrator.²⁵⁴

Domestic Violence Victoria emphasised the importance of accurately assessing the risk to children—particularly by first responders such as police:

A lack of understanding of the impact on children of family violence [victims] along with limited capacity and opportunity can lead to inadequate or inappropriate risk assessments being conducted. As a consequence the information communicated to family violence services and child protection or Child FIRST agencies [by police] may not accurately or adequately convey the full extent of a child's experience.²⁵⁵

The Australian Childhood Foundation noted in its submission that assessing risk for children should reflect the cumulative nature of harm associated with family violence, but that this is not currently the case: '[T]he service system is geared towards treating violence and abuse which occurs in the family as discrete incidents that are not cumulatively harmful to children and young people'.²⁵⁶ Ms Catherine Plunkett from Domestic Violence Victoria told the Commission that in her experience as a trainer,

... most Child Protection workers find it difficult to understand that assessing the risk to a woman is essential to understanding the risk to her children. Yet, we know that because children are dependent upon their mother, that if she is being harmed, then they are being harmed as well.²⁵⁷

Stanley and Humphreys argued that child-focused risk assessment needs to engage with mothers as partners and with men as fathers in a way that avoids collusion in claims that the violence is mutual or minimal.²⁵⁸ They further stated that risk assessment for children is an area where professional judgment is needed, rather than a validated risk assessment tool:

... the safety of children is dependent upon risks associated with the perpetrator, risk factors associated with their primary carer (usually their mothers), and the effectiveness of protective factors which surround the child.²⁵⁹

Berry Street advised the Commission that, although it routinely uses the CRAF, it had amended the aide-memoire to fill gaps to do with both children and perpetrator behaviour.²⁶⁰ In relation to children, it recommended the CRAF include additional risk indicators:

... perpetrator behaviours towards children such as physical assault of child, sexual assault of child, child injury due to attempt to intervene, threats to kill child, threat to abduct child, references to murder/suicide, sexual grooming of child, child exposed to pornography, child present during a violent incident.²⁶¹

Filicide risk

Filicide, or the killing of a child by a parent or guardian, is a form of family violence and the risk factors associated with it are pertinent to this discussion.²⁶² As noted in Chapter 25, about 27 children are killed by their parents each year in Australia.²⁶³ Research suggests that there are gendered patterns to filicide. Mothers kill their children at similar rates to fathers, however they do so in different circumstances and for different reasons.²⁶⁴ Neonaticides (the killing of a baby within the first 24 hours of life) are almost always perpetrated by mothers; retaliatory killings to punish an intimate partner are predominately perpetrated by men.²⁶⁵

Since prior family violence against the mother is a feature in most killing of children by men,²⁶⁶ knowing a woman's level of family violence risk provides important information about the potential risk of lethal harm to her children.²⁶⁷ Filicide is more likely to occur when women try to leave the relationship.²⁶⁸ A retrospective case analysis of family violence homicides showed the following:

- ▶ Paternal filicide is a rare event that is often hard to predict and prevent.
- ▶ Current research with domestic homicide review committees suggests that warning signs can be overlooked by some professionals and agencies.
- ▶ Child homicides in the context of domestic violence are often motivated by revenge against the mother for leaving the abusive relationship.
- ▶ There is a need for close coordination between family and criminal court professionals to ensure that the safety plan for a parent in these circumstances extends to the children as well.²⁶⁹

The Department of Health and Human Services stated that men with a history of intimate partner violence need to be carefully assessed during and after separation in relation to the risk of filicide, even when there has been no previous violence towards the child. Where there have been threats to kill, stalking and breaches of family violence intervention orders or Family Court orders, contact with the child should be stopped and urgent safety plans put in place. The department has also cautioned that 'a thorough assessment of the history and pattern of the violence needs to be undertaken, rather than relying on separation as a safety mechanism in itself'.²⁷⁰

As Judge Gray noted, although there is no validated risk assessment tool capable of reliably identifying whether a parent will commit filicide, there are validated tools that can predict with reasonable certainty when mothers are likely to be at risk.²⁷¹ Judge Gray recommended that children be considered at potential risk of harm if their mother is at risk:

Filicide should be considered as part of the broader phenomenon of family violence, rather than existing in a separate category. Steps taken in response to family violence are *likely* to reduce the frequency of its various manifestations, including filicide, however, it is by no means clear that steps taken in response to family violence generally, will *necessarily* reduce the incidence of filicide.²⁷²

Risk assessment of children in other jurisdictions

It is the Commission's understanding that there is no current validated risk assessment tool in Australia or internationally that specifically measures the risk to children of family violence:

This is a complex area. While all child protection departments throughout the Western world struggle with the inundation of referrals of children living with domestic violence largely, though not exclusively from police, there has not been an actuarial tool developed to regularise or create a consistent practice in this area.²⁷³

The Commission notes that the Western Australian Common Risk Assessment and Risk Management Framework provides guidance in relation to the assessment of risk for children, as well as additional specific risk indicators such as the following:

- ▷ Is the adult victim pregnant or is there a new birth?
- ▷ Has the child ever been in the adult victim's arms when she/he has been attacked?
- ▷ Has the child ever tried to intervene in the violence?
- ▷ Are there child contact or residency issues and/or current Family Court proceedings?
- ▷ Are there children from a previous relationship present in the household?²⁷⁴

The first two listed risk factors were said to be indicative of an increased likelihood of an adult victim being killed.

In the United Kingdom, work done alongside the Multi-Agency Risk Assessment Conference high-risk initiative produced a checklist for identifying risks children may be living with. This is accompanied by the following caveat:

[It is not a] full risk assessment for children. The presence of children increases the wider risks of domestic violence and stepchildren are particularly at risk. If risk towards children is highlighted you should consider what referral you need to make to obtain a full assessment of the children's situation.²⁷⁵

Better risk assessment for children is also a central concern for the Family Court because of the implications for orders with unsupervised access to children and of the risk of filicide. This issue is considered in Chapter 24.

Risk factors relevant to all victims

The Commission heard that the CRAF needs to be reviewed in order to take into account the breadth of different experiences of family violence. For example, Women with Disabilities Victoria reported that the CRAF does not reflect all the risk factors experienced by women with disabilities:

Women we interviewed explained that perpetrators have tactics to use impairment-based-violence to gain power. This can be by discrediting women with cognitive impairments, tampering with medication, withholding aids, and for women with no speech it is very easy to limit what are already rare communication opportunities.²⁷⁶

Women with Disabilities Victoria reported that the lack of risk indicators specific to women with a disability in the CRAF meant that, when the Department of Health and Human Services was developing the family violence disability crisis fund, it needed to create an informal supplementary disability template for the CRAF.²⁷⁷ A further example provided to the Commission was that within disability and mental health services family violence can be perceived as 'carer burnout' and thus escape detection.²⁷⁸

Victoria has separate guidelines to prevent and respond to elder abuse, developed in 2012.²⁷⁹ These guidelines aim to facilitate closer links between the family violence and aged care sectors and to 'raise awareness of the needs of older women experiencing elder abuse as a form of family violence and to ensure appropriate service responses are available'.²⁸⁰

The Commission received evidence expressing different views about the need for a separate mechanism for assessing elder abuse:

People experiencing elder abuse and FV may display a number of similar risk factors – including dependency, social isolation, poor health and disability. There are, however, other risk factors of elder abuse – such as the accumulation of assets, reduced capacity and death of a partner – that would not necessarily be identified by the established common risk assessment framework (CRAF) for FV. The identification of accumulated assets as a risk factor of elder abuse is particularly important as it can increase vulnerability to elder financial abuse even in the absence of other risk factors.²⁸¹

Seniors Rights Victoria submitted that the existing guidance is adequate but that connections between policy and practice could be strengthened:

In Victoria, SRV believes that elder abuse can be effectively combated through existing frameworks but because of the intersection between family violence and ageing, policy making around elder abuse needs to be situated in the broader discussion about ageing and creating a society that respects the rights and needs of older people. As such, the Victorian Government must continue to take a whole-of-government approach to elder abuse.²⁸²

Research indicates that adolescent violence in the home often begins after the mother and father have separated.²⁸³ An adolescent interviewed as part of research conducted in Victoria and who was being violent towards his mother, reported that he experienced violence 'all the time ... when I was living with my dad'. When asked if he was violent in the home when his dad lived there he said, 'No, because my dad would beat me up'. It was after his mother re-partnered that he started using violence against her.²⁸⁴ This was seen to be an area in which many sectors are seeking clearer guidance and more resources:

There are no standards of practice nor practice frameworks in working with adolescent family violence. Whilst a Common Risk Assessment Framework (CRAF) exists in relation to safety in heterosexual adult family violence, there is no guidance in relation to risk assessment and safety planning with adolescent violence in the home.²⁸⁵

This issue is discussed in Chapter 23.

Victoria Police recommended that the CRAF also be amended to incorporate risk assessment indicators for lesbian, gay, bisexual, transgender and intersex people.²⁸⁶

Validating the CRAF

The Commission heard that, although CRAF training has been evaluated, the CRAF itself has not. Further, the CRAF does not contain a validated risk assessment tool. Professor Jim Ogloff AM, Director of Psychological Services at Forensicare and Director of the Centre for Forensic Behavioural Science at Swinburne University, told the Commission that if the CRAF is to be retained:

... further work needs to be done to validate the framework. It must be evaluated and further developed so that it does what is required – provide an indication of the likelihood that family violence will be repeated and that the severity of family violence will escalate.²⁸⁷

Judge Gray also noted that the CRAF is not validated in his report on the inquest into the death of Luke Batty.²⁸⁸

Validation involves comparing and reviewing risk assessment and management processes and tools and the outcomes of assessment and management decisions over time and determining whether the processes and tools support effective decisions.²⁸⁹ Professor Ogloff said that at present only a small number of risk assessment tools have actually been validated.²⁹⁰ These are discussed in the section entitled 'International risk assessment tools'.

It can take up to 10 years to validate an assessment tool,²⁹¹ since the most reliable evaluations monitor assessments over a number of years.²⁹² The alternative is to use retrospective evaluation, which involves assessing family violence incidents that have already occurred against the indicators in a particular tool.²⁹³ There is substantially less research available about the effectiveness of family violence risk assessment tools and frameworks compared with non-family violence and sexually violent offending.²⁹⁴ A 2009 meta-analysis of sexual assault re-offending found 95 rigorous prospective studies while, in comparison, the field of intimate partner violence research had nine comparable investigations.²⁹⁵

In relation to the small number of studies and other issues relating to validation, Professor Humphreys explained that most risk assessment tools focus on male violence against female intimate partners because this form of violence is most common in homicide data and serious crime reviews.²⁹⁶ She also cited this as the reason for there being a lack of validated risk assessment tools for children: the capacity to measure predictive factors for filicide is limited because filicide is statistically rare.²⁹⁷ As noted, Judge Gray emphasised that validated tools can predict with reasonable certainty the families in which there is likely to be a recurrence of family violence and that a risk of lethality for a mother can also indicate a risk for her children.²⁹⁸

The Commission was informed that the current CRAF indicators associated with escalating risk of family violence are 'recognisable and aligned with other domestic violence [risk assessment and management] frameworks'.²⁹⁹

The inquest into the death of Luke Batty

Judge Gray released his report on the inquest into the death of Luke Batty on 28 September 2015. Judge Gray made a number of findings and recommendations relevant to risk assessment, risk management and the CRAF. In summary, he recommended ensuring that risk assessments are:

- undertaken upon notification of risk to a child;
- in writing;
- refer to previous risk assessments;
- routinely shared with relevant agencies and persons, such as protected persons named in an FVIO;
- uniform in approach while acknowledging the different legislative mandates of agencies;
- coordinated with respect to risk management and safety planning, such as RAMPs; and
- remove the practice of asking women at risk of family violence to enter into undertakings which require them to supervise or manage the behaviour of the perpetrator.³⁰⁰

Judge Gray also made findings in relation to confusion about privacy legislation and sharing information in risk assessments, flaws in the L17 system, lack of clarity about the roles of different professions assessing risk, lack of practice guidance, and the need for a comprehensive workforce development and training strategy in relation to risk assessments.³⁰¹

The Victorian Government responded to Judge Gray's report in December 2015, committed to implementing all his recommendations, and referred the report to this Royal Commission.³⁰²

Workforce training

Domestic Violence Victoria submitted that expertise in risk assessment and risk management is essential to securing the safety of women and children:

It cannot be left to the 'best efforts' of non-specialist agencies. High risk and crisis situations are not the same but can easily be confused. Women may seek housing or financial support, as symptoms of their undisclosed family violence. Though their exposure to family violence may be detected through an initial needs assessment, women at high risk are unlikely to be identified at this point as most are reluctant or unable to disclose the extent of their risk to a service provider who lacks the specialist skills and knowledge to recognise and respond to the complexity of their situation.³⁰³

The Commission was also told that a person experiencing family violence is more likely to disclose the full extent of the violence if they feel safe and supported and trust the process:

When risk assessment is conducted by interview with the woman, it should be a collaborative process done with the woman, not on the woman. This requires a relatively high level of skill and is an approach you would expect to find in specialist women's family violence services ... However, if risk assessment is conducted with a perfunctory, question and answer approach, a woman who is at high risk and has adopted a strategy of minimising the abuse in order to cope emotionally and psychologically, will often maintain that minimisation and either not disclose the most harmful abuse or decline offers of assistance. This potentially makes any intervention or risk management ineffective.³⁰⁴

Berry Street and others submitted that fully realising the benefits of the CRAF requires a comprehensive training strategy and investment to ensure that all relevant workforces are properly trained and supported in applying the framework to their decision making and action:³⁰⁵

[The CRAF] is an excellent tool. However, the funding to sustain the training on a long term basis wasn't maintained and therefore it became problematic to access. This training needs to be sustained and delivered to key professional groups annually.³⁰⁶

The Commission was informed that in the past CRAF workforce training had a positive impact and had significantly improved how professionals identified and responded to family violence.³⁰⁷ Since 2013, CRAF training has been delivered on a more ad hoc basis. The need for more training, and the lack of a specific plan for continued delivery was raised in a number of submissions.³⁰⁸ Ms McCartney told the Commission that there is a risk in high-demand sectors that, without continued training, workers will view the CRAF as something that is done once and placed in a woman's file.³⁰⁹

Noting that the CRAF's effectiveness depends on organisations developing processes, policies and procedures associated with it, Domestic Violence Resource Centre Victoria submitted:

The delivery of CRAF training to Community Corrections staff was well received ... because trainers were able to reference the organisation's policy and procedural directions, which effectively operationalise the use of CRAF.³¹⁰

The Commission also heard that, because the CRAF 'has been the only free of charge and broadly accessible professional development in family violence issues that is available in Victoria', organisations often send workers with no previous family violence training to CRAF training.³¹¹ Domestic Violence Resource Centre Victoria advised the Commission that current CRAF training is an inadequate introduction to family violence, with very little information being provided about the causes, dynamics, misconceptions and impacts associated with family violence.³¹²

The Commission was also told that the CRAF should include capability benchmarks targeted at different levels of practice, roles and workforce functions.³¹³ Domestic Violence Resource Centre Victoria identified consistent elements needed for all professionals—for example, an understanding of the nature and dynamics of family violence, knowledge of risk indicators, and knowledge and confidence to ask direct questions. It submitted that there will also be additional skills and competencies required to match different roles and functions.³¹⁴

Judge Gray made a number of recommendations relating to workforce knowledge and implementation of the CRAF. Among them he recommended that the State of Victoria:

[E]nsure all agencies operating within the integrated family violence system are sufficiently supported to provide their respective training and professional development to undertake CRAF based family violence risk assessments. Such training and professional development should include, but not be limited to, recognising, understanding; and responding to family violence. Each agency's staff should be educated in the dynamics of family violence, with specialist training provided to those employees whose primary role is to have contact with victims and perpetrators of family violence.³¹⁵

In its response to this recommendation the Victorian Government stated that it will consider training in its evaluation of the CRAF, 'including a review of implementation initiatives to ensure that these reflect best practice'. The response further states that the government 'anticipates that professional development and training, including training materials and delivery, will be revised'.³¹⁶

Risk management for perpetrators

The Commission heard that there are limited interventions available to manage the risks posed by perpetrators and that where community-based men's behaviour change programs do exist, they are insufficient or inappropriate for the risk profiles of all perpetrators. Submissions emphasised that the perpetrators who pose the highest risk of serious harm to women and children might not be suitable for these programs:

The currently offered Men's Behaviour Change programs are widely regarded as ineffective for high risk men who are treatment-resistant and show high levels of non-compliance. This problem is further complicated by the linkages between high risk family violence [and] drug and alcohol abuse, mental illness or mental disorder, and a personal history of neglect and abuse.³¹⁷

Mr Andrew Reaper, Deputy Commissioner of Corrections Victoria, gave evidence that:

[Men's behaviour change programs] can be effective in engaging low risk offenders with family violence related offences who are not eligible for a clinical intervention ... [E]vidence suggests that offence specific clinical interventions for low risk offenders can in fact increase their risk of reoffending, and as such, psych-educational/skills based programs are more suitable for this cohort.³¹⁸

The Commission was informed that 'connecting the accountability and consequences for men on MBC programs to the broader intervention system (police, courts, child protection, corrections and women's services) so that they are "held" within the broader system' is crucial to the effectiveness of these programs.³¹⁹

No To Violence submitted that there is an ongoing and urgent need to resource the community sector, share information and develop better practice in identifying and managing perpetrator risk:

... what the [men's behaviour change programs] will do with all those other 15,000, 20,000, 30,000 men is support the child protection practitioners to better engage with them or to work alongside our colleagues in community corrections to improve supervision practices which at the same time will improve facilitator practices.³²⁰

The Commission was also advised that when men's behaviour programs are used they should be funded to engage with the partners of perpetrators, to identify and respond to safety needs and to increase the likelihood that a victim's feedback about their partner's behaviour will assist with monitoring.³²¹

The Commission received a number of proposals for improving management of high-risk perpetrators. These suggestions emphasise the importance of matching perpetrator interventions to specific needs and levels of risk.³²² Among the proposals were:

- ▶ supporting information sharing with a centralised database³²³
- ▶ recognising that community-based men's case-management programs have limited effectiveness for high-risk perpetrators³²⁴
- ▶ strengthening responses from Corrections Victoria—for example, more specialist supervision on probation or parole³²⁵
- ▶ strengthening court and justice responses—for example, court-mandated perpetrator programs with appropriate penalties for non-compliance³²⁶
- ▶ linking perpetrators to programs dealing with factors that increase the likelihood they will use violence (such as substance abuse and mental ill-health)³²⁷ and integrating substance abuse programs with family violence programs.³²⁸

These proposals share the common theme that agencies need to work together to effectively manage perpetrator risk. Research shows that:

coordination and communication among agencies is ideal when possible because, in many [domestic homicide] cases, separate agencies each possessed unique and significant information with respect to lethality risk that taken together, would have painted an alarming picture with respect to the need for formal risk assessment, and safety planning.³²⁹

This is consistent with the findings and recommendations of the Victorian Coroner's Systematic Review into Family Violence-related Deaths and, more recently, the coroner's findings in relation to the death of Luke Batty.³³⁰

The Commission discusses information sharing to improve risk management, including that of high-risk perpetrators, in Chapter 7; perpetrator programs and responses are discussed in Chapter 18.

Progress of the RAMP roll-out

Concern was expressed to the Commission that the new RAMP model for assessing and managing high-risk family violence cases has been modified from its pilot form, 'which will in all likelihood diminish its impact':

Pathways for ongoing case management for women and children beyond RAMP have not been clearly articulated in the new guidelines, despite this issue being raised in evaluation reports ... RAMP funding announced in 2014 only allows for a single caseworker to manage a caseload solely of women and children who have experienced potentially lethal risk, with no clearly articulated exit plan to ongoing support. This is a significant dilution of the model.³³¹

The lack of consideration of governance arrangements in relation to RAMPs at the regional and statewide levels, was also raised with the Commission.³³² Domestic Violence Victoria submitted:

[I]t would be strategically sound to use these existing structures to build consistency of risk management across the state. We can leverage off the current governance bodies to strengthen place based service provision and provide the right platforms to consider the next steps for the state-wide high risk models under development, or indeed any initiative that has implications for any aspect of risk management.³³³

The Melbourne Research Alliance to end violence against women and their children submitted that memorandums of understanding, agreement about databases and adequate resourcing are needed to ensure that the model meets its objective of strengthening accountability and enhancing safety for high-risk victims of family violence:

A RAMP on 'a shoe-string' is potentially dangerous as the model is designed to work with the most high-risk perpetrators where homicide, serious assault and stalking are real possibilities. Poor practice may have serious consequences.³³⁴

The Commission notes that the government has progressed work in a number of these areas.

Obstacles to sharing information about risk

It was noted in a number of submissions that improved data collection, data sharing and adequate IT systems, supported by clear information-sharing legislation, were essential to supporting coordinated, multi-agency risk management.³³⁵

The Commission was informed that sharing information increases victim safety, improves case management and coordination, reduces the need for victims to re-tell their stories, and increases the accountability of perpetrators.³³⁶

The Commission heard from the government and non-government sectors, that there have been major difficulties in relation to the capacity of current privacy legislation to support effective information-sharing arrangements.³³⁷ As the Coroners Court has consistently noted in reports on family violence deaths, information sharing is an essential strategy for comprehensive system-wide risk management.³³⁸ The Victorian Government has also advised that the current privacy legislation creates limits to information sharing by RAMPs, and that it has been working with the Commissioner for Privacy and Data Protection to resolve the situation and to ensure that RAMP participants can confidently share information.³³⁹

The barriers to effective information sharing in the context of the RAMPs are discussed in Chapter 7. As noted there, in view of the current legislative barriers, the Department of Health and Human Services has applied for an information-use arrangement that will permit departures from relevant privacy legislation. The approval process requires that the Commissioner for Privacy and Data Protection consider the agreement and prepare a report for the relevant minister or ministers. The agreement must then be approved by the relevant minister or ministers.³⁴⁰

Gaps in information required to manage perpetrator risk can have dire consequences. The Commission discusses privacy law in Chapter 7, where it makes recommendations designed to remove legislative impediments and to establish infrastructure to streamline the sharing of information.

The way forward

Family violence risk assessment and risk management is complex, and assessing the family violence risks for victims and perpetrators is a profound and significant responsibility. Too many women and children are bearing and managing the risks of family violence on their own. This is not acceptable.

The risk perpetrators pose should be assessed and managed, and services that support victims or work with perpetrators should not operate in isolation from each other. We need to take a systems approach to keeping the victims of family violence safe. This means that all agencies inside and outside the family violence system must have a shared understanding about risk assessment and management, as well as about family violence itself. They must understand that risk is dynamic and ongoing, keep the focus on the perpetrator and privilege the victim's experience and knowledge of their own levels of risk. These are core principles. A systems approach also demands that agencies share information in a timely and pro-active way and have a common approach to multi-agency risk management.

The CRAF has provided a strong basis for Victorian services to assess the risk of family violence. The initial intent of the framework was to improve understanding of the dynamics of family violence and to ensure that different sectors and services had a shared understanding of how to identify and assess risk. In recent years, however, a lack of whole-of-government guidance has diminished the CRAF's usefulness as a means of integrating service responses to family violence. The CRAF is now seen primarily as a practice tool, rather than the definitive mechanism for identifying and managing safety risks in Victoria.

There are pockets of excellence in risk assessment and risk management practice. However, we need consistency, resourcing and infrastructure statewide to support risk assessment and risk management. All victims—regardless of their level of risk or where they live—deserve a timely response that prioritises their safety and focuses on perpetrator accountability.

The CRAF should continue to provide the overarching framework for ensuring that risk assessment and management are coordinated throughout the system. In view of this, the CRAF must be improved, understood by all relevant service providers, and applied consistently. Its original intent as a framework for the entire system needs to be re-established and embedded in practice.

All service providers need to be confident about using the CRAF. This does not, however, mean that all service providers will use the same tool or ask the same questions. Instead, there needs to be a shared understanding about the nature and dynamics of family violence, what the risk factors are, how to have a conversation with a victim or a perpetrator about the risks, and what to do next—this is what the CRAF provides. For example, child protection workers will always use the Best Interests Framework, but that framework should be guided by what the CRAF tells us about family violence risk.

The message that all services—not just the family violence system—have a role in identifying and responding to family violence should be reinforced through policy, service agreements, and investment in workforce capacity and competency. Minimum standards and practice requirements for risk assessment and management, information sharing and referral are all needed to support standard practice. Accountability and monitoring of implementation of these practices will need to be included in responsibilities at each level of governance of the family violence system.

A next-generation CRAF

The Commission considers the following to be essential elements of an improved risk assessment and management framework:

- ▷ a revised CRAF that allows for risk assessment for a broader range of victims, including children, and places greater emphasis on monitoring perpetrator behaviour
- ▷ a governance process that requires and supports consistent risk assessment and management throughout government and government-funded services
- ▷ the roll-out of RAMPS as a matter of urgency
- ▷ removal of legislative impediments to information sharing and the establishment of a Central Information Point to consolidate information about perpetrators, relevant to risk.

The first three of these elements are discussed here; matters relating to the new Central Information Point and improved information sharing are discussed in Chapter 7.

The Victorian Government is currently engaged in the first stage of a comprehensive review of the CRAF in response to Judge Gray's recommendations in his report on the inquest into the death of Luke Batty.³⁴¹ The Commission welcomes this review as one of the first steps towards reforming and strengthening the family violence system. We are heartened that the review will consider the evidence that was put before the Commission and will take account of its recommendations, along with those of Judge Gray.³⁴²

The Commission considers that the CRAF is an important framework for risk assessment and risk management that incorporates overarching principles, risk assessment and screening tools, and practical guidance; much of the information included in it is consistent with the literature and evidence about effective risk assessment and management. The CRAF should be maintained and strengthened.

A review of how the information is presented, the clarity of practice guides and further information about minimum standards of assessment, may be necessary. Helpful tools such as 'ready reckoners' and fact sheets, covering areas such as information sharing, responding to perpetrators and identifying the primary aggressor, will be beneficial for many practitioners who do not specialise in family violence and who need these resources.

Further, it is essential that this review clarifies the organisational responsibilities for different sectors' use of the CRAF—for example, who should be using it and when, who should be trained in its use, and which non-family violence specific providers should be using it.

The Commission also considers the CRAF should be reviewed every three to five years to reflect the latest evidence about risk.

In relation to the 2016 review, the Commission proposes that a number of new elements be incorporated in the CRAF, as follows.

A new actuarial or tiered risk tool within the CRAF

An actuarial or tiered risk assessment tool should be developed for the CRAF as a priority. The tool will support shared understanding of family violence and consistent referral.

The Commission notes concerns about the use of actuarial tools. All practitioners using such tools should be required to participate in regular training, and their use of the tool should be monitored so that the risk of inaccurate assessments or a default to responding only to women at the highest risk, can be managed and mitigated. Fundamentally, we must not allow an actuarial tool to become a rationing device for services, including police responses. To do so would leave victims in danger and defeat the purpose of having a risk assessment process at all.

Alongside the use of empirically tested risk indicators, all risk assessments must take into account the victim's assessment of her level of risk and the practitioner's professional judgment.³⁴³ The Commission agrees with Judge Gray's recommendation that the CRAF review will need to examine whether greater weight should be given to a victim's level of fear.³⁴⁴

In addition to risk assessment tools, the CRAF needs to incorporate further practice guidance for screening family violence. Other new developments, such as online self-assessment tools that women can use to assess their own risk, should also be considered. One example of an online tool is I-DECIDE which is currently being tested by the University of Melbourne.

Consistent and aligned approaches to risk assessment for all levels of risk should also be supported by whole-of-government governance processes, as set out in Chapter 38.

Recognition of specific risks for children

The separate and unique effects of family violence on children, as well as the links between risks to women and risks to their children, are well documented. They are not, however, being translated into risk assessment and management practice.

Relationship breakdown and separation constitute a time of increased risk of filicide (killing of a child by a parent), as well as intimate partner homicide. Reviews of intimate partner and filicide deaths reveal that the risk indicators are very similar. System attention must be focused on the time of separation as a crucial point of risk for family violence. This warrants increased resourcing and a shared understanding and coordinated action throughout the family law, Child Protection, Integrated Family Services and family violence systems.

The Commission agrees with the Australian Childhood Foundation that there is 'still inadequate understanding of the impact of trauma arising from such abuse and violence on the development and functioning of children and young people.'³⁴⁵ Tools, guidance and practice responses should reflect the risk of cumulative harm of family violence for children, while also taking into account their age and developmental stage.

Resources developed by the Department of Health and Human Services, including *Working with Families Where an Adult is Violent: Best Interests Case Practice Model* (2014), and *Assessing Children and Young People Experiencing Family Violence: A Practice Guide for Family Violence Practitioners* (2013) should be supported by ongoing training and practice guidance, supervision and coaching to support their application. These resources should also provide clear links to, and align with, the revised CRAF.

The Commission is of the view that, rather than a specific risk assessment tool for children, we need a common and consistent approach to identifying and assessing the risks to children. It agrees with Professor Humphreys that this is an area where professional judgment is central: the 'problem is that the safety of children is dependent upon risks associated with the perpetrator, risk factors associated with their primary carer (usually their mothers), and the effectiveness of protective factors which surround the child'.³⁴⁶

The review of the CRAF provides an important opportunity to highlight risks to children and to incorporate evidence-based risk indicators specific to children. The Western Australian approach, reflected in its revised common risk assessment and risk management framework, appears to be an effective example.³⁴⁷

Perpetrator assessment

More comprehensive risk assessment tools and guidance for practitioners working in men's behaviour change programs are required, as well as advice on the ways in which men's behaviour change programs should engage with the family violence system in order to improve risk management.

As part of the CRAF review, the Victorian Government should review and incorporate risk assessment and management principles and guidance set out in the Framework for Comprehensive Assessment in Men's Behaviour Change Programs, developed by the (then) Department of Human Services to align with the CRAF, alongside other perpetrator risk assessment tools in use by Corrections Victoria. This should include articulation of the expected responses from different service providers, noting that these responses will vary according to service providers' roles and responsibilities. It is important to recognise that assessment of perpetrator risk requires information that goes beyond that gathered at an incident to include continuing risk assessment that captures a broader pattern of coercive and controlling behaviour.

There is also an opportunity, alongside the review of the CRAF, to develop guidelines for these programs that align with the Risk Needs Responsivity model and the Spousal Assault Risk Assessment tool used by Corrections Victoria. The evaluation of the Victoria Police actuarial tool trial, which will include Victoria Police family violence teams in the trial area also using the B-SAFER tool will also provide important information.

Non-intimate partner forms of family violence

The CRAF review should also consider the needs of different population groups and the specific barriers these groups can face.

For example, young people can be both victims of family violence and themselves use violence. The review of the CRAF should include a specific focus on young people and the risk factors associated with their victimisation or use of violence, or both. Guidance for those working with adolescents who use or experience violence should also be included as a new element of the CRAF. The evaluation of the Adolescent Violence in the Home program may inform this aspect of the CRAF review (see Chapter 23).

The CRAF review should also consider family violence risk assessment tools and guidance relevant to older people at risk of or experiencing family violence. Older people can have specific barriers to escaping family violence—for example, they can be reliant on family members or carers who use violence. Service providers as well as police and the courts need to be aware the many women have experienced continued violence from their partner for years, while others might experience it only later in life. The high rate of family violence perpetrated against older people by their children should also be taken into account.

People with disabilities can experience unique forms of violence at the hands of family members or carers—among them threats to withdraw care and controlling access to medication, mobility and transport. The CRAF review should take these factors into account, as well as perpetrators who might present a risk to people with disabilities (including paid and unpaid carers).

The Commission notes work that has already been done to contextualise the CRAF for use with Aboriginal and Torres Strait Islander peoples, and that this should be reviewed as part of the broader CRAF review. Early work to improve risk assessment and management approaches to working with people in culturally and linguistically diverse communities should also be considered as part of the review.

The CRAF review will need to consider the experience of different groups, as well as the practice guidance and training that will need to be developed and delivered. This is part of the broader workforce development the Commission recommends in Chapter 40.

Recommendation 1

The Victorian Government review and begin implementing the revised Family Violence Risk Assessment and Risk Management Framework (known as the Common Risk Assessment Framework, or the CRAF) [by 31 December 2017] in order to deliver a comprehensive framework that sets minimum standards and roles and responsibilities for screening, risk assessment, risk management, information sharing and referral throughout Victorian agencies. The revised framework should incorporate:

- ▷ a rating and/or weighting of risk factors to identify the risk of family violence as low, medium or high
- ▷ evidence-based risk indicators that are specific to children
- ▷ comprehensive practice guidance.

The framework should also reflect the needs of the diverse range of family violence victims and perpetrators, among them older people, people with disabilities, and people from Aboriginal and Torres Strait Islander, culturally and linguistically diverse and lesbian, gay, bisexual, transgender and intersex communities.

The authorising environment

The CRAF is a vital mechanism for facilitating consistent practice throughout the family violence system. It is relevant to all departments' policies and practice and their interoperability.

The Commission agrees with Judge Gray that the Victorian Government needs to ensure that all agencies operating in the system use the CRAF (or a CRAF-aligned risk assessment tool) when dealing with family violence matters.³⁴⁸ Since victims, children and perpetrators might come into contact with multiple services, all relevant agencies—including, for example, health services—should align their risk assessment practices with the CRAF.

The Commission considered mechanisms whereby government departments, police and other agencies might be supported to do this. In our view, legislative change is required to support this intent.

The Commission's proposal is that the primary legislation—the *Family Violence Protection Act 2008 (Vic)*—set out the relevant principles, including the use of a common risk assessment framework. The content of that framework, such as relevant roles and responsibilities, standards and practices, would then be approved by the relevant minister (or ministers) or secretary (or secretaries).³⁴⁹ This approach has the advantage that it is flexible, since the approved content (such as the CRAF) can be amended easily if there are any changes in practice.

It is also consistent with the concept, set out in Chapter 7, that 'prescribed organisations'³⁵⁰ share information when it is necessary to manage a risk to safety but when the method of determining whether this test is satisfied is not specified—although it is expected that this would be done through the CRAF or a CRAF-aligned risk assessment tool.

Even if an organisation is not formally required to use the CRAF, such organisations should be encouraged to use it because it will reflect best practice. This will contribute to the overall objective of greater alignment and consistency of practice. Further, the approved CRAF should be made publicly available—for example, on the Department of Premier and Cabinet or the Department of Health and Human Services website—so that all are able to adopt and use it.

In addition to the amendments just discussed, the *Family Violence Protection Act* could be amended to require departments to ensure that any service provider contracts or funding arrangements relevant to family violence oblige those providers to align their risk assessment policies, procedures, practices and tools with the CRAF as approved by the relevant minister (ministers) or secretary (secretaries). This will establish a clear expectation for the service providers and assist in ensuring consistent practice. It would not, however, capture providers who do not have a contract with or are not funded by the Victorian Government.

Recommendation 2

The Victorian Government amend the *Family Violence Protection Act 2008 (Vic)* [within 12 months] so that it:

- ▶ empowers the relevant minister or secretary to approve a Family Violence Risk Assessment and Risk Management Framework (and roles and responsibilities, standards and practices under it) for family violence risk assessment in Victoria
- ▶ sets out the principle that 'prescribed organisations' and agencies contracted by the Victorian Government to provide family violence services (if not otherwise prescribed organisations) are required to align their risk assessment policies, procedures, practices and tools with the Family Violence Risk Assessment and Risk Management Framework as approved by the relevant minister or secretary.

Responsibility for the CRAF in government

At present the CRAF is the responsibility of the Department of Health and Human Services. Although the Commission recognises that placing responsibility for the CRAF with the department has enabled strong operational links with the family violence services sector, there is a need to better link the CRAF with police and justice operational practice. This will require a concerted whole-of-government effort.

Concerted effort is also needed to extend the CRAF to link to the practice of other health and human services sectors. The Statewide Family Violence Action Plan recommended in Chapter 38 will ensure strategic engagement with the CRAF at the policy and practice levels. This calls for management through whole-of-government processes and consultation.

The Commission's view is that placing the ongoing management of the CRAF with the Family Violence Unit in the Department of Premier and Cabinet will more effectively achieve this aim. It will support a whole-of-government view on the process for departments to monitor their broader responsibilities in relation to family violence risk management, as well their relevant agencies' use of the CRAF.

However, operational decisions regarding responsibility for the CRAF within the public sector are a matter for government. If the CRAF is to remain with the Department of Health and Human Services, increased resourcing and further governance arrangements will be required to ensure that it is implemented as a whole-of-government framework, as part of the Statewide Family Violence Action Plan.

Investing in the workforce

The Commission was informed that to date the CRAF workforce development process has substantially contributed to understanding and capacity in relation to risk assessment and management in many sectors. But the current 'stop-start' approach to workforce development in this area is not tenable. The government's commitment of \$800,000 a year for CRAF training should be increased to support the substantial demand for training and to ensure that a broad range of practitioners can receive appropriately targeted training on a continuing basis. All sectors will need to be trained in the revised CRAF and current funding levels are not sufficient for this to be done well.

A workforce development strategy should accompany the revised CRAF, targeted to different sectors and relevant to their specific roles. This should form part of and complement the industry plan the Commission recommends in Chapter 40. Many different services and people are involved in identifying and responding to the risk of family violence, each with a different role and skill set. Investing in the capacity, capability and competence of each requires a clear focus on who does what, how and when. It will be necessary to develop clear and defined competencies and skills to support practitioners. The tiered approach of Domestic Violence Resource Centre Victoria could be a useful framework in this regard.³⁵¹

It was stressed in evidence that training is limited in its provision of guidance on how managers should consistently implement the CRAF, as the training is more directed to front-line staff.³⁵² The Commission is of the firm view that implementing the CRAF at the organisational level cannot be left to individual workers' skill level and commitment. Organisations need to provide clear guidance in relation to organisational responsibilities, such as developing policies to respond to disclosures, and developing protocols to support referral. The Commission welcomes the Victorian Government's recognition of this in its response to Judge Gray's report into the death of Luke Batty: it has committed to building the CRAF into service agreements as a requirement of funding.³⁵³

In addition, effort, incentives and requirements for organisations to create work processes that enable practitioners to 'exercise' the CRAF as it is intended, and support them in doing so, will be important. Supervision and the availability of specialist practitioners for secondary consultation are essential to ongoing practice development.

As the Commission reiterates throughout this report, an overarching approach to building general knowledge of family violence throughout the workforce is required. At present the CRAF represents the bulk of the family violence training available in Victoria. In view of the fact that the inclusion of family violence training in pre- and in-service training will be a long-term goal, the CRAF training will need to include general information about the nature and dynamics of family violence. After the CRAF training delivery review, the CRAF workforce strategy will continue to be one of the central planks of future system reform.

Recommendation 3

The Victorian Government implement the revised Family Violence Risk Assessment and Risk Management Framework and develop a sustained workforce development and training strategy as part of the recommended family violence industry plan [from 1 January 2018]. The framework should provide for:

- ▶ minimum standards and core competencies to guide identifying, risk assessment and risk management practice in family violence specialist services, mainstream services and universal services
- ▶ whole-of-workforce training for priority sectors—including general practitioners and hospital, mental health, drug and alcohol, child protection, aged care and disability workers—that takes into account and aligns with their roles and standards of practice.

The Victoria Police actuarial triage trial

As noted, Victoria Police is about to begin a trial of actuarial triage and risk assessment tools in western Melbourne. The trial presents an opportunity to test how an actuarial approach can be applied to police decision making in relation to the level of specialist response required. It also offers an opportunity to test how front-line police are best equipped to accurately assess family violence risk and use the options available to them, including formal referrals and civil and criminal options.

The timing is significant here, since the trial will be under way at the same time as the CRAF review. The lessons learnt from the trial will be important considerations for the review—not least because the trial will provide an opportunity to test how the tension between the desire to manage demand related to a high-volume crime can be reconciled with the paramount requirement for victim safety. The value of the trial will lie in developing an unambiguous pathway for escalation of matters to a specialist police response. This is a sound policy aim.

The Commission notes the emphasis on the actuarial tool being used to predict the likelihood of another police call-out to the same two people—as opposed to the assessment of family violence risk per se. Although there will be many commonalities between these two events, conceptually and practically they are distinct.

This emphasis on predicting future police demand reflects the very real challenge Victoria Police faces in treating family violence as core business while also seeking a differentiated response to guide allocation of specialist family violence team resources. The Commission understands this dilemma, but it is concerned that it might lead to some unintended consequences.

Reducing the number of formal referrals

The Commission was informed that having a threshold score of four on the initial screening tool used by police members will mean that 50 per cent of all police family violence incidents will be categorised as of 'low concern'.³⁵⁴ Among other things, these cases will no longer have a full L17 assessment completed. Nor will police make a formal referral to a specialist family violence service (or Child FIRST or Child Protection) or, in the case of perpetrators, to a men's service.

It has been a central principle of the Victorian system that the police can rely on comprehensive specialist risk assessment and safety planning by a family violence service being conducted for all police referrals. This relieves the burden on police and has been a practical means of developing a more integrated and consistent response, by transferring the onus to the service system to make contact with the victim and perpetrator, rather than hoping they might do so themselves.

The past five years have seen the ratio between informal and formal referrals change for the better. There has been a much stronger emphasis on police making formal referrals. This reflects the important role police play as first responder and as a gateway to other supports.

In 2009–10 about 62 per cent of referrals for victims were informal—that is, where information is provided to the victim about services but the L17 form is not sent to a specialist service for follow-up. In 2013–14 the proportion of such referrals had dropped to about 13 per cent.³⁵⁵ The ratio between informal and formal referrals for perpetrators has also changed considerably. In 2009–10 about 65 per cent of referrals for perpetrators were informal; in 2013–14 this had dropped to about 17 per cent.³⁵⁶

Of course, this trial is taking place in only one area, and the assumption that the threshold score of four is appropriate needs to be tested. The Commission is concerned, however, that effectively reducing formal referrals to 50 per cent of cases will dramatically affect how people gain access to the family violence service system: it would reverse the intention of previous reforms to have as many victims and perpetrators as possible connected to services, with police acting as a conduit to support.

The Commission considers this a retrograde step. Managing demand should not be privileged over a comprehensive and integrated response to the full range of needs of victims. Adoption of the reforms the Commission recommends will mean the need to manage demand should be less urgent.

Quality assurance

It will also be important to monitor any unintended effects on quality assurance processes associated with the trial. As noted in Chapter 15, at present most family violence teams monitor and triage all divisional L17s. If L17s are only forwarded in 50 per cent of cases this could mean that supervisors and family violence liaison officers, who are already busy, end up having a greater quality assurance role in relation to cases that are 'screened out' of the family violence teams' remit by the triage tool—without the benefit of the information collected through a full L17 risk assessment.

Absence of administrative 'overrides'

An associated question concerns how police members will ensure that they comply with all aspects of the Code of Practice for the Investigation of Family Violence when using the triage tool. The draft tool provides an option for police attending an incident to override the score using their professional judgment in order to conduct a CRAF-consistent risk assessment, escalate the matter to the family violence team, and by inference make a formal referral.³⁵⁷

This is most welcome. Current best practice suggests that, given the changing and complex nature of family violence risk, professional judgment should always be able to override tools. It is essential to retain police discretion in this area. Since the initial screening tool is a simple one and lacks detail, the danger is that it misses family violence risk that will not score over the threshold and might diminish the required nuanced response. This could put victims and their children at further risk.

In conducting the trial Victoria Police will also need to consider whether any administrative overrides should be built in, for example a directive that when a child is present, criminal charges are contemplated, a family violence safety notice or a police-initiated family violence intervention order is required, and a full risk assessment and formal referral are made, regardless of the triage score.

In such circumstances it is likely that the attending officer would need to collect the information required to complete the amended L17 risk assessment in any case to use in the police application for a family violence intervention order or the brief of evidence for a criminal charge, or both.

Somewhat counter-intuitively, an incident for which a criminal charge or a family violence safety notice or intervention order is contemplated would not necessarily score the requisite four points using the triage tool in its current form. The Centre for Behavioural and Forensic Science, which designed the tool, has recommended against an administrative override in all cases with a criminal charge, noting that this would result in an increase of 18 per cent in referrals to the family violence team each year—‘without much improvement in the overall predictive validity of the instrument’.³⁵⁸

This gives rise to the potential for another possible unintended consequence—namely, that the scoring system is used as a shorthand way of determining which options are used under the Code of Practice. In many ways this is the aim of the tool (to guide and create priorities for action), but it also poses the risk that inexperienced police members will assume that if an incident fails to score the requisite four points that they should not pursue criminal or civil options, even when otherwise these would be available. While the requirement of Victoria Police is that the Code of Practice must be followed, the Commission is concerned that in practice, front-line police might default to not pursuing all options if the incident does not reach the threshold for a full risk assessment. Much will depend on the skill and experience of the police member attending the incident.

The Commission is confident that Family Violence Command is aware of these considerations and will sensibly examine the administrative overrides needed to comply with the Code of Practice and ensure a comprehensive and pro-active approach to policing family violence incidents throughout the trial.

An emphasis on physical violence

As noted, the definition of ‘serious family violence’ being used for the trial is frequent or physical violence.³⁵⁹ Physical family violence is equated with having a charge for a violent offence within the next 12 months.³⁶⁰ The Commission recognises that criminal charges are likely to eventuate when the violence is physical, but it also seeks to maintain and increase police members’ awareness that family violence manifests in many ways—including as emotional and financial abuse. Similarly, in regard to the threshold of ‘severe family violence’ the effect of cumulative harm—which may or may not be physical—needs to be considered. This will probably be of less concern for specialist police in family violence teams who will conduct second-tier risk assessments to determine ‘seriousness’; it will, however, be important that communications with and training of front-line police members make it very clear that non-physical family violence such as threats of physical violence, is also a priority. This goes to the broader point of the importance of training for all police members who will be using the tools in the trial.

The Commission considers it will be particularly important to train police members in identification of the primary aggressor, which as noted in Chapter 14 remains a challenge for police members who attend incidents. The triage tool requires police to check LEAP for all prior incidents, so it may assist in this regard. However, the absence of a formal referral for those who score less than four again comes into sharp relief, because the true primary aggressor is often only identified through these referrals.³⁶¹

Alignment with the CRAF review

The project summary provided to the Commission by Victoria Police notes that if the evaluation of the front-line triage tool is positive ‘new processes will be rolled out across Victoria through a change management process beginning in 2017’.³⁶² It will be important that the timing and completion of the CRAF review and any decision making by Victoria Police in relation to future L17 practices are aligned and that the implications for the family violence system as a whole are fully considered.

The trial evaluation will need to test the concerns expressed above. The capacity to audit across police stations will provide an indication of the extent of unintended consequences—including the risk of failing to pursue civil and criminal options and not exercising professional judgment when faced with a low triage score. As mentioned, the introduction of an administrative override may allay some of these concerns.

More challenging will be managing the system risks associated with not making formal referrals. This will be a highly important test for the trial and will be of great significance to the CRAF review if we are to avoid a return to a police culture in which connecting people to services was the exception rather than the rule.

The Commission suggests that consultation with and feedback be sought from specialist family violence services, expert stakeholders and victims, in connection with all elements of the trial design, testing and evaluation.

A new approach to managing perpetrators

The Commission notes that different perpetrator interventions have different objectives. Some monitor perpetrators, some support men in ceasing their use of violence, some focus on individual accountability, and some impose criminal sanctions. As a basic principle, the family violence system should be able to offer interventions tailored to the needs of each perpetrator over time. These interventions may include:

- ▷ risk assessment, access to and sharing of current and pertinent information about the danger posed by the perpetrator
- ▷ monitoring the perpetrator by using technologies such as CCTV and men’s behaviour change programs, coupled with information provided by the victim
- ▷ managing risks through civil court orders, mandatory men’s behaviour change programs, exclusion conditions, and specialist respondent workers at magistrates’ courts
- ▷ managing high-risk perpetrators by using strategies such as correctional orders including appropriate conditions, responding to accompanying risk factors (for example, through drug and alcohol and mental health programs), using RAMPs and appropriate sentencing.

All services need to strengthen their response to perpetrators in Victoria in order to keep them ‘in view’ and address the risk factors associated with their use of violence. One way this can be done is through improved information sharing between the justice, health and human services systems—as the Commission recommends.

As discussed in Chapter 18, the efficacy of interventions in managing the risks associated with an individual’s perpetration of family violence remains an area that warrants further study. The research ANROWS is doing in relation to perpetrator interventions will make an important contribution to the evidence.³⁶³

At present police and the justice system have the primary role in managing perpetrator risk. If perpetrator interventions are to be effective, strong justice responses are needed to ensure that perpetrators who continue to use violence are subject to consistent and appropriate penalties and consequences. The Commission’s recommendations in this regard are outlined in Chapters 17 and 18.

Other types of intervention that focus on monitoring and supervision—such as specialist supervision on probation or parole—also warrant consideration. Research has found that ‘monitoring and supervision appear to be of particular importance for high-risk [family violence] perpetrators’.³⁶⁴ This is discussed in Chapter 7. The Commission also proposes that the health and human services system develop stronger capacity and competencies for working with perpetrators.

Both specialist and non-specialist sectors need training and support in order to do this better. Universal community and health services should be resourced to work effectively with perpetrators, keep them in view, and to respond to specific risk factors that perpetrators may present with. Organisations that work with dangerous and often frightening men, will need to manage the risk of occupational violence as well as risks to the perpetrator’s family members.

A perpetrator register?

A register for perpetrators is being considered by other jurisdictions in Australia. The Commission is of the view that a perpetrator register scheme should not proceed in Victoria at this time for a number of reasons:

- ▷ The effect of such a scheme on increasing women’s safety has not been demonstrated.
- ▷ There has been very limited evaluation of similar schemes, although the UK scheme is being evaluated.
- ▷ Under such a scheme the onus remains on the victim to keep herself safe.
- ▷ A scheme is potentially costly.
- ▷ A scheme is usually limited to those perpetrators who have a criminal history, although this could be changed.³⁶⁵

The Commission’s main concern, however, is that having such a scheme could give women a false sense of security if a perpetrator’s name does not appear on the register, simply because he has never had contact with the police.

The Commission proposes that if there is any future consideration of such a scheme for Victoria it should take these concerns into account. The results of the New South Wales trial will be instructive.

Setting the tone for the entire response

The Commission considers that RAMPs have the potential to provide an effective mechanism for managing risks posed by perpetrators and setting the tone for the entire system’s response. It also considers that improving information sharing and shared risk management responsibility for high-risk cases should guide practice for all cases. High-risk cases should not divert attention from lower risk perpetrators whose use of violence could escalate in the absence of intervention. We should be learning from what works collectively to keep more people safe, regardless of their defined ‘level of risk’.

Strengthening Risk Assessment and Management Panels

Obstacles to roll-out

The statewide roll-out of Risk Assessment and Management Panels is an immediate priority.

A number of elements have been introduced or progressed during the Commission's term that respond to concerns and recommendations arising from the Strengthening Risk Management evaluation. Among these are a memorandum of understanding between key government agencies, local agreements, the development of formal program and operational guidelines, and oversight by the Family Violence Interdepartmental Committee. One of the main challenges the RAMP pilot programs faced was in sharing information. These challenges have continued and have greatly delayed the statewide RAMP roll-out. Removing obstacles to information sharing is an important aspect of the infrastructure required to ensure RAMP success.

Targeted workforce development is now being provided to the different sectors directly responsible for RAMP implementation. This is an essential development and, although these sectors are the priority, this training should be extended to other sectors for whom knowledge of the RAMP process is a required part of practice. Shared knowledge about required responses to high-risk family violence must be understood and implemented consistently throughout the state, with a clear relationship to broader risk management practices. This is particularly important as different regions currently have different approaches to high-risk cases as a result of having developed over time to meet urgent local needs. Throughout the training and educating in relation to the RAMPs, a central message of focus on the perpetrator, rather than the victim, will be essential.

The safety implications of changes to funding arrangements will need to be a priority focus of the RAMP evaluation. It is not clear whether the additional case-management funding provided to directly support the RAMP model is adequate. The Commission understands that the original Strengthening Risk Management evaluation found that pilot agencies' access to additional case-management resources did enable higher rates of engagement with high-risk households.

Oversight of implementation

The establishment of the two RAMP pilots was protracted and inefficient, largely as a consequence of the lack of a clear authorising environment. The Commission welcomes the fact that the current Family Violence Interdepartmental Committee has oversight of the RAMPs: ensuring efficient engagement with government agencies to resolve difficulties as they arise will be a priority. The Commission was told that the South Australian model—in which the high-risk initiative is overseen by the whole-of-government executive chaired by the lead minister—works effectively. The level of whole-of-government agency leadership and shared commitment among government and non-government agencies to implementation was highlighted to the Commission as one of the key elements of the South Australian model's success.

Ongoing high-level multi-department commitment to the implementation of risk management will be central to an effective authorising environment. RAMPs cannot be conceived as a stand-alone reform and must be related to other initiatives the Commission recommends—for example, the revised CRAF, the strengthening of risk management practice for all levels of risk, developments within the police in relation to specialisation of family violence teams, and the development of the new Support and Safety Hubs the Commission recommends in Chapter 13.

The Commission further proposes that RAMPs have clear regional governance arrangements and a clear mandate, that regional integration committees develop a regional platform for information sharing and share their experiences, and that high-level endorsement from the ministerial and departmental secretary level be secured to ensure support within divisional, regional and local contexts.³⁶⁶

The Commission considers that RAMPs will highlight the practicalities underpinning effective risk management. Ensuring strong engagement and consultation with statewide and regional governance and advisory structures throughout this process will be crucial to ensuring consistent good practice and systems fixes, rather than leaving these things to be dealt with individually (and inefficiently) by RAMPs around the state. State and regional governance arrangements will also support systems responses for all levels of risk and for all stages of people's engagement with the family violence system. Arrangements for this are set out in Chapter 38; there is a clear role for the Victorian Secretaries Board in this area.

Recommendation 4

The Victorian Government facilitate the roll-out of the Risk Assessment and Management Panels, or RAMPs, as a priority [within 12 months], ensuring that this includes:

- ▷ adequate resourcing and support—case management and links to long-term support
- ▷ standardised referral guidance, to be used by all agencies, that is aligned to the revised Family Violence Risk Assessment and Risk Management Framework to identify high-risk cases for referral to RAMPs
- ▷ organisational and practice guidelines for effective RAMP operation, supported by a targeted workforce development and training program
- ▷ processes for supporting oversight by Regional Family Violence Integration Committees
- ▷ implementation oversight by the Cabinet Family Violence Sub-committee and the Victorian Secretaries Board Family Violence Sub-committee.

Information sharing

The requirement that agencies collaborate and exchange information—particularly within and between health, human and justice services—is a necessary part of a coordinated family violence response and is essential for risk management at all levels of risk. The current onus is on workers to navigate systems that do not talk to each other, to share information with other individual workers with whom they are already connected, and to work within and around complex and often misunderstood privacy requirements. These shortcomings put women and children at greater risk. This is a complex area of law, and agencies need to have a clear understanding of their function and the reasons for the collection of the information.³⁶⁷

Providing greater certainty to the family violence response system in relation to its capacity to share required information is an immediate priority. The Commission recommends for legislative reform and system infrastructure—including a Central Information Point for risk information—in Chapter 7.

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- 240 State of Victoria, Submission 717, 42.
- 241 Coroners Court of Victoria, above n 4, 94 [519].
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- 243 Statement of Widmer, 21 July 2015, Attachment 17, 88.
- 244 Statement of Plunkett, 20 July 2015, [43].
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- 247 Thomson Goodall Associates Pty Ltd, Submission 755, 11.
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- 289 Transcript of Ogloff, 23 July 2015, 1250 [4]–[22].

290 Ibid [13]–[16].

291 Ibid 1251 [12]–[16].

292 Ibid [6]–[8].

293 Ibid [1]–[5], [16]–[18].

294 Northcott, above n 12, 12.

295 Campbell, Webster and Glass, above n 201, 656.

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300 Coroners Court of Victoria, above n 4, 103–5.

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303 Domestic Violence Victoria—2, Submission 943, 17.

304 Statement of Plunkett, 20 July 2015, 10 [48].

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310 Domestic Violence Resource Centre Victoria, Submission 945, 38.

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314 Ibid 23–24.

315 Coroners Court of Victoria, above n 4, 106 [7].

316 The Hon Daniel Andrews MP, above n 125, Attachment 1, 3.

317 Caraniche, Submission 456, 4.

318 Statement of Reaper, 17 July 2015, 6 [30].

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321 See, eg, Melbourne Research Alliance to End Violence Against Women and their Children (Prof Cathy Humphreys et al)—01, Submission 840, Briefing Paper 2, 6–7.

322 Statement of Widmer, 21 July 2015, Attachment 17, 115.

323 No To Violence; Men's Referral Service, Submission 944, 16.

324 Statement of Widmer, 21 July 2015, Attachment 17, 50.

325 Caraniche, Submission 456, 12.

326 Berry St, Submission 834, 24, 26.

327 Centre for Forensic Behavioural Science—Swinburne University; Victorian Institute of Forensic Mental Health (Forsensicare), Submission 649, 15.

328 Caraniche, Submission 456, 12.

329 Joudis et al, above n 25, 384.

330 Coroners Court of Victoria, above n 4, 103–5.

331 Berry Street, Submission 834, 36 citing Department of Human Services, 'Evaluation of the Family Violence Strengthening Risk Management Demonstration Projects in Victoria' (Final Report, December 2013) v.

332 EMR Regional Family Violence Partnership and Together For Equality and Respect, Submission 464, 9. See also Berry Street, Submission 834, 36.

333 Domestic Violence Victoria—01, Submission 943, 18.

334 Melbourne Research Alliance to End Violence Against Women and their Children (Prof Cathy Humphreys et al)—01, Submission 840, Briefing Paper 1, 6.

335 Victoria Police, Submission 923, 26, Domestic Violence Victoria, Submission 943, 18; Children's Protection Society, Submission 505, 20.

336 Department of Human Services, above n 1, 46–7.

337 Statement of Widmer, 21 July 2015, 31 [136], 12–18.

338 Coroners Court of Victoria, above n 4, 104.

339 Statement of Widmer, 31 July 2015, 13 [51]–[52].

340 Ibid.

341 See Coroners Court of Victoria, above n 4, 103.

342 See Department of Health and Human Services, above n 121, 5. See also The Hon Daniel Andrews MP, above n 125, Attachment 1, 3–4.

343 Department of Human Services, above n 1, 13.

344 Coroners Court of Victoria, above n 4, 103–4.

345 Australian Childhood Foundation, Submission 894, 3.

346 Melbourne Research Alliance to End Violence Against Women and their Children (Prof Cathy Humphreys et al)—01, Submission 840, Briefing Paper 1, 6.

347 Department for Child Protection and Family Support, above n 274.

348 Coroners Court of Victoria, above n 4, 104.

349 The Commission considered the option of setting out the roles and responsibilities, standards and practices in subordinate legislation but, because this remains subject to a range of requirements and processes, empowering the relevant minister/s or secretary/s to approve this content is more flexible and efficient.

350 As discussed in Chapter 7 the particular organisations to be prescribed will need be determined by thorough analysis. The Commission's view, however, is that they should be similar to the bodies currently able to share information under Part 3.2 of the *Children, Youth and Families Act 2005* (Vic). These bodies must be registered 'community services' and cover a wide range of social services including homelessness, health, disability, drug and alcohol and mental health services.

351 Transcript of Maguire, 13 October 2015, 3397 [12]–3398 [18].

- 352 See Domestic Violence Resource Centre Victoria, Submission 945, 38.
- 353 The Hon Daniel Andrews MP, above n 125, Attachment 1, 3.
- 354 Victoria Police, above n 127, 3.
- 355 That is, 18,965 informal referrals for victims out of total police referrals for victims of 30,410 in 2009–10 (62.4 per cent) and 7407 informal referrals for victims out of total police referrals for victims of 59,035. See Crime Statistics Agency, 'An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14' (January 2016) Victoria Police Data source, Tab 1, Table 1: Family Incidents Recorded and Family Incident Rate per 100,000 Population, July 2009 to June 2014; Tab 31, Table 31: Referrals made by Victoria Police by Police Region and Gender of the Affected Family Member, July 2009 to June 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015.
- 356 That is, 11,837 informal referrals for perpetrators out of total police referrals for perpetrators of 18,134 in 2009–10 (65.3 per cent) and 9031 informal referrals for perpetrators out of total police referrals for perpetrators of 52,609 (17.2 per cent).
- 357 Victoria Police, above n 130.
- 358 'If such an administrative override were introduced, the effect on referrals to the FVT would be profound. Adding the override reduced the discriminatory ability of the VP-SAFvR:SV substantially, AUC = 0.57 (95%CI = .56-.57), with the primary effect being to reduce the specificity so that there was only a 34% chance of correctly identifying cases where there were no further FVIs'. Ibid 10–11.
- 359 Victoria Police, above n 127, 11.
- 360 Ibid 11–12.
- 361 For discussion of primary aggressor and L17 referrals see Women's Health West Inc, Submission 239, 38.
- 362 Victoria Police, above n 126, 10.
- 363 Erin Mackay et al, 'Perpetrator Interventions in Australia: Key Findings and Future Directions' (Compass Issue PP01, Australia's National Research Organisation for Women's Safety, November 2015).
- 364 Joudis et al, above n 25, 384.
- 365 Jane Wangmann, *Violent Offenders Registers Sound Good, But Are a Costly, Unproven Distraction* (2015) The Conversation <<http://theconversation.com/violent-offenders-registers-sound-good-but-are-a-costly-unproven-distraction-44182>>.
- 366 The Commission sees this approach as essential to the RAMPs success, and requires the explicit, formal endorsement and ongoing commitment of relevant Ministers and government departments. Precedents include the UK, where the Home Office, building on the work of CAADA, provided an authorising environment, support and resources, for the operation of the Multi-Agency Risk Assessment Committees since 2002.
- 367 Statement of Widmer, 31 July 2015, 4 [17].

7 Information sharing

Introduction

Organisations within the family violence system and organisations that otherwise provide services to victims or perpetrators of family violence collect and use a wide range of personal information for a variety of purposes. Effective and appropriate sharing of that information is crucial, playing a significant role in keeping victims safe and holding perpetrators to account. The consequences when information is not shared can be catastrophic.

Despite the significant role of information sharing in responding to family violence, there are a number of barriers that mean information is not shared as effectively as it could be. Improving information-sharing practices is a vital next step in the development of Victoria's family violence system.

In this chapter the term 'information sharing' describes not only a situation in which an organisation or individual provides information to another organisation or individual. It also describes the exchange of information within organisations—for example, between different business units in a large government department. In each instance of information sharing, organisations will collect, use and disclose information.

The first section of this chapter outlines the legislation and policies that govern information sharing in Victoria. It discusses the complex legislative environment that family violence professionals must navigate and the enormous volume of legislation relevant to information sharing, including both general privacy legislation and other, subject-specific Acts that contain relevant confidentiality and secrecy provisions. Some pieces of Victorian legislation establish specific information-sharing regimes, while Commonwealth legislation is also relevant in some instances. This section then goes on to discuss obligations that fall outside legislation, such as policies and formal information-sharing arrangements (such as memorandums of understanding or protocols).

The next section of the chapter looks at the evidence heard by the Commission in relation to current information-sharing practices. The Commission received evidence that information is not, at present, routinely or systematically shared within the family violence system. This includes different agencies sharing information about perpetrator risk, men's and women's services sharing information, and sharing information with victims. Even where legislation or policy facilitates information sharing, the complexity of the legislative environment means organisations do not fully understand their obligations and are consequently reluctant to share information.

Barriers to information sharing are then examined, with the Commission identifying three key themes which affect agencies' ability, or willingness, to share information: the fact that legislation and policy governing information sharing are complex, confusing and restrictive; the lack of an information-sharing culture and leadership in regards to sharing family violence risk information; and reliance on outdated IT systems.

Finally, the Commission outlines a way forward. In relation to legislative reform, it assesses several possible options before outlining its preferred approach: to create a specific family violence information-sharing regime under the *Family Violence Protection Act 2008* (Vic). This regime is intended to provide clear authority for prescribed organisations to share information. It outlines a number of guiding principles and design elements for the new regime. Noting that legislative change alone will not create a culture of information sharing throughout the family violence system, the Commission then recommends a means to develop an information-sharing culture, including producing guidance materials and developing an awareness campaign. The Commission also recommends the establishment of a Central Information Point, to provide up-to-date information to assist risk assessment and risk management. In relation to IT systems, the Commission recommends measures for improving outdated IT systems to enhance agencies' abilities to share information.

These recommendations support the Commission's recommendations relating to keeping the perpetrators of family violence in view and accountable. There should be a rebalancing of the way in which organisations view information sharing, to ensure that concerns about privacy do not outweigh concerns about safety. The current barriers to sharing information about perpetrators of family violence must be removed so that risks to the safety of victims can be managed.

Context

Types of information and organisations

Organisations within the family violence system and organisations that provide other services to victims or perpetrators of family violence collect and use a wide variety of personal information for a variety of purposes. This information can be about victims of family violence (including children) or perpetrators or both.¹

For example, Victoria Police provides copies of the L17 form (the family violence risk assessment and management report) to specialist family violence services after attending a family violence incident.² Victoria Police, the Department of Education and Training, the Department of Health and Human Services, and many other organisations may disclose information to Child Protection, Child FIRST or Integrated Family Services for the purpose of identifying and responding to children at risk of harm. Table 7.1 shows examples of some of the information different organisations might collect and use in the context of family violence.

Table 7.1 Information collected and used in the context of family violence³

| Organisation | | Information | |
|---|---|--|--|
| Department of Health and Human Services (including through contracted service providers) ⁴ | Specialist family violence services | Women's services | Identifying information about victims, children and perpetrators, including names, dates of birth, genograms, places of residence, employment status, cultural identities, visa status and disabilities. In addition to identifying information, services will have information about risk factors recorded on risk assessments and safety plans (including behaviour of the perpetrator and other information communicated by the victim), and current and previous case management services provided to the victim or referrals made. |
| | | Men's services | Identifying information and risk assessments. Information about perpetrators' participation, attendance and progress in behaviour change programs, previous partners and children from other relationships, parenting status and risk factors will be more detailed. |
| | Child protection, Child FIRST or Integrated Family Services | Identifying information and current and previous involvement of children in care of victims or perpetrators, including age, living arrangements, contact information, and schools children attend. Details about reported concerns for safety and wellbeing of children, including in relation to family violence. Information collected during consultations and investigations. Current and previous involvement with victims or perpetrators as children or young people. Information about child protection orders. | |
| | Mental health services | Identifying information and current and previous mental health problems of victims (including children) and perpetrators and any treatment services provided. | |
| | Alcohol and drug treatment services | Identifying information and current and previous information about alcohol or drug use and treatment services provided to victims or perpetrators, or both. | |
| | Housing and homelessness services | Identifying information and residency information about victims (including children) and perpetrators. Current and previous housing services responses provided. | |
| | Health-care services (community health or hospitals) | Identifying information and health information about victims (including children) and perpetrators—for example, medical conditions, injuries, and hospital and emergency department admissions. | |
| | Sexual assault support services | Identifying information and information about previous and current sexual assaults, investigations, support services provided and referrals made. | |
| | Disability services | Identifying information and information about disability and current and previous disability services provided to victims (including children) or perpetrators. | |
| Private health service providers (such as GPs) | | Identifying information and health information about victims (including children) and perpetrators. | |
| Victoria Police | | Identifying information about victims, perpetrators and witnesses (including children); health information such as information about a person's mental health or use of drugs and alcohol; criminal record information, including existing commitments such as bail conditions or intervention order conditions; other information about perpetrators, including their propensity for violence, apparent drug or alcohol misuse or access to weapons, which can affect the level of risk posed by them; and information relating to court orders. ⁵ | |
| Corrections Victoria | | Identifying information and what behaviour-management programs the offender has participated in while in prison or while subject to a community correction order; information relating to criminogenic risk factors for the offender, such as whether there has been an increase in substance use, unstable mental health, unemployment or homelessness, and the identity of people with whom the offender is associating. ⁶ | |
| Department of Education and Training | | Identifying information and information about children and their parents, including early childhood and school enrolment and attendance data, participation in school-based programs, incident reports and referrals to other services (such as Victoria Police or Child Protection) and information collected by the Victorian Maternal and Child Health Service. ⁷ | |

| Organisation | Information |
|---------------------------------------|---|
| Magistrates' Court of Victoria | Identifying information, intervention orders, information contained in evidence and court documents, transcripts and audio recordings of court proceedings, ⁸ reports drafted for court proceedings, records of interactions with court staff, including risk assessments—for example, applicant and respondent support workers. |
| Children's Court | Identifying information and information from the Department of Health and Human Services in relation to protection applications, child protection orders, information contained in evidence and court documents, audio recordings of court proceedings, ⁹ reports drafted for court proceedings, records of interactions with court staff. |
| Family Court or Federal Circuit Court | Identifying information and information related to family law proceedings, including parenting and financial orders, injunctions, transcripts and audio recordings of court proceedings, expert reports drafted for court proceedings, including by family consultants, and notice of risk forms. |

It appears no comprehensive assessment has been conducted to date of the types of information collected, used and disclosed by organisations responding to family violence or of important information flows within the family violence system.¹⁰ This situation is complicated by a lack of coherence about the respective roles and responsibilities of different organisations and practitioners.¹¹

The importance of sharing information

Maximising responses to family violence

Many submissions and witnesses stressed how important information sharing is to keeping victims safe.¹² Mr Scott Widmer, Executive Director, Service Design and Operations Division of the Department of Health and Human Services, gave evidence to the Commission that information sharing serves two central purposes in this context:

First, it is necessary to assess and manage the risk to a victim's safety and, in particular, to prevent or reduce the risk of further harm. This includes sharing information about perpetrators to hold them accountable for their behaviour. Secondly, information sharing through case management and the co-ordination of services assists victims to recover from family violence and perpetrators to change their behaviour.¹³

The Family Violence Risk Assessment and Risk Management Framework (referred to as the Common Risk Assessment Framework, or CRAF), provides an explanation of why information sharing is important:

Sharing information helps to ensure that victims of family violence receive support and assistance in a timely and effective manner; increases the safety of victims; and promotes accountability of perpetrators.

Sharing information between services helps to enhance protection for women and children when they are vulnerable. It also enables earlier intervention and prevention strategies to be implemented, by enhancing case management and coordination, and providing services with clearer roles and expectations for service provision.

Importantly, sharing information helps people to feel confident that their situation is understood and is being managed across a range of service providers; it also means they do not have to repeat personal and sensitive information and possibly be subjected to further trauma.¹⁴

Speaking from the perspective of a specialist family violence service, Ms Bernadette McCartney, Executive Manager of Bethany Community Support, emphasised that obtaining information about a perpetrator 'has real importance in terms of safety planning'.¹⁵

In its written submission, the Coroners Court of Victoria identified the potentially catastrophic consequences that can result when information sharing does not occur:

Assisting persons exposed to family violence (as perpetrators and/or victims) relies on detection by appropriately skilled professionals with a mandate to respond. In conducting in-depth reviews of service contacts amongst persons involved in family violence homicides, the [Coroners Court of Victoria] has identified family violence-related contacts with a number of government and non-government entities across the legal, health and community setting. In many instances important information about the occurrence of family violence was not sought and/or shared between these entities. Had the pattern and nature of contacts amongst both parties to the homicide been available to all services involved, the level and nature of risk may have been assessed differently and points of intervention may have been more clearly identified, which may have changed the outcome.¹⁶

This view was reiterated in the coronial inquest into the death of Luke Batty. In response to Ms Rosie Batty's submission that there were many 'red flags' indicating that the level of risk posed by Mr Anderson was escalating, The former State Coroner, Judge Ian Gray stated:

The point of the submission is that the system—the agencies assisting or working with Ms Batty—did not collectively, in real time, know and share and consolidate the [discrete] pieces of information applicable to her situation. This is a fundamental point. Real time updated information sharing between agencies (including Victoria Police) is a key element in a fully integrated system, and in my view, is a necessary precursor to interventions which can be taken to promote safety and save lives ...¹⁷

Judge Gray added:

Despite Ms Batty's numerous contact with the Courts, the police, the DHS, various counsellors, and her various treating medical practitioners her evidence was that she felt alone. Ms Batty's experience was that:

There seemed to be no sharing of information I had supplied or police had gathered across from Victoria Police, the Family Court, the Magistrates' Court and DHS. As all these agencies have responsibilities including protecting women and children, I would have thought they would be capable of sharing relevant information to save time, improve responses and protection.

I agree with Ms Batty that there was an absence of effective information sharing between services and there was no comprehensive family violence risk assessment undertaken and shared.¹⁸

The Victorian Government has accepted all of the recommendations made by Judge Gray, including those about information sharing.¹⁹ The Commission notes that, in response to the coroner's recommendations, the Department of Premier and Cabinet has started a review of legislative and policy impediments to sharing relevant information between agencies in relation to a person at risk of family violence. The department opened a tender process in January 2016 to select a provider to undertake the review. The selected reviewer will be required to recommend options that can be implemented by the Victorian Government to remove these impediments, but will not be required to implement any of these recommendations.²⁰

Appropriate information sharing

The Commission heard that, although information sharing is important, it must also be done appropriately because victims have a right to privacy, especially at a time when they are vulnerable.²¹ The Commissioner for Privacy and Data, Mr David Watts, submitted:

The need to identify, reduce and prevent family violence, and ensure the safety of individuals affected by family violence requires integration and coordination between various organisations. This will regularly involve the sharing of sensitive personal information. Having the ability to share *the right information with the right people at the right time for the right purpose* will significantly supports [sic] better outcomes by protecting those at risk.²²

In addition to infringing privacy rights, inappropriate information sharing can have negative practical consequences for victims of family violence. For example, if victims feel their information is being shared inappropriately, they might lose confidence in the family violence system. A loss of confidence or trust can limit a victim's willingness to report family violence in the first place or to seek help in the future.²³ The Commission was told that, additionally, a failure to share information properly or to protect the security of information can actually increase the risk of family violence—for example, if information is inappropriately disclosed to a perpetrator or to someone who might tell the perpetrator.²⁴

It was also noted that there is a need to strike a suitable balance between the information sharing necessary to respond to family violence and the privacy rights of both victims and perpetrators.²⁵

Current law and policy

This section outlines what the Commission was told about current legislation and policy, organisational factors and technological capacities that affect information sharing in the family violence system.

Victorian legislation

Broadly, two types of legislation govern information sharing in Victoria—default information privacy laws and subject-specific legislation that contains confidentiality or secrecy provisions or provides for specific information-sharing regimes. There are also a number of formal information-sharing arrangements and policies of relevance to family violence.

The *Charter of Human Rights and Responsibilities Act 2006* (Vic) protects rights to privacy, although there is no general right to privacy at common law.²⁶ If an organisation proposes to share information about a specific individual, privacy rights must be considered. As the Commissioner for Privacy and Data Protection noted, however, it is clear that:

... the right to privacy does not trump the right to personal safety. Victoria's privacy laws are written to reflect that. Tragedies should not occur as a result of a misunderstanding of privacy legislation.²⁷

Information privacy

The Commissioner for Privacy and Data Protection informed the Commission that 'information privacy' refers to 'the right of individuals to determine for themselves when, how, and to what extent their personal information is shared with others'.²⁸ The *Privacy and Data Protection Act 2014* (Vic) and the *Health Records Act 2001* (Vic) govern information privacy and are 'default legislation'; that is, they apply unless they are inconsistent with any other Act.²⁹

The Privacy and Data Protection Act applies to ‘personal information’,³⁰ whereas the Health Records Act applies to ‘health information’.³¹ The legislation does not regulate the handling of information that is already publicly available—for example, information in a telephone directory or newspaper or on a website or the published reasons of a court.³²

Despite applying to different types of information, each Act regulates the handling of information by establishing a number of privacy principles, known as Information Privacy Principles under the Privacy and Data Protection Act, and Health Privacy Principles under the Health Records Act. An organisation subject to the IPPs or HPPs must not do an act or engage in a practice that contravenes these principles.³³ The Privacy and Data Protection Act and the Health Records Act apply to ‘public sector organisations’, which includes ministers, government departments, local councils, statutory authorities, courts and tribunals (except in relation to their judicial or quasi-judicial functions), Victoria Police, hospitals, and contracted service providers.³⁴ The Health Records Act also applies to any private sector organisation that provides a health service in Victoria or collects, holds or uses health information.³⁵

Organisations subject to either or both Acts have important roles in the family violence system and in responding to family violence. With the exception of the federal courts, each organisation listed in Table 7.1 is subject to either the Privacy and Data Protection Act, or the Health Records Act, or both Acts (either directly or as a contracted service provider).³⁶

The first principle of both the IPPs and HPPs relates to collection of information, and provides that an organisation must not collect personal information unless the information is necessary for its functions or activities.³⁷ It also deals with *how* information can be collected, including that it must be done in a fair and lawful way and where possible, collected directly from the individual to whom the information relates.³⁸

A further key feature of appropriate information sharing is the IPP and HPP prohibition on using or disclosing information for a purpose other than the one for which the information was collected—known as the ‘primary purpose rule’.³⁹ The primary purpose for collecting the information is determined by an organisation’s overall legislated purposes and functions.⁴⁰ Mr Widmer told the Commission that an organisation’s enabling legislation will determine what information it can collect and use in order to fulfil its functions and whether disclosure of such information would be for a purpose other than the primary purpose.⁴¹

The primary purpose rule is not absolute, however. Both the Privacy and Data Protection Act and the Health Records Act permit information to be shared for a secondary purpose in a number of circumstances, including, for example, where:

- ▷ The secondary purpose is related to the primary purpose (or directly related in the case of sensitive or health information) and the individual would reasonably expect the organisation to use or disclose the information for the secondary purpose.⁴²
- ▷ The individual has consented to the use or disclosure of the information.⁴³
- ▷ The use or disclosure of the information is required or authorised by or under law.⁴⁴
- ▷ An organisation has reason to suspect that unlawful activity has been, is being or may be engaged in and uses or discloses the personal information as a necessary part of its investigation of the matter or in reporting its concerns to relevant individuals or authorities.⁴⁵
- ▷ An organisation reasonably believes that the use or disclosure of the information is reasonably necessary for specified law enforcement purposes.⁴⁶

In evidence before the Commission, the exemption to the primary purpose rule that was the subject of most comment is known as the ‘serious and imminent threat exemption’. This exemption permits an organisation to use or disclose information for a secondary purpose if ‘the organisation reasonably believes that the use or disclosure is necessary to lessen or prevent a serious and imminent threat to an individual’s life, health, safety or welfare’.⁴⁷

Under the Privacy and Data Protection Act there are also multiple exemptions from compliance with the IPPs for ‘law enforcement agencies’.⁴⁸ This means that Victoria Police, other state and territory police and federal police (and other agencies responsible for the performance of functions or activities directed at the prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of a law imposing a penalty or sanction) are not required to comply with the IPPs if the law enforcement agency believes on reasonable grounds that non-compliance is necessary:

- ▶ for the purposes of one or more of its or any other law enforcement agency’s law enforcement functions or activities; or
- ▶ in connection with the conduct of proceedings commenced or about to be commenced in any court or tribunal.⁴⁹

Additionally, the Privacy and Data Protection Act contains several flexibility mechanisms that allow for departures from the IPPs if this would be in the public interest.⁵⁰ This includes the following:

- ▶ temporary public interest determinations
- ▶ public interest determinations
- ▶ information usage arrangements.⁵¹

Similarly, other mechanisms—namely, codes of practice and certification—can clarify the application of the IPPs in certain circumstances.⁵² The procedures required for organisations to take advantage of these mechanisms vary, but each involves applying to or coordinating with the Commissioner for Privacy and Data Protection. The Health Records Act does not contain the flexibility mechanisms included in the Privacy and Data Protection Act.

Data security

The Privacy and Data Protection Act also governs data security. Under Part 4 of the Act the Commissioner for Privacy and Data Protection is obliged to develop the Victorian protective data security framework for monitoring and assuring the security of ‘public sector data’.⁵³ The Commissioner may issue standards, consistent with the framework, known as ‘protective data security standards’.⁵⁴ Draft Victorian Protective Data Security Standards have been developed and are expected to come into effect in July 2016.⁵⁵ Under Standard 15, which relates to information sharing, public sector organisations are required to develop secure information-sharing practices to prevent the unauthorised sharing of public sector data.⁵⁶

The Commissioner for Privacy and Data Protection has also issued standards for law enforcement data security, or SLEDS, pursuant to Part 5 of the Privacy and Data Protection Act.⁵⁷ The SLEDS apply only to Victoria Police and the Chief Statistician, along with his or her employees or consultants.⁵⁸ The Commissioner for Privacy and Data Protection told the Commission:

Chapter 4 of the SLEDS applies to the release, or disclosure, of law enforcement data. Standard 11 provides that release of law enforcement data must only occur if that disclosure is authorised and Victoria Police must ensure that agreements with approved third parties include the requirement that release of law enforcement data must only occur if it is authorised. Underneath this standard, there are several protocols which represent the minimum mandatory requirements to be addressed, in order to meet each standard. Protocol 11.1 provides that users must not release any information except where the release or communication of that information is authorised by law and/or Victoria Police policy.⁵⁹

Assistant Commissioner Wendy Steendam, Information, Systems and Security Command (now Deputy Commissioner) and Senior Sergeant Ailsa Howard, Senior Supervisor, Security Incident Register, explained to the Commission that the SLEDS requirements directly affect information sharing by Victoria Police.⁶⁰

Secrecy and confidentiality provisions

Privacy legislation is only one part of the complex legislative environment family violence professionals must navigate when seeking to share information.⁶¹ In addition to information privacy and data protection legislation:

... individual pieces of legislation contain provisions that limit, restrict or prohibit the use or disclosure of information, including personal information. By virtue of section 6(1) of the [Privacy and Data Protection Act], these provisions operate to the exclusion of the [Privacy and Data Protection Act]. Typically these provisions take the form of confidentiality or secrecy provisions.⁶²

The Commission heard evidence from Mr Widmer about several of these subject-specific Acts that apply to the Department of Health and Human Services—among them are the *Children, Youth and Families Act 2005* (Vic); the *Disability Act 2006* (Vic); the *Mental Health Act 2014* (Vic); the *Public Health and Wellbeing Act 2008* (Vic); the *Health Services Act 1988* (Vic); and the *Housing Act 1983* (Vic).⁶³

Mr Andrew Reaper, Deputy Commissioner, Offender Management, at Corrections Victoria, outlined the specific provisions of the *Corrections Act 1986* (Vic) that govern the disclosure of personal or confidential information held by corrections organisations.⁶⁴ He noted that a range of other Victorian legislation—such as the *Serious Sex Offender (Detention and Supervision) Act 2009* (Vic) and the *Sentencing Act 1991* (Vic)—is also relevant to the disclosure of information by Corrections Victoria.⁶⁵

Assistant Commissioner Steendam and Senior Sergeant Howard explained that ‘at State level there are a number of statutes governing the way Victoria Police engages in information sharing’.⁶⁶ These include, in addition to the information privacy legislation and the *Children, Youth and Families Act*, the *Victoria Police Act 2013* (Vic) and the *Sex Offenders Registration Act 2004* (Vic).⁶⁷ Victoria Police also provided the Commission with an extensive list of those pieces of legislation that affect specific or specialised information-sharing activities undertaken by Victoria Police, or apply to discrete forms or types of law enforcement data, including among others the *Coroners Act 2008* (Vic), the *Crimes (Assumed Identities) Act 2004* (Vic) and the *Surveillance Devices Act 1999* (Vic).⁶⁸

The Magistrates’ Court noted that it is subject to provisions governing sharing of information in the *Family Violence Protection Act*, while the Children’s Court is subject to similar provisions under the *Children, Youth and Families Act*.⁶⁹ These provisions are discussed in Chapter 16.

In addition to setting out the statutory and other functions of parts of the Department of Health and Human Services, Corrections Victoria and Victoria Police, these pieces of legislation contain specific confidentiality and secrecy provisions, that can override the IPPs and HPPs. Table 7.2 provides examples of such provisions.

Table 7.2 Victorian secrecy and confidentiality provisions relevant to family violence: some examples

| Legislation | Section | Description |
|--|-----------|---|
| <i>Mental Health Act 2014</i> (Vic) | 346 | A mental health service provider and their staff (including past and present contractors, volunteers and board members) must not disclose health information about a consumer, subject to certain exemptions. A penalty is imposed for unauthorised disclosure. |
| <i>Children, Youth and Families Act 2005</i> (Vic) | 36(5) | A community-based child and family service may consult with a number of organisations for the purpose of assessing a risk to a child or making a referral. If a service receives information through consultation, it must not disclose that information to any other person (unless it is permitted to do so under the Act). A penalty is imposed for unauthorised disclosure. |
| | 205(2)(b) | A protective intervener (Child Protection or police officer) who is investigating the subject matter of a report must not disclose any information arising from the investigation to anyone (other than certain people listed in the Act—for example, a court). No penalty is imposed for unauthorised disclosure. |
| <i>Corrections Act 1986</i> (Vic) | 104ZZA | It is an offence for a relevant person ⁷⁰ (or someone who has previously been a relevant person) to use or disclose personal or confidential information about a prisoner unless the use or disclosure is reasonably necessary for listed reasons, including: <ul style="list-style-type: none"> ▶ the administration of corrections legislation ▶ law enforcement ▶ to lessen or prevent a serious and imminent risk to a person's life, health, safety or welfare or to public health ▶ with the authorisation or at the request of the relevant individual ▶ to ensure the proper care or housing of a person who is or is likely to be provided with services by or on behalf of the Department of Health and Human Services ▶ to a person included on the Victims Register in certain circumstances ▶ if the use or disclosure is specifically authorised or required by or under the Corrections Act or any other Act.⁷¹ |
| <i>Victoria Police Act 2013</i> (Vic) | 227 | It is a summary offence to, without reasonable excuse, gain access to, use or disclose 'police information' if it is the member's duty not to gain access to, use or disclose that information. 'Police information' is broadly defined in section 225 to mean any information that has come to the knowledge or into the possession of the member in the performance of functions or duties or the exercise of powers as a member of Victoria Police personnel or otherwise as a result of being a member of Victoria Police personnel. The maximum penalty for the offence is imprisonment for two years. A contravention of this section is also a breach of discipline. ⁷² |

Information-sharing regimes

Some pieces of Victorian legislation establish specific information-sharing regimes to achieve particular purposes. For example, Part 3.2 of the *Children, Youth and Families Act* contains an information-sharing regime that provides for referrals, intake and assessment, family engagement and service provision where there is 'a significant concern for the wellbeing of the child'.⁷³ The legislation provides that child protection, Child FIRST and family services workers can consult a wide range of organisations for the purposes of assessing a risk to a child or determining which service should be used to assist the child or the family.⁷⁴ The *Children, Youth and Families Act* provides clear authorisation for collection and disclosure of information for these purposes.⁷⁵ Family violence services funded by the Department of Health and Human Services are included in the information-sharing regime.⁷⁶

Another example is the *Human Services (Complex Needs) Act 2009* (Vic), which makes provision for the Secretary of the Department of Health and Human Services to obtain personal information and health information about a person with multiple and complex needs for the purpose of developing a care plan for that person.⁷⁷ The individuals and entities authorised to disclose this information to the Secretary are set out in the Act.⁷⁸

Commonwealth legislation

Although the *Privacy Act 1998* (Cth) was not the subject of extensive evidence, the Commission notes that the Privacy Act applies to information sharing in the context of family violence. The Privacy Act requires Commonwealth public sector agencies (such as Centrelink) and some private sector entities to comply with the Australian Privacy Principles, which are similar to the Information Privacy Principles under the Privacy and Data Protection Act.⁷⁹

Among the private sector organisations to which the APPs apply are individuals, bodies corporate, partnerships, and any other unincorporated associations or trusts, with an annual turnover of \$3 million or more, or that provide a health service and hold health information other than in an employee record.⁸⁰ This means that many large non-government organisations working to respond to family violence, or social disadvantage more broadly, must comply with the APPs. For example, the websites of Safe Steps Family Violence Response Centre and Berry Street and organisations providing a health service (such as St Vincent's Health Australia) explain that these organisations must comply with the APPs.⁸¹

Additionally, the *Family Law Act 1975* (Cth), the *Family Law Rules 2004* (Cth) and the *Federal Circuit Court Rules 2001* (Cth) contain provisions governing access to court records and the disclosure of information by the Family Court and the Federal Circuit Court in relation to child protection and family violence.⁸² These provisions are discussed in Chapters 11 and 24.

In summary, the Commission heard there are a number of pieces of legislation that are potentially relevant to information sharing in the context of family violence. Restrictions on information sharing are contained in the 'default' information privacy legislation or in subject-specific legislation. Specific information-sharing regimes may also apply. As a result, organisations involved in responding to family violence (such as Victoria Police) can be subject to multiple layers of legislation, sometimes in relation to the same information.

Formal information-sharing arrangements and policies

In addition to legislation governing information sharing, organisations must take account of the requirements of various policies and formal information-sharing arrangements (such as memorandums of understanding or protocols) that apply to them. The Commission heard there are multiple information-sharing protocols and memorandums of understanding that can apply directly or indirectly in the context of family violence.⁸³

The Department of Health and Human Services has entered into at least 18 protocols or memorandums of understanding relating to information sharing in connection with family violence; it has 13 protocols with Victoria Police alone.⁸⁴ Corrections Victoria has nine memorandums of understanding and protocols in operation to facilitate relevant information sharing, including with Victoria Police and DHHS.⁸⁵

The Department of Justice and Regulation produced to the Commission a number of memorandums of understanding and protocols which govern information sharing between it and other bodies, while the Department of Education and Training identified several different protocols and guidelines that applied to it.⁸⁶

Victoria Police nominated the Family Violence Referral Protocol between the Department of Health and Human Services and Victoria Police 2015⁸⁷ (which sets out the approach to informal and formal referral pathways between police and DHHS-funded family violence services) and the Protecting Children: Protocol between Department of Human Services—Child Protection and Victoria Police⁸⁸ (which outlines permitted information exchange between Victoria Police, Child FIRST and Child Protection) as the primary documents governing the relationship between Victoria Police and other government agencies in relation to family violence.⁸⁹

Mr Widmer explained to the Commission that these types of documents, known by a variety of names, contain commitments given by agencies at the most senior level.⁹⁰ He noted that the Department of Health and Human Services has:

... set up a range of protocols that guide how that information sharing should occur and seek to explain what that mandate is and how that works in practice, but even those protocols can be challenging because at its core the legislative basis is complicated.⁹¹

The Commission understands that below these high-level protocols and memorandums of understanding sit specific policies and guidelines, which provide operational guidance for front-line workers. One family violence-related example is an information sharing fact sheet produced by the Office of Women's Policy in 2010.⁹²

Additionally, Mr Widmer told the Commission that practice in relation to information sharing is also influenced by the CRAF and the Code of Practice for Specialist Family Violence Services for Women and Children.⁹³ There appears, however, to be little explicit guidance on information sharing in the code, with only one short section dealing with 'Exchange of information'.⁹⁴ The code also advises specialist family violence workers to ask the person requesting information (for example, an employee of a government department) for the legislation that supports their request and expects these workers to be familiar with the various pieces of legislation just outlined.⁹⁵

The Commission was also referred to the No To Violence minimum standards, and extensive Victoria Police guidance material as examples of policies relevant to information management and information sharing.⁹⁶ The Commission received, however, little evidence about how such agreements operate or how policies are actually applied, both within organisations and throughout the entire family violence system.

Current information-sharing practices

The Commission heard evidence that at present, information is not routinely or systematically shared within the family violence system.⁹⁷

Information about perpetrators

A consistent theme in evidence was the lack of information sharing about perpetrators of family violence, which is said to leave victims vulnerable. Domestic Violence Victoria stated:

Family violence workers report that detailed information about perpetrators is not routinely shared between the relevant agencies. Family violence agencies often know more about the perpetrator than the police based on what the woman has told them; effective information sharing can be contingent upon personal relationships with police who will share info if there is an established positive working relationship.⁹⁸

No To Violence and the Men's Referral Service submitted:

Information related to perpetrator dangerousness is shared inconsistently between agencies responsible for managing risk, due to the lack of a strengthening risk management framework, inadequate database investment, and the siloed nature of service delivery.⁹⁹

Mr Widmer told the Commission that the sharing of information about perpetrators is likely to be limited because the primary basis for information collection under the CRAF is consent and 'in most cases seeking consent from the perpetrator is either unsafe or unfeasible, given that it may result in the escalation of risk to the victim'.¹⁰⁰ He added that this means a family violence agency would not routinely obtain the following:

- the perpetrator's criminal record and whether there are any outstanding warrants for his arrest;
- details of any prior contact the perpetrator has had with police in relation to family violence (eg previous L17 referrals);
- details of any contact the perpetrator has had with child protection or Child FIRST/ family services, including whether he had been determined to be a person responsible for harm;

- any history of drug and alcohol or mental health conditions that the perpetrator may have that is relevant to his risk of violence;
- details of any relevant court orders (such as intervention orders) that the perpetrator may be subject to or have breached in the past;
- advice from Corrections Victoria about the perpetrator if he is receiving a corrections service; and
- details of previous family violence risk assessments that have been conducted by other agencies in respect of the perpetrator.¹⁰¹

Victoria Police explained that it ‘does not provide women’s referral services with the perpetrator’s information, nor does it provide perpetrator referral services with the victim’s information’.¹⁰²

As Assistant Commissioner Steendam and Senior Sergeant Howard noted:

We are aware that victims’ referral agencies are concerned that they do not receive the parts of the L17 regarding the perpetrator, which they regard as relevant for risk assessment purposes. In Victoria Police’s view, this information, especially that relating to prior criminal convictions or investigations, is sensitive personal information. The disclosure of this information to referral agencies not capable of complying with the SLEDS would be a breach of the SLEDS.

Police members are adept at assessing risk arising out of criminal histories and will provide general information regarding a perpetrator’s criminal history to victims’ referral agencies; for example, that the perpetrator has a history of using violence. In Victoria Police’s view, referral agencies can rely on Victoria Police’s assessment, so far as it relates to history of violence or other relevant issues, and do not need to know the details of a perpetrator’s prior criminal offending in order to conduct an effective risk assessment. The disclosure of detailed criminal histories, beyond this generalised type of information, may also be a breach of the [Privacy and Data Protection] Act.¹⁰³

Victoria Police submitted that there is a need for further exploration of the minimum information required to adequately respond to family violence:

Victoria Police recommends breaking down what is actually meant under the banner of ‘information sharing’ and clarifying what capabilities are required to support the effective use of information ... For us, the first step is for each agency to articulate the minimum information they require and they could contribute for the purpose of responding to family violence. It is our experience in other areas, such as responding to incidents involving people with mental health issues, that a lack of clarity about minimum information requirements can result in misperceptions about the level and type of information sought, and consequently, misapprehensions about whether that information can be released.¹⁰⁴

Victoria Police also noted that, once information is disclosed to other services, no suitable feedback loop exists and Victoria Police does not receive information about what services are being provided to victims following referral, whether those services have been accepted, and how effective those services have proved in dealing with the risk of harm.¹⁰⁵

Information sharing between men's and women's services

Bethany Community Support told the Commission that information sharing between men's and women's specialist family violence services is lacking.¹⁰⁶ Plenty Valley Community Health Service expanded on this:

... we believe that privacy regulations that prevent suitable exchange of background information between agencies should be provided with exemptions where sufficient cause exists. We believe that the same exemption should be applied so that providers of services to the perpetrator on one side, can exchange information with providers of services to victims. The present structural separation of information available from both parties can create a risk of dangerous gaps occurring in risk management.¹⁰⁷

Sharing information with victims

Information held by agencies in the family violence system may not be shared with victims unless the serious and imminent threat exemption applies.¹⁰⁸ For example, in relation to information held by Corrections Victoria:

If a victim or victim's support service seeks information from Corrections about where an offender resides, what programs they have undertaken whilst in prison or whilst subject to a community correction order, or risk related information ... Corrections is unable to disclose this information unless specifically authorised to disclose the information under the provisions of the Corrections Act ... In my experience, it is not for a victim or victim's support service to seek such information. I am not aware of any recent occasions where information of this nature has been provided to a victim. This may be due to the difficulty of the requesting party providing Corrections with information sufficient to establish a serious and imminent threat to a person's life, health, safety or welfare.¹⁰⁹

Nexus Primary Health put forward a different view:

Safety for women and children must override legislation around privacy. For example: Victoria Police are unable to inform a woman that her current partner has a history of family violence against previous partners. This is important information for women to ensure she can assess her level of safety and for her children. High risk cases (especially involving drug or alcohol addiction/mental illness) must be flagged as high risk for women and children. They must be protected from the wrath of perpetrators who fall into these categories.¹¹⁰

The evidence before the Commission suggests that the family violence system expects victims to play an active role in managing risks to their own safety and that of any children in their care.¹¹¹ It was noted, however, that a victim is unable to do this if they do not have all the information relevant to managing the risk. Several individual submissions highlighted the fact that because of privacy laws, women were not told or were unable to find out particular information (for example, about the perpetrator's visa status, conditions of parole and participation in behaviour change programs while in prison) they considered relevant to their safety.¹¹²

The need for better sharing of information with victims of family violence was a central finding arising from the inquest into the death of Luke Batty. Judge Gray said:

... Ms Batty sought to obtain information from Victoria Police about the child pornography charges [brought against Mr Anderson] and was advised they could not release any details to her. Ms Batty's evidence on this issue was:

I couldn't understand that when I wanted to protect Luke fully that I was not allowed to have access to information that enabled me to understand the risks.

I note the evidence in relation to the reasons why Ms Batty was not told about the child pornography charges by Victoria Police. I do not intend to comment on the respective police officer's reasons for not telling Ms Batty, save to say that clearer guidance should be given to police officers by Victoria Police in relation to such matters. In my view, such information should be shared. In any event, by 22 July 2013, Ms Batty knew of the child pornography charges and she acted on that information appropriately by contacting the DHS.¹¹³

Luke Batty's father (Mr Anderson) was also the respondent in an interim intervention order, which named a person he was living with, XYZ, as the protected person. XYZ sought the interim intervention order after an incident involving knife threats by Mr Anderson to XYZ. The coroner said that in his view Ms Batty 'should have been informed of that intervention order, so she could assess the risks Mr Anderson posed to her and Luke.'¹¹⁴

Victims Register

There was some evidence before the Commission that information sharing with victims of family violence can occur under the Victims Register.¹¹⁵ The Victims Support Agency administers the register, which was established under regulation 6 of the *Corrections (Victims Register) Regulations 2014* (Vic) for the purpose of recording persons entitled to receive prescribed information under section 30A of the Corrections Act.¹¹⁶ The prescribed information includes the following:

- ▷ the length of an offender's prison sentence
- ▷ any changes to an offender's prison sentence
- ▷ whether an offender has escaped or died
- ▷ an offender's parole status.¹¹⁷

Victims Support Agency staff may share this information with registered victims, for example, where an offender is close to his or her release date (whether on parole or at the end of sentence).¹¹⁸ A person must, however, apply to be listed on the Victims Register: there is no automatic process of registration following the commission of a criminal act against a person.¹¹⁹

Prisoner release information

The Commission was also told that Corrections Victoria and Victoria Police share information about prisoner releases in order to develop policing responses¹²⁰ and that the Department of Health and Human Services collects information about people receiving treatment under the Mental Health Act if that information demonstrates there is a serious and imminent threat to a victim's life, safety, health or welfare.¹²¹ Such information sharing occurs on a limited, case-by-case basis, rather than systematically or proactively.¹²²

Dr Melisa Wood, Senior Clinical & Forensic Psychologist at the Victorian Institute of Forensic Mental Health (Forensicare), told the Commission that when information is shared it is not always accurate:

Information sharing between police and corrections also requires improvement, as there is a limitation on the amount of accurate information the police or the family violence teams can obtain from corrections in terms of when a perpetrator is released from prison. A list is circulated by corrections listing which perpetrators will be released per week or per month, but a specific release date is not provided. This can cause unnecessary stress and anxiety for the victim of the prisoner who is due to be released. There must be improvement in the provision of information from corrections to family violence services regarding when the associated offender is released, so that appropriate victim safety planning can occur.¹²³

Information sharing with the Magistrates' Court

The Commission heard evidence that information sharing within the Magistrates' Court and between the Magistrates' Court and other organisations in the family violence system is limited, and that information is not shared routinely or systematically.¹²⁴ Particular issues relating to information-sharing practices and courts are discussed in greater detail in Chapter 16.

Challenges around information sharing

The University of New South Wales Social Policy Research Centre notes in a recent report:

There are a number of interrelated factors that affect information sharing between organisations, including: individual agency interpretations of policy documents and legislation; governance structures; technical factors such as compatibility of computer systems; training and support; organisational structure and culture; trust, rewards, incentives and other social factors; and individuals' beliefs about information sharing.¹²⁵

Evidence before the Commission showed that the reasons for the lack of information sharing are complex and overlapping, but three important themes did emerge:

- ▶ the fact that legislation and policy governing information sharing are complex, confusing and restrictive
- ▶ the lack of an information-sharing culture and leadership
- ▶ reliance on outdated IT systems, which impedes information sharing.

Complex, confusing and restrictive legislation and policy

At present, there is no legislation that specifically authorises information sharing in the context of family violence.¹²⁶ As a result, organisations must navigate the various pieces of legislation and policy described in this chapter each time they wish to or are asked to share information.¹²⁷ The Commission received evidence from a range of sources that Victoria's legislative framework creates serious barriers to information sharing in the context of family violence.¹²⁸

The complexity of the legislative and policy framework can result in confusion and a risk-averse approach to sharing information. The Commission heard that members of Victoria Police are required to unpack issues and navigate their way through a complex set of statutory provisions, standards and guidelines that apply differently to different requests for information. The Commission was told that while members of Victoria Police receive training on information sharing, it is unnecessarily onerous to require police members to have this level of expertise and is not conducive to effective and timely information sharing. It may also lead to unnecessary caution:

Coupled with the extremely complex system of governance in relation to information sharing, this may lead to an overly cautious approach being taken to information sharing by police members.¹²⁹

Women's Health West Inc submitted that specialist family violence workers struggle when deciding whether information sharing is appropriate.¹³⁰ Domestic Violence Victoria also noted, 'There is currently some confusion and misunderstanding among the sector about what information can be shared between police, family violence agencies, child protection and Child FIRST.'¹³¹

The multiple and varying memorandums of understanding, policy documents and guidance materials (as discussed) add to the complexity when determining whether to share information between organisations. One organisation might be able to disclose the information, but the other might not be able to collect it, or vice versa. The Code of Practice for Specialist Family Violence Services for Women and Children, an example of such guidance material, expects front-line workers to have copies of various pieces of legislation accessible to them, something that directly conflicts with the view that 'service delivery workers should not have to be lawyers'.¹³²

The Commission heard that in the context of family violence, obtaining consent to share information does not present a simple answer to this complexity since seeking consent from a perpetrator is often unsafe or not feasible.¹³³ Obtaining a victim's express or implied consent or obtaining accurate and complete information from them can also be difficult because their contact with organisations often occurs at a time of acute stress.¹³⁴ Further, consent must be free, informed and tailored to the particular disclosure: it might not be appropriate, for example, to have a client sign one consent form for all services. Additionally, ensuring that consent remains current can be difficult to manage.¹³⁵

The Commission was told that the legislative context creates a barrier to information sharing because it is ill-suited to family violence risk assessment and risk management across the spectrum of risk, from the highest risk cases to those of low risk.¹³⁶ It was said that cases meeting the serious and imminent threat threshold are more straightforward in terms of information sharing, yet information privacy and confidentiality and secrecy legislation still creates complications.¹³⁷ These complications are apparent in the roll-out of the risk assessment and management panels (RAMPs). Risk assessment and management panels are discussed in detail in Chapter 6.

Case study: legislative barriers to the roll-out of RAMPs

RAMPs provide a coordinated, multi-agency risk approach and case management service to women and children at imminent risk of serious injury or death from family violence. Key agencies are brought together through monthly, or extraordinary, meetings of senior staff from the partner agencies involved. RAMP members share information, assess the level of risk for referred cases, and coordinate risk management action plans.

As noted in Chapter 6, expansion of the RAMPs beyond the initial pilot sites was announced in the May 2014 State Budget and the statewide roll-out of the program was announced in October 2014.¹³⁸ Ms Bernadette McCartney, chairperson of the Geelong RAMP, told the Commission about the benefits and importance of information sharing at RAMP meetings during the pilot phase.¹³⁹

During the public hearings the Commission heard evidence that privacy concerns had delayed the roll-out of RAMPs across the state. Professor Cathy Humphreys, Professor of Social Work at the University of Melbourne, said:

I think that in Victoria at the moment we have a situation that's highly dangerous because, whereas we were making progress in the two demonstration site risk assessment panels, now that the Privacy Commissioner has got in there to have a look at this they have decided that that level of information sharing is problematic. It may be because we are trying to bring in different people as core partners to the risk assessment panel; I'm not sure. But certainly the messages that have gone out to the sector at the moment are that, where there was sharing of information, they are now stopping it. That's highly dangerous. I think it's very problematic, the situation we are in at the moment, and it's also stopped the development of the RAMPs at the moment.¹⁴⁰

The Commissioner for Privacy and Data Protection denied that his office was the source of any delay and said he had not taken any action to inhibit information sharing in such programs.¹⁴¹

It is evident that the Department of Health and Human Services has concerns about the RAMP program breaching the information privacy legislation and other confidentiality and secrecy provisions. Mr Widmer explained that, although information sharing at a RAMP is based on consent (where possible) and the serious and imminent threat exemption, the model does have limits.¹⁴²

A significant restriction on the operation of RAMPs is that agencies at RAMP meetings are currently unable to record information about a perpetrator's criminal history without the perpetrator's consent. The Commission notes that in some cases, Information Privacy Principle 10 permits the collection of 'sensitive information' (including criminal records) without consent, including where the collection is necessary to prevent or lessen a serious and imminent threat to life or health in circumstances where the individual concerned is incapable of giving consent.

Given that RAMPS rely on the serious and imminent threat exemption, information that is not strictly relevant to preventing or lessening the threat but that could nonetheless be relevant for appropriate responses would not fall within the exemption and cannot be shared. Further, if the RAMP meeting actually achieves its objective of mitigating the risk, the information might not be within the exemption threshold such that information sharing must cease. As a result, once a case is referred, RAMP partners must constantly monitor risk levels in relation to information privacy and other legislation.

While all RAMP meetings involve multilateral information sharing, the information privacy legislation is drafted with a focus on bilateral information sharing. Further, restrictions can differ depending on who is disclosing the information to whom, as the agencies may be subject to different IPPs, HPPs and secrecy and confidentiality provisions in different pieces of legislation, depending on their function and purpose. This adds to confusion about what can be discussed and recorded at a RAMP meeting.¹⁴³

Other barriers identified by the Department of Health and Human Services and the Privacy and Data Protection Commissioner include:

- ▶ Organisations that collect personal information from individuals are required to inform them of certain things, including to whom the organisation usually discloses such information.¹⁴⁴ This would include disclosure at a RAMP meeting. Victims of family violence may be deterred from seeking out services in circumstances where they fear that the information could become known to the perpetrator.
- ▶ Organisations that collect personal information about an individual from someone else must take reasonable steps to inform the individual, among other things, of the purpose for which the information is collected, other than in circumstances when this would pose a serious threat to the health or safety of any individual.¹⁴⁵ There is a risk that representatives of organisations attending a RAMP meeting could rely on this serious threat exception in error. There might also be concerns associated with collecting third-party information tied to a RAMP case—for example, information about a victim's parents, neighbours or new partner, who would not be given notice about such collection.
- ▶ People attending RAMP meetings might also rely on the serious and imminent threat exemption in error, which would make information sharing unlawful.
- ▶ Organisations may use or disclose personal information in circumstances where the organisation reasonably believes that this is necessary to lessen or prevent a serious and imminent threat to an individual's health or safety.¹⁴⁶ However, more stringent requirements are imposed on certain specified groups of people, including Corrections Victoria staff, as information can only be used or disclosed where there is an actual imminent threat, rather than a reasonable belief that there is a threat.¹⁴⁷

In view of these barriers, the Department of Health and Human Services informed the Commission during the hearings that it had undertaken to apply for an information usage arrangement, or IUA, from the Commissioner for Privacy and Data Protection, that will permit departures from the IPPs and other 'information handling' provisions.¹⁴⁸

Information usage arrangements

An IUA is an arrangement that allows for a modification of, or exemption from, an Information Privacy Principle (other than IPP 4 or 6). The IUA may also permit handling of personal information as permitted or required by law or under another Act.¹⁴⁹ An IUA must include detailed information about, among other things, the parties to the arrangement, the information to be handled under the arrangement, how the arrangement will facilitate the public purpose, and the actions a party or organisation may take under the arrangement.¹⁵⁰

Seeking approval for an IUA is a two-stage process. First, a lead party (which, in the case of RAMPs, is the Department of Health and Human Services) must submit the IUA to the Commissioner for Privacy and Data Protection. The commissioner must consider the public interest in the proposal and prepare a report for the relevant minister or ministers against defined public interest tests (set out in the Privacy and Data Protection Act) and, where appropriate, certify that those tests are met.¹⁵¹ Second, the relevant minister or ministers may approve the IUA after receiving the commissioner's certificate.¹⁵²

On 24 December 2015, the Department of Health and Human Services submitted an IUA to the Commissioner for Privacy and Data Protection for approval.¹⁵³ Although there is no formally established procedure for applying for an IUA, the Commissioner for Privacy and Data Protection required the department to complete a privacy impact assessment and a human rights impact assessment of the RAMP program as part of the application.¹⁵⁴ The Commission notes that the IUA application process for RAMPs has entailed extensive legal advice and correspondence with the Commissioner for Privacy and Data Protection. Further advice, consultation and reporting will also be needed in order to receive ministerial approval.

If executed, the RAMP IUA will be the first of its kind in Victoria.¹⁵⁵

Beyond the highest risk cases, such as those dealt with by RAMPs, the difficulties posed by the legislative framework for information sharing become even more complex. In these cases it is almost always unclear whether decision makers can rely on the serious and imminent threat exemption. In relation to the exemption, Mr Widmer explained:

... many family violence cases will not meet this threshold. This is because requiring the threat to be both 'serious' and 'imminent' sets a high bar. In particular, whether a threat is 'imminent' can be uncertain and difficult to establish in the dynamic context of family violence. In addition, while the evidence of 'imminence' may be unclear, the threat can nevertheless be serious and a victim placed at real risk.

Mr Widmer told the Commission that this high bar may prevent information sharing that would facilitate early intervention in family violence situations, as risks cannot be identified and appropriate service responses implemented until the threat becomes imminent. It is also difficult for practitioners to establish whether there is a 'serious and imminent threat' without relevant information about the perpetrator.¹⁵⁶

Assistant Commissioner Steendam and Senior Sergeant Howard also highlighted the problem:

Outside of high risk cases ... a grey area arises regarding risk assessment and risk management. The initial assessment of risk may require information sharing before a serious or imminent threat can be established; effective risk management may require information sharing in cases where the risk to a person does not constitute a serious or imminent threat on the basis of the available information; and the degree and imminence of a person's risk of family violence is also dynamic.¹⁵⁷

Assistant Commissioner Steendam elaborated on this during the Commission's public hearings, noting that in circumstances of ambiguity many members of the police will not disclose information, including because of requirements in the Victoria Police Act relating to information sharing and the disciplinary consequences that can be imposed for breaches of this Act.¹⁵⁸

The Commission notes that the interplay between the serious and imminent threat exemption and subject-specific confidentiality or secrecy provisions poses difficulties for a number of agencies and individuals, among them corrections, mental health practitioners, and child protection.¹⁵⁹ In relation to Child Protection, the Commission heard that 'the complexity of information sharing provisions in the [Children, Youth and Families Act] can lead to confusion and difficulty for practitioners in complying with the legislation'.¹⁶⁰ Specifically, the Commission heard that secrecy and confidentiality provisions, including relating to the content of protective intervener reports,¹⁶¹ may mean that Child Protection does not disclose information which may be relevant for risk assessment to specialist family violence agencies or other relevant organisations.¹⁶²

In summary, the Commission heard that the current legislative and policy framework in Victoria presents serious challenges for the efficient, effective and timely sharing of information in connection with family violence.

Lack of proactive information sharing

The Commissioner for Privacy and Data Protection advised the Commission that merely removing perceived barriers will not ensure that information will be shared:

In short, my experience is that there are many reasons why individuals refrain from sharing information. These include:

- a general reluctance to share information;
- an overly legalistic approach to information sharing;
- professional or ethical obligations of confidentiality; and
- concerns about sharing information in breach of their legislative obligations.

A culture of information sharing requires a willingness by public sector organisations to engage for a common purpose.¹⁶³

He went on to say:

One of the things that I have noticed as a privacy adviser, as a lawyer in departments, but also as Commissioner, is how different perspectives of risk within the public sector can just simply stop information sharing taking place and positions become entrenched, incredibly difficult to unravel.¹⁶⁴

The University of New South Wales Social Policy Research Centre's recent literature review identified a number of organisational factors that can inhibit or enable information sharing.¹⁶⁵ These are summarised in Table 7.3.

Table 7.3 Organisational barriers to and enablers of information sharing

| Enablers | Barriers |
|--|---|
| Agreement on aims and agendas between organisations | Differing aims, values, agendas and goals |
| Senior leadership actively promoting organisational coordination and information sharing | Lack of clarity about decision-making authority within agencies for information sharing |
| Workforce development that includes training in when to share information, that redresses barriers and concerns, and that develops shared understanding of basic assumptions, expectations, terms and concepts | Lack of clear policies or protocols for sharing information with others |
| Efforts to develop the trust and knowledge of other organisations | Mistrust between organisational groups or organisations |
| Adequate protections for personal data, leading to increased trust | Lack of knowledge and understanding about the interventions provided by other agencies (and thus with whom information should be shared) |
| Staff having a clear understanding of the benefits of information sharing | Perceptions that information sharing is difficult and time-consuming because of unfamiliarity with legislation and protocols for information exchange |
| Organisational structures where responsibilities for information exchange are clear and where there are structured links with other organisations | Organisational self-interest, resulting in an aversion to information sharing |

Source: Based on Michael Keeley et al, 'Opportunities for Information Sharing: Case Studies' (Social Policy Research Centre, 2015).

The Commission heard that there is a general culture of risk aversion rather than proactive and coordinated information sharing, throughout the family violence system. Pockets of good practice, based on local relationships, do occur, but no overall authorising environment exists and there is a lack of leadership specifically related to information sharing. For example, Mr Widmer stated:

... anecdotally this Commission has heard lots of evidence of people acting in a risk averse way where they are unsure of whether they should or can share information, [and] may choose not to, in order to be risk averse ...¹⁶⁶

The Privacy and Data Protection Commissioner submitted:

... our experience is that many Victorian public sector organisations have failed to properly operationalise their privacy, or other information obligations, including record-keeping obligations. Sometimes, this is attributable to them taking an excessively legalistic and risk-averse approach to information obligations. High quality service responses to family violence issues need to be supported by high quality information sharing process and procedure, training and support so that front line workers can make decisions confidently and consistently.¹⁶⁷

Assistant Commissioner Steendam and Senior Sergeant Howard informed the Commission that major practical and cultural barriers to information sharing exist throughout the entire family violence system.¹⁶⁸ Similarly, the Maternal Child Health Nurse Network identified cultural barriers, stating there is a reluctance to share information between agencies that could help prevent violence, something that is a source of increasing frustration for MCH nurses.¹⁶⁹

Quantum Support Services Inc. submitted that:

... the implementation of privacy legislation has resulted in some organisations and government departments not appropriately sharing information and coordinating with others in the sector through fear of breaching their obligations.¹⁷⁰

Bethany Community Support highlighted the need for greater guidance on permitted information sharing, along with the potential for legislative change to prompt practice changes:

One of the key barriers that Bethany sees in relation to information sharing is a general lack of understanding about what information can or cannot be shared. There is a sense that people working across agencies may be afraid of crossing boundaries when it comes to the sharing of information. There is a need for all those working across the family violence system to have clear guidelines around when, how and why information should be shared and the importance of confidentiality and privacy ...¹⁷¹

With the exception of the statewide roll-out of RAMPs (which is yet to occur), the Commission is not aware of the existence of any formal whole-of-government leadership or governance arrangements focusing on improving information sharing in the family violence context.

The Privacy and Data Protection Commissioner explained some of his recent efforts to provide leadership in connection with information sharing more generally, targeting senior levels of the public sector:

I have jointly convened with deputy secretary levels an information sharing forum to address at a senior level what the information sharing barriers are across government. So that consists of DPC ... DJR, DHHS, Education, and that's the core group at the moment ...¹⁷²

I found it surprising in Victoria the extent to which at senior levels people actually don't really know what the right approach is, how to go about doing it. So we have written to Secretaries saying, 'Would you support us developing a curriculum and delivering an executive series of master classes on information sharing?'¹⁷³

The Commissioner is in the process of developing guidelines for sharing personal information that provide guidance on 'how to work with privacy to achieve good information outcomes'.¹⁷⁴ He also commented on information sharing at the point of service delivery:

... much needs to be done to ensure that the information sharing needs of frontline service delivery workers are clarified and simplified. This needs to occur *before* an emergency arises through the operationalisation of information sharing procedures—through, for example, training and standard operating procedures. Service delivery workers should not have to be lawyers.¹⁷⁵

Outdated and ineffective information technology systems

In addition to legislation, policy and organisational factors, IT systems have an important role in enabling or inhibiting information sharing. Almost all submissions and witnesses who gave evidence about IT in the context of family violence acknowledged that the current arrangements present major barriers to information sharing.

The current landscape

The University of New South Wales Social Policy Research Centre states in its recent report:

Within the literature a number of technological barriers to information sharing were identified. It should be noted that information technology is rapidly evolving and recent developments such as 'cloud computing' have greatly improved the ability to transfer information across systems and to ensure the safety of information. Nevertheless, the literature indicates that factors such as incompatibility of databases and mismatched data structures can create practical barriers, which make information sharing cumbersome and challenging in some circumstances.¹⁷⁶

There is no single family violence database or information systems interface in Victoria. Instead, multiple platforms are used by various organisations in the family violence system—for example, Victoria Police,¹⁷⁷ the Magistrates' Court of Victoria,¹⁷⁸ and Corrections Victoria¹⁷⁹ use separate systems. The Department of Health and Human Services also uses multiple systems and databases.¹⁸⁰

Mr Widmer explained:

Information technology systems and databases in health and human services have largely developed over time to support particular services, in line with the way departmental structures have developed to mirror the programmatic focus of enabling legislation. This has resulted in the development of numerous and separate client information systems. There are currently at least 14 discrete systems that record and store client information, collate data or provide information on targets and services across the human services output groups. In addition, relevant records may be kept in at least 12 related health information systems ... For example, child protection, Child FIRST/Family services, family violence, housing, homelessness, mental health, alcohol and drug, disability, hospitals each have separate databases. Additional systems operate in the funded non-government sector, often as case management systems.¹⁸¹

The Commission was told that the use of multiple systems means it is not possible or practicable to track a particular victim or perpetrator throughout the family violence system since the IT systems are incapable of 'talking' to each other:

... there is limited transferability of information between [Department of Health and Human Services IT systems]. As previously discussed, workers need to navigate systems that do not talk to each other by transmitting information to support clients via manual arrangements. This inhibits information sharing across services that can assist in assessing and managing the risk of family violence to women and children.

These limitations also affect case management to assist women and children to recover from family violence, and to rehabilitate men who use violence. This can:

- prevent workers from identifying and addressing the full range of an individual's or family's needs;
- inhibit the development of complete, accurate, and timely plans and service responses for individuals or families; and
- mean that the onus is on clients to navigate from service to service, sometimes telling their stories multiple times. This places further pressure on individuals and families, and time is wasted gathering information that already exists in separate client information systems. Individuals can have records in multiple systems, as well as multiple records within ... one system.¹⁸²

Specialist family violence services Bethany Community Support and Women's Health West Inc. explained that this situation forces them to double-handle information and prevents them from collating and sharing information effectively:

... Bethany currently uses two different client data management systems (IRIS and SHIP) in its work with men, women and children experiencing family violence. These systems do not link with other data management systems in use by other agencies, such as Victoria Police's LEAP database or the Courtlink case management system used by Victorian Courts. Without linkages or communication between these systems, we rely solely on the expressed communication between systems and [this] is highly subject to human error.¹⁸³

Effective integration and coordination 'on the ground' is supported by data systems that can hold the information needed for a family violence response in readily accessible places. Currently, specialist family violence services such as those provided by WHW are required to report against multiple data systems, which means information is often stored in different places and/or double handled. Basic collation of data is challenging; for example, police referrals must be counted by hand as the SHIP system does not allow collation. This runs counter to effective integration and coordination.¹⁸⁴

Mr Widmer noted that, 'in light of the disparate information technology systems, information sharing currently occurs through manual arrangements, with limited information sharing electronically'.¹⁸⁵ The Commission was also told of multiple examples of entering, retrieving and sharing information in or from different systems manually or inefficiently.

For example, organisations funded by the Department of Health and Human Services under the housing assistance output group use the SHIP (Specialist Homelessness Information Platform) system, whereas services funded by the child protection and family services output group use IRIS (Integrated Report and Information System). Where funding is provided under both streams, specialist family violence services are required to manually enter information into both databases; for example, a specialist family violence service may be required to use SHIP for its refuge service and IRIS for its family violence counselling services.¹⁸⁶

The Commission was also told that courts are unable to share information automatically. Magistrates Toohey and Hawkins provided evidence about the manual processes required in order to obtain information during intervention order hearings. Unless registrars or bench clerks search different databases and then physically hand the magistrate copies of related court documents, magistrates are unable to see whether there are concurrent criminal proceedings, previous family violence intervention orders, child protection orders or family law orders.¹⁸⁷ Such difficulties are discussed in Chapters 11 and 16.

The Commission also heard that '... there are currently no automated systems for the sharing of family violence information between Corrections and other agencies'.¹⁸⁸ As a result, Corrections Victoria has come to an arrangement with Victoria Police whereby Corrections Intelligence Unit staff manually examine individual prisoner or offender records in LEAP (the Victoria Police database) and conduct searches to determine whether a prisoner or offender is subject to or the victim of a current family violence intervention order, or whether they have been the victim or perpetrator in one or more historical intervention orders. This arrangement poses significant resourcing problems.¹⁸⁹

The inability to transmit information securely between agencies funded by the Department of Health and Human Services, Victoria Police and Corrections Victoria was emphasised by a number of witnesses. Mr Widmer explained, 'A key example of this is that police referrals, or L17 forms, are still faxed to family violence agencies'.¹⁹⁰ Assistant Commissioner Steendam and Senior Sergeant Howard explained that this is because of information privacy law and outdated IT systems on the part of some agencies:

L 17 reports are faxed to the referral organisations. The L 17 report is a digital form. Victoria Police's IT systems allow email transmission of the L 17 report. However, the SLEDS require that email transmission of law enforcement data, which the L 17 reports contain, is subject to suitable levels of encryption. Referral agencies on the Victoria Government Global Address List, such as the Victims Support Agency, have the capacity to receive encrypted emails. However, other referral agencies, funded by but not a part of government do not. In these circumstances Victoria Police must, in order to remain SLEDS compliant, revert to an alternative immediate transmissions system—digital facsimile.¹⁹¹

Assistant Commissioner Steendam elaborated on this during public hearings, explaining that in some cases Victoria Police must inspect family violence services or seek letters of attestation to ensure that their IT systems meet the appropriate encryption and data protection standards.¹⁹²

In its submission the Magistrates' Court of Victoria highlighted the importance of information sharing in the context of family violence, while noting the current technological limitations that inhibit this from occurring:

An effective, integrated family violence system must be built around timely, appropriate information and data sharing across agencies, if decision making is to be properly informed and evidence based. Specifically, in relation to family violence, if the inherent risks associated with these matters [are] to be properly assessed and managed then it is critical that there be effective communication across involved agencies, including courts ...

The capacity to share appropriate information quickly and securely across courts, police, and family violence legal and support services is a critical prerequisite for any systemic reform aimed at improving the efficiency and responsiveness of the court's approach to meeting the needs of families experiencing family violence.

Currently, even if the requisite legislative frameworks were in place to facilitate comprehensive information and data sharing across jurisdictions and agencies, the case management systems of [the Magistrates' Court of Victoria and the Children's Court of Victoria] do not have adequate functionality to support this aim.¹⁹³

Courtlink was first implemented in Victorian courts in the 1980s and is the main IT system used to hold information about court matters, including parties' details and hearing dates. During the public hearings the anachronistic nature of Courtlink was the subject of frequent comment.¹⁹⁴

The Commission notes that at present there is no effective way of using IT systems to identify recidivist perpetrators of family violence.¹⁹⁵

Current initiatives

The Commission was told of a number of initiatives that have occurred recently or are under way aimed at improving information technology in the family violence system. These include the following:

- ▶ The LEAP Electronic Direct Reporting Mk 2 (LEDR Mk 2) has been rolled out, which enables police to complete L17 forms electronically, automatically entering relevant information into LEAP and transmitting formal referrals to relevant support agencies—albeit largely by way of facsimile. Previously, L17 forms were filled out in hard copy and faxed to both the relevant support service and the Victoria Police Central Data Entry Bureau for entry into LEAP.¹⁹⁶
- ▶ Courtlink now interfaces directly with LEAP to enable family violence intervention order information to be accurately sent between the two organisations.¹⁹⁷
- ▶ Victoria Police is progressing the Policing Information Process and Practice Reform Program, with the dual focus of maintaining the performance of core information systems while planning for longer term reforms to IT systems.¹⁹⁸ This program is discussed in Chapter 15.

In relation to the Department of Health and Human Services, Mr Widmer said that work is under way to integrate the department's numerous IT systems:

We have been doing some exploration for some time now, and this is ongoing at the moment, in working out how we are able to get our systems to talk to each other, so looking at where there are opportunities for a software mechanism to sit over the top of databases with a set of permissions so that, if you log in as a worker, whether you are a disability worker or a child protection worker, you have permissions set around your access and that we seek to work out how we can get you access to the other information that sits around a client, where that's appropriate, where it's lawful and where that's relevant. That's ongoing work and that's certainly one of the avenues that we are pursuing at the moment.¹⁹⁹

The Magistrates' Court of Victoria and Children's Court of Victoria also identified current and planned work aimed at modernising their IT platforms:

In the short term, MCV and CCV are undertaking work to stabilise Courtlink, and create basic functionality that will enable e-services such as electronic document lodgement and increased automation and digitisation of current paper based and manual processing functions.

In the longer term, MCV and CCV will pursue partnerships to secure investment in the budget process for a case management system that will fundamentally re-shape the way in which IT can support a modern court and client service delivery model, enable fast and accurate information sharing between jurisdictions and justice agencies and ... unlock human capital from the delivery of manual administrative tasks to high value client based services and support. Government investment will be critical to achieving outcomes in this area.²⁰⁰

Mr Reaper told the Commission that work is under way to integrate key Corrections Victoria IT systems, including connectivity with other Justice portfolio entities:

We are currently certainly under active consideration of the development of a single database or IT system for all of the Corrections information, whether that would be a system that replaces all of our existing IT systems or certainly is able to connect them better and just replace those that are most aged is the work that is underway ... As we move forward, whatever we develop will be done being mindful of its ability to connect at the very least to our Justice entities going forward.²⁰¹

Ms Marisa De Cicco, Deputy Secretary, Criminal Justice Division, the Department of Justice and Regulation, gave evidence about work in progress to better integrate critical IT systems throughout the Justice portfolio, with a focus on improving information flow and exchange between Victoria Police, the Magistrates' Court of Victoria and Corrections Victoria, without necessarily waiting to renew legacy case-management systems:

What we are trying to do in the scoping of this particular project is to try and identify systems that can be used with a multiplicity of existing potentially quite out of date systems that can mine data from those systems to form some sort of comprehensive view of a particular family circumstance ...²⁰²

We are mindful that the development of systems that are end to end or that capture a whole range of data through, I suppose, created interfaces [is] very problematic. They are generally expensive, they take a long time to develop and in many respects you don't know until you are quite close to the end as to whether or not they will work.²⁰³

So we tried with this one to see if there weren't off-the-shelf systems that could be customised to actually mine the data. There are many that have been developed in the US. We are mindful of some of our law enforcement Commonwealth agencies that use similar sorts of systems to do intel and other sort of allied work. So we are hopeful that the market will be able to bring forward a solution that can be implemented in a timely fashion and that won't require years and years of product development.²⁰⁴

It is anticipated that the project will be completed by December 2016.²⁰⁵

In summary, the Commission heard that the primary organisations in the family violence system see IT system reform as a priority, as well as a major challenge. At present there is no way to track a particular victim or perpetrator through the system, provide feedback on the results of a referral or identify recidivist perpetrators. Similarly, opportunities for automated and proactive information sharing are limited. The consequences of inadequate IT systems are discussed further in the following section.

Proposals for reform

The Commission received evidence about using existing mechanisms or enacting reforms to Victorian legislation in order to remove barriers to information sharing in the family violence system. For example, Domestic Violence Victoria said:

Legislative change to exclude family violence where there is a risk of serious and imminent harm, and family violence exemptions across professional codes of practice, protocols and practice frameworks [are] urgently needed.²⁰⁶

Broadly, there are three options for dealing with information-sharing barriers: use the existing mechanisms under Victorian law; amend Victoria's information privacy legislation (the Privacy and Data Protection Act and the Health Records Act) to facilitate information sharing in the context of family violence; or create a new information-sharing regime based on approaches in other jurisdictions. In this section some of the suggested options are discussed.

Using existing mechanisms under Victorian law

As outlined above, the Department of Health and Human Services is seeking an information usage arrangement, or IUA, for the RAMP program. One possible reform option would be to implement IUAs for different programs throughout the family violence system. The Commissioner for Privacy and Data Protection observed, however, that there are problems both with implementing separate IUAs for different programs across the family violence system and with implementing one IUA for the entire system.²⁰⁷

The Commissioner noted that it is neither feasible nor desirable to conduct separate privacy impact assessments nor to have separate IUA applications across the many different family violence programs. To the extent possible there should be a single privacy impact assessment conducted across the whole of the system.²⁰⁸ On the other hand, the Commissioner acknowledged that having one IUA to cover the entire family violence system may be inappropriate given the number of participants in the family violence system: 'where too many parties are involved, IUAs can become unwieldy'.²⁰⁹

The Privacy and Data Protection Commissioner suggested that an alternative might be a sector-wide code of practice under the Privacy and Data Protection Act.²¹⁰ At present, however, codes of practice cannot reduce the minimum protections provided by the Information Privacy Principles; the Privacy and Data Protection Act would need to be amended to allow codes of practice to modify the IPPs.²¹¹ Even if such amendments were made, a code of practice would not apply to the Health Records Act or other subject-specific secrecy and confidentiality provisions. Further, the development of a code of practice would be an enormously time-consuming task.

Amending Victorian information privacy legislation

Submissions and witnesses suggested that Victoria's information privacy legislation be amended to enable information sharing throughout the family violence system.²¹²

The Commission heard evidence about removing the word 'imminent' from the serious and imminent threat test in the Privacy and Data Protection Act and the Health Records Act. The Commissioner for Privacy and Data Protection supports this idea:

I would support removing the word 'imminent'. That's what happened in New Zealand when they were faced with similar issues in relation to family violence, the difficulty I think that people had in working out what 'imminent' meant ...²¹³

Such an approach was also supported by the Australian and New South Wales Law Reform Commissions in *Family Violence—a National Legal Response* and subsequently enacted in the Australian Privacy Principles.²¹⁴

The Australian Law Reform Commission and New South Wales Law Reform Commission also made the following recommendations in that report:

Recommendation 30–11 State and territory family violence legislation should expressly authorise the use or disclosure of personal information for the purpose of ensuring the safety of a victim of family violence or an affected child.

Recommendation 30–13 State and territory family violence legislation and child protection legislation should expressly provide for information sharing among specified agencies in specified circumstances, and should include provision to allow information to be shared with specified private sector organisations.²¹⁵

However, the Commission notes that the Commissioner for Privacy and Data Protection has raised concerns about 'any broadly-framed legislative exemption for information sharing for the purposes of identifying and responding to the risk of family violence'.²¹⁶

Legislation in other jurisdictions

The Commission was referred to legislation in other jurisdictions that specifically authorises, or has been used to authorise, information sharing in the context of family violence.²¹⁷ Table 7.4 summarises several of the provisions the Commission considered.

Table 7.4 Family violence information-sharing legislation in other jurisdictions

| Jurisdiction | Legislation | Description |
|------------------------------|--|--|
| Australian Capital Territory | s 18 <i>Domestic Violence Agencies Act 1986</i> | This section provides for a police officer or a staff member of the Australian Federal Police to disclose information to an approved crisis support organisation for the purpose of rendering assistance to victims of family violence or their children. |
| New South Wales | Part 13A <i>Crimes (Domestic and Personal Violence) Act 2007</i> | This part establishes an information-sharing regime for family violence. It specifically overrides NSW information privacy legislation by authorising the disclosure of personal information and health information relating to both victims and perpetrators of family violence. Because the information-sharing regime integrates with the NSW Safer Pathway reforms, information can be shared with a central referral point (to electronically manage and monitor family violence referrals) and a statewide network of local coordination points (non-government family violence services). Most information sharing requires the consent of the victim but not the consent of the perpetrator or alleged perpetrator. In situations of serious threat, the consent of the victim can be overridden. The legislation also expressly prevents perpetrators from gaining access to information collected about them under the regime. |
| | Chapter 16A <i>Children and Young Persons (Care and Protection) Act 1998</i> | This chapter establishes an information sharing regime to facilitate the provision of services to children and young persons by agencies that have responsibilities relating to their safety, welfare or wellbeing. The chapter authorises those agencies to share information and requires them to take reasonable steps to coordinate their services. The regime applies to certain prescribed bodies and provides protection from civil or criminal liability for persons, acting in good faith, who provide information in accordance with the legislation. Other laws prohibiting or restricting the disclosure of information are expressly overridden so as not to operate to prevent information sharing under the regime. |
| Tasmania | s 37 <i>Family Violence Act 2004</i> | This section provides that 'a personal information custodian, within the meaning of the <i>Personal Information Protection Act 2004</i> , acting in good faith, does not commit a breach of that Act by reason only of collecting, using, disclosing or otherwise dealing with personal information for the purpose of furthering the objects of this Act'. The effect of this provision is to override Tasmania's information privacy legislation where information is shared, in good faith, to further the 'safety, psychological wellbeing and interests of people affected by family violence'. |

| Jurisdiction | Legislation | Description |
|--------------------|--|---|
| Western Australia | S 70A <i>Restraining Orders Act 1997</i> and r 15 <i>Restraining Orders Regulations 1997</i> | <p>This section provides for the exchange of 'prescribed information' between a limited number of 'interested parties' (government organisations). 'Prescribed information' is defined in regulations to mean:</p> <ul style="list-style-type: none"> ▶ the name, address, telephone number, age and ethnicity and other details of – ▶ the person or child; or ▶ a person who is bound by the violence restraining order; or ▶ an offender or alleged offender responsible for, or involved in, any offence relevant to the granting of the violence restraining order; ▶ a description of any offence relevant to the granting of the violence restraining order and an abridged description of the circumstances of its commission; ▶ any information about the grounds on which the violence restraining order was granted; ▶ the name, rank and any other relevant identifying information of any police officer in charge of investigating any offence relevant to the granting of the violence restraining order; ▶ the police station or office where information is held – ▶ about the investigation of any offence relevant to the granting of the violence restraining order or the breach of that order; or ▶ about the grounds on which the order was granted; ▶ the status of the investigation and prosecution of any offence relevant to the granting of the violence restraining order by a police officer. <p>An interested party may provide to another interested party prescribed information if the parties agree that the provision of such information is necessary to ensure the safety of a person protected by a violence restraining order or the wellbeing of a child affected by such an order. The information must be provided in confidence, and there are protections from exposure to civil or criminal liability, or professional standards if information is shared in accordance with the section.</p> |
| British Columbia | Ss 26(f) and 33.1(1)(m.1) <i>Freedom of Information and Protection of Privacy Act 1996</i> | These provisions specifically authorise public bodies to collect and disclose information if it is necessary for the purpose of 'reducing the risk that an individual will be a victim of domestic violence, if domestic violence is reasonably likely to occur'. The Act also enables public bodies to share personal information for delivering or evaluating a common or integrated program or activity such as those dealing with family violence. |
| New Zealand | Part 9A <i>Privacy Act 1993</i> | This part allows for the creation of an Approved Information Sharing Agreement similar to the information usage arrangement under the Privacy and Data Protection Act. The Commission considered the 'Information Sharing Agreement for Improving Public Services for Vulnerable Children' (dated 25 June 2015), which modifies relevant New Zealand privacy legislation. |
| The United Kingdom | <i>Data Protection Act 1998</i> | The Commission examined UK information-sharing arrangements such as Multi-Agency Safeguarding Hubs, or MASHs, which rely on specific statutory gateways in legislation. For example, some MASHs rely on the implied statutory gateway in section 11 of the <i>Children Act 2004</i> (UK), which obliges relevant agencies to ensure that their 'functions are discharged having regard to the need to safeguard and promote the welfare of children'. This duty is said to satisfy the condition in the Data Protection Act that states that information can be processed if 'the processing is necessary for the exercise of any functions conferred on any person by or under an enactment'. |

The Commission notes the recent finding of the University of New South Wales Social Policy Research Centre, referring to Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW), that: 'The introduction of specific legislative authority has clearly been helpful in the ongoing development of a culture of appropriate information sharing in NSW'.²¹⁸

The Commission also examined information-sharing arrangements in South Australia. South Australia does not have information privacy legislation equivalent to the Privacy and Data Protection Act or the Health Records Act. Instead, the South Australian Cabinet has issued an administrative instruction, requiring government agencies and contracted service providers to comply with a set of Information Privacy Principles.²¹⁹ Consistent with the administrative instruction, the South Australian Ombudsman has issued the Information Sharing Guidelines for Promoting Safety and Wellbeing, which 'provide [for] a consistent statewide approach to appropriate information sharing practice wherever there are threats to safety and wellbeing'.²²⁰ The guidelines are complementary to the Multi-Agency Protection Service (MAPs), discussed below.²²¹

The way forward

In the Commission's view, changes must be made to current information-sharing arrangements in order to ensure that victims and support organisations are aware of the actions of perpetrators of family violence. Evidence before the Commission consistently demonstrated that government agencies, specialist family violence services and others working to prevent family violence and support victims cannot adequately achieve their aims without sharing risk-related information about perpetrators. Improving information-sharing practices to focus on perpetrators is a vital next step in the development of Victoria's family violence system.

As Judge Gray stated, 'The fact is that the perpetrator ultimately controls the risks of family violence'.²²² Sharing necessary information about perpetrators—to keep them in view, engaged and accountable—will enhance victims' safety and help prevent family violence.

In this section the Commission sets out how it considers the barriers to information sharing in current legislation and policy, in organisational structures and cultures, and in IT systems might be overcome. The Victorian Government should accord the highest priority to removing the barriers identified in this chapter. Ultimately, we recommend that a new information-sharing regime be developed for the family violence system.

A new information-sharing regime

The various options

The Commission considered the existing mechanisms in the Privacy and Data Protection Act. We are of the view that none of these mechanisms offers a comprehensive answer to the information-sharing barriers described in this chapter. Apart from not applying to the Health Records Act or other secrecy and confidentiality provisions, the mechanisms are designed to allow information sharing to occur on discrete projects (for example, information collection or sharing by one or two organisations) rather than create systemic change.²²³

It is not acceptable that victims' safety and lives can be put at risk because of complex legislative provisions and confusing policies. The disappointing example of the extensive delay in rolling out the RAMPs to all of Victoria demonstrates that existing laws are not adequate.

As outlined above, the Commission heard evidence calling for the Privacy and Data Protection Act and Health Records Act to be amended to remove the requirement that a threat be imminent in order for an exemption to apply. However, we consider that this change alone would not remove all the barriers to information sharing (as demonstrated by the RAMP case study in this chapter) and nor would it necessarily overcome the complexity and confusion accompanying the current legislative framework.

We also contemplated recommending amendment of the Information Privacy Principles and Health Privacy Principles, as well as other secrecy and confidentiality provisions, to include specific family violence exemptions for the collection, use or disclosure of information. This approach is not appropriate, though: the IPPs and HPPs should retain, as far as possible, their general application. It would also require multiple amendments to multiple Acts containing secrecy and confidentiality provisions, which the Commission considers impractical and likely to lead to further confusion.

In the context of family violence it is vital that front-line workers can easily understand and implement best-practice information sharing. Amending default information privacy legislation and various secrecy and confidentiality provisions to include family violence is unlikely to provide the clear authority and reference point required to overcome the identified barriers to information sharing.

The Commission's preferred approach

On the basis of responses in Victoria (such as the information-sharing regime provided for in Part 3.2 of the Children, Youth and Families Act), and other jurisdictions such as New South Wales, Western Australia and South Australia, our preferred approach is to amend the Family Violence Protection Act to create a specific family violence information-sharing regime. This approach is preferable for a number of reasons:

- ▶ It will provide clear authority for organisations responding to family violence to share information.
- ▶ It will provide a single point of reference for the law relating to information sharing, cutting through the complexity of the current legislation and policy.
- ▶ It will offer a clear basis for workforce training and the development of protocols and procedures for putting the new regime into operation.
- ▶ It will enable professionals to confidently share information from other organisations and to take timely and decisive action to respond to family violence.
- ▶ It will probably take less time and involve less cost than preparing multiple information usage arrangements or a code of practice under the Privacy and Data Protection Act.

The Commission notes the recent finding of the University of New South Wales Social Policy Research Centre that, in the context of Chapter 16A of the NSW Children and Young Persons (Care and Protection) Act, the introduction of specific legislative authority was useful in developing a culture of appropriate information sharing. Our recommended information-sharing regime is partly modelled on Chapter 16A of the NSW Children and Young Persons (Care and Protection) Act, Part 13A of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) and Victoria's Children, Youth and Families Act. It is intended to be a comparable catalyst for change to information-sharing practice in Victoria.

The Commission also notes the recommendations of the Australian Law Reform Commission and New South Wales Law Reform Commission that support disclosure and sharing of personal information to ensure the safety of victims of family violence.²²⁴

While the Commission is alert to the concerns raised by the Commissioner for Privacy and Data Protection in relation to the operation of a broadly framed legislative exemption for information sharing,²²⁵ it makes this recommendation on the basis that information sharing will only be authorised when it is necessary for certain organisations to assess risk or to manage a risk to safety from family violence. We consider that the recommended regime strikes a suitable balance between information privacy rights and the need to keep victims safe.

The Commission is also mindful that Parliament will be required to consider the compatibility of the proposed new regime with the Charter of Human Rights and Responsibilities. In view of this, the new regime should be designed according to a number of guiding principles and should include specific design elements.

Guiding principles for legislative reform

In the Commission's view, the development of the new information-sharing regime should be guided by the following high-level principles:

- ▷ The legislation should be clear and succinct, so that it can be effectively applied by front-line workers.
- ▷ The balance between a victim's right to safety and a perpetrator's right to privacy should be recalibrated in the victim's favour.
- ▷ Notwithstanding this recalibration, the new regime should displace existing privacy protections only to the extent necessary and should also preserve victims' control over sharing their information.
- ▷ The potential for any unintended consequences—for example, concerning the willingness of victims to report family violence—should be given careful consideration.
- ▷ A broad range of interested parties—including the Commissioner for Privacy and Data Protection, government agencies, legal practitioners and the specialist family violence sector—should be consulted during development of the new regime to ensure that it is balanced, workable and effective.

Design elements

Although the final drafting of any legislative amendment is a matter for government, and ultimately Parliament, the Commission considers that the new regime should adhere to the following design elements, which are consistent with the guiding principles just listed.

Objective

The new information-sharing regime should have a clearly stated objective, which should be to support the intentions of the Family Violence Protection Act in two ways:

- ▷ by authorising specific organisations to share information when this is necessary for risk assessment or to protect safety
- ▷ by requiring these organisations to take reasonable steps to coordinate services and share information in accordance with the Family Violence Protection Act.²²⁶

Application

Prescribed organisations

The information-sharing provisions should apply to prescribed organisations that may provide services to victims of family violence or to perpetrators of such violence. Prescribing organisations by regulation will have several important effects:

- ▷ Organisations that can share information under the Family Violence Protection Act will be easily identifiable.
- ▷ Organisations can be added to or removed from the regime as necessary.
- ▷ Information sharing will be limited to a discrete number of organisations relevant to family violence.

The particular organisations to be prescribed should be determined by thorough analysis. The Commission considers, however, that they should be similar to the bodies currently able to share information under Part 3.2 of the Children, Youth and Families Act. These bodies include registered 'community services' such as homelessness, health care, aged care, disability, drug and alcohol and mental health services, as well as 'information holders', such as police officers, nurses, midwives, doctors and teachers.²²⁷

Broadly, community service organisations (including specialist family violence services, sexual assault services and other providers who come into contact with people experiencing family violence and who will need to assess family violence risks) should be prescribed organisations.

Each of the Support and Safety Hubs, Safe Steps Family Violence Response Centre, the Men's Referral Service and the Victims Support Agency should be prescribed organisations. Home and Community Care agencies and Aged Care Assessment Services are other bodies that could also be considered.

Additionally, relevant Commonwealth agencies should be prescribed, so that Victorian agencies can consult them. Because Victorian legislation cannot override Commonwealth legislation, however, it should be made clear that Commonwealth agencies are not required by Victorian law to share information.²²⁸

Courts

The Commission further considers that Victorian courts should also be prescribed organisations, to ensure that any actual or perceived legislative barriers that might exist to impair or constrain information sharing by the courts are overcome. Including courts as prescribed organisations will confirm the courts' ability to share information with another prescribed organisation (in accordance with the proposed new regime) without that organisation having to seek an order from the court to gain access to the information in question, as discussed in Chapter 16.

As part of this approach, changes will also be required to current court rules, practices and procedures to reflect their greater capacity to share information. While the courts are encouraged to actively share information to the greatest extent possible under this new regime, it will be important for courts to have an ability to refuse to share information in certain circumstances (for example, where it would prejudice an ongoing proceeding). This is discussed in greater detail below.

Individuals

Information sharing on family violence risk involves information about two main categories of people –people who are the victim of or are at risk of family violence (victims) and perpetrators.

To align with the current Family Violence Protection Act, the new information-sharing regime should authorise prescribed organisations to share information about a person who is protected by a family violence intervention order or a family violence safety notice ('protected persons') and individuals against whom such orders and notices have been issued. This provides an objective standard for engaging the regime and will allow prescribed organisations to clearly identify individuals named in such orders.

Not all victims of family violence will have family violence protection orders in operation, though: some victims will not have had contact with the police or the Magistrates' Court, and children might not be protected by orders or safety notices but might still be at risk of family violence. Information about these people will also need to be shared. The Commission therefore proposes that the new regime apply to any person a prescribed organisation reasonably believes is at risk of family violence ('person at risk'). Prescribed organisations should be able to share information about a person at risk and the person who is the source of the risk, in accordance with the new regime.

Part 13A of the NSW Crimes (Domestic and Personal Violence) Act uses the terms 'primary person' and 'associated respondent' to identify the individuals whose information may be shared. Adapting the definitions, the new regime should apply to the following individuals:

- ▶ a 'primary person'—meaning a protected person (as defined in the Family Violence Protection Act) or a person at risk
- ▶ an 'associated respondent'—meaning in relation to a protected person, the respondent (as defined in the Family Violence Protection Act, excluding subclause (a)(i) of the definition) and, in relation to a person at risk, the person who is the source of the risk.

The Commission considers that, in contrast with Part 13A of the New South Wales legislation, an application for a family violence intervention order should not automatically allow information about the parties to be shared. Before information can be shared, it is desirable that an order has been made or a safety notice has been issued or that a prescribed organisation reasonably believes there is a risk. This will prevent the regime from applying when there is a vexatious or frivolous application for an intervention order by a perpetrator of family violence. It is noted, however, that in cases where a genuine application has been made by a victim, the 'person at risk' test will most likely be satisfied.

The Commission emphasises that the new regime must also be capable of applying to information relating to multiple victims of the same perpetrator. For example, if an associated respondent has committed family violence against a person who is not the primary person (that is, they are a third party), information about that violence can be shared to protect the primary person. In most cases, however, the identity of the third party would not be shared with the primary person.

Information sharing under the new regime should also take into account situations where a victim (primary person) and perpetrator (associated respondent) have been incorrectly identified; where the perpetrator was previously the victim; or where both parties are or claim to be victims (for example, where two intervention orders are in operation). Responses to these situations need not be drafted into the Family Violence Protection Act, but they do need to be considered by prescribed organisations.

A requirement to respond to a request for information

When a prescribed organisation receives a request for information from another prescribed organisation, it should be required to comply with the request if it reasonably believes that the requested information should be disclosed under the relevant test. As discussed below, the test is whether an organisation reasonably believes that sharing the information is necessary to manage a risk to the safety of the primary person. If a prescribed organisation refuses to provide information in accordance with a request, it should provide written reasons for the refusal. A provision to this effect would send a clear message that Parliament intends that information be shared in the response to family violence.²²⁹

Such a requirement may play a clarifying role when secrecy or confidentiality provisions in other Acts might apply. For example, as discussed, the Police Act prohibits a member of the police force from gaining access to, using or disclosing police information if it is the duty of that member not to do so. The Family Violence Protection Act should override that prohibition in circumstances involving family violence so that the police member can share relevant information.

Defining 'information' and 'information sharing'

As noted, it might be necessary to share a wide variety of information in order to assess the risk of family violence and secure the safety of primary persons. This will include personal information and could include health information and other sensitive information. As a result, the definition of 'information' in the new regime should not be restricted.

The Commission also considers that the expression 'information sharing' is preferable to the separate concepts of 'collection', 'use' and 'disclosure': it is simpler to understand. In keeping with the approaches in the UK Data Protection Act and section 98M of the NSW Crimes (Domestic and Personal Violence) Act, 'information sharing' should be defined to include each of 'collection', 'use' and 'disclosure'. Such an approach is more appropriate in the context of multilateral information sharing, where information can be shared between several prescribed organisations simultaneously. Using the term 'information sharing' rather than 'disclosure' will also encourage continued communication and coordination between prescribed organisations, which is crucial to best-practice risk management, as opposed to one-off disclosures.

Interaction with other laws

The Family Violence Protection Act should clearly state that it does not prevent disclosure of information under any other law. This will ensure that the new regime cannot be interpreted as a barrier to sharing when there is other authority.

The new regime should specifically override the Privacy and Data Protection Act and the Health Records Act. The Commission notes that such an 'avoidance of doubt' provision, although not strictly required because these Acts are 'default legislation', would help to clarify that the Family Violence Protection Act takes precedence.

It is noted, however, that the Privacy and Data Protection Act and the Health Records Act should be overridden only when the collection, use and disclosure of, and access to and correction of, information is carried out in accordance with the new regime. That is, other Information Privacy Principles and Health Privacy Principles will continue to apply—including, for example, IPP 3 (Data Quality) and IPP 4 (Data Security).

As mentioned, other legislation contains secrecy and confidentiality provisions that might apply in the context of family violence. The new regime should override these provisions where necessary—for example, if the provision does not contain an exemption whereby disclosure is authorised by another law. This includes in relation to relevant provisions in the Children, Youth and Families Act and the Family Violence Protection Act itself, to the extent that these provisions prohibit or limit the power of courts to allow access to court documents. For example, the Magistrates' Court notes that it is prohibited by Part 8 of the Family Violence Protection Act from allowing access to final family violence intervention orders, other than by order of the court or with the consent of an adult victim.²³⁰ We refer to the discussion in Chapter 16 regarding the relevant provisions. The new regime should override these provisions to the extent necessary to ensure that courts, as prescribed bodies, can share information with other prescribed bodies under the new regime.

The Commission makes it clear, however, that nothing in the new regime should operate to enable the sharing of information where doing so is inconsistent with the underlying aims of the regime (namely, the safety and support of family violence victims) or any other legitimate policy objectives. For example, nothing in the new regime should apply to override the prohibition on disclosing the identity of a reporter or referrer to child protection, Child FIRST or family services under the Children, Youth and Families Act.

For reasons already explained, the new regime will not override the requirements of the Commonwealth Privacy Act. Prescribed organisations that are subject to Commonwealth laws must continue to comply with them.

A test for sharing information

The Family Violence Protection Act should clearly authorise a prescribed organisation to share information about a primary person or the associated respondent with another prescribed organisation if the prescribed organisation reasonably believes that sharing the information is necessary to manage a risk to the safety of the primary person. 'Safety' is defined in the Family Violence Protection Act as meaning 'safety from family violence'. Importantly, managing a risk to safety should not necessarily mean reducing the risk: in some circumstances it might mean simply ensuring that the risk does not escalate.

In the Commission's view, this test is appropriate because the primary purpose of information sharing should be to keep children and adults safe from family violence. The test also requires sharing to be necessary in order to manage risk. What is *necessary* will depend on the circumstances. As part of their practice, prescribed organisations have regard to various factors, including what the primary person has told the organisation, the level of risk as determined by the CRAF or the actuarial tool, and any internal practice manuals or policies.

For example, the Commission considers it will often be necessary to share information collected or included in a risk assessment in order to manage a risk to the safety of a primary person. If a prescribed organisation performs a risk assessment it should be able to share that information with other prescribed organisations. This will obviate the situation—revealed in evidence in the inquest into the death of Luke Batty—where 'risk assessment[s] undertaken by the various agencies were performed in "silos", not shared and not updated'.²³¹

Because 'information sharing' includes collection *and* disclosure, the same test applies to organisations that provide the information and those that receive the information. Both organisations should be satisfied that sharing the information is necessary so as to manage a risk to safety. Applying the same test will encourage organisations to consult each other and clearly explain why sharing is necessary.

Further, the same test should be applied to sharing information about an associated respondent with the primary person. If it is *necessary* to tell a primary person something about an associated respondent in order to manage a risk to their safety, the person should be told. Again, whether sharing is necessary will depend on the nature of the information and the nature of the risk.

The Commission considers that the situation identified by Judge Gray in his findings relating to the death of Luke Batty constitutes an example of when information sharing with a primary person is necessary:

FC Topham [a Victoria Police officer] telephoned Ms Batty and advised her that a magistrate had granted Mr Anderson bail. This was entirely appropriate information sharing. Constable Guenther's evidence was that the decision to contact Ms Batty was because of the:

need to notify the victim of the bail so she knows what to expect and she knows what he can and can't do, so she can notify us if she knows that he's breaching his bail conditions.

... The police officers' actions were completely appropriate. The approach they took should, in my view, be routine for all bail matters related to family violence.²³²

Risk assessment by intake organisations

A different test should apply to some organisations for the purposes of risk assessment and referral.

One of the main functions of the Support and Safety Hubs the Commission recommends be established, and of existing specialist family violence services including Safe Steps and the Men's Referral Service (referred to as 'intake organisations') is to conduct comprehensive family violence risk assessments. As a result, intake organisations should be specifically authorised to collect information from other prescribed organisations when it is necessary for them to do the following:

- ▷ conduct a family violence risk assessment
- ▷ determine which service(s) are appropriate to help a primary person or an associated respondent
- ▷ refer a primary person or an associated respondent to the appropriate service(s).

There should be no risk threshold for information sharing for the purposes of risk assessment and referral; that is, intake organisations will not need to be satisfied that a specific or identifiable risk exists. Determining whether a risk does exist is the purpose of the assessment. As noted, intake organisations will also need to be authorised to collect information about multiple victims of the same perpetrator. As with risk management, however, the information provided by the primary person, the CRAF (including a proposed actuarial tool within the CRAF), and internal practice manuals and policies will guide organisations in determining what information is necessary for risk assessment and should be collected by and disclosed to intake organisations. This will prevent the sharing of irrelevant information.

Prescribed organisations that are not intake organisations—for example, Corrections Victoria or a registered school teacher or principal—should also be authorised to disclose information to intake organisations for the purposes of risk assessment or referral, without having to reasonably believe such disclosure is necessary in order to manage a risk to the safety of a primary person.²³³

Victims' consent

Information sharing under the new regime must respect victims' right to choose whether information about them is shared. This is important for ensuring confidence in the family violence system. As a general principle, prescribed organisations must not share information about a primary person (victim) without their consent.

The Commission recognises, however, that there could be situations in which information should be shared without the consent of the primary person. Currently, information can be shared without consent under the serious and imminent threat exemption under the Privacy and Data Protection Act and the Health Records Act.

Such an exemption should continue to apply to enable prescribed organisations to share information about a primary person without their consent. Importantly, however, the test for the exemption should be that there is a serious **or** imminent threat to their life, health, safety or welfare, or that of their children, because of family violence.²³⁴

Perpetrator's consent

Information sharing, for either risk assessment or risk management, should not require the consent of the associated respondent (the perpetrator or alleged perpetrator). This should be clearly expressed in the Family Violence Protection Act.

In relation to risk assessed by intake organisations, the Commission considers that not requiring the consent of an associate respondent (the perpetrator) is justified because the information-sharing regime applies only when there is a current intervention order or family violence safety notice in force or an organisation reasonably believes there is a family violence risk. We also consider that managing risks to safety takes priority over associated respondents' privacy rights. The effect on privacy rights will be proportionate because information sharing must be *necessary* to conducting a family violence risk assessment, making an appropriate referral or managing a risk to safety in order to comply with the Family Violence Protection Act.

Consent to sharing information about children

Consistent with the principles just outlined, it is the Commission's view that when the primary person and associated respondent have children, consent should be sought only from the primary person when sharing information about the children. No consent should be required from the associated respondent.

Access to shared information

On request, primary persons should have access to and be able to correct any information about them that is shared. A prescribed organisation that obtains information under the regime should not, however, be required to take steps to make an associated respondent aware that information about them has been collected or provide access to such information.²³⁵

Even though a prescribed organisation need not take steps to provide access to associated respondents, the new regime should not prohibit information being provided to associated respondents if providing the information would not increase the risk to the safety of the primary person or a third party. This will allow cases in which errors have been made to be corrected, so that information remains accurate, complete and up-to-date.

Refusing to share information

Although information sharing under the new regime should be voluntary (subject to the requirement to respond to a request for information outlined above), it might be important to expressly define a limited number of situations in which a prescribed organisation can refuse to share information. This could include circumstances in which sharing information would prejudice an ongoing investigation or a proceeding, contravene legal professional privilege, prejudice a coronial inquest or inquiry, or increase the risk of family violence occurring.²³⁶ As mentioned earlier, this may be particularly important in the case of courts.

Protection for people sharing information

In order to encourage information sharing, people who share information in accordance with the Family Violence Protection Act should be protected. Information sharing in good faith should not amount to unprofessional conduct or a breach of professional ethics and should not expose the information sharer to any criminal or civil liability.

Reference could also be made to specific sections in legislation that impose confidentiality obligations—for example, section 346 of the Mental Health Act and section 141 of the Health Services Act—so that information sharing in accordance with the test proposed above does not contravene those Acts.²³⁷

Inappropriate information sharing

Prescribed organisations may share information only in accordance with the Family Violence Protection Act. A penalty should be applied to unauthorised information sharing. This could be similar to the provisions in section 36(5) of the Children, Youth and Families Act.²³⁸

Complaints about information sharing

An individual should be able to make a complaint to the Privacy and Data Protection Commissioner if they believe information about them has been shared by a prescribed organisation other than in accordance with the Family Violence Protection Act. The Privacy and Data Protection Commissioner should have powers of investigation and conciliation similar to those provided for in Division 8 of Part 3 of the Privacy and Data Protection Act.²³⁹

Guidelines

Some legislative information-sharing regimes explicitly provide for the creation of standards, protocols or guidelines, often by the responsible minister; others do not. If any standards, protocols or guidelines are developed to support the new regime, the Commission considers that they must have several important characteristics:

- ▷ They must be developed in consultation with all prescribed organisations or their representative bodies, the independent Family Violence Agency and the Commissioner for Privacy and Data Protection.
- ▷ They need to be clear and concise, so that they will be easily understood and applied by front-line workers in prescribed organisations.
- ▷ They should be reviewed as appropriate but at least at the same time as the new information-sharing regime is reviewed following implementation (as recommended below).

The Commission does not consider it necessary to provide for mandatory standards, protocols or guidelines for the new information-sharing regime. This is in contrast to section 98J of the NSW Crimes (Domestic and Personal Violence) Act, which requires compliance with the New South Wales Domestic Violence Information Sharing Protocol.²⁴⁰

Clear, simply drafted legislation is preferable to lengthy, complex guidance. Further, implementation of other recommendations put forward in this report will support best-practice information sharing. Among these are recommendations about the development of a revised common risk assessment framework, and the standardisation of that framework across all agencies (see Chapter 6). Mandatory standards, protocols or guidelines should therefore not be necessary.²⁴¹

Statutory review

The Family Violence Protection Act should contain a requirement that the Attorney-General, in consultation with the Privacy and Data Protection Commissioner, conduct a review of the new information-sharing regime within two years of the regime's introduction. Following implementation of the Commission's recommendations in Chapters 6 and 13, including in respect of the Support and Safety Hubs and the Central Information Point (discussed below), there should be another review within five years of the commencement of the fully operational system.

In light of its recommendation for a new information-sharing regime, the Commission notes that current high-level information-sharing arrangements and policies affecting prescribed organisations will need to be reviewed, updated and potentially consolidated once the new regime comes into force.

Recommendation 5

The Victorian Government amend the *Family Violence Protection Act 2008* (Vic) to create a specific family violence information-sharing regime [within 12 months]. The new regime should be consistent with the guiding principles and design elements described in this report.

Developing an information-sharing culture

Legislative change alone will not create a culture of information sharing throughout the family violence system. Legislative barriers are only one of many reasons for individuals to shy away from sharing information.

The proposed new information-sharing regime incorporated in the Family Violence Protection Act will send a clear signal to people working in prescribed organisations that they can share information in order to manage risks to safety. Such a change will go some way toward redressing the general culture of risk aversion identified by the Commission. Risk aversion and non-disclosure must be replaced by proactive, coordinated and timely information sharing. There is also a need for strong leadership in prescribed organisations so as to create a clear authorising environment for information sharing. Much work on improving the information-sharing culture will be necessary.

It is the Commission's view that the Victorian Secretaries Board Family Violence Sub-committee should oversee implementation of the new information-sharing regime and be responsible for developing an information-sharing culture throughout prescribed organisations.

The sub-committee should coordinate the production of any guidelines or guidance material created to support the new regime and be responsible for developing an awareness campaign to explain the new regime to prescribed organisations. Implementing the new framework—in terms of drafting and updating information-sharing protocols and memorandums of understanding, and delivering internal training—should, however, be the responsibility of prescribed organisations. The sub-committee should also be responsible for monitoring progress, holding organisations to account, disseminating information about good practice and resolving any emergent difficulties. It should work closely with the Commissioner for Privacy and Data Protection in performing these tasks.

Recommendation 6

The Victorian Secretaries Board Family Violence Sub-committee oversee a working group consisting of representatives of 'prescribed organisations' covered by the recommended information-sharing regime and the Office of the Privacy and Data Protection Commissioner [within 12 months of the legislative amendments]. The working group should:

- ▶ identify priority areas for the development of an information-sharing culture throughout the family violence system
- ▶ develop an awareness campaign to explain the new information-sharing regime to prescribed organisations
- ▶ coordinate the production of any guidelines or guidance material created to support the new information-sharing regime and help prescribed organisations put their information-sharing arrangements into operation
- ▶ help prescribed organisations update information-sharing protocols and memorandums of understanding and deliver internal training on information sharing.

Improving multi-agency information sharing

The Commission recognises that timely information sharing is crucial to effectively managing the risk posed by the perpetrator and to ensuring strategies are in place to keep victims safe. Further, it recognises that creating a more permissive information-sharing regime requires new system infrastructure, in addition to legislative and cultural reform.

The Commission recommends that a statewide Central Information Point be established to provide up-to-date information to assist risk assessment and risk management, in particular for medium to high-risk cases. Introduction of an actuarial risk assessment tool within the revised CRAF, as recommended by the Commission in Chapter 6, will help with determining medium to high-risk category cases. This model is loosely based on the existing South Australian Multi-Agency Protection Service model which is discussed in the box below.

The South Australian MAPS model: 'real time information sharing to reduce risk'²⁴²

In 2012, following a visit to the UK, the Chief Commissioner of Police recommended to government that they implement a UK 'MASH-type' model to support early intervention for family violence in the South Australian context. This model was also developed in response to criticism from the State Coroner following the death of Zahra Abrahamzadeh.

MAPS is a police led, co-located model, with the agencies involved including police; Corrections; Health; Housing; Office for Women; Education, and Families SA (Child Protection). The model operates as follows:

- ▶ all police family violence incident reports (both the criminal and the 'domestic abuse' reports) are automatically uploaded each morning into the MAPS system
- ▶ these are reviewed by the MAPS multi-agency research team, who search through for relevant information from their own agency databases (that they access from on-site)
- ▶ any concerns are selected for 'mapping' and referred to a twice daily taskforce meeting (the "tactical table") where agreed actions are referred back to local agencies for action.

Currently MAPS referrals come from South Australia Police only, but the intent is to include referrals about domestic violence and child protection concerns from all partner agencies.

This model is described as an 'an early warning system', intended to increase system accountability and provide an escalation point where there have been process flaws or gaps in the response to family violence.

South Australia Police has leadership of the response, which includes the power to instruct and hold other agencies to account in relation to identified cases. The information gathered is then automatically uploaded into each agencies database in real-time. The model is currently unfunded and is being reviewed.

The Central Information Point should consist of a co-located multi-department team led by Victoria Police and with representatives from the Departments of Justice and Regulation (including Corrections Victoria) and Health and Human Services (including health, drug and alcohol, mental health, child protection, housing and homelessness and youth justice services).

It should also include a representative from the registry staff of the Magistrates' Court of Victoria (and potentially from other Victorian courts as well). Information held by the court, such as final family violence intervention orders and risk assessments completed by the applicant support worker, should be shared consistent with the legislative regime we have proposed. The Commission recognises, however, that there are specific challenges that exist in respect of the Magistrates' Court inclusion in the Central Information Point, because of its outdated information technology system and difficulties associated with efficiently and effectively accessing information from its databases. However, the Magistrates' Court should provide information and participate as a member of the Central Information Point to the extent possible. As upgrades to the Magistrates' Court IT systems progress, the system should be used to more efficiently provide the required information, as well as providing a greater range of information.

Consideration should be given to any other agencies who could over time be included as additional members of the Central Information Point.

Each department represented at the Central Information Point should be a prescribed organisation under the new information sharing regime in the Family Violence Protection Act. This will allow information sharing between members of the Central Information Point, as well as with other prescribed organisations, such as the recommended Support and Safety Hubs described in Chapter 13.

As discussed above, the Commission notes that there may be limited situations in which an agency participating in the Central Information Point will not be able to share information. This may be particularly important in the case of courts and would include circumstances in which sharing information would prejudice an ongoing investigation or proceeding.

The Central Information Point will work closely with the 17 proposed Support and Safety Hubs. On a request from such a hub, each agency member of the Central Information Point will be authorised to have access to their own agency's databases and to provide any information that might be held in relation to nominated individuals. The information obtained from the Central Information Point will primarily be about the perpetrator; information about the victim may be obtained from the victim directly or from the Central Information Point with the victim's consent.

The agency databases might include information about criminal history, community correction orders, parole, child protection, mental health, drug and alcohol and other health services, as well as disability and housing services. The Central Information Point would consolidate the relevant information from each agency's database into one report and provide it to the Support and Safety Hub in question. As risk assessment forms part of the Support and Safety Hubs' intake process which is performed daily, the information would be consolidated on a daily basis.

The Central Information Point would also provide updated information to a hub each time such information is received in relation to a perpetrator who has already been the subject of a request for information. For example, the Central Information Point should provide information to a hub when a perpetrator is approaching release from prison or is the subject of an L17 referral with respect to a different victim. This means that the Central Information Point needs to have the capacity to run searches on individuals who have previously been the subject of a request for information, and to have a mechanism for flagging important dates such as the expiry of a family violence intervention order and the end of a prison sentence. The hub should in turn share this information with the agencies working with the victim(s) when it is necessary to manage risks to the victim's safety.

Unlike, for example, the Multi-Agency Protection Service model in South Australia, it is not envisaged that the members of the Central Information Point would undertake the process of risk assessment, or seek to make decisions as to how to manage the particular risk. They will, however, be required to make decisions as to which information is necessary (under the new legislative regime recommended by the Commission) to provide to the hubs or others. Accordingly, staff at the Central Information Point should have continuing training around family violence, as well as comprehensive and continuously updated knowledge of family violence risk, including a strong understanding of the CRAF.

RAMPs, the statewide 24-hour crisis service (Safe Steps), the Men's Referral Service and the Victims Support Agency should also have access to information from the Central Information Point. This is because the Men's Referral Service and Safe Steps will continue to be responsible for after-hours referrals and the Victims Support Agency for L17 referrals for male victims. As the mechanism for managing high-risk cases, RAMPs must also have easy access to risk information.

It is envisaged that other prescribed organisations such as specialist family violence services will be able to obtain information from the relevant Support and Safety Hub rather than dealing directly with the Central Information Point. We also note that the Central Information Point is not intended to replace information sharing at the local level. Police, courts, specialist family violence services and other prescribed organisations can and should communicate directly with each other as necessary (provided it is in accordance with the new legislative regime under the Family Violence Protection Act).

The Central Information Point will offer prompt access to comprehensive information in order to strengthen risk assessment and risk management and improve the quality of measures designed to keep victims safe. The establishment of this facility is a key reform on which many other actions rely. Accordingly, we recommend that the Central Information Point be established in advance of the Support and Safety Hubs, and no later than 1 July 2018 when the hubs are due to commence.

Recommendation 7

The Victorian Government establish a secure Central Information Point. Led by Victoria Police, it should consist of a co-located multi-disciplinary team with representatives from Victoria Police, the courts (registry staff), the Department of Health and Human Services and the Department of Justice and Regulation (Corrections Victoria) who are authorised to obtain information from their respective databases [by 1 July 2018]. A summary of this information should be available to the Risk Assessment and Management Panels, the recommended Support and Safety Hubs, the 24-hour crisis telephone service Safe Steps and the Men's Referral Service to permit effective assessment and management of risk in individual cases.

Updating IT systems

In order to support the Central Information Point, the Commission considers it imperative that there be joint planning between all prescribed organisations to ensure that upgraded or replacement IT platforms have adequate functionality for prompt, effective and appropriate information sharing. There is a pressing need for central oversight of this process in view of the once-in-a-generation opportunity associated with the overhaul or replacement of major case management platforms such as LEAP and Courtlink.

Equally, the Commission considers that government should not wait for major system changes before moving to improve technology-enabled information sharing in the family violence system. Building on the work being done by the Department of Justice and Regulation, a project should be started immediately to examine opportunities for purchasing off-the-shelf applications to integrate databases, without replacing legacy systems.

In the Commission's view, government should have as its aspiration the creation of an integrated case management system whereby relevant agencies can upload and access in real time the information they need to fulfil their roles and responsibilities as part of the family violence system. This will probably require significant scoping and planning because of the complexity of what is involved, and the broader policy implications of options such as adopting e-records in the human services field.

Recommendation 8

The Victorian Secretaries Board ensure that proposed upgrades to key Magistrates' Court of Victoria, Victoria Police, Corrections Victoria and Department of Health and Human Services information technology systems equip these systems [by 1 July 2018] to:

- ▷ share information for the purposes of risk assessment and management in individual cases of family violence
- ▷ permit the use of system data for the purpose of evaluating the effectiveness of outcomes from implementation of the Commission's recommendations and the recommended Statewide Family Violence Action Plan
- ▷ participate in the Central Information Point.

Recommendation 9

The Victorian Government examine options for the development of a single case management data system to enable relevant agencies to view and share risk information in real time [within 12 months].

Endnotes

- 1 See Transcript of McCartney, 14 August 2015, 3128 [23]–3131 [8].
- 2 Victoria Police, 'Code of Practice for the Investigation of Family Violence—Edition 3' (2014) 44 [6.1]–[6.2].
- 3 This summary is based on information provided to the Commission by a number of different sources throughout the course of its inquiries.
- 4 See Statement of Widmer, 31 July 2015, 2–3 [8].
- 5 See, eg, Statement of Steendam and Howard, 3 August 2015, 18 [67].
- 6 See, eg, Statement of Reaper, 4 August 2015, 5 [18].
- 7 See generally, Statement of Callister, 4 August 2015.
- 8 The Magistrates' Court produces transcripts for committal hearings only. It otherwise records proceedings and, subject to approval from the Chief Magistrate, will make audio recordings available on application. See Magistrates' Court of Victoria, *Practice Direction 1 of 2013—Audio Recordings*, 22 May 2013; Magistrates' Court of Victoria, 'Audio Recording Protocols—Fact Sheet' (May 2013).
- 9 There is no transcript service available in the Children's Court; it records proceedings and, subject to approval from a Judicial Officer, will make audio recordings available on application. See Children's Court of Victoria, *Practice Direction No 2 of 2012—Authority to provide digital recordings of proceedings*, 2 February 2012.
- 10 See Statement of Watts, 11 August 2015, 26–7 [116]–[119].
- 11 See Chapter 8 which discusses the fragmentation of the system in detail. See also, Coroners Court of Victoria, 'Finding into Death with Inquest: Luke Geoffrey Batty' (28 September 2015) 6 [19E].
- 12 See, eg, Transcript of Humphreys, 23 July 2015, 1274 [11]–[16]; Statement of Steendam and Howard, 3 August 2015, 3 [12]; Domestic Violence Victoria—03, Submission 943, 21; Women's Health West Inc, Submission 239, 42.
- 13 Statement of Widmer, 31 July 2015, 1–2 [5].
- 14 Department of Human Services, 'Family Violence Risk Assessment and Risk Management: Framework and Practice Guides 1-3 (Edition 2)' (April 2012) 46–7.
- 15 Transcript of McCartney, 14 August 2015, 3131 [15]–[16].
- 16 Coroners Court of Victoria, Submission 382, 18–19.
- 17 Coroners Court of Victoria, above n 11, 83 [457]–[458].
- 18 Ibid.
- 19 Premier of Victoria, The Hon Daniel Andrews, 'Victorian Government Response—Inquest into the Death of Luke Geoffrey Batty' (24 December 2015) <http://www.coronerscourt.vic.gov.au/resources/68cf6ac7-e998-468d-a4c4-5ae4b7461378/20140855+response+premier+of+vic+ia_luke+batty.pdf>.
- 20 Department of Premier and Cabinet, 'Review of legislative and policy impediments to sharing relevant information between agencies in relation to a person at risk of family violence' (Request for Tender No 00519, 2016) <<http://www.tenders.vic.gov.au/tenders/tender/display/tender-details.do?id=7550&action=display-tender-details>>.
- 21 See, eg, Women's Health West Inc, Submission 239, 42.
- 22 Commissioner for Privacy and Data Protection, Submission 644, 1.
- 23 See 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, Commonwealth of Australia, 2010) 1399; Statement of Widmer, 31 July 2015, 10 [42].
- 24 See, eg, Statement of Watts, 11 August 2015, 9 [44].
- 25 Statement of Watts, 11 August 2015, 29 [127].
- 26 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 13; Statement of Watts, 11 August 2015, 5 [19].
- 27 Commissioner for Privacy and Data Protection, Submission 644, 3.
- 28 Ibid 2.
- 29 *Privacy and Data Protection Act 2014* (Vic) s 6 and *Health Records Act 2001* (Vic) s 7; see also, Statement of Watts, 11 August 2015, 5 [20]–[23] and 6 [30].
- 30 *Privacy and Data Protection Act 2014* (Vic) s 3: 'personal information means information or an opinion (including information or an opinion forming part of a database), that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, but does not include information of a kind to which the *Health Records Act 2001* applies'.
- 31 *Health Records Act 2001* (Vic) s 3 relevantly provides that health information means: information or an opinion about the physical, mental or psychological health (at any time) of an individual; or a disability (at any time) of an individual; or an individual's expressed wishes about the future provision of health services to him or her, or a health service provided, or to be provided, to an individual; that is also personal information. Health information is also any other personal information collected to provide, or in providing, a health service.
- 32 *Privacy and Data Protection Act 2014* (Vic) s 12 and *Health Records Act 2001* (Vic) s 15; see also, Statement of Watts, 11 August 2015, 12 [55].
- 33 *Privacy and Data Protection Act 2014* (Vic) s 20(1); *Health Records Act 2001* (Vic) s 21(1).
- 34 *Privacy and Data Protection Act 2014* (Vic) ss 10, 13 and 15; *Health Records Act 2001* (Vic) ss 10 and 12.
- 35 *Health Records Act 2001* (Vic) s 11.
- 36 Transcript of Watts, 14 August 2015, 3166 [3]–[17].
- 37 *Privacy and Data Protection Act 2014* (Vic) IPP 1 and *Health Records Act 2001* (Vic) HPP 1.
- 38 *Privacy and Data Protection Act 2014* (Vic) IPP 1 and *Health Records Act 2001* (Vic) HPP 1.
- 39 *Privacy and Data Protection Act 2014* (Vic) IPP 2.1 and *Health Records Act 2001* (Vic) HPP 2.2.
- 40 Statement of Watts, 11 August 2015, 13 [58].
- 41 Statement of Widmer, 31 July 2015, 3 [10]–[13]; Transcript of Widmer, 14 August 2015, 3137 [24]–3138 [23].
- 42 *Privacy and Data Protection Act 2014* (Vic) IPP 2.1(a) and *Health Records Act 2001* (Vic) HPP 2.2(a).
- 43 *Privacy and Data Protection Act 2014* (Vic) IPP 2.1(b) and *Health Records Act 2001* (Vic) HPP 2.2(b).
- 44 *Privacy and Data Protection Act 2014* (Vic) IPP 2.1(f) and *Health Records Act 2001* (Vic) HPP 2.2(c).
- 45 *Privacy and Data Protection Act 2014* (Vic) IPP 2.1(e) and *Health Records Act 2001* (Vic) HPP 2.2(i). Note however that the test in HPP 2.2(i) is higher than in IPP 2.1(e); if the organisation is a registered health service provider, the use or disclosure must not be a breach of confidence.
- 46 *Privacy and Data Protection Act 2014* (Vic) IPP 2.1(g) and *Health Records Act 2001* (Vic) HPP 2.2(j). Note however that the test in HPP 2.2(j) is higher than in IPP 2.1(g); if the organisation is a registered health service provider, the use or disclosure must not be a breach of confidence.
- 47 *Privacy and Data Protection Act 2014* (Vic) IPP 2.1(d)(i) and *Health Records Act 2001* (Vic) HPP 2.2(h)(i); see also Statement of Widmer, 31 July 2015, 4 [14].
- 48 *Privacy and Data Protection Act 2014* (Vic) s 15; see also, Statement of Watts, 11 August 2015, 12 [56]–[57]. Similar exemptions are built-in to the HPPs under the *Health Records Act 2001* (Vic).
- 49 Ibid.
- 50 *Privacy and Data Protection Act 2014* (Vic) s 20(3).
- 51 Ibid.
- 52 See Statement of Watts, 11 August 2015, 14–19 [63]–[84].

- 53 *Privacy and Data Protection Act 2014* (Vic) s 3: 'public sector data means any information (including personal information) obtained, received or held by an agency or body to which Part 4 applies, whether or not the agency or body obtained, received or holds that information in connection with the functions of that agency or body'.
- 54 *Ibid* s 86.
- 55 Statement of Watts, 11 August 2015, 10 [46]. See also, Commissioner for Privacy and Data Protection, *Data Security—What's New? Victorian Protective Data Security Standards* (VPDSS) (15 January 2016) <<https://www.cpdp.vic.gov.au/menu-data-security/data-security-whats-new>>.
- 56 See Commissioner for Privacy and Data Protection, *Data Security—What's New? Victorian Protective Data Security Standards* (VPDSS) (15 January 2016) <<https://www.cpdp.vic.gov.au/menu-data-security/data-security-whats-new>>.
- 57 *Privacy and Data Protection Act 2014* (Vic) ss 91–94.
- 58 *Ibid*s 91; see also, Statement of Watts, 11 August 2015, 9 [42].
- 59 Statement of Watts, 11 August 2015, 11 [52].
- 60 Statement of Steendam and Howard, 3 August 2015, 9–11 [38]–[40].
- 61 Statement of Widmer, 31 July 2015, 11 [47].
- 62 Statement of Watts, 11 August 2015, 8 [38].
- 63 Statement of Widmer, 31 July 2015, 3 [11].
- 64 Statement of Reaper, 4 August 2015, 2–5 [9]–[17].
- 65 *Ibid* 2 [7].
- 66 Statement of Steendam and Howard, 3 August 2015, 4 [18].
- 67 *Ibid* 4 [17]–[19].
- 68 Victoria Police, 'Response to NTP Item 197—supplied by the Policy and Legislation Division—Corporate Strategy and Operational Improvement Department, Victoria Police', 6–8, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.
- 69 Magistrates' Court of Victoria, 'Family Violence Operating Procedures' (August 2014), 110–112, produced in response to the Commission's request for information dated 5 June 2015; *Children, Youth and Families Act 2005* (Vic) ss 534 and 537.
- 70 *Corrections Act 1986* (Vic) s 104ZX: 'relevant persons' include prison governors, prison officers and certain other people working within prisons; regional managers and community corrections officers; members of the Adult Parole Board; and employees of the Department of Justice and Regulation.
- 71 Statement of Reaper, 4 August 2015, 3–4 [14]–[17].
- 72 Statement of Steendam and Howard, 3 August 2015, 5 [20.1].
- 73 *Children, Youth and Families Act 2006* (Vic) s 27.
- 74 *Ibid* s 36.
- 75 *Ibid* s 36(4).
- 76 *Children, Youth and Families Regulations 2007* (Vic) reg 6(a).
- 77 Human Services (Complex Needs) Act 2009 (Vic) s 14; Statement of Watts, 11 August 2015, 19 [87].
- 78 *Ibid*.
- 79 *Privacy Act 1998* (Cth) s 15 and Sch 1.
- 80 *Ibid* ss 6, 6C, 6D.
- 81 See Safe Steps Family Violence Response Centre, *Privacy Policy* <<http://www.safesteps.org.au/about-us/#PrivacyPolicy>>; Berry Street, *Privacy Statement* <<http://www.berrystreet.org.au/PrivacyStatement>>; St Vincent's Health Australia, *Privacy Policy* <<https://svha.org.au/home/privacy-policy>>.
- 82 See, eg, *Family Law Act 1975* (Cth) s 121; *Family Law Rules 2004* (Cth) r 24.13; *Federal Circuit Court Rules* (Cth) r 2.08.
- 83 The Commission received numerous examples of information-sharing protocols and memorandums of understanding from, for example, the Department of Health and Human Services, the Department of Education, the Department of Justice and Regulation, Victoria Police, Victoria Legal Aid and the Magistrates' Court of Victoria in response to the Commission's Notices to Produce and requests for information dated 5 June 2015.
- 84 Statement of Widmer, 31 July 2015, 5 [20]–[22].
- 85 Statement of Reaper, 4 August 2015, 7–8 [28].
- 86 Department of Justice and Regulation and Department of Education and Training, various documents, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.
- 87 Department of Health and Human Services, 'Family Violence Referral Protocol Between the Department of Health and Human Services and Victoria Police—2015' (June 2015).
- 88 State of Victoria, 'Protecting Children: Protocol Between Department of Human Services—Child Protection and Victoria Police' (June 2012).
- 89 Statement of Steendam and Howard, 3 August 2015, 16 [59]; Statement of Widmer, 31 July 2015, 5–6 [23]–[25]. The Commission also received numerous other protocols, memorandums of understanding and agreements governing information sharing between Victoria Police and other bodies, produced by Victoria Police pursuant to the Commission's Notice to Produce dated 5 June 2015.
- 90 Transcript of Widmer, 14 August 2015, 3148 [5]–[24].
- 91 *Ibid* 3139 [29]–3140 [1].
- 92 Office of Women's Policy, 'Information Sharing in the context of family violence' (Factsheet, Department of Planning and Community Development, June 2009).
- 93 Statement of Widmer, 31 July 2015, 6 [26].
- 94 Domestic Violence Victoria, 'Code of Practice for Specialist Family Violence Services for Women and Children: Enhancing the Safety of Women and Children in Victoria' (2006) 53–54 [5.6.2].
- 95 *Ibid* 54–55 [5.6.5].
- 96 Statement of Widmer, 31 July 2015, 7 [28]–[29]; Statement of Steendam and Howard, 3 August 2015, 11–14 [41]–[54].
- 97 See, eg, Knox City Council, Submission 227, 16; City of Casey, Submission 354, 8; Bethany Community Support, Submission 434, 14; State of Victoria, Submission 717, 47.
- 98 Domestic Violence Victoria—03, Submission 943, 20–21.
- 99 No To Violence; Men's Referral Service, Submission 944, 16.
- 100 Statement of Widmer, 31 July 2015, 10 [41].
- 101 *Ibid* 10 [43].
- 102 Statement of Steendam and Howard, 3 August 2015, 19 [71].
- 103 *Ibid* 19 [72]–[73].
- 104 Victoria Police, Submission 923, 22.
- 105 Statement of Steendam and Howard, 3 August 2015, 28 [108].
- 106 Bethany Community Support, Submission 434, 15.
- 107 Plenty Valley Community Health Service, Submission 242, 6.
- 108 Transcript of Steendam, Reaper and Widmer, 14 August 2015, 3144 [24]–3147 [27].
- 109 Statement of Reaper, 4 August 2015, 6 [24]–[25].

- 110 Nexus Primary Health, Submission 781, 5.
- 111 See, eg, Statement of Eltringham, 17 July 2015, 4 [21]; Community consultation, Whittlesea, 29 April 2015; Department of Human Services, above n 14, 51.
- 112 See, eg, Anonymous, Submission 60, 1; Anonymous, Submission 120, 1–2.
- 113 Coroners Court of Victoria, above n 11, 54 [282]–[283].
- 114 Ibid 73 [408] and [414].
- 115 Transcript of Steendam, Reaper and Widmer, 14 August 2015, 3145 [31]–3146 [13].
- 116 *Corrections (Victims Register) Regulations 2004* (Vic) r 5.
- 117 See *Corrections Act 1986* (Vic) s 30A.
- 118 Statement of Morton, 3 August 2015, 16 [74].
- 119 *Corrections Act 1986* (Vic) s 30B. As at 30 June 2015, there were 792 victims registered. See Statement of Morton, 3 August 2015, 16 [73]. It is unclear how many of these victims are victims of family violence.
- 120 Transcript of Steendam, Reaper and Widmer, 14 August 2015, 3145 [5]–[7].
- 121 See *ibid* 3146 [20]–3147 [10].
- 122 See *ibid* 3145 [4]–3147 [26].
- 123 Statement of Wood, 24 July 2015, 13–14 [51].
- 124 See, eg, Statement of Field, 31 July 2015, 10 [42].
- 125 Matthew Keeley et al, 'Opportunities for Information Sharing: Case Studies—Report to the NSW Department of Premier and Cabinet' (University of New South Wales, Social Policy Research Centre, April 2015) 111, 17.
- 126 Statement of Widmer, 31 July 2015, 9 [39].
- 127 See, eg, *ibid* 11 [47].
- 128 See, eg, *ibid* 14 [58]; Transcript of Spriggs, 3 August 2015, 1621 [26]–[27]; Transcript of Schultze, 23 July 2015, 1381 [12]–[19]; Statement of McCormack, 29 July 2015, 11 [61]; Community consultation, Geelong 2, 28 April 2015; Community consultation, Whittlesea, 29 April 2015; Community consultation, Traralgon, 13 May 2015; Community consultation, Benalla 2, 19 May 2015; Chawla Family Submission 422, 13; The Hon Fiona Richardson MP Member for Northcote, Submission 815, 3; Victorian Aboriginal Community Services Association Limited, Submission 837, 6; Plenty Valley Community Health Service, Submission 242, 6; Quantum Support Services Incorporated, Submission 371, 12; Whittlesea Community Connections, Submission 375, 24; Maternal and Child Health Nurses Victoria—MCHN Vic Inc, Submission 454, 2; Opportunity Knocks—EDVOS; Safe Futures Foundation; Safe Steps; WISHIN; Victorian Women's Trust, Submission 898, 40; Australian Community Support Organisation (ACSO), Submission 900, 2; Domestic Violence Victoria—02, Submission 943, 38; Domestic Violence Victoria—03, Submission 943, 20–22.
- 129 Statement of Steendam and Howard, 3 August 2015, 3 [15].
- 130 Women's Health West Inc, Submission 239, 42.
- 131 Domestic Violence Victoria—03, Submission 943, 20.
- 132 Commissioner for Privacy and Data Protection, Submission 644, 1.
- 133 Statement of Widmer, 31 July 2015, 10 [41]; see also Transcript of Widmer, 14 August 2015, 3140 [8]–[23].
- 134 See, eg, Transcript of McCartney, 14 August 2015, 3127 [30]–3128 [16].
- 135 Transcript of Watts, 14 August 2015, 3178 [8]–3179 [7].
- 136 Statement of Widmer, 31 July 2015, 9 [36]–12 [47].
- 137 *Ibid*.
- 138 See also, *ibid* 30 [130].
- 139 Transcript of McCartney, 14 August 2015, 3132 [4]–3134 [13].
- 140 Transcript of Humphreys, 23 July 2015, 1274 [17]–[30].
- 141 Statement of Watts, 11 August 2015, 18 [80].
- 142 Statement of Widmer, 31 July 2015, 12–13 [49]–[50].
- 143 Statement of Widmer, 31 July 2015, 12–13 [50].
- 144 *Privacy and Data Protection Act 2014* (Vic) sch 1 IPP 1.3.
- 145 *Ibid* IPP 1.5.
- 146 *Ibid* IPP 1.2.
- 147 *Corrections Act 1986* (Vic) s 104ZY(2); Department of Health and Human Services, 'Privacy Impact Assessment', 14, produced by the State of Victoria in response to the Commission's Notice to Produce dated 27 November 2015.
- 148 Statement of Widmer, 31 July 2015, 13 [51]–[52]; Statement of Watts, 11 August 2015, 18 [79].
- 149 Statement of Watts, 11 August 2015, 16 [74]; *Privacy and Data Protection Act 2014* (Vic) s 44.
- 150 Statement of Watts, 11 August 2015, 16 [76]; *Privacy and Data Protection Act 2014* (Vic) s 45(2).
- 151 Statement of Watts, 11 August 2015, 17 [78.1].
- 152 *Ibid* 18 [78.2].
- 153 Department of Health and Human Services, 'RAMPs Information Usage Arrangement' (24 December 2015) and 'Privacy Impact Assessment' produced by the State of Victoria in response to the Commission's Notice to Produce dated 27 November 2015. The 'RAMPs Information Usage Arrangement' noted that the accompanying Human Rights Impact Assessment would be provided by the Department of Health and Human Services in January 2016.
- 154 Department of Health and Human Services, Letter from Commissioner for Privacy and Data Protection David Watts to Acting Secretary of the Department of Health and Human Services Kym Peake regarding Proposed RAMP IUA (27 October 2015), produced by the State of Victoria in response to the Commission's Notice to Produce dated 27 November 2015.
- 155 See Statement of Watts, 11 August 2015, 18 [79].
- 156 Statement of Widmer, 31 July 2015, 11 [45]–[46].
- 157 Statement of Steendam and Howard, 3 August 2015, 26 [112].
- 158 Transcript of Steendam, 14 August 2015, 3163 [17]–[28].
- 159 See Statement of Widmer, 31 July 2015, 11 [47].
- 160 See *ibid* 12 [47].
- 161 See, eg, *Children, Youth and Families Act 2005* (Vic) s 205(2).
- 162 Community consultation, Whittlesea, 29 April 2015.
- 163 Statement of Watts, 11 August 2015, 25 [114].
- 164 Transcript of Watts, 14 August 2015, 3171 [14]–[19].
- 165 Keeley et al, above n 125, 3, 5, 18, 51, 64, 83.
- 166 Transcript of Widmer, 14 August 2015, 3139 [3]–[7].
- 167 Commissioner for Privacy and Data Protection, Submission 644, 3–4.
- 168 Statement of Steendam and Howard, 3 August 2015, 28 [109].
- 169 Maternal and Child Health Nurses Victoria—MCHN Vic Inc, Submission 454, 2.

170 Quantum Support Services Incorporated, Submission 371, 12.

171 Bethany Community Support, Submission 434, 15.

172 Transcript of Watts, 14 August 2015, 3174 [29]–3175 [3].

173 Ibid 3175 [22]–[27].

174 Ibid 14 August 2015, 3175 [30]–[31]. See also, Commissioner for Privacy and Data Protection, 'Guidelines for Sharing Personal Information: Draft', produced by the Commissioner for Privacy and Data Protection in response to the Commission's Notice to Produce dated 14 August 2015 (as varied on 20 August and 20 October 2015).

175 Commissioner for Privacy and Data Protection, Submission 644, 1.

176 Keeley et al, above n 125, 111, 17–18.

177 LEAP and Interpose systems: Victoria Police, 'Family Violence Royal Commission Notice to Produce Response—Operational Systems Support Division ISSC' (22 June 2015), 1, produced in response to the Commission's Notice to Produce dated 5 June 2015.

178 Courtlink: see Magistrates' Court of Victoria and Children's Court of Victoria, 'Magistrates' and Children's Courts—Information Request Response', 1, and 'Magistrates' Court of Victoria: Family Violence Court Division Operating Procedures', 119, produced in response to the Commission's request for information dated 5 June 2015.

179 Corrections Victoria Intervention Management System: Department of Justice and Regulation, 'Offending Behaviour Programs: Service Delivery Model' (April 2015), 12, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.

180 The Specialist Homelessness Information Platform (SHIP) for homelessness services: see Statement of Widmer, 31 July 2015, 8 [32]; the Client Relationship Information System (CRIS) for child protection, youth justice, disability services and early childhood intervention services: see Department of Health and Human Services, 'Protocol between Child Protection and Youth Justice' (September 2013), 27, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015; and the Integrated Reports and Information System (IRIS) for family violence services, Child FIRST/Family Services and sexual assault services: see Statement of Widmer, 31 July 2015, 8 [32].

181 Statement of Widmer, 31 July 2015, 7 [31].

182 Ibid 13–14 [53]–[54].

183 Bethany Community Support, Submission 434, 15.

184 Women's Health West Inc, Submission 239, 42.

185 Statement of Widmer, 31 July 2015, 8 [33].

186 Ibid 8 [32]; Transcript of Widmer, 14 August 2015, 3154 [29]–3155 [10].

187 See Transcript of Toohey and Hawkins, 4 August 2015, 1850 [27]–1854 [17].

188 Statement of Shuard, 27 July 2015, 5 [26].

189 Ibid 5–6 [26]–[35]; Transcript of Shuard and Howard, 6 August 2015, 2202 [24]–2204 [14].

190 Statement of Widmer, 31 July 2015, 14 [55].

191 Statement of Steendam and Howard, 3 August 2015, 19 [74], 29 [117].

192 Transcript of Steendam, 14 August 2015, 3143 [13]–3144 [21].

193 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 52.

194 See, eg, Transcript of Toohey and Hawkins, 4 August 2015, 1851 [15]–[27]; Transcript of Broughton, 2174 [9]–[18]; Transcript of Field, 1741 [21]–1742 [11].

195 Transcript of Toohey and Hawkins, 4 August 2015, 1850 [30]–1851 [5], 1851 [28]–1852 [14], 1853 [23]–[25].

196 Statement of Spriggs, 27 July 2015, 17 [72]; Transcript of Spriggs, 3 August 2015, 1597 [16]–[26].

197 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 14.

198 Victoria Police, 'Annual Report 2014–2015' (2015) 17, 54, 61.

199 Transcript of Widmer, 20 August 2015, 3154 [9]–[22]. The Commission was subsequently told by the Department of Health and Human Services that this work initially formed part of the 'Single Client View' project undertaken by the department which focused on technical barriers to information sharing. On review in early 2015, it considered that this project was no longer the best approach to deliver the department's future information sharing needs for reasons including that its focus on technical barriers (without also addressing cultural and practice issues) was too limited. Accordingly, the Department of Health and Human Services is currently developing a new business case that will identify challenges and propose options to address the complexities of information sharing. This is known as the 'Better Client Information' project: see Department of Health and Human Services, 'Information Sharing', provided in response to the Commission's Notice to Produce dated 14 August 2015 (as varied on 20 August and 20 October 2015).

200 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 53.

201 Transcript of Reaper, 20 August 2015, 3156 [4]–[10], [16]–[19].

202 Transcript of De Cicco, 14 August 2015, 3123 [31]–3124 [5]. See also, Statement of De Cicco, 7 August 2015, 16–18 [48]–[57].

203 Transcript of De Cicco, 14 August 2015, 3124 [30]–3125 [5].

204 Transcript of De Cicco, 14 August 2015, 3125 [6]–[14]. See also, Statement of De Cicco, 7 August 2015, 16–18 [48]–[57].

205 Premier of Victoria, The Hon Daniel Andrews, above n 19.

206 Domestic Violence Victoria—02, Submission 943, 38.

207 Statement of Watts, 11 August 2015, 27–28 [119]–[122].

208 Ibid 27 [119].

209 Ibid 28 [122].

210 Ibid 28 [122].

211 Statement of Watts, 11 August 2015, 28 [122]–[123]; see also Transcript of Watts, 14 August 2015, 3177 [14]–[23].

212 See Statement of Widmer, 31 July 2015, 14 [57]; Statement of Steendam and Howard, 3 August 2015, 29 [120]; Victoria Police, Submission 923, 24; Bethany Community Support, Submission 434, 16.

213 Transcript of Watts, 14 August 2015, 3170 [13]–[18]; Statement of Watts, 11 August 2015, 27 [121].

214 Australian Law Reform Commission and New South Wales Law Reform Commission, above n 23, 1429–32, 1442.

215 Ibid 1442–3.

216 Statement of Watts, 11 August 2015, 28 [126].

217 See Statement of Widmer, 31 July 2015, 15–17 [62]–[70]; Statement of Watts, 11 August 2015, 19–22 [88]–[99].

218 Keeley et al, above n 125, 8.

219 Department of Premier and Cabinet (SA), 'Information Privacy Principles Instruction' (Cabinet Administrative Instruction No 1/89, 6 September 2013).

220 Ombudsman of South Australia, 'Information Sharing Guidelines for Promoting Safety and Wellbeing' (Guidelines, November 2014) 5.

221 Ibid 39–41.

222 Coroners Court of Victoria, above n 11, 84 [467].

223 See Statement of Widmer, 31 July 2015, 15 [60].

224 Australian Law Reform Commission and New South Wales Law Reform Commission, above n 23, 1442–43.

225 Statement of Watts, 11 August 2015, 28 [126].

226 The Commission considers that section 254A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) provides a model for such a clause.

- 227 *Children, Youth and Families Act 2005* (Vic) ss 3, 35, 44, 46. See also, Department of Health and Human Services, *Registration requirements for community services* (12 January 2016) <<http://www.dhs.vic.gov.au/for-service-providers/children,-youth-and-families/Community-service-organisations/registration-requirements-for-community-services>>.
- 228 Section 245I of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) provides an example of this approach.
- 229 The Commission considers that s 245D of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) provides a model for such a requirement.
- 230 Magistrates' Court of Victoria, 'Family Violence Operating Procedures' (August 2014), 110–112, produced in response to the Commission's request for information dated 5 June 2015.
- 231 Coroners Court of Victoria, above n 11, 86 [479].
- 232 *Ibid* 31 [163], [165].
- 233 Section 14(1) of the *Human Services (Complex Needs) Act 2009* (Vic) provides an example of this kind of purposive approach to information sharing: the Secretary may collect information for the purposes of developing a care plan and a number of persons are authorised to disclose information for that purpose.
- 234 Division 3 of Part 13A of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) provides an example of when information may be shared without first obtaining the consent of the primary person.
- 235 Sections 98I and 98N of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) provide a model for refusing access to associated respondents.
- 236 Section 245D of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) provides an example of a similar provision.
- 237 The Commission considers that section 40 of the *Children, Youth and Families Act 2005* (Vic) provides an appropriate example of such a provision.
- 238 See, eg, section 37(5) of the *Children, Youth and Families Act 2005* (Vic).
- 239 *Privacy and Data Protection Act 2014* (Vic).
- 240 *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 98J.
- 241 The Commission considers that the South Australian Information Sharing Guidelines for Promoting Safety and Wellbeing should be considered in the development of any whole-of-system guidelines under the new regime. See Ombudsman of South Australia, above n 220, 5.
- 242 See Department of Premier and Cabinet (SA), 'Taking a Stand: Responding to Domestic Violence' (October 2014) 11; South Australian Government, 'Social Development Committee: Inquiry into Domestic and Family Violence—Submission from the South Australian Government' (February 2015) 5; Information provided to the Commission during the Commission's site visit (30 June 2015, 1 July 2015).

Appendix A Letters Patent and terms of reference

**ELIZABETH THE SECOND, BY THE GRACE OF GOD
QUEEN OF AUSTRALIA AND HER OTHER REALMS AND TERRITORIES,
HEAD OF THE COMMONWEALTH:**

I, the Honourable Alex Chernov AC QC, the Governor of the State of Victoria, with the advice of the Premier, under section 5 of the *Inquiries Act 2014* and all other enabling powers, appoint you

the Honourable Marcia Ann Neave AO as Commissioner and Chairperson, and Patricia Mary Faulkner AO and Anthony Joseph Nicholson as Commissioners

to constitute a Royal Commission to inquire into and report on the matters specified in the terms of reference.

BACKGROUND

- Family violence is the most pervasive form of violence perpetrated against women in Victoria. While both men and women can be perpetrators or victims of family violence, overwhelmingly the majority of perpetrators are men and victims are women and children.
- The causes of family violence are complex and include gender inequality and community attitudes towards women. Contributing factors may include financial pressures, alcohol and drug abuse, mental illness and social and economic exclusion.
- The impacts of family violence are profound.
 - a. In 2013 there were 44 family violence related deaths in Victoria.
 - b. For women and children, family violence has extensive and often long term physical, psychological and emotional consequences. It creates homelessness, disrupts children's schooling and leads to social and economic isolation for women.
 - c. The estimated annual cost of family violence to the Victorian economy in 2009 was \$3.4 billion.
- The response to family violence is necessarily complex and requires coordinated and concerted effort across government and the community, including by

government departments, courts, police, correctional services, legal services, housing, child protection and family services, schools, health and community organisations.

- Many committed and dedicated persons are involved in the prevention of and response to family violence, given the challenges it presents. There were 65,393 family incidents reported to Victoria Police in 2013-14, an increase of 83 per cent since 2009-10. This increased reporting of traditionally under-reported incidents may signal a positive step towards encouraging victims to speak out and an increased awareness of family violence. However, the increase in reported family violence incidents presents a challenge for the family violence system and has had significant impacts on all parts of the system, including police, courts, legal services and specialist family violence services.
- Preventing and responding to family violence is a shared responsibility across government and local government, media, business, community organisations, communities, families and individuals.
- Victoria's response to family violence must reduce the incidence of family violence, hold perpetrators to account for their actions and support victims in an effective, efficient and sustainable way into the future.

TERMS OF REFERENCE

You are appointed to inquire into and report on how Victoria's response to family violence can be improved by providing practical recommendations to stop family violence. You are required to:

1. examine and evaluate strategies, frameworks, policies, programs and services across government and local government, media, business and community organisations and establish best practice for:
 - a. the prevention of family violence;
 - b. early intervention to identify and protect those at risk of family violence and prevent the escalation of violence;
 - c. support for victims of family violence and measures to address the impacts on victims, particularly on women and children; and
 - d. perpetrator accountability;

2. investigate the means of having systemic responses to family violence, particularly in the legal system and by police, corrections, child protection, legal and family violence support services, including reducing re-offending and changing violent and controlling behaviours;
3. investigate how government agencies and community organisations can better integrate and coordinate their efforts; and
4. provide recommendations on how best to evaluate and measure the success of strategies, frameworks, policies, programs and services put in place to stop family violence;

and inquire into and report on any other matters reasonably incidental to those set out in paragraphs 1-4 above.

You may make such recommendations arising out of your inquiry as you consider appropriate, having regard to any matters you consider relevant including:

5. the need to establish a culture of non-violence and gender equality, and to shape appropriate attitudes towards women and children;
6. the needs and experiences of people affected by family violence with particular regard to children, seniors, Aboriginal and Torres Strait Islander communities, culturally and linguistically diverse communities, gay, lesbian, bisexual, transgender and intersex communities, regional and rural communities and people with a disability and complex needs;
7. the need to identify and focus on practical short, medium and long term systemic improvements to Victoria's current response to family violence and the need for this response to be sustainable into the future;
8. the need for coordination across jurisdictions to provide the most effective response to family violence;
9. the systems and mechanisms to identify and appropriately prevent and respond to family violence, including information sharing and data systems; and
10. the expertise of professionals and academics working in the field of family violence, including any relevant international and Australian family violence research, past inquiries, reports and evaluations that may inform your inquiry and avoid unnecessary duplication.

You are required to report your findings and any recommendations to the Governor as soon as possible, and in any event, no later than 29 February 2016.

In these terms of reference,

family violence means family violence as defined in section 5 of the *Family Violence Protection Act 2008*.

community organisation means any non-government body, agency, association, institution, organisation or other entity or group of entities of any kind (whether incorporated or unincorporated) and however described, that provides services or conducts activities to prevent or respond to family violence in Victoria.

CONDUCT OF THE INQUIRY

You are directed to:

- conduct your inquiry as you consider appropriate, having regard to adopting informal and flexible procedures where desirable;
- have regard to the desirability of conducting your inquiry without unnecessary cost or delay;
- not prejudice, and to work cooperatively with, other inquiries and current investigations into any matter of family violence, including having regard to the need to treat any evidence received by you in a way that does not prejudice current or future criminal or civil proceedings or other contemporaneous inquiries; and
- conduct the inquiry in accordance with these letters patent, the *Inquiries Act 2014*, and all other relevant laws.

You may also consult with experts and engage persons to provide relevant advice and assistance, including persons who have experienced family violence and support providers.

The powers of the Royal Commission, at the discretion of the Chairperson may, at any time, be exercised by one or more Commissioners.

Appendix B Amendment to Letters Patent

**ELIZABETH THE SECOND, BY THE GRACE OF GOD
QUEEN OF AUSTRALIA AND HER OTHER REALMS AND TERRITORIES,
HEAD OF THE COMMONWEALTH:**

I, the Honourable Linda Dessau AM, the Governor of the State of Victoria, with the advice of the Premier, under section 5 of the *Inquiries Act 2014*, section 41A of the *Interpretation of Legislation Act 1984* and all other enabling powers, amend the Letters Patent entered into the Register of Patents Book No. 46 Page No. 33 on 22 February 2015, by fixing 29 March 2016 as the date by which the Royal Commission is required to report its findings and any recommendations.

These amended letters patent are issued under the Public Seal of the State.

WITNESS

Her Excellency the Honourable
Linda Dessau, Member of the
Order of Australia, Governor of
the State of Victoria in the
Commonwealth of Australia at
Melbourne this *23rd* day
of *December*
two thousand and fifteen.



By Her Excellency's Command

The Honourable Daniel Andrews MP
Premier of Victoria

Entered on the record by me in the Register of Patents Book No *46* Page No *77*
on the *23rd* day of *December* 20 *15*

Secretary, Department of Premier and Cabinet

Appendix C Statement of expenditure*

| Expenditure for the period 22 February 2015 to 31 January 2016 ^{a,b} | \$ |
|---|-------------------|
| Commissioners and staff costs | 3,030,860 |
| General expenses ^c | 168,678 |
| Information technology | 1,567,451 |
| Other professional services and subscriptions ^d | 645,590 |
| Counsel Assisting | 704,009 |
| Lawyers | 1,800,323 |
| Document management | 1,091,949 |
| Hearings and community consultations | 485,841 |
| Occupancy | 1,589,314 |
| Total | 11,084,015 |

| | |
|--|-------------------|
| Estimated expenditure 1 February 2016 to 29 April 2016 ^e | 2,381,022 |
| Estimated total expenditure 22 February 2015 to 29 April 2016 | 13,465,037 |

Notes:

* The Royal Commission into Family Violence (RCFV) discharged its terms of reference with the delivery of its report on 29 March 2016. The expenditure shown reflects actual costs incurred by the Commission to 31 January 2016, as well as an estimate of costs of the final two months of operation in February and March 2016; and expected wind-down and decommissioning costs to 29 April 2016.

- a. Summary of costs incurred for the period 22 February 2015 to 31 January 2016 verified by Ernst & Young against the, Department of Premier and Cabinet's financial system through which all RCFV expenses were processed.
- b. Depreciation and provisions are included in the relevant categories.
- c. Including office infrastructure and equipment, travel and accommodation.
- d. Including commissioned research and contracted professional services.
- e. Including salaries, report editing, layout, design and printing, legal, information technology, document management and transfer of records to Public Records Office of Victoria.

Appendix D Witness list

| Name | Role |
|---------------------------------------|---|
| Abbott, Ms Judith | Director, Drugs, Primary Care and Community Programs Branch, Department of Health and Human Services |
| Adams, Ms Lucy | Manager and Principal Lawyer, Justice Connect Homeless Law |
| Aleksandrs, Mr Gabriel | Social worker and consultant, Brotherhood of St Laurence |
| Alexander, Senior Sergeant Fiona | Senior Sergeant and Officer in Charge, Integrated Response Team Initiative, Taskforce Alexis, Victoria Police |
| Allen, Ms Beth | Assistant Director, Child Protection Unit, Statutory and Forensic Services Design Branch, Department of Health and Human Services |
| Allen, Superintendent Charles | Superintendent, Priority Communities Division, Victoria Police |
| Antoine, Mr Jethro | Director of Technology and Director of New Jersey Programs, Center for Court Innovation (US) |
| Aos, Mr Steven | Director, Washington State Institute for Public Policy |
| Ashton, Chief Commissioner Graham | Chief Commissioner, Victoria Police |
| Atmore, Dr Chris | Senior Policy Adviser, Federation of Community Legal Centres |
| Avdibegovic, Ms Maya | Chief Executive Officer, InTouch Multicultural Centre Against Family Violence |
| Bamblett AM, Adjunct Professor Muriel | Chief Executive Officer, Victorian Aboriginal Child Care Agency |
| Bateson, Superintendent Stuart | Superintendent, Divisional Commander for North West Metro Division 2, Victoria Police |
| Batty, Ms Rosie | Domestic violence victim advocate, Luke Batty Foundation |
| Beagley, Ms Leanne | Director of Mental Health, Department of Health and Human Services |
| Beaton, Ms Tracy | Chief Practitioner and Director, Office of Professional Practice, Department of Health and Human Services |
| Becker, Ms Elizabeth | Principal Lawyer, InTouch Multicultural Centre Against Family Violence |
| Bignold, Ms Jocelyn | Chief Executive Officer, McAuley Community Services for Women |
| Bishop, Mr Drew | Senior Social Worker, North West Area Mental Health Service |
| Blakey, Ms Jenny | Manager, Seniors Rights Victoria |
| Boland, Ms Brenda | Chief Executive Officer, Commission for Children and Young People |
| Bolton, Ms Helen | Chief Executive Officer, Barwon Centre Against Sexual Assault |
| Brandenburg, Mr Michael | Manager, Family Violence, Family Relationship Services and Housing, Child and Family Services Ballarat |
| Braybrook, Ms Antoinette | Chief Executive Officer, Aboriginal Family Violence Prevention and Legal Service Victoria |
| Brennan, Ms Julianne | Director, Community Crime Prevention Unit, Department of Justice and Regulation |
| Bromfield, Professor Leah | Deputy Director, Australian Centre for Child Protection, University of South Australia and Professional Fellow at the Royal Commission into Institutional Responses to Child Sexual Abuse |

| Name | Role |
|---|--|
| Broughton, Deputy Chief Magistrate Felicity | Deputy Chief Magistrate and Joint Supervising Family Violence Magistrate, Magistrates' Court of Victoria |
| Brown, Ms Anna | Co-convenor, Victorian Gay & Lesbian Rights Lobby |
| 'Brown, Ms Melissa' | Lay witness |
| Brown, Dr Patricia | Director, Children's Court Clinic, Children's Court of Victoria |
| Brown, Associate Professor Stephanie | Associate Professor, Head of Healthy Mothers Healthy Families research group, Murdoch Children's Research Institute, The Royal Children's Hospital |
| Brown, Professor Thea | Professor Emeritus, Department of Social Work, Monash University |
| Bugeja, Dr Lyndal | Manager, Prevention Unit, Coroners Court of Victoria |
| Bunston, Ms Wendy | Senior clinical mental health social worker, family therapist, infant mental health specialist and PhD candidate, La Trobe University |
| Byrne, Mr John | Men's health counsellor, Dardi Munwurro |
| Calafiore, Mr Joe | Chief Executive Officer, Transport Accident Commission |
| Calkin, Ms Fiona | Leading Senior Constable, Victoria Police |
| Callister, Ms Gill | Secretary, Department of Education and Training |
| Campbell, Ms Helen | Chair, Eastern Metropolitan Region Regional Family Violence Partnership |
| Carr, Ms Ailsa | Executive Manager, Family, Youth and Children's Services Unit, Gippsland Lakes Community Health |
| Carr, Ms Cate | Executive Director, Office of Liquor, Gaming and Racing, Department of Justice and Regulation |
| Carter, Councillor Sarah | Councillor, Maribyrnong City Council |
| Casey, Mr Chris | Senior Lawyer, Loddon Campaspe Community Legal Centre |
| Chambers, President Amanda | President, Children's Court of Victoria |
| Champion SC, Mr John | Director, Office of Public Prosecutions |
| Chesterman, Dr John | Manager of Policy and Education, Office of the Public Advocate |
| Clark, Commissioner Belinda | Commissioner, Victorian Public Sector Commission |
| 'Collins, Mr James' | Lay witness |
| Comrie AO APM, Mr Neil | Implementation Monitor, Hazelwood Mine Fire Inquiry |
| Cooney, Ms Alice | Parole Coordinator, Victoria Police |
| Cornelius, Assistant Commissioner Luke | Assistant Commissioner, Southern Metropolitan Region, Victoria Police |
| Counsel, Ms Caroline | Accredited Family Law Specialist and Founding Partner, Counsel Family Law |
| Cumberland, Dr Rhonda | Chief Executive Officer, Good Shepherd Australia New Zealand |
| Davies, Ms Julie | Family violence respondent support worker, Ballarat Magistrates' Court |
| Day, Professor Andrew | Registered psychologist and Professor of Psychology, Deakin University |
| De Cicco, Ms Marisa | Deputy Secretary, Criminal Justice Division, Department of Justice and Regulation |

| Name | Role |
|--------------------------------------|--|
| de Lacy, Ms Joanne | Team leader, Court Integrated Services Program, Sunshine Magistrates' Court |
| Diemer, Dr Kristin | Senior Research Fellow, Department of Social Work, University of Melbourne |
| Diver, Ms Frances | Deputy Secretary, Health Service Performance and Programs, Department of Health and Human Services |
| Dotchin, Magistrate Peter | Regional Coordinating Magistrate, Moorabbin Children's Court |
| Douglas, Professor Heather | Professor of Law, University of Queensland |
| Dowsley, Ms Fiona | Chief Statistician, Crime Statistics Agency |
| Dunlop, Ms Lisa | Executive Director, Clinical Operations, Royal Women's Hospital |
| Dyson, Dr Sue | Associate Professor and Principal Research Fellow at the Australian Research Centre in Sex, Health and Society, La Trobe University |
| Easton, Dr Caroline | Professor of Forensic Psychology, College of Health Sciences and Technology, Rochester Institute of Technology |
| Eccles, Mr Chris | Secretary, Department of Premier and Cabinet |
| El Matrah, Ms Joumanah | Executive Director, Australian Muslim Women's Centre for Human Rights |
| Eltringham, Ms Libby | Policy and Legal Worker, Domestic Violence Resource Centre Victoria |
| Fatouros, Ms Helen | Director, Criminal Law Services, Victoria Legal Aid |
| Feinberg, Professor Mark | Research Professor, Prevention Research Centre, Pennsylvania State University |
| Fergus, Dr Lara | Director of Policy and Evaluation, Our Watch |
| Fernbacher, Dr Sabin | 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 |
| Field, Ms Karen | Specialist Family Violence Service Registrar, Sunshine Magistrates' Court |
| Fitzsimon, Ms Emma | Executive Officer, Inner North West Primary Care Partnership |
| Fletcher, Dr Richard | Senior Lecturer, Family Action Centre, and Head of the Fathers and Families Research Program, University of Newcastle |
| Flood, Dr Michael | Australian Research Council Future Fellow and Senior Lecturer in Sociology, University of Wollongong |
| Fonzi, Mr Rocco | Director, Client Outcomes and Service Improvement, East Division, Department of Health and Human Services |
| Formica, Ms Lee | Accredited family law specialist and practising consultant, Taussig Cherrie Fildes Lawyers |
| Fraser, Ms Helen | Portfolio Manager, Ministry of Health, New Zealand |
| Fraser, Ms Sharon | General Manager, Go Goldfields |
| Frederico, Professor Margarita | Associate Professor and Graduate Research Coordinator Social Work and Policy, La Trobe University |
| Freiberg AM, Emeritus Professor Arie | Emeritus Professor, Monash University |
| Gartlan, Mr Peter | Executive Director, Financial and Consumer Rights Council |
| Gassner, Dr Leigh | Director, Reos Partners, Australia |

| Name | Role |
|--------------------------------------|---|
| Geary OAM, Commissioner Bernie | Commissioner, Commission for Children and Young People |
| Gillespie, Ms Annette | Chief Executive Officer, Safe Steps Family Violence Response Centre |
| Goddard, Professor Chris | Director, Child Abuse Prevention Research, Monash University |
| Goodmark, Professor Leigh | Professor of Law, Francis King Carey School of Law, University of Maryland, US |
| Grayson, Mx Ren | Key worker, North East Services Connect |
| Gregory, Dr Robyn | Chief Executive Officer, Women's Health West |
| Gruenert, Dr Stefan | Chief Executive Officer, Odyssey House |
| Gyorki, Ms Linda | Senior Project Manager and Lawyer, Inner Melbourne Community Legal |
| Hagias, Ms Maria | Executive Director, Central Domestic Violence Service South Australia |
| Hann, Ms Sheryl | Lead Advisor Quality Programmes and Practice for Community Investment, Ministry of Social Development, New Zealand |
| Hanna, Ms Alice | Clinical Manager, Jarrah House |
| Hansen, Superintendent Timothy | Community Safety Division, Corporate Strategy and Operational Improvement Department, Victoria Police |
| Hargrave, Ms Jen | Policy officer, Women with Disabilities Victoria |
| Harrison, Ms Bernadette | Maternal and Child Health Coordinator, City of Greater Dandenong |
| Hawkins, Magistrate Kate | Joint Supervising Family Violence Magistrate, Magistrates' Court of Victoria |
| Hearne, Mr Jeremy | Manager Prevention North and Inner North, cohealth |
| Heatley, Mr Dave | Principal Advisor, New Zealand Productivity Commission |
| Heenan, Dr Melanie | Executive Director, Court Network |
| Hegarty, Professor Kelsey | Professor of General Practice, University of Melbourne |
| Higgins, Mr Garry | Memberships Director, The Rotary Club of Maryborough |
| Holmes, Mr Scott | Project Manager, Health Promotion, YMCA Victoria |
| Holst, Dr Heather | Deputy Chief Executive Officer and Director of Services and Housing, Launch Housing |
| Horsley, Dr Philomena | Research Fellow and Senior Trainer, Gay and Lesbian Health Victoria, Australian Research Centre in Sex, Health and Society, La Trobe University |
| Howard, Senior Sergeant Ailsa | Senior Supervisor, Security Incident Register, Victoria Police |
| Howard, Assistant Commissioner Craig | Assistant Commissioner for Security Intelligence, Corrections Victoria, Department of Justice and Regulation |
| Howard, Ms Jo | Executive Manager Child, Youth and Family Services, Kildonan UnitingCare |
| Howe, Ms Keran | Executive Director, Women with Disabilities Victoria |
| Humphreys, Professor Cathy | Professor of Social Work, University of Melbourne |
| Hyman, Judge Eugene | Judge (retired), Superior Court of California |
| Imbesi, Ms Renee | Acting Manager, Mental Wellbeing, Victorian Health Promotion Foundation (VicHealth) |

| Name | Role |
|--|---|
| Jackomos PSM, Commissioner Andrew | Commissioner, Commission for Aboriginal Children and Young People |
| Jaffe, Ms Ilana | Project Coordinator, Inner North West Primary Care Partnership |
| 'Jayde, Ms Sarah' | Lay witness |
| Jenkins, Commissioner Kate | Commissioner, Victorian Equal Opportunity and Human Rights Commission |
| Johnson, Ms Sarah | Regional Integration Coordinator, Women's Health in the North |
| 'Jones, Ms Anna' | Lay witness |
| 'Jones, Ms Susan' | Lay witness |
| Kearney, Ms Ged | President, Australian Council of Trade Unions |
| Kinnersly, Ms Patricia | Director, Practice Leadership, Our Watch |
| Kirby, Mr Rudolph | Chief Executive Officer, Mallee District Aboriginal Services |
| Kirkham, Mayor Ricky | Mayor, Whittlesea City Council |
| Kulkarni, Professor Jayashri | Consultant psychiatrist and Professor of Psychiatry, Monash Alfred Psychiatry Research Centre |
| Kun, Ms Julie | Deputy Chief Executive Officer and Business Development Manager, Women's Information and Referral Exchange |
| Lay APM, Mr Ken | Chair, Council of Australian Governments Advisory Panel on Reducing Violence against Women and their Children |
| Lillie, Mr Stephen | Men's Health Coordinator, Hawkesbury District Health Service |
| Maguire, Ms Emily | Chief Executive Officer, Domestic Violence Resource Centre Victoria |
| Mahoney, Ms Janine | Chief Executive Officer, Safe Futures Foundation |
| Matthews, Ms Helen | Accredited family law specialist and principal lawyer, Women's Legal Service Victoria |
| McCartney, Ms Bernadette | Executive Manager, Community Support, Bethany Community Support |
| McCaw, Dr Brigid | Medical Director, Family Violence Prevention Program, Kaiser Permanente (US) |
| McCormack, Ms Fiona | Chief Executive Officer, Domestic Violence Victoria |
| McDonald, Ms Alison | Policy and Program Manager, Domestic Violence Victoria |
| McGorry AO, Professor Patrick | Executive Director, Orygen National Centre of Excellence in Youth Mental Health |
| McGregor, Mr Andrew | Principal, Dowling McGregor Pty Ltd |
| McNamara, Ms Lorna | Director, Education Centre Against Violence, NSW |
| McWhirter, Assistant Commissioner Dean | Assistant Commissioner for Family Violence Command, Victoria Police |
| Micallef, Ms Mary | Key worker, North East Services Connect |
| Miller, Ms Leeanne | Director, Child Protection West Division, Department of Health and Human Services |
| Miller, Associate Professor Peter | Principal Research Fellow, School of Psychology, Deakin University |
| Miller, Dr Robyn | Social worker and family therapist |

| Name | Role |
|--|--|
| Mooney, Mr Adam | Chief Executive Officer, Good Shepherd Micro-Finance |
| Morris, Ms Anita | PhD candidate, University of Melbourne |
| 'Morris, Ms Jessica' | Lay witness |
| Mort, Ms Fiona | Director, Office of Women, South Australia |
| Morton, Ms Pam | Acting Principal Lawyer, Seniors Rights Victoria |
| Nagle, Ms Kellie | Policy advisor in prevention of violence against women, Municipal Association of Victoria |
| Naylor, Superintendent Paul | Divisional Superintendent for North-West Victoria, Victoria Police |
| Nelthorpe AM, Mr Denis | Chief Executive Officer, Western Community Legal Centre |
| Newman, Ms Abbey | Family Violence Applicant Support Worker, Sunshine Magistrates' Court |
| Newman AM, Professor Louise | Director, Centre for Women's Mental Health, Royal Woman's Hospital |
| O'Brien, Ms Angela | Operations Manager, WISHIN (Women's Information, Support and Housing in the North) |
| O'Brien, Ms Meghan | Social work team leader, St Vincent's Hospital, Melbourne |
| O'Donohue, Ms Trish | Chief Executive Officer, WISHIN (Women's Information, Support and Housing in the North) |
| Oakley Browne, Dr Mark | Chief Psychiatrist, Department of Health and Human Services |
| Oberklaid, Professor Frank | Foundation Director, Centre for Community Child Health, Murdoch Children's Research Institute, The Royal Children's Hospital |
| Ogloff AM, Professor Jim | Professor, Forensic Behavioural Science, and Director, Centre for Forensic Behavioural Science, Swinburne University of Technology |
| Paroz, Ms Katherine | Chief Talent Officer, Human Resources Department, Telstra |
| Peake, Ms Kym | Acting Secretary, Department of Health and Human Services |
| Pearce, Ms Colleen | Victorian Public Advocate, Office of the Public Advocate |
| Pettett, Detective Senior Sergeant Bryce | Officer in Charge, Dandenong Sexual Offence and Child Abuse Investigation Team, Victoria Police |
| Philip, Dr Pradeep | Secretary, Department of Health and Human Services |
| Plunkett, Ms Catherine | RAMP Development Officer, Domestic Violence Victoria |
| Pomeroy, Ms Teresa | Team Leader, Social Action, Ministry of Social Development, New Zealand |
| Prior, Ms Kathy | Deputy Director, Berry Street, North East Services Connect |
| Rankin, Ms Seri | Chief Executive Officer, ten20 Foundation |
| Reaper, Deputy Commissioner Andrew | Deputy Commissioner Offender Management, Corrections Victoria, Department of Justice and Regulation |
| Rechter, Ms Jerril | Chief Executive Officer, Victorian Health Promotion Foundation (VicHealth) |
| Rennie, Dr Susan | Manager Policy and Strategy, Victorian Primary Care Partnerships |
| Ricardo, Sergeant Deryn | Family Violence Advisor, Eastern Region Divisions 5 and 6, Victoria Police |
| Rich, Ms Nicole | Director, Family, Youth and Children's Law Services, Victoria Legal Aid |

| Name | Role |
|--|--|
| Ritchie, Ms Miranda | National Violence Intervention Program Manager, District Health Boards, Ministry of Health, New Zealand |
| Robinson, Dr Kim | Lecturer, Deakin University |
| Rogers, Mr Arthur | Deputy Secretary, Social Housing and NDIS Reform, and Director of Housing, Department of Health and Human Services |
| Rudd, Acting Inspector Paul | Officer in Charge, Melbourne Prosecutions Unit, Victoria Police |
| Russo, Ms Antoinette | Social worker, Women's Homelessness Prevention Project, Justice Connect Homeless Law |
| Rutter, Mr Glenn | Manager, Court Support and Diversion Services, Magistrates' Court of Victoria |
| 'Ryan, Ms Lyndal' | Lay witness |
| Sardo, Mr Serge | Chief Executive Officer, Victorian Responsible Gambling Foundation |
| Schultze, Mr Steve | Senior Partner and Executive Director (Operations), Protective Services Pty Ltd |
| Scott, Dr Katreena | Associate Professor and Canada Research Chair, Department of Applied Psychology and Human Development, University of Toronto, Canada |
| Shuard, Commissioner Jan | Commissioner of Corrections Victoria, Department of Justice and Regulation |
| Sinclair, Ms Leanne | Family Violence Program Manager, Victoria Legal Aid |
| Singh, Ms Angela | Executive Director, Office of Aboriginal Affairs Victoria, Department of Premier and Cabinet |
| Skilbeck, Ms Melissa | Deputy Secretary, Budget and Finance Division, Department of Treasury and Finance |
| Smallwood, Ms Emma | Lawyer and Economic Well-being Project Research Coordinator, Women's Legal Service Victoria |
| Smith, Ms Jenny | Chief Executive Officer, Council to Homeless Persons |
| 'Smith, Ms Rebecca' | Lay witness |
| Smith, Ms Tammy | Regional Integration Coordinator, Ovens Murray Goulburn Integrated Family Violence Network |
| Spinney, Dr Angela | Research fellow and lecturer, Institute for Social Research, Swinburne University of Technology |
| Spriggs, Sergeant Mark | Family Violence Advisor for North West Metro Division 5, Victoria Police |
| Springall, Ms Robyn | Accommodation Services Manager, Northern Community Hub, VincentCare Victoria |
| Steendam, Assistant Commissioner Wendy | Assistant Commissioner, Information, Systems and Security Command, Victoria Police |
| Stracke, Ms Wil | Industrial and campaigns officer, Victorian Trades Hall Council |
| Taft, Professor Angela | Director, Judith Lumley Centre, La Trobe University |
| Thorn, Mr Michael | Chief Executive, Foundation for Alcohol Research and Education |
| Toohey, Magistrate Noreen | Lead Magistrate, Ballarat Family Violence Division, Magistrates' Court of Victoria |

| Name | Role |
|---------------------------|---|
| Toohy, Ms Sarah | Manager of Policy and Communications, Council to Homeless Persons |
| Toone, Ms Emma | Senior Clinician, Turtle Program, Northern Family and Domestic Violence Service, Berry Street |
| Tucker, Ms Jacky | Family Violence Services Manager, Women's Health West |
| Turfrey, Ms Jacquelyn | Director, Koori Justice Unit, Department of Justice and Regulation |
| Turnbull, Mr David | Chief Executive Officer, City of Whittlesea |
| Vickery, Ms Annette | Deputy Chief Executive Officer, Victorian Aboriginal Legal Service |
| Vinson, Professor Tony | Emeritus Professor, University of New South Wales |
| Vlais, Mr Rodney | Registered psychologist and Manager, No To Violence |
| Walker, Ms Kerry | Director, Neighbourhood Justice Centre |
| Walker, Ms Melinda | Accredited specialist in criminal law, sole practitioner |
| Wansbrough, Mr Horace | Manager, Youth Support and Advocacy Service |
| Watson, Ms Amy | Associate Nurse Unit Manager, Women's Emergency Care, Royal Women's Hospital |
| Watt, Ms Jacqui | Chief Executive Officer, No To Violence and Men's Referral Service |
| Watts, Commissioner David | Commissioner for Privacy and Data Protection, Commission for Privacy and Data Protection |
| Widmer, Mr Scott | Executive Director, Service Design and Operations Division, Department of Health and Human Services |
| Williams, Ms Jane | Partnerships Manager, North East Services Connect |
| Wilson, Mr Greg | Secretary, Department of Justice and Regulation |
| Wilson, Ms Ingrid | PhD candidate, Judith Lumley Centre, La Trobe University |
| Wilson, Ms Janine | Chairperson, Northern Loddon Mallee Indigenous Family Violence Regional Action Group |
| Wood, Dr Melisa | Senior Clinical and Forensic Psychologist, Forensicare |

Appendix E Hearing modules

| Module | Topic | Date |
|--------|--|------------------------------------|
| 1 | What is family violence and who experiences it—including causes and contributing factors | 13 July 2015 |
| 2 | Children—introduction and early intervention | 14 Jul 2015 |
| 3 | Children—intervention and response | 15 July 2015 |
| 4 | Financial abuse and empowerment | 16 July 2015 |
| 5 | Alcohol and drugs | 17 July 2015 |
| 6 | Aboriginal and Torres Strait Islanders—experiences and opportunities | 20 July 2015 |
| 7 | Housing and homelessness | 21 July 2015 |
| 8 | Mental health | 22 July 2015 |
| 9 | Risk assessment and risk management | 23 July 2015 |
| 10 | Perpetrator interventions | 24 July 2015 |
| 11 | Initial police response | 3 August 2015 |
| 12 | Family violence intervention orders—application process | 4 August 2015 |
| 13 | Family violence intervention orders—monitoring and enforcement | 5 August 2015 |
| 14 | Criminal justice response | 6 August 2015 |
| 15 | Overlapping jurisdictions—the role of family law and child protection law | 7 August 2015 |
| 16 | Culture change in workplaces and the community | 10 August 2015 |
| 17 | Diversity of experiences, community attitudes and structural impediments | 11 August 2015 |
| 18 | Role of the health system | 12 August 2015 |
| 19 | Integrating services and information sharing | 13 August 2015 14 August 2015 |
| 20 | Engaging the community | 12 October 2015 |
| 21 | Developing the workforce | 13 October 2015 |
| 22 | Evaluating, reporting and reviewing | 14 October 2015 |
| 23 | What the family violence system should look like and how it should be funded | 15 October 2015 16 October 2015 |

Appendix F Lay witnesses

The Commission invited eight individuals who had direct experience of family violence, either as a victim or, in one instance, as someone who had used violence, to give evidence about their experiences of current responses to family violence. A ninth person provided a written statement. Eight of the witness statements are presented here. For safety reasons, one of the statements remains unpublished. The Commission is very grateful to all people who provided statements and appeared as witnesses.

Witness statement of ‘Susan Jones’

I, Susan Jones,¹ say as follows:

1. I make this statement on the basis of my own knowledge, save where otherwise stated. Where I make statements based on information provided by others, I believe such information to be true.

Background

2. In 2000 while living overseas, I eloped to marry a man who did not have the approval of my family or community. As such, I was cut off from all family and community support. My father is Australian.
3. The sexual, physical and verbal assault began almost immediately. In the first week of our marriage, after having intercourse, my husband threw me on the concrete floor, which is where he made me sleep on nights he was not pleased with me. He said that he should have married a whore instead of me because a whore would ‘know how to pleasure her man.’
4. Over the first few weeks of marriage, he repeatedly had sexual intercourse with me and made me sleep on the floor if I could not keep up with his sexual needs. He told me ‘the floor is where sluts sleep.’ He made me feel insecure by telling me I couldn’t do anything right.
5. It was during these early weeks of marriage that I learnt the hard way that I was not allowed to say ‘no’ to my husband. Physical and sexually demeaning behaviour would occur towards me, which made me fearful and anxious around my husband. His wishes and needs were met at every request and I was not allowed to express my opinion or preference for anything, whether it be what we ate, where we went or anything that is otherwise normal in a relationship, companionship or marriage.
6. I became pregnant within the first month of marriage, which made him angry as he implied I had broken an agreement that ‘we are supposed to have fun for a while, and not get pregnant straight away.’ No such agreement was ever discussed, but he did put the blame on me for becoming pregnant. One night, he kicked me in the stomach while I was sleeping. I had to prove that my becoming pregnant would not make me less obedient. Examples of this behaviour was when he made me carry all the grocery bags, push start his car while he sat in it and have sex any time he demanded it. He had no concern for my state of pregnancy.
7. During the pregnancy, I suffered morning sickness and I could only eat oranges. My husband wouldn’t let me leave the house, even to get oranges to ease my morning sickness. When I asked his relatives who visited if they could buy me some oranges and gave them money to do so, he took the money and said he would purchase the oranges. When his relatives had left, he became furious that I had asked his family to run errands for me, and didn’t buy the oranges.
8. In October 2000, when I was eight months pregnant with our first child, I flew, with my father’s assistance, to Australia, with the intention of leaving my husband due to his abusive behaviour. My siblings were all living in Australia at that time.
9. He followed me to Australia one week later to my surprise, and the abuse continued. I had nowhere to go as my family didn’t realise the extent of the abuse, and I didn’t have any further support networks. Any connections I had in Australia didn’t know what had been happening behind closed doors so they therefore continued to encourage me to stay with him.

10. At some point in our marriage I went to speak to our religious leader and ask advice about my husband's abusive behaviour. The religious leader advised me that perhaps if the house was cleaner when my husband got home, or if I cooked better, he might not be so angry. As a result of confiding to my religious leader, I was referred to a counselling service that advised me on how to be a more obliging and obedient wife.
11. The abuse intensified every time I became pregnant. During our marriage, I became pregnant four times and I now have four sons.

Initial contact with the health system

12. In 2001 I had attended a medical clinic due to injuries sustained from rape. The female GP did discuss the severity of my injuries and had asked if it was rape. I told her 'no, it was my husband.' She told me she would keep this incident on record, but these records were lost by the time I went to the police in 2011. She gave me a pamphlet for a women's helpline, I thanked her for it, but disposed of the pamphlet in case my husband found me in possession of it. At the time, I did not know the significance of this helpline.
13. Again in 2004 while pregnant with my third child, I sustained such significant injuries from my husband's sexual assault that I had to attend a hospital. I was bleeding and thought I might be losing the baby. The doctor that treated my injuries identified that the cause must have been sexual assault. The doctor asked if I wanted to press charges for rape. I was confused by the suggestion as my understanding of 'rape' was that the rapist had to be a stranger or an intruder, not a husband.
14. I thought that the role of wife meant that when you sign the marriage contract, you sign over the rights to your body. Any time your husband wants your body, it belongs to him. The doctor informed me that this information was not correct, that when your husband signs the marriage contract, he agrees to love and protect. This doctor's statement had a huge impact on my understanding of what rape and consent meant. The doctor told me that my body belonged to me and explained that any form of non-consensual sex was rape, regardless of whether you were married to the perpetrator or not.
15. This doctor referred me to a counsellor and enlightened me to the opportunity of learning more about my rights through discussion. I did attend these counselling sessions. I walked to my counselling sessions, children in tow, while my husband was at work. Although learning about my rights was insightful, putting that learning into practice was not so easy.
16. On a separate occasion, a GP had asked me if I was being 'abused'. My understanding of the word 'abuse' was being beaten with a closed fist. My husband had told me that through his job, he had learned that if you hit someone with an open palm, it's not considered 'abuse'. As my husband would hit me with an open palm, I told the doctor that I was not being abused.
17. Throughout the 10 years of marriage, I had no idea that financial control, social control, manipulation, fear tactics, threats of hurting me or the children were all forms of abuse. I even laughed when someone told me about emotional abuse—how can anyone cause pain to feelings? I now know this to be true and very possible.

Police response

18. The doctor at the hospital referred me to a counsellor, who told me that I could call the police when my husband's behaviour was making me feel unsafe, scared, or resulted in the injuries that I had when I attended the hospital. Before this time, I thought the police only dealt with car accidents or other emergencies. I didn't realise that they could come to our house for the behaviour my husband was displaying to me. At the time I did not understand domestic violence to be an emergency.
19. The first time I phoned the police, I felt the threat of violence as I could tell he was angry. He was exhibiting erratic and frightening behaviour such as slamming doors and cupboards and flicking the lights on and off in the children's bedroom while they were sleeping. This frightened me and I did not know what he was going to do. The police attended and separated us to different sides of the house. As my husband worked as a [REMOVED], he later told me that he had had interactions with these specific officers through his work. He told me all he had to say was that I was taking anti-depressants and hadn't been taking my medication, and that there was no threat of violence. I heard him tell the officers 'women, they over exaggerate you know.' The police officers laughed with him and no further action was taken.

20. The second time I phoned the police, they attended again and again no action was taken. As soon as the police arrived, my husband pretended to be calm and friendly. One of the officers asked me what I wanted them to do, but I didn't know what my options were. They didn't tell me that I could take out an intervention order against him, which would mean he couldn't continue hurting me. If that had been explained to me, I would have asked them to make him leave.

Isolating and controlling behaviours

21. My husband locked the phone and computer in a padlocked room every time he left the house. I was only able to use them when he was home and with his permission. He would sit next to me when I made any phone calls to family. This was both intimidating and frightening. I could not speak freely while he monitored my phone calls. He controlled which friends and family members I was allowed to speak to. For example, he learnt that one of my friends was divorced. He told me I wasn't allowed to associate with divorced women as they would corrupt a God-sanctioned marriage.
22. He didn't allow me my own mobile phone. In 2001, my sister had provided me with my own mobile, as she was concerned about me. He threw it against the wall and smashed it.
23. My husband held my bankcard so I couldn't spend any money without approval. He allocated me \$20 a week to provide for me and our four children. If I needed more money for nappies or any extras for the kids I had to beg him for extra money. If he approved of the extras that I requested he would ask exactly how much I needed, and count out that precise amount in coins. He used my card freely to buy expensive gym equipment, clothes and overseas holidays. I was never allowed to question his spending.
24. In order to have control over my whereabouts, he would often take me to work with him. Sometimes he worked night shift. He would demand I come with him so he knew where I was at all times. I had to sleep in the car all night without access to a toilet. The children were small at the time. My anxiety rose dramatically; I had to ensure they were warm and comfortable as we all slept in a small car.
25. I was restricted to the house. When my father gave me access to a car, my husband took the keys with him to work and wouldn't let me drive it. If I needed the car for any reason I had to beg and promise exactly where I was going and what time I would be back.
26. He was very controlling about being on time. If he had to pick me up from somewhere (for example, picking me up from an ultrasound appointment) he was often late to pick me up. On one occasion I waited up to three hours and I was not permitted to ask what delayed him. I was only allowed to say 'thank you' when he arrived. But if he needed to be picked up from somewhere (a train station) I would cop it if I was three minutes late.

Role of the education system in identifying the abuse

27. When I was pregnant with my fourth child, a teacher from my children's school made contact with me to ask about my five year old who was in prep. He had stopped talking during class and the teacher wasn't sure if he was learning the material being taught. The teacher asked my permission for him to see a counsellor, which I of course approved. Once the counselling session had been completed, the teacher phoned again and asked if they could interview his older brother. After this session, the school asked me to come to speak to them. At this point, I assumed it was in relation to strategies within both of the boys' education to assist my younger child to speak and learn in the classroom. When I attended the school, the counsellor started asking me questions based on answers the children had given during counselling and some pictures my children had drawn which depicted family violence. The counsellor asked me if my children had witnessed family violence in our house, such as my husband pulling me by the hair, or throwing food at me.
28. The children had given detailed descriptions of what they had witnessed and as it was being relayed to me I felt my sad secret was now not only about me. I then realised that they had been witnessing the violent behaviour that my husband was perpetrating and it was affecting them. I broke down in tears as I felt I had let the children down, as it was my role as a mother to provide for and protect these children. I felt I had let them down, that I had failed to some degree. I realised that whilst my husband only occasionally hit our children, they were also affected emotionally by the abuse that was occurring to me.

29. The school counsellor referred me to a refuge, and told me that it was likely that if we went to a refuge, we would stay there for two weeks before moving into more permanent housing. I didn't have an understanding of what a refuge was as no one had ever explained it to me. I had an expectation that it would be a facility as depicted in the news, surrounded by barbed wire like an internment camp. I didn't want to take my children to a facility like that.
30. The school counsellor also referred me to a women's information service helpline, which I was unable to use as I didn't have access to a phone.
31. At that time, I was attending counselling as referred by the doctor at the hospital. I found it emotionally exhausting to bring up the issues I'd been facing and felt embarrassed to talk about the abuse. How can talking about a horrible past help the future? I still had to go home to this man. Talking about it felt silly and futile.

Access to a women's refuge

32. Between 2000 and 2009, I tried to leave my husband on five occasions with the children and stayed with family or friends. When I was at my sister's house with the boys, my husband would call incessantly, including to my sister's mobile or home phone, or would simply come around and demand that he have access to his children. Using the children as a need for reuniting his family, he would ask, 'who else would love you and the children more than me?' I felt my presence at my sister's house was an inconvenience to her and her family. When I fled to a friend's home, I felt that I was equally inconvenient to them.
33. In October 2009, I planned to attend a woman's refuge by telling my husband I was babysitting my sister's children for two weeks, when the reality was that we only needed to babysit for one week. I planned to leave for the refuge after the first week. Through advice of the women's helpline I packed my children's things, including their passports and birth certificates, a few articles of clothing and a small toy without my husband becoming suspicious.
34. The refuge organised for a taxi to transport me and the children back to the refuge at the start of the second week. As we were leaving, my sister was confused about my husband not collecting us from her driveway and asked where we were going. I told her we were going to a refuge which upset her because she had the same understanding of what a refuge was that I did, which is similar to a prison or internment camp. My sister tried to stop us from going to the refuge. I phoned the refuge and told them that we were reconsidering coming to stay there, based on both mine and my sister's understanding of what sort of facility it was.
35. The refuge made it clear that if we didn't come, that we would not receive counselling or housing support.

Homelessness and access to housing

36. The incident with the refuge began the next 12 months of homelessness for myself and my children. From time to time, we were able to stay with my sister and various friends and family. All four of my children would sleep in one bed and I would sleep on the floor next to them, or on lounge room floors.
37. We also spent periods of time in a tent in local parks when the weather was warm enough. We started sleeping in the car when it was too cold.
38. When we slept in the car, it had to be near enough to the children's school that they could walk, as I didn't have enough money for petrol to drive them to school every day. The car couldn't be too close to school as there was a chance that their school friends might see our living conditions. We selected a park that had a toilet facility that we could wash up in before the kids went to school.
39. During this time, whilst my children attended school, I began looking for permanent accommodation for myself and my children.

Housing Service (Department of Human Services)

40. I filled out an application with a housing service. They informed me there that I should expect a long wait for housing (up to two years for emergency housing, and 20 years for non-emergency housing). They asked me if I had an address to put on the form. I said that I didn't have an address as we were living in a car. They then informed me that if I didn't have an address to put on the form, they couldn't process my application. I asked them if I should put my sister's address on the form, to which they said I wouldn't qualify for emergency housing as I already had accommodation at my sister's house. I told them that we didn't have accommodation and that I would provide my sister's address to be eligible to apply for housing. After the conundrum of this issue was settled they finally agreed to process the application and told me that I would be contacted within two months.
41. After two months, I hadn't heard from the housing service. After three months, the housing service still hadn't contacted me, so I phoned them to check on the progress of my application. The service informed me that there was no application in my name and that I would need to fill out another form. I told them I had already filled out a form and they said 'sorry, we don't have a record of your application'. I attended the service and filled out another application form. This time, I requested that the housing service photocopy the dated and stamped application so I could have proof, which they did under protest. The service then told me I would be contacted within another two months.
42. After another two months, I still hadn't heard from the service. After three months, or six months in total from the first time I filled out an application, I phoned them again. They informed me again they didn't have an application in my name. I attended the housing service office and showed them the stamped dated copy of my second application. It wasn't until I produced this copy of my application that they acknowledged that they did in fact have my application. I was always very polite and patient in dealing with services as it is my nature to be so, but to me I couldn't help but feel that this service had a system of losing forms, or making it difficult to complete forms as a deliberate strategy to deter people.
43. It was also at this point, they referred me to crisis accommodation housing. It was six months after initially walking into the housing service office that they referred me to a private crisis accommodation.

Salvation Army

44. During the 12 months of homelessness I attempted multiple avenues of looking for stable accommodation. One of these avenues was reaching out to the Salvation Army and asking if they had any accommodation options for myself and my four sons. They informed me that they didn't have housing for more than one mother and two children together, and asked if there was somewhere else my 'other' two children could go. There was a moment's desperation of contemplating which of my two children would benefit from separating from me for a bit while I got on my feet. That moment did not last long as I could not bear the thought of splitting the brothers up during this difficult time. We didn't have much, but we had each other and I felt it would be horrible to choose which children to send elsewhere. I didn't want to separate my children, or be faced with the choice of which two to take with me, and which other two to put in another form of accommodation or care.
45. I asked if they could refer me to another service where a mother could stay with all four of her children. The Salvation Army said that they only knew about the housing in their own area and didn't know about what housing was available in other areas. They didn't know where to refer me.
46. I kept cold calling various housing options I found using the internet on the local library computer. I ran out of phone credit before I could get hold of anyone who could offer any other housing options.

Crisis Accommodation Centre

47. The centre offered short-term crisis accommodation to single women, as well as women with children, with a restriction on boys over 12 years of age. My eldest son was 11 at the time, so there was a finite amount of time we would be able to stay. In the end, we were there for about four months.
48. They charged a lot. For \$400 per week, we had one room with two sets of bunks for myself and all four boys. It had a communal bathroom in a dismal state, tiny communal kitchen, communal dining and TV room to share with the other people at the centre. There was only one key for the room so if one needed to use the toilet or shower we all moved about in a group together. We felt unsafe there and my children were anxious and unhappy. It was the only time my eldest son cried. It was worse than camping or sleeping in the car for him.

49. I recall reiterating to my children at the time we were staying at the centre of the importance of their education. I couldn't promise that they would never be homeless again, but if they concentrated on their studies, and worked hard, and made the most of opportunities that come their way, there would be less likelihood that they would ever have to be homeless again. I also took the time to teach my boys that it is better to live like this than to live in fear from my husband and how very important it was to me that they never harm their wives/partners. I told them when they find a companion to share their life with that they should cherish them, and never harm them, ever. I felt it was important, as they will be men one day to teach them what kind of men I expected them to be and why it was we were living like this. The children didn't miss any school (still attending their original school) during the 12 months of homelessness.

Rental accommodation

50. I attended numerous rental properties to find somewhere safer and more permanent for us to live. At one inspection, I was told by a local real estate agent that as a single unemployed mother with four children, my application would be at the bottom of the pile. She implied that I was wasting her time. I felt it was unfair for my hopes to be dismissed so carelessly. I was hurt but not deterred and kept politely attending open days. I was never offered anything, despite an impeccable rental history.
51. I attended open for inspections on Saturdays, as each weekday, I needed to drive my children 45 minutes each way to school. I didn't have enough petrol money to drive back to the crisis accommodation centre while the boys were at school. Having very limited funds I had to be conscious of fuel use and limit my driving. I spent my time while the kids were in school volunteering around the school, reading with the children, helping with weeding and other odd jobs.
52. The Chaplain at the school noticed me and asked what I was doing at the school every day. I explained that our current accommodation was too far away for me to drive the car back and forth, so I stayed at the school to pass the time until I could pick the boys up again.
53. The Chaplain made enquiries on our behalf and found a rental property, which was made available to those needing temporary housing after the bushfires. As those affected by the fires were moving back to their homes, the Chaplain knew of some houses that were becoming available and was able to refer me to some home owners that were willing to rent to us. It was much closer to the school and we moved into one as soon as it was available to us. We have since secured a more permanent rental option.

Intervention Order

54. My husband was still in contact with our children and would spend time with them every Saturday. I gave him \$200 per week to take the children to the cinema, go bowling, or swimming. It was important for me that they build better memories of their father than the ones surrounding our departure. It was also important that they build a positive relationship with him, as I knew this would reflect on what kind of men they would grow to become.
55. The money also went towards a loan for the seven seater car that my husband was driving, but I did not have access to.
56. I didn't want my husband to find out where our rental property was for safety reasons, so I would take the children to the local McDonalds for my husband to collect them from there. I knew McDonalds has security cameras so I felt safe in making the change over there. He asked our children to show him where we were living and they did.
57. He began attending our rental property and asking for money and sex, threatening to take our children away if I didn't provide him with either. If I didn't come out to see him, he would sit in the car and lean on the car horn until I did.
58. I asked my friend, whose husband is a police officer, if there was anything I could do to stop him from coming to the house. She told me about Intervention Orders. I was able to ask her in detail what an Intervention Order meant. How can a piece of paper stop him from actually coming to my house? If I got an Intervention Order does that mean he'll lose his job and the children would suffer? I had so many questions on what an Intervention Order meant.

Financial abuse

59. 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.
60. 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 in which he 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.

Further family violence

61. In 2010, my husband asked if the family could spend Christmas together at his new house. The children were excited about the idea. I said we could all go, provided that I could pitch a tent in the back yard of the property for myself and the children. I didn't want myself and my husband to sleep under the same roof.
62. He didn't have any clothes, food or furniture for our children at his house, even though when I'd moved out in 2009, we left with only backpacks. He had access to all the furniture and clothes from the house we had shared. I was not aware that when the kids had weekends with their father, that they had no beds. As a result of learning the living conditions I later purchased some bunk beds from Savers to give the boys somewhere to sleep and brought some clothes from our home.
63. The night before Christmas 2010, he came into the tent I had pitched in the backyard and raped me while the children were asleep in front of the television inside the house. I did not consent in any way.
64. On New Year's Eve a week later, I entered the house to install the bunk beds for the children, as there was nowhere for them to sleep. This was the only time the children weren't with me when I went to his house. I had to fit the bunk beds in the back of the car and so I had left the children with a friend. I was there to provide for the children while they were in his care. I had no reason to suspect he would attack me at this time. My husband approached from behind while I was assembling bunk beds with his [REMOVED] handcuffs. After a brief scuffle he secured the handcuff to my right hand and the other link to the furniture and proceeded to brutally rape me. I tried to break my wrist to get out of the handcuffs but could not. After the sexual assault, he left me locked there for a further 45 minutes before releasing me.
65. I was extremely hurt, physically and emotionally, as I had only agreed to be at the house over the holiday period for the sake of the children, and my husband violently and repeatedly abused me.

Criminal Justice System

66. As a direct result of these attacks, I applied (with the advice of the friend mentioned above) for the Intervention Order against my husband in April 2011. The form required that I provide information on what the most recent incident of family violence was, and whether there had been other incidents of family violence in the past. I looked at the small area on the form that asked to list harm caused and realised that I would require significantly more space than was allocated. I started writing out more and more pages to attach to the form, which made me reflect on the extent of the abuse.
67. The friend that had answered my questions about what an Intervention Order meant accompanied me to the Court to apply for an Order. There was a moment during the proceedings that the Magistrate was going to dismiss my application as 'historical' since all I was showing him was hospital records from prior to 2009 and the children's school counsellor report also prior to 2009. As it was already 2011 when I was applying for this Intervention Order, he didn't see the need for one. I pleaded with the Magistrate that I don't want there to be another violent event and begged his assistance to keep us safe. I told him that 'I don't have any records of any recent events as I haven't told any professionals' his reply is significant when he said, 'you are their mother, what more qualifications do you need to speak on their behalf?' This was very empowering for me, as I felt the only records that could be seen in court are documents written by doctors, teachers, or other professionals. To stand there and speak for myself of my own experiences was very liberating. I did not know I was allowed to do that. He granted an Interim Order.

68. Although I did have the Order, I still did not feel safe. I knew my ex-husband was furious with me and that the threat against me could escalate. I also knew that he was dating a young lady and felt responsible for her not knowing his manipulative ways. There were many reasons to go to the police to press charges for the harm caused but mainly so that he would not do it to me or anyone else again.
69. I initially (and for a long time later) thought that I could not report the father of my children to the police. The granting of the Intervention Order gave me real courage, as did the assistance of the friend. I am very conscious that many women in my position have no access to such knowledge and support. I finally walked into the police station and by appointment was interviewed by the Sexual Offences and Child Abuse Investigation Team officer there. It took three days in total to get a record of 10 years of abuse towards me. As I was raising boys, I felt it was important that they know the behaviour they had witnessed their father harm their mother was not ok, and that he take responsibility for his actions.
70. After my report to the police, it took four months until his house was searched and further investigations began. He now had notice that I was serious about talking.
71. This was an extremely high-risk time for me and I felt an imminent threat.
72. It took so long to finalise the police brief that he left the country and married another woman whom he had met and with whom he had built a relationship on the Internet. He has had another child.
73. When he returned to Australia, he was apprehended at the airport, arrested and charged. He had his passport confiscated by police and was placed on remand. He was released on bail and I was not notified. I later learnt that he was back in the country and immediately called the investigating officer who told me that he was apprehended and released two weeks after I had learned that he was back in the country. I felt this was an extremely scary time for me to learn that he had been living close by without me knowing, that he knew where the kids went to school and I wasn't alerted. I had no idea why he was back in the country and if I allowed my thoughts to wander, my fears would never end. I was afraid that he wanted to take at least one of the kids. I was also afraid that for the sake of his pride, it was better for him to say his wife was dead rather than divorced.
74. He was finally tried on seven counts of aggravated rape in June this year. The trial was extraordinarily difficult for me, as court proceedings are very intimidating in all ways. Thankfully, he was convicted. To give you some idea of the seriousness of what he had done, he was sentenced to 13 years imprisonment, with a 10 year non-parole period.

Integrating services and structural impediments

Access to drug and alcohol services

75. While living at the crisis accommodation centre, I met and heard the story of a mother who had substance abuse issues. She said that her mother had the same substance abuse issues and felt, fatalistically, that her daughter would grow up to inherit the same abuse issues. She said she wanted to be a better mum to her daughter. I spoke with her about seeking treatment so she could be a better mum to her daughter and she was open to the idea of getting help. I offered to look after her children while she attended rehab.
76. We attended the local Council who told us that there were no free drug and alcohol treatment services available for her in the area. We were then referred to a GP who told us that drug and alcohol treatment of this kind has the starting price of \$2000. The GP said that the only place he knew that provided longer term treatment for drug and alcohol addiction was prison.
77. Neither the Council nor the GP could refer us to any further appropriate support services.

Centrelink

78. When I had decided to leave my husband, I attended Centrelink to try to find someone to assist me in understanding my entitlement to payments for myself and my children. The Centrelink representative I spoke to was unhelpful and confusing when asking me what payments I was entitled to. I did not know the answers and was worried I was applying for the wrong one. I became anxious and distressed. I was referred to a Centrelink social worker who identified that I required assistance and helpfully talked me through the appropriate payments.
79. Prior to this time, I didn't know that Centrelink offered the service of a social worker to people in distress and who didn't know the system. I would have found it helpful if a Centrelink representative had told me about this service earlier.

Child Support Payments

80. When I considered the option of child support payments for the four children, I thought I would have to have contact with my husband again for him to hand over the money. Child support services did not make it clear that I could receive these payments electronically, so I chose to forego the payments rather than risk seeing my husband again.
81. It would have been helpful if any of the services, whether it be Centrelink, a GP, a housing service, a counsellor or police, were able to provide me with this information.

Recommendations

82. Changing the name of Women's Refuges to Safe Houses would greatly ease the confusion as to what sort of facility it is. A distressed woman in fear and confusion would be more likely to run towards a Safe House purely because of its name.
83. Women who are isolated have very limited windows of opportunities to reach out. It is crucial when that first brave step is made that they are supported to keep going for themselves, and especially if there are children involved. The anxiety about whether or not she is making the right choice can be greatly alleviated if clear information is offered about the options a person has when they are subject to family violence. Many of the entry points that I tried to connect with on my journey didn't advise about the full scope of options available for victims of abuse.
84. There should be a fully funded community engagement program which can educate all people about avenues to services that are able to provide help. I think there should be other services, such as a GP, police, Salvation Army, Centrelink, teacher, or counsellor that can refer women to a service that can answer what an Intervention Order means, and can offer support when filling out legal forms or attend court with her. A service that knows what options are available, from the big issues (legal rights and medical help, housing) to all the little hurdles along the way (child support, changing schools, and the basics, food and clothing for women on the run). This one service would be responsible for both support and follow up so that police, GPs, counsellors and courts can be freed up to allow the one service to attend to these details.
85. There should be education in schools about healthy relationships so that children can understand concepts of abuse and healthy homes from a young age. Teenagers can learn more complex intricacies of relationships such as coercion, consent and companionship. This will assist in an understanding of how all people in all relationships should be treated, and how you should allow yourself to be treated.
86. The support services need to talk to each other as there needs to be a reliable referral system in place to assist victims/survivors with multiple needs. For example, I attended a White Ribbon day event in 2014 where the mainstream services had set up information booths. I asked each of the services if they knew where a single mother with four young children could find accommodation after experiencing family violence. It had taken me six months to find this form of housing myself three years earlier and I was interested to see if the system had changed. None of the services knew the answer, or knew where to refer me.

87. 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. In a case like mine, there was never so much as a hint of contrition, so it would probably not be possible.

Accepted into evidence at the Royal Commission into Family Violence public hearing on Monday, 13 July 2015.

Witness statement of ‘Anjali Jana’

I, Anjali Jana,² say as follows:

1. I make this statement on the basis of my own knowledge, save where otherwise stated. Where I make statements based on information provided by others, I believe such information to be true.

Background

2. I was born in India and lived there for most of my life. Several years ago my parents arranged a marriage for me, to a man who was already living in Australia. We got married and I moved to Australia on a temporary visa.
3. My husband was working here as a civil engineer at the time and supported me for the first month or so that I was in the country, as I learnt about the new culture and the place where I was living. Initially everything was good within my marriage and he treated me really well.
4. I told him that I wanted to pursue my dream of working as a nurse in Australia. However, my qualifications were not recognised here. I found that to become qualified I would have to undertake a training course that would cost several thousand dollars. I asked my husband if I could have the money to pay for it, but he also said that he had no money and soon after that he stopped paying my expenses as well. It was at that point that he told me that I had to work, and he arranged with someone he knew at a major retailer to get me a job there. I thought that this would be OK as it would allow me to save up enough money for the training course. My husband never really gave me an answer but I thought that it would be OK if I gave him some of the money to help with my expenses as well.

My new job at a major retailer

5. I got the job with that major retailer and I have been employed there for over two years now. Initially, my husband was supportive of me working at the major retailer. We opened a joint bank account together and my wages went into that account but his wages went into his personal account, which I didn't have access to. I was able to save a few thousand dollars, half of what I needed for the course. However, he started to work less and less. Then, one day, I realised that he had spent all of the money that I had saved in just one month. I had no idea that he would spend it, he knew that was my savings for my course.
6. I was devastated and when I tried to talk to him about it he just told me that I was only allowed to work with my current employer, whether I liked it or not. He said that I wasn't allowed to become a nurse. I was so upset—that was my dream. I didn't want to argue with him, I was prepared to accept that this would be my life and I would never be able to achieve my dreams.
7. I was doing really well at work and I was given more shifts than I was contracted for, meaning that I was earning quite a bit of money. It was around about this time when I realised that he had stopped working altogether and was completely relying on me for money. There was no reason for this, as he had good qualifications and could have worked if he had wanted to. He started to make me put all of my money that I was earning directly into his personal bank account, so that I had nothing. I had to rely on him for access to my money, but he always spent it and said that we had no money for anything.

My husband's change in behaviour

8. When my husband stopped working, this is when his behaviour really started to change. I wasn't allowed to answer my phone after work or to call the other people I was working with to discuss shifts and if I did he would scream and yell at me. He knew what time my shifts at work were and if I was one minute late from work, I would have to call him to tell him, otherwise he would get really angry and yell at me. He didn't let me go out with my friends, I was only allowed to talk to his friends and their wives. When I first moved here, I used to visit my sister a lot, as she lived nearby but now I was hardly allowed to see her either. He wouldn't even let me talk to my parents, who still lived in India. I felt isolated and alone because of this.
9. He refused to do some things for himself, he told me it was my job, as his wife. For example, he needed medicine everyday but unless I stopped preparing dinner or what I was doing at the time and put the tablet in his hand, he would not take it, even if I left it right in front of him, he would just keep sitting there, watching TV. Later, he would blame me in front of the GP when he was told that his results were bad.
10. Even though I was the one working and he did nothing all day, I still had to come home and cook the dinner and clean up afterwards as well as doing all of the other cleaning and other housework. He did absolutely nothing. I also had to do everything when he wanted me to do it, I had to cook as soon as I got home because he was hungry even though I wasn't. He would complain if any little thing was wrong, like if there was too much salt in his dinner, he would scream at me about it. He never picked me up from work even though he had a car and I did not. I always had to catch the train even when I had shifts early in the morning and late at night, even when he was nearby or doing nothing. On top of that, I wasn't allowed to do anything, I wasn't allowed to watch TV unless he was, and it was only what he wanted to watch. There were lots of things like this that he did, small things really but which added up over time and made living intolerable. He was always controlling and I wasn't allowed to do anything but work, though he took all of the money anyway. I didn't know why he was doing this to me, what I had done.
11. All of these things continued to happen over a period of about a year and a half. My husband had isolated me, taken away my dream of being a nurse in Australia, forced me to work and left me with no money. It felt inescapable.
12. Because of all of this, I began to feel sad all of the time, and it was hard to feel motivated, particularly in terms of my work. Previously I had been an excellent employee but now I was having trouble concentrating and I found it hard to do a good job, like I used to. I found that I would make lots of mistakes at work. They started giving me less shifts as a result.

Realisation that my husband's behaviour was wrong

13. People at work had noticed the drop in my performance and I think that they were privately concerned for me but I didn't talk about my life at home with them. I didn't understand at the time that a marriage was supposed to be any different to what I was experiencing. I thought that this is just how marriage is supposed to be. However, when I spoke to the other people that I worked with, I began to see that they were really happy in their marriages and their lives. In contrast, I grew to realise that the marriage that I was living in was like being in hell. I knew that there was something wrong with my marriage, that the way that my husband was treating me was not right.
14. My manager had noticed that something wasn't right with me. She spoke to me and asked what was wrong. She was worried that it was something that was wrong in the workplace. I said no it wasn't, but I didn't want to say what the real problem was.

Seeking help in a time of crisis

15. Eventually, my manager spoke to me privately. By then, I knew that something was not right in my marriage so I told her about my home life and what was happening. She told me to see a GP, as I was feeling really down all of the time, and to get a referral to see a family counsellor. This happened around two months before I finally left my husband.

16. When I went to see the family counsellor with my husband, to try and fix our problems, he didn't let me talk at all. He told the counsellor all of these things about me that weren't true, to make me look bad. I cried the whole time. When the counsellor asked me about what was happening, I told her that I didn't feel that I was able to say anything after what my husband had said, that I needed another appointment. We arranged a new appointment and my husband drove us there. I went in alone, and he was supposed to go in after me but he never did. The counsellor gave me advice about how to change his behaviour. However, he refused to change his behaviour or to even try to improve things between us. I began to see that things were never going to change, that our marriage was never going to improve and that this is what my life would always be like.
17. It was around this time when my father had a stroke. I was really worried about him as he was really sick. I spoke to my sister and we decided that we would fly home to India to see him and help to look after him, which was our duty as daughters. I told my husband that I wanted to go and initially he was supportive of the idea. However, he changed his mind and said that I could not go because I would lose my job. I explained that I wouldn't, that I could get leave but he wouldn't listen. He said no. I thought about telling my sister everything then as she knew that something was going on, but I didn't.
18. I decided that if I couldn't go to India, at least I could save up some money and send it to my father for the special medicine he needed, which was very expensive. I saved \$950 and because I didn't know how to get it to India I gave it to my husband to send to him. I thought that he would send it, but I found out later that he didn't.
19. Then, my mother was involved in a car accident. It was a real shock. I told my husband that I definitely had to go back now. My father even phoned my husband and asked if I could go back to see them. He picked me up from work that night after my father had called him. He was so angry that my father had called. He told me that he had booked my flights to go home. He told me that he had used the money that I had saved. That was the money for the medicine for my father. I would never have spent that money on the flights. I was so angry. I couldn't believe that he had done this. He just said that he had not sent it to India as we had no money, that I wasn't allowed to give money to my parents. This was unbelievable to me, that he would act in this way.
20. It was then that I knew that I definitely had to go to see my parents in India. I spoke to my employer about getting leave because my parents were sick and they were completely fine with it—just like my sister said they would be. They said that it was no problem. They just said that I should try to get a medical certificate but if I couldn't that would be OK too. I told my husband this but he told me I couldn't unless I was taking annual leave, not unpaid leave. I didn't care about the money, I was just so happy to be able to go. In the end I got half of the time as annual leave and the other half as unpaid leave.
21. He then refused to drive me to the airport. He said that since it was my idea to go that I had to figure it all out myself. I had never been before and I had no idea how to get there, I was never allowed to do anything, like catching a taxi. I asked my sister how to get there and she arranged to give me the money, she was very helpful. She couldn't drive me as her and her husband didn't want to get caught up in the problems I was having, as it would affect them too, especially as she was pregnant. He then told me that he had changed his mind, that he would drive me, but only if I transferred all of my money to him that I would receive for my annual leave. He then told me as well that I had to ask my parents for money and bring it back for him, to cover the two weeks that I didn't have paid leave for. He made me give him his pin number so that he could take the money as it came into my account. I did it so that he would let me go.
22. I finally left and saw my parents. I didn't tell them anything about my marriage. While I was there he would call me every day, and yell at me for all of these things that I didn't have control over. Even if I tried to talk to him nicely he would just yell. Eventually I stopped even answering the phone.

Escalating abuse

23. When I got back it was worse than before. We were sleeping in separate rooms, living like two strangers living in one house. It was too much. This is when I gave up on our marriage.

24. It was around this time that I had been feeling sad all of the time, like everything was hopeless, that I couldn't escape. It was like my mind had stopped working properly, I felt like I didn't know what I was doing, and what was happening. Sometimes I thought about committing suicide, there was the train track near where I lived and I thought about just jumping in front of it. I didn't know what to do, I had no one to talk to, both of my parents were sick and overseas, I had no friends and no money. My sister was pregnant and her husband didn't want to get involved. All I had were his friends but they didn't want to get involved either. I had no way to get out, no one to ask for help.
25. I realised eventually that when I was going to the train station to go to work he was following me there and watching. He would know exactly what seat I had been sitting on and what time my train came. When I asked him about it he admitted it and told me he was making sure I was going to work and not somewhere else. This made me really confused and angry because he always went out without telling me where, who with or when he would be back. I thought, why was he doing this to me then?
26. He was also hacking into my Skype, Facebook and email account as well as my phone to see who I had been calling and what I was saying. He would often yell at me and ask me why I was calling my sister or mother when I wasn't allowed to, and providing details that I had never told him, that's how I knew.
27. I asked him why he was following me and listening to all of my calls. I told him that I wanted some privacy in my life and since I couldn't have it, I didn't want the phone anymore. I gave it to him and he threw it at me. I moved and it smashed against the wall. I couldn't afford a new one. I was worried that if I was ever running late to work that I wouldn't be able to let my work know that I would be late. I felt completely alone and scared.
28. It was around this time that I received in the mail a traffic fine. I asked my husband why it had been sent to me as I don't have an Australian drivers licence as he had never helped me to learn or let me have lessons. I tried to learn by paying for my own lessons but he stopped me from going and said we didn't have enough money for that. He told me that he had transferred the fine to me, to say that I had been driving the car so that he would not lose the points. He said that if I didn't pay it I would get a second notice and then the Sheriff would come around.
29. I got the second notice but I decided that I wasn't going to accept this. I went to the police station and I spoke to the police officers there about the situation. They did a search and said that there was indeed no record of a driver's licence existing in my name. To prove then that I could not have been driving the car, I spoke to my work and they provided me with a letter confirming that I was at work at that time. After this, they said that I did not have to pay. This made me angry, it wasn't fair that he did this to me.

Escape

30. Soon after, on a hot day, we were at home and I was getting ready to go to sleep. I had an early shift the next day but it was too hot to sleep. My husband had the cooler in the lounge room and wouldn't let me move it into my bedroom so that I could sleep. I said that I would sleep out there in that room so that we could share it. But when I lay down to go to sleep he turned the TV on and put the volume up really loud so that I could not sleep, even though he was using the computer and not even watching it. I asked him to turn it down but he just yelled and told me to go if I didn't like it. I asked him again and he became furious. We had a huge fight. I have never been involved in such a huge argument before. He said to get out of the room or to get out of the house. I had nowhere else to go so I went into the other room—I was really scared, I didn't sleep at all.

31. The next day, without really knowing why, I took my passport and phone charger with me when I went to work. Maybe I thought that he would burn them. I went into work but I couldn't concentrate, I couldn't talk to anyone, it was all too much. My manager spoke to me and I admitted to her what was going on, that it was really bad. I knew that if I went back I would do something that I would regret, to myself, because this was not the life that I wanted. One of my colleagues was there and she gave me a 1800 number to call, I think it was the Woman's Domestic Violence Hotline. I called them but they said that they couldn't help me because I had a job. They told me to call WAYYS in Dandenong instead, so I did. WAYYS told me to come and see them in person. I asked my manager and she said that was absolutely fine, that I needed to go and sort this out and get my life in order because I couldn't work like this. She said that she would look after my shift and that I should take as long as I needed. My manager spoke to the area manager and he said that this was OK as well. Normally you have to give four days' notice for leave but they were great about letting me go with no notice at all. They were so supportive and lovely throughout the whole process.
32. I stayed at WAYYS for one night but then they refused me after that as I had a job, and they said it was for women that did not. I called my sister and told her the situation that I had left my husband. My husband had been around to her house accusing her of letting me stay there, threatening them. My brother-in-law said that I couldn't stay there more than one night, as he didn't want to get involved.
33. WAYYS gave me another number to call for a woman's refuge service. They said that they couldn't help me because I was working. I stayed at a friend's house from work and then they found me a room in a boarding house as my friend was afraid my husband would turn up at her house. He showed up at my work one time and created a disturbance but I wasn't there. I wasn't going back.
34. I called InTouch and they were able to help me. I had a social worker that was helping me with everything. She helped me to apply for an intervention order against my husband. This included a condition that he couldn't call me, my friends or my parents, as he had called them and threatened them. He also had to stay 200m away from me. The order lasted a year. She was my guardian angel. He stayed away from me after that and I haven't been in contact with him. They were also very helpful in helping me with my visa.
35. My husband called my parents and told them I had left, and they tried to pressure me to go back, because it is not socially acceptable in India to get divorced. I refused. I said I that I would not do it. My parents do not treat me the same anymore, not as a daughter. I hope though over time things will return to how they were.

A fresh start with the help of my employer

36. I am starting to get my life back on track after all of this. It has been about a year since I left. He took everything, every penny in my account, however I have been able to save up by working hard and my manager helped me to find extra shifts. In addition, the people at work have been so amazing in helping me get all of the basics that I needed. They gave me money to help me when I had first left my husband. They were like my family, when I had no one else to turn to. My employer has been so supportive, they did things like making sure that I was never rostered on alone until my intervention order was in place, in case my husband turned up at work, so that I was safe. They have been amazing.
37. I have saved enough money and I have started my training to be a nurse. I am so happy. However, I will still keep working one shift with my employer so I can stay in contact with all of my friends there.

Accepted into evidence at the Royal Commission into Family Violence public hearing on Thursday, 16 July 2015.

Witness statement of 'Melissa Brown'

I, Melissa Brown,³ say as follows:

1. I make this statement on the basis of my own knowledge, save where otherwise stated. Where I make statements based on information provided by others, I believe such information to be true.

Background

2. I am a mother of two, living with a physical disability. I am a survivor of domestic violence.
3. For about 10 years I was abused by my husband, Henry. He was also my sole carer.
4. I met Henry through disability sports. He is also physically disabled. We married in 2007 and have one son together, now aged 11. I also have a son from my previous marriage who is now 17 years old.
5. Henry started abusing me not long after the birth of our son. The abuse was sexual in nature and continued for many years. I tried to seek support for Henry, but he refused to accept help. I confided in one friend during this period of time as to what was going on at home.
6. Henry's behaviour got increasingly worse over the years. I confided in my psychiatrist and other mental health care workers. I was being treated for anorexia nervosa, which I have suffered on and off since I was a teenager. It also worsened as Henry's abuse escalated. He didn't see that his behaviour contributed to it.
7. My situation was further complicated by the fact that Henry was also my carer. I use a wheelchair and I relied on Henry for physical and practical support. This put me in a difficult position. I was too afraid to be on my own. I didn't think I could look after myself and my children due to my physical disabilities. Also, like everyone else, I was living in hope that he would change. So there was the emotional side of an abusive relationship, along with of course the financial. And then you compound it with the physical disability.
8. The abuse ended about a year ago when Henry was finally charged for various assaults I had sustained. He pleaded guilty to all charges and is currently serving a gaol sentence.

Events leading up to charges

9. I made one of many suicide attempts to get out of the abusive situation I was in. I thought that was the only way out. The last suicide attempt was roughly 11 months ago. When I presented at the Hospital's Emergency Department, the staff asked me why. I told them that Henry had raped me four times in one week. They asked me whether I wanted to go to a shelter, but I couldn't. I didn't want to leave my children. I returned home the next day.
10. The Emergency Department was the first one to report the abuse, finally. They reported it to the Child Protection Service.
11. I would have begged them not to say anything had I known as I would have been afraid of the repercussions. In hindsight I was relieved they didn't tell me they would report it.
12. No one asked me if I wanted it reported, I found out about it when a note was left in our letterbox asking that we contact Child Protection because when they first visited our house, we were not home.

Child Protection services

13. Child Protection came back to our house and spoke to Henry and I. They spoke to us together in the same room. They asked about the incidents that led to me telling the Emergency Department that he had raped me. They asked him bluntly. He was in such a huge amount of denial about what he was doing being a criminal offence. He was upfront with them. He said, yes, I have done that, and that he had done it before and would likely do it again. He said he had been violent, because he had to be. He tried to explain it as a couple arguing. I think Child Protection was very shocked. They were not expecting that.

14. Child Protection then talked with the children individually while they were at school. They asked about life at home. The children said they had seen Henry assault me on a couple of occasions, and that they had heard the arguing and that they were scared of him. That was a surprise to me. Even I was in denial about the impact it was having on the kids.
15. The second time they came to visit us at home, after they had spoken to the children, they again placed us in the same room together. That meeting lasted about two minutes. Henry lost his temper with them and left. It was scary. I had never seen him explode like that in front of other adults.
16. From there, Child Protection went to the Police.

Police involvement

17. When the Police became involved they firstly came and spoke to me one-on-one to discuss the options before they went any further, which I felt was good.
18. Henry and I were then called into the station together, by the Sexual Offences and Child Abuse Investigation Team (SOCIT). I was not expecting the outcome that happened that day. I did not see it coming.
19. They took Henry one way and asked me to come in the other direction. They asked me to make a statement but I wasn't ready. I was told that I would be going home on my own. They said he was being questioned in relation to what Child Protection had told them (the abuse and the rapes). They made sure I could get home safely by myself.
20. Henry was questioned. He confessed to everything because he believed it was what husbands do. He thought they would feel sorry for him. He fully believed all men did this but just didn't talk about it. He also blamed my mental health issues as an excuse for his behaviour. Not once did he realise his actions were contributing to the deterioration of my mental health. When you are being raped every four weeks, constantly harassed every night, yelled at, hit, called all sorts of names, you end up with no self-esteem and no confidence as a person.
21. At that point I was told the Police were seeking a family violence intervention order against him because I was not capable of protecting myself. They said words to the effect that, 'If you won't do it, we will.' It was not what I wanted at the time, but in hindsight, I'm grateful. I wish someone had done it years ago when I first spoke about it. I wish someone had stepped in like that a long time ago.

Intervention order

22. I was required to attend the first court hearing for the order. I felt supported because my Police contact, who stayed my point of contact throughout the whole ordeal, was there but I was also very nervous and anxious about having to be in the same room as Henry. I didn't want to see him. The matter ended up being adjourned because Henry didn't turn up. An interim order was made at this time.
23. Henry continued to breach that order by contacting me via social media and through text messages from his parents' mobiles. I reported it to the Police and they then took proceedings against Henry for breach of the order.
24. Henry's justification was, 'She can't survive without me.' To be honest, I didn't think I could either. That's the nature of family violence. It took me a while to understand how much control he had over my emotions and my ability to cope on my own.
25. Henry pleaded guilty which was a huge relief for me because it meant that I didn't have to attend the hearing and see him. He received a \$400 fine and was required to undertake a 12 month behaviour change program for breaching the intervention order.
26. I refused to make a statement in the hope he would go to the behavioural change program and would change. I was hoping we could see it as a positive thing and that he would realise all the things I have been telling him all these years were true, and that his actions were wrong and had to stop. Finally, I thought someone else would back up what I had been telling him. All I ever wanted was for him to get help and to stop.

27. He was referred to the men's behavioural change program at Kildonan. He went twice. He was also asked to see a forensic psychologist.
28. The day he told Kildonan where to stick their program, he called me to abuse me, and that was the day I made a statement to the Police. A few days after the statement, he was arrested and charged and released on bail. It was a condition of his bail that he was not to make contact with me and yet he was still able to fight the intervention order and he had legal aid which supported him to continue to fight this losing battle.
29. I didn't hear from him for a couple of weeks until we had to go to the Children's Court because the Department of Human Services (DHS) sought a supervision order for the kids (which I discuss separately below).
30. After seeing him at the Children's Court Henry started making contact with me again through social media.
31. Eventually I contacted the Police to let them know he was breaching the order again, and his bail. He was arrested and remanded into custody and has been there ever since.
32. The Police took further breach proceedings for a persistent contravention of an intervention order. I again had to attend court for the hearing. The court was going to transfer him so he could attend but the hearing was again adjourned and because of this I didn't have to see him. After that, the Police told me not to come to the next hearing where his intervention order was ultimately extended by two years.

Children's Court

33. My eldest son and I had to attend the hearing for the supervision order. My youngest son was still under 10 so fortunately did not need to attend. We had to sit waiting in the same area as Henry and try not to look at him. It was very hard being in the same corridor waiting to be heard.
34. I didn't have a lawyer so Henry's lawyer spoke to me. I said I didn't want to hear what he had to say.
35. In the early stages, we attended a mediation as agreement couldn't be reached around supervision orders. DHS was there to represent themselves and Henry had his Legal Aid lawyer. No one was there to support me.
36. The support provided by the Salvation Army at the court was the only support I received.
37. When it went to a hearing, I was still required to turn up even though I was not contesting the orders. I wasn't allowed Legal Aid because of this. I was expected to sit at the same table as the lawyers and address the court. This was very intimidating for me.
38. Prior to hearing, I had to request that I did not see him on video link to the prison. I was assured by the court staff that my request would be granted, but it wasn't. I had to sit up the front with all the other lawyers and with Henry's image projected on the screen, all of which was very intimidating.
39. I wasn't given an opportunity to speak until close to the end of the hearing. When I finally did, I let the Judge know that I had requested he not be able to see me and had been assured of this. The Judge looked through the intervention order and apologised—he said he would take full responsibility for the mistake. Unfortunately at the Courts they can't keep you separate from the perpetrator.
40. Henry's lawyers were also very abrupt and very rude to me. They treated me as if I was an idiot. His Legal Aid lawyer said, 'Henry wants you to know he really loves you' and because I had been in hospital, referred to me being so used to being institutionalised. Henry wanted me to retract my statement. He even asked the kids that in his supervised access. I was dumbfounded. I was amazed at the ways in which 'no contact' can be broken. I told the Police.

County Court

41. By contrast, the County Court process was less stressful on me. Henry pleaded guilty so I didn't have to go through the trial.

42. I also received assistance from the witness assistance program. They helped me with a victim impact statement and sat with me through the hearings. They came to my house and made sure my statement was what I wanted to say. I found this process helpful.
43. During the hearing, I was kept in a remote witness room so I wouldn't have to see Henry. They also had a covered camera so I couldn't be seen. When the defence team started to try to blame me for Henry's conduct the Judge quickly shut them down.
44. I also attended sentencing via remote access in 2015. I heard the Judge handing down the sentence. Henry received several years with no parole period, further time on community corrections and intense therapy with community service. The prison sentence doesn't justify what he did to me. He pleaded guilty because he wanted a lighter sentence. I was disappointed that the courts could take that into account in favour of a lighter sentence. He showed no signs of remorse.

Gaps and downfalls

Legal support for victims

45. Amazingly, through the whole process the justice system allowed Henry to fight the supervision order. He was allowed to contest the intervention order even though he was charged and on bail. He was also allowed to contest the supervision orders with DHS. They gave him supervised access after he made suicide threats. He didn't understand that you couldn't make threats about your own life, and then a few days later apologise. It showed a pattern of instability. One second he'd be angry, then when there were repercussions he'd be sorry. He was still allowed to contest supervised access, even though there was no chance of him winning. I felt it was crazy. I wasted so many hours in court. Lawyers' time, court resources, legal aid resources were all ridiculously wasted during these processes.
46. Victims also need to be represented in the court process. I had no legal representation whatsoever throughout all processes. The intervention order was made by the Police. In the criminal matter, I was represented by the Police. In the Children's Court there was no representation for me because I wasn't contesting what DHS was asking for.
47. Henry on the other hand was given Legal Aid to contest the different orders, including the family violence order and the child supervision order. That made things very hard for me. It meant that every small court date, I had to attend. It also meant I had to liaise directly with Henry's lawyers in person, not knowing what I was doing. I also had to liaise directly with the lawyers my children were given through Legal Aid.

Magistrates' and Children's Court

48. There was no formal support services at the court. Emotional support would have been better than nothing. Being able to access someone with some advocacy skills would have also assisted me.
49. Fathers, mothers and children should all be kept separate from each other. My oldest son had to attend court because he was over 10 years old. At the very least, he should have been in a separate area to his dad.
50. Videolink services should also be available for people like myself not just prisoners. I had to attend most court dates in person.
51. I found the victim assistance program in the County Court really helpful. I wish I had received the same sort of support in the other courts.

Disability assistance

52. When Henry was removed from the house it took eight weeks to get someone to come in and do something as basic as give me a shower. They removed my carer but didn't put anything in place to back that up. For eight weeks, all I wanted was for Henry to come home. I was struggling to look after my kids. If I didn't have my oldest son, it would have been a lot worse. But it's not my son's job to give me a shower. I didn't want him to do that.
53. When he was removed, they should have asked me what my physical needs were. The Disability and Family Violence fund through DHS took eight weeks to be initiated. It should have happened straight away.

54. When I first met with SOCIT I talked to them about my dependence on him and that he was effectively my carer and they reiterated he can't return to home. I wished the Police had made that referral back then.
55. Child Protection eventually made the referral after I kept complaining. I then received 12 weeks of funding.
56. It has taken 12 months but I now have a disability worker through DHS.

Mandatory reporting

57. For me, unfortunately, there was no mandatory reporting. Because I am not under the age of 18, sexual assaults did not have to be reported. My psychiatrist and other mental health workers I sought assistance from knew about the abuse, but they did not have to report it nor did they ask me if I wanted it reported. I was not in a state where I would have been ready to report it to the Police.
58. I think mandatory reporting, no matter the person's age, should be implemented, across the healthcare field. They should have a duty of care to the patient and be compelled to report it. If that had of happened, this would have stopped 3, 4, or 5 years ago.
59. The reason behind mental health professionals not reporting it is because my actions were not impacting on anyone, so it was not their job to take action. Because it was Henry raping me, no one was under any obligation to help me. Nobody did anything.
60. When I was an inpatient in hospital, we had family therapy with Henry. Just the two of us. The issue of the rapes came out. When the therapist didn't agree with what Henry was saying, Henry got aggressive and the session was shut down and he was asked to leave. I was offered help to leave my marriage. But it was the same thing, I couldn't leave my children. Where would I go? What money would I go with? How do I tell my family? So, of course, I said no. If it had of been reported, that's two years I would have saved living with this. It shouldn't have taken a suicide attempt for someone to finally step in and stop it. The only way I would have stopped it is by me killing myself or him killing me. You start to believe the things that you are told—that you are stupid, that you are incapable of looking after yourself and that you need that person to survive. You hear it often enough, you are petrified to leave. I believed it. I didn't think I could look after myself.

Child support services

61. Whilst my sons received assistance from Legal Aid lawyers, they could have benefited from a carer or worker to help explain what their lawyers were saying to them. My eldest son has a language delay and I felt his lawyer was not well skilled in dealing with children with learning disabilities.
62. It would have also been helpful for the kids to have emergency counselling. One moment they had a Dad, the next he was gone. It was very hard on them. My youngest blames himself because he spoke to Child Protection. He thought he got his Dad into trouble. To this day he wants his Dad to come home. Dealing with my own issues, while hearing my child cry, 'I want Daddy to come home' is hard. My 10 year old is having extreme mood swings and has been diagnosed with severe depression. The life he knew was all of a sudden gone.
63. Because of the nature of the offences, Henry is not allowed any visitors under 18 years of age. The prison won't allow it. For the children, it is like their Dad has died. It is like he is dead. They are grieving for the loss of the family; they are grieving for the loss of their Dad. They don't know how to tell their friends that their Dad is in prison. They needed and still do need counselling. They should have had it in the beginning when they were brought home by Child Protection.
64. Berry Street has a six month waitlist for kids counselling. After nine months, he has finally been referred to counselling. I was able to get counselling through CASA, but they do not have kids counselling. CASA has gone well over their sixteen week support. Their support has been amazing.
65. And for my 17 year old, there is nothing. He has been referred to Headspace, but there is a waitlist.
66. We have had good workers at Child Protection. I was worried about my mental health issues causing trouble, but they have been very supportive. Even with a hospital admission for my anorexia, they have been supportive. We now have monthly Care Team meetings which include Child Protection, DHS, a disability support worker, the Principal from the kids' school, myself and one of my outreach workers.

Other matters

67. Maybe if there were better disability services while we were together, rather than the responsibility being on my partner to be a carer, I would have felt more confident to leave earlier. I was regularly told, 'We can't provide that, your husband can do it.' That puts a lot of pressure on any relationship. Our relationship became one of invalid and carer.
68. There's a lot of stigma involved with the kind of violence that was happening, especially with the sexual assault. No one wants to talk about that. Not many people understand it. A friend asked whether it was sex games gone wrong. Others blamed me for Henry's actions: 'You've been in hospital. You've got a mental health problem'. Or, 'You pushed him to do this'. It's almost like it was OK because I suffer with mental illness. It made his actions understandable. Justifiable.
69. The fact we were both disabled also presented issues. Henry was constantly put on an 'inspiration pedestal'. There was pressure to live up to that in people's eyes.
70. I have had very little privacy. Everything about my life, everyone knows. It is placed in reports. But because Henry is in prison, his privacy is fully protected.
71. I found the book *Real Rape, Real Pain* very helpful. It explains the hurdles and the way society justifies it. I am not the only one who has come up against these same things. I recommend it to the Commission. (*Real Rape, Real Pain: Help for Women Sexually Assaulted by Male Partners* by Patricia Eastal and Louise McOrmond-Plummer, published by Hybrid Publishers, Melbourne, 2006.)

Accepted into evidence at the Royal Commission into Family Violence public hearing on Wednesday, 22 July 2015.

Witness statement of 'Lyndal Ryan'

I, Lyndal Ryan,⁴ say as follows:

1. I make this statement on the basis of my own knowledge, save where otherwise stated. Where I make statements based on information provided by others, I believe such information to be true.

Introduction

2. I am 42 years old and have a Masters degree. I have spent most of my career with the Federal Government in Canberra but now live in Melbourne.
3. I have lived in very high-risk countries and experienced situations there where I was fearful for my safety. Nothing prepared me, however, for the fear of domestic violence. It's entirely different being frightened of someone you love, yet who is so unpredictable; someone who knows where you live, what your patterns are, what your vulnerabilities are; someone who knows how to manipulate you; and someone who is specifically targeting you.

Background

4. I have two children to my first husband, and met my violent ex-partner ('X') a year later. After a year with X we had a child together. During the pregnancy in 2012 I experienced escalating controlling, abusive and bullying behaviour, particularly towards my children (who were 8 and 5 at the time). For example, he would threaten to beat my son, deliberately run over the children's toys with his car and throw their belongings in the bin. My son in particular was terrified of X and would walk around the house with his head down avoiding any eye contact so he would not get into trouble.
5. Our home became a place of fear and intimidation. As I became desensitised to his behaviour throughout 2012 and 2013—and he convinced me what he was doing was OK—I became confused about my parenting and judgement of values and safety. As a result of his anti-social behaviour, I became increasingly socially isolated, which further removed me from benchmarks of acceptable behaviour.

Application for intervention order

6. In 2013 as part of their wellbeing curriculum at school, my children were asked how they resolved conflict at home. My son disclosed what was happening at home, and the Deputy Principal, who was also the student wellbeing coordinator, contacted me.
7. The way the school dealt with the situation was excellent. They didn't undermine me or make me feel like a bad parent. At that stage, I didn't realise what was happening to us was domestic violence. I needed someone else to say that what X was doing was not OK.
8. The school suggested that Child First become involved. X refused to engage with Child First, and when I provided them with a detailed list of things X had done, they organised a consultation meeting with a representative from Child Protection and a second meeting with a representative from the NGO Safe Futures and a police member from the local domestic violence unit.
9. When the police heard about the kinds of behaviour X had engaged in, I was told that on a scale of one to 10, what we were experiencing was eight out of 10. I was advised that the nature of the abuse required an intervention order (IVO) and either I would need to take that out, or the police would. I applied for the IVO in January 2014 listing the three children as protected people, which was granted for a year.
10. I didn't list myself as a protected person on the IVO application form because I thought that if I controlled the IVO process I could at least help X and keep him from getting more angry.
11. I have since learnt that we cannot help perpetrators of violence—as Rosie Batty clearly said when Luke died. Back then I believed I could, but when it became apparent I couldn't after two months of a dramatic escalation in threatening and abusive behaviour, the police subsequently took out a second IVO in March 2014 for one year listing me as a protected person.
12. Safe Futures were invaluable in providing me with advice, linking me with resources, and supporting me in person—particularly in navigating the court system, which was so daunting. They paid to have the locks changed on my house and installed switch lights. In addition, my mother flew over from London to live with me for four months because I was too frightened to live on my own in the house; and when she left I often had friends spend the night. This support, along with that of a psychologist, are what I attribute to me making it through the most terrifying and confusing year of my life.

X's conduct after the first IVO

13. Over the next nine months from the start of the IVO (January–September 2014), I supported X to attend a behaviour change program, which he commenced in February 2014 (but dropped out of) and organised ongoing visitation in public places with our daughter. I did this because I was advised by a private family lawyer that X would be granted access to her anyway through the Family Court. At this stage, I understood that X had a 'right' to see our daughter and didn't feel in a position to refuse access. I wrote a Parenting Plan with legal advice that set up the framework for these visits.
14. X's behaviour escalated and increasingly targeted me. He was incredibly abusive, would come to the house regularly in breach of the IVO and destroy property, he managed to fiddle the locks and enter the house, he turned the power off one night while I was inside, he smashed a window trying to break into the house, he would follow me around in his car trying to run me off the road—and indeed tried forcing me into his car on one occasion, he took our daughter from daycare also in breach of the IVO and Parenting Plan, and used his visitation access with her as opportunities to abuse me in front of her, often ignoring her entirely.
15. He would email me constantly and would phone me incessantly, sometimes using different numbers so I wouldn't recognise it was him. There were numerous terrifying incidents—and our daughter was present during almost all of them. X timed his visits to the house (in breach of the IVO) when my older children were with their father, so I was somehow able to protect them from what was occurring and maintain a level of normalcy for them.

16. During this time I largely locked myself in my home, too afraid to walk down my local street, go to my local shops, sit outside in my garden, or drive normal routes to and from school pickups. I was frightened to go to sleep, or even have a shower. I would drive around the block before going home, looking for his parked car or signs that he was at or near the house. At one point I lived out of my car, staying with friends that would have us because I was too frightened to return home. And when I did return home, I arranged for a friend to stay. I felt like a 'sitting duck' just waiting for him to come, helpless—with my only course of action to call 000 if X came. It was terrifying and my anxiety was severe, I slept with one hand on my mobile phone and one on the home phone. But yet I only reported a small fraction of these breaches because I was frightened of the repercussions from him and Child Protection. X was charged with some of the breaches, and served two weeks in prison in April 2014. Child Protection contacted me twice during this period, but did not open a case file as I was able to demonstrate I was acting protectively of my children. X started a second behaviour change program at my insistence following his release from prison.
17. As X continued to breach the IVO following his release from prison, I was advised I may need to relocate to a refuge. But this was a last resort for me as the upheaval would be dire with the three children, and I was fearful my ex-husband would seek full custody of my two eldest children. Staying safe in my own home was my priority.
18. During the most serious incident in September 2014, X tried to smash his way into the house. As I ran for the phone to call 000 he went to the front of the house and cut the phone line. Thankfully my mobile was charged and I managed to get to my mobile phone and dial 000. As I went through the (lengthy) questioning in this horrific ordeal, X attempted to climb in, cutting himself severely in the process. Glass was flying everywhere. I kept begging 000 to 'please just send the police' instead of questioning me—which I do understand is required, but when you feel you are about to be murdered, seems superfluous. Eventually X cut himself so badly he fled. The police arrived 10 minutes later. X was on the run for a week and eventually handed himself in to police. He served a second prison sentence of five weeks with a two month suspended sentence.
19. I was advised by X's behaviour change program that, during this incident, I was in a position where I could have been killed. They advised me that X was not out of control, but was choosing to behave in a violent and controlling way with no regard for his impact on us, and that I should cut all contact with X. I found the ongoing contact with X's behaviour change program facilitators invaluable. He helped me realize that X wasn't going to change and that I could, and should, stop all contact with X immediately, including stopping him from seeing our daughter.
20. I was contacted again by Child Protection who agreed that I should not allow X to see our daughter and that he would have to apply for court orders to arrange access. For the first time I felt I was in a position where I would be fully supported to draw a line with him—where I could keep my children and not allow him to see our daughter (and thus me). It was only with this complete cessation of all contact that I felt safer to report all breaches of the IVO. I wrote a letter to X while he was in prison in October 2014 advising him that I would no longer allow him to see our daughter and that I would now report every breach of the IVO.
21. At this time Safe Futures included me in a trial program of the SafeTCard. I made sure (via a friend) X knew I had the card and that he would be recorded if I pressed the alert button during a breach, and thus would not be able to counter my testimony. After receiving the card, and following his release from prison, X did not physically breach the IVO, although he continued to send me text messages, emails, and attempted to call me from unknown numbers. The card gave me increasing confidence to go out again, to feel safe in my own home, and indeed to sleep again at night.
22. Using the alert button on the SafeTCard can be done subtly so as not to alert and inflame the perpetrator, as well as circumventing the lengthy questioning required of the 000 process. These were significant issues the night X broke in to my house. While I do see benefits of a GPS ankle bracelet for the perpetrator, the SafeTCard provided me with an essential sense of safety and immediate (and discrete) access to help.

23. In January this year the children's IVO was extended by the police for another year, and I applied for mine to be extended in March, which it was, indefinitely. I plan to apply for an indefinite extension to the children's IVO in January 2016 as well. X has now been charged with the email, phone, and text message breaches to the IVO and will go to court in September 2015. I hope X will not be granted access to his daughter should he apply, as she will not be safe with him physically or psychologically, and he will use her to get access to me.
24. In May this year I was interviewed by SBS and ABC on my experience. As I wrapped up the ABC interview detailing the incidents, a parcel of presents arrived from X along with a letter begging me to reconsider our relationship and the IVO. It perfectly illustrated the emotional and psychological complexity of domestic violence and how perpetrators are able to keep convincing their partners to forgive them and give them another chance. Without full system support and a complete feeling of safety, it is an incredibly difficult situation to extract oneself from.
25. I have since learnt X has a long history of family violence. X fits perfectly with the description of a sociopath; and thankfully the early intervention alerted me to the pattern of escalation that inevitably ensued.
26. I gave back my SafeTCard in January 2015 after I heard that X had left the country. I have since got it back because I learnt that X never left the country, and am feeling frightened again knowing he has been charged for further breaches of the IVO and may act violently in desperation prior to his court hearing in September.

Reporting breaches of the intervention order

27. I am often asked why I did not report all of X's breaches of the IVO. I probably only reported about 10 of over 50 breaches. On occasions other people reported his breaches. The reasons I didn't were because:
 - 27.1 I had to see him in order to arrange for him to see our daughter (which a family lawyer had told me he would have rights to do under family law). If I reported all his breaches I was fearful of antagonising him further and placing me and our daughter at increased risk.
 - 27.2 I felt sorry for him—during the remorseful phases of domestic violence his pleas of love and desire for personal change were compelling.
 - 27.3 The police had on occasions told X it was me that reported him, which I felt compromised my safety.
 - 27.4 I was frightened that if Child Protection knew how frequently X was breaching the IVO they would determine I could not protect my children and I would lose custody. In my first meeting with Child Protection, they told me explicitly that they were not interested in me or my circumstances, their only concern was whether my children were protected by me or not. This made me feel highly anxious.
 - 27.5 X would often counter my breach reports with statements that I had agreed for him to be at the house.

What I felt 'worked' in my situation

28. The things that I felt worked for me were:
 - 28.1 Early intervention by the school and domestic violence unit of the police that informed yet didn't undermine me.
 - 28.2 Support from Safe Futures. I felt initially that I was on my own and that the only people completely on my side were Safe Futures. They supported me to manage the risk that X posed to me and my children. They understood the complexity of domestic violence and the complexity of my situation where I was trying desperately to keep X non-violent while protecting myself and my children at the same time. I felt judged by almost everyone else—the police, Child Protection, and even friends and family.

- 28.3 Engagement by the behaviour change program staff that worked with X. Both programs engaged with me regularly (and are in fact still in contact) and their insightful and informed advice was invaluable. As with Safe Futures, they genuinely understood the complex situation I was in.
- 28.4 The SafeTCard intervention. This changed my life dramatically. I felt I had the confidence to go out again and it made me feel safer in my own home.
- 28.5 The close proximity of the police to my home. They were able to respond quickly and became familiar with me and my situation (and thus became less judgemental over time).
- 28.6 The dedicated domestic violence unit of the police and staff that I became familiar with. I particularly appreciated their 'home visit' on one occasion.
- 28.7 Courts taking IVOs increasingly seriously.

What I felt could be improved

29. The matters which I feel could be improved are:

- 29.1 Family law allowing access by the perpetrator to their children. This placed me at ongoing and severely increased risk, as well as risk to our daughter. I would say that this was the primary cause of my protracted experience with fear and violence. This is a rights vs responsibilities debate; but why does X have a right to see his daughter when he is such a threat to her and me, and takes no responsibility for his role as a safe father. She is not safe with him, either physically or psychologically due to his sociopathic character. He used access to her as an opportunity to get to me.
 - 29.2 The role and approach of Child Protection. I felt they actually worked against me initially by demanding to know how I was protecting my children. I understand this is their role, but I was desperately doing everything I could to protect them, and I felt threatened I could lose them. If I had felt supported earlier on by Child Protection, I would have reported X's breaches much more readily. I welcomed the moment they told me I could stop X from seeing our daughter, and if he went to court I could subpoena their files showing their advice to cease contact. I wish I had received this support from Child Protection earlier.
 - 29.3 Police awareness of how what they say or do may place the victim at increased risk. Our protection needs to be paramount and they need to be careful what they reveal to the perpetrator.
 - 29.4 There needs to be some consideration as to the type of incarceration. When X went to jail he rallied with his fellow inmates about how they were OK and the system worked against them; they justified themselves as the victims. X's prison sentences were too short to result in behaviour change, it did not deter him from breaching the IVO. Perhaps some sort of secure rehabilitation centre with compulsory behaviour change program and community service might be an alternative.
30. My experience of domestic violence is not the sort that has been making headlines. I may not have had black eyes, but I did experience domestic violence that left me terrified and at times fearful for my life. Also, X's controlling and abusive behaviour was not fuelled by alcohol or drugs. The words of the behaviour change staff ring through here—men perpetrate domestic violence a) because they choose to; and b) because they can.
31. I do agree the roots of domestic violence lie in stereotypical attitudes towards women. We need to seriously address these issues, particularly how women are portrayed in our society. How are we raising our girls to value themselves, and how are we raising our boys to value girls? However, it is due to tertiary intervention that I am here today.

Accepted into evidence at the Royal Commission into Family Violence public hearing on Thursday, 23 July 2015.

Witness statement of 'James Collins'

I, James Collins,⁵ say as follows:

1. I make this statement on the basis of my own knowledge, save where otherwise stated. Where I make statements based on information provided by others, I believe such information to be true.

Background

2. I grew up in a country town where the ideal of a man was someone macho, gruff, strong and silent. You had to be a drinker, you had to be one of the boys. I always put on a persona of being a tough guy. I am a big guy so it was easy to carry on this bluff. But underneath, I was a wimp.
3. I was quite isolated when I was a kid. My family was quite remote and my brother and sister and I were often left at home by ourselves. I was always a bit of a bully. There were a few times when I got called out on my behaviour. The guys at school would do the freeze out thing. They would cut me out and make me think about my behaviour for a little while, but I would always go back to what I was doing before. I was always alone, as a kid. It was the way I went through life.
4. The ultimatum to change my behaviour or leave came from my wife about five years ago. My wife and I had been married for about 15 years at this point. Throughout our entire marriage I had been psychologically abusive, manipulative and underhanded. I would be threatening and intimidating towards my wife and my family, yelling and screaming and punching walls. I kept my wife off balance all the time. I would hide things from her.
5. Around five years ago, my wife got to a point where she wasn't willing to put up with it any longer. As they were growing up, our kids, both boys, had started to mimic my behaviour and disrespect her. They would take my side on things. She was becoming isolated in our own home. She told me that I had to do something about my behaviour, or our marriage was over.
6. It was crunch time. It really made me think—I purport to be a father and a husband and to love my family. But what is the real truth?

Getting in touch with services

7. My wife had a friend who worked for Men's Referral Service. She contacted him and he agreed that what I was doing was abusive. He gave her some details which she passed onto me. I called Men's Referral Service, who referred me to an organisation called Kildonan UnitingCare (Kildonan). I rang Kildonan but they didn't have any openings in any of their programs for three months. It was coming up to Christmas time and all the programs were finishing up for the year.
8. While I was waiting to start one of the programs at Kildonan, I was trying to improve my behaviour myself. I was buying books so I could read up on passive aggression and those kind of issues. I read a couple of different books and these were consistent with what I saw myself as doing. In the meantime, I was going through a cycle of violence and remorse. I couldn't identify this pattern of behaviour at the time, but I later realised what I had been doing.
9. In February, I had four weeks of one-on-one sessions at Kildonan with one of the counsellors. I started to feel changes in myself at that stage, from talking to someone and receiving feedback on what I was saying.
10. Then I had the opportunity to start participating in some of the programs Kildonan offered.

Men's behavioural change programs

11. The first program I participated in was a Men's Behavioural Change program. This initially ran for eight weeks but was extended to 12 weeks. Within the broader Men's Behavioural Change program, I did several other programs including programs relating specifically to parenting. Overall, I participated in about four programs over a 12 month period. I refer to these programs collectively as MBC programs.

12. The MBC programs helped me to understand my own behaviour. I realised throughout the program that anxiety and depression had a big impact on my behaviour and my reactions to situations. I was able to recognise that my main issue was that, when people raised an issue with me, I thought they were having a go at me. Previously I used to feel very anxious when my wife would raise issues with me. It might be issues with the house, or with me or things I had done. I felt confronted, like I was being called out on it.
13. I got really defensive and anxious and I felt like I was being attacked. My response to the increased anxiety was to deny the issue, fight and get out. That would result in me becoming aggressive, angry and threatening in my behaviour. I would yell and scream and stomp around.
14. The MBC programs helped me to reflect on my behaviour and showed me how damaging that kind of behaviour was. The MBC programs made me realise I'm not the only person in the world with this problem. I was educated about the typical cycle of violence. This was mind blowing. We also did role playing. I put myself in my wife's position, which was a real eye-opener. I understood what she was going through, to a degree. I felt much more compassion for my wife after that.
15. The MBC programs also taught me techniques to deal with that depression and anxiety. One of the techniques that was suggested is to look out the window and breathe. I took up meditation which helped with recognising how to breathe and keep control.
16. I also learned to persevere in conversations where previously I would have become very anxious and exploded and left. On one occasion, I decided to sit through a whole conversation with my wife where we were discussing an issue. I forced myself to sit through it, despite the anxiety I was feeling. That was terrifying, sitting there talking to my wife. The first time I felt like my heart was going to stop. But I got through it—I didn't stomp off or yell and scream. I listened to my wife and I thought to myself, 'I'm not dead.' It was a breakthrough. Once I broke through that fear, it got better and better. We talk openly all the time now.
17. It was a mind-blowing experience for me. It helped me to see what was truly happening and gave me ways to stop falling back into the patterns of my old behaviour. If I'm not feeling right, I will lie in bed and go through where my mind is at and where I felt my best during the day and where I am struggling.
18. I am not as angry as I used to be. I am not abusive anymore, I don't yell and scream and intimidate my wife and family. I can calmly go through discussions instead of getting upset and stomping around and being a bully.
19. The MBC programs turned around the way I thought. The changes I experienced I will carry for the rest of my life; I have had a complete turnaround in the last five or six years. It is a wonderful gift to be given. My relationship with my wife is the best it has ever been, since our first year of marriage. My relationship with my boys has also improved dramatically. I can give them a hug now. We are a much warmer and closer family.

My perspective on MBC programs

Voluntary versus non-voluntary involvement

20. When I started doing the MBC programs, I was really motivated to change. Before I started, I had decided I was going to do something about myself and my behaviour. I didn't want to lose everything I had. I went in there the first day with the intention of being honest and open with what my experiences were and what I saw myself as being.
21. I don't know how effective the programs are when men are there involuntarily. Of the 12 men I started the first MBC program with, there were only four that were doing the program voluntarily. Once the guys had done the minimum that was required of them by the court, most of them disappeared and didn't stay involved any further. There was only one man (of those that were not there voluntarily) who continued involvement with the services after his court-ordered program finished. He started going to a support group.

22. If men are there because they are forced to be there, I'm not sure how they can confront the issues and start dealing with them and making changes. I was motivated compared with most men and I noted a big difference between my experience and those of men who were there involuntarily. A lot of them seemed to view themselves as victims. I think one key thing was that in order to change they needed to see themselves for who they truly are—the perpetrator, not the victim.

Support offered to women and children

23. Kildonan was very proactive about offering support to my wife and children as well. My wife attended a support group along the way that was for women whose partners were doing the MBC programs. I think these groups, and this support, is really important.

Increased demand

24. I understand that it is currently not possible, or at least it is very difficult, to voluntarily attend an MBC program. There is so much demand coming from court-ordered attendees that those who would voluntarily attend can't get a spot.
25. I think this is a real shame. Given how helpful the MBC programs were for me, I think there should be opportunities to participate for men who identify in themselves a need for change, as well as those who are ordered to do so by the court.

Ongoing supports

26. I am now part of a men's group, through my interfaith church community, that meets monthly. The men in the group are all older than me. It is good to hear the maturity and common sense that these men have by virtue of being older than me. They will listen and give feedback on what I have to say. We do working bees and other activities together.
27. I have had some treatment for my depression, but nothing ongoing. I am not on any medication at the moment. I also attend meditation sessions through my church.
28. About 12 months after I completed the MBC programs I got in touch with Men's Referral Service and No to Violence to see what other avenues were available to give something back. I started doing phone counselling but I had to stop in the end; I couldn't deal with it because it brought back too many memories. But I still touch base with these sorts of services occasionally. If I feel things aren't right, I will ring up and have a chat and get back on track. This sort of thing is not a fast process; you take three steps forward then a step back.
29. I think having had a mentor or someone I could talk to and be appreciated by would have made a big difference. There are people I meet now that I wish I had known 30 or 40 years ago. It might have made a big difference to my life.

The impact on my children

30. My two boys are 23 and 21. They are very aware of what I've done. I think it is important to talk about it, given what I've been through and what can happen. If their behaviour is not up to scratch then I help them make changes and be there with them. I am trying to help them as much as I can. I am trying to lead by example as to what can be done and what the outcomes can be.
31. My sons are lucky though. My sons have lots of friends who are both girls and boys. When I was growing up, the boys only spent time with the boys and you basically didn't talk to girls. I think this is important to have relationships with the opposite sex from a young age.

Message to other men

32. My message to other men in this situation would be that no matter what, you can still make a difference. Things aren't lost. Even if the relationship is gone, you can still be better than what you are. However, you have to be open to it and willing to be raw and honest and face some hard truths.

Accepted into evidence at the Royal Commission into Family Violence public hearing on Friday, 24 July 2015.

Witness statement of 'Jessica Morris'

I, Jessica Morris,⁶ say as follows:

1. I make this statement on the basis of my own knowledge, save where otherwise stated. Where I make statements based on information provided by others, I believe such information to be true.

Background

2. From a young age I was brought up, with my sister, by a foster family; our grandparents. I had a really beautiful upbringing; my grandparents were amazing. I had never experienced family violence during my childhood.
3. I am currently working as a receptionist for a financial company. I also work as a waitress on weekends.

My relationship with Sam

4. Sam and I got together in about February of 2014. We had been in a relationship for about seven months before the incident occurred which led to the police getting involved, and to me leaving the relationship.
5. Our relationship had been OK for a while, but slowly, it started to become violent. I wasn't living with Sam but I was with him nearly every night, at his parents' house. When he got kicked out at one stage and was living with some friends, I stayed with him there too.
6. Looking back now, the first signs of his violent behaviour were violence towards himself. He would get really angry but then be able to calm himself down. Slowly, he started to turn his anger onto me and blame me for things and that's when the violence towards me started.
7. Sam was verbally violent in the beginning but then became physically violent. There were probably six or seven times when he was physically violent towards me, over about four months.
8. He used to self-harm, and tell me that I could never leave him or he would kill himself. Once, he cut his leg in front of me to show me what he would do if I left him. He tried to hang himself once when I drove off on him. Another time, he actually had a gun and put it to his head.
9. One of the first times he was physically violent, he locked me in the shed and threw sawdust at me. The sawdust had a nail in it which hit me in the eye and left my eye bruised.
10. Another time, the day after my birthday, I left him and said the relationship was over. He called me and said he was about to commit suicide. I called the police and they came to my house. I explained what had happened and I said, "I can't deal with it." I didn't tell the police I had ended it because of violence, I just said he was out there, suicidal. The police didn't really ask questions about our relationship. They tried to ask one or two questions, but they didn't press me at all. I didn't want to tell them about the violence at that time anyway; I wasn't concerned about the violence then, I was more worried about Sam. At the time, I believed that he really would kill himself, and that it would be my fault because I made him feel that low.
11. I tried to call the police on another occasion. Sam was really angry with me and I was scared of him. We were at my foster parents' house, but no one was home. He had taken my car, my phone and everything else. I ran and hid and called the police on the home phone, but he found me on the phone before I was able to get through. He threw me down in the living room, and was punching me and hitting me. He threatened to kill my family.
12. I didn't try to call the police again after that. He was violent again towards me a couple more times before the incident where the police intervened.

The incident that led to police intervention

13. In September of last year, Sam had picked me up from work in his car. It was about 9:00 pm when he picked me up. He locked the doors and assaulted me in his car. It went for a few hours. This time felt very different to previous times. Before, there had always been remorse and he would realise what he was doing and stop and apologise. This time, it felt really dark. I honestly didn't know if I would get out alive. The abuse was constant, it wouldn't end.
14. We were driving around an industrial area with lots of factories so there was no one around. I couldn't get out of the car. I said to myself, 'Once we see the main road, I will scream for help.' It was about 11 o'clock at night by this time. We got close to the main road. Sam had pinned me down but I kicked out the windscreen and screamed my lungs out. A lady who was driving past heard me. I found out later she was only a week off giving birth. I jumped out of the car. She drove her car towards me and I just ran into her car, she put me in it and we drove away.
15. Sam latched on to the side of the car and tried to pull me out. The lady was freaking out. She couldn't call the police because she was driving, but someone else saw what was happening, pulled over and called the police.

Police response

16. The police arrived at the scene. They put Sam in the police car and they took me down to the police station. One of the police officers was driving me back to the station. He was lovely. He was saying to me during the drive, 'You don't have to make a statement, you don't have to do anything, but you have to realise that it's not OK.'
17. When I arrived at the police station, they left me with a female police officer and I told her what happened and she took a statement from me. I didn't want to sign it, to make it official. Ben, the constable who ended up taking on the case, then came in. I didn't like Ben at first. He really wanted me to sign my statement to help him to lay charges against Sam. Looking back, I realise now he had my best interests at heart.
18. Ben talked to me about intervention orders and what that meant. I decided I wanted to make an application for an intervention order but that I didn't want to make a statement. I loved Sam and I didn't want to get him in trouble. I didn't want to feel guilty. I thought it would be my fault if he was in gaol.
19. The police were really good. They didn't pressure me, but they did talk about why they thought it was important for me to make a statement. Ben said things to me like, 'It's not fair, it's not right. You shouldn't have to deal with this, he shouldn't get away with this.' They tried to make me understand that this behaviour was not real love. They asked me to read my statement out loud. After I read it, they said, 'Do you think this is OK?' I knew it wasn't OK.
20. They also told me that they knew about another girl who had been abused by Sam. I didn't know about this previous girl. I knew she was an ex-girlfriend of Sam's, and I remember asking his mum what happened between them. His mum lied to me about it, and Sam would always lie to me about it too. I realised she had gone to the police for family violence too.
21. Finding out that someone else had been through what I had been through made a big difference to me. It really made me think about the fact that, if I didn't do something, another girl might have to go through the same thing.
22. I decided I would sign my statement.
23. Up until the time the police got involved, I hadn't told anyone in my family how Sam was treating me. I think I was ashamed. I also didn't know myself what was even happening; I was numb, I was in survival mode. I didn't think it was his fault and I was always trying to help him through stuff. I knew that if my family found out, they would think badly of him and I didn't want that.

The impact of the police response

24. If someone hadn't pulled over and involved the police, Sam might have eventually stopped and apologised and begged me for forgiveness. If he had, I would have forgiven him. You just want the violence to stop, your head is numb, you can't even think.
25. Looking back, that day in the station, if the police had not encouraged me to make a statement, I think I would have stayed in the relationship and, honestly, I think I would have died in that relationship. That's where it was headed. I am so grateful that the police encouraged me to make that statement, and took the time to help me understand that what Sam was doing was not right and that I didn't deserve it.
26. A big part of what the police did was make me feel like I had the power to stand up for myself and that I didn't have to put up with what had been happening. They helped me realise that it wasn't up to me to take care of Sam or protect him, that justice should take its course and that they wanted to help me by charging him.
27. Their support was amazing. I can imagine that they would speak to so many women, go to so many women's houses and tell those women to take a stand.
28. I feel really positive about my experience with the police. They have taken the whole journey with me, they didn't just take the statement and leave me to deal with the aftermath. I still email Ben, the constable who was there on that awful night.
29. He worked really hard on my case. He asked my sister and my aunty to come down to the station and give witness statements. He got me to write a victim impact statement. He was the one who told me about the work the Royal Commission was doing. He emailed me the details of the Royal Commission's community consultations and said I should go. I emailed him afterwards to thank him for his support. He emailed me back saying, 'You should be proud of yourself.' He has supported me through everything.

Intervention order and criminal proceedings

30. After the incident, the police charged Sam with various offences, including false imprisonment. I think Sam went straight to gaol for a month because his lawyer said not to apply for bail. While he was in gaol, the police applied for an intervention order (IVO) on my behalf. I went to court when we applied for the IVO and I saw him on the video screen, from gaol. The application was successful and the IVO said he couldn't come near me at all.
31. He got out on bail after a month, but had to stick to some conditions, including to do a rehabilitation program. He went to rehab, then moved to a place in St Kilda. He had some drug and alcohol issues, although he never told me about them and I didn't really realise at the time. I still don't know what he was into. His mum had her suspicions as well and she would try to talk to me about it. There was definitely ice involved. I think his drug use did add to the violence and there was a definite cycle in his behaviour. However, at the same time, he made his own decision to be violent.
32. Before the IVO had been put into place he sent me a note through his mum. However, after he got out on bail, he obeyed the IVO.
33. He pleaded guilty to the criminal charges and was sentenced a couple of weeks ago. I didn't have to give evidence but I went to the hearing and I saw him in person for the first time since the incident. I read my victim impact statement aloud in court.
34. He was sentenced to six months in gaol. He has appealed that sentence, so I am waiting to see what the final outcome is. The case is going from the Magistrates' Court to the County Court. The case will be heard in September 2015, exactly a year since the incident that night. I am not focussing on the outcome of the appeal though. He can't control me anymore.
35. The IVO will be in place until October. At that point, I will consider whether I need to extend it or not. I think that by that time, he will either have learned or, unfortunately, he will be on to his next victim.

36. At some stages during the process, after the charges had been laid, I changed my mind about wanting the charges to proceed. I saw the whole process ahead of me and I didn't want to go through it. I felt like it was my fault and I was still wanting to help Sam. The police played a role in that shift in my decision making. I would talk to Ben about my concerns, and say I was worried about Sam, and Ben would say, 'He will get what he needs, it is not up to you to look after him.' I feel glad now that Ben encouraged me.
37. When I went to court for the sentencing hearing Ben drove me in and sat next to me in court. He will be with me at the next court case in September. He really did support me through the whole process.

Reflecting on the court process

38. It's hard leaving the relationship. What's even harder is making a statement and going through a long court process. I am unsure how other court cases have gone, but mine has been a long process where he has played victim to the courts, including making excuses based on his drug use and unstable upbringing. Why would any women want to go through that? She wants to leave the violent relationship, but it doesn't end; she has to remain linked to him through a long court process and watch him plead victim. At the end of it, he eventually gets off with a light sentence. She has suffered for a long time and to an extent she is not taken seriously. What message does that send to the offenders? How is that encouraging the victim to speak up?

Events after the police response

39. The police linked me into WAYSS Domestic Violence Outreach Program (WAYSS) straight away. I went there with my aunty. That was the first time I realised I had been in a domestic violent relationship.
40. The worker from WAYSS had a questionnaire which had a series of questions about our relationship, with healthy and unhealthy factors set out in two columns. All of my answers were factors that appeared in the unhealthy column.
41. After completing the questionnaire, the worker said I was in a domestic violent relationship. She said that in seven years of working, she had never seen a relationship become so violent so quickly. Sam and I had only been together for seven months. The worker said that if I had stayed in the relationship, I would have died. That's when it really sunk in.
42. From there, the worker referred me to Windermere, where I started to see a counsellor. That has been amazing. I have learnt so much about family violence and relationships. It's incredible.
43. My counsellor has been one of the most important supports I have had throughout this whole process. She is amazing. I now see things from a completely different perspective. I am on the lookout now, too. Next time I am in a relationship, I will be able to recognise the signs of domestic violence and I won't let myself get stuck in that sort of position again. I now see other women and I know when they are in a relationship of domestic violence, I can tell from body language and other signs. The way these men work is very calculated. They don't beat you in public but in private. I made excuses for Sam and I believed him when he told me that it was my actions that led him to do this. Over time, with the manipulation and control, you believe this. My counsellor pointed out that Sam knew what he was doing and that he made the conscious decision to beat me behind closed doors.
44. After the incident happened, Sam's mum said to me, 'I've been there too, it's fine, you'll get through it.' That makes me so angry now. She didn't take a stand when it was happening to her and then she let her son do it to me. She is enabling this to continue. He obviously saw this kind of violence in his own childhood and understood that it was OK or that it was love, or something. Sam's mother now hides it for him and is letting him hide it. If he could bring it to the surface and understand that what he did was wrong and that he can change, he would be able to change.
45. I also understand that, regardless of his childhood, or the drugs, behaving in this way is a choice that he makes. He is his own person and can make his own choices.

Victim versus survivor

46. I don't like the label of 'victim'. Throughout the whole process I was referred to as a victim—'victim's assistance', a 'victim impact statement'. Once a woman leaves that relationship, it should be about survival. I was a victim, and I can label myself as that, but I am not a victim anymore. I am now a survivor.
47. I think the language we use is important, and I think people should be really conscious of how they label people who have experienced domestic violence.

Message to other women

48. My message to other women in this situation is that you do not deserve that kind of treatment. Women are so loving and nurturing and it's in our nature to put up with this kind of behaviour. But no one deserves it, and it's not OK at all. They say the worst part is leaving the relationship, and I think that's right.
49. You need to realise that you deserve real love, a relationship where you aren't in fear, where you are free to live your life. That's true love.
50. It is not going to be easy when you leave that relationship; but it will get easier. If you reach out for help, the help will be there.

Accepted into evidence at the Royal Commission into Family Violence public hearing on Monday, 3 August 2015.

Witness statement of 'Rebecca Smith'

I, Rebecca Smith,⁷ say as follows:

1. I make this statement on the basis of my own knowledge, save where otherwise stated. Where I make statements based on information provided by others, I believe such information to be true.

The relationship

2. In 2001, when I turned 22, I entered a relationship which became abusive; physically, emotionally and financially. I was in that relationship for three and a half years.
3. The violence escalated over the three and a half years and I tried to leave several times. Incidents included having my finger broken, being choked and, on a number of occasions, having a knife held up to my throat whilst being told that if I left, not only would I be killed and buried in the backyard, but that he would go after my family and friends.
4. The first time I involved the police was when my ex-partner held me hostage at gunpoint on my birthday one year. However, the response I got from the police was very much a boys' club response which deterred me from calling again. My ex-partner then used that lack of response from the police against me, and it became part of his controlling and abusive behaviour. He would do something, and then taunt me with the fact that there was no point calling the police because they wouldn't do anything anyway.
5. At the same time, he became involved in criminal behaviour. He was dealing drugs from our home. His brothers had also moved in and were involved. I was scared that if the police got involved, they wouldn't believe that I had nothing to do with the drug dealing. There were all these different levels of fear that stopped me from calling the police again.
6. It took three and a half years, and several attempts, before I left for the final time. The tipping point for leaving was not what an outsider might have expected. It came when my ex-partner refused to visit my brother, when my brother had to go into hospital. For me, that was the lightbulb moment. I realised that I did not want to spend another moment with someone who was not only so disrespectful to me, but also treated my family so badly. Had the situation been reversed, and one of his siblings been in hospital, I would have been there in a second.

7. We had stopped living together a little while earlier. I asked him to come and pick up his things that were at my house, and said we should end things. A week later, he started stalking me. This was in 2005. The stalking continued up until last year.

Events after the relationship

8. We were both living in the same suburb, at the time I ended the relationship. As a result, I continued to see him around that suburb when I was out on weekends or after work. Late in 2005, an incident occurred when I was out one night. My ex-partner was very threatening towards me and I became too scared to go home, I thought he would be there waiting for me. I stayed out because I didn't want to go home. That night, I was raped by a stranger. It was a traumatising experience, but I am also really angry about it. I feel like it would never had happened had I felt safe to go home.
9. In around 2006, I saw my ex-partner at our local pub one evening. He was being horrible towards me. The barman happened to be a friend of his, and witnessed what happened. This friend said to me, 'You need to take out an intervention order against him'. That gave me a lot of courage.
10. Later that night, my ex-partner sent me a text message with a threat to kill me. This, combined with the comment from his friend, gave me the courage to go to the local police station to find out how I could go about getting an intervention order.

The first attempt to seek an intervention order

Police response

11. I went to the local police station and told the police officer in charge about the violence I had experienced from my ex-partner, about the current events, and that I had received a threat to kill. I showed him the text message that contained the threat. I told the police officer that I wanted to apply for an intervention order, and asked him what the process was. I had no idea how to go about it. I had never had an experience of family violence in my upbringing and very little exposure to the justice system at all.
12. The response from the police office was, 'Go to the Magistrates' Court and speak to the Registrar.' That was it. He didn't give me any referrals or ask any further questions. He also did not take a statement from me about the threat to kill or the other conduct I had disclosed to him.

Magistrates' Court

13. Shortly after that, I went to the Magistrates' Court and applied for an interim intervention order. I didn't know where my ex-partner lived at that time. I got two extensions to the interim order because on the first two times I attended court the police had not been able to find my ex-partner to serve him and so the matter could not proceed. Having the interim order extended while the police kept trying to find him was a relatively straightforward process and on each occasion I had my older brother and my best friend there as my support people and as witnesses if necessary. The Magistrates I had appeared before were all reasonably sympathetic.
14. In January 2007, I received another Notice of Hearing and assumed that this too would not go ahead because I had never been told that he had been served with my application. I thought that, as on the two previous occasions, it would just be a case of me applying to extend the interim intervention order until he could be served. Given my previous experiences, I decided I didn't need my older brother or best friend with me. They had previously taken time off work so they could come with me and I didn't want to inconvenience them anymore. I said to my family and friends, 'Don't worry about coming, I am just doing the same thing again and I will be fine.'
15. However, as it turned out, my ex-partner had been served with my application and so this hearing was for the final order. I didn't realise this was the case, and there was no assistance provided to explain what it meant. I had no legal advice.

16. On the day of the hearing I was driving to the court and I saw my ex-partner standing out the front having a cigarette with an ex-housemate of mine. This ex-housemate was a friend of my ex-partner's, who had witnessed the violence. He had seen my ex-partner bang my head repeatedly on the kitchen table and had done nothing. I went into shock at seeing them.
17. When I got inside the court I went to the Registrar and asked what I should do. I told the Registrar I didn't realise my ex-partner was coming to the hearing, I didn't have any support people and I didn't know what to do. I was crying and shaking. He asked me if I wanted to see the applicant support worker, and shortly afterwards pointed towards someone who I assumed to be that person. I went over to her and said, 'Are you the applicant support worker?' and she said, 'Yes, I am'. I had a conversation with her where I told her the events that had occurred since the interim order had been in place. She tried to get me to agree to an undertaking. She seemed very cold and I started becoming concerned. In fact, as I found out when we were in court, she was not the applicant support worker at all, but my ex-partner's lawyer.
18. After having spoken with this person who I thought was the applicant support worker, I called my Dad who, on hearing how upset I was, told me to try to get the hearing adjourned to the afternoon and that he would drive down to attend with me. He lives quite far away and I knew it would be at least two hours before he arrived. When we got into the hearing I explained to the Magistrate what had happened. The Magistrate eventually agreed to adjourn the hearing until the afternoon but he was not pleased about it.
19. In the break I called everyone I knew, but no one could get out of work to come down to help me. After lunch, the hearing was called back on and Dad still wasn't there. I had to stand up and represent myself. I didn't have any support people present. I wasn't prepared at all. Stupidly, I had deleted the text message which contained the threat to kill, just three days earlier. I didn't have any witnesses present. I then had to cross-examine my ex-partner. I don't even know what came out of my mouth. I was like jelly the whole time. It was horrible. At the end, the Magistrate was not convinced I had enough proof and said it was a case of 'He said, she said'. The final intervention order was not granted.
20. I walked out. I was in a flood of tears at that point, I felt so numb. The applicant support worker then finally located me. As she was taking me into her office I saw my ex-partner, his lawyer and the ex-housemate coming out of the court high-fiving and laughing, and I could hear my ex-partner making comments about me. My Dad then arrived.
21. It was a totally disempowering, traumatising experience.

Events after my experience at the Magistrates' Court

22. The harassing and threatening behaviour from my ex-partner continued at a relatively low level from then on, including hang up phone calls, clothes that had been hanging on the clothes line being cut up and being menacing towards me whenever we were out at the same place together.
23. After the rape, I had made an application to the Victims of Crime Assistance Tribunal (VOCAT). Through VOCAT, I had been able to access counselling services. Through these counselling sessions, I had been made more aware of other services that were available to me to support me with the family violence I had experienced and was continuing to experience. For the first time, I started to become aware that there were people who could help me. Previously, I had disclosed the family violence to GPs who would minimise the violence or didn't respond.
24. In mid-2007, I saw an ad for the safe steps Volunteer Survivor Advocate Program. This program empowers women who have experienced family violence to break their silence and have a voice in the prevention of violence against women and children. Women who have survived family violence are trained and supported on how to use their personal story to change society's attitudes and beliefs that fuel and enable violence against women.
25. This was an amazing program to be involved in, and really had a significant impact on me. The program has given me the ability to do something with those negative experiences—to help me channel change processes to ensure people experiencing those things now don't have to go through what I have gone through.

The second attempt to seek an intervention order

26. In the period following the rape, 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.
27. As a result, when the harassment by my ex-partner escalated again in 2010, I had the confidence to decide to try again to seek an intervention order. I felt empowered enough and removed from the relationship enough to proceed. The escalation of the harassment in 2010 involved harassing phone calls and threats when we were out and about.
28. I reported this behaviour to the police and on this occasion the police took a statement from me and heard the whole history of the relationship. The police then made the application for the intervention order on my behalf. The hearing was also held at the Family Violence Division of the Heidelberg Magistrates' Court. I felt a huge difference walking into the court knowing that the police were on my side. I also felt comfortable with the court itself, because the VOCAT proceeding had been held at Heidelberg Magistrates' Court too.
29. I located the applicant support worker and asked to see identification. In the hearing itself, I had the police, the applicant support worker and a support person present to assist me. I didn't have to stand up to represent myself. I didn't even have to give evidence because he didn't oppose the order. I was conscious of the fact that it was a specialist family violence division. I walked in knowing the Magistrate had a higher level of understanding of family violence. It was also a closed court which made me feel a lot better.
30. The intervention order was put into place for a 12 month period. The entire process was the complete opposite of the first experience I had at the first Magistrates' Court. I felt like I had been listened to, believed and supported. I felt so much more confident and empowered. I couldn't believe the difference.
31. After having reported the family violence to the police, I also received a call from Berry Street offering me counselling and support. I was adequately supported at that stage, as a result of my experience through VOCAT, and didn't need to take up their offer, but I was so grateful that it had occurred. It would have made a huge difference had this referral been made the first time.

Current circumstances

32. I haven't felt the need to extend the intervention order since it lapsed in 2011. Over the last four years there has been the odd attempt to contact me but I have now blocked his number and I am using the tactic of ignoring him completely. I am treating him as completely insignificant. I am very secure and happy with my current partner and feel I am getting on with my life.

Reflections on my experiences

33. One of the most distressing aspects of the violence I experienced was the way, after the relationship ended, my ex-partner was able to use the system against me. My first experience at the Magistrates' Court was very disempowering and re-traumatised me to an even greater extent than before. It made things so much worse.
34. As I stated above, 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 \$1000 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.
35. The police and the Centre Against Sexual Assault were very proactive in providing me with information and referrals to services in relation to the rape, but there was far less information provided to me in relation to the family violence.

36. The key differences between my experience in 2007 at the Magistrates' Court and the experience at Heidelberg in 2010, included the following.
- 36.1 The initial police response: when I walked into the police station and explained my story, I was taken seriously by police as someone who was reporting criminal conduct. They believed what I had to say.
 - 36.2 Police taking up the application for the intervention order on my behalf: having the police in court, on my side, made me feel so much more confident. I didn't feel like I was by myself and having to be my own advocate.
 - 36.3 Clearly identified applicant support workers: not being able to locate the applicant support worker, and having my ex-partner's lawyer wrongly identify herself as the applicant support worker, made the first experience at the Magistrates' Court even worse. It is important that the applicant support worker is clearly and easily identified.
 - 36.4 Better understanding of the process: I had a support person and was not caught unprepared. I knew what the hearing would involve.
 - 36.5 Having the hearing in the specialist family violence division of the Heidelberg Magistrates' Court: the way the Magistrate behaved was respectful and compassionate and he clearly had a much greater understanding of family violence than the Magistrate in the first Magistrates' Court. This made a huge difference.
 - 36.6 Having a closed court: the first hearing was humiliating in that members of the public were able to witness the entire thing. It made representing myself so much harder as I was conscious of all the people watching. I felt much more comfortable in the second hearing when the court was closed to the public.
7. I realised, after having gone through the process of seeking an intervention order on these two separate occasions, it is possible to have very different experiences of the same process. I hope that women in my situation in the future don't have to experience what I went through at the first Magistrates' Court.

Accepted into evidence at the Royal Commission into Family Violence public hearing on Tuesday, 4 August 2015.

Witness statement of 'Anna Jones'

I, Anna Jones,⁸ say as follows:

- 1. I make this statement on the basis of my own knowledge, save where otherwise stated. Where I make statements based on information provided by others, I believe such information to be true.
- 2. Based on my experience, I aim to highlight what I see to be some of the greatest challenges affecting victims of family violence who are seeking protection via the legal system. As a private person, sharing my story and matters of my private life in a court room has proved to be incredibly difficult for me and, like many women, was almost reason enough to not take legal action against my ex-husband in the first place.

My experience of family violence

- 3. After a time living together interstate my ex-husband and I sold our family home in 2013 and commenced a road trip around Australia with our son, then aged five. We made this decision after an escalation in his violent outbursts and a string of marital difficulties. Most alarmingly for me at this time was that my ex-husband had begun to direct violence at my son. I was becoming aware of significant changes in my son's behaviour, most notably anxiety around his father and nightmares about his father.

4. Our trip was intended to be the last attempt at salvaging the marriage, particularly as my ex-husband blamed a lot of his behaviour on the stress of running a small business. He also blamed a lot of his behaviour on me and this 'red-flag' was never far from my mind. In 2013, my ex-husband drove the vehicle we were travelling in toward my son and I on a crossing. This was the moment that I knew I had to get out of the relationship for the safety of my son and myself. Later when drafting an affidavit for the family court I realised that this incident of violence had occurred after a pattern of monthly, and at times more frequent, acts of family violence.
5. Although I knew the Police were in walking distance, I did not go. I felt certain that if I did go to the Police, I would give a statement but then would be in the predicament of returning to the same vehicle with my ex-husband. I knew him to be a man who could be beyond irate yet had the capacity to present as perfectly calm and reasonable in an instant if it was in his interest. I had no faith that I could gain protection at that time, so I instead chose to return to the vehicle with my son and attempt to calm his father down.
6. I then made up my mind to leave him two weeks later when we were scheduled to be with my entire extended family at my parent's house marking the end of our trip. As we no longer shared a family home and the proceeds of our house sale were in the bank, I felt we were in a situation that would make the separation reasonably easy. I was wrong.
7. My ex-husband left in the van we had been travelling in and headed north with no regard for our welfare, evading contact from me for several days so I was unsure of his whereabouts. This was distressing because I knew he had access to an unregistered firearm and had previously threatened to kill me and my son if I ever left him.
8. My son and I were left standing with only the basic possessions we were travelling with. With my family rallying around me, I drove from interstate to my sister's house in Victoria. We decided this to be the safest alternative, as my ex-husband had not previously attempted to use threatening behaviour with my brother-in-law, though he had done with my mother and sister.

Initial attempts to obtain advice and assistance

9. From the point my ex-husband drove away in the van I was effectively homeless. As a result, I moved, with my son, to Victoria to be with my family. I was fortunate to have family support during this transition. Many mothers and children without such a family would be placed in an even more vulnerable predicament.
10. I contacted a solicitor to obtain legal advice regarding property separation and custody arrangements. I asked her advice on what I should do if the violence escalated. She instructed me to obtain a family violence intervention order (Intervention Order). At the time, I had no idea what an Intervention Order was and contacted the Magistrates' Court for advice. The first woman I spoke to asked: 'Did your lawyer put you up to this?' This was the first, but not the last, time that the notion that I was a 'scorned wife' who was being deliberately vengeful toward her ex-husband was implied. Considering the woman had just spent less than 30 seconds on the phone to me, the lump in my throat obvious through my speech, her behaviour was out of line.
11. Based on this experience, I suggest that the Royal Commission should consider implementing standardised first response communication for peripheral support people.

12. Obviously in emergency situations our emergency personnel are well trained in the manner in which to handle victims and attend to domestic violence situations appropriately. I am referring here to the many other roles in our community where staff may inadvertently find themselves handling a very early enquiry for a victim of domestic violence, such as the courts, General Practitioners, teachers, etc. A standardised script could be formulated and implemented with suggestions as to how to recognise indicators that a person may be a victim of family violence, how to delicately handle this situation and know what services and support could be recommended. I think that such training could be implemented without great expense. It could be a self-perpetuating campaign with tools available online and implemented in workplaces, similar to how workplaces implement Occupational Health and Safety training. I have concerns that the manner in which many women are treated presently in early requests for help leads them to give up and not pursue the matter further. I refer to the statistic that 64 per cent of women who experienced physical assault and 81.1 per cent of women who experienced sexual assault still did not report it to police.

Recovery order proceedings

13. Knowing that his son was now to reside with me in Victoria, my ex-husband commenced legal proceedings interstate for a recovery order with the assistance of a lawyer in his family. He did this despite my offer to attend to legalities rationally and amicably in Victoria.
14. The recovery order application was heard in the Federal Circuit Court interstate. The judge dismissed the recovery order on the basis of evidence of our joint decision to sell our house and leave that state almost one year earlier. However, despite this outcome, my experience of the court system has been wholly unsatisfactory in many respects. This day in court was my first introduction to what would become a 'He-said, She-said' case in the eyes of the legal system.
15. In my experience, the first problem with the recovery order proceeding was that there was insufficient time to establish a clear background of family violence. 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.
16. My fear is that after generations of inequitable custodial settlements disadvantaging positive paternal relationships, the pendulum has now swung too far the other way. The short term risk here was blatant. My 'story', my 'case' had the hallmarks of becoming a family violence statistic in the future. Under current legislation, the courts are impeded in their ability to respond preventatively and are forced to function reactively. Given the appalling statistics of women and children who are killed each year by a parent or intimate partner, this must change. It must change effectively and intelligently and not at the glacial pace we have come to expect and accept of our judicial system.
17. The Magistrate stood the matter down so that my barrister and my ex-husband's lawyer could confer and reach a custody arrangement. The starting point of that 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.
18. We were unable to agree to a position outside of Court so we went back before the judge. The judge ordered supervised access, but only for a limited time. Therefore, I still felt that her focus was very much about ensuring that my ex-husband had access to his child.

19. After this hearing, my ex-husband continued to pursue 50/50 custody. The proceeding was resolved by mediation in 2014. This was only because I had run out of money by this stage, and could not fund a full contested trial. I thought the mediator was appalling. I found him to be very arrogant and he lacked sensitivity with regard to the family violence issues I tried to explain to him. The mediator treated my case as if it was just another custody hearing, without regard to the safety risks to my son. He seemed to just assume we would meet in the middle of our respective positions as if it was a commercial dispute. At the mediation, I was very firm that I would not agree to 50/50 custody. I would not budge from this position and the mediator became very frustrated with me. At one point, he said 'This is moving at a glacial pace, I am not happy with this.' The efficiency of the mediation was more important to the mediator than coming to an agreement that would protect my son.
20. As a result of the mediation, my ex-husband has two-thirds of holidays and two weekends every school term. He also has scheduled half hour Skype phone calls with my son once a week. My ex-husband is required to pay for half of the cost of the flights interstate for my son.
21. I have felt that, through my dealings with the courts, my son was rarely mentioned. His experience and his wellbeing was not at the centre of the custody proceedings, nor was he given proper consideration at the Intervention Order proceedings. The court's primary focus was ensuring that his father's right to see him was protected. We should be focusing on what is best for the child.

Family Court Report process

22. In the recovery order proceedings, the Court ordered that a Family Report be prepared. My experience of the Family Report process, and in particular the reporter himself, was appalling.
23. The reporter was around the same age as me, and he had spoken to my ex-husband first. I felt that they had struck up a rapport, because they were both young men and seemed to get along well. Already, I felt at a disadvantage. The reporter was a counsellor with limited professional experience, and not a trained psychologist. Throughout the day, based on how the reporter conducted the interviews, I felt that he was extremely underqualified and inexperienced. He was also consistently dismissive of my recount of the violence I had experienced, instead proposing that it was a matter of my own 'perception'.
24. For example, during my interview with the reporter, I raised concerns to him about my ex-husband's prior drug use. I have genuine concerns that my ex-husband shows signs of a medical condition and felt it important to raise this with the reporter. I did not do so maliciously or as a tactic to badmouth my ex-husband to the reporter. I told the reporter that I lacked knowledge about drugs. The reporter said to me, 'If this was a different environment, I could really educate you with a few stories about drugs'. I was speechless and completely shocked by this comment. It is indicative of how completely unprofessional the reporter was.
25. Another example from this day was that my ex-husband showed up with two presents for my son, for Christmas and his birthday, which had been four months earlier and which had both passed without acknowledgement from him. The reporter asked me if I was happy for my ex-husband to give the presents to my son. I said yes, of course he can have the presents, but said too that I thought it was very contrived that my ex-husband had brought these presents today, four months after Christmas and my son's birthday and on the day his relationship with his son was being assessed. When I read the Family Report, the reporter stated in the report that I had 'wondered if there was a sinister reason for doing this'. This comment was a blatant misquote and left out all of the context. It painted me in a bad light, which continued on a theme already introduced by my ex-husband that questioned my mental stability. I suggest that it should be standard practice that gifts are not allowed to be exchanged during a family court assessment.
26. The court reporter also stated in his report that 'Whether or not there was family violence rests on disputed facts, but if there is a court determination that it occurred, it was likely situational violence'. I felt that the court reporter's use of the phrase 'situational violence' excused and trivialised the family violence that my son and I had experienced. In my opinion, it is not the court reporter's role to provide an expert opinion (especially when the reporter is underqualified and inexperienced) about the court's likely determination regarding the violence I had experienced. I think that this is an abuse of his role and is morally and professionally reprehensible.

27. I am very concerned about how much weight the Family Report carries in custody proceedings. The examples I have included of what happened on the day show that there are too many variables, such as, who the reporter is and what the reporter chooses to include in the report. The Family Report is too subjective and does not take into account all of the circumstances. I am concerned that Family Report interviews are not recorded, and are only written based on the reporter's notes. I was misquoted a number of times in the Family Report. I think there should be some form of check on what is written in the report, to ensure that what is said in the interview is not taken out of context.
28. Most significantly, the Family Report did not adequately address the safety of my son. There was little discussion in the report about the violence that my son had been exposed to and experienced. I thought that the report completely missed the point in terms of determining what would be safe circumstances for my son.
29. I found the Family Report process very confronting and very draining. My barrister had told me that it was a very important day and that the Court would put a lot of weight on the Family Report. Naturally, I was anxious and I worried that this would affect how I was perceived in the report. This was already a very stressful situation for me, having to see my ex-husband and recount to the report writer my experience of family violence, but I felt that the way the Family Report process was managed only made my stress worse.
- It was so confronting to even just describe to the reporter the violence, but especially so to a person who I felt was inexperienced and not considerate of my experiences.
30. I was also very concerned about what the process expected of my son. I had to send him into a room to talk to a stranger and I was not allowed to take him into the room and settle him as I would do—as any parent would do—in any other circumstance where a child of his age was going somewhere for the first time. I had to hand him over at the door and was not allowed to tell him about what was about to happen as it would be seen as influencing him. It is obvious from the report that once inside my son was very anxious and took some time to settle.

Supervised contact centres

31. I made a request that at least initially, my child spend time with his father in supervised contact centres only. I was told by my legal team that this 'could not be a long term solution', which the Magistrate reiterated. I was very frustrated that my ex-husband was not considered a long term risk. At what point is a person who has threatened to kill their own child no longer a risk? I know that my ex-husband has access to an unregistered firearm, about which I have tried to alert authorities. After contacting Crime Stoppers numerous times regarding his weapon, I received no response. My local police informed me that they could only act if he 'arrived at my house with weapon in hand'. If my son's father wanted to carry out his threat to kill, I felt that he was being spoon fed the opportunities by the same people I was appealing to for help. In these circumstances, please consider whether the risk to my son is any less and if our courts truly have any power to function preventatively.
32. Following the supervised access order, I signed up immediately to both interstate and Victorian government placements. My ex-husband signed up after four months, which I consider is indicative of his desire, or lack thereof, to see his son.
33. During this period, I was continually harassed by his legal team offering ludicrous alternative suggestions, including offering for a senior member of his legal team to supervise the contact between my ex-husband and my son. This harassment was bullying, and at times demeaning, expensive to respond to and undermining of what had been approved by the judge. I think my ex-husband's actions were tactics for when we re-appeared for a further mentions hearing, at which my ex-husband attempted to use the lack of time spent with his son as leverage to override the allegations of violence. Although my lawyer told the Court he had refused to sign up to the contact centres, my ex-husband still managed to gain some sympathy for his lack of contact. We left that hearing with new interim orders which again approved my request for supervised contact. However, the supervised contact was only for a limited time, after which my ex-husband was allowed overnight visits from my son.
34. At this time a placement became available in the interstate supervised contact centre. However, I was shortly advised that the centre was ceasing operations due to funding.

35. Sufficient funding is critical so that these centres can remain open as a viable option for children who have experienced family violence. These centres are particularly important in the early stages of separation from a violent partner, when that partner's behaviour is likely to be very unpredictable and irrational. Contact centres provide an environment that protects the child's safety. It seems obvious to keep these centres open to protect the child's welfare, but sadly this is not the case, with several government supervised contact centres being closed. Access to this vital service is now unreliable and, for most people, completely inaccessible. In the end, I paid for the contact centre visits with my ex-husband and son. It was very expensive and cost even more to receive a report of the visit.
36. There also needs to be a consistent standard applied across government contact centres. I made numerous enquiries to various centres and found that the safety standards for each centre was very different. As my ex-husband had access to firearms, I asked each of them if they had metal detectors or a pat-down security procedure. None of them did. This may seem overly cautious, but I consider it necessary. Allocating funding to the security of these centres to ensure a safe and well-managed system for contact to occur, with as little risk to children's safety as possible, is crucial.
37. Although I was informed that the supervision would be careful and that there would be no chance of any problems, the visit between my ex-husband and son was supervised by a very petite woman, who would not have been able to physically stop my husband from walking out with my son.
38. Keeping in mind that I had initially sought no contact, and felt that I had been bullied into contact arrangements that I was not happy about, it was not acceptable that the supervised contact centres could not even provide a safe environment for my child. If supervised contact centres were properly funded and operated with adequate safety measures, I think they would be a good way to provide access to the other party, without labelling a parent who feels they are acting protectively as a 'no-contact parent', inferring that they are acting maliciously. Supervised contact should not just be limited to a short term solution.
39. Following the occasions that my son visited his father interstate, I have noticed significant behavioural changes. I find that it takes weeks for him to re-stabilise after the visits with his father. My son's school has also reported that they have noticed changes in his behaviour when he returns from visits with his father. I am very concerned about sending my son into this environment, where it is mentally distressing for him and affecting his life both in the short and long term. At the present time for a variety of reasons my son is not having any contact with his father.

Jurisdictional barriers

40. There have been jurisdictional difficulties because of the fact that I live in Victoria and my ex-husband lives interstate. I have discovered the lack of communication between State government departments to be particularly difficult. For instance, I only came to learn recently that the Department of Human Services is state operated and as such, does not produce reports or implement safety plans to effectively deal with children of interstate parents, where family violence is an issue.
41. I think that jurisdictional difficulties will have affected many separated families and it is a prime example of how children can 'fall through the cracks' of the system and be overlooked. One way to address this problem could be standardised reporting. I also think that an inquiry into what constitutes a 'thorough' report from the Department of Human Services would likely prove very revealing. There needs to be an effective way for State government departments to communicate, or better yet, consider the implementation of policies and procedures that would be applied nationally in circumstances of family violence.
42. Related to this need for better communication, I think there could be better communication from schools where children have experienced family violence. I think that schools could play an important role in monitoring children's behaviour, particularly of changes that may be indicative of exposure to family violence. I wanted my son's school to monitor his behaviour and take notes about changes after he returned from visits with his father, so that I could use this as evidence in Court. The school said that they could not do this, as they did not want the information being used as evidence, exposing them to cross-examination. I think there is a clear gap here, where the school has a lot of contact with my son, and other children in similar situations, during the week, but don't feel they have an effective means of providing this information to the courts.

Legal funding

43. At the start of my legal proceedings, I was ineligible for legal aid because I had some savings in the bank. Legal Aid interstate would not represent me in the recovery order proceedings because I am now a Victorian resident. When my funds were exhausted and the recovery order proceedings were approaching a final, contested hearing, I was informed that Victoria Legal Aid does not fund any final trials. I find it a sad irony that after stepping forward and negotiating through over 12 months of legal proceedings, the opportunity to have my case heard and finally determined by a Magistrate was out of reach. Up to this point, I had spent over \$50,000 of my own money and was then told it would cost a further \$50,000 to have the matter 'heard'. As noted above, we reached final orders through the Court ordered mediation process. However, I felt let down by the legal system, in that a judge would not hear the full details of my case to make an informed judgement on my son's behalf. Perhaps, with all of the facts at hand, the judge would not consider my instinctive desire for 'no-contact' excessive. Perhaps the judge would consider it to be the safest and fairest outcome for my son, in which case, I would be in a very different position today.
44. I have been very frustrated by the legal representation I have had, especially considering how expensive it is. I have found that I am constantly battling my legal representatives because they do not agree with the outcome that I want or think that I am being unreasonable by insisting that the custody terms take into account the family violence issues. It has seemed to me that even my own legal team would prefer to ignore the issue of family violence to negotiate on simpler terms for the custody arrangements. Now that I am more experienced with the process of the legal system, I would like to represent myself because I know my story better and I can no longer afford private legal representation. I find it very frustrating that I have to pay someone to talk about my personal life. However, I continue to experience that courts have a negative attitude towards self-represented parties. In an earlier mentions hearing, a Magistrate at the Magistrates' Court commented to me that 'everyone wants their 15 minutes'. I found this comment so demeaning. Speaking about my experience of family violence in court is not about getting my '15 minutes', but about making sure the details and history of my case are properly and accurately told.

Current Intervention Order proceedings

45. I wrote my submission to the Royal Commission into Family Violence while I was at court, waiting for an Intervention Order hearing at the Magistrates' Court. That day, despite all parties being summonsed for appearance at 9.30 am, I spent most of the day waiting for the hearing which ended up being adjourned. At that hearing, I sought an extension of the Intervention Order made against my ex-husband last year, which had expired. In the initial Intervention Order proceedings, I privately briefed a barrister for the hearing, which cost more than \$5000.
46. The contested Intervention Order proceeding was finally heard in 2015. For this hearing, I engaged Legal Aid for the purpose of cross-examination, but I represented myself in all other matters that came to hand in that trial as I could not afford further legal representation.
47. Although I had previously been advised that contested Intervention Order hearings are very rare, I pursued the contested Intervention Order hearing, which was heard at the Magistrates' Court. In previous hearings, I have been pressured by my own lawyers and also by the duty lawyer at the Magistrates' Court to come to a negotiated outcome on the day, instead of seeking an Intervention Order that applies to both me and my son. The current Intervention Order applies only to me, but the conditions are such that it also covers my son.
48. The result of the contested hearing in 2015 was that the Magistrate granted a 12 month extension of the existing Intervention Order. The Magistrate declared a number of times throughout the hearing that he was 'not really prepared to adjudicate' the matter and that he would leave it to my Legal Aid representative to direct the process. Although I was technically 'successful', I am very disappointed by the Magistrate's conduct of the proceeding.

49. As noted above, I know that my ex-husband has access to an unregistered firearm, which is very concerning to me as he has previously made threats to kill me and my son. The original Intervention Order (the subject of the contested hearing) included a weapons restriction, however there was some debate about the restriction on the Intervention Order, given that the interim Intervention Order included a firearms restriction. I have consistently requested that the Intervention Order include a restriction on the ownership of firearms, and specifically, that my ex-husband be required to hand in his gun. In court, I attempted to establish that his refusal to do this was a breach of the Intervention Order. The Magistrate did not agree and ruled that the weapons restriction (as included in the original Intervention Order) did not cover ownership of an unregistered firearm. The Magistrate said that there was a difference between a weapon and a firearm 'in the Act'. He also said 'so it never covered a gun, oh well', and then literally put up his hands, indicating a complete lack of concern. I felt as though he spoke to me as if I was a child. At this hearing, like the previous hearings I have attended, my son's safety was not taken into consideration. The Magistrate did not acknowledge my son's position at all.
50. I reiterated to the Magistrate that I had consistently sought that the Intervention Order include a restriction on firearms. I stated that the Court should not regard the seriousness of the risk any less, simply because there had been some kind of administrative error in processing the restrictions on the interim Intervention Order compared to the original Intervention Order. While I was speaking to the Magistrate about this point, the Magistrate made a derogatory comment to me to the effect that I was pretending to be a lawyer, and remarked that 'everyone wants their day in court'. This Magistrate has made comments to me of this nature several times, such as saying to me that 'everyone wants their 15 minutes', as noted above at paragraph 44. Throughout the hearing, the Magistrate and my ex-husband's barrister spoke to me in a belittling way. They were unnecessarily rude and insensitive. I felt that I was penalised for being confident and articulate, and the fact that I did not fit the Magistrate's preconceived idea of a victim of family violence.
51. I felt as though the Magistrate was sympathetic to my ex-husband. When granting the extension to the Intervention Order, the Magistrate acknowledged that it was 'tough' for my ex-husband because the Intervention Order 'enforces pleasant behaviour' and that the 'repercussions are quite serious if you don't'. At no point did the Magistrate acknowledge the seriousness of the violence that led to the Intervention Order in the first place. Even though I was 'successful' in the eyes of the law, I felt cheated in that I had listened to the Magistrate's ruling on the matter, which was so sympathetic to my ex-husband that I felt he almost apologised to my ex-husband for granting the extension. Of all the court appearances and hearings I have now attended, the Magistrate that heard this contested Intervention Order was the worst I have encountered.
52. Experiencing family violence altered my course in life and career path significantly. Last year I commenced studies at university to undertake a double major, Journalism being one of them. Throughout 2014, despite having around a dozen court appearances and all of the upheaval that comes with separating from a violent partner with a child, I maintained a high distinction average. I have intentions to put my skills to good use in the area of justice, women's rights and areas of community significance.

Accepted into evidence at the Royal Commission into Family Violence public hearing on Friday, 7 August 2015.

Endnotes

- 1 The name and other details of the witness (and others) referred to in this statement have been changed to protect her identity and to comply with the Royal Commission into Family Violence Restricted Publication Order dated 10 July 2015.
- 2 The name and other details of the witness referred to in this statement have been changed to protect her identity.
- 3 The name and other details of the witness referred to in this statement have been changed to protect her identity and to comply with the Royal Commission into Family Violence Restricted Publication Order dated 22 July 2015.
- 4 The name and other details of the witness (and others) referred to in this statement have been changed to protect her identity and to comply with the Royal Commission into Family Violence Restricted Publication Order dated 23 July 2015.
- 5 The name and other details of the witness referred to in this statement have been changed to protect his identity and to comply with the Royal Commission into Family Violence Restricted Publication Order dated 24 July 2015.
- 6 The name and other details of the witness (and others) referred to in this statement have been changed to protect her identity and to comply with the Royal Commission into Family Violence Restricted Publication Order dated 3 August 2015.
- 7 The name and other details of the witness referred to in this statement have been changed to protect her identity and to comply with the Royal Commission into Family Violence Restricted Publication Order dated 4 August 2015.
- 8 The name and other details of the witness (and others) referred to in this statement have been changed to protect her identity and to comply with the Royal Commission into Family Violence Restricted Publication Order dated 7 August 2015.

Appendix G Roundtable discussions: topics and participants

Relationship between family law system and Victorian family violence system

Monday 21 September 2015

| Title | Name | Organisation | Role |
|-------------------------|-----------------------|---|---|
| Chief Justice | Diana Bryant AO | Family Court of Australia | Chief Justice |
| Chief Judge | John Pascoe AO CVO | Federal Circuit Court | Chief Judge |
| Judge | Evelyn Bender | Federal Circuit Court | Judge |
| Deputy Chief Magistrate | Felicity Broughton | Magistrates' Court | Deputy Chief Magistrate |
| Magistrate | Anne Goldsbrough | Magistrates' Court | Magistrate |
| Ms | Manuela Galvao | Family Court of Australia/ Federal Circuit Court | Regional Coordinator, Child Dispute Services |
| Professor | Helen Rhoades | Family Law Council / Melbourne University | Chair of the Family Law Council, Professor of Law |
| Ms | Nicole Rich | Victoria Legal Aid | Director, Family, Youth and Children's Law Services |
| Dr | Andrew Bickerdike | Relationships Australia Victoria | Chief Executive Officer |

Exploring perpetrator interventions

Monday 21 September 2015

| Title | Name | Organisation | Role |
|--------------------|------------------|---|---|
| Ms | Elena Campbell | Centre for Innovative Justice | Manager, Policy and Research |
| Emeritus Professor | Arie Freiberg AM | Sentencing Advisory Council/ Monash University | Chair of the Sentencing Advisory Council, Emeritus Professor |
| Ms | Helen Fatouros | Victoria Legal Aid | Director, Criminal Law Services |
| Ms | Carina Holmquist | Anglicare Victoria | Program Co-ordinator, Dads Putting Kids First |
| Mr | Glenn Rutter | Magistrates' Court | Manager, Court Support and Diversion Services |
| Ms | Shaymaa Elkadi | Department of Justice and Regulation | General Manager Offending Behaviour Programs, Corrections Victoria |
| Mr | Rodney Vlais | No To Violence and Men's Referral Service | Manager, Men's Referral Service |
| Dr | Astrid Birgden | Deakin University | Consultant forensic psychologist, Adjunct Clinical Associate Professor |
| Acting Inspector | Wes Lawson | Victoria Police | Acting Inspector, Prosecutions Division, Legal Services Department |
| Superintendent | Russell Barrett | Victoria Police | Superintendent, Southern Region |

Sustainable reform

Tuesday 22 September 2015

| Title | Name | Organisation | Role |
|-----------|---------------------|---|-------------------------------------|
| Mr | John Thwaites | | Former Deputy Premier |
| Mr | Rob Knowles AO | | Former Minister for Health |
| Mr | Terry Moran AC | | Former senior bureaucrat |
| Ms | Christine Nixon APM | | Former Chief Commissioner of Police |
| Mr | Terry Healy | | Former senior bureaucrat |
| Professor | Mark Considine | Melbourne University | Dean, Faculty of Arts |
| Professor | Gary Banks AO | Australia and New Zealand School of Government | Chief Executive and Dean |
| Dr | Peter Bragge | BehaviourWorks Australia, Monash Sustainability Institute | Senior Research Fellow |

Magistrates' roundtable

Wednesday 23 September 2015

| Title | Name | Organisation | Role |
|-------------------------|--------------------|------------------------------|--|
| Chief Magistrate | Peter Lauritsen | Magistrates' Court | Chief Magistrate |
| Deputy Chief Magistrate | Felicity Broughton | Magistrates' Court | Deputy Chief Magistrate |
| Acting President | Kay MacPherson | Children's Court | Acting President |
| Magistrate | Fiona Hayes | Magistrates' Court | Coordinating Magistrate |
| Magistrate | Anne Goldsbrough | Magistrates' Court | Magistrate |
| Magistrate | Pauline Spencer | Magistrates' Court | Magistrate |
| Magistrate | David Fanning | Neighbourhood Justice Centre | Magistrate |
| Ms | Alison Paton | Magistrates' Court | Project Manager, Response to Royal Commission into Family Violence |
| Mr | Andrew Tenni | Magistrates' Court | Chief Executive Officer |
| Ms | Lisa Grey | Magistrates' Court | Registry Manager, Broadmeadows Magistrates' Court |
| Ms | Kate Ryan | Children's Court | General Manager, Governance and Planning |

Victim restoration and the justice system

Friday 25 September 2015

| Title | Name | Organisation | Role |
|-------|-----------------|---|--|
| Ms | Dymphna Lowrey | Defence Abuse Response Taskforce | Manager Restorative Justice Unit, ACT Government |
| Ms | Carolyn Worth | South East Centre Against Sexual Assault | Manager |
| Aunty | Pam Pedersen | Koori Courts | Elder |
| Ms | Freia Carlton | Victoria Legal Aid Victoria | Manager, Family Dispute Resolution Service |
| Ms | Joanna Fletcher | Women's Legal Service Victoria | Chief Executive Officer |
| Ms | Bonnie Renou | ARC Justice | Community lawyer |
| Mr | David Moore | Victorian Association for Restorative Justice | President |

Governance

Tuesday 6 October 2015

| Title | Name | Organisation | Role |
|--------------------|-------------------|---|--------------------|
| Mr | Chris Eccles | Department of Premier and Cabinet | Secretary |
| Ms | Kym Peake | Department of Health and Human Services | Acting Secretary |
| Mr | Greg Wilson | Department of Justice and Regulation | Secretary |
| Ms | Gill Callister | Department of Education and Training | Secretary |
| Ms | Melissa Skillbeck | Department of Treasury and Finance | Deputy Secretary |
| Chief Commissioner | Graham Ashton | Victoria Police | Chief Commissioner |

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. |
| Crimonogenic | 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. |

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| 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). |

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| 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 (Vic)</i> . 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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Royal Commission
into Family Violence

Volume II

Report and recommendations

March 2016

Royal Commission into Family Violence

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The Hon. Marcia Neave AO – Commissioner

Patricia Faulkner AO – Deputy Commissioner

Tony Nicholson – Deputy Commissioner

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Contents

| | | |
|----|---|-----|
| 8 | Specialist family violence services | 1 |
| 9 | A safe home | 37 |
| 10 | Children and young people's experience of family violence | 101 |
| 11 | Family violence and the child protection system | 159 |
| 12 | Sexual assault and family violence | 213 |
| 13 | Pathways to services | 245 |
| | Glossary | 291 |

8 Specialist family violence services

Introduction

Specialist family violence services are designed to support victims of family violence. There are also specialist family violence services which work with male perpetrators. This chapter looks exclusively at services for women and children, since these services account for the bulk of the family violence response. Responses for male victims are discussed in Chapter 32; responses for perpetrators are discussed in Chapter 18.

Along with the police and the courts, specialist family violence services form what is known as the ‘family violence system’ in Victoria. Under its terms of reference, the Royal Commission must examine services that support victims of family violence and how these services form part of the state’s systemic response to family violence.

Specialist family violence services focus on keeping women and their children safe and helping them to recover from the violence they have experienced. Historically, this focus has been through primarily working with the woman. The experiences and needs of children affected by family violence are discussed in detail in Chapter 10.

Much of the discussion in this chapter concerns intimate partner violence, since this is the most common form of family violence and has traditionally been the focus of specialist family violence services for women and children. As is evident throughout this report, family violence encompasses other forms of violence, such as elder abuse, and violence against parents and siblings.

The first section of this chapter describes the role of specialist family violence services—what they do, how they are funded, and the principles that govern their work. It also considers the evidence the Commission received about women’s experiences of finding help, including the difficulties many women have had when trying to find their way through different service systems.

The chapter then looks at specialist family violence services and associated challenges that were commonly raised in evidence. The Commission heard that there has been a significant and rapid rise in demand for such services—particularly as a result of referrals from the police—and that this has outstripped the capacity of the services to meet their clients’ needs. There is also evidence of service gaps, including a lack of after-hours support and a lack of responses aimed at the individual needs of victims and the longer term effects of family violence.

In the final section of the chapter the Commission proposes a way forward. We recommend increasing the resourcing of specialist family violence services in order to ease demand pressures and ensure that services have the capacity to respond better to victims’ needs.

Not all victims of family violence seek assistance from specialist family violence services. People experiencing family violence can seek support from friends and family or from other ‘service systems’, such as the health system. It is important that the community is able to readily access information and resources about how to recognise and respond to family violence and, in particular, how to help friends and family members who may be affected by violence, or intervene safely. The Commission heard that information is not readily accessible or sufficiently detailed to equip people to support those taking steps to safely address violence. For this reason, the Commission proposes that additional information for friends and family be made available through a new or existing website. The Commission recognises that community responses cannot, and should not, replace specialist family violence or core support services.

This chapter does not consider in detail accommodation options for women and children; that is discussed in Chapter 9. Nor does it discuss how specialist family violence and other services provide pathways and referrals into other supports for women: this is the subject of Chapter 13.

Context and current practice

Victoria's specialist family violence service sector began as a network of community-based women's refuges established in the 1970s and has expanded to provide a range of support services for women and children affected by family violence. Historically, apart from statutory services such as Child Protection and community-based homelessness services, few other services were directly involved in family violence work. A more detailed overview of the history of family violence policy and the service response is in Chapter 4.

In 2005 the Statewide Steering Committee to Reduce Family Violence released a report entitled *Reforming the Family Violence System*, in which it announced an intention to build an integrated family violence system to bring together all the major services dealing with family violence in Victoria. Specialist family violence services are an important part of this response.

The term 'specialist family violence services' is used in the Commission's report to mean services funded to specifically respond to family violence, although the organisations that deliver these services may do work in other areas as well. There are three main types of specialist family violence services for women and children: support services, accommodation services (refuges), and family violence counselling services. This chapter deals only with support services. Accommodation services are discussed in Chapter 9, and counselling services are discussed in Chapter 20. In this chapter the term 'specialist family violence services' refers specifically to support services.

The Commission notes that support services are called 'case-management services' in some contexts and that in funding arrangements the Department of Health and Human Services refers to them as 'outreach services'.

Not all specialist family violence services are funded to provide the same services but, broadly, they have the same aim, which is to keep women and their children safe by offering the following:

- ▷ risk assessments and safety planning
- ▷ case management—including coordination and support
- ▷ the receipt of referrals (known as L17 forms) after police attend a family violence incident
- ▷ information and referral—including to refuge accommodation
- ▷ advocacy for complex matters—including legal, financial, and health and wellbeing needs.

How specialist family violence services are delivered

Specialist family violence services are delivered through community service organisations. Some organisations provide either support or accommodation services; others do both. Others also provide counselling.

Some service providers are small, stand-alone organisations, but most are medium to large organisations that work in multiple policy areas—such as child and youth services, homelessness, community health and sexual assault. Further, some service providers operate in a number of different parts of the state. For example, in addition to providing specialist family violence services (both support and accommodation), Berry Street Northern Family and Domestic Violence Service provides education, training and employment programs, family services, youth services, and foster, kinship and residential care services. Similarly, in addition to specialist family violence services Gippsland Lakes Community Health provides allied health, medical and nursing, disability support, men's behaviour change and family services.

These arrangements are indicative of the pathways available for linking women and children to a range of services and programs according to their needs. This can occur either through other programs delivered by the particular service or by working with local partner organisations. The Commission heard, however, that the extent to which this happens in practice varies and is largely dependent on the strength of regional integration committees and local-level initiative, goodwill and resourcing.

Statewide telephone services

The Safe Steps Family Violence Response Service provides a 24-hour statewide telephone information and referral service for women seeking information about their options, including leaving a relationship to escape abuse. The staff complete risk assessments, help women develop safety plans, and refer them to support options in the community—both specialist family violence support services and generalist services such as community health centres. The organisation also receives after-hours referrals when police attend family violence incidents.

Additionally, Safe Steps is the statewide contact point for referral to refuge accommodation; it also operates a crisis accommodation unit and places women in other emergency accommodation such as motels pending placement in a refuge.

1800 RESPECT, funded by the Commonwealth Government, provides 24-hour telephone and online crisis and trauma counselling services to help people experiencing the effects of sexual assault or domestic or family violence.¹ This service can also provide information about local services to callers.

Support services

There are 28 specialist family violence support services. These services aim to keep women and children safe, and their work includes risk assessment and management and safety planning with women who are in a violent relationship, are thinking of leaving their relationship, or have left it.

Different specialist family violence services deliver support services in different ways. Women experiencing family violence often have a diverse range of needs—legal, housing, financial, health and wellbeing, and so on. The specialist services provide support and advocate on behalf of women as they make their way through the various service systems.

As part of a case-management response, specialist family violence services can work with women to do the following:

- ▷ apply for a family violence intervention order
- ▷ accompany a woman to appointments with her lawyer and to any court hearings
- ▷ arrange for locks to be changed at her house
- ▷ talk to her children's school to explain the terms of a family violence intervention order
- ▷ help her set up a new bank account and obtain a new mobile phone
- ▷ help her negotiate with government departments and agencies such as Centrelink, the Office of Housing, and the Department of Immigration and Border Protection if there are visa concerns
- ▷ help her secure suitable alternative housing—whether this be crisis accommodation (a refuge), transitional or social housing, or private rental
- ▷ help her identify and act on employment, education and training opportunities.²

Not all specialist family violence services are funded to provide this full suite of services.

Funding arrangements

Specialist family violence support services are funded to deliver services against a target for episodes of support based on an average of 12 weeks per family.³ This gives services flexibility as to the duration and intensity of support while still providing the number of episodes of support for which they are funded. For example, one service's policy allows for women and children to be supported for up to 12 months, depending on identified and assessed needs.⁴ The Department of Health and Human Services was unable to provide to the Commission data showing the actual length of periods of support provided.⁵

Victorian Government funding information shows that some specialist family violence services are funded to provide intensive case-management support for high-risk and complex cases; this is based on an average of 26 weeks per family.⁶ Funding information suggests that this is a relatively small component of expenditure, with 206 'episodes of support' funded in 2014–15 compared with 5953 episodes of support for outreach and case management.⁷

The Code of Practice

Specialist family violence services are governed by the Code of Practice for Specialist Family Violence Services for Women and Children.⁸

The Code of Practice explains the values underpinning the work of specialist family violence services, describes the different types of services provided, and sets out eligibility criteria and referral pathways. It has not been updated since it was first published in 2006. A number of submissions to the Commission called for it to be updated to reflect the changed policy and practice landscape.⁹

Services provided

Not all specialist family violence services are funded to provide the same suite of services. Of the 28 specialist family violence support service providers:

- ▷ Nineteen are contact points for L17 referrals.¹⁰
- ▷ Twenty-four receive funding for the Safe at Home program, which provides specialist workers to help women stay at home with supports such as installing deadlocks, screen doors, security lighting and home alarms or by providing short-term rental subsidies or mortgage top-ups.¹¹
- ▷ Sixteen provide intensive case management based on an average of 26 weeks of support.¹² This work is funded through the Department of Health and Human Services Transition Support activity. Twenty providers are funded to provide this service through the National Partnership Agreement on Homelessness which expires on 30 June 2017.¹³
- ▷ Fourteen provide high-risk family violence services and respond to referrals from the multi-agency risk assessment and management panels.¹⁴
- ▷ Thirteen provide access to private rental programs—including help to find a rental property and brokerage funds (to pay for rental arrears, for example).¹⁵
- ▷ Twelve receive funding for after-hours support funded through the Transition Support activity. Fourteen are funded for extended after-hours support through the National Partnership Agreement on Homelessness.
- ▷ Four receive funding for court support.¹⁶
- ▷ Fifteen provide women's refuges and emergency accommodation.¹⁷

This is on top of the organisations' core work of providing support services (for example, case management, coordination and advocacy) for women and children.

In addition, family violence counselling services are provided by 35 community service organisations, some of which are also specialist family violence support services.¹⁸

Women's experience of services

Women are referred to specialist family violence services in a number of ways, including informally or formally through the L17 form when police attend a family violence incident.¹⁹ They can be referred by a general practitioner, a maternal and child health nurse, or a teacher or counsellor at their child's school or by another specialist service such as housing, Integrated Family Services, or drug and alcohol or mental health services. They might find out about a service from the internet, by calling a helpline, or by talking with a family member or friend.

Friends, family and other community members are often the first to become aware of family violence, and many victims may not seek specialist help. The following interaction took place at one of the community consultations the Commission held:

Where did you go when you first sought help?

I went to a friend and then probably watching their reaction and you realise 'hmm'.

Were they helpful?

They said that's not normal. That was the first step in understanding that what's happening to you isn't normal. One friend then contacted her lawyer for me. Then once you tell one friend you get confidence to tell another friend. You start off with people further away from you rather than those close to you. So eventually you tell your best friend and then you tell your family.²⁰

Some victims of family violence rely mainly or entirely on the help of family and friends, rather than on the police, the courts or any services. The range of help family and friends provide includes being an initial sounding board, putting the person in touch with other forms of assistance and providing a safe place to stay. Longer term, family and friends can play a monitoring role by keeping the victim informed about the movements or behaviour of the perpetrator.

Analysis by ANROWS (the Australian National Research Organisation for Women's Safety) found that more than 50 per cent of women who had told someone about their most recent physical assault by a male perpetrator first disclosed the incident to friends, family members, work colleagues or a minister of religion.²¹

Ms Sheryl Leigh Hann, Lead Advisor Quality Programs and Practice for Community Investment in the Ministry of Social Development in New Zealand noted in relation to the New Zealand experience:

The [New Zealand] research also showed that people want help from their friends and family. They would much rather that happened than go to police or to Child Protection. They wanted their community to help them.²²

Although it is important not to transfer responsibility for keeping people safe to their family and friends, how these people respond can be crucial to a victim's experience and to their recovery. The findings from the 2013 National Community Attitudes towards Violence against Women Survey show that, compared with 2009, there has been a decrease in the number of people 'who would know where to go to get help with a domestic violence problem'.²³

The Commission heard that 'there is no central website for Victoria' that informs people experiencing family violence where to go or who to contact, and some friends and family members reported finding it hard to access information about what to do to help.²⁴ Some websites provide information for family and friends looking for guidance on how to respond to family violence. Among these are the following:

- ▶ The Domestic Violence Resource Centre Victoria and the 1800RESPECT websites both have information on how to ask about family violence and what to do to help.²⁵
- ▶ Our Watch's website offers general bystander guidance on preventing family violence and White Ribbon's website has information on 'What men can do', which describes concrete steps men can take if they witness violence, are aware of violence or need to stand up to violence.²⁶
- ▶ The Say Something website, an initiative of Crime Stoppers, provides information to young people about sexual assault and how to report it.²⁷
- ▶ The Lookout website has a page for friends and family, although the information on the page is the same as that provided for victims.²⁸
- ▶ The Tell Someone website provides family violence information 'for people with a mild intellectual disability and for the support agency community'.²⁹

Among those women who do connect with a specialist family violence service, most speak highly of such services—particularly if they have access to services that provide continuity of contact and flexibility to adapt to multiple needs over time. One woman was supported by a worker for three years and said the continuity of care was a central aspect of her recovery from family violence.³⁰ Women who made submissions also praised the services:

Support workers, they listen, validate, support and advise. For someone who has never been down the path before this is so helpful in making sure you follow through with required actions.³¹

Today as I write, these frightening days are receding – but at the time I had some real concerns about my state of mind. Mine is so far, a story of relatively successful recovery over a period of three years, made possible by some good support, alongside my own energetic efforts. I recall well, the hazards of the journey though and recognize that it might easily have been a very different outcome and that at various points the success of my efforts to find external assistance seemed more a matter of fortunate circumstance than of clear pathway ... I cannot stress enough the pivotal role that this support worker played. The continuity and dependability of care I received from her and the calming effect of having a qualified and skilled worker with real knowledge of this area made an immense difference to my recovery.³²

Other women described negative experiences because they could not get the help they needed, were not listened to or felt their experience was not understood.³³ Some reported being refused service:

Domestic Violence couldn't help, refused her help because of no physical signs of abuse. They only help people who don't work. But she had no place to go. They instructed her to go to a police station or to go back home. She said her husband would definitely kill her. She went to her sister's place. Her friend from [workplace] took her in.³⁴

A timely response is seen as essential. The Women's Mental Health Network noted:

Organisations don't seem to be able to streamline the provision of timely information, waiting lists for support are too long and often women are told to ring back – this creates a critical safety issue for women who may need to remove themselves from a situation where if they stay they may be killed. Searching for information and help seeking can be stressful. Organisations must show more understanding about how stressful it is when women call them.³⁵

In their submissions women also outlined concerns related to the process of seeking help, as well as some of the reasons they did not seek assistance—for example, because they did not identify themselves as a victim of family violence, they felt undeserving, or they did not know about the range of services available:

It took me eighteen months after I left my abusive ex-partner to fully comprehend that I had been in a FV relationship. I, too, held the misconception of the stereotypical FV victim and, whilst, I was aware I had been abused, as far as I was concerned, this was not FV. As a result of this, I did not feel as though I deserved to access FV support services because, I believed, I had not experienced it so I was taking the time my case worker spent with me away from a more deserving woman. It was not until I had to fill out an application for an intervention order myself that I finally realised that, yes, it was FV.³⁶

I didn't have a language to describe what was wrong in my relationship. I didn't know who to call or who to see or which hotline to ring. I felt so stupid. It was all in my head.

I wish there had been information campaigns on TV or on the radio, that told me what abuse is and what a healthy relationship isn't. I wish I had known that all of the services for women experiencing domestic violence looked after women experiencing all kinds of violence, not just physical violence.³⁷

Many submissions mentioned difficulties encountered when trying to negotiate one's way through the specialist family violence service system. This is discussed in the 'Challenges and opportunities' section of this chapter.

The experiences of specific populations

There is concern that some people—such as children and young people, older people, young people, women with disabilities, women who work in the sex industry and people from lesbian, gay, bisexual, transgender and intersex communities—are 'invisible' to the family violence system.³⁸ People from culturally and linguistically diverse and faith communities also expressed this frustration.³⁹ Many called for better recognition of people's life experiences, as determined by intersections of gender, disability, sexuality, race, and other aspects of identity such as poverty or socio-economic status.⁴⁰

Among Aboriginal and Torres Strait Islander stakeholders, in particular, there was emphasis on a cultural lens being applied to programs and services, including specialist family violence services.⁴¹ The Commission heard that recognition of the effects of trauma, dispossession and racism and of the need for holistic, community-controlled solutions is essential to providing effective specialist support to Aboriginal peoples.⁴² This is referred to as 'cultural safety' by some and as 'culturally appropriate practice' by others.⁴³ The Aboriginal Family Violence Prevention and Legal Service Victoria submitted:

[Any] approach must necessarily recognise the over-representation of Aboriginal women and children among victims/survivors of family violence, and prioritise culturally safe and targeted approaches which address Aboriginal women and children's unique needs, perspectives and barriers to getting assistance.⁴⁴

These matters are discussed in Volume V. Barriers to family violence accommodation services—in particular, refuge accommodation—are discussed in Chapter 9.

Principles of specialist family violence services

Despite the diversity and range of support services provided, several themes emerged in evidence before the Commission about the principles underlying specialist family violence service provision.

The importance of specialist expertise

Domestic Violence Victoria stated that the sector's approach to family violence reflects an understanding of the following:

- ▷ the characteristics, dynamics and impacts of family violence
- ▷ the barriers to leaving a violent relationship
- ▷ the effects of violence on children and young people
- ▷ the nature of the first response—particularly what women need when they first disclose or seek support to leave a violent relationship.⁴⁵

Submissions used terms such as 'client-centred focus', 'women-centred practice', 'victim/survivor-led' practice, 'end-to-end wrap around' and a 'holistic approach' to describe how specialist family violence services operate and stressed that this manner of operation needs to be standard throughout the family violence system.⁴⁶

This is closely linked to the gendered approach that specialist family violence services for women and children have traditionally taken.⁴⁷ Good Shepherd Australia New Zealand described this as a best-practice model:

... that frames support and advocacy within a human rights approach and feminist analysis ... The approach is woman-focused, respectful, non-judgemental and strengths based. It facilitates women's self determination in meeting immediate and longer-term needs ...⁴⁸

Women's Health West Inc. talked about the ethos of women-only services:

The continuing role and leadership of specialist family violence services in a multi-agency system, especially those with strong feminist principles providing services for women by women, is integral to effective integration and systemic response. This ensures that women are always at the centre of our service models, providing consistency between service delivery and our work to meet the holistic needs of women in housing, flexible childcare, time out to attend court, primary or mental health services for themselves and their children in their employment, and so on.⁴⁹

Submissions emphasised the need to treat victims with dignity, to support them in making choices about how to respond to the violence, and to help them maintain control over what happens.⁵⁰ Some submissions conceptualised this as women's 'autonomy' or 'agency';⁵¹ others talked about working with people in place and on their terms and 'listening directly to the voices of those affected'.⁵² This was seen as a standard for services but also an aspiration for the entire system:

Understanding the lived experiences of women and children who experience family violence must be at the centre of any system responses and reforms.⁵³

Women must be regarded as best placed to determine how to be agents for themselves and their children as it relates to managing safety and survival in the context of separation. Their experiences of violence and interpretations of risk matter ... [w]omen's interactions with specialist and mainstream services across the system must be characterised by respect for their decision-making and support for measures adopted to manage safety. This is critical to empowering women to exercise a degree of agency when leaving a violent partner.⁵⁴

One woman remarked that this:

... could be an alternative story. It puts maximum effort into containing and holding accountable those who are violent whilst making sure victims of violence are safe, have options, are empowered and informed, and simplifies the service system to benefit victims.⁵⁵

Submissions also stressed the depth of expertise held by services that have a sole focus on keeping women and children safe.⁵⁶ Kara House submitted:

It is important to maintain this knowledge and understanding of the multiple unique experiences of women and children that can only be learnt by working closely with them and not have it diluted by reliance on mainstream services.⁵⁷

The Barwon Area Integrated Family Violence Committee noted that the reforms of the mid-2000s, aimed at better integrating the family violence system, 'articulated that responding to family violence is complex and requires that those who work with women and children experiencing family violence and sexual assault must possess a particular set of skills and expertise'.⁵⁸ Other submissions called for maintaining and strengthening a specialised response for women and their children who experience family violence.⁵⁹ Some argued for specialisation across the continuum, from prevention to early intervention, crisis response and post-crisis recovery.⁶⁰

Submissions noted that specialisation is occurring in other parts of the family violence system in recognition of the complexity of the issue.⁶¹ For example, Victoria Police introduced family violence teams from the mid-2000s to provide expertise and dedicated support for police responding to family violence.⁶² The Magistrates' Court of Victoria also highlighted the importance of specialisation:

Specialisation has been shown to have a range of positive outcomes for the Courts ... [It] facilitates a depth of understanding of family violence among practitioners and personnel involved in those matters, which results in more consistent and effective processing of cases.⁶³

While many submissions emphasised the specialised nature of family violence work, some also noted that specialist family violence services should not be the only response.⁶⁴ This is particularly the case in rural and regional areas, where a lack of specialist services means that women often depend on universal services.⁶⁵ Some rural communities that were reliant, for example, on a once-a-week outreach session from a specialist lamented the lack of a specialist service.⁶⁶

Chapter 40 discusses the specialist skills needed in family violence services.

Understanding trauma and keeping women safe

The Commission heard that a woman will disclose her experience of violence or end the relationship only if 'she is confident that the system will keep her safe'; it was also informed that many women do not realise the extent of the risk they face until they are helped to undergo a risk assessment conducted by a highly skilled specialist.⁶⁷ Similarly, submissions highlighted the importance of specialist skills in helping women experiencing violence to become safe.⁶⁸ Victoria Police stated:

In many situations, the fear and intimidation of the perpetrator makes it challenging for victims to disclose their experiences. We also recognise some victims feel unable to disclose their experience due to uncertainty about what will occur in the aftermath. In other instances, professionals may suspect something is wrong, but perhaps feel ill-equipped to know how to help. Any consideration would therefore need to take into account potential unintended consequences, such as discouraging victims from seeking assistance or disclosing, for fear of mandatory action being taken.⁶⁹

The importance of keeping women and their children safe—either at home or if they have to leave—was one of the strongest messages the Commission received. This reflects the role of specialist family violence services in responding to the immediate crisis—for example, after a police incident or when a woman seeks to leave—and on a continuing basis (including if the woman stays in the relationship). Victims valued this support highly:⁷⁰

The only service who truly understood and helped me actually begin a plan to leave my home safely with my children was a local Women's Service. I first accessed them via phone and was incredibly amazed and relieved to hear a support worker saying 'yes we're familiar with that behaviour' ... I cannot tell you the relief it was to finally, after ... years have my experiences validated by an understanding voice from that service.⁷¹

Another central message from the evidence was that women and children living with family violence experience trauma.⁷² Almost every victim of family violence who recounted their experience to the Commission spoke of the profound impact of the violence against them. Some people described the role of the specialist family violence practitioner in responding to this impact as 'trauma-informed practice'. Sunbury Community Health observed that trauma caused by family violence had specific impacts:

Addressing the trauma and other impacts of family violence in its early stages is critical, whenever possible, to re-form safe and affirming relationships and improve life choices for everyone involved, most importantly the victims. Parents' ability to attend to their children's needs is severely fractured when family violence is present, having traumatic consequences on their bonding and attachment.⁷³

Barwon Area Integrated Family Violence Committee described the dual focus of safety and trauma-informed practice. Others talked about the multi-faceted process of responding to trauma beyond the immediate crisis:

Workers need to have a sophisticated understanding of the nature, features and dynamics of family violence and sexual assault, and be highly skilled at risk assessment and safety planning and in managing ongoing risk. They also need to be able to provide therapeutic, trauma-informed, clinical practice to support and aid recovery.⁷⁴

In many cases submissions expressed the need for measures and strategies that take account of the impact of trauma as a vital part of the recovery process:

To achieve this, post-crisis support is essential in supporting women who have already experienced family violence to strengthen their capacity to consolidate and sustain the changes they have already made during the initial crisis period. Thus underpinned by a focus on breaking the cycle of violence and prevention of further harm and trauma, post-crisis support seeks to provide 'support safeguards' which target support where it is required and for as long as it is needed. This includes support to maintain stable housing, to overcome financial hardship, to find avenues of ongoing emotional support, to re-connect with family and community, to build resilience and self-determination, to address mental health and physical wellbeing issues, and to increase social and economic participation.⁷⁵

Chapters 19 and 20 discuss trauma in more detail.

Risk assessment and timely and continuing support

The Commission received evidence that victims of family violence who are not ready to leave their relationship need support and time in order to gain confidence that it is safe to act.⁷⁶ Victims who are ready to act need timely and practical support that provides accurate information about their options.⁷⁷

Victims' and their children's lives can be put at risk if this process is mishandled—for example, if a woman feels she is being rushed or is given inaccurate information or if a service inadvertently implies that she is not believed.⁷⁸ Inappropriate responses can also result in victims staying in a violent situation for longer than they would have if they had received the right support.⁷⁹

Submissions noted that the daily work of specialist family violence services is underpinned by continuous risk assessment and management.⁸⁰ Risk management is a dynamic process: risks change over time and are liable to sudden shifts that are often beyond a woman's control.⁸¹ Domestic Violence Victoria noted that specialist family violence services need to be able to respond to the woman's and her children's safety needs at any point in the process.⁸²

Chapter 6 discusses risk assessment and management.

Current demand on the specialist family violence system

The Commission heard that demand is one of the biggest challenges facing specialist family violence services in Victoria.

A number of submissions argued that, from the mid-2000s, well-conceived policies designed to secure an integrated response to family violence have been hampered by inadequate resources. It was argued that long-term under-investment in family violence perpetuates and entrenches a crisis-driven response, whereby 'support is prescribed by funding, not determined by need'.⁸³ Good Shepherd Australia New Zealand articulated the concerns of many:

Every component of the Victorian integrated family violence service system is over-worked, under-resourced, and despite its collective efforts, failing Victorian women and children.⁸⁴

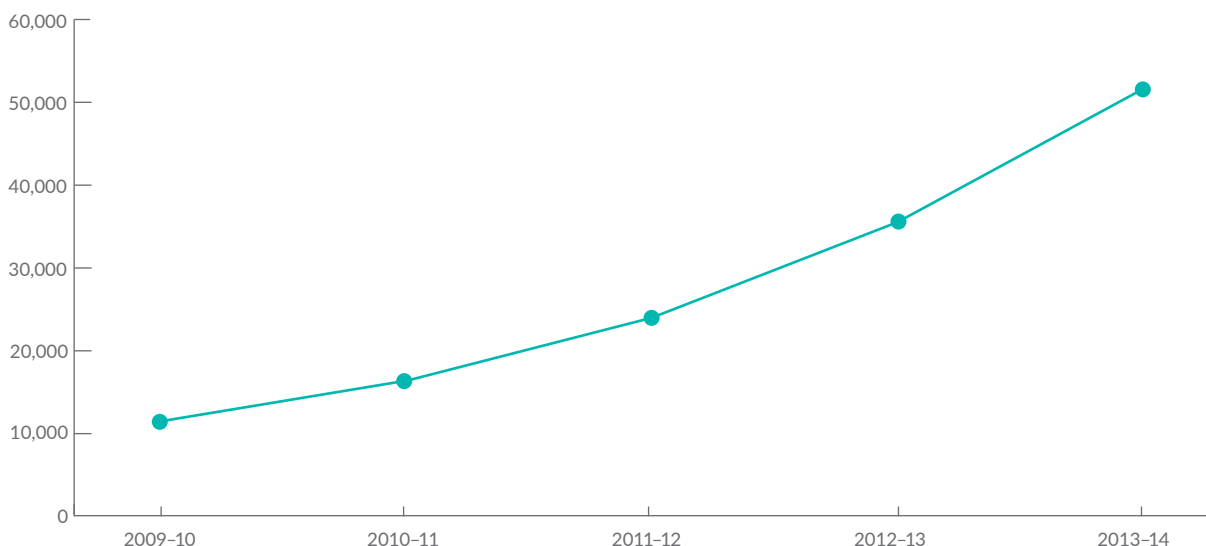
What worked decades ago is no longer relevant or effective. The system we are working within now is reactive. Rather than applying band-aid solutions to a system that is clearly fractured, an overhaul of policy reform and service delivery structures is necessary.⁸⁵

The numbers of people reporting family violence have grown substantially in recent years, and a consistent message in submissions, community consultations and hearings was that the consequent increase in demand has had a dramatic effect on police, courts and specialist family violence services.⁸⁶ The scale of growth in demand is described as unprecedented and, most probably, greater than anticipated at the time of the reforms of the mid-2000s.⁸⁷

Police L17 form referrals

In 2013–14 Victoria Police attended over 65,000 family violence incidents—an increase of 83 per cent over the preceding five years.⁸⁸ During the same time, the number of formal referrals of affected family members (female victims) to specialist family violence services grew by 317 per cent.⁸⁹ In 2013–14, of the 51,628 L17 referrals to specialist family violence services (see Figure 8.1), almost 40,000 (77 per cent) were made on behalf of female victims.⁹⁰ An L17 referral requires a specialist family violence service to attempt to contact the victim and offer support. The Commission was unable to obtain data on the proportion of victims who were able to be contacted or who wanted a service.

Figure 8.1 L17 referrals for all affected family members to specialist family violence services, 2009–10 to 2013–14



Source: Based on Crime Statistics Agency, 'An Overview of Family Violence In Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14', Victoria Police data source, Tab 31, Table 31: Referrals made by Victoria Police by police region and gender of the affected family member, July 2009 to June 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015.

In addition, a number of submissions identified localised and regional increases in L17 referrals. Areas of high population growth on Melbourne's metropolitan fringe—for example, the City of Casey, the City of Whittlesea and Hume City Council—experienced significant increases in demand.⁹¹ These areas have poor community and transport infrastructure, which makes it harder for victims to gain access to services. They are also characterised by historical inequities in terms of the physical location of specialist services.⁹² For example, the City of Whittlesea submitted:

The capacity of the services available in the City [of Whittlesea] is inadequate, despite having one of the highest rates of family violence in the State. Women and children can only access the regional family violence service through outreach and a small amount of very limited out-posting. Residents in the City experience differential access to specialist family violence services when compared to residents in the inner northern metropolitan areas of Melbourne. Specialist services such as Berry Street Northern Family and Domestic Violence Service (who receive the Victoria Police family violence incident reports or 'L-17's') are under significant pressure to respond to demand in the large geographical area of the Northern Metropolitan Region of Melbourne and an area that has vastly different cultural and contextual factors that vary from municipality to municipality.⁹³

The following are other examples provided to the Commission:

- ▷ Women's Health West Inc. reported a 286 per cent increase in the number of referrals from police between 2009–10 and 2013–14. It receives an average of 517 L17 referrals a month.⁹⁴
- ▷ During the same period, Berry Street observed a 259 per cent increase in police referrals. For the period July 2014 to April 2015 it received an average of 782 L17 referrals a month.⁹⁵
- ▷ Eastern Domestic Violence Service reported that police referrals increased by 275 per cent over five years, from an average of 130 referrals a month in 2010–11 to 485 a month in 2014–15.⁹⁶

Although the Victorian Government stated it does not provide dedicated funding for a response to L17 referrals (the response being part of overall case management or 'outreach'), Domestic Violence Victoria stated that some services have funded targets for responding to L17 referrals. The Commission understands this could be a consequence of local arrangements. Domestic Violence Victoria told the Commission these targets are unrealistic and cited the following data:

- ▶ Good Shepherd's Peninsula Family Violence Program is funded to respond to 72 L17 police referrals a year; it received 1413 referrals in the nine months to March 2015, an average of 157 a month.⁹⁷
- ▶ Quantum Support Services in Gippsland received 2208 L17s from 1 July 2014 to 31 March 2015, an average of 245 a month. It receives 0.8 equivalent full-time funding to respond to L17s. It has assigned two full-time staff to processing L17 referrals and says this is still inadequate.⁹⁸
- ▶ The Centre for Non-Violence in Bendigo receives L17s for men and women since it runs perpetrator programs as well as providing services for women and children. There is a funded target for men but not for women.⁹⁹ The centre received 1708 L17s for women in the year from May 2014 to May 2015.¹⁰⁰
- ▶ WAYSS Ltd is funded to respond to 12 L17s for women each year. It received 5134 L17s for women in 2013–14.¹⁰¹

Investment compared with demand

Domestic Violence Victoria reported that demand vastly outweighs agencies' ability to respond adequately, which has led to strained and ad hoc responses.¹⁰² This was a theme common to many submissions.¹⁰³ The Commission was told that the pressure is exacerbated by the fact that the level of funding has not kept pace with the rapid rise in demand and that the gap is growing.¹⁰⁴

To test this, the Commission examined funding data provided by government in order to see how funded capacity has changed in the past five years. We chose the period 2009–10 to 2013–14 because we had police data on L17 referrals as a source of demand-flow information. Demand is not just measured by the number of L17 referrals, however, since services also receive referrals from sources such as general practitioners, maternal and child health nurses and schools, as well as direct contact from women, but there is no comprehensive statewide system for ascertaining the number of these referrals.

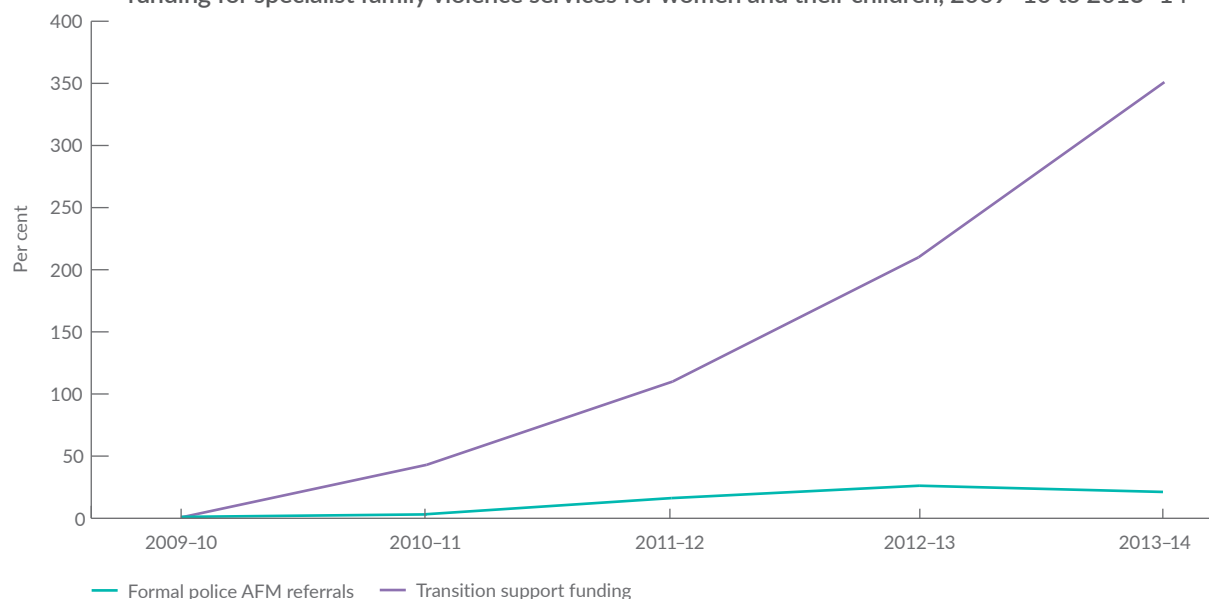
Information provided by the Department of Health and Human Services shows that funding for specialist family violence services under the Transition Support activity grew by about 9.2 per cent in the five years to June 2014.¹⁰⁵ In comparison:

- ▶ In 2009–10 there were 9530 L17s sent to specialist family violence services for female victims.¹⁰⁶ That year specialist family violence services were funded to provide 7304 'episodes of assistance'¹⁰⁷—a difference of 2226 episodes of support.
- ▶ In 2013–14 there were 39,772 L17s sent to specialist family violence services for female victims.¹⁰⁸ That year 8788 episodes of support were funded¹⁰⁹—a difference of 30,984 episodes of support.

In the following year (2014–15) the number of funded episodes of support decreased to 8508.¹¹⁰ The number of family violence incidents Victoria Police attended during that period was 70,906,¹¹¹ noting that not all incidents result in a formal referral to specialist family violence services. This number does not reflect the number of individual women affected by family violence: L17 referrals can relate to repeat violence against the same woman.

Figure 8.2 shows the growth in demand (measured by formal police referrals) compared with the level of Transition Support funding for the period 2009–10 to 2013–14.

Figure 8.2 Cumulative percentage increase in formal police referrals for female affected family members and funding for specialist family violence services for women and their children, 2009–10 to 2013–14



Note: 'Specialist family violence services' includes funding for refuges (crisis supported accommodation for family violence services), specialist family violence support services (transition support for family violence services) and family violence counselling.

Source: Based on Department of Health and Human Services, 'Query 70', Tab 1: Q70(20082_Transition Support), produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.

The Department of Health and Human Services produces regular forecasts of family violence incidents based on the number of such incidents recorded by Victoria Police; the forecasting is usually for the following three years.¹¹² The Commission understands, however, that there is no systematic demand modelling done to ascertain the level of specialist family violence services or funding required to accommodate the forecast demand.

Challenges and opportunities

This section looks at some of the challenges and opportunities associated with reforming the specialist family violence service sector and Victoria's response to family violence more broadly. Our discussion can be grouped into three main themes: difficulties with navigating the system; the impact of increased demand on the service response; and gaps in the services that specialist family violence services provide.

Navigating the system

Responding to family violence can bring a woman into contact with many different services as she deals with things such as legal matters, court appearances, securing immediate alternative accommodation, supporting children and helping them with school, medical treatment, telling family and friends about the violence, considering and applying for medium-term accommodation, and obtaining financial and material support.¹¹³ None of these are easy on their own, let alone managing all of them at the same time.

Many women told the Commission they found these systems complex and did not know where to start or how to find the right service. These systemic problems are discussed in Chapter 13, which also provides recommendations relating to system navigation. They are noted briefly in this current chapter because it is impossible to talk about women's experience of specialist family violence services without making mention of some of these factors.

I had no idea where to start or of what services were available – financial, legal, housing, personal support etc.¹¹⁴

I had no idea where to go to for help. I was not aware of any services available to women in my circumstances.¹¹⁵

Many women reported that, despite persistent efforts, they found it difficult to gain access to support services. In some cases this was a result of the multiplicity of referral pathways; in others women were frustrated by long queues for services when they needed immediate help:¹¹⁶

I tried on multiple occasions to access the domestic violence help line and I could never get through. It should be funded to run 24 hours a day. I could never find help outside of legal aid provided to me. I felt like I was entirely on my own despite many efforts to reach out for help.¹¹⁷

Others described how they went from service to service but were never told about specialist family violence services. One victim submitted:

I sought counsellors in [a large country town] ... Lifeline on the phone was a listening ear, but no help. A young male counsellor [employed] by the Council didn't know much and just kept saying (just before we split up) make really good sex with him and he'll be OK. I said it was way past that, but he just kept insisting. I spoke to a Minister of religion and while he was sympathetic he could offer no help. In Melbourne a young counsellor employed by the Council listened passively for an hour and said, well I'm sorry you'll have to explain this to the next person, I'm going on maternity leave now. No one at any time offered any referral to any agency, welfare, social work etc, ever. Maybe they didn't exist then. I'll never know ... All I wanted was someone to tell me how to handle his behaviour and what I could do to stop him abusing us.¹¹⁸

The Commission heard much criticism of the complexity and compartmentalisation of existing service system responses:¹¹⁹

There have been individuals within the system I have been lucky enough to meet and who have advocated on my behalf. I cannot help but wonder how those women who do not have an education or vital financial resources can navigate their way through the complex minefield of civil, criminal, and federal law once they leave their abuser. These three systems operate in isolation of each-other and are incongruent to each-other, making it near impossible to survive the post separation journey.¹²⁰

There was strong support for simplifying and unifying the system and making it easier and less traumatic to seek and receive support, so that the first response received by the victim is the best possible response.¹²¹

Although this subject is often discussed in the context of non-specialist responses—for example, by general practitioners or other health professionals to whom women might turn for help—the Commission was also told that simplifying responses should apply to all aspects of seeking help, including through information lines, websites and face-to-face contact. For example, websites and brochures often use language that is meaningful to service providers, government or funders but does not make sense to the person needing help:

I would love to see greater commitment from Government and non-government to plain English material, seen through victims' eyes. A recent example from [an] ABC online piece about 1800 RESPECT included this scenario – I said to her 'Are you experiencing domestic violence?' and she said 'No', '... And I thought, she has rung the DV line, I better ask this question another way.

So I said 'Can I ask you why you phoned?' and she said, 'He's going to kill me.'¹²²

Women told the Commission they wanted someone to help them obtain the things they needed in order to stay safe and recover from the violence, to help them deal with all the relevant systems (including courts, police, housing, finance and other matters) and to stand beside them rather than just referring them on to someone else.¹²³ Most specialist family violence services consider these tasks part of their case-management or advocacy role and expressed frustration that demand pressures mean they cannot always fulfil this role or cannot do it well.¹²⁴

Effects of increased demand

The increase in demand for services and the lack of growth in funded capacity have led to a heavily rationed service response, with very negative consequences for women and children and for the way the service system operates.

Rationing

The Commission consistently heard that for specialist family violence services the main task has become managing demand, particularly L17 referrals. Quantum Support Service reported that referrals are heavily triaged, with only the 'most serious' being dealt with.¹²⁵

There is evidence that, in the absence of discrete funding for intake, services have developed variations in how they respond to referrals, including in the level of resources allocated to triage, in order to manage demand.¹²⁶ For example, some services allocate full-time workers to intake and processing of L17 referrals,¹²⁷ while others add processing L17 referrals to workers' caseloads.¹²⁸ This is a source of considerable frustration for services, who see it as a diversion from their core work at a time when overall demand is rapidly escalating.¹²⁹

The Salvation Army submitted that in one service L17 demand had increased by 30 per cent from one year to the next—to over 3000 referrals a year. It reported that each L17 form is followed up with four phone calls in an attempt to make contact:

[This] takes a significant amount of case workers' time, yet services receive no funding for this work. Case workers have to reduce the amount of time they spend providing case management support to respond to L17s.¹³⁰

It further submitted:

Despite services' best efforts to stretch resources and respond to all women in need, services report that there is still a large number of women who are not receiving services. L17 data suggests that only 38 per cent of L17s received result in women receiving any kind of service which may include information and advice. The remaining women either are not able to be reached or refuse a service. Unfortunately, data shows that these women and their families are the most likely to be the most complex, be well known to police and involved in child protection.¹³¹

Submissions also noted that women who are not yet ready to leave home or want to remain at home are given lower priority. Berry Street submitted that it has limited capacity to assist women identified as at lower risk, which means opportunities to intervene early, before the violence escalates, are often missed:¹³²

Under-funding results in services rationalising limited resources. This creates a perverse incentive in which women are unable to access crisis services until their need is assessed as sufficiently pressing. This process is not only dangerous it is more cost intensive than earlier interventions.¹³³

A crisis focus

The Commission was advised that focusing on crisis is problematic because crisis does not necessarily equate to risk.¹³⁴ Ms Annette Gillespie, Chief Executive Officer of Safe Steps, said:

All of the resources in the sector are directed towards the back end, towards the highest risk individuals. What we know about family violence is that, if it is not attended to in the beginning, then it escalates. The system we have now is akin to a sausage factory, pushing women towards being at the highest risk. It is only then that they will get a genuine intervention ...¹³⁵

She went on to describe the system as resulting in ‘a kind of “either, or” situation, where either you have reached the requisite risk level and you can come through the system, or you aren’t at risk enough and therefore we don’t have anything for you’.¹³⁶

The current focus on crisis can lead to victims making repeated entries to and exits from the system, which increases the number of attempts a woman must make before she can safely leave a violent relationship. Barwon Area Integrated Family Violence Committee stated:

The redirection of resources [to crisis intake response] has been at the expense of longer term support and has jeopardised the capacity of services to provide the level of support required by women and children experiencing family violence and sexual assault, increasing the likelihood they will repeatedly seek assistance.¹³⁷

This can lead to services limiting the period of support offered to women. Barwon Area Integrated Family Violence Committee explained:

In Geelong, the specialist women’s service has had to limit its intervention to three months of service. This, in turn, has had a noticeable impact on demand to Barwon CASAs and Bethany’s family violence counselling service who have similarly had to impose more stringent ongoing case reviews.¹³⁸

Eastern Domestic Violence Service reported that ‘due to the significant demand and the concerns staff hold with turning women away, EDVOS made a decision to assist women based on higher risk, but usually for shorter support periods’.¹³⁹ This also impacts on the consistency and quality of the service response, with workers under pressure to assist more women with limited resources.¹⁴⁰

Delays in following up referrals

Intake and triage of referrals, including L17s, is not discretely funded, which means this work is done as part of the overall case-management function. Each provider determines the level of resourcing it directs to this activity compared with providing case-management services (within its available budget).

Most specialist family violence services triage referrals based on a risk assessment using the information available at the time of referral, such as the L17 form. This process differs between agencies. For example, Berry Street’s triage process involves an initial review by senior practitioners who determine whether the immediate response will be a priority intake call, an intake call, a text message or a letter to the victim.¹⁴¹ Eastern Domestic Violence Service has a designated intake team that assesses and allocates L17 referrals to extremely high risk, high-risk and low-risk categories, which then determines the time frame for response.¹⁴²

The Commission understands that services aim to follow up all referrals as quickly as possible—ideally within 24 to 48 hours of receipt—but that is not always possible because of demand:

Ideally we would provide early intervention in cases coded as low risk ... but we no longer have the resources to assist all victims of family violence with the same level of urgency given the increase in demand without comparable levels of funding.¹⁴³

The Commission is aware that, when a referral is assessed as relatively low risk, follow-up can occur days or weeks after the incident or there might be no follow-up at all. It was put to the Commission that instances of no follow-up at all were a direct result of increasing demand without adequate funding for staff to respond.¹⁴⁴

The Commission was told that, of those women who are contacted, some decline the support services offered. Ms Jacky Tucker, Family Violence Services Manager at Women’s Health West, gave evidence that:

... we will make an attempt at a phone call, not necessarily a successful one, for all respondents [victims of family violence] within three days, and most of them are done within 24 hours ... We are generally able to respond to—actually speak to somebody in 65 per cent of those within that timeframe.¹⁴⁵

When asked what proportion of women who are contacted accept some sort of help, she said, ‘most women will actually engage.’¹⁴⁶

Because data is not systematically collected on how many women are contacted and, of those, how many accept the offer of support, it is not possible to determine why some women accept support and others do not. As noted earlier in this chapter, some women might turn to family and friends for support.¹⁴⁷ Some women might decide not to proceed because contact by services has occurred beyond the initial crisis period and the offer of assistance is ‘too little, too late’.

More generally, concern was expressed to the Commission that the lapse in time between the violence occurring and a service system response might also give the perpetrator time to persuade a woman not to proceed with formal assistance, such as applying for a family violence intervention order.¹⁴⁸ Alternatively, some women might not be ready to proceed with formal assistance at the initial contact, although initial contacts are important in order to make a connection and provide information the woman can use at a later time.¹⁴⁹

Because of a lack of data, it is not possible to determine the extent to which L17 contact points refer women to other specialist family violence services in the area or to determine the circumstances of these referrals—such as whether the L17s are forwarded before the initial follow-up or after the initial assessment for ongoing support. Nor is it possible to ascertain the proportion of L17 referrals that represent multiple incidents involving the same victim and/or perpetrator.

Service gaps

Submissions and participants at community consultations referred to gaps that go beyond those associated with demand pressures, as discussed—for example, shortfalls in the provision of tailored support, after-hours support, advocacy services, working with families while the perpetrator remains at home, and dealing with the longer term effects of family violence. Other gaps—in particular, in relation to supporting women to stay at home safely, offering good-quality crisis accommodation, and provision of other supports such as counselling—are considered in Chapters 9 and 20.

Tailored support

A strong theme in the evidence was that each person’s experience of family violence can vary: there are different types of violence and different levels of severity, and people need different services and supports to recover. Additionally, people experience family violence differently at different times in their lifespan—as infants, children, young people, partnered adults and older people.¹⁵⁰ The experience of family violence is also different in different places, including rural and regional and outer urban communities, and submissions called for locational disadvantage and geographical equity to be taken into account.¹⁵¹ People also called for greater responsiveness to particular forms of family violence and the inter-related nature of different types of violence—including financial abuse, stalking, sibling abuse, sexual violence and elder abuse.¹⁵²

The Commission was informed that current responses are based on programs and throughputs (the number of people able to be helped in a year), rather than women’s and children’s needs, because this is how the government funds services.¹⁵³ There is particular concern that most specialist family violence services are funded through the homelessness funding stream: several organisations submitted that this affects what and how services are provided to women, noting that homelessness funding focuses on shelter and accommodation, while family violence responses need to secure safety.¹⁵⁴ The implications of this are discussed in Chapter 41.

The Commission was also informed that people who obviously need support sometimes fail to receive it because they do not meet the specifications of the program area from which they are seeking help:

A major deficiency in current responses to family violence is that responses are constructed around ‘programs’ and ‘systems’ not around people. The type of support, the frequency of support, the period of support, and the places in which that support is delivered is determined by which program or service a worker can best ‘fit’ a person’s needs to; and what the funding and service agreement for that program or service allows.¹⁵⁵

Additionally, the Commission heard that options are limited and do not necessarily align with what women need at different stages of crisis and recovery.¹⁵⁶ For example, a woman with a disability might need specific supports or face particular costs; an older single woman might need different things to a young woman experiencing intimate partner violence; and the needs of a person leaving their home for good might differ from those of a person who stays at home or leaves and returns when it is safer to do so.

Many submissions also noted that the service system often fails to accommodate the needs of specific children experiencing family violence. Domestic Violence Victoria stated that this is in part because of ‘the limited capacity of the family violence system to respond to children and young people, due to extreme demand and endemic underfunding.’¹⁵⁷

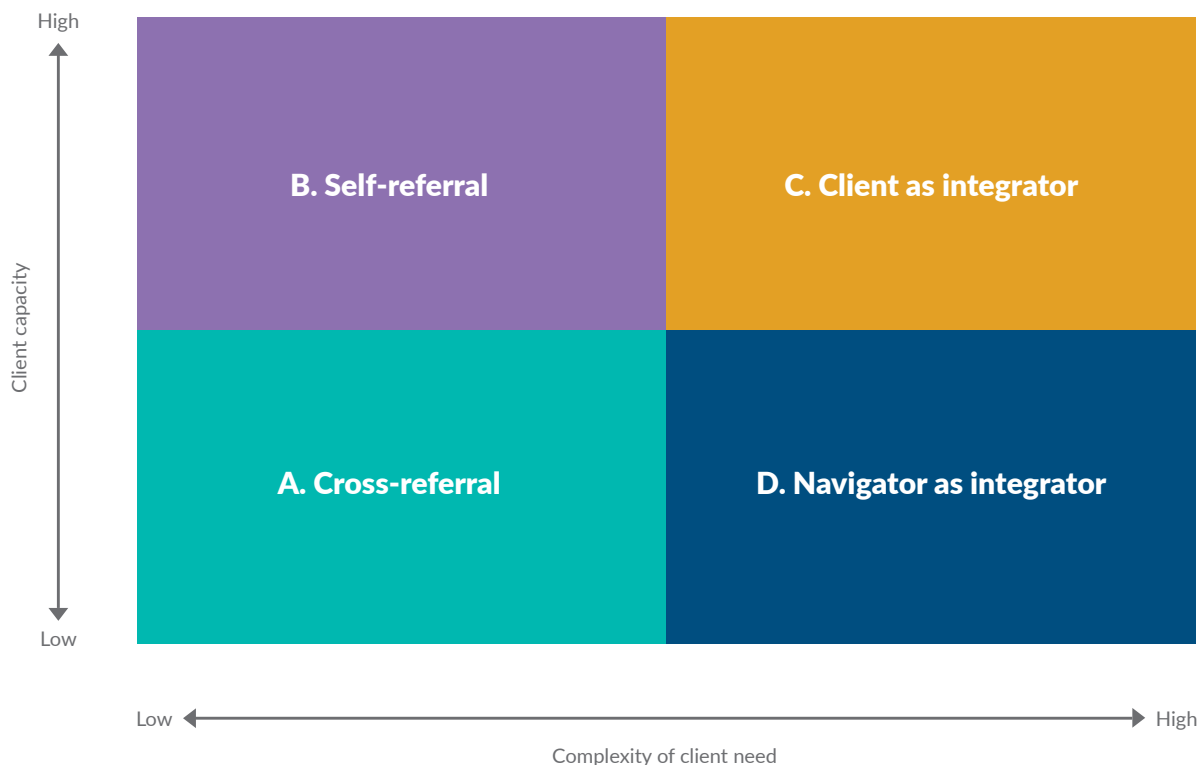
Children’s ‘invisibility’ in the service system and programs specifically for children and young people are discussed in Chapter 10; the experience of children living in crisis and emergency accommodation is discussed in Chapter 9; and referral pathways for family violence incidents involving children is discussed in Chapter 13.

The New Zealand Productivity Commission recently examined the effectiveness of social services and how the system caters for complex, multiple and interdependent needs. The commission divided users of social services into four groups:

- ▷ people whose needs are relatively straightforward but who need assistance in order to gain access to services
- ▷ people whose needs are relatively straightforward and who have the capacity to access services for themselves
- ▷ people whose needs are complex but who have the capacity to access services for themselves
- ▷ people whose needs are complex and who require assistance to access services.¹⁵⁸

Figure 8.3 depicts these four types of service users.

Figure 8.3 Characteristics of people interacting with the social services system



Source: Based on New Zealand Productivity Commission, ‘More Effective Social Services’ (August 2015).

As the New Zealand Productivity Commission noted, an ‘efficient and effective system must cater for all types of clients.’¹⁵⁹ This Royal Commission consistently heard, however, that people with complex and interdependent needs had difficulty obtaining the services they needed.¹⁶⁰

Submissions called for a broader range of options to help victims of family violence, rather than the current 'one size fits all' approach.¹⁶¹

A number of submissions discussed the importance of individualised approaches, so that support provided during the crisis and post-crisis periods better fits the specific requirements of individual victims and, where relevant, their children.¹⁶² In her evidence to this Commission, Ms Kym Peake, then Acting Secretary of the Department of Health and Human Services, acknowledged that responding to family violence 'requires an approach to service delivery that is flexible and holistic—designed around individual preferences and needs rather than programmatic boundaries'.¹⁶³

The Commission was advised of some existing sources of funding and individualised packages that can supplement casework and provide a flexible response.¹⁶⁴ Flexible funding programs allocate to providers a lump sum that can be used to achieve a broad goal. It is argued that this flexibility allows people to receive assistance according to their individual needs rather than receiving a predetermined type and level of assistance—for example:

- ▷ purchasing security measures under the Safe at Home program and the recently announced Personal Safety Initiative¹⁶⁵
- ▷ assistance to pay for goods such as household furnishings to set up a new home or rent in advance or arrears (through the Housing Establishment Fund) or a rental bond (through the Bond Loan Scheme)¹⁶⁶
- ▷ short-term funds for women with disabilities for up to 12 weeks to a maximum of \$9000 per person through the Disability and Family Violence Crisis Response Initiative¹⁶⁷
- ▷ children's resource coordinators, who have a small brokerage fund for children who are homeless. In 2013–14 a total of \$136,574 was available for Victoria, shared between eight areas.¹⁶⁸

The Commission was informed that, although these programs are welcome, they are relatively small and heavily subscribed.¹⁶⁹ A number of submissions also pointed to a more comprehensive model of individualised support beyond the crisis period—the Integrated Post Crisis Response Service developed by Good Shepherd Youth and Family Services and McAuley Community Services for Women in 2011.¹⁷⁰

During the term of this Commission, the Department of Health and Human Services announced funding packages of up to \$7000 for Family Violence Flexible Support Packages as part of a \$12 million four-year budget commitment.¹⁷¹ These discretionary packages will be administered by 15 family violence services and can be used for rent, relocation costs, material aid such as clothing and books for children, and security measures at home.¹⁷² The packages can also be used to pay outstanding bills or debts or to 'cover medical costs or enable enrolment in education or training courses to develop new skills to help find employment'.¹⁷³ It is estimated that about 1000 packages will be available each year, with an average cost of \$3000.¹⁷⁴ Ms Peake gave evidence in October 2015 that the packages were 'soon to be rolled out'.¹⁷⁵

These packages are targeted at women and children who: 'are escaping and/or have recently experienced family violence; and/or are planning to leave an abusive situation or have the perpetrator removed from the family home with appropriate legal sanctions in place'.¹⁷⁶ The period during which a woman can have access to the funds is not clear. In relation to services such as counselling, it is not clear whether there are any conditions attached to the type of counselling that will be funded (for example, that the counselling must relate to family violence) or from whom the counselling should be purchased (for example, a counsellor who is trained in family violence).

The packages cannot be used to replace or duplicate supports that are available through other funding mechanisms (including other local, state or Commonwealth programs), but the Commission understands that the packages can be used where '... available supports (e.g. Local, State or Commonwealth Government services) cannot be provided in a timely manner'.¹⁷⁷

The relationship between these packages and supports such as counselling, employment and education is discussed in Chapter 20; the relationship between the packages and housing options is discussed in Chapter 9.

After-hours support

Although many submissions emphasised the need to act at the time of crisis, the Commission heard that specialist family violence support services have limited capacity to provide after-hours support. Most assistance is offered during business hours, which is not necessarily when women need support.¹⁷⁸ This is seen as a problem throughout the family violence system. Court Network submitted:

There is little congruence between when family violence incidents occur and the subsequent response by the family violence system. Police and the 24 hour crisis telephone line for women are the only primary responses available to women outside standard business hours (Monday – Friday 9am – 5pm) despite the vast majority of family violence incidents occurring outside business hours. The family violence system is essentially ‘asleep’ when women could most do with support.¹⁷⁹

The Police Association Victoria described the challenges of offering a 24-hour service in a sector that largely operates during business hours, noting that ‘police are currently reliant on an under resourced and under staffed service sector’ and are faced with an ‘ever-expanding list of tasks performed by [police] members to assist external agencies’.¹⁸⁰

Opportunity Knocks, which is made up of a number of family violence and women’s organisations, made the same point. It stated that there are ‘insufficient immediate face to face support services for women and children in crisis, and a lack of services able to facilitate after-hours outreach support to a women where she is located (for instance, at a police station or hospital)’.¹⁸¹ It estimated that a person with an L17 referral ‘can wait 15 hours to be seen on weekdays or 63 hours on weekends, compromising women’s and children’s safety’.¹⁸²

The Commission was informed that ‘funding for after hours responses locally, regionally and across the state [is] clearly inadequate with an over reliance on a stretched statewide telephone response system’.¹⁸³ The statewide 24-hour crisis telephone service Safe Steps provides information and support by telephone, rather than face-to-face support.¹⁸⁴ The Commission understands that 24-hour outreach is not funded as a core activity throughout the state but that some specialist family violence services do provide after-hours support. For example, a weekend specialist family violence response service delivered by Women’s Health West Inc. in partnership with McAuley Community Services for Women operates for six hours on Saturdays and six hours on Sundays to deal with L17 referrals.¹⁸⁵ Another example is the Southern Women’s Integrated Support Service, operated by WAYSS Ltd, which operates extended hours seven days a week to provide a crisis response and support women and children escaping family violence.¹⁸⁶

Funding information from the Department of Health and Human Services shows that 12 services receive funding to provide after-hours support funded through the Transition Support activity.¹⁸⁷ Fourteen are funded for extended after-hours support through the National Partnership Agreement on Homelessness,¹⁸⁸ but the funding for this is not secure past 30 June 2017.

The Commission learnt that in places where an after-hours response is funded, these are primarily telephone-based services that operate on call.¹⁸⁹ The services act as the contact point for Safe Steps, which will call them to refer a woman requiring after-hours assistance in that area. The specialist family violence service can carry out a risk assessment by phone and arrange for accommodation (generally in a motel) unless Safe Steps is arranging accommodation.¹⁹⁰

Safe Steps submitted that, while ‘face-to-face crisis responses are sometimes available to some women and children in metropolitan Melbourne’, the availability of such responses is insufficient to deal with the number of crisis referrals received; nor are face-to-face responses available in most parts of Melbourne and Victoria.¹⁹¹ Go Goldfields also noted the lack of after-hours support in the regions:

After hours support is limited to women across the region. Again, telephone based support is the only response to women in locations outside of Bendigo. Whilst this may be appropriate in some cases, there are many women who require additional and face to face support after hours.¹⁹²

The Commission was informed that some service providers have pooled resources (including after-hours funding) so that they can deliver an after-hours response through the Crisis Advocacy Response Service model.¹⁹³ It learnt of two CARS services operating in northern and eastern metropolitan Melbourne—NCARS and ECARS.¹⁹⁴ The intention is to provide face-to-face assistance to women after hours at locations such as hospitals, motels and police stations (but not at women's homes), usually after an incident has occurred.¹⁹⁵ The services provide information about legal options and other rights, material aid (such as nappies and baby formula), referrals to relevant services, and planning for follow-up the next day if needed.¹⁹⁶

There is variation in how CARS providers deliver services: some providers no longer visit women in motel rooms because of concerns about safety.¹⁹⁷ One current CARS provider, Eastern Domestic Violence Service, noted that when it was launched it had a high level of recognition in the family violence sector and with police but that over time the number of referrals decreased. It submitted that models such as CARS 'need to be constantly brought to the attention of services to ensure that new staff entering the sector are aware of them' and that dedicated resources for community development and evaluation are needed.¹⁹⁸

Several organisations submitted that family violence after-hours outreach and contact for victims need to be improved. For example, the Police Association Victoria submitted that 'service provision by these agencies should be urgent and immediate post the family violence event and as such would require agencies to operate 24 hrs a day 7 days a week'.¹⁹⁹

For its part, Safe Steps expressed a strong preference for face-to-face assessment and response since this is seen as best practice. It argued that the Victorian Government should establish an outreach support service to provide a 24-hour face-to-face crisis response for women and children throughout the state under the Safe Steps Family Violence Response Centre model.²⁰⁰

A face-to-face contact, particularly as the initial contact a woman makes with the service system, is vital to ensure a woman receives the support she needs ... All women and children experiencing family violence should have access to an immediate face-to-face crisis response regardless of their location.²⁰¹

Central Goldfields Council submitted that, although after-hours and weekend access to a face-to-face response does need to be improved, to some extent this can be done with existing services working together. It might be done, for example, by collaboration between a specialist family violence response worker and a member of Victoria Police working together.²⁰²

A number of submissions noted that if sexual violence has occurred after-hours services are available at Centres Against Sexual Assault. This includes sexual assault crisis units in some hospitals.²⁰³ South Eastern CASA provides a 24-hour crisis service for sexual assault and family violence.²⁰⁴ Some submissions noted that there is potential to make use of the existing expertise of CASAs to improve after-hours service responses to family violence.²⁰⁵

The intersection between specialist family violence services and sexual assault services is discussed in Chapter 12.

Advocacy as part of case management

It was argued that specialist family violence services should be specifically funded to do advocacy work, which would include intensive assistance for the range of problems a client might be facing.²⁰⁶

The Commission notes that, while family violence support or outreach functions and roles are given different labels by different services, each is broadly consistent with casework functions. These roles are variously referred to as ‘advocates’, ‘caseworkers’ or ‘navigators’. For example, Eastern Domestic Violence Service assigns a ‘domestic violence advocate’ whose task is to work with the woman in question to identify her needs and obtain suitable services and support. This might include accompanying the woman to legal appointments and court hearings and negotiating with agencies such as Centrelink and the Office of Housing, as well as the Department of Immigration and Border Protection if there are visa concerns.²⁰⁷ Safe Futures calls its case-management response ‘Circles of Support’; it involves an advocate working with each woman and child to ‘identify their safety and support needs within a holistic framework, and then assist with referrals to appropriate support agencies’.²⁰⁸

Domestic Violence Victoria submitted that assertive advocacy is an intrinsic part of case management in managing risks for women and promoting integration of the family violence system.²⁰⁹ It argued that this advocacy role should be strengthened with adequate resourcing in order to improve individual women’s experiences of the family violence system and to contribute to better integration and effectiveness of the system overall.²¹⁰

Along with several other organisations, Domestic Violence Victoria cited the United Kingdom independent domestic violence advocates model as an example that could be emulated in Victoria.²¹¹ The UK program provides independent advocates who give ‘practical and emotional support to clients at the highest levels of risk’.²¹²

This matter was also considered in the inquest into the death of Luke Batty: former State Coroner, Judge Ian Gray recommended the establishment of a family violence advocate service based on the UK model.²¹³ Judge Gray also stated that there should be specialist family violence case management for all matters involving families at high risk of family violence.²¹⁴

Independent domestic violence advocates

In the United Kingdom independent domestic violence advocates help to keep clients safe while liaising with the numerous agencies involved in bringing charges against perpetrators. They advocate for the client—acting as their ‘eyes and ears’²¹⁵—and their role includes the following:

- ▷ creating safety plans and performing risk assessments
- ▷ accompanying clients to court or arranging pre-trial visits
- ▷ supporting clients in giving evidence and writing victim impact statements
- ▷ requesting special measures—for example, screens to conceal clients in court so that a client does not have to face their abuser
- ▷ helping clients obtain refuge accommodation
- ▷ helping clients improve the security of their property so that they can continue to live safely at home
- ▷ providing emotional support and referring victims to counselling or mental health services
- ▷ liaising with social workers in relation to child protection.²¹⁶

Working with families when the perpetrator is still in the home

A number of women told the Commission they wanted to keep living with their partner or that they lived with their partner for a long time before they felt it was safe enough to end the relationship.²¹⁷

I stayed married for many years longer than I wished to because of his threats to take the children so that I would never see them again. I stayed because I wanted to protect my children and because I knew that given his level of anger and aggression that I would be left homeless.²¹⁸

A specialist family violence worker reflected on her experience:

Why doesn't she leave? ... Two things! Firstly that they love their partners is a very simple message. They just want the violence to stop. We have a tendency to reduce what is a complex relationship to a risk assessment checklist in our crisis response rhetoric and approach ... The second most commonly expressed response from women is they stay for the children. It seems a dichotomous attitude to keep your children living with FV however most women I have supported go to great lengths to keep their children safe and away from the violence.²¹⁹

The Commission was also told that in Aboriginal and Torres Strait Islander communities it is particularly important to take a whole-of-family approach. This may include working with the perpetrator of the violence in the home:

We need community involved to keep the family together. We haven't got a family-centred approach. We need to pull the mum, dad, children together – we need to get the children involved. I'm talking about keeping the family together at home. Making sure the violence doesn't escalate.²²⁰

... in their [Victorian Aboriginal Child Care Agency family violence workers] experience working with Aboriginal women affected by violence, the majority of them want to stay in the relationship, they do not want the relationship to stop, just the violence.²²¹

As observed throughout this report, specialist family violence workers play an important role in providing information and support to enable women to make choices, particularly in the immediate crisis period. This involves assessing the needs of a woman and her children over time and helping them obtain the services and supports they need.

According to Safe Steps, women who remain living with the perpetrator of violence have few support options. The organisation noted that, although support is currently funded through outreach or case management, 'caseload caps, capacity and resource constraints mean that women and children wait for weeks or months for follow up contact'.²²²

The Commission was told that in practice specialist family violence services tend to work with women who have left or are on the point of leaving a violent relationship. Some people were critical of this focus:

The refuge made it clear that if we didn't come ... we would not receive counselling or housing support.²²³

It also frustrates me that some service providers decline to work with people who are subject to violence if they are ambivalent about the relationship or staying in the relationship. From my point of view some support is better than none and the risks to the person subject to violence and/or the service provider needs to be assessed on an individual basis not one size fits all, especially if the person using violence has committed also to working on their behaviour.²²⁴

Families@Home

Families@Home is an example of a program that works with families where the perpetrator may still be in the home. It is delivered by Kildonan Uniting Care in partnership with homelessness services Salvation Army Crossroads and Launch Housing and was one of several Homelessness Innovation Action Projects established in mid-2012 and funded by the then Department of Human Services.²²⁵ It has since been funded on an ongoing basis. Kildonan told the Commission that Families@Home has supported 393 families since November 2012.²²⁶

The program supports families who are experiencing family violence—although not high-risk cases—with a multi-disciplinary team who operate a ‘one-stop shop’ model providing services based on a whole-of-family assessment.²²⁷ The Commission understands that there are no formal referral pathways into the program; instead a community engagement worker promotes the service to referrers such as family and community services.²²⁸

The Families@Home program provides financial counselling, family support, specialist family violence support and housing support services. It also provides women seeking employment financial assistance to enter vocational studies, linking them with employment agencies and work-readiness training courses, as well as dealing with factors preventing women from working (such as affordable child care).²²⁹ The service offers advocacy with real estate agents and assistance with initial accommodation costs if the woman is not able to remain in her home.²³⁰

The program also supports perpetrators if the woman consents to this, although the program evaluation reported consistently low engagement from this group.²³¹ The program evaluation also noted that the model of intervention required clarification, with differences observed in the approach of family violence, housing and family services agencies, which are partly a result of differing views of what constitutes early intervention.²³²

Western Melbourne Child and Family Services Alliance noted that there are challenges in working with women who remain living with the perpetrator or in having a solely legal response:

By working solely to encourage women to seek protection orders we risk losing genuine engagement with a victim and the perpetrator may still remain in the home. Instead of increasing safety, an unintended consequence is that we may decrease safety as we no longer have the trust and information necessary to properly intervene and provide support.²³³

MacKillop Family Services argued:

While it is generally the practice of some specialist family violence services to focus support towards women and children who are no longer living with the perpetrator, MacKillop’s family support teams work with families in which violence is on-going ... There are a number of reasons a woman might decide not to leave and ... support should not be predicated on her leaving ... Some services still require that women and children have left (or the perpetrator has left) before support can begin. Ongoing support of this service model leaves many women and their children without adequate assistance.²³⁴

The Commission was informed that it is often Integrated Family Services, rather than specialist family violence services, that work with families when the perpetrator is still living at home. For example, Kildonan Uniting Care estimates that about 60 per cent of all families referred to Child FIRST by means of police L17s are families where the parents remain in a relationship.²³⁵

Kildonan Uniting Care pointed out that, because many women do not choose to leave their partners, at least initially, this has ramifications for child protection and child safety work.²³⁶ The Commission received substantial evidence that when Child Protection is notified it can place further pressure on a woman to leave the relationship as part of her duties as a 'protective parent'.²³⁷ This is discussed in Chapter 11. In summary, many women and family violence professionals expressed the view that the 'protective parent' approach leads to re-victimisation and a failure to focus on the person responsible for the violence; they called for child protection practice to take a 'family violence' approach.²³⁸

Some submissions suggested that specialist family violence workers be placed within Integrated Family Services and Child FIRST teams to support the woman when the perpetrator is still in the home. Western Melbourne Child and Family Services Alliance submitted that 'these workers should be prepared to work alongside family support workers within family units where the perpetrator has not left the family, providing specialist expertise and strategies to manage this issue'.²³⁹

In relation to family services, in New South Wales the Parenting Research Centre has been commissioned by Burnside Uniting Care to develop a practice framework aimed at strengthening parent and family functioning and improving child outcomes in families who have been identified by the child welfare system and where family violence is a current or recent concern.²⁴⁰ The Commission was informed that the framework uses a 'harm reduction' approach to reduce the harmful consequences of the particular family situation and incorporates a range of goals as alternatives to separating whilst at all times maintaining the safety of family members, particularly children. The framework is being trialled at two locations in New South Wales, with a third to be rolled out, and further review and evaluation to be conducted by the end of 2015.²⁴¹ The Commission heard that this work is at a relatively early stage but could make an important contribution to how Integrated Family Services work with families where men are using violence.²⁴²

It was also submitted that delivering a better response to families when the perpetrator is in the home calls for consideration of how to use the expertise of perpetrator programs, noting that, with a few exceptions, the current intake and referral pathways to these programs are separate from those for services for women and children.²⁴³

In Chapter 22, the Commission discusses the potential of restorative justice processes to meet some of the needs of victims who remain living with or in contact with the perpetrator.

Dealing with the longer term effects of family violence

There was strong support for expanding the response to family violence beyond the crisis phase and frustration that this is currently hindered by inadequate resourcing.²⁴⁴ The Commission received evidence about the importance of longer term support for victims of family violence, to help them recover physically, emotionally and financially:

The true goal for family violence reform is for women to fully participate in society and live a free and independent life. The full aim for men is the same. Quality of life is diminished for perpetrators and victims. Safety is an essential part but not the end point we want for women. It is a stepping stone for her to reach her full potential.²⁴⁵

The lasting impacts of family violence and men's violence against women is life long, however women, children and families have the ability to survive this and even thrive after the violence has occurred. What is crippling for individuals and families is a lack of support which would otherwise enable them to return to work, continue to study, maintain relations and participate in everyday life again.²⁴⁶

Tackling financial and social disadvantage was another important principle:²⁴⁷ 'Supporting victims of violence to obtain their financial independence is vital if we are to prevent them and their children from experiencing ongoing poverty and disadvantage'.²⁴⁸

Submissions noted that employment and education are protective factors against violence.²⁴⁹ For women who have left a violent relationship, stable and secure housing was seen as a lynchpin in helping families rebuild their lives.²⁵⁰ This is discussed in depth in Chapter 9. Recovery, including financial security and health and wellbeing, is discussed in Chapters 20 and 21.

The way forward

The Commission recognises the unique and crucial role specialist family violence services have in the family violence system. As is apparent, though, the policy and service delivery landscape has changed since the mid-2000s, with complex referral pathways, growing demand, and gaps in services emerging. At the same time, many other service systems are confronting the reality of family violence. This has implications not only for services such as health and Integrated Family Services: it also has implications for the specialist family violence services that must connect with and understand those service systems.

Specialist family violence services, along with police and the courts, are under enormous pressure as a result of the unprecedented demand for assistance in the past decade. The situation has been exacerbated by the largely static levels of funding provided for specialist family violence services during this period.

Put simply, current funding is insufficient if we are to respond properly to demand. Demand pressure has resulted in services for women and their children focusing on crisis responses. The Commission considers it a priority that the capacity of the system be immediately expanded in order to enable it to better respond to demand.

Alleviating the immediate demand pressure should allow specialist family violence services to focus on what they do best—helping women and children stay safe and rebuild their lives. Alleviating demand pressures should also free up services to concentrate on new and better methods of service delivery, enhancing staff capabilities and improving access for victims of family violence who face specific barriers.

The Commission is aware that family, friends and community organisations are often the first to become aware of family violence. Individuals and communities, therefore, need to be equipped to recognise and respond to family violence, in relation to both victims and perpetrators.

Addressing demand is only part of what must be done. Chapter 13 discusses the integration between specialist family violence services and other parts of the service system, such as Child Protection, Integrated Family Services and men's services, and considers opportunities for more streamlined pathways to receipt of services.

Elsewhere in this report the Commission makes recommendations that are also relevant to specialist family violence services—in relation to housing and accommodation (Chapter 9), industry planning (Chapter 40), and the needs of specific population groups (Volume V). For this reason, most of the recommendations in this chapter are limited to dealing with the demand specialist family violence services face to allow them to move from managing demand to meeting demand.

Short-term action to support family and friends

As noted, the Commission is conscious that not all women who experience family violence will seek help through specialist family violence services. Family and friends should be better equipped to support victims, both at the point of crisis and during the recovery period, and men should be encouraged to play a more active role in discouraging family violence.

At present there are websites that provide family violence–related information for victims, family and friends. Although these websites are helpful, there is no distinction between information directed towards victims and that relevant to family members, friends and others who might be concerned about the victim. Additionally, the focus is more on the crisis period than on helping victims rebuild their lives.

Recognising that family, friends and community organisations already respond to family violence, the Commission considers that a website that provides all involved with the information they need to be safe, supportive and proactive, would be a valuable initiative. This could draw upon existing family violence information sites as well as looking to leading practice in other sites that deal with complex social problems that provide information to people seeking to support their family, friends and colleagues. It is important that any information about family violence is presented in ways that are accessible to everyone in the community, including young people and people from diverse communities.

Recommendation 10

The Victorian Government expand an existing website or create a new website [within two years], to provide information for:

- ▷ victims of all forms of family violence—including victims who face particular barriers to obtaining help—about where and how they can seek help
- ▷ families, friends and community networks, to help them recognise family violence, support victims and support perpetrators who are seeking help to change their behaviour.

This information should relate to both help during the crisis period and recovery in the longer term.

Responding to demand

Specialist family violence services are overwhelmed by high levels of demand, and women and children are being left vulnerable to violence. The system is under enormous pressure, trying to respond to the growing number of referrals with existing resources. This has a number of effects on the way specialist family services are delivered, among them the following:

- ▷ Responses are rationed and triaged with a focus on crisis. Services are trying to manage demand when their service ethos is to meet demand.
- ▷ Lower risk referrals might not be followed up or are followed up days or weeks after the violence occurs.
- ▷ Early intervention to assist the victim and prevent the violence from getting worse may not occur.
- ▷ The duration of support services provided is truncated.
- ▷ The quality of service and risk management is compromised.
- ▷ Some women face specific barriers that are likely to be intensified when the system faces demand pressures. This adversely affects service quality and accessibility.
- ▷ The relatively static level of investment in specialist family violence services in the past decade has resulted in inadequate options beyond the crisis period.
- ▷ Some women return to or remain in violent situations because adequate support is not available. This creates 'churn' in the system and can lead to multiple contacts with services before a woman and her children are able to find safety.

The focus on trying to manage demand has skewed the entire system and gets in the way of effective systems thinking and innovative responses. We make a recommendation to provide funding for processing and responding to L17s in Chapter 13. We make an additional recommendation about a funding boost below.

A funding boost as a circuit breaker

The rate of growth in demand has significantly affected the ability of specialist family violence services to provide services to all who need them. The situation is exacerbated by funding levels that have remained relatively unchanged. Services have always had to be resourceful but, if demand is not addressed, it will not be possible to embark on system reform or deliver on the promise of an integrated family violence system as first articulated in the mid-2000s. Without additional funding to meet immediate demand, the pressure will continue to define and restrict the focus of specialist family violence services.

Although the 2015–16 State Budget allocated a small funding increase to family violence, that funding is for one year only. The Commission recommends that, in addition to maintaining the funding on an ongoing basis, government should ensure that adequate funding is available immediately to stabilise the system and deal with current demand.

There are opportunities for greater efficiencies through more streamlined intake arrangements and a greater role for other services to recognise and respond to family violence. It is, however, unlikely that these efficiency gains will offset the full level of additional investment required. Further, there are important gaps that need to be filled—in particular, the following:

- ▷ after-hours face-to-face responses
- ▷ consistent therapeutic responses for children
- ▷ support for women who remain at home—including when the perpetrator is present
- ▷ support for victims who experience family violence other than intimate partner violence.

These improvements are necessary to ensure that victims can receive support no matter when, how and where family violence occurs.

The Commission notes that the expansion of Family Violence Flexible Support Packages, as recommended in Chapter 9, will help victims receive support that is tailored to their individual needs.

The most important thing is that women and children receive the help they need. Regardless of whether decision makers choose to call this 'case management', 'advocacy' or 'navigation', it is vital to ensure that this function—which already exists—is funded at an appropriate level.

The Commission recommends that the Victorian Government model the total investment required to ascertain the impact of the various measures and reforms it recommends. Any response to longer-term demand must be based on robust forecasting coupled with strategic planning that takes account of the requirements, contributions and interdependencies of the broader service system beyond specialist family violence services. This demand modelling should be completed within two years, be reviewed regularly, and form the basis for determining future investment levels. This is discussed further in Chapter 41.

Strengthening specialist family violence services

A specialist response at the point of crisis is crucial, and it is important to note that this period of crisis is not necessarily short or a one-off occurrence.

When a person seeks assistance it is vital that they have confidence in the system and are provided detailed information about their options including in circumstances where they choose to stay living with the perpetrator. The level of support and information provided at this stage can affect whether a woman decides to leave a violent relationship or whether she chooses to stay safely at home.

One of the most important functions of specialist family violence services is risk assessment and management. As noted elsewhere in this report, specialist family violence services are responsible for undertaking risk assessment and management, while other services focus on the indicators of risk and understanding when they should refer a victim to specialists.

For those victims who report family violence, whether through a planned disclosure or as a result of a crisis, it is crucial that the response is guided by specialised skills and knowledge of family violence, particularly in relation to assessing risk.

Specialist family violence services quite rightly focus on the crisis stage: this is when their expertise is most needed. Safety during a crisis is paramount and must be secured so that other measures can be put in place for longer-term recovery.

Some women will not wish to become involved with specialist family violence services, no matter what the level of risk is, and other services such as community health or Integrated Family Services will need to play a more prominent role. The Commission is also aware that specialist family violence services will not be the most appropriate response for every woman who experiences family violence. It is neither viable nor desirable to have a service system that channels all women into one type of service.

Beyond the crisis phase, other services might assume a larger role with the task of specialist family violence services involving co-managing cases, and providing ongoing advice about risk management. The way this will work will depend on an individual woman's needs, and any handover between services must be guided by continued risk assessment and responsiveness to the victim's preferences.

The Commission also considers that, in view of the extent of family violence, specialist family violence services should focus on supporting women who are at medium to high risk, including women who elect to remain at home. Once the risk subsides, case management can be transferred from specialist family violence services to other services—assuming that these services have the capacity and skill to respond and that they remain in contact with specialist family violence services so that risk assessment can continue to be carried out.

In the case of women with children who are at lower risk, Integrated Family Services or other generalist or specialist services should play a greater role in case management, with the advice of specialist family violence services. This is particularly important in relation to risk assessment and management because risk can escalate quickly. Further, the choices of the victim must be recognised: many women build trust with a specialist family violence service, and passing them on to another service is not always appropriate.

The Commission is aware that this is the way many specialist family violence practitioners aim to work at the moment, but that options for co-working with other services vary. The challenge lies in ensuring that the skills and expertise of specialist family violence services are captured and integrated into whichever service women are most comfortable using. Specialist family violence practitioners have a role in helping others develop their skills in responding to family violence.

This capacity building can, and already does, take many forms—secondary consultation, co-case management, shared training in areas of commonality, training in specific aspects of family violence, and so on. A specialist workforce has the knowledge and expertise necessary to ensure that family violence practice continues to be refined, is guided by practice-based research, and is shared with others. The Victorian Government must recognise and fund this work.

Addressing inconsistency

The Commission observed variations between service providers in practice, approaches and delivery arrangements. Some variation can be considered positive since it reflects a tailoring of services to local circumstances (for example, in rural areas) and allows for innovative practices and approaches. The current scale of variation means, however, that women experiencing family violence do not receive a consistent service response throughout the state.

One of the factors contributing to this situation is the lack of specificity by government in relation to what it requires specialist family violence services to provide, how, to whom and to what standard. There is no consistent definition of the services to be provided by specialist family violence services. The services have evolved over time in response to changing demand and delivery arrangements, and their development has been characterised by complex, multiple and sometimes insecure funding streams, investment in ad hoc or one-off pilot programs, and a lack of sustained governance structures.

As noted, the primary governance document for specialist family violence services—the Code of Practice for Specialist Family Violence Services for Women and Children—was released a decade ago and has not been updated.

The Commission proposes that the Victorian Government work in partnership with the family violence sector to refresh the code and in some cases develop new frameworks and guidance material that make clear the role, objectives and focus of specialist family violence services. This would assist with consistency between services. This matter is examined in Chapter 13.

Recommendation 11

The Victorian Government provide additional funding for specialist family violence support services to deal with the current crisis in demand and to ensure that victims of family violence receive appropriate support [within 12 months].

Recommendation 12

Pending the establishment of the recommended Support and Safety Hubs, the Victorian Government expand funding for after-hours responses—including the capacity to activate a face-to-face crisis response when required—in each of the 17 Department of Health and Human Services regions [within 12 months].

Endnotes

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- 3 Based on a case load ratio of one worker to 12 families. 'Outreach workers undertake risk assessments and safety planning, and provide practical support in relation to housing, court processes, financial issues and link women to other appropriate services. Women may receive outreach services for an average of 12 weeks. Some women may require support over a longer period. Outreach services will also consider the needs of accompanying children when assisting women who have experienced violence.': Department of Health and Human Services, 'DHHS response in relation to Part A 2(a)(ii) and (iii)', 2, produced by the State of Victoria in response to the Commission's Notice to Produce dated 20 August 2015.
- 4 Department of Health and Human Services, 'Emerge Referral Management' (August 2013), 3, produced by the State of Victoria in response to the Commission's Notice to Produce dated 20 August 2015.
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- 8 Domestic Violence Victoria, 'Code of Practice for Specialist Family Violence Services for Women and Children: "Enhancing the Safety of Women and Children in Victoria"' (September 2006).
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- 13 Department of Health and Human Services, above n 11.
- 14 See Department of Health and Human Services, above n 6, 3.
- 15 *Ibid.* 2.
- 16 Department of Health and Human Services, above n 11.
- 17 *Ibid.*
- 18 *Ibid.*
- 19 Domestic Violence Victoria—03, Submission 943, 7-8.
- 20 Community consultation, Melbourne, 21 May 2015.
- 21 Peta Cox, 'Violence Against Women: Additional Analysis of the Australian Bureau of Statistics' Personal Safety Survey, 2012' (Horizons Research Report Issue 01, October 2015) 111-12.
- 22 Transcript of Hann, 12 October 2015, 3318 [10]-[13].
- 23 VicHealth, 'Australians' Attitudes to Violence Against Women: Findings from the 2013 National Community Attitudes Towards Violence Against Women Survey' (September 2014) 6.
- 24 See, eg, Community consultation, Geelong 2, 28 April 2015; Community consultation, Whittlesea, 29 April 2015.
- 25 Domestic Violence Resource Centre Victoria, *For Families, Friends & Neighbours* (2013) <<http://www.dvrcv.org.au/help-advice/guide-for-families-friends-and-neighbours>>; 1800RESPECT, *How do I support someone experiencing domestic or family violence?* (2015) <<https://www.1800respect.org.au/family-friends/common-questions/dealing-with-domestic-family-violence/>>.
- 26 Our Watch, *Preventing Violence* <<http://www.ourwatch.org.au/Preventing-Violence>>; White Ribbon, *Be an Active Bystander* (2014) <<http://www.whiteribbon.org.au/whatmencando>>.
- 27 Crime Stoppers Victoria, *Say Something* <<http://www.saysomething.org.au>>. For a discussion of bystander interventions generally, see also Crime Stoppers Victoria, Submission 208, 15-16.
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- 29 Women with Disabilities Victoria, Submission 924, 15; Southern Integrated Family Violence Executive, *Tell Someone* (2010) <<http://www.tellsomeone.org.au/index.html>>.
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- 35 Women's Mental Health Network Victoria Inc, Submission 417, 6.
- 36 Leonie Davey, Submission 365, 2-3.
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- 39 See, eg, Australian Muslim Women's Centre for Human Rights, Submission 728, 1. See also Chapter 28.
- 40 See, eg, Women with Disabilities Victoria, Submission 924, 4.
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- 42 See, eg, Victorian Aboriginal Legal Service, Submission 826, 3-4; Victorian Aboriginal Community Services Association Limited, Submission 837, 3-4; Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 15, 22; Victorian Aboriginal Child Care Agency, Submission 947, 16, 21. See also National Aboriginal and Torres Strait Islander Women's Alliance, Submission 912, 6.
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- 53 Domestic Violence Victoria—02, Submission 943, 9.
- 54 Crystal Bruton, Submission 137, 2. See also Benalla Family Violence Prevention Network, Submission 131, 3.
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- 59 Domestic Violence Victoria—02, Submission 943, 9, 13; McAuley Community Services for Women, Submission 480, 24; Kara House Inc, Submission 618, 5; Women's Health West Inc, Submission 239, 9.
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- 62 Victoria Police, Submission 923, Attachment 3, 38, 43.
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- 65 Gippsland Lakes Community Health, Submission 229, 5.
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- 85 Ibid 36.
- 86 See, eg, Domestic Violence Victoria—03, Submission 943, 7, 9, 24; Eastern Domestic Violence Service Inc, Submission 619, 9; Women's Health West Inc, Submission 239, 18; Berry Street, Submission 834, 11; Nexus Primary Health, Submission 781, 3; Community consultation, Maryborough 2, 21 April 2015; Community consultation, Melbourne, 30 April 2015; Transcript of Tucker, 3 August 2015 1554 [10]–1555 [5]; Opportunity Knocks—EDVOS; Safe Futures Foundation; Safe Steps; WISHIN; Victorian Women's Trust, Submission 898, 23.
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- 91 See City of Casey, Submission 354, 1; Whittlesea Community Futures Partnership, Submission 392, 3–5; Hume City Council, Submission 995, 2–3.
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- 100 Ibid.
- 101 Their target for men is 312 per annum and they received 5619 for the same period: *ibid.*
- 102 Ibid.
- 103 See, eg, Barwon Area Integrated Family Violence Committee, Submission 893, 9, 15; Opportunity Knocks—EDVOS; Safe Futures Foundation; Safe Steps; WISHIN; Victorian Women's Trust, Submission 898, 23; Women's Health West Inc, Submission 239, 18; Whitehorse Community Health Service, trading as Carrington Health, Submission 777, 2.
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- 114 Anonymous, Submission 583, 4.
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- 130 The Salvation Army, Submission 450, 46.
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- 233 Western Melbourne Child and Family Services Alliance, Submission 597, 3.
- 234 MacKillop Family Services, Submission 895, 3.
- 235 Kildonan UnitingCare, Submission 770, 14.
- 236 Ibid 9.
- 237 Family Life, Submission 758, 14; MacKillop Family Services, Submission 895, 3; Community consultation, Whittlesea, 29 April 2015; Community consultation, Werribee 2, 11 May 2015.
- 238 No to Violence; Men's Referral Service, Submission 944, Appendix 4, 82.
- 239 Western Melbourne Child and Family Services Alliance, Submission 597, 4.
- 240 Parenting Research Centre, Submission 881, 12.
- 241 Ibid.
- 242 Statement of Humphreys, 7 July 2015, 7 [21]–[22].
- 243 Kildonan UnitingCare, Submission 770, 8.
- 244 WIRE Women's Information, Submission 574, 4; State-wide Children's Resource Program, Submission 126, 2; Ovens Murray Goulburn Integrated Family Violence Services, Submission 444, 16.
- 245 Good Shepherd Australia New Zealand, Submission 836, 17.
- 246 Anonymous, Submission 14, 1.
- 247 This includes addressing the lack of social infrastructure and support services in areas with a high prevalence of family violence: Brotherhood of St Laurence, Submission 818, 5. See also Sustainability Australia, Submission 845, 1.
- 248 InTouch Multicultural Centre against Family Violence, Submission 612, 49.
- 249 Safe Steps Family Violence Response Centre, Submission 942, 20, 25; Women's Health West Inc, Submission 239, 26; Victorian Health Promotion Foundation (VicHealth), Submission 243, 9.
- 250 See, eg, WIRE Women's Information, Submission 574, 4.

9 A safe home

Introduction

Access to safe, stable and affordable housing is vital for women and children who have experienced family violence.

Family violence can often displace women from secure housing, whether they remain in the home or leave for alternative accommodation. Women who stay at home may require additional steps to be taken to ensure their safety and may struggle financially to meet mortgage or rent payments as a result of disruption to their own earning capacity or the failure of the perpetrator to maintain contributions. Women who leave their homes can have trouble finding safe, suitable and affordable alternative accommodation and, in some instances this can lead to homelessness.

A lack of housing options can exacerbate the trauma and dislocation of the violence, disrupting social and economic participation and education and adversely affecting health and wellbeing. In some cases it forces women to choose to return to a violent partner. Once women and children who have experienced such violence are housed in a safe place, they can begin to rebuild their lives and plan for the future.

The conventional response to family violence has been for the victim and any children to leave the home and enter refuges or crisis accommodation to escape the risk posed by the perpetrator. This remains the model underpinning crisis accommodation to this day. There has however, been a growing move towards supporting victims to stay at home, where it is safe to do so and they wish to remain.

This chapter begins with a description of Safe at Home programs that, along with new technologies, seek to support women and children to stay in their own homes whenever this is possible. It outlines the necessary elements to ensure Safe at Home strategies are effective—for example, by ensuring that technological measures are coupled with broader practical and emotional support, effective risk management and justice system responses, case management and good information sharing between service providers.

The chapter then provides a snapshot of accommodation options in Victoria when a victim cannot stay at home because it is not safe to do so. It follows the victim's journey from immediate crisis accommodation towards a permanent home, highlighting existing gaps and identifying opportunities for improvement. The Commission was told that there is limited availability of crisis accommodation because of capacity and eligibility requirements, which leads to some victims being forced into inappropriate or ad hoc accommodation such as motels or rooming houses that are unsafe, unpleasant and alienating, particularly for children. The Commission was also told of the lack of affordable medium-term and long-term housing, causing the system to clog up, leaving victims trapped in transitional or crisis housing arrangements with limited options to move into more stable housing.

At the end of the chapter, the Commission sets out recommendations aimed at supporting victims to remain in or return to their own homes and communities, as well as improving refuge accommodation and promoting access to a greater range of crisis accommodation. The Commission also proposes expanding the existing Family Violence Flexible Support Packages and significantly extending their availability so that assistance for people affected by family violence better meets their specific needs.

Much of the discussion in the chapter focuses on the housing needs of women and children. The Commission also received evidence about the housing needs of specific groups of victims, such as young people, older people and lesbian, gay, bisexual, transgender and intersex people. The experiences of these groups are considered in Chapters 10, 27 and 30.

The impacts of family violence on housing

Family violence is the major reason for women seeking assistance from homelessness support services in Australia.¹ In 2014–15, 31 per cent ($n=31,421$) of all people seeking assistance from homelessness services in Victoria did so as a direct result of family violence.² Of this number, 86 per cent ($n=26,979$) were women.³

Family violence is also a growing cause of homelessness among young people. Recent research has found that nationally 56 per cent of young people experiencing homelessness had to leave their home at least once as a result of violence, while about 90 per cent had witnessed violence in the home.⁴ Melbourne City Mission informed the Commission that 'homelessness is correlated with early school leaving, precarious employment, welfare dependency and justice system engagement, as well as poor physical and mental health'. It submitted:

There is something fundamentally wrong with our community's response to family violence, when the default response to a young person disclosing family violence is to pathway them into the homelessness system.⁵

The Commission was also informed that meeting the short-term and longer term housing needs of victims of family violence is crucial so that their experience of the violence does not define their future.⁶ Witnesses told the Commission that responding to these housing needs is central to everything else. People cannot move out of crisis without first having a safe and secure place to live:

We know from our work that once you have someone housed, a huge amount of the stress of their situation is removed. While someone is homeless, the only thing that they can really address is their homelessness. Once clients are housed, they are more open to having a think about their mental health and physical health, getting a plan in place with workers if there are substance issues or tackling old debts. Those things can often only be looked at once the primary stressor, their lack of safe and secure housing, has been resolved, particularly if they have children.⁷

It was submitted that the longer women and children remain homeless or in temporary accommodation the more likely it is that the crisis will extend and repeat. This can trap a victim in a cycle of violence, homelessness and, for women who perceive they have no other choice, a return to a violent partner.

Being homeless with a kid and having to constantly move from refuges to motels was a real hassle, especially without a car. Honestly, it just made me want to go back to the violence because I knew there was at least a roof over our heads and I had somewhere to feed my son.⁸

Staying home safely

Many submissions to the Commission made the point that the best outcome for women experiencing family violence is that they are supported in staying in their own homes if it is safe to do so.⁹

The Public Health Association of Australia observed that 'the onus should not be on the victim to find a place of safety but [should be on] society to keep the victim safe from the perpetrator'.¹⁰ One victim articulated the frustration many women feel at being forced from their homes in order to keep themselves and their children safe:

The thing I hate the most is, why do we as women of domestic violence/survivors, why do we have to leave our families and our homes because of them bastards. Why do we have to leave and run? Why do we have to leave everything we love because someone just can't let go. That's what I hate the most.¹¹

In her evidence to the Commission, Dr Angela Spinney, research fellow and lecturer, Institute for Social Research, Swinburne University of Technology, who evaluated the first Australian Safe at Home scheme, in Tasmania, emphasised that it is '... the element of choice which is really important'.¹² For some women, their home has been '... a really unhappy place and they may not want to remain there, but many women do ...'¹³

The Commission was advised that in recent years there has been a move towards helping women and children stay in their homes when it safe to do so, with orders excluding perpetrators from the home and an expectation that they should be the ones to seek alternative accommodation.¹⁴ This has been supported by changes to law and practice—such as the introduction of family violence safety notices and the use of family violence intervention orders to exclude the perpetrator—as well as funding for and trials of programs aimed at supporting women in staying at home.¹⁵

Safe at Home initiatives: a time line

| | |
|-------------|--|
| Early 2000s | A number of Safe at Home programs trialled throughout Australia show that the initiative is a viable option for some women. ¹⁶ |
| 2007 | The BSafe trial begins and will run until 2010. |
| 2008 | Family violence safety notices and family violence intervention orders are introduced, strengthening the ability of police and the courts to order perpetrators to leave a home. |
| 2008 | <i>The Residential Tenancies Act 1997 (Vic)</i> is amended to allow victims of family violence to transfer leases previously held in the perpetrator's name (or jointly with the perpetrator) into their own name following the making of final intervention orders. ¹⁷ |
| 2008 | The Australian Government's White Paper on homelessness is released. It acknowledges that homelessness can be reduced by increasing support for women and children who wish to stay in their own homes when it is safe to do so. ¹⁸ |
| 2009 | The first National Partnership Agreement on Homelessness between the Commonwealth and state and territory governments commences, which funds expanded models of support known as Safe at Home programs. |

'Safe at Home' refers to a variety of different interventions aimed at helping women and children to remain safely at home. As noted by the SAFER research program, 'there is no single approach to "safe at home" interventions': services develop programs to 'meet the specific needs of their client group, their agency context and available resources'.¹⁹ Some of the programs are location specific; others form part of strategic policy approaches at the state and territory and national levels.²⁰ They are variously referred to as Staying Safely at Home, Home Safe and Staying Home, Leaving Violence.²¹

In Victoria, Safe at Home programs are delivered by some specialist family violence services and funded through the National Partnership Agreement on Homelessness.²² As part of the program, specialist workers assess the safety needs and the level of support required for women and children to stay in their own homes. Steps are also taken to increase home security by, for example, 'installing deadlocks, screen doors, security lighting and home alarms, or providing short-term rental subsidies or mortgage top-ups'.²³

Developments in technology have also been used to bolster security for women and children who stay in their homes—for example, personal alarms that, when activated, provide a GPS reading of the woman's location to a 24-hour call centre and trigger a police or security company response. Some of the more recent models of safety alarms also incorporate a live video and audio stream that can capture evidence.²⁴

In addition, family violence apps for smartphones have been developed. In May 2013 the New South Wales Government announced the release of Aurora, a free smartphone app for people experiencing domestic and family violence in the state.²⁵ The app provides information about what constitutes family violence and about services that can help. It also allows a user to quickly send in-built messages (such as 'Call the police' or 'Come and get me') or customised messages to up to five friends or family members if they need urgent help. The app's GPS system allows the message alert recipients to see where the sender is. In announcing the launch of the app, New South Wales Minister for Family and Community Services, the Hon. Pru Goward, noted that it could be particularly useful in 'regional and rural areas where women don't necessarily have access to a computer, but they often own a smart phone'.²⁶

Bsafe

Bsafe is a personal alarm system for women and children escaping family violence. It uses a GPS tracking unit to notify a response centre of the user's location and the need for urgent assistance.²⁷ The program was initiated by Benalla police following a visit to Sweden in 2003. Women's Health Goulburn North East trialled it in 2006 in the Hume region.²⁸

The program was formally evaluated following a pilot run through Women's Health Goulburn North East between 2007 and 2010, with funding from the Commonwealth Government. Women in the pilot were asked to complete an evaluation questionnaire after having their personal alarm kit for three months, six months and on leaving the program.²⁹ The questionnaire sought information about breaches of family violence intervention orders, kit activations and police responses, as well as victims' feelings of safety and their broader experiences.³⁰

Thirty-six women participated in the evaluation.³¹ The evaluation states that 27 women reported a decrease in perpetrator recidivist offending, and of this number, 16 women reported that breaches of intervention orders 'stopped entirely once Bsafe was installed'.³²

Some women reported that the perpetrator's violence reduced or ceased as a result of 'a combination of factors—including Bsafe, relocating to another community, securing an Intervention Order with more conditions, and effective perpetrator programs in conjunction with drug and alcohol counselling [where this was a presenting factor] ...'.³³ Other women said the violence they experienced changed from being physical to psychological in nature—including threats, intimidation and stalking, which usually ceased with time.³⁴

It was found that a majority of the women were able to remain safely in their own home and that most women felt safer because of Bsafe and access to other services associated with the program.³⁵ The evaluation noted that this '... sense of increased safety that Bsafe offered had allowed women to regain some personal strength and freedom in their lives post-violence'.³⁶

The program was found to be effective for a diverse group of women, including women with disabilities and women from culturally and linguistically diverse communities.³⁷

According to Women's Health Goulburn North East, over 500 women have now been assisted since the program began.³⁸ The program is currently operating through VincentCare Victoria's Marian Community in Shepparton and no longer receives government funding.³⁹ VincentCare Victoria noted that it and its parent organisation, the St Vincent de Paul Society, 'regard this risk of violence as being so critical that [the] two organisations have continued to fund alarms beyond the pilot for family violence victims who remain in situations of extreme risk'.⁴⁰

Improving Safety in The Home

Safe Futures, a specialist family violence service, assists 40 women whom police have assessed as being at extreme risk of family violence. Each woman has a family violence intervention order in place.⁴¹ The Improving Safety in The Home program provides a risk assessment and property assessment service, case-management support, personal safety training and security technology, including Safe-T-Cards, which are personal alarms that on activation provide a GPS location to a 24-hour call centre. Police inform the perpetrators that these women have been given the Safe-T-Card and CCTV cameras in order to deter them from breaching the intervention orders. During the pilot, with 21 clients, there were no incidents of a breach of an intervention order after the women received the Safe-T-Card,⁴² in circumstances where some of these women had previously been experiencing up to 40 or 50 breaches a day.⁴³

Current investment

The Victorian Government estimates that funding for programs and services aimed at dealing with family violence in 2014–15 was \$80.6 million.⁴⁴ Of this, \$1.8 million was spent on Safe at Home programs, the majority of this funding being available through the National Partnership Agreement on Homelessness.⁴⁵ In 2014–15 a target of 877 'episodes of support' was set for the program in Victoria.⁴⁶

The main funding source for Safe at Home programs, the National Partnership Agreement on Homelessness, ends on 30 June 2017. Mr Arthur Rogers, Director of Housing and a Deputy Secretary of the Department of Health and Human Services, told the Commission, 'There is not a plan to say we will extend Safe at Home to a broader degree.'⁴⁷

A further \$900,000 was allocated for a Personal Safety Initiative pilot in the 2015–16 Victorian State Budget. In December 2015 the government announced that a consortium led by the Safe Futures Foundation with partners Quantum Support Services and WISHIN had won the tender and that the pilot will be trialled in Eastern Melbourne (Darebin, Whittlesea, Moreland and Hume), the Latrobe Valley and Wellington. The pilot will provide safety devices—including safety cards, personal alarms, home safety and surveillance—to more than 70 women to test how technological interventions can be used to improve the safety of those experiencing family violence.⁴⁸ Associated case-management services will form part of the trial.

On 24 September 2015 the Commonwealth Government announced \$17 million over four years for a range of measures designed to help women stay safely in their homes; this included an expansion of the Safe at Home program.⁴⁹ At the time of writing the proportion of funding allocated to Victoria was not known, and nor is it known whether the funding is ongoing or for a fixed period.

The Commission was advised that the funding for Safe at Home programs is insufficient to achieve full implementation across Victoria.⁵⁰ It was argued that this leads to inconsistent arrangements and inequitable access, depending on where people live:

There are a handful of these programs dotted around Victoria: although it is increasingly recognised that they are a good idea, the availability of this support in Victoria is very piecemeal. This is partly because Safe at Home programs have only been started relatively recently in Victoria. More overall leadership by the Victorian government is needed to ensure that safe at home schemes become available to all women living in Victoria.⁵¹

Domestic Violence Victoria submitted that there is considerable variation in the design and implementation of programs and that implementation has not been underpinned by program standards.⁵² McAuley Community Services for Women reported that, 'while some Safe at Home funding has been allocated, its effectiveness is undermined by limited resources, piecemeal coverage and inadequate coordination with the broader service systems'.⁵³ It noted that many women want to stay at home but fear for their safety and was also concerned that some women who have left will return home when it is unsafe:

The current 'Safe at Home' response is piecemeal and inadequately resourced. Successful Safe at Home programs (unfunded) occur where the perpetrator is removed and safety measures and coordinated supports are put in place. Only around 10% of women who come to MCSW crisis service each year, leave to return home, and of them, only half with adequate protection.⁵⁴

The Council to Homeless Persons, along with 128 other organisations, submitted that Safe at Home programs should be expanded at an initial cost of \$7.6 million a year.⁵⁵ It estimated that this would provide assistance to 1521 households, based on a \$5000 package.⁵⁶

The importance of support as well as technology

During the Commission's consultations a number of women spoke about the feeling of safety and confidence new technology had given them. One woman said the Safe-T-Card—the personal alarm that provides an immediate GPS location to a 24-hour call-centre—had improved her feelings of quality of life:

It makes me feel so safe. I don't have to buy milk for the whole week. I can go out and buy milk during the week. I pay \$40 per month. The first three months were free. It's really given me a quality of life. It should be available [more broadly]. It makes me feel safe.⁵⁷

A lay witness, Ms 'Lyndal Ryan', told the Commission that the Safe-T-Card had 'changed [her] life dramatically'.⁵⁸ Once her violent ex-partner knew she had the card, Ms Ryan said she felt confident to go out, felt safe in her home and was able to sleep again.⁵⁹ Her view was as follows:

Using the alert button on the [Safe-T-Card] can be done subtly so as not to alert and inflame the perpetrator, as well as circumventing the lengthy questioning required of the 000 process ... While I do see benefits of a GPS ankle bracelet for the perpetrator, the [Safe-T-Card] provided me with an essential sense of safety and immediate (and discrete) access to help.⁶⁰

Others said technology alone did not make them feel safe, with one woman telling the Commission: 'The Be Safe card is useless – if he comes out and wants to kill me, he will'.⁶¹ Some felt it should be the perpetrator who has to wear a tracking device.⁶²

Domestic Violence Victoria cautioned against focusing solely on 'technological fixes' such as changing locks and installing security cameras.⁶³ It advised the Commission that practical and emotional support is also required if Safe at Home programs are to be successful.⁶⁴ In Chapter 6 the Commission notes that such initiatives can complement, but not replace, good risk management practices.

The Melbourne Research Alliance to end violence against women and their children submitted that evaluations of Safe at Home schemes in Australia and overseas show that providing 'wrap-around' support—that is, 'integrating a service system around the woman and the children'—and an advocate or case manager for the woman is the optimal model.⁶⁵ It also noted that these elements are 'difficult to implement in the current Victorian economic and political context when sufficient funding is not made available to sustain an integrated service system'.⁶⁶ Support for a whole-of-system approach was expressed in other submissions:

The success of these programs relies on effective support services, financial and legal assistance, and the financial capacity to maintain housing costs on a single income. Also crucial are [a] proactive police response to enforcing intervention orders and responding to [breaches], accommodation for perpetrators and access arrangements for children to be able to occur outside the home.⁶⁷

On the basis of evaluations conducted under an Australian Research Council Linkage Project Grant (referred to as the SAFER research), the Melbourne Research Alliance to end violence against women and their children argued:

The Safe at Home approach is an important and potentially effective strategy for many women and children leaving abusive relationships. However, we need bipartisan commitment to implement and resource a tighter, more coherent, integrated service system than has been possible to date in order to support Safe at Home initiatives. This is necessary in order to increase the choice of 'a safe home' available for women and their children in the post-separation context.⁶⁸

The SAFER research identified the following key elements for successful implementation of Safe at Home programs:

- ▷ effectively integrated family violence system—collaboration, cooperation, consistency, information sharing and formal agreements are required between a range of agencies and sectors
- ▷ community education prior to implementation in order to raise awareness about a woman's right to choose to remain at home, and to gain community support in making that choice
- ▷ financial support for women to maintain security of tenure
- ▷ appropriate, supportive and consistent police and court responses—this both fosters women's confidence in the system and delivers an effective message about perpetrator accountability.⁶⁹

In addition, the Melbourne Research Alliance to end violence against women and their children submitted that Safe at Home responses should:

- ▷ ensure that women have a safe space within which they can explore their options for living safely—including having information and support from a specialist advocate
- ▷ provide support for complex case management to assist women and children in the medium to long term and limit the risk of returning to unsafe living arrangements
- ▷ take account of diversity in the context of safety at home for women with disabilities, Aboriginal women, and women from immigrant and culturally diverse communities.⁷⁰

ANROWS (Australia's National Research Organisation for Women's Safety) reported that timely access to information about options and entitlements is a crucial feature of effective Stay at Home programs.⁷¹ Although some women seek assistance in determining their options during a 'non-crisis' period, for many women the trigger for action can be a crisis incident, sometimes involving the attendance of police. The Commission was informed that in these cases it is vital that women have access to out-of-hours services that can provide support and information about options.⁷²

Access to information about the risk the perpetrator poses

The literature shows that Safe at Home programs are most successful if there is adequate information sharing between services, particularly in relation to the risk the perpetrator poses.⁷³ In particular, the SAFER research found that a shared risk assessment and management tool that can track adult and child victim and perpetrator risks over time (for example, at the time services are provided), as well as share information about risk among agencies, was central to the success of Safe at Home programs.⁷⁴

The Commission was informed that men's services—men's behaviour change programs—are largely separate from women's services and take inconsistent approaches to partner contact.⁷⁵ The Family Violence Risk Assessment and Risk Management Framework (referred to as the Common Risk Assessment Framework or CRAF) was designed to use with victims, and while it does include risk factors affecting the perpetrator, the Commission heard that the CRAF should include greater guidance for agencies working with perpetrators.⁷⁶ It was submitted that both these factors limit the ability of women to fully exercise their choice to remain at home.⁷⁷ These issues are discussed further in Chapter 6.

The length of the perpetrator's exclusion

The length of the perpetrator's exclusion from the home was seen as a factor contributing to women's capacity to remain safely at home. Dr Spinney highlighted the difference between Tasmania, where in certain cases the police can issue an intervention order in the field to exclude the perpetrator from the property for 12 months, and Victoria, where police can issue a family violence safety notice ordering the perpetrator to leave the home for five days before the matter must be considered by the Magistrates' Court:

If you imagined yourself in the situation where you have been attacked by a man in your own home, and the police arrive and say 'he has to go for at least 12 months', as opposed to 'he has to go for at least 72 hours', you would be a lot more confident that you could make a long term future for yourself in Tasmania than in Victoria.⁷⁸

Police powers to make orders are discussed in Chapter 14.

Enforcement of intervention orders

The SAFER research reported that a central factor in the success of Stay at Home programs is victims' confidence in the police and justice responses—particularly in enforcing a perpetrator's exclusion from the home.⁷⁹ Dr Spinney gave evidence that, in order for Safe at Home programs to work:

We need to make sure the justice system really enforces to perpetrators that this is behaviour that will not be accepted. We know that when the justice system is strong enough, in most cases perpetrators will desist from their damaging behaviour, but they need to know the implications are strong enough ... that if they break injunctions, et cetera, there will be criminal enforcements and they will be imprisoned.⁸⁰

Women and family violence workers told the Commission they had a mixed experience with police responses, and particular concern was expressed about the enforcement of family violence intervention orders:

[Safe at Home interventions] become less effective at keeping women and children safe where breaches of Intervention Orders are not properly enforced. Where women and children are not able to be safe in their homes, they are forced into the service system creating far greater costs in accommodation, as well as the community costs of women having to leave their jobs and children being forced out of school.⁸¹

The Melbourne Research Alliance to end violence against women and their children drew attention to the high number of breaches of intervention orders, especially in the case of women who remain in a property that had previously been shared with the perpetrator.⁸² The researchers found that women living in places other than their own home were more likely than women remaining at home to find intervention orders helpful and that most felt safer with an order in place.⁸³

Using alarm and security technologies as sources of evidence of breaches of intervention orders was seen as an important component of effective Safe at Home approaches.⁸⁴ The Commission was told of a number of initiatives in this regard. For example, Telstra has designed and is considering the possible application of an app to support applicants for and respondents to family violence intervention orders so that they can meet the obligations of the orders. The app will do this by sending court appearance reminders, tracking the proximity and vicinity of the two parties, moderating communications, and capturing an evidence log of any detected breaches.⁸⁵

Economic and housing security

It was stressed that a woman's ability to afford to stay in her own home is a basic precondition for the success of Safe at Home programs.⁸⁶ The Commission heard from many women who were unable to leave a violent relationship because they were unable to afford their current home on their own and were afraid they would be left homeless:

There was one time I was pregnant with my [child] and he punched me in the stomach ... there have been times when we were on the verge of splitting up – that I have actually looked into moving out on my own and I haven't had the money to do it ... I had to stay in that situation because I didn't have the money to get up and leave ...⁸⁷

Others explained how household incomes are invariably reduced in the short term and long term as a result of the loss of the perpetrator's income contribution, the partial or total loss of the victim's income because of increased care responsibilities, and the disruption to paid employment when the victim is trying to manage her safety, her legal affairs and multiple other concerns.⁸⁸ Among other factors that can cause difficulties for women seeking to retain their home is the responsiveness of financial institutions in relation to mortgages.⁸⁹ These and other factors related to economic abuse and recovery are discussed in Chapter 21.

The Commission heard evidence about Justice Connect's Women's Homelessness Prevention Project, which aims to keep women and children in housing 'through a combination of legal representation and social work support'.⁹⁰ Justice Connect reported that 95 per cent of women assisted by the program have experienced family violence.⁹¹ The primary tenancy-related problem for women presenting at the service is eviction for rental arrears.⁹²

Of the matters finalised in its first 12 months of operation, Justice Connect reported that 25 out of 33 clients at risk of eviction for rental arrears were able to maintain their existing tenancy; a further two women were helped by the Victorian Civil and Administrative Tribunal to obtain additional time to enable them to move into new housing without an intervening period of homelessness.⁹³ Justice Connect stated that 'evictions are preventable for the most part, with the right intervention of legal representation and intensive social work'.⁹⁴

A number of submissions noted that under the *Residential Tenancies Act 1997 (Vic)* leases can be transferred to victims of family violence if the violence has been perpetrated by the tenant named on the lease.⁹⁵ It was also noted that these provisions are not well known and as a result are under-used.⁹⁶ These and other legislative provisions relating to family violence and the private rental market are discussed in Chapter 21.

Crisis and emergency accommodation

For some women and children staying at home is not an option: they are forced to leave home and find alternative accommodation because of the violence they have experienced. This section examines the types of crisis and longer term accommodation available to women and children escaping family violence and considers the evidence the Commission received about the experiences of women living in these types of accommodation.

When a woman seeks to escape violence and needs alternative accommodation, there are two broad entry pathways:

- ▷ specialist family violence services (generally through Safe Steps Family Violence Response Centre)
- ▷ specialist homelessness services, which include Initial Assessment and Planning services.

These entry pathways are not mutually exclusive. Some specialist family violence services are also Initial Assessment and Planning services, or IAPs, and each pathway can refer to the other when trying to secure accommodation. The Commission heard from homelessness IAPs that it is not uncommon to receive a referral from Safe Steps.⁹⁷ In other examples, Launch Housing which runs several IAPs, has formal referral arrangements with Kildonan Uniting Care, Inner South Domestic Violence Services and Berry Street.⁹⁸ Launch Housing reported that it supports a number of women who have experienced family violence and a large number of children, mostly under the age of 12, who have been displaced by family violence; it estimates that 59 per cent of its clients have experienced family violence.⁹⁹

In addition, the Commission heard that IAPs and generalist homelessness services often see extremely vulnerable people who do not seek out police or family violence services—effectively making these agencies first responders.¹⁰⁰ Many come to IAPs saying simply that they are homeless and do not disclose family violence. 'At times this may be because they are not asked, or the worker does not recognise the signs of family violence' or it could be because the person does not wish to disclose.¹⁰¹ Dr Heather Holst, Deputy Chief Executive Officer and Director of Services and Housing, Launch Housing, told the Commission that housing and homelessness staff across the state need clear guidelines and training in how to identify family violence and whether referrals are required.¹⁰²

Accommodation types

Crisis accommodation

There are 31 refuges in Victoria, consisting of 54 individual properties or units able to accommodate about 105 households at any time.¹⁰³ Refuges are intended to provide short-term accommodation (up to six weeks) for women and children immediately after they leave a violent partner.¹⁰⁴ In reality, women often end up staying much longer.

Access to refuges generally occurs with the involvement of Safe Steps. Some refuges accept referrals only from Safe Steps; others accept referrals from a broader range of sources, such as homelessness Initial Assessment and Planning services.¹⁰⁵ A few refuges accept referrals from any source, including directly from women and police.¹⁰⁶

Each refuge advises Safe Steps of its vacancies. It is not possible, however, for Safe Steps to book a place at a refuge: instead, Safe Steps calls the relevant refuge and it decides whether to accept the woman and her family. Each refuge has its own intake process and makes its own decision based on operational considerations, such as whether the referred client can be accommodated within the current client mix.¹⁰⁷ This is influenced by the fact that many refuges in Victoria still offer communal accommodation, rather than free-standing units.

The Victorian Government has 'not specifically funded refuges to operate 24 hour, seven days per week intake services', and it is not common practice for refuges to admit clients after hours.¹⁰⁸

Emergency accommodation

Women's refuges in Victoria also have access to 57 emergency accommodation properties (Crisis Accommodation Program properties), where refuge staff provide support to the women and children.¹⁰⁹ Women experiencing family violence can also gain access to emergency accommodation through the homelessness service system. In some instances, a refuge might transfer a family from a high-security refuge to a Crisis Accommodation Program property until alternative safe housing can be arranged.¹¹⁰

Ad hoc accommodation

When refuges are unable to take a woman she might be placed in ad hoc emergency accommodation (such as a motel) by Safe Steps, a homelessness service provider or a specialist family violence service. Rooming houses and caravans are other forms of ad hoc accommodation. Payment for ad hoc emergency accommodation is made from the Housing Establishment Fund, discussed shortly.

The demand for crisis and emergency accommodation

Data from the Australian Institute of Health and Welfare indicates that 5688 people came to homelessness services in Victoria in need of short-term or emergency accommodation in 2014–15 because of family violence.¹¹¹ Of this number, 1104 people (19.4 per cent) did not have this need met.¹¹²

Service providers consistently told the Commission that the demand for crisis accommodation exceeds the number of available places:

For many women and children, refuge accommodation is a supported and safe alternative to remaining at home or with family or friends; however, due to the scarcity of beds, the access criterion has become increasingly narrow. Sometimes women who are at extreme risk, are rendered ineligible, because the most recent incident of violence was more than a week ago. The criteria can prevent the use of preventative placement, for example, when a person who has used violence is about to be released from remand or jail.¹¹³

In 2014–15 Safe Steps placed about 450 women in refuge accommodation.¹¹⁴ Of this number, about 20 were placed directly in a refuge; the remaining 430 were placed in interim accommodation before gaining entry to a refuge.¹¹⁵ These figures do not include women experiencing family violence who might have found ad hoc emergency accommodation through a homelessness Initial Assessment and Planning service. Safe Steps also reported a 131 per cent increase in the number of women and children requiring high-security accommodation between March 2013 and March 2015.¹¹⁶

Submissions noted specific barriers faced by some groups of women. The Council to Homeless Persons submitted:

Women with children are often prioritized for access to crisis and transitional housing, in order to reduce the impact and harm of homelessness on the children. While these priorities are, in CHP's opinion, the right judgments, they nonetheless leave a gap in the service system for single women experiencing family violence. Indeed during CHP's consultations with consumers one participant noted 'I felt I became a person [to the service system] once I had children'.¹¹⁷

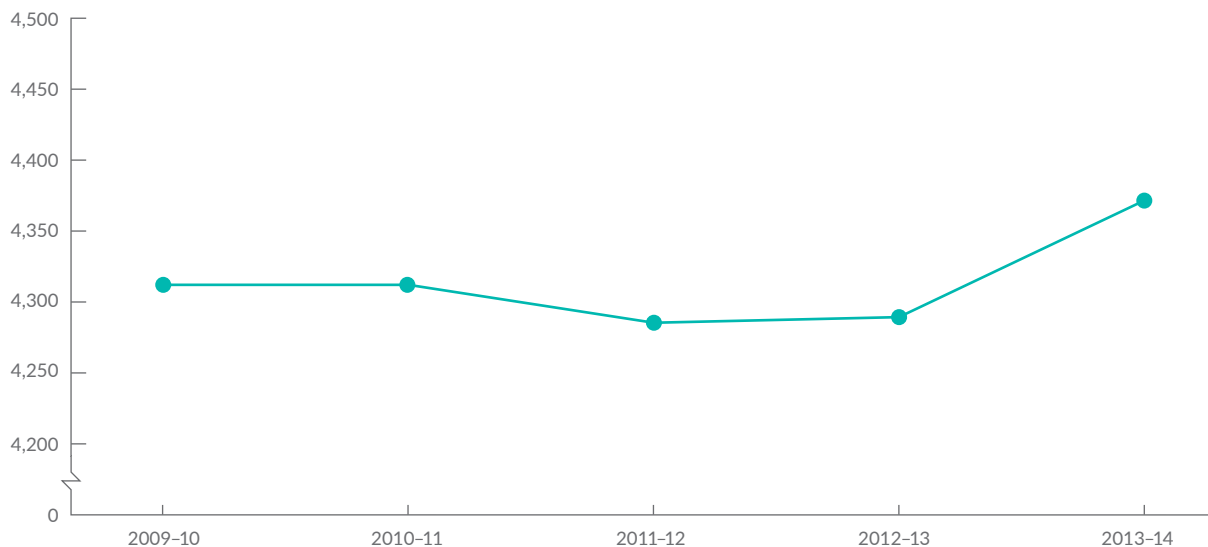
Investment and demand

There is no comprehensive statewide data on the level of demand for refuge places, so it is difficult to determine how well the system meets demand. It is, however, possible to examine how investment compares with increases in family violence reporting overall.

Information provided by the Department of Health and Human Services shows that funding for refuges and emergency accommodation remained substantially the same between 2009–10 and 2013–14 (see Figure 9.1). Refuges and emergency accommodation were funded to provide about 4372 'episodes of support' in 2013–2014 compared with 4312 in 2009–10, an increase of 60 episodes of support.¹¹⁸ The department advised the Commission that in 2014–15 it purchased 3695 episodes of support for crisis accommodation—a net loss of 677 episodes of support.¹¹⁹

In 2013–14 funding for crisis supported accommodation for family violence was \$12.6 million, representing 32 per cent of the total funding spent on all forms of crisis accommodation.¹²⁰ Overall, funding for crisis supported accommodation rose by an average of 3.8 per cent a year between 2009–10 and 2013–14, which is marginally above indexation.¹²¹

Figure 9.1 Family violence crisis supported accommodation (refuges): episodes of support, 2009–10 to 2013–14



Source: Based on Department of Health and Human Services, 'Royal Commission into Family Violence SAMS Data Request - 2009-2014' (1 January 2014) produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.

In the same period the number of formal police referrals for female victims to specialist family violence services rose by 317 per cent.¹²² Although many of these referrals would not require a refuge or emergency accommodation placement, the figure does provide an indication of demand growth overall. The number of L17 referrals (the Victoria Police family violence risk assessment and management report) to Safe Steps increased by 102 per cent in the same period.¹²³

The demand for and use of ad hoc accommodation

A strong theme that emerged in the evidence was that, because of the limited availability of refuge and other supported crisis accommodation, services increasingly rely on ad hoc emergency accommodation such as motels, boarding or rooming houses, and caravans.¹²⁴

The Commission received the following information:

- ▶ On average, 17 per cent of women referred to Safe Steps in need of crisis accommodation were told that there was no refuge vacancy that day.¹²⁵
- ▶ Safe Steps accommodates about 40 families in motels each night while waiting for a refuge placement.¹²⁶
- ▶ Between March and April 2015, 95 per cent of women referred to Safe Steps had spent at least part of their crisis accommodation stay in a motel.¹²⁷

This data does not include women placed in similar interim emergency arrangements by homelessness services or other specialist family violence services.

There is no statewide data on the average length of time women spend in interim accommodation, although the Commission was informed that many women are placed in motels for weeks rather than days.¹²⁸ In some cases women need to move between temporary options. Between March–April 2015, Safe Steps reported that, the average length of stay in a motel for women awaiting refuge accommodation was eight nights.¹²⁹

Domestic Violence Victoria noted that the number of refuges in Victoria 'has remained static for years'.¹³⁰ Further, the location of refuges 'reflects the historical need to relocate women and children out of their home location, rather than ... local need'.¹³¹

The Commission was told this situation is exacerbated in regional and rural areas as a result of the dearth, or sometimes total lack, of crisis accommodation. The Council to Homeless Persons gave evidence that there are no refuges or Crisis Accommodation Program properties in some areas, forcing rural women to move to the city to obtain crisis or refuge accommodation.¹³² During one of its community consultations the Commission heard that women and their children from rural areas were sent by train to refuge accommodation in Melbourne.¹³³

Ms Simone Doody, Senior Specialist Homelessness Services Worker at St Luke's, stated, 'All of the crisis accommodation in Echuca is provided by local motels and caravan parks: anywhere that we can find a bed. Finding crisis accommodation is probably one of our biggest problems'.¹³⁴

A number of providers noted that some motel operators are becoming less willing to accommodate referrals from specialist family violence or homelessness services, particularly in areas where other demand for accommodation is at a premium:

Most of the motels in Echuca are at 80+% capacity at any given time. They have plenty of money coming in and therefore don't really want or need to accept our clients. From time to time our clients may experience a break down in their supported accommodation arrangement, leading to refusal on the behalf of the provider to work with our service on future occasions.¹³⁵

Women and service providers consistently told the Commission that the use of interim accommodation compromised women's safety and left them feeling isolated and vulnerable,¹³⁶ especially if they are unable to obtain counselling and other support services provided by the refuge:¹³⁷

The motels! It's not the kind of environment where when you have just been bashed and tortured for a while to go and – it's depressing. I mean it's depressing. I got put on anti-depressants and I reckon it was probably the lowest point in my life, being there. It's a confined space. You don't have any cooking facilities. No washing up facilities. You are spilling water everywhere. No space ... you get frustrated! You wake up every day in that limbo that you know you have left him. You know you don't want to go back. You don't want to find an excuse to go back. But it's hard. The system is so hard to leave. I can understand why women go back.¹³⁸

These challenges were compounded for women who were living in motels and were accompanied by children. McAuley Community Services for Women submitted:

When accommodated in motel rooms, women report that they receive minimal support from services, usually only a phone call. They still feel unsafe and are isolated and unable to manage the emotional and material demands of children at that time. In addition the women have no space to think clearly while remaining in a state of trauma and chaos, and are unable to begin to plan next steps effectively. For accompanying children, the trauma continues as they watch their mothers under continued stress.¹³⁹

Evidence was put forward that the risks for women in smaller townships can be amplified because it might be easier for a perpetrator to find out where a woman is staying. In addition, the limited range of accommodation options means a woman could end up sharing a facility with a variety of people experiencing risk. The Commission was told of occasions when women were placed in a rooming house that also accommodated perpetrators (although not necessarily the perpetrator of that woman's violence).¹⁴⁰ In some cases women decide to return to violent relationships rather than stay in ad hoc accommodation:

Extortionate rental in a rooming house for a woman and her children, sharing with alcoholics and drug users or returning to the devil you know – it's not that big of a stretch to understand how women end up going back to their abuser when the options are so equally appalling.¹⁴¹

Costs of ad hoc accommodation

The main source of funding for ad hoc emergency accommodation is the Housing Establishment Fund. Homelessness agencies (some of which are also specialist family violence services) receive an annual funding allocation from the HEF. This funding was originally intended to assist people leaving homelessness and provide practical assistance such as transport and housing establishment costs.¹⁴²

The Commission was told, however, that '[a]s crisis services are often at capacity, Housing Establish[ment] Fund ... or similar brokerage funding is also used by homelessness and family violence agencies [to] fund temporary accommodation at motels'.¹⁴³

Demand for HEF funds was consistently reported as exceeding supply.¹⁴⁴ Providers said they had to ration funds to balance competing demands because this funding source is intended for a number of purposes. Ms Robyn Springall, Accommodation Services Manager, Northern Community Hub, VincentCare Victoria, gave the following evidence:

We maintain a daily budget for crisis accommodation, so that we do not run out of funds by the end of the month. If we overspend on the budget on one particular day, we will try to spend less, and only on crisis accommodation, not rent in advance or rental arrears, the following day. Nevertheless, if we need to, we will eat into the following month's budget to provide support to women and children, or anyone who is particularly vulnerable.¹⁴⁵

Barriers to obtaining crisis accommodation

Beyond the demand problems just described, the Commission was informed that some groups of women experience additional barriers to gaining access to refuges and crisis accommodation—because the current model does not meet their needs.¹⁴⁶ As a result, these women could be more likely to be placed in ad hoc emergency accommodation.

The groups most likely to be affected are women with disabilities; Aboriginal and Torres Strait Islander women; women without permanent residency; women with complex needs, such as drug and alcohol problems or mental illness; women with adolescent male children or with children of different ages; women with large families; and women without children.¹⁴⁷ The accommodation challenges these groups face are discussed here; the broader barriers they face are discussed in Chapters 26 to 31.

Safe Steps told the Commission that up to 35 per cent of all refuge providers had vacancies on any particular night.¹⁴⁸ It was said that one of the reasons for these vacancies is that refuge providers need to manage group living dynamics, particularly in the case of women with complex needs.¹⁴⁹ Safe Steps argued, however, that this is not the sole reason:

While there may be genuine reasons why a woman's circumstances do not exactly match the circumstances of the bed that is available the gap between women needing beds and women getting access to beds is too great to adequately be explained as a 'client matching' issue. Often beds are not available due to unwillingness by refuges to take clients at specific times or to take clients with particular high and complex service needs.¹⁵⁰

Women with adolescent male children

Although refuges are expected to provide support and accommodation for women and dependent children up to 18 years of age,¹⁵¹ the Victorian Government told the Commission it was aware that 'a small number of refuge services—particularly in communal settings—may restrict access to refuges for women with adolescent boys'.¹⁵²

Services reported that adolescent male children were commonly excluded from refuges, although this could be changed depending on the circumstances:

In theory the age limit on boys at the refuge is 12 years old. We have however taken boys older than that from time to time, depending on the individual circumstances and whether we are able to house them. For example, we had a child with an intellectual disability who we allowed to stay.¹⁵³

The Commission reviewed refugees' policies and found that approaches varied. Some refugees had 'a deliberate policy not to discriminate against women who have older accompanying male children',¹⁵⁴ whereas others said accommodation of children over 12 years of age would be assessed case by case, consideration being given to the safety of other residents and staff.¹⁵⁵ One refuge stated, '[M]ale children aged over 14 will not be accommodated in the communal refuge but may be housed in alternative crisis accommodation if available'.¹⁵⁶

The Victorian Equal Opportunity and Human Rights Commission advised the Commission that, although the exclusion of accompanying male children 'may prima facie constitute discrimination', exceptions under the *Equal Opportunity Act 2010 (Vic)* that allow refugees to discriminate on the basis of sex might apply.¹⁵⁷ As VEOHRC noted, however, refugees are under no obligation to apply the exceptions in the Equal Opportunity Act.¹⁵⁸

Women with complex needs

The Commission heard that women with complex needs have difficulty gaining access to refuges and crisis accommodation. For example, the Commission was told that some refuges will not accommodate women with mental illness or drug and alcohol problems¹⁵⁹ and that others have insufficient resources to adequately support women with complex needs.¹⁶⁰

This was particularly the case with communal refuges: service providers said they have to 'actively manage' who is accepted into a refuge and that, because of the communal nature of many refuges, a refuge can decline a referral for a woman with a mental illness if it is already accommodating other residents who have similar issues.¹⁶¹ Some refuges will only accept women with drug and alcohol problems if they have already detoxed.¹⁶²

Evidence was provided, however, that interim accommodation such as a motel is especially unsuitable for this group of women since they need additional supports in order to manage the range of difficulties they face. One worker told the Commission, 'we have high-risk, complex-needs clients but we have nowhere to put them'.¹⁶³

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 women experiencing mental illness can face barriers to entry into refuges as a result of a lack of capacity among staff to understand and respond to mental illness:

One such example is a woman who has to take a train to go to a refuge; during the train ride she has a panic attack and has to get out of the train. Her distress escalates and she is attended by a mental health team. The refuge refuses to take her, as it is believed she is not capable of 'looking after herself' and [living] independently.

...

[Another] example is a woman who told family violence workers that she felt watched by her partner but could not substantiate her claims. Workers believed this was part of her delusion due to her mental illness. After prolonged abuse, it was found out ... her partner had indeed installed cameras in the ceiling and filmed her.¹⁶⁴

Women without permanent residency

The Victorian Government advised the Commission that women without permanent residency are eligible for refuges and emergency and transitional accommodation.¹⁶⁵ Mr Rogers stated:

Similarly, we don't specify that a non-permanent resident is not eligible for a refuge; the fact [is] non-permanent residents are eligible for refuges and crisis and transitional accommodation. A refuge may make that decision based on the real difficulty that they might think about a person moving on to long-term housing, because a non-permanent resident is not eligible for public housing. But they are eligible for the refuge. They will make that call within the confines of their operational policy and based on the particular configuration of people they have in the house. It wouldn't be on a financial issue because refuges generally don't charge for accommodation.¹⁶⁶

Ms Springall stated, 'They might charge a service fee. But they will make that decision based on their own access policies within the broad family violence guidelines that exist'.¹⁶⁷

Nevertheless, the Commission was consistently informed in consultations and submissions that women without permanent residency or who are otherwise ineligible for social security benefits face difficulties obtaining refuge and crisis accommodation:¹⁶⁸ 'The women we see often have no income. We have had to impose a limit that we can only have two people who are on no income at the refuge at any one time'.¹⁶⁹

Victorian government guidelines allow service providers the discretion to apply full or partial rental subsidies for clients without income or with significantly reduced income.¹⁷⁰ The Commission found that some refuges charge a nominal amount for refuge services: at least one refuge policy manual states that all clients are required to pay a service fee of 10 per cent of their total income;¹⁷¹ another's fees were \$30 per woman per week, plus \$10 per child per week.¹⁷² Other refuges' policies note that fees are required only if the woman is in receipt of income and that this may be waived if the woman is paying rent elsewhere.¹⁷³

Safe Steps reported that over 80 per cent of the women and children accommodated in its emergency accommodation units have not been able to enter a refuge because they lack permanent residency and that these people remain in crisis accommodation twice as long as other residents.¹⁷⁴

Aboriginal and Torres Strait Islander women

At present there are three refuges specifically for Aboriginal and Torres Strait Islander women in Victoria.¹⁷⁵ As discussed in Chapter 26, community members and Aboriginal organisations stressed to the Commission that this is inadequate for responding to need, especially in view of the over-representation of Aboriginal and Torres Strait Islander women and children as victims of family violence.¹⁷⁶ There was also a very clear message that Aboriginal and Torres Strait Islander women were reluctant to use mainstream services because those services do not always provide a response that is sensitive to their culture.¹⁷⁷

Women with disabilities

The Commission heard that there is limited capacity to respond to women with disabilities who are seeking to leave a violent relationship. Evidence was also presented that women whose children have a disability face impediments, regardless of whether the disability is physical or non-physical.¹⁷⁸ One mother said, 'I can't go to a shelter with a daughter who is bipolar'.¹⁷⁹

Beyond physical access, some of the barriers to access crisis accommodation for people with disabilities are as follows:

- ▶ There are fewer 'exit options' for women with disabilities, which can mean refuges are less likely to accept these women.
- ▶ Some refuges do not accommodate women with a mental illness because of the nature of communal settings.
- ▶ Many refuges do not allow disability support workers on site because of security concerns.¹⁸⁰
- ▶ Services may not be able to meet the support or communication needs of the woman.¹⁸¹

Few refuges have full disability access. Women with Disabilities Victoria reported that, of the 31 refuges in Victoria, up to nine might accommodate women or children with a physical disability; of these, three are specifically for Aboriginal and Torres Strait Islander women.¹⁸² The Council to Homeless Persons noted, however, that access may be even more limited, with as few as three refuges being fully accessible:

For women with disabilities, finding crisis accommodation is even more challenging. Many family violence refuges were purchased by community organisations in the 1970s, and as such, few are built for purpose and only three are fully accessible for women with disabilities.¹⁸³

The Victorian Government informed the Commission that a works program of about \$900,000 was under way to modernise refuge facilities, including improving access for women and children with a disability.¹⁸⁴ It is not clear how many refuges will have full disability access at the completion of the upgrades.

Lesbian, gay, bisexual, transgender and intersex communities

Although in recent years there has been increased acknowledgment of LGBTI communities by specialist family violence services, the Commission was advised, '... family and intimate partner violence service provision remains inadequate to cater for the diverse circumstances that can arise in LGTIQ community contexts'.¹⁸⁵ Safe Steps and No To Violence gave evidence that many people in LGBTI communities believe they will not be treated fairly when reporting intimate partner abuse and using mainstream services because of the discrimination, homophobia and transphobia regularly experienced by their communities.¹⁸⁶

A particular barrier identified for these communities is the lack of crisis and emergency accommodation.¹⁸⁷ As noted in Chapter 30, the Commission heard that in one case a refuge required a transgender man to resume living as a woman in order to gain access to the service.¹⁸⁸ The experiences of LGBTI communities are discussed in Chapter 30.

Women without children, including older women

The Commission heard that the family violence system gives priority to women with children, making it harder for women without children to obtain crisis accommodation.¹⁸⁹ For example, one refuge's policy states, '[D]ue to the size of some bedrooms the number of single women accepted will be restricted to two at any one time'.¹⁹⁰

The Commission was told that, because of high demand, the assistance service providers can offer to women without children is limited:

When she contacted the Salvation Army, since she had no children with her, she was at the bottom of the list for housing; and they have the housing monopoly and there is no other group to provide housing options. They did give her three nights' accommodation in a hotel and then she bought a 2-man tent on an unpowered site. Three quarters of her money was going to pay for her camp site. She was there for nine months.¹⁹¹

One woman stated, 'I felt I became a person [to the service system] once I had children'.¹⁹²

The Commission also heard that older women face barriers when they seek crisis accommodation because the accommodation might not meet their specific needs; for example, it might not be fully accessible to someone with mobility difficulties.¹⁹³ The needs of older people are discussed in Chapter 27.

Life in crisis accommodation

Experiences of refuges

Refuges in Victoria

- ▶ Eighteen of the 31 refuges in Victoria are 'communal' facilities. Located on a single property, they have a communal kitchen and living areas and a number of bedrooms, one for each family unit (a woman and any children).¹⁹⁴ These facilities can accommodate a total of 69 families.¹⁹⁵
- ▶ Thirteen refuges in Victoria are 'dispersed', or 'cluster', refuges. These have several self-contained properties on one site or across dispersed sites and can accommodate at least 36 families.¹⁹⁶
- ▶ Twenty of the 31 refuges in Victoria are 'high security', meaning that their addresses are not disclosed on the housing database of the Department of Health and Human Services.¹⁹⁷

The Commission heard directly from many women about the experience of living in a refuge. Many gave positive accounts of their time, saying they felt safe and supported by refuge staff who validated their experience. Others highlighted the opportunity for peer support and being able to share stories with other women who have had similar experiences:

I left my husband three years ago and he never found me. I went to a refuge. It was the best system.¹⁹⁸

Support workers, they listen, validate, support and advise. For someone who has never been down the path before this is so helpful in making sure you follow through with required actions.¹⁹⁹

Some women, however, said they found the experience confronting and distressing both for them and for their children: ‘... the refuge house, it was really horrible. It was a nightmare. Living in an abusive relationship and in a refuge was one and the same thing.’²⁰⁰

Reflecting on her experience working in specialist family violence services, Dr Rhonda Cumberland, Chief Executive Officer of Good Shepherd Australia New Zealand, stated in her evidence to the Commission:

... we did offer women the option of going to a refuge, a very blunt instrument, took her away from her family, non-violent members of her family. It took her identity. It was the bluntest thing we could have done, and the impact was felt on women.²⁰¹

High-security refuges

DHHS told the Commission that 20 of the 31 refuges in Victoria are ‘high security’.²⁰² The addresses of these high-security refuges are confidential, although Ms Annette Gillespie, Chief Executive Officer of Safe Steps Family Violence Response Centre, noted that ‘the refuges have often been operational for generations and their whereabouts is often commonly known’.²⁰³

High-security refuges have additional eligibility criteria and restrictions, which differ according to the refuge. These restrictions are intended to keep women, children and staff safe and to ensure the refuge’s security. There was broad consensus that some women experience a level of risk that warrants a high-security response. There was, however, also criticism that high-security refuges hide women away and that we should instead be helping these people live their normal lives in safety.²⁰⁴

Women and children living in high-security refuges are asked not to disclose the refuge’s location and, depending on the individual refuge’s policy, might be expected to cease working and prevent children staying with them from attending school.²⁰⁵

Dr Holst described this:

[It is] hugely disruptive for the children’s education and wellbeing and adds to the trauma arising from family violence incidents. It also means that women do not have a steady stream of income, which could assist them in entering the rental property market. Additionally, real estate agents are more likely to house employed people.²⁰⁶

Evidence was provided that residents may not be allowed to have visitors at a refuge.²⁰⁷ Curfews can also operate. For example, one refuge’s manual states, ‘[I]n the interests of safety and security all women and children are requested to return to the refuge property by either the children’s bed time or curfew time of an evening, unless otherwise arranged with staff’.²⁰⁸

Another security measure involves switching off GPS devices in mobile phones so that a woman’s location cannot be tracked.²⁰⁹ At least one high-security refuge has a specific policy of accepting women only if parenting access arrangements are able to be ‘suspended, revoked or negotiated’ while the children are at the refuge.²¹⁰

Melbourne City Mission said these arrangements can be particularly difficult for young women, for whom connection to friends is a central part of their identity and an important protective factor:

... the requirement to cease contact with friends whilst in the 'safe house' environment and temporarily give up all that entails (for example, no mobile phone, no email, no social media) can, in itself, be traumatic. Some young women will not be able to comply with the requirements, and will leave.²¹¹

The Commission was told these measures are restrictive to the point where some women choose not to go to a refuge:

The strict security rules imposed at refuges are often another reason women avoid refuges. I understand that there are often a large amount of empty beds at refuges due to ... the rules, which, if breached once, can result in women being excluded from the refuge system entirely.²¹²

Communal refuges

More than half the refuges in Victoria are single properties, with a communal kitchen and living areas and bedrooms for each family unit (a woman and any of her children).²¹³ Opportunity Knocks told the Commission this style of living can be '... very challenging when mothers are trying to get children ready for school with limited facilities or there are women with divergent social and cultural needs or language backgrounds sharing the space'.²¹⁴ Others reported that the model suits some clients: '... however there are many who are deterred from entering [a] refuge as they prefer privacy or fear exposing their children to clients with drug and alcohol or mental health issues'.²¹⁵

As part of her research, Dr Spinney conducted interviews with women who had lived in refuges. She told the Commission:

... being in a refuge can be scary: they are noisy and you are thrown into this ... communal atmosphere, which is a marked difference from your home. Although refuges may have started off with a great feminist, collectivist ambition, it feels alien to many women to be suddenly cooking together, not to be deciding what to cook for their children and sharing all facilities. There will often be other residents who have quite chaotic lifestyles; who may be drinking or taking drugs, and so if you do not come from a chaotic household, they are actually very frightening environments. Women have told me that they will do virtually anything to avoid going into a refuge.²¹⁶

A number of submissions noted that some women choose to return home—possibly to a violent situation—because they find living in a refuge too stressful:

After 2 /3 weeks of living with the fear of not knowing if I had accommodation I decided it was actually more stressful living under those circumstances than back with [the perpetrator] so when he kept suggesting I returned I agreed.²¹⁷

On some occasions we have had to shut down the six bedroom facility for a period of time (usually two weeks), because we have had situations where some of the women were allegedly bullying others. We had to move those women on to other crisis accommodation.²¹⁸

The Commission was also told that the infrastructure of communal refuges means some families are not accepted if the make-up of the family does not reflect the bedroom capacity:

... one of the reasons can be that the provider may have a room that fits a women with three children and we might not have that make-up of family. We might have several families with a woman with one or two children.²¹⁹

Life as a child in a refuge

Many people stressed to the Commission that the prevalence of family violence, along with family violence's serious and long-term effects for children, means that a much greater focus is needed on developing age-appropriate practice and dedicated services for children and young people. Specialist family violence services have traditionally worked with children by providing safety support to their mother.²²⁰ Children have not been considered as 'clients' in their own right, even though their needs might not be the same as those of their mother.²²¹

Although there is no firm data on the number of children in crisis accommodation on any particular night, the Commission heard evidence that there are more children living in refuge accommodation than there are women.²²² Safe Steps estimates that 37 per cent of women they accommodate have children with them and that as many as half of all people they place in accommodation—refuges, emergency accommodation, motels or other ad hoc accommodation—are under 18 years.²²³

Dr Spinney gave evidence about life in a refuge for children:

Refuges are not environments where children are able to prosper. It is important for very young children to have friends and family, however when they enter a refuge, they are forced to change their kindergarten and no longer know their neighbours. If they are older and in school, we know that it is much better for children for that schooling to remain constant. There are often further changes when families move on from the refuge to transitional or private rented accommodation.²²⁴

Submissions also noted that being housed in high-security refuge accommodation disrupts children's connection with school and friends, which in turn can influence women's decisions about whether to stay or return home:

These children sometimes arrive in school uniforms as that was the easiest and safest way for them to be "plucked out" to safety in high security refuge. It does not take long for the children to start crying about missing the school excursion the coming Friday or worrying about what their friends will think that they have gone missing. Such pressure on a traumatised mother in crisis goes a long way to explain why many women return home. We [refuge staff] are kind and friendly but we are not their friends and family and the refuge does not smell like their bedroom at home.²²⁵

Domestic Violence Victoria stressed that long-term recovery from the impacts of family violence is strongly influenced by the degree of safety and stability that women and children experience post-separation.²²⁶ The Commission was told that living in ad hoc accommodation such as motels and moving between different crisis accommodation types and locations added to disruption and trauma for children. Similarly, a lack of service capacity to offer therapeutic support to children can aggravate harm.²²⁷ Dr Spinney said the 'very temporary nature' of refuges and other crisis accommodation also makes these places unsuitable for children:

They are really designed to only be in there in blocks of six weeks. It is often much longer than that, but it's normally not more than a year. If you are living in that kind of situation, it's not home, because you know that you are going to move on at any moment ... it's moving away from everything that you knew and knowing that you can't put down roots there in terms of local schools, et cetera, because you are going to be moving on again very shortly.²²⁸

The Commission was informed that in refuges' policies there is increasing recognition of the importance of trying to meet children's specific needs. For example, many refuges' policies state that the refuge will provide a safe, welcoming area for children, with toys, books and other activities, and will involve children in safety planning and other decision making where appropriate and with their mother's consent.²²⁹ Programs such as the Babies in Refuge training resource were also described in submissions, although it was also noted that funding for training is needed in order to maximise the effectiveness of such resources.²³⁰

The Commission understands that some refuges have staff whose role is to work with children. It is not possible, however, to determine from the information provided by the Victorian Government how many of these positions exist and whether this is the primary function of the role or if refuge staff build this capability onto their work. Where there are such staff, this activity does not appear to be funded as a discrete function with dedicated resources.²³¹ For example, Kara House submitted:

We are not funded to provide services for children. We do provide services for children, however, by virtue of our limited funding this does not cover the needs of the children we accommodate. Funding refuge services would allow us to employ a qualified children's worker, provide therapeutic groups for children and improve the parenting of mothers.²³²

The experiences of children and young people are discussed further in Chapter 10.

New types of refuges

One alternative to the communal refuge model is the 'core and cluster' model, which has been introduced in all refuges in South Australia.²³³ In Victoria, similar arrangements are called 'dispersed' or 'cluster' models. At present 13 of the 31 Victorian refuges are cluster-style on one site or dispersed across sites.²³⁴

A core and cluster is a set of individual units on a piece of land, together with office space or workers' space and communal activities areas for residents.²³⁵ The site allows for independent living while also providing comprehensive support services for women and children. The model offers families privacy while allowing them to connect and be supported as they wish. Families effectively have their own home.²³⁶

One Victorian example is Meminar Ngangg Gimba, which is in Mildura and is run by Mallee District Aboriginal Services.²³⁷ The Commission visited Meminar and a cluster refuge in South Australia as part of its program of site visits.

In the case of Meminar, Aunty Janine Wilson, Chairperson, Northern Loddon Mallee Indigenous Family Violence Regional Action Group, explained that the facility was established because Aboriginal and Torres Strait Islander women fleeing violence were not able to obtain mainstream services for a variety of reasons, including difficulties with communal refuge models.²³⁸ Several features distinguish Meminar from other crisis response services.

First, the service provides a holistic case-management response, based on the Victorian Indigenous Family Violence Task Force definition of 'family violence'. Aunty Janine commented that they therefore call Meminar 'a women's response, not a women's refuge'.²³⁹ There is no limit to the amount of time women and their children can stay at Meminar. Services such as health and housing services and Centrelink are provided on site, and women and children are able to maintain relationships with external support organisations and case workers.²⁴⁰

Secondly, the Meminar facility is based on a cluster model and has six individual units. Each unit is fully furnished and self-contained, with a kitchen and bathroom.²⁴¹ The unit design is flexible, so that units can be joined to accommodate larger families. This is particularly important for Aboriginal and Torres Strait Islander women, who might be caring for extended family.²⁴² Thirdly, unlike most mainstream refuges, Meminar's location is not kept secret.²⁴³

Meminar also works closely with men's behaviour change programs and services, so both men and women receive assistance and the services talk to each other.²⁴⁴

The Commission observed that the communal spaces are used to run group programs for women and children that focus on violence and its effects and help build self-esteem and confidence, re-establish the bond between mother and child, and build women's capacity to reach financial independence and so break the cycle of violence and poverty. At the South Australian site the Commission visited, these programs are provided in partnership with other regional government and non-government service providers, among them Centrelink, legal services, vocational education services, children's services, psychologists and health services.

As noted, women and children can sometimes be excluded from refuges as a result of personal circumstances such as disability, mental illness, substance dependency, and when adolescent boys accompany their mother. Ms Maria Hagias, Executive Director, Central Domestic Violence Service, South Australia, gave evidence that because there is no communal living in a cluster refuge there is much less likelihood of a women being refused access, and blanket exclusions do not apply:

We don't have age limits for children, or curfews. We don't have rules around drug[s] and alcohol ... some women using our services will present with mental health issues and drug and alcohol issues. Our role is to work with them and support them to address those issues. The only rules that we do have are based on behaviour. Women are required to engage with their domestic violence case manager regularly, and we don't tolerate violent, aggressive or intimidating conduct.²⁴⁵

Ms Hagias also noted that security features were provided for the different sites:

[One site] resembles a retirement village ... The women have a security code to come in and out and women can drive their cars into the complex, which keeps them off the street and provides another level of security. [At another site] all of our properties face the street and there are no high fences, although fences separate each property. Every unit at that site has a duress alarm that goes directly to a security company. We also have security screens on the external windows and doors.²⁴⁶

DHHS gave evidence that the cluster model is now the preferred approach in Victoria. With the exception of one communal refuge that is being funded for conversion into cluster form,²⁴⁷ at present there is, however, no program of funding for the redevelopment of existing communal refuges.²⁴⁸ The department advised that the estimated cost of converting the remaining communal refuges to the cluster model is about \$70 million—an average of \$3.85 million for each refuge rebuild, excluding land costs.²⁴⁹

Post-crisis housing options

Refuges were established as a short-term option for supporting women and children during the immediate crisis period. The model is based on the premise of a woman staying in a refuge for about six weeks, then moving on to transitional housing for an interim period of up to 12 months, and then going to long-term accommodation such as public housing or private rental.²⁵⁰ The Commission heard evidence, however, that, 'In practice, bottlenecks in the system form at the point[s] of entry into refuge, transitional and long-term housing, preventing the system from flowing as is intended'.²⁵¹

Services reported that women and children are staying in refuges for increasingly longer periods. Women's Liberation Halfway House reported stays of up to five or six months in refuge and that 'targets for numbers of women served cannot reasonably be met'.²⁵² Other service providers reported similar lengths of stay:

Women and children now stay in refuge often for 12 weeks or longer and our support of clients in transitional housing can stretch 5 years or more.²⁵³

Most of the people on the transitional housing prioritisation list will never receive it. Last month we had ten vacancies, or ten new tenants in, from a waiting list of over 400.²⁵⁴

This backlog was identified as a major contributor to the long-term use of motels and other ad hoc arrangements.²⁵⁵

Victims said that the pressure to clear backlogs and 'move them on' left them without adequate support:

I'm grateful that I've got my safety but it's not fair. I still don't have any support and I have to do it all on my own. The refuge system was amazing but then they cut me loose because there are women waiting in motels.²⁵⁶

A number of factors were identified as contributing to the backlog—in particular, the lack of transitional accommodation and permanent affordable options either in the private rental market or in social housing. Eastern Domestic Violence Service informed the Commission:

Rents are high requiring women to often spend more than 55% of their income on accommodation making them ineligible for bond assistance and rent in advance from Centrelink as the tenancy is considered to be unsustainable. The high cost of alternative accommodation is a major factor in a woman's decision to remain in a violent relationship. Even when the woman can access transitional housing (which is in short supply), the expectation is that she will move into more permanent accommodation. The Centrelink crisis payment is not sufficient to even rent a cabin in a caravan park in the Eastern Region. Public housing is often not a viable option due to the extensive waiting list, even for priority housing. It is common for women to wait 8–15 months (or longer for women with many children, or special needs) for priority public housing. It is also disruptive for the family as they may settle into the community where the transitional property is, and then often have to relocate to a new area for the public housing.²⁵⁷

These matters are discussed briefly in the following sections. Options for clearing this backlog and providing viable housing solutions for victims of family violence are examined later in the chapter.

Transitional housing

Transitional housing

Transitional housing properties are either owned or leased by the Director of Housing, an officer of the Victorian Government. They are administered by community service organisations that are funded to manage tenancies—arranging minor maintenance, ensuring that those in greatest need have access to transitional housing properties, negotiating and monitoring tenancy and occupancy agreements, collecting rent, and working collaboratively with organisations helping tenants to sustain their tenancies.

The current supply

Data from DHHS shows that the number of transitional housing properties has decreased in recent years. Between 30 June 2010 and 30 June 2014 the total number of such properties in the state decreased from 3703 to 3667.²⁵⁸ Subsequent information from the department showed a further reduction in transitional housing properties with 3571 properties as at September 2015.²⁵⁹ Of these 3571 properties, 206 were allocated for crisis housing, 843 were allocated for specific groups (such as people with alcohol and drug problems or with mental illness) and 2522 were 'generalist'.²⁶⁰ There are no transitional properties solely for people who have experienced family violence.²⁶¹

DHHS advised the Commission that data relating to demand or unmet need for transitional housing is not collected consistently across all agencies.²⁶²

Eligibility for transitional housing

The Commission heard that, because there is no dedicated transitional housing for women escaping family violence, women are forced to 'compete' with people experiencing homelessness for access to these properties. At a community consultation in Gippsland the following was noted:

Two or three workers putting families up for the same property. Up against homelessness applications. So competitive for the transitional houses. Safe houses are backed up and trying to fund emergency accommodation in motels.²⁶³

A person needs to be linked to a support service in order to be eligible for a transitional property.²⁶⁴ In cases involving family violence, this support is generally delivered by specialist family violence services funded to provide 12 weeks of support (or 26 weeks in the case of intensive case-management services).²⁶⁵ Support workers' focus tends to be on stabilising housing before dealing with other things. Ms Springall stated:

In my experience, this is what works best for most people: if someone is uncertain about where they are going to be sleeping that night, or they're worried about their immediate safety and accommodation, then it is difficult for them to grapple with other issues.²⁶⁶

The Commission was told that, because of extended waiting times for transitional housing, there is a tension between the requirement for transitional housing applicants to be connected to a service and the length of time services are funded to provide assistance. In reality, women can be left in crisis accommodation with minimal support.²⁶⁷ We were also told that people who maintain an ownership interest in the family home are not eligible for transitional housing.²⁶⁸

Life in transitional housing

The Council to Homeless Persons described some of the negative outcomes for women and children living in temporary accommodation. It stated that the structures of homelessness and housing services can exacerbate the women's and children's disconnection from important people and social supports and connections:

Children may face two or three school moves within a year due to their changing housing circumstances: firstly on entering a refuge, then on exiting refuge into transitional housing, and then exiting transitional housing into either private or public housing. There have been efforts to minimize this disruption, by swapping a transitional housing property to a public housing property in some regions, or investing in private rental brokerage programs. However these practices are not routine, and are limited by the availability of public housing properties to swap and private rental brokerage packages to deliver.²⁶⁹

The Council said that, although services make every effort to limit this disruption, 'these are individual "work arounds" rather than systemic interventions'.²⁷⁰

Transitional housing was initially introduced as a way of helping to stabilise people experiencing homelessness before they gained long-term housing, such as public housing or private rental.²⁷¹ Mr Rogers told the Commission that '[l]engths of stay in transitional housing should be from three months, generally up to 12 months, with stays of up to 18 months for young people, where required'.²⁷² The Commission was informed that, although transitional housing used to be a pathway out of crisis accommodation, this is no longer the case.²⁷³ 'Blockages' in the system and a lack of exit points mean that transitional housing tenancies are now much longer than originally intended: while the average tenancy is about 12 months,²⁷⁴ in some cases it can extend up to two or three years.²⁷⁵

We will often have clients living in transitional housing for anywhere between 12 months and two years: the movement through these properties can be slow. We are finding that our clients get stuck in those properties, waiting for public housing or a suitable alternative.²⁷⁶

The Victorian Government advised the Commission that a recent audit of lengths of stay in transitional housing showed that over one-third of these properties are tenanted for more than a year and 4.3 per cent are tenanted for more than five years.²⁷⁷

Some submissions called for additional transitional housing properties, recognising that if the system worked as intended transitional housing would play an important role in providing short-term accommodation while longer term housing is secured.²⁷⁸ Because of the significant lack of long-term accommodation options, however, others argued that it is difficult to know whether the current transitional housing response is adequate. The Council to Homeless Persons stated:

The shortage of long-term properties creates a bottleneck in different parts of the system: people are stuck in transitional who should be in long-term; people are in crisis because they can't get into transitional; and people are in hotels because they can't get into crisis. It is not flowing as it is supposed to be. If the system was flowing, we might find that there is enough crisis and transitional accommodation, however we suspect there is not, because the number of those properties has not kept pace with population growth.²⁷⁹

Long-term housing

Social housing

Because it is affordable and offers security of tenure, social housing is essential for those who are at risk of longer term struggles to sustain housing. Victoria's social housing provides subsidised rental housing for people on low incomes. The accommodation response to women escaping family violence was designed with social housing as a major destination following transitional housing.

Types of social housing

There are two types of social housing in Victoria.

Public housing is delivered by the Office of Housing in the Department of Health and Human Services. Rent is capped at 25 per cent of combined eligible household income, with the amount of rent payable formally determined by calculating market rental value and applying a rebate (discount) to ensure rental payments do not exceed 25 per cent.²⁸⁰ Public housing tenants are not eligible to receive Commonwealth Rent Assistance.

Community housing is delivered either by housing associations or by housing providers who manage Director of Housing-owned properties that have been allocated to a community group for management.²⁸¹ Income and asset limits are generally higher than those for public housing, although community housing tenants generally pay no more than 30 per cent of their combined household income.²⁸² Tenants are also eligible to receive Commonwealth Rent Assistance. Housing associations are required to accommodate 50 per cent of people who would be eligible for public housing.²⁸³

Social housing accounts for less than four per cent of the total housing stock in Victoria.²⁸⁴

Current supply

The majority of the social housing stock in Victoria is public housing, which, as noted, is administered by DHHS. The Commission received evidence that Victoria has less public housing per capita than the national average.²⁸⁵ Australian Bureau of Statistics data for 2013–14 shows that Victoria has the lowest proportion of public housing residents across all states and territories: 1.9 per cent of people in Victoria live in public housing compared with the national average of 3.2 per cent.²⁸⁶ Mr Rogers explained that this difference is partly a result of historical policy differences, which began when the then Victorian Housing Commission sold many thousands of properties to tenants.²⁸⁷

- ▷ In 30 June 2014 there were 85,199 social housing properties in Victoria—including 64,886 public housing properties.²⁸⁸
- ▷ The Victorian Government advised the Commission that it expects a net reduction of 84 social housing properties in 2015–16.²⁸⁹

Department of Health and Human Services data (see Table 9.1 below) shows that social housing stock levels have remained largely static in the past decade, with average annual growth of 1.3 per cent between 2006 and 2014. The majority of this growth occurred in 2010–11, coinciding with the Nation Building Economic Stimulus Plan.²⁹⁰ While the overall social housing stock base has grown by 10.6 per cent since 2006–07, the public housing component has, however, had a net decrease of 267 properties (see Table 9.1).

Table 9.1 Public housing and total social housing dwellings in Victoria, 2005–06 to 2013–14

| Housing type | 2005–06 | 2006–07 | 2007–08 | 2008–09 | 2009–10 | 2010–11 | 2011–12 | 2012–13 | 2013–14 |
|--------------------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| Total public housing dwellings | 65,244 | 65,307 | 65,167 | 65,207 | 65,437 | 65,352 | 65,183 | 65,031 | 64,886 |
| Total social housing dwellings | 77,048 | 77,456 | 78,004 | 78,646 | 80,955 | 82,974 | 83,789 | 84,863 | 85,199 |

Source: Based on data provided by the Director of Housing, Department of Health and Human Services: Statement of Rogers, 20 July 2015, 4 [18], [21].

Eligibility

At present there is no common waiting list or access point for social housing.²⁹¹ Community housing is obtained by applying to individual providers, who each maintain their own records—which may or may not include a waiting list—and use varying systems.²⁹² The Victorian Government has, however, announced its intention to move to a single waiting list for all social housing, so that ‘it is totally visible to the whole sector in terms of what the availability of resources [is]’.²⁹³

To be eligible for public housing, applicants must satisfy the following criteria:

- ▷ live in Victoria and have Australian citizenship or permanent residency status
- ▷ not earn or own more than the current public housing income and asset limits
- ▷ not be subject to Centrelink’s two-year waiting period for newly arrived migrants
- ▷ not own or part-own a house, unit or flat
- ▷ repay any money that is still owed from a previous public housing tenancy or bond loan
- ▷ provide the required proof of identity, residency status, and income and other documents.²⁹⁴

There are, however, exemptions to these requirements, and some of them relate specifically to family violence. For example, the requirement to be resident in Victoria is waived for those escaping family violence in other states.²⁹⁵

Public housing operates a ‘segmented early housing waiting list’ with the aim of making public housing available to those most in need.²⁹⁶ There are four ‘segments’ of the waiting list, the top three comprising the Early Housing allocation:

- ▷ homeless with support (highest priority segment)
- ▷ supported housing
- ▷ special housing needs
- ▷ wait turn (lowest priority segment).²⁹⁷

Applicants on the Early Housing waiting list are allocated housing before others on the waiting list. There are several sub-categories in the Early Housing allocation.²⁹⁸ The two sub-categories that most directly apply to women experiencing family violence are as follows:

- ▷ 'Homeless with support' applies to people who have no alternative housing options and are receiving support from a government-funded service—for example, women living in crisis accommodation arranged by a family violence service or living in transitional housing or other housing managed or arranged by a crisis service.
- ▷ 'Special housing needs' applies to people who are living in housing that has become unsuitable. Women experiencing family violence are eligible under 'Insecure housing' for those who are living in transitional, emergency or crisis housing or temporarily with friends or relatives. This does not require support to the same level as those in the 'Homeless with support' sub-category or under 'Unsafe housing', when a member of the household is facing actual or a serious threat of physical danger or family violence.²⁹⁹

Evidence was presented to the Commission that a woman living at home with the perpetrator of family violence or living temporarily with friends or family is not necessarily at lower risk of family violence than a woman living in a refuge and that allocating housing support to those 'most in need' is particularly problematic in the context of family violence because 'need' does not necessarily equate to 'risk':

Many requests for assistance with public housing ... are usually for or by women who have an underlying issue such as family violence ... anecdotal evidence suggests that women are unable to remove themselves from violent situations due to a lack of alternative accommodation; the catch 22 being they are unable to get on a priority housing list while they are still in existing accommodation, on the other hand they don't wish to forecast their intention to their partner or leave before they have guaranteed accommodation.³⁰⁰

A Department of Health and Human Services review of the allocations policy found that the system could be changed to improve outcomes for homeless people by, among other things, 'prioritising individuals and families who are homeless due to family violence, as it continues to be a major contributor to family breakdown and homelessness in Victoria'.³⁰¹

Waiting lists

There were 41,953 applications on the Victorian public housing waiting list at 30 June 2014; this included 7321 existing tenants who were seeking a transfer.³⁰² Department of Health and Human Services data shows that almost 400 of the 41,953 applicants had included family violence as a circumstance associated with their application.³⁰³ About one-third of all public housing applicants were on the Early Housing waiting list (13,184); of these, 6.4 per cent (840 applicants) were in the 'Unsafe housing' sub-category (see Table 9.2).³⁰⁴

Although the data suggests that the number of people seeking public housing who have experienced or are experiencing family violence is low, this is not consistent with the evidence the Commission received through consultations and in submissions: it was consistently stated that women were waiting long periods to obtain public housing.³⁰⁵ The Commission is unable to reach any conclusions about the level of demand on the basis of this data: the figures might represent poor identification or recording of family violence on application forms, poor data management, or the fact that people might be deterred from applying for public housing because of the extensive waiting lists.

Table 9.2 Applicants for public housing identifying family violence as a circumstance associated with their application, 30 June 2010 to 30 June 2014

| Applicants | 2010 | 2011 | 2012 | 2013 | 2014 |
|---|--------|--------|--------|--------|--------|
| Total number on waiting list (new and transfers) | 50,674 | 45,936 | 44,201 | 43,043 | 41,953 |
| Number who have family violence included in circumstances associated with their application (new and transfers) | 379 | 445 | 443 | 417 | 394 |
| Number on the Early Housing segment of the public housing waiting list, including transfer list (applicants) | 12,051 | 13,185 | 13,356 | 13,623 | 13,184 |
| Number in the 'Unsafe housing' category of the Early Housing segment (applicants) | 889 | 935 | 939 | 888 | 840 |

Source: Based on Department of Health and Human Services, 'Query 72' (1 January 2014), Tab: Question 72; Department of Health and Human Services, 'Query 74' (1 January 2014), Tab: Question 74a, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.

The Commission also heard that there has been a decrease in the allocation of public housing stock generally as people stay in tenanted properties for longer periods. Turnover is slow and few vacancies arise:

The number of allocations to public housing has declined over the last decade due to fewer vacancies being available as tenants are staying in properties longer. For example, in 1999–00, 11,051 new households were allocated public housing. In 2004–05, 8,125 households were allocated public housing. In 2013–14, this number was 5,715 allocations, representing a decline of almost 30 per cent since 2004–05.³⁰⁶

Waiting times

A strong theme in submissions was that long waiting times for public housing mean that the family violence response system is blocked because of the lack of accommodation options, leaving women and children in 'limbo' for long periods:

After the crisis has passed, there are limited housing options to exit refuge: many wait many months for a THM (transitional housing management property) and often years for a permanent OoH (Office of Housing Property). Although children are linked into schools and child care temporarily whilst they are in refuge & THM, [women] are unable to resume their life fully as they do not know where they will be located. Women and children are in limbo for too long and they are therefore unable to participate fully in the community. Currently the long waits mean that women and children are still being affected by the violence years later due to homelessness.³⁰⁷

One family violence victim told the Commission:

I've been on public housing lists for years. I've been on transitional housing for three months. There's no choice – either stay homeless, or deal drugs to pay for private rental. Once you go into private rental you lose your spot on the public housing list.³⁰⁸

The Victorian Government advised the Commission that in 2014–15 the average waiting period for Early Housing allocation was 9.5 months.³⁰⁹ For those waiting for a house with four or more bedrooms, however, the waiting time was 16.6 months.³¹⁰

Calls for investment

DHHS provided to the Commission information showing that the level of expenditure on public housing acquisitions and renewal has declined in recent years, from \$462.8 million in 2009–10 to an estimated \$131 million in 2014–15.³¹¹

The Commission was informed that the private rental market will never be a viable option for some victims of family violence, so investment in social housing is particularly important:

Some women managing complex traumas, who have other complex needs, or have been unemployed for some time may not be able to sustain housing in the private rental market. For these women, public housing and community housing is, and should continue to be, the most appropriate housing option. Unfortunately the construction of social housing hasn't kept up with demand or population growth ... We must reverse this trend in order to provide long term affordable housing for women escaping family violence.³¹²

Submissions and consultations showed strong support for a substantial expansion of social housing in view of the scale of the current blockages in the system and the associated consequences for women who have experienced family violence. The submission from the Council to Homeless Persons, which was endorsed by 128 other organisations, called for the establishment of an affordable housing growth fund of \$200 million a year.³¹³ It stated that investment at this scale would produce about 800 additional units of accommodation each year.³¹⁴

The Commission observed that such an injection of emergency funds would be less than that under the previous Nation Building Economic Stimulus Plan, which had a stock growth rate of about two per cent a year. Applying a two per cent growth in stock would deliver an extra 7300 units of accommodation over four years, or about 1825 units a year.³¹⁵

Another suggestion for increasing the supply of affordable rental housing related to the use of 'inclusionary zoning'.³¹⁶ Inclusionary zoning is a planning law mechanism that requires contributions from land developers as a condition of development consent, in the form of either units of affordable housing or an equivalent monetary amount.³¹⁷ These schemes operate to a limited degree in some other Australian jurisdictions and are widespread internationally, particularly in the United Kingdom and the United States.

The Commission notes that the Victorian Government's Plan Melbourne Refresh process is actively considering this idea as well as broader proposals for improving the supply of social housing.³¹⁸ For example, in March 2015 the government announced its intention to trial inclusionary zoning for land it sold in a policy that could require 10 to 15 per cent of new construction to be affordable for first-home buyers and low-income families.³¹⁹

Future directions for social housing in New South Wales

Released in January 2016, the New South Wales Government's report *Future Directions for Social Housing in NSW* signals the government's commitment to expand and diversify the options for people requiring housing assistance. There are three strategic priorities:

- ▶ more social housing—expanding the social housing supply and optimising planning settings and infrastructure
- ▶ more opportunities to avoid and/or leave social housing—improving access to the private rental market, expanding the affordable housing supply, and supporting people in pursuing work and educational opportunities
- ▶ a better experience in social housing—access for priority clients, housing stability, ensuring suitable, safe and quality housing, and high-quality customer service.

The report states that these priorities will be achieved in several ways:

- ▶ by significant expansion and redevelopment of stock through partnerships with private sector developers and finance—including through the Social and Affordable Housing Fund
- ▶ by transferring significant tenancy management responsibility to non-government housing providers
- ▶ through 'wrap around' services to support tenants in building their capabilities—such as education, training and employment opportunities
- ▶ by increasing the use of private rental assistance.

Public housing tenants and family violence

Although public housing provides important security for people without other housing options, there are still difficulties for people who experience violence while living there. The Commission was told that the public housing system is not able to respond quickly and flexibly to the needs of women and children experiencing family violence.³²⁰

If a public housing tenant is forced to leave the home because of the risk of family violence, this can have implications for her continuing tenancy. One woman informed the Commission:

I am [at] risk of homelessness all the time. I am currently lucky enough to be in a DHS house. However my abuser claims that he knows my whereabouts. I am at risk of having to pack up and run again. This will put myself and children in abject poverty and homelessness again. We need special circumstances for maintaining our DHS houses if we need to be away from the residence for extended periods of time (in refuges). Currently it is only a four week absence from a DHS house which will cause them to evict you.³²¹

DHHS released a temporary absence policy statement on 21 September 2015.³²² Under the new policy, if a person is a victim of family violence and is forced to leave their home, they may be afforded 'special circumstances' and permitted to pay a reduced weekly rental of \$15 for the duration of the absence (up to six months).³²³ This is in recognition of the financial hardship experienced by tenants who might have no income during the time they are absent and might also be expected to pay temporary accommodation costs somewhere else, such as in a refuge.³²⁴

The Commission also heard of cases where women accrued debt for damage to public housing property caused by the perpetrator. The DHHS Office of Housing's policy statement on property damage was amended in October 2015 and now provides as follows:

The Department accepts that there are circumstances where damage to the property occurs and the tenant is unable to prevent it. In these instances, such as family violence where the perpetrator of the violence caused the damage to the property or the damage is caused by a natural disaster, the Department will not charge the tenant for the costs of repairs.³²⁵

The Department will generally not claim costs from the tenant for property damage if the damage was caused by:

- An accident or actions which could not be reasonably prevented, taking into account the individual needs or circumstances of the tenant or the household members remaining in the property, for example, the tenant has a disability or is a victim of family violence ...³²⁶

Where family violence is involved, the Department accepts advice from the victim's family violence worker or other relevant support worker as sufficient evidence to support the victim's claim.³²⁷

There are similar statements in the more detailed Office of Housing operational guidelines.³²⁸

In one case, the Commission heard that a woman was prevented from transferring to a safer property because the Office of Housing requires that debts be cleared before it approves transfers:³²⁹

She remained in the house with her children and tried to get her ex-partner to take his name off the lease as per Office of Housing (OoH) policy, he refused. Her ex-partner regularly returned to the house vandalising the property, including smashing windows. On each occasion she contacted police and a report was done. She has also applied for a transfer out of the area in an attempt to avoid any further contact with the ex-partner.

Ms A was denied a transfer because she was deemed to have a debt to the OoH because too many windows had been smashed and replaced, so the OoH was charging her for the replacement of the glass. Due to the high rental she was paying she could not afford to pay this debt, therefore remained living in the house in fear and desperation. With a growing debt and no ability to transfer to another area she could see no way out of this unacceptable situation.³³⁰

At present tenants wishing to transfer have to wait for extended periods as transfer applicants are allocated properties in turn with those on the general waiting list. The Commission was informed that in practice this means that many women abandon their properties.³³¹

Service providers told the Commission that since the guidelines for the Social Housing Advocacy and Support Program were amended in 2012 they have been unable to advocate on behalf of tenants in relation to property maintenance or damage.³³² It was argued that 'in the case of family violence this can have serious implications for tenants retaining their homes' and that this function should be restored.³³³

The Council to Homeless Persons emphasised that transferring between public housing properties can be a very lengthy process and that the long waits can lead to women abandoning their properties. The Council suggested that another way of managing transfers requested because of family violence might be to allocate vacancies to transfer applicants first and then allocate to the vacated property from the waiting list. It argued that this would 'essentially give transfers priority but would not disadvantage those on the waiting list overall'.³³⁴

The private rental market

The other housing option available to victims of family violence is the private rental market which accounts for about 22.6 per cent of total housing stock in Victoria.³³⁵ This can include staying at home when the perpetrator is excluded, on leaving a violent situation, or after time spent in crisis or transitional housing. The Commission heard that the private rental market 'plays a central role in both resettlement and in providing medium term housing options for women affected by family violence'.³³⁶ The high cost of private rental accommodation can, however, make it difficult for many women to obtain and maintain a tenancy.

Access to the private rental market

A number of submissions made the point that, although private rental can offer choice and flexibility for many women escaping family violence, it remains out of reach for many because of multiple and intersecting barriers.

Affordability

The Commission heard that, even with the availability of Commonwealth Rent Assistance, the vast majority of low-income private renters remain in 'housing stress', which occurs when a person pays more than 30 per cent of their income on housing costs.³³⁷

Melbourne City Mission submitted that rental unaffordability is particularly acute in metropolitan Melbourne.³³⁸ It reported that total average female earnings in Victoria (full-time and part-time earnings) amount to \$843 a week and that income at this level would only secure affordable housing (under 30 per cent of weekly income) in seven out of 30 municipalities in Melbourne for a one-bedroom property.³³⁹ 'For every other housing type a woman would be paying more than a third of her income on rent'.³⁴⁰ The council noted that this 'highlights not only the challenge of finding housing, but the challenge of sustaining it'.³⁴¹

The Council to Homeless Persons also informed the Commission that for women relying on Centrelink payments 'only [three] in 100 two bedroom homes would be affordable to a single parent with one child, and less than one in two hundred would be affordable to a single woman on Newstart'.³⁴² Anglicare Victoria's 2015 rental affordability snapshot presented a similar finding. It showed that less than 0.1 per cent of rental properties in metropolitan Melbourne are affordable for single parents relying on the single parenting payment, and only 0.8 per cent of rental properties are affordable for these families in coastal or regional Victoria.³⁴³

The Commission was advised that, while rental properties in regional Victoria are more affordable compared with metropolitan areas, fewer properties in total are available and their cost has increased above inflation in recent years.³⁴⁴ It was further noted that, 'with few crisis accommodation options in regional areas, women may be forced to move out of a region temporarily, but find it difficult to return'.³⁴⁵ Dr Holst commented:

Whilst rental properties are less expensive in rural areas, they are still often too expensive for a low income family and there are still a myriad of complexities around the tight knit communities witnessing the trauma of the ramifications of a family violence incident. More attention should be paid to women in rural areas experiencing homelessness having affordable and long term housing options, as well as discreet options for attending these premises.³⁴⁶

Initiatives aimed at tackling the problem of the unaffordability of private rental properties are discussed shortly.

Discrimination

Victims of family violence told the Commission they faced discrimination in the private rental market. A lay witness, 'Ms Susan Jones', spoke of her experience:

I attended numerous rental properties to find somewhere safer and more permanent for us to live. At one inspection, I was told by a local real estate agent that as a single unemployed mother with four children, my application would be at the bottom of the pile. She implied that I was wasting her time. I felt it was unfair for my hopes to be dismissed so carelessly. I was hurt but not deterred and kept politely attending open days. I was never offered anything, despite an impeccable rental history.³⁴⁷

Research conducted by the Victorian Equal Opportunity and Human Rights Commission suggests that women with children—particularly single parents—find it difficult to enter the private rental market.³⁴⁸ A 2011 study by the Australian Domestic and Family Violence Clearinghouse for its financial security project also reported that many women in the study felt they were discriminated against by landlords or real estate agents because they were single mothers or had pets.³⁴⁹

They've put me in a box of 'I'm a no-hoper, single mother with three kids, there's something wrong with me, I can't pay my bills' ... One social worker – which I think is hilarious – has said, 'Why don't you just say you're widowed and they might look at you in a different light'. And you shouldn't have to do that. That is discrimination.³⁵⁰

The Commission heard evidence that discrimination can occur on multiple grounds—including race and disability—and that some women have to go to extraordinary lengths to find a home. A community consultation in Mildura produced the following example:

The discrimination regarding housing for Indigenous people here is rife in the private rental market. One client took six months to find somewhere, and that was really fast. Her children were Aboriginal but she wasn't, and that made it easier (she didn't take them to the open for inspection visits).³⁵¹

Submissions also noted that programs intended to promote access to the private rental market can cause delays, leaving women at a disadvantage in a competitive market. In other cases, services reported that '... women have been verbally approved for properties only to have the approval withdrawn when they indicate they will get a Bond Loan or HEF assistance from a homelessness agency'.³⁵²

Other barriers

The Commission was told of other barriers to gaining access to private rental that are unique to women who have experienced or are experiencing family violence. As discussed elsewhere in this report, it is common for perpetrators to isolate their victims, both socially and from services, while controlling access to the family's resources. This might mean women do not have a credit rating because they were not permitted access to the family's income. Alternatively, the perpetrator might have incurred debts on items that were in both names, resulting in a poor credit rating for the woman. Further, a woman might not have her own rental history or the perpetrator might have damaged the property, resulting in a poor rental history.³⁵³

Victims also described difficulties such as not having documentary evidence (for example, bills in their name) or cases when they had to leave the relationship or property abruptly, leaving behind documentation such as birth certificates or passports. Examples were given of women without documents being unable to secure a property for over 15 months, despite having the means to pay rent.³⁵⁴

Current private rental programs

The Commission received evidence about a number of programs and initiatives that aim to help women secure private rental accommodation, either so that they can leave home or in order to leave crisis or emergency accommodation.

The Housing Establishment Fund

Victoria's Housing Establishment Fund is administered by the Department of Health and Human Services and provides funds to homelessness services so that they can assist people with housing establishment costs such as rent in advance to establish a tenancy or to pay rental arrears to avoid becoming homeless. As noted, however, submissions claimed there are competing demands on these funds, which are also used to pay for emergency accommodation in places such as motels and rooming houses.³⁵⁵

Although the Victorian Government does not have data on the proportion of the Housing Establishment Fund budget spent on assisting women escaping family violence, it advised the Commission that \$3.268 million of its total budget of \$11.8 million in 2015–16 was allocated to family violence service providers. No details were available about how much of the fund's budget is spent on ad hoc accommodation compared with rent arrears or in advance.³⁵⁶

Service providers said the demand for Housing Establishment Fund funds far exceeds supply.³⁵⁷

Bond Loan Scheme

The Director of Housing funds a bond loan scheme to help households meet the cost of paying a bond on a private rental property, generally equivalent to the first month's rent. This amount is to be repaid at the conclusion of the tenancy.³⁵⁸ The scheme has a budget of \$13.191 million for 2015–16 and is expected to make 12,000 bond loans. It is not known how many of these loans are made for women experiencing family violence.³⁵⁹

To be eligible for this assistance, applicants must be Australian permanent residents, thus excluding people with uncertain residency status.³⁶⁰ Applicants must also have sufficient income to be able to afford the rent (less than 55 per cent of their gross weekly income), must have repaid any previous bond loans, and must not owe any money on previous or current public housing tenancies. Applicants are also ineligible if they own or part-own a house, flat or unit, although it is not clear if there is an exemption for women who own or have a share in a residential property but are unable to live there because of family violence.³⁶¹

Family Violence Flexible Support Packages

Assistance for family violence victims has commonly been funded by the Victorian Government in the form of staff in specified programs—for example, case managers in specialist family violence services. To better respond to the particular needs of victims, the government has started to introduce various forms of additional ‘discretionary’ funding, sometimes referred to as ‘brokerage funding’ or ‘flexible funding packages’. In these cases, service providers receive an allocation of funds and, in consultation with the family violence victim, and within an upper limit for each household, have a degree of discretion about what they purchase for each client. This means that people receive assistance that is more closely aligned to their individual needs.

Some of these programs are targeted to deal with specific barriers and costs facing certain groups of women. For example, the Disability Family Violence Initiative provides funds for up to 12 weeks to a maximum of \$9000 per person.³⁶²

As discussed in various sections of this report the Victorian Government has allocated \$3 million a year for the next four years for up to 1000 Family Violence Flexible Support Packages a year. The Commission understands that these packages will be administered by 15 specialist family violence services and can be used for housing and non-housing costs, including paying for rent arrears in advance, relocation costs, furniture, security measures, counselling, education, training and employment assistance.³⁶³

This move reflects the view that social services should provide more individualised support than has been the case in the past. Mr Chris Eccles, Secretary, Department of Premier and Cabinet, suggested that any future service system should deliver a more ‘personalised response’, so that the various supports required by people experiencing family violence are ‘tailored to their needs’.³⁶⁴

Head-leasing arrangements

Head leasing occurs when a housing provider leases a property from a landlord in the private rental market and then subleases it to a person requiring housing assistance.

This approach can be attractive to landlords because it guarantees them a secure rental.³⁶⁵ For the potential tenant it might help to overcome problems of discrimination and adverse credit ratings resulting from their experience of family violence because the lease is managed through a service provider, not directly with the resident. It also makes more properties available in diverse locations. A further advantage of using head leases is that the lease can potentially be transferred into the woman’s name at a suitable time. Dr Holst explained that this is the objective of Launch Housing’s head-leasing program to divert families out of rooming houses:

We have actually downgraded the head leases and made them principally leases that are held by the women that we have subsidised. We actually think that’s better. It gets the welfare agency out of the picture a bit sooner and, as long as the subsidy is there, it can be taken over more readily by the woman who is then the tenant.³⁶⁶

This was also the approach adopted by the A Place to Call Home program, which converted transitional housing into ongoing public housing and thus minimised the need for a woman to move again.³⁶⁷

Private rental brokerage

Some specialist family violence services are funded to support women in obtaining and retaining private rental properties. This assistance includes brokerage funds to subsidise rent for a limited period. It also includes liaison with real estate agents and provision of ongoing contact and housing-related assistance for the duration of the brokerage period.

DHHS advised the Commission that funding was to provide 611 ‘episodes of assistance’ to women and children through the private rental brokerage program in 2014–15, delivered through 13 family violence services at a total cost of \$1.13 million.³⁶⁸ Examples were given of currently available brokerage packages being insufficient to meet demand: one regional service providers had 25 packages of funding for family violence private rental brokerage in 2014–15 and had allocated them all by January 2015.³⁶⁹

Sustaining private rental accommodation

The Commission was informed that there are few programs that help women sustain a home in the long term and that it is important that housing assistance is combined with support where needed. One submission noted that treating family violence as ‘resolved once the client has a new house is dangerously naïve and belies all contemporary academic literature on family violence intervention’.³⁷⁰

Help to improve a woman’s position in the labour market so she can meet longer-term housing costs was named as a priority, including linking her to education and training opportunities, employment services and financial counselling.³⁷¹ McAuley Community Services for Women also noted that employment assistance should be sensitive and responsive to the specific needs of women who have experienced family violence.³⁷²

One feature of the Family Violence Flexible Support Packages just discussed is that funds can be used for education costs, training and other employment-related items within the \$7000 limit.³⁷³

The Commission was also told of specialist family violence services establishing partnerships with local real estate agents in order to negotiate bonds and rents and, in some cases, to install fences and additional security measures.³⁷⁴ Workers reported that advocating with real estate agents on behalf of clients had brought considerable benefits and had helped women who would otherwise have found it difficult to leave a violent relationship.³⁷⁵

Many submissions expressed support for existing measures designed to help women move into the private rental market, while also noting the need to review and expand programs that have been operating for a long time.³⁷⁶ They also submitted that funding for these initiatives is insufficient to meet current demand.³⁷⁷

Rapid rehousing programs

Some submissions called for a greater number of focused rapid rehousing programs to secure and maintain new tenancies.³⁷⁸ These programs were developed in the United States and aim to quickly move people who are homeless into private rental by providing a short-term rental subsidy (up to 18 months) as well as support services to strengthen their capacity to sustain the tenancy in the long term.³⁷⁹ They are not specifically family violence programs; rather, they have emerged in response to high levels of homelessness, including family homelessness.

A recent large-scale experimental research study being conducted in the United States—the Family Options Study, led by the Department of Housing and Urban Development—compared outcomes for families who had stayed in emergency shelters and subsequently been assigned to one of four forms of housing assistance, including community-based rapid rehousing.

In the United States the rationale for rapid rehousing approaches with time-limited support stresses the importance of helping families into conventional housing in their communities as quickly as possible to reduce dislocation and potential further harm resulting from the extended periods that occur under the standard ‘stepping stone’ model of housing assistance. Time-limited support is justified to encourage families to become economically self-sufficient more quickly. The Family Options Study findings reported in 2015 found that a ‘housing first’ approach through a permanent rental supplement was most effective in stabilising the housing of families and improving the wellbeing of children compared with time-limited rapid rehousing or transitional housing. The permanent housing supplement intervention did, however, have a negative impact on employment participation and family incomes.³⁸⁰ The Commission understands that this intervention was not accompanied by any form of tailored employment assistance.

The Victorian Council of Social Service told the Commission:

Many people experiencing violence have been previously housed and are able to maintain a tenancy in permanent housing. A rapid rehousing program uses flexible resources to secure and maintain new tenancies quickly, such as establishing relationships with real estate agents and negotiating with potential landlords, providing guarantees, bonds or subsidies and working with people to ensure their tenancies are successful.³⁸¹

The Council to Homeless Persons, along with 128 other organisations, suggested to the Commission that the Victorian Government should establish such a program. It estimated that \$10 million (approximately \$2.3 million in annual rental subsidies and \$7.3 million in other annual support costs) could finance assistance to search for suitable properties, offer incentives for landlords to participate, and provide medium-term rental subsidies of up to six months to ensure that rent remains affordable for up to 1000 women and their children.³⁸²

The Commission was also told about a 'rapid rehousing' program operated by Launch Housing. With the support of philanthropic funding from realestate.com.au (the REA Group), Launch Housing operates a rapid rehousing program for women and their children leaving family violence by providing 'extra brokerage for rent and other private rental expenses'.³⁸³ The REA Group will also donate furniture to help women set up a new home. Launch Housing also operates its own not-for-profit real estate agency.³⁸⁴

In October 2012 the New South Wales Government began a 12-month demonstration project for rapid rehousing in Penrith, Mt Druitt and Coffs Harbour. The aim was to help frequent users of temporary accommodation secure and sustain private rental housing.³⁸⁵ Project workers aimed to carry out an assessment within 24 hours of referral and develop a case plan within 48 hours. The program sought to ensure that the tenancy of housed clients was maintained for at least four months.³⁸⁶

An evaluation of the project demonstrated a range of social and economic benefits for clients. The project had helped build their life skills, confidence and tenancy management skills (such as budgeting and keeping up to date with rent). The majority of tenancies established under the project have been able to be maintained.³⁸⁷ The evaluation report pointed to the following as success factors:

- ▶ *Early turnaround.* Having the initial contact with clients as soon as possible after referral was a critical part of the success of the project.
- ▶ *Relationships with real estate agents.* Each site developed good relationships with real estate agents, enabling them to secure tenancies for clients who would otherwise probably be rejected because they received Centrelink benefits, were first-time renters or had poor rental histories.
- ▶ *Support tailored to individual need.* Most clients required a range of supports to establish a tenancy, including intense assistance up front. Support also focused on how to maintain the tenancy in order to avoid tenancy breakdown.
- ▶ *Flexible use of funds.* Funds could be tailored to meet individual needs.
- ▶ *Options for singles.* To respond to rental affordability problems for single people on Newstart, each site developed share-housing options.³⁸⁸

The evaluation report found that the cost per client (\$4700) was higher than the cost of providing temporary accommodation because it involved intensive support, such as accompanying clients to real estate agents and on property inspections. The project was, however, effective in securing timely outcomes, with the time spent in temporary accommodation before securing private rental generally three to four weeks.³⁸⁹ The main change stakeholders proposed was for a longer period of support (12 months) to ensure long-term tenancy sustainability. Some suggested that rapid rehousing should focus on clients with more complex needs; others, particularly service providers, said it is best targeted at clients with low to moderate needs.³⁹⁰

Accommodation for perpetrators

In some submissions the provision of accommodation to men who are excluded from the family home as a result of family violence was identified as a gap.³⁹¹ The Commission was told that ‘providing accommodation to keep men who use violence “in sight” of the justice system and other service interventions is in the interest of both victims and the broader community’.³⁹² One woman told the Commission during its consultations:

I think that the refuges should be for the men, not the women who can stay in their house. The problem with that is that the man still knows where she’s living. It (moving men into refuges) won’t work for everyone but it would for some. It’s so disruptive for the kids and then they miss him. If the man is placed in the refuge then they (the kids) can go to see him. I know that I’m simplifying it and it’s really about control but it’s worth doing.³⁹³

Crisis accommodation and medium- to long-term housing options for single men are limited. For example, there are two crisis accommodation facilities for single men in Melbourne and two that take men, women and families. In one of the male-only facilities there are 63 beds and about three vacancies a week:

These facilities are targeted to men who have multiple and complex needs and have slept rough, and deliver a service model that is based on addressing long term homelessness. With few vacancies and a specific target group, current crisis accommodation facilities are neither readily available nor provide the right solution for people who have been removed from the home due to violence.³⁹⁴

The Commission heard that homelessness services often used ad hoc accommodation such as rooming houses to house perpetrators.³⁹⁵ Mr Rogers advised that accommodation options include singles accommodation funded under the homelessness program or use of the Housing Establishment Fund to pay for motel or rooming house accommodation.³⁹⁶ Information about the number of perpetrators accommodated or the demand levels under either option was not available.³⁹⁷

Concern was expressed that ‘... many private rooming houses continue to house people with a range of complex needs, and very little ongoing outreach is able to be provided within current resources. Violence is not uncommon in private rooming houses and can reinforce violent behaviours’.³⁹⁸

Community consultations revealed concern that the environment of a rooming house is not conducive to children visiting their father when parenting orders are in force. People were particularly concerned that the mix of people living in rooming houses, including people with substance dependency, made them a dangerous place for children and an environment that is not well suited for men to learn to change their use of violence.³⁹⁹

As noted earlier in this chapter, the Commission was told of instances of victims and perpetrators being placed in the same motel or ad hoc accommodation. Some homelessness services do, however, have specific protocols in place to prevent this occurring.⁴⁰⁰

Another common concern was that a lack of suitable accommodation for the perpetrator often led to pressure being placed on the woman to allow him to return home.⁴⁰¹ Conversely, the woman might not be able to return home if the perpetrator is still in the property because he does not have access to alternative accommodation.⁴⁰²

The Victorian Aboriginal Legal Service stated:

Stable housing is the foundation from which all other change and growth can come. It is essential that there is stable and accessible housing for victims fleeing family violence, but also for perpetrators of family violence. Whether it’s anything from “cooling off” houses as have been utilised in some Aboriginal communities in the Northern Territory, or safe houses, there needs to be suitable accommodation for [all] involved ... Lack of appropriate emergency and transitional housing for those in crisis, both perpetrator and victim/s, may result in offenders or victims returning to the household if they have no other practical accommodation, resulting in further breaches or possible further violence.⁴⁰³

The Commission also heard that therapeutic crisis accommodation interventions should be introduced.⁴⁰⁴ In considering temporary housing options for perpetrators, a number of submissions called for accommodation to be linked to behaviour change programs as a condition of stay, while others saw a more general connection between stability of housing and engagement in perpetrator programs:

In situations where perpetrators are removed from the home, there needs to be accommodation (emergency housing for perpetrators – intervention houses, please don't call them male refuges – language matters and it is not these men who need safety and refuge) alongside NTV accredited men's behaviour change program intensives for these men, where there are no waiting times. These houses need to have a therapeutic focus and much work in terms of evaluating the work there.⁴⁰⁵

Lack of housing options affects perpetrators too as insecure housing can impede behaviour change and other programs focussed on supporting men develop appropriate and respectful behaviours, dealing with alcohol and drug issues or unemployment – all of which may contribute to violent behaviours.⁴⁰⁶

Others suggested that, rather than redirecting resources from the homelessness sector, specialist accommodation options attached to behaviour change programs should be considered; the Western Australian Breathing Space facility was cited as an example.⁴⁰⁷ The Victorian Aboriginal Community Services Association Ltd suggested that 'time out' programs be given an accommodation component by converting transitional housing stock to crisis accommodation for use as a 'time out' facility. It argued that this would provide Aboriginal men '... with meaningful time out whilst the family can be maintained and supported in their family home'.⁴⁰⁸

DHHS advised the Commission that in 2014–15 \$0.2 million was allocated to emergency accommodation for men who are unable to remain in the family home as a result of an intervention order with exclusion conditions being granted.⁴⁰⁹ It is not known, however, to what extent the funding is used for this target group since it is allocated either to providers of men's family violence services (which may purchase emergency accommodation such as motels) or to homelessness services that may also provide a range of emergency accommodation to men who are not perpetrators of family violence. The Australian Institute of Health and Welfare has noted that the Specialist Homelessness Services Collection data is not able to separately identify victims and perpetrators of family violence from the number of people presenting to homelessness services because of family violence.⁴¹⁰

As noted above, Dr Spinney gave evidence about her research on the first Australian Safe at Home scheme, which was developed in Tasmania. She told the Commission that while some program funding was originally intended to be set aside for perpetrator accommodation, this had not occurred because there was 'not a driving need for it': perpetrators normally found accommodation with friends or family.⁴¹¹

The way forward

Principles of an effective housing response

Secure and affordable housing is an essential foundation if victims of violence are to regain a sense of safety and recover from the trauma they have experienced. For a woman, it provides the space she needs in order to rebuild her life, plan her future, care for her children and build positive connections with people and services in the community. Having a secure home is crucial to ending the powerful hold family violence has on victims and the way it can define their futures. Without a secure place to live, victims can slip into homelessness, stay in crisis for longer or end up returning to live in an abusive relationship. Women should not be forced to make that choice.

The accommodation needs of women in Victoria who are experiencing or have experienced family violence are diverse: some women are able to stay at home; others can return home after a short period away; others are unable to return home and need alternative long-term accommodation.

When it is safe to do so, and provided they want to do it, it is in the best interests of women and children to stay in their own home. That means they can stay close to the things that are important to them, such as family, friends, work, school and community networks. But, despite some progress, there is still insufficient support available for women and children to stay at home safely. Those who do stay often carry an exceptional burden to keep themselves safe, living with security devices and having to remain constantly vigilant. It can also place a major financial burden on them because they need to pay rent or mortgage repayments on their own.

Although some women can leave home safely and successfully, leaving home to escape a violent relationship can be the start of a pathway into homelessness, poor-quality housing and housing-related poverty. It is not surprising that some women do not take that chance at all or return to a violent relationship as a way of escaping such a situation.

When women are forced to leave their homes, securing accommodation quickly is vital in order to recover and begin to deal with the multiple challenges in their life—such as dealing with grief and trauma, obtaining a family violence intervention order and resolving other legal issues, adjusting to a new area, looking after children in an unfamiliar environment, and resuming or seeking employment. Only a small proportion of women gain access to refuge accommodation and, before they do, they might spend extended periods in a motel, caravan or rooming house. These are not good environments for women and children who are trying to recover from family violence. They are not a home.

Of those women who did enter a refuge, many spoke highly of the support and the safety they found there. Others struggled, especially where there was communal living or it was a high-security environment. There has been progress in making Victoria's refuges better and more liveable: some refuges now feature individual units for greater privacy, and disability access is being improved in a small number. These developments need to be expanded and to become standard throughout Victoria. Barriers that prevent some groups of women—among them Aboriginal and Torres Strait Islander women, women with complex needs, and women with adolescent male children—being accepted into refuges must also be removed.

The Commission found that women often have to move repeatedly, leading to dislocation from community and existing supports and increasing the likelihood that they might become homeless. Women and children need support and a stable environment in order to recover from the trauma and uncertainty of family violence. Safe, secure and affordable accommodation is essential if they are to have this stability. At present Victoria is failing in this.

There is clear evidence that housing pathways are 'blocked up' and not flowing as intended. There is a lack of viable long-term housing options that allow people to 'exit' the system and get on with their lives. There are simply not enough short-term or long-term accommodation options for victims in metropolitan and regional Victoria. Other jurisdictions, such as New South Wales, have faced a similar problem with a housing system that is clogged: they are now using a mix of housing options.

Simply continuing existing programs and strategies will not deliver better outcomes for the women and children whose lives have been damaged by family violence. It will not overcome the 'siloed' approach to program delivery or remedy the gaps and failings in housing provision that were made clear in the evidence the Commission received.

We need a bolder, more proactive approach to expanding the housing options for family violence victims—one that is more individualised, more sustainable, and more connected to promoting broader social and economic participation.

Social and economic participation is central to the recovery from family violence. A rapid response to victims' housing needs is important to ensure continuity of participation in education, employment and social networks. The location of housing is important for the same reasons. Developments in Safe at Home strategies—particularly with increasing use of technology backed up by a strong justice response and case-management support—can make an important contribution to the objective of fostering continuity of participation.

The housing response for people experiencing family violence should have the following characteristics:

- ▷ be tailored to the victim's circumstances, choices and goals, whether they live in metropolitan, regional or rural Victoria
- ▷ be non-discriminatory and responsive to the full range of people who might be victims of family violence
- ▷ ensure safety and provide options commensurate with victims' level of risk
- ▷ follow a simple pathway so that people can obtain the help they need, whether they are able to stay in their home or have to leave
- ▷ recognise that keeping victims in their home is optimal if it is safe and the victim's choice and provide support accordingly
- ▷ provide alternative safe accommodation when a victim cannot remain or return home, while minimising the number of moves they need to make and the time taken to acquire permanent housing
- ▷ ensure that accommodation is of good quality, affordable to the victim and in a location that will help them retain or build on protective factors to support their recovery—including employment, training, education and natural supports such as family and friends
- ▷ complement other forms of support in a manner that reflects the victim's needs and aspirations—including referral to other services they might need
- ▷ be part of a broader, integrated system of support so that the system keeps the woman safe by maintaining a focus on the perpetrator and reducing the burden on the victim no matter where she is living.

The Commission therefore proposes the following:

- ▷ There should be greater *support*, both financial and non-financial, for women to retain their existing housing or to gain access to private rental properties in their community.
- ▷ A more concerted shift towards *individualised assistance* is needed in order to meet the specific needs of people affected by family violence. This means amending the existing Family Violence Flexible Support Packages to include a longer period of rental or mortgage subsidy and further assistance with costs to support economic recovery.
- ▷ *Housing options* should be expanded so that there is a much greater capacity to rapidly rehouse people and, in doing so, free up places within refuges and crisis accommodation and bypass transitional housing when the victim's full range of needs are better met in the private rental market with other supports as necessary.
- ▷ Better *integration between accommodation and support* is essential so that a victim's housing and other needs—such as counselling, legal advice, financial counselling and employment assistance—are considered at the same time and the link between housing assistance and the support to improve the victim's financial security and employment status is made explicit.

Greater support for victims to stay at home

Supporting women who choose to stay at home

- ▶ Current funding for Safe at Home initiatives accounts for only a small proportion of overall government spending on family violence initiatives.
- ▶ It is important that women are told that staying at home is a genuine option and that sufficient supports are available for those who decide to remain at home or return there.
- ▶ Evaluations show that Safe at Home programs can be effective, but there has been insufficient funding to provide the programs consistently throughout Victoria.
- ▶ There are no universal guidelines or principles for Safe at Home programs, and the design and implementation of the programs has been inconsistent.
- ▶ The primary features of effective Safe at Home programs are accompanying support, confidence in police and court responses, and the use of security technology. An integrated system is needed to keep women safe.

Although there is growing recognition that staying at home safely should be an option for women and children, service providers still tends to focus on options for women to leave and enter the refuge system. The Commission supports the increasing efforts to help women and their children remain in or return safely to their homes. This approach quite appropriately transfers the responsibility for leaving the family home to the perpetrator of family violence and allows victims to stay in their home and community. In this way the disruption associated with multiple moves—including losing connections with family and friends and other supports, school networks, employment, and participation in the community—is largely avoided.

The Commission found, however, that the current roll-out of Safe at Home programs is piecemeal, does not have geographic coverage throughout the state, and has inconsistent standards. As a consequence, only a very small number of victims of family violence are able to benefit from the programs. In the absence of a consistent statewide approach, local services have had to cobble things together to respond to need. Further, existing Safe at Home programs make no provision as a matter of course for a longer term rental or mortgage subsidy that will be required by many victims to secure the stability of housing that can form the basis of their recovery.

The Commission was told of recent developments in personal security devices, which—when accompanied by adequate risk assessment, safety planning and, when necessary, case-management support—hold the promise of allowing a major step forward in enabling people to stay in their existing home and community, being reasonably confident of their safety. This would, in turn, reduce the demand for crisis or refuge accommodation.

Nevertheless, although technological supports make promising additions to the suite of measures that enable women to stay safely in their homes, they are not on their own sufficient to keep women safe. Accordingly, Safe at Home programs must be based on a strong systems response to the perpetrator and effective support for the victim; evidence has shown that these are vital ingredients of programs. In particular, a proactive approach to enforcing intervention orders, swift police action on breaches of orders, and information sharing about the perpetrator are needed to transfer the burden away from requiring women to be vigilant in order to maintain their safety.

To ensure that risk assessment and management guide the support that is to be provided, specialist family violence services should continue to take the lead in delivering Safe at Home programs, collaborating with others to involve necessary complementary services. The programs should be part of a comprehensive case-management response that includes the involvement of and coordination with police and legal services.

The Commission's recommendations aimed at allowing for greater exchanging of information about perpetrators are set out in Chapter 7. Our proposal to integrate risk and needs assessment across women's, children's and perpetrator interventions through the establishment of Support and Safety Hubs, as part of a second generation of system integration, is discussed in Chapter 13. Together, these recommendations should assist in supporting victims who stay at home by establishing a tighter risk management environment.

The additional \$900,000 investment by the Victorian Government for the Personal Safety Initiative pilot to provide support for about 70 women is welcome. Importantly, the trial will be evaluated so as to determine future actions. The Commission expects that a successful pilot would lead to an investment in such initiatives, sufficient to meet the needs of victims of family violence statewide.

The Commission notes with concern that most of the existing Safe at Home programs are funded through the National Partnership Agreement on Homelessness, which is due to expire on 30 June 2017. Although the agreement and the concomitant Commonwealth funding contributions lapse at that time, the Victorian Government's contribution is secure until 30 June 2018.⁴¹²

The Commission considers that the Safe at Home programs should be retained and substantially expanded in order to make staying at home a real option for victims of family violence. This needs to happen regardless of the funding source—including by the Victorian Government allocating its own resources to give the programs the certainty and scale needed to fulfil their potential. Investment decisions by the Commonwealth Government are beyond the scope of this Royal Commission, although we do note the strong statements the government has made in relation to responding to family violence and consider Safe at Home programs to be an important part of a comprehensive response.

The success of Safe at Home programs depends on effective support services, legal assistance and the financial capacity to maintain housing costs on a single income. Put simply, a person cannot stay at home if they cannot afford to do so. The Commission therefore proposes that the Victorian Government ensure that staying at home is indeed a viable and sustainable option by explicitly including access to rent or mortgage subsidies within such schemes.

Recommendation 13

The Victorian Government give priority to supporting victims in safely remaining in, or returning to, their own homes and communities through the expansion of Safe at Home-type programs across Victoria [within two years]. These programs should incorporate rental and mortgage subsidies and any benefits offered by advances in safety devices, with suitable case management as well as monitoring of perpetrators by police and the justice system.

Improving crisis accommodation

The evidence presented to the Commission makes it clear that Victoria's crisis accommodation capacity—both refuge and other crisis accommodation—is insufficient to meet current demand. There is an urgent need to expand crisis accommodation, especially in view of the fact that funding and capacity have remained unchanged since 2009–10. Since that time there have been reports of substantial growth in the demand for crisis accommodation, particularly as a result of the increase in police referrals to services. The number of police referrals of affected family members (female victims) to specialist family violence services grew by 317 per cent between 2009–10 and 2013–14.⁴¹³

The Commission agrees with the Council to Homeless Persons that it is difficult to determine how much extra crisis accommodation would be required if the system was working as intended.⁴¹⁴ Nevertheless, a number of factors would improve refuges' existing capacity to meet demand:

- ▷ greatly expanding Stay at Home options
- ▷ improving efficiency through amended intake procedures
- ▷ reducing demand for refuges by introducing more community-based crisis accommodation options
- ▷ increasing movement throughout the accommodation system by improving access to post-crisis housing options
- ▷ reconfiguring communal crisis accommodation into 'core and cluster' models so as to increase capacity, improve amenity and offer greater physical accessibility.

The Commission is not able to assess the potential impact of these changes. It does note, however, that expanding the 'crisis accommodation response' capacity does not necessarily mean simply establishing additional refuges. The priority should instead be developing a range of crisis options that enable women to remain in their community. In particular, these options should be carefully explored in regional and rural communities because of the dearth of specialist crisis accommodation in these areas.

The intake into crisis accommodation

The Commission found that there are multiple referral pathways for accommodation and support for women experiencing family violence. This makes it difficult for services to develop a holistic view of a woman's needs and, as a result, makes it difficult to integrate service responses. Support for women and children experiencing family violence is generally obtained through specialist family violence case-management services, usually in response to a police L17 referral, while access to crisis accommodation is generally coordinated through Safe Steps Family Violence Response Centre. Initial Assessment and Planning Services also play a role in placing victims and perpetrators in accommodation.

The Commission found that the current arrangements for access to refuge properties are inefficient. Family violence service Safe Steps is the referral and contact point for refuges but does not act as the intake point: it has no 'control' over entry into either the 31 refuges or the 57 Crisis Accommodation Program properties refuges managed. Although access to accommodation is largely limited by supply, the Commission found evidence of delays that were caused by staff not being available to accept referrals after hours or by refuges' operational decisions that mean that beds might be kept vacant or certain individuals excluded.

There is a need to streamline referral and intake arrangements for all specialist family violence crisis accommodation—especially since, for some women, the alternative often is either to remain in a violent situation or to move to a motel.

In Chapter 13 the Commission recommends the establishment of Support and Safety Hubs in each of the 17 Department of Health and Human Services local areas by 1 July 2018. These hubs will provide a single referral and intake point for family violence services, including facilitating access to crisis accommodation services in each local area.

The role of the hub intake team would be to work with the woman to determine what is required for her to remain in her home—or to return home if this is her choice and it is safe to do so. This should be part of the first response: timing is crucial in helping women make informed choices that minimise the disruption and dislocation associated with moving to alternative accommodation. The intake process would include assessment for Safe at Home assistance, which, as recommended, should be expanded throughout the state.

If a woman chooses to take up another accommodation option, it is essential that the hub intake team is able to facilitate her placement into the most appropriate accommodation option available. Safe Steps will continue to organise refuge accommodation. A central coordination role is necessary to match these women to scarce resources, as well as coordinate the transfer of women to refuges that will probably be quite a distance from the area in which they were living. In order for Safe Steps to be able to do this efficiently it must be able to book victims into refuges without it being necessary for the victim to be re-assessed, and possibly rejected, by the refuge. This change should occur as a matter of urgency: government should not wait until the Support and Safety Hubs are established to facilitate this reform.

The Support and Safety Hubs and Safe Steps will also need to have brokerage/flexible funding in order to buy goods and services to respond to a woman's immediate needs, particularly if she is in crisis. This could include items such as emergency accommodation in a motel, food, clothing, toys, transportation and pet care. Service providers who have case coordination responsibility will also require flexible funding to help the woman achieve the goals set out in her service plan. This approach supports the Commission's recommendation that the system move to adopt a more individualised response to victims of family violence (as described shortly).

The intake team at a Support and Safety Hub will also have risk and needs assessment capability for men's services and perpetrator interventions. Additionally, they should identify accommodation options for the perpetrator as appropriate and make a 'warm referral' to the local homelessness service to facilitate the person's placement.

Expanding crisis accommodation options

The accommodation options currently offered to women who choose to leave a violent relationship are inadequate: women are faced with a choice of going to a motel or going to a crisis accommodation service, which commonly means moving to a new area. The Commission learnt that women and children are staying in motels for long periods.

The crisis accommodation response should move away from a 'one size fits all' approach—which was developed at a time when it was the sole response to family violence and fleeing was generally the only option available—and instead focus on providing more tailored assistance to women.

A woman escaping violence needs confidence that crisis accommodation will provide a level of safety consistent with her assessment of risk. As far as possible, it should also help her maintain her connection with the important people and supports in her life, such as family, friends, work and her community. Women should also be able to expect that crisis accommodation will do the following:

- ▶ keep the number of moves and the disruption associated with leaving a violent home to a minimum
- ▶ offer the support she needs—that is, beyond accommodation, having access to regular support from specialist family violence services and knowing this support will accompany her regardless of where she lives or moves to
- ▶ be kept to the shortest time necessary to enable her to move out of crisis and begin to rebuild her life
- ▶ be sensitive to the needs of children and support her rebuilding parent-child bonds.

The Commission expects that the recommended expansion of Stay at Home options will divert some demand away from crisis accommodation. There will, however, continue to be a need for emergency accommodation for women who need to leave, either permanently or for an interim period, and require accommodation immediately following a crisis. Accordingly, accommodation should be of the best quality possible.

Staying connected to community

The Commission considers that a broader range of crisis accommodation options should be made available to women who choose to leave a violent situation. In the first instance, it proposes a significant expansion of options designed to help women and their children remain within their community when risk assessments suggest this is possible. This will involve women moving from their home to different accommodation but not necessarily to a high-security refuge. This does not mean greater use of ad hoc accommodation such as motels: rather, in order to provide stability of housing through the crisis and recovery phases, the Commission has in mind the use of ordinary houses in ordinary streets.

Historically, crisis and emergency accommodation has been delivered by specialist family violence services and housing and homelessness services through properties, in the most part, owned or allocated to providers by the Director of Housing. In the Commission's view, additional procurement measures need to be explored. As noted earlier in this chapter, some services have taken the initiative and have already started to do this—for example, through head leasing and other initiatives.

Reducing the use of ad hoc accommodation

There is an urgent need to greatly reduce the use of motels and other ad hoc accommodation, especially as additional Stay at Home programs and more diversified crisis accommodation options are made available. For example, Mallee District Aboriginal Service noted that it 'currently pays \$300–400 per week for a tent site in local campgrounds'.⁴¹⁵ A community consultation in Mildura confirmed that this is the case for both Aboriginal and non-Aboriginal people in that area.⁴¹⁶ Such measures show the desperate measures the family violence and homelessness systems have been forced to adopt in the face of inadequate investment.

The Commission accepts that there will continue to be a need for interim accommodation, but it is unacceptable for women escaping family violence to be placed in emergency accommodation without access to appropriate support. These women, often accompanied by children, are in crisis, and their placement in an unstaffed facility such as a motel can be confronting and alienating. It is crucial that the response does not further traumatise the victim or inadvertently contribute to her deciding that it is easier to return to a violent partner.

Although there will also be a need to place some women in motels overnight as refuge and crisis accommodation options are pursued, facilities such as rooming houses and caravans should no longer be used: they are insecure, and their use is inconsistent with the principle of maximising safety for women and children, regardless of the support provided by specialist family violence services. The Commission's vision is that motels and other ad hoc accommodation will never be used to house women and children for weeks or months and should be used only for short stays in exceptional circumstances. To achieve this, the range and supply of crisis accommodation available must be expanded.

Refocusing refuges on providing accommodation to women at highest risk

The recommended expansion of Stay at Home and local community options should mean that women at lower or medium risk can be supported safely and will not need to go to a refuge. There will, however, continue to be a need for high-security accommodation for women who are at significant and high risk. Responding to these women's needs should be the specialist and primary role of refuges, although they should not only provide a high-security response. The goal is to increase the number and range of options overall for victims of family violence—options that respond appropriately to each individual's level of risk and that are flexible enough to deal with changes in risk so that women can 'step up' and 'step down' in security as required.

Adoption of the Commission's recommendation that the Family Violence Risk Assessment and Risk Management Framework (also known as the Common Risk Assessment Framework, or the CRAF) be refreshed to contain a stronger actuarial methodology would help ensure that the specialist family violence service response aligns with the assessed level of risk. Such an approach—along with the use of Risk Assessment and Management Panels—will reinforce the importance of refuges forming part of the response to women at high risk. High-risk cases are considered in Chapter 6.

Making refuges more liveable

The refuge model evolved at a time when there was limited support from police and the courts to keep women and children experiencing family violence safe at home. In these circumstances the best option was to move the women and children to a secure and confidential location. This meant that many women and children left behind their family, friends and community and were unable to attend school and work. The police and justice responses to family violence have since improved, but the reliance on refuge accommodation as a major part of the crisis accommodation response remains largely unchanged.

High-security measures are applied to the majority of women accommodated in refuges, regardless of their level of risk.⁴¹⁷ This means that there is limited scope to offer a different response to women who might not require high-security measures such as curfews, prohibitions on employment or school attendance, and surrendering phones and other devices that can be tracked by the perpetrator.

Although the Commission found that the communal refuge model does offer benefits for some women—for example, enabling them to share their experiences with others in similar circumstances—this was far outweighed by the negative effects of group living. Some of these negatives are cohabitation of several families, most of whom are in crisis, which can be chaotic and confronting; the behaviour of women with additional needs, such as drug and alcohol problems or mental illness; and the challenges for women trying to parent their children in a communal and unfamiliar environment.

The Commission also found that women with disabilities and those whose children have disabilities are routinely denied access to refuges because very few refuges are accessible for people with disabilities. Women with adolescent male children face similar barriers. With changes in design, operational policies and attitudes, these groups of women could all live in a refuge.

The ‘core and cluster’ refuge model is preferable to the communal model because it provides self-contained facilities for families while maintaining the positive aspects of communal living, such as onsite support from workers and opportunities to spend time with other families who might have had similar experiences. With this configuration, women can have friends and family visit, have their teenage boys live with them, and have room for attendant carers and other supports. A further benefit is that the core and cluster model provides a base for services, such as legal services, to meet with residents, as well as ensuring that the physical environment has space for child and youth-sensitive facilities, with play areas, books, toys and private space for young people.

The Commission is particularly concerned that the stress and anxiety some women experience in group living can contribute to their decision to return home to an unsafe environment. It considers that moving away from a communal refuge model is a priority in order to improve client outcomes and to align Victoria with leading practice in other Australian jurisdictions.

All Victorian refuges should be converted to the core and cluster model within five years. In doing this, it is imperative that each crisis accommodation provider be consulted in relation to the design and approach most appropriate for its particular circumstances.

Recommendation 14

The Victorian Government increase the number and range of crisis and emergency accommodation that is available by using a wider range of service models—including head leasing of premises—with priority being given to rural, regional and remote areas [within 12 months].

Recommendation 15

The Victorian Government support service providers in phasing out the communal refuge model [by 31 December 2020] and replacing it with accommodation that promotes safety, is accessible to people with disabilities, provides private units and enables connections with the community, work and school (core and cluster model). To facilitate the transition, the Victorian Government should provide a capital fund to assist service providers with business case development, design options and implementation (including construction of redesigned accommodation) and fund interim arrangements to avoid loss in service delivery during refurbishment or redevelopment.

Improving the responsiveness of crisis accommodation to diverse population groups

The Commission received consistent evidence that some groups of people are routinely denied access to refuge accommodation. We were informed that this depends on operational considerations—such as whether the referred client can be accommodated within the current client mix—as well as the physical accessibility of the premises.

There is inconsistent availability of crisis supported accommodation for people from lesbian, gay, bisexual, transgender and intersex communities, Aboriginal and Torres Strait Islander women, single women, older women, women without children, women from culturally and linguistically diverse backgrounds, women with disabilities, women without permanent residency, women with adolescent male children, women in contact with the criminal justice system, and women with a mental illness or drug and alcohol problems. This situation needs to be redressed. Victims who face these barriers are more likely to end up in ad hoc emergency accommodation, which further prolongs their ‘crisis’ period.

Admission policies and practices vary between refuges, and government policy, as set out by the Department of Health and Human Services, is not explicit about what is expected of refuges. This leaves room for individual refuges to develop practices that reflect ‘operational considerations’, many of these practices being the result of funding constraints or the need to manage group living arrangements.

The Commission agrees with the Victorian Equal Opportunity and Human Rights Commission that great care should be taken in applying exceptions under the Equal Opportunity Act allowing refuges to refuse access to women with adolescent male children. Among the consequences for victims of family violence in these circumstances is the risk of homelessness and ongoing exposure to violence.

The Commission proposes that the crisis accommodation needs of diverse groups should be addressed in three ways:

- ▷ by ensuring that the use of crisis accommodation services is maximised through eliminating discriminatory practices
- ▷ by reducing communal living arrangements in refuges
- ▷ by developing additional crisis accommodation models for each group of women.

The Commission notes that the development of additional crisis accommodation services specifically targeted to each group of women is both expensive and not necessarily viable and that certain groups—such as women living in rural and regional areas—might still miss out.

In Volume V, the Commission recommends that steps be taken in the following areas to improve the capacity of existing services to better meet the needs of all women experiencing family violence who require crisis accommodation services:

- ▷ allocating additional resources for statewide organisations—such as InTouch Multicultural Centre Against Family Violence, Women with Disabilities Victoria and Seniors Rights Victoria—to provide consultancy services and training to specialist family violence services, including crisis accommodation providers in connection with actions designed to meet the needs of particular population groups
- ▷ allocating additional resources to crisis accommodation for Aboriginal and Torres Strait Islander women and children
- ▷ having the Victorian Equal Opportunity and Human Rights Commission produce a guideline under the Equal Opportunity Act, providing guidance to specialist family violence services, including crisis accommodation providers, on meeting their obligation to act inclusively and avoid discrimination when delivering services
- ▷ for DHHS, reviewing and updating standards for family violence service providers, specifying providers' obligations to develop suitable services for diverse communities.

Recommendation 16

The Department of Health and Human Services review the contractual arrangements (including funding levels) for crisis supported accommodation to remove barriers for particular groups, such as women with no income and women and children with disabilities [within 12 months].

Towards a more effective system

There is clear evidence that the current system for rehousing family violence victims is 'blocked up'. Rather than being offered housing assistance that meets their individual needs, victims are being funnelled into a system that more often than not results in lengthy and/or episodic stays in various forms of temporary and transitional housing—in some cases with long stays in motels and other unacceptable accommodation.

This reflects the 'throughput' model of moving people from crisis to transitional to permanent accommodation, which has operated throughout the homelessness system for the past decade or so. Although this approach should be able to provide for victims, options that suit their needs at different stages of their journey from crisis to recovery, in practice the delays and the unavailability of properties mean that the response is often damaging rather than beneficial. Although some women will return home or find a home themselves along this pathway, the system assumes that the goal of a permanent home will be reached. As the evidence in this chapter shows, however, this goal proves elusive for many.

The throughput model fails to have women and children housed quickly in a home that best suits their needs. At present the system relies on the prospect of social housing, which, while being a suitable long-term option for some family violence victims who are able to obtain it, does not offer the flexibility to deliver a rapid response or a property in the right location to suit women and children's needs.

The flaws in the throughput approach need to be confronted. They reflect the pragmatic development over several decades of a service system that is no longer in keeping with what we now understand to be the needs of women seeking to rebuild their and their children's lives. Continuing the existing approaches alone will not ensure that most victims have the housing assistance that will maximise their chances of recovery and long-term economic and social participation so that they can effectively compete in what is often an expensive housing market.

Access to sustainable private tenancies

The Commission recognises that the housing response to family violence will continue to require a mix of options in order to meet the diverse needs of family violence victims. There is no one-size-fits-all approach. There is, however, considerable potential to facilitate greater access to the private rental market for victims of family violence, as a way of securing suitable housing and promoting their continued social and economic participation.

Compared with social housing, the private rental market can offer greater locational choice and flexibility in meeting the needs of family violence victims. Social housing is generally offered in areas where there is a vacancy, rather than where a woman needs to live. In addition, only 3.1 per cent of households in Victoria live in social housing.⁴¹⁸ Excessive demand, a low turnover of tenants, and a stock profile not well matched to demand mean that such housing struggles to be responsive to the needs of the wide range of women having to move from their home as a result of family violence.

Although the private rental sector accounts for about a quarter of Victoria's housing stock and has greater capacity to respond flexibly, it is generally not affordable for low-income earners. Centrelink recipients are eligible to receive Commonwealth Rent Assistance, which is a capped payment that in most areas—and particularly in metropolitan Melbourne—is insufficient to ensure that net rental costs are confined to 30 per cent of household income, the accepted benchmark for affordability.

The housing assistance currently available to victims of family violence largely ignores these realities. Apart from Commonwealth Rent Assistance, any help available to meet private rental costs is generally short term in nature. At the same time, scant attention is paid to improving victims' ability to be resilient in the private housing market by helping them improve their status in the labour market and, as a consequence, their level of earned income.

For many women, becoming financially secure to the point where they are able to take on a lease in their own right can be a long-term proposition, and they may be reliant on receiving assistance (for example, for child care, training and employment) to help them to get to that point. Some women will not be in a position to rent privately. For this reason it is important that private rental subsidies be offered to those who are most likely to be able to sustain a private rental lease within the time frames of the rental subsidy; other women will need to be assisted in other ways.

Analysis of rental data identifies the indicative private rental supplements required to meet an affordability benchmark of 30 per cent of household income spent on rental costs for four typical categories of households that are solely reliant on Centrelink income. The geographical areas analysed were Ringwood, Cheltenham and Horsham. Details of median weekly rental were obtained from the Department of Health and Human Services *Rental Report*.⁴¹⁹ This analysis indicates that, in the 2015 housing market, affordability supplements would need to be in the order of \$100 to 180 a week, depending on the suburb in metropolitan Melbourne and the relevant regional city. The amount of supplement would be substantially lower in some rural housing markets. Table 9.3 provides details of the scenarios.

Table 9.3 Estimated affordability in private rental market: three locations, September quarter 2015

| Location/rental factor | Family type | | | |
|---|-------------------------------------|-------------------------------------|--|--|
| | Single person on NSA ⁴²⁰ | Single person on NSA ⁴²¹ | Single parent on Parenting Payment (2 children) ⁴²² | Single parent on Parenting Payment (3 children) ⁴²³ |
| | 1 br flat | 2 br flat | 2 br flat | 3 br house |
| Ringwood | | | | |
| Income support payments ⁴²⁴ | \$261.70 | \$261.70 | \$626.71 | \$730.55 |
| Weekly rent ⁴²⁵ | \$250.00 | \$330.00 | \$330.00 | \$385.00 |
| Cth Rent Assistance | \$64.70 | \$64.70 | \$75.88 | \$85.75 |
| Net rent | \$185.30 | \$265.30 | \$254.12 | \$299.25 |
| Net income | \$76.40 | -\$3.60 | \$372.59 | \$431.30 |
| Affordability 1 (% income on rent) | 76.6% | 101.1% | 47.0% | 47.2% |
| Affordability 2 (% net income on rent) | 70.8% | 101.4% | 40.5% | 41.0% |
| Additional supplement for affordability at 30% ⁴²⁶ | \$106.79 | \$186.79 | \$66.11 | \$80.09 |
| Cheltenham | | | | |
| Income support payments | \$261.70 | \$261.70 | \$626.71 | \$730.55 |
| Weekly rent ⁴²⁷ | \$315.00 | \$360.00 | \$360.00 | \$470.00 |
| Cth Rent Assistance | \$64.70 | \$64.70 | \$75.88 | \$85.75 |
| Net rent | \$250.30 | \$295.30 | \$284.12 | \$384.25 |
| Net income | \$11.40 | -\$33.60 | \$342.59 | \$346.30 |
| Affordability 1 (% income on rent) | 96.5% | 110.3% | 51.2% | 57.6% |
| Affordability 2 (% net income on rent) | 95.6% | 112.8% | 45.3% | 52.6% |
| Additional supplement for affordability at 30% | \$171.79 | \$216.79 | \$96.11 | \$165.09 |
| Horsham | | | | |
| Income support payments | \$261.70 | \$261.70 | \$626.71 | \$730.55 |
| Weekly rent ⁴²⁸ | \$210.00 | \$215.00 | \$215.00 | \$270.00 |
| Cth Rent Assistance | \$64.70 | \$64.70 | \$75.88 | \$85.75 |
| Net rent | \$145.30 | \$150.30 | \$139.12 | \$184.25 |
| Net income | \$116.40 | \$111.40 | \$487.59 | \$546.30 |
| Affordability 1 (% income on rent) | 64.3% | 65.9% | 30.6% | 33.1% |
| Affordability 2 (% net income on rent) | 55.5% | 57.4% | 22.2% | 25.2% |
| Additional supplement for affordability at 30% | \$66.79 | \$71.79 | \$0.00 | \$0.00 |

Notes: Affordability for three selected of households solely reliant on Centrelink payments in different property types was calculated assuming the receipt of Commonwealth Rent Assistance (RA) to the maximum level entitled. Two methods were used; the first expresses weekly rent as a percentage of income plus RA, the second 'net rent' method expresses the weekly rent less RA as a percentage of income. The latter produces a lower figure and was used to calculate level of housing supplement required for each household to achieve the 30% affordability benchmark. In order to cross-check the amount of weekly rent, a survey was undertaken of private lettings across the three selected areas advertised on the domain.com website on Saturday 12 September 2015. A total of 491 lettings were included in the sample (230 in Ringwood; 176 in Cheltenham; 85 in Horsham) covering 1 and 2 bedroom flats/units and 2 and 3 bedroom houses. An analysis of the distribution of the advertised lettings concluded that the use of median rents is an acceptable indicator for the affordability analysis.

Sources: : Department of Human Services (Cth), A Guide to Australian Government Payments: 20 September – 31 December 2015 (5 February 2016) <<https://www.humanservices.gov.au/sites/default/files/documents/co029-1509en.pdf>>; Department of Health and Human Services, Rental Report September 2015 (10 December 2015) <<http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/research,-data-and-statistics/current-rental-report>>.

If access to private rental property can be maximised through the provision of dedicated rental supplements for the period of a victim's recovery, and the victim is supported in improving their employment status, there is the prospect that many more people will be able to be assisted and many more people will recover more rapidly than is the case when housing assistance provided to them takes the form of social housing. Such a move should also free up social housing places for those with the greatest need.

In addition to these benefits, investing in rental subsidy strategies has the potential to be more economically efficient than investing solely in social housing stock.

For illustrative purposes, though, if as the Council to Homeless Persons and other organisations suggested, \$200 million might deliver 800 social housing units (which could be used to assist more than one household over time),⁴²⁹ an equivalent amount invested in rental subsidies and other supports could help several thousands of family violence victims to secure housing. For example, if a \$200 million program of rental subsidies consisted of an average annual supplement of \$5500 each year for a four-year recovery period, this could assist 9000 households. If the same program also provided an employment assistance component of \$6000 for each of two years it could assist 5880 households.

The Commission recognises that rental subsidies and capital expenditure are very different propositions: the former involve a recurrent program of expenditure; the latter involves a one-off investment and creates an asset (albeit with ongoing operating costs). Even if expanded considerably, however, capital expenditure would result in a finite set of stock, whereas rental subsidies would be able to be applied in a more flexible manner, potentially assisting many more people. Since capital costs and rental subsidies are treated differently for budgetary purposes, the comparative costs of both approaches would need to be subject to detailed modelling by the Department of Treasury and Finance to take into account a range of complexities.

The Commission also heard, and accepts, that the private rental market will never be a viable option for some people and that as a consequence investment in social housing remains vitally important. The proportion of family violence victims who fall into this category is, however, unknown.

We know that family violence is experienced across all strata of the Victorian community. The recent New Zealand Productivity Commission report on the social services sector stressed the importance of full assessment of client needs and capacities through its articulation of a segmented typology, whereby the level and duration of support are tailored to the individual household's capacity and complexity of needs.⁴³⁰ More broadly, Australian data on social exclusion suggests that the proportion of people who fall into the high-needs/low-capacity quadrant and most likely need social housing is relatively low. Based on HILDA (the Household, Income and Labour Dynamics in Australia Survey) data, the Melbourne Institute – Brotherhood of St Laurence Social Exclusion Monitor reports that 27 per cent of women experience social exclusion annually. Five per cent face deep social exclusion; that is, they face multiple barriers to fully participating in social and economic life. Single parents with children experience the highest rate of deep exclusion—nine per cent of all household types nationally.⁴³¹

On this basis the Commission concludes that there will still be a need for flexibility in responses to women who seek alternative accommodation. A comparison of social and private housing options should therefore not be seen as a binary choice: the goal must be to increase the number and range of housing options overall for victims of family violence. We need more, not fewer, solutions.

The Commission therefore proposes that a Family Violence Housing Assistance Fund be established to fund a program of rental subsidies (and other items) for victims of family violence. Among the factors that will need to be considered when implementing this program are eligibility requirements, the period for which an individual would be entitled to receive the subsidy, and opportunities to link rental subsidies with access to employment and training programs in order to increase the likelihood of a woman being able to afford private housing in the longer term.

The Commission also considers that the following initiatives warrant further attention and support:

- ▷ using planning law mechanisms such as inclusionary zoning to encourage contributions from developers for affordable housing head leasing. For example, the units of housing generated in the Victorian government trial of inclusionary zoning could be designated for family violence victims
- ▷ working with real estate agents to help women remain in or secure private rental properties
- ▷ promoting more flexible practices by financial institutions—such as permitting a victim of family violence to borrow against current equity pending resolution of property matters
- ▷ transferring transitional housing to women experiencing family violence, so that they have a permanent home and do not need to move again into public housing.

Individualised assistance

A strong theme that emerged in evidence the Commission received is that each person's experience of family violence differs, as do the services and supports these people need in order to recover from the violence. Accordingly, the Commission considers that service provision should move away from the current one-size-fits-all approach and offer victims greater choice and control over the nature of the assistance they receive.

The Victorian Government's introduction of Family Violence Flexible Support Packages is a move in this direction. The Commission considers, however, that the funding allocated for these packages is unlikely to be sufficient to meet the full range of expenditure on the housing-related needs of family violence victims. The scale of family violence-specific programs involving elements of discretionary funding—such as Safe at Home and private rental brokerage—is inadequate for the demand, geographic coverage is patchy, and assistance focuses primarily on the crisis response.

These forms of discretionary funding packages should feature much more prominently in the response to people experiencing family violence. Such an approach offers significant flexibility for providing a timely response to victims of family violence by enabling goods and services to be obtained quickly, thus expediting families' recovery.

Individualised packages should be available to help victims (including children) during crises and throughout the recovery phase. Importantly, such funds need to be able to be deployed flexibly in recognition that risk in family violence is dynamic, liable to escalate quickly, and can recur over time—at times unexpectedly. In some circumstances it would be most beneficial if such a package of funds were made available to victims who have a plan for leaving their home. This would obviate the need for them to move into either community-based crisis accommodation or a refuge and so allow them to stabilise their living arrangements without having to enter 'the system'.

The Commission envisages such packages being available and administered through funded staffing positions in the recommended Support and Safety Hubs and by specialist family violence services. Specific elements of the package would be delivered in collaboration with agencies in complementary service sectors. The scope of the packages should cover assistance to ensure that victims' safety, health, housing, education and employment needs are met. The packages are crucial to promoting recovery, so that victims' futures are not defined by their experience of family violence. They would be available to all victims of family violence—women, women with children, young people, older people and male victims, including gay, bisexual, transgender and intersex victims.

It is important that investment in individualised packages does not divert existing funding from service providers or from other discrete programs such as the Disability and Family Violence Crisis Response Initiative or Safe at Home initiatives. The system is already under great pressure and in need of additional investment.

The housing assistance element of flexible recovery packages

The housing assistance available to victims should include funds to meet costs associated with upgrading the safety of homes, relocation, the purchase of essential household furnishings, and the provision of time-limited rental or mortgage subsidies. It needs to be sufficiently flexible to support victims in either staying at home or securing stable housing within a relatively short period, including after a period in a refuge or other crisis housing.

The Commission considers that the provision of housing to victims who have to leave their own home will be most effectively achieved under a head-leasing arrangement in the private rental market. Here, collaboration with regionally based housing associations offers the advantages in tenant and stock management associated with scale and opportunities for vertical integration between short and long-term housing.

The depth and duration of rental subsidies will initially be determined and be regularly reviewed by the woman's case coordinator (which depending on the family violence service, might be called a case manager, advocate or navigator) in light of individual victims' household circumstances and what is needed to achieve the 30 per cent affordability benchmark in the local rental market. Importantly, rental supplements themselves need to be supplemented with assistance aimed at improving the tenant's labour market participation where that is appropriate.

The Housing Assistance Implementation Task Force (as proposed shortly) will need to establish the initial upper limits to the duration and depth of rental subsidies and to monitor their appropriateness in practice. It should also be prepared to alter them as part of an 'adaptive' approach to implementation of the scheme.

The employment assistance element of flexible recovery packages

For many victims of family violence employment assistance is a central element of the recovery process. Victims told the Commission how their experience of family violence severely affected both their self-confidence and their professional confidence in the workplace. At times they had become unemployed as a result. When determining the type of employment assistance these people require, service providers need to be cognisant of the particular impact of family violence and ensure that the employment assistance is integrated with other assistance a victim is receiving. Where housing assistance is provided, it should be explicitly linked to consideration of employment assistance. Consequently, the Commission envisages employment assistance providers with a record of effectively working with highly disadvantaged job seekers being engaged, to utilize funds available through the package.

Through the Back to Work program and associated initiatives in the Regional Jobs and Investment Fund and the Premier's Jobs and Investment Fund, the Victorian Government has acknowledged the debilitating impact of unemployment. The Commission suggests that the Victorian Government consider whether any of the funds available as part of these programs can be allocated to support the employment assistance element of the flexible recovery packages for victims of family violence.

Detailed design

In expanding Family Violence Flexible Support Packages to meet the Commission's recommendations, a number of aspects of design will need to be taken into account, among them the following:

- ▷ what the right cap is for each package, bearing in mind the reasonable amount required for rental subsidy to achieve housing affordability and the various other supports that need to be purchased
- ▷ the maximum duration of rental subsidy
- ▷ whether the amount of the subsidy is fixed or proportionate (that is, a percentage of rent) and, if the latter, what capping of the maximum should apply
- ▷ whether the level of subsidy is based on the number of people in the household
- ▷ the way in which rental subsidies will be means tested and how the subsidies might be targeted to those most in need
- ▷ the degree to which a woman's choice of location and housing type can be accommodated
- ▷ in cases where accommodation is made available other than under head-leasing arrangements, how the rental subsidy component interacts with Commonwealth Rent Assistance or eligibility for other income support or Centrelink benefits
- ▷ how the employment and training component would intersect with other existing subsidies or requirements—for example, any existing obligations imposed by Centrelink
- ▷ how the package will be treated for the purposes of determining child support and/or family law matters
- ▷ managing other factors that might limit the effectiveness of the subsidy program—such as market factors outside government's control, including demand levels from other groups, rental property supply levels and uneven rental property distributions.

Recommendation 17

The Victorian Government expand the provision of Family Violence Flexible Support Packages [within 12 months]. These packages should provide to victims assistance beyond the crisis period and should include longer term rental and mortgage subsidies where required, along with assistance for costs associated with securing and maintaining counselling, wellbeing, education, employment, financial counselling and other services designed to assist housing stability and financial security.

Ending the crisis

It is clear that the existing system of providing housing assistance to family violence victims is not working as intended. The system has become 'blocked', with bottlenecks forming at the point of entry into crisis accommodation, transitional housing and social housing. As a result, people end up staying in motels or refuges for extended periods, often for much longer than the stated limit of six weeks in a refuge. Transitional housing as a post-refuge destination is no longer a realistic option for many women in crisis accommodation. For those that do obtain transitional housing, their stay can also be extended long past the official period. In some cases, women have lived in 'transitional' housing for five years.

These circumstances are exacerbating the harm caused by family violence and are undermining other efforts within the service system to help victims recover. For many, effective housing assistance is the foundation for the effectiveness of other services available to them. As a consequence, the Commission considers that priority attention needs to be given to two urgent matters.

First, the blockages associated with access to and exit from refuges and crisis housing need to be resolved by making sufficient subsequent housing options available so that victims' stays will, on average, be less than six weeks.

Secondly, the implementation at scale of the various forms of housing assistance under the package approach the Commission recommends (by significantly expanding Family Violence Flexible Support Packages) will be a complex task. There is a lack of empirical data that would enable those implementing the scheme to readily categorise victims according to the type and level of housing support required to achieve desired outcomes. Existing secondary data sets do not allow for the depth of understanding about victims' circumstances that will be required. Similarly, while there are emerging pockets of practice wisdom concerning how the private rental market can be most effectively used for this purpose, this knowledge is confined to specific housing markets and is not well documented and shared.

Consequently, in the Commission's view the implementation of the housing assistance elements of packages, at a scale commensurate with demand, needs to be phased. It should begin with an initial two-year phase in which the number of packages delivered will be at a scale that is adequate for gathering data that will assist in forecasting demand, segmenting needs and service responses and in testing new delivery strategies. This first phase of implementation will need to incorporate applied research methods that will enable close monitoring, constant reporting, and an adaptive approach to management. It should be seen as a necessary precursor to larger scale implementation beyond two years, coinciding in each area with the introduction of the proposed Support and Safety hubs, enabling them to function as intended.

A housing blitz

Implementation of the Commission's recommendations relating to housing assistance calls for expert knowledge of family violence services, housing markets, applied research methodologies and systems design. It also calls for creativity, new thinking and an intense focus.

As a consequence, the Commission proposes the establishment of a Housing Assistance Implementation Task Force. The task force's primary objectives will be to oversee efforts to 'unclog' family violence refuges and associated crisis housing, as well as bringing housing-related packages to scale in the manner just described. In doing this, the task force will be expected to develop a body of knowledge about the most cost-effective strategies for achieving the desired outcomes and for understanding the determinants of demand. The Family Violence Housing Assistance Fund will need to be adequately funded to support these objectives.

The key performance indicators for the task force will be to return to a situation where the maximum time spent in crisis accommodation (including refuges) is six weeks and to bring to an end the use of ad hoc accommodation options such as rooming houses and caravans.

In fulfilling its role of breaking the current inertia in the system, the task force will need to use all the tools at its disposal. This means it will have to consider the appropriate level of investment required in social housing and related options for augmenting supply, so that those women and children for whom private rental is not an option are not left behind and the aim of returning crisis accommodation to a maximum of six weeks is achieved.

The challenge here lies in the current lack of empirical evidence on the proportion of victims of family violence for whom private rental may not be a viable long-term housing tenure. We know there are long waiting lists for public housing, but this is only a measure of expressed demand and is not supported by robust information about the incidence of family violence among applicants. We know little about the many more women who do not 'hit the system'.

Before an expansion of social housing specifically to meet the needs of family violence victims can be quantified, a much deeper conceptualisation of the long-term role of public housing in assisting in the recovery of victims is needed. The differences in the cost of providing social housing units as compared with medium-term support in the private rental market during the recovery phase, as discussed, suggest that attention to this matter is warranted.

The task force should be independently chaired and should include senior representatives of the private rental housing sector, registered housing providers and associations, family violence services and the public sector, as well as an expert in applied social research.

Consistent with arrangements recommended in Chapter 38, the Commission recommends, first, that the task force report through the Minister for Housing to the Cabinet Sub-Committee on Family Violence and, secondly, that the Minister for Housing report annually to the Parliamentary Family Violence Committee on the extent of unmet housing need (including the average and range of current stays by women and children in refuge and associated crisis housing) among people affected by family violence.

Recommendation 18

The Victorian Government give priority to removing current blockages in refuge and crisis accommodation and transitional housing, so that victims of family violence can gain stable housing as quickly as possible and with a minimum number of relocations, are not accommodated in motels and other ad hoc accommodation, and spend on average no longer than six weeks in refuge and crisis accommodation [within two years].

Recommendation 19

The Victorian Government establish a Family Violence Housing Assistance Implementation Task Force consisting of senior representatives from the public and commercial housing sectors and family violence specialists [within 12 months]. The task force, which should report through the Minister for Housing to the Cabinet Family Violence Sub-committee, should:

- ▷ oversee a process designed to remove blockages in access to family violence crisis accommodation by rapidly rehousing family violence victims living in crisis and transitional accommodation
- ▷ design, oversee and monitor the first 18-month phase of the proposed expanded Family Violence Flexible Support Packages (including rental subsidies)
- ▷ quantify the number of additional social housing units required for family violence victims who are unable to gain access to and sustain private rental accommodation
- ▷ subject to evaluation of the proposed expanded Family Violence Flexible Support Packages, plan for the statewide roll-out of the packages (including rental subsidies) and the social housing required.

Recommendation 20

The Victorian Minister for Housing, Disability and Ageing report annually to the Parliamentary Committee on Family Violence [within two years] on:

- ▷ the extent of unmet housing demand among people affected by family violence—including the average and range of current stays by women and children in crisis and transitional accommodation
- ▷ progress in meeting the benchmark of six weeks in crisis accommodation
- ▷ proposed actions for meeting the continuing housing demand from people affected by family violence.

Accommodation for perpetrators

Although this chapter focuses on the urgent pressures on the accommodation system for women escaping family violence, the Commission did receive submissions from homelessness organisations arguing that funding should be directed towards accommodation for perpetrators. This could occur with some form of flexible housing package, noting that perpetrators are currently eligible for housing assistance through the Housing Establishment Fund and homelessness services. If it were to occur, however, the Commission considers that further work is required to determine the level of demand for such accommodation, noting that there was ambiguity on this point in the evidence before the Commission. It is also important that any investment in housing options for perpetrators of family violence does not detract from the priority of increasing housing security for victims.

Proposals for the introduction of therapeutic interventions tied to crisis accommodation options for perpetrators have some merit, but further work is required to develop a suitable service model. Some of the important considerations concern what constitutes ‘therapeutic’, whether this support should be integrated as a core element of the accommodation or be obtained from other providers, whether men would seek the support voluntarily or it should be mandated (noting the legislative impediments discussed in Chapter 18), and how this would link to services for victims. Similarly, in relation to proposals for developing communal accommodation options for perpetrators, careful analysis of the risks associated with such an approach would need to be done before any such facilities were contemplated. The Commission therefore encourages the Victorian Government to investigate the extent and nature of the demand for such accommodation and the most appropriate model.

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10 Children and young people's experience of family violence

Introduction

The Commission received a large number of submissions describing the devastating effects of family violence on children and young people. We heard that they are often described as silent victims because the system has historically focused on the safety and wellbeing of women (or women and their children). The Commission also heard that more recently this focus has shifted.

Family violence has a serious impact on the health and wellbeing of infants, children and young people. There is no known 'safe' level of exposure to such violence. It is important to note, however, that despite this, many children and young people display great resilience in the face of family violence and the Commission heard evidence about factors that can support their resilience.

The first section of this chapter 'Context and current practice' begins by looking at key data regarding the incidence of family violence against children and young people. It then discusses evidence and submissions the Commission received about children and young people's experience of family violence and the role of early childhood services and schools in identifying and responding to family violence. Specialist family violence services as well as services that work with vulnerable families and children more generally (Child FIRST and Integrated Family Services) are also discussed in this section. Existing counselling and therapeutic programs for children are described, along with key parenting support programs. The role of Child Protection is discussed in Chapter 11.

The effects and specific experiences of particular cohorts of children and young people—Aboriginal and Torres Strait Islander children and young people, those from culturally and linguistically diverse backgrounds, children and young people with a disability, or living in rural, regional or remote communities, and those who are same-sex attracted or gender diverse—are also discussed in this section. The experience of these groups is also considered in more detail in Volume V.

In the next section 'Challenges and opportunities' the effectiveness of the current system in meeting the needs of children and young people affected by family violence is assessed. The Commission was told that children are 'frequently marginalised' in current responses to family violence.¹ Although a child's safety and welfare are often intrinsically linked to the mother's safety and welfare,² a child's needs can differ from, and at times even conflict with, a parent's rights.³ The Commission was also told that there is a need for more (and more comprehensive) services specifically focusing on the needs of children and young people.⁴

Victoria has a legal framework that recognises children's rights to safety and wellbeing, provides specific protections for children who experience family violence, and outlines principles designed to facilitate the participation of children in decisions affecting them. Despite this, the Commission heard that there is no system-wide recognition in practice of children and young people who experience family violence as unique victims in their own right. Child and youth-centred services that recognise and respond to children and young people's distinct experiences of family violence are largely missing in Victoria. These are needed to complement the work responding to women. In some cases this will mean working directly with the child or young person, in others it will mean working with mother and child, and in other cases by helping her, we are also helping her children.

Some examples of effective interventions are noted, however it is clear that these initiatives, welcome though they are, are reliant on the efforts of services already at capacity and are not supported in any systemic way. Specific barriers and the lack of services for young people experiencing family violence are also identified, along with major concerns regarding the link between family violence and homelessness of young people.

In the final section of this chapter the Commission recommends a system-wide, coordinated response to family violence that focuses on the specific needs of children and young people, and makes recommendations aimed at ensuring that their needs are met. The Commission calls for greater focus on assisting universal services to identify children and young people experiencing family violence, and more resources for mother and child therapeutic programs to help repair the bond which can be broken by family violence.

Promising responses that could be developed, improved and strengthened are identified in this section. In particular trauma-informed therapeutic interventions that are currently largely only available to children in the statutory child protection system are identified as model programs with features that could be adapted and expanded for children and young people who require this level of support. Similarly, existing counselling and support programs that only operate in specific geographic areas are identified for expansion so that children and young people experiencing or recovering from family violence can access these, regardless of where they live.

The Commission also recommends amendments to the *Family Violence Protection Act 2008* (Vic) to ensure that a child who has experienced family violence (including through witnessing, hearing or otherwise being exposed to it) is protected by a family violence intervention order.

In making its recommendations, the Commission envisages a system that incorporates a focus on children and young people, promotes early intervention with families, increases support and better engages them. Underpinning these recommendations is the Commission's view that children and young people experiencing family violence should be recognised as victims in their own right. Their safety and wellbeing are paramount and their distinct needs should be recognised when planning and delivering responses to family violence.

Note: The Commission uses the legal definition of 'child' as a person who is under the age of 18 years.⁵ The term 'young people' refers to people up to the age of 25 years.

Context and current practice

This section discusses relevant legislation; available data on the prevalence and incidence of family violence affecting children and young people; and describes some of the main services provided to this group, recognising that the needs of infants, children and young people are distinct.

The rights framework

There are a number of statutes in Victoria that protect children's rights. These include Victoria's *Charter of Human Rights and Responsibilities Act 2006* (Vic) which recognises children's rights to safety and wellbeing. Section 17(2) of the Charter states that every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child.⁶ This reflects Australia's obligation to protect children's rights under the UN Convention on the Rights of the Child.⁷

The Family Violence Protection Act specifically protects children, including by defining 'family violence' to include behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of family violence.⁸

In addition, the *Children, Youth and Families Act 2005* (Vic) provides a legislative framework for ensuring that children's services best support children's needs. For example, the Act provides for a number of decision-making principles to be considered when the Department of Health and Human Services or a community service is making decisions or taking action in relation to a child.⁹ This includes both Child Protection within the Department of Health and Human Services and community-based Child FIRST/Integrated Family Services. These principles require services to use a practice approach that is child-centred and family-sensitive—decisions and actions must protect the child from harm, protect the child's rights and promote the child's development. These principles require practitioners to focus on children's safety, stability and development in the context of their age and stage of life, as well as their culture and gender.¹⁰

The *Child Wellbeing and Safety Act 2005* (Vic) outlines 'principles for children' to guide the development and provision of services for children.¹¹ These include an expectation that service providers 'acknowledge and be respectful of the child's individual identity, circumstances and cultural identity and be responsive to the particular needs of the child'.¹²

Prevalence and incidence

As a result of under-reporting of family violence and the lack of comprehensive data collection, it is difficult to assess the full extent to which children and young people are experiencing family violence in Victoria.¹³ The best data we have on the likely prevalence of family violence against adult women is from the Australian Bureau of Statistics' Personal Safety Survey, however this survey does not extend to children.

The National Children's Commissioner in her *Children's Rights Report 2015* found that national and disaggregated data about child victims of family violence, including breakdowns on the age of victims and data about offenders, is limited.¹⁴ The Commissioner recommended improvements to data collection, including that the ABS Personal Safety Survey extend its collection of information to experiences of abuse between the ages of 15 and 17¹⁵ and that data about a child's experience of family violence be recorded as a separate entry and not part of an adult entry in the ABS *National Data Collection and Reporting Framework*.¹⁶

One thing we do know is that children and young people are often present when their mothers suffer family violence. The ABS Personal Safety Survey estimated that for 31.3 per cent of women who had experienced violence by a current partner since the age of 15, and for 47.6 per cent of women who had experienced violence by a previous partner since the age of 15, violence was seen or heard by their children.¹⁷ This means that many homes in which family violence occurs will have children in them.

Victoria Police data

The police data set out below relates only to reported family violence incidents, which, due to under-reporting, are likely to represent only a portion of actual family violence incidents against children.

Victoria Police data analysed by the Crime Statistics Agency for the Commission shows:

- ▷ there has been a 76 per cent increase in reported family violence incidents at which children were present between the years 2009–10 and 2013–14¹⁸
- ▷ children under 18 years were present at 12,688 family violence incidents attended by Victoria Police in 2009–10. This had increased to 22,376 incidents by 2013–14¹⁹
- ▷ often multiple children are present at these incidents. In 2013–14, there were 11,053 incidents in which one child was present, 6627 where two children were present, 2866 where three children were present, 1089 where four children were present and 741 where five or more children were present.²⁰

From 2009–10 to 2013–14, the proportion of incidents in which children were present has remained relatively constant (35.6 per cent in 2009–10 and 34.3 per cent in 2013–14).²¹

In addition to recording the number of children present at family violence incidents, police data also includes where a child has been listed as an 'affected family member' (meaning victim) on the L17 form which police complete after attending a family violence incident.²² It should be noted that although an L17 should be completed by Victoria Police for each child that is present at a family violence incident, in practice it may be that an L17 will be completed for the person that police assess to be the direct victim (this is most likely the mother).²³ This may mean that any children who were in the residence at the time will be recorded on the L17 as present, rather than as an affected family member on a separate L17.²⁴

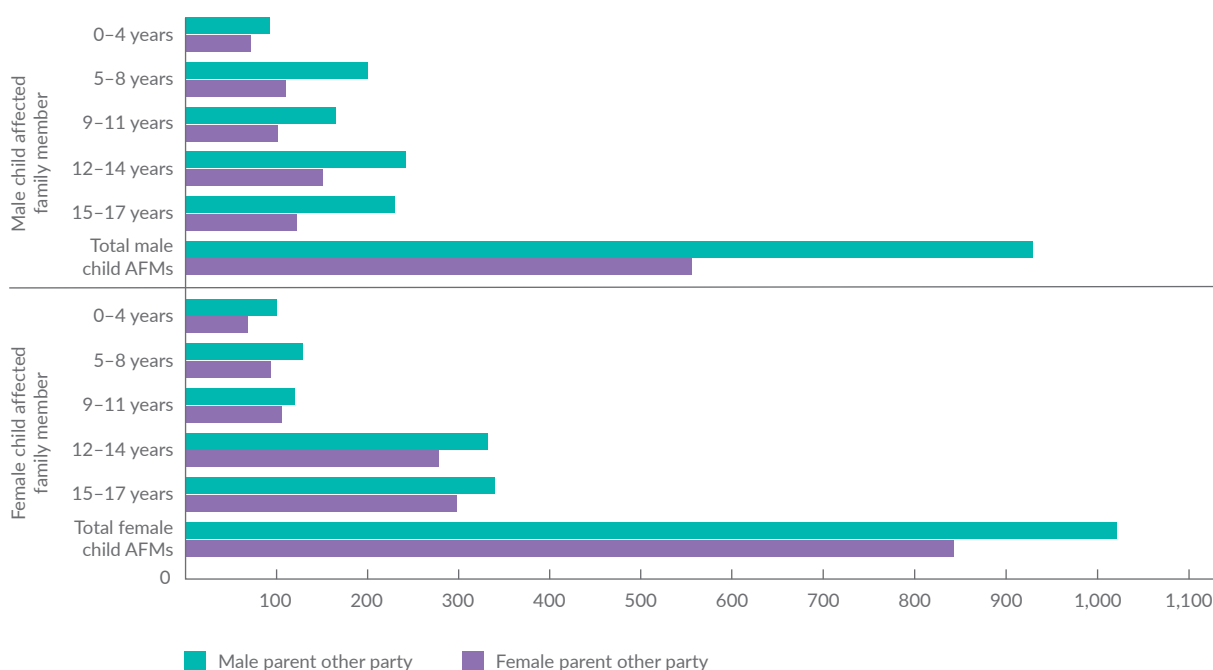
Over the five year period 2009–10 to 2013–14, the number of L17s that recorded children as the affected family member of family violence has increased.

- ▷ In 2009–10, 2742 L17s were completed for affected family members who were aged less than 18 years, and by 2013–14 this figure had more than doubled to 5781.²⁵
- ▷ As a proportion of all recorded family violence incidents, in 2009–10, 7.7 per cent of affected family members were aged under 18, increasing slightly to 8.9 per cent in 2013–14. In 2013–14, children in the age cohorts 12 to 14 years and 15 to 17 years made up the highest portion of child affected family members where the other party (the reported perpetrator) was a parent.²⁶
- ▷ In 2013–14, where a parent was the other party, girls were more likely to be the affected family member than boys (56 per cent (n=1860) girls and 44 per cent (n=1481) boys).²⁷ Further information about the age and gender of affected family members for the 2013–14 period is in Figure 10.1 below.

Fathers were ‘other parties’ in the majority of incidents: 63 per cent (n=927) where the affected family member was a male child and 55 per cent (n=1019) where the affected family member was a female child.

Mothers were ‘other parties’ in 37 per cent (n=554) of incidents where the affected family member was a male child and 45 per cent (n=841) where the affected family member was a female child.²⁸

Figure 10.1 Affected family members aged 17 years and under where other party is a parent: Victoria Police, 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), Table 6: Children affected family members aged 17 years and under where the other party is a parent—Victoria Police July 2013 to June 2014, 31, provided to the Commission by the Crime Statistics Agency, 8 January 2016.

Family violence intervention order applications

Over the five years from July 2009 to June 2014, combined Magistrates’ and Children’s Court data shows that there has been a 20.5 per cent increase in the number of child affected family members on FVIO applications (compared with an increase of 28.9 per cent in the number of adult affected family members).²⁹ Across both courts, the majority of respondents to these applications were males, however, from July 2009 to June 2014 20 per cent were females.³⁰

In 2009–10, 46.5 per cent (n=20,575) of all affected family members listed on FVIO applications in both courts were children (aged 0–17 years) and in 2013–14 this was slightly lower at 44.8 per cent (n=24,802), with minor variations in between.³¹

Magistrates' and Children's Court data relating to children and young people

Magistrates' Court data on parties to original applications for FVIOs shows the following:

- ▶ In the five years from July 2009, the number of affected family members aged 17 years and younger increased by 20.6 per cent.³²
- ▶ In 2013–14 the largest age group of child affected family members was five to 12 years.³³
- ▶ On applications where the affected family member was aged under 17 years, the related respondent was most likely between 30–44 years of age and most likely male.³⁴

Children's Court data on parties to original applications for FVIOs, which includes children who are respondents, shows the following:

- ▶ In the five years from July 2009, the number of affected family members aged 17 years or younger increased by 20.3 per cent.³⁵
- ▶ In 2013–14, 70 per cent (n=1028) of these applications were against a male respondent and 30 per cent (n=442) were against a female respondent.³⁶
- ▶ In 2013–14, the largest age cohort amongst all male affected family members (including adult males) was 10–14 years.³⁷
- ▶ In 2013–14 the largest age cohort amongst all female affected family members (including adult females) was 15–19 years.³⁸

The effects of family violence on children and young people

Family violence can have profound short and long-term effects on children and young people that may or may not be immediately apparent: '[i]mpacts on children who live with family violence may be acute and chronic, immediate and accumulative, direct and indirect, seen and unseen.'³⁹

Impacts during pregnancy and infancy

The Commission was told that pregnancy is a time of increased risk of family violence, and there is evidence that such violence can have an impact on the foetus.⁴⁰ A pregnant woman experiencing elevated levels of stress and fear as a result of family violence can transmit stress hormones such as cortisol and adrenaline to the foetus.⁴¹ High exposure to cortisol has been linked to low birthweight, significantly smaller head size and reduced ability to fight infection.⁴² There is a recognised link between intimate partner violence and miscarriage.⁴³ A foetus can be injured as a result of physical trauma, which can cause miscarriage or pre-term labour:

During my pregnancy I was subjected to numerous [beatings] which finally resulted in a miscarriage ... My daughter was born with spinal fractures due to the physical abuse that was never identified until recently.⁴⁴

... when I found out I was pregnant [he] told me I had to have an abortion, when I tried to leave to raise the child myself he threatened to kick me in the stomach and kill the child ...⁴⁵

I became pregnant with his baby, and the abuse became worse. On one occasion he throws me in the pool smashing my head on the concrete. I lost my baby at 5 weeks.⁴⁶

There is also an increased risk of family violence just after a baby is born.⁴⁷

The Commission heard that infants are 'highly sophisticated in their capacity to process information' and very attuned to their environment and whether they feel safe.⁴⁸ Family violence affects infants' development because the human brain grows very quickly during the early years of life and is highly sensitive to prolonged periods of stress at this time.⁴⁹ Exposing infants to family violence therefore 'interferes with the basic building blocks of development' and can affect their cognitive, emotional and behavioural development.⁵⁰

Physical, emotional, mental and behavioural effects on children

Children can be affected by family violence in many ways, including the following:

- ▷ suffering direct or indirect physical harm—for example, if a mother is holding a child when she is attacked or if a child is injured while trying to protect their mother
- ▷ feeling scared of those they love when they should feel safe
- ▷ feeling anxious about their safety and that of other family members and pets
- ▷ having to be responsible for the care and safety of the abused parent and/or siblings
- ▷ feeling they are responsible for the violence
- ▷ becoming homeless, losing treasured possessions, and losing a sense of security and familiar toys, surroundings and people
- ▷ through disrupted schooling as a result of prolonged absences from school or multiple new schools in a short space of time
- ▷ being unable to bring friends home or being socially marginalised because of the perpetrator's controlling behaviour.⁵¹

The result is that children can suffer from a variety of physical, emotional and mental health effects including depression, anxiety, low self esteem, impaired cognitive functioning and mood problems.⁵² The Commission was told they might be burdened by the 'secret' at home and are more likely to suffer from learning difficulties, trauma symptoms and behavioural problems.⁵³ Such children can also have problems with bedwetting and disturbed sleep, and be plagued by flashbacks and nightmares.⁵⁴ Additionally, their social skills may be affected and they might have difficulty regulating their emotions, trusting others and forming relationships.⁵⁵

I was incredibly suicidal from a very young age—it's very painful to think about. I remember being what could only have been about 6 years old and just crying and crying and being so afraid, wondering how I could live if I ran away from home—I was also incredibly afraid of and obsessed by death. I was already starving and hurting myself when I was around 11.⁵⁶

Children's schooling can be affected as a result of mental health and behavioural problems that arise from the violence.⁵⁷ They might learn coping strategies that protect them in their home but that detract from their learning at school; for example, a child might withdraw at home to mitigate the risk and the impacts of violence there, but this could compromise their learning and their ability to form friendships at school.⁵⁸ They might also have problems concentrating and managing day-to-day tasks, including getting to school.⁵⁹

It is well established that children do not have to directly experience family violence or even witness it to be negatively affected by it.⁶⁰ Reflecting this, the Family Violence Protection Act defines 'family violence' to include behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of family violence. Examples of behaviour which may constitute family violence are provided in the Act:

- ▷ overhearing threats of physical abuse by one family member towards another
- ▷ seeing or hearing a family member being assaulted
- ▷ comforting or providing assistance to a family member who has been physically abused by another family member
- ▷ cleaning up a site after a family member has intentionally damaged another family member's property
- ▷ being present when police officers attend an incident involving physical abuse of a family member by another family member.⁶¹

The Commission heard that observing the aftermath of a violent incident, seeing an injured parent or feeling a sense of tension and fear in the home can be just as traumatising for children.⁶² Research has shown that the impacts on children of exposure to family violence are similar to the impacts on children who experience direct physical violence:⁶³

The aftermath of the violence where there is blood on their mother's face, walls are smashed, or glass is broken, is often something that children have often spoken to me about as being intrusive memories that they can't get out of their heads during the day, and which keep them awake at night as nightmares.⁶⁴

Witnessing an attack on a primary caregiver can be a terrifying experience for a child. Professor Louise Newman AM, Director at the Centre for Women's Mental Health at the Royal Women's Hospital stated:

The most damaging type of situation for a young child exposed to family violence is where the child believes that their primary carer will be unavailable to them and will die. This belief is as damaging to the child as the belief that the child itself will die. This reflects the dependency of the child on his or her primary carer and attachment figure.⁶⁵

The Commission heard many descriptions of the effect of family violence on children who witnessed the violence:

I was torn; yearning to escape my situation, terrified that further harm would come to my mother and siblings if I were not there to protect them. I considered committing a serious crime, sufficient to have me placed in juvenile detention or jail as a means of escape, however the responsibility I felt to my mother and siblings stopped me from pursuing what I feared was a selfish course of action.⁶⁶

[M]um would call out to me every night in some terrible situation, or something violent, with a chair in her hand, steel armed chair, I was only three or four, Dad loved me and I could stop him. It was a lot of responsibility, it's a huge thing. It does affect the kids, the way it affects me.⁶⁷

Once he cut the head off my Mother's pet to 'teach her a lesson.' He regularly beat—and I mean beat the shit out of our dogs. Hearing the sounds of this in my memory is still gut wrenchingly sickening. In fact, I hate ever thinking about my childhood, because all I can remember is screaming, crying, horrible insults, and the sounds of people running away from each other.⁶⁸

Although she was never diagnosed, I also believe that my mother suffered from depression, and I remember her telling me that she wanted to kill herself when I was a child and also overdosing on pills when I was a teenager. There were many occasions where there were blow ups and my Dad would start yelling, swearing and hitting my mum. We were incredibly scared and frightened as children, and I remember my sister calling my Aunties on several occasions who would rush over and try to intervene. As us siblings grew, we were able to physically intervene and hold them off.⁶⁹

Domestic Violence Victoria told us that children living in households where family violence occurs are more likely to suffer physical abuse, sexual abuse or neglect when compared with children who live in non-violent homes.⁷⁰ Child sexual abuse is discussed in the context of family violence in more detail in Chapter 12.

The Commission also heard that perpetrators sometimes use the family law system to inflict abuse—for example, by making repeated parenting applications in order to punish the child’s mother or as a means of controlling her. This form of family violence can also be highly stressful for children:⁷¹

My experiences in the Family Court have all been unpleasant. I have been told that I have no choice even though I have been frightened and suffered from panic attacks as well as anxiety. The court were going to place me in a room with my abusive father just to see how I react. Before this ruling, I had made my views known to the court but they ignored my statement. One of my greatest fears is that no one takes my concerns seriously nor do they really think my views are important.⁷²

I believe that my ex husband attempted to control me and ‘see’ me ... 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’.⁷³

Effects of family violence on the mother–child relationship

The Commission heard from many women about the extraordinary lengths they had to go to try and keep their children safe from the violence. Research also shows that some perpetrators systematically undermine the mother–child relationship as an abuse tactic—for example, by undermining the mother’s parenting skills through criticism⁷⁴—and one submission described for the Commission the effect of such tactics:

So many arguments I have lost count, he would follow me around the house trying to get me to join him in a yelling match. He would make sure the children could hear him putting me down. ... [He] constantly put me down to the children and questioned the children as to why they loved me.⁷⁵

As a survival mechanism, some children may identify with the perpetrator and participate in undermining their mother.⁷⁶ Professor Newman noted that children want to be loved and accepted by their parents, and in family violence situations ‘the only way they can get that closeness is often to join with the abusive aggressive parent’.⁷⁷ In the long term this can distort the child’s understanding of relationships.⁷⁸

The Commission was told that family violence can affect the mother–child bond.⁷⁹ For infants, family violence can result in ‘disorganised attachment’,⁸⁰ which occurs when the baby ‘does not have a consistent or coherent strategy for obtaining help or comfort from its mother’⁸¹ and can even be frightened by the presence of its mother, as well as by the presence of the perpetrator of the violence.⁸²

Infants and children may suffer if their mother’s ability to parent is compromised as a result of family violence.⁸³ Parenting capacity can be undermined because a mother’s mental health is adversely affected or because she is physically injured.⁸⁴ She might also ‘be preoccupied with trying to control the home environment’ so that the perpetrator’s needs receive priority.⁸⁵

There is evidence that women who experience family violence during pregnancy are more likely to develop depression after the birth of their child.⁸⁶ Maternal perinatal depression is in turn linked to a number of psychological and developmental disorders in children.⁸⁷

I can’t adequately parent our daughter while I am sick, and under the stressful circumstances of the past few years, my immune system is not what it ought to be and I am more susceptible to illness.⁸⁸

Dr Robyn Miller, social worker and family therapist, told the Commission that aggravating this situation is the fact that a child experiencing family violence might need additional parental attention because of their emotional and behavioural difficulties.⁸⁹ This can place considerable pressure on women who are dealing with family violence. However many women increase their nurturing behaviours towards their children in an attempt to compensate for the violence, and evidence shows that mothers have a central role in their children’s recovery from family violence.⁹⁰

Mothers sometimes also use violence against their children. According to Victoria Police, women were the offenders in just over two in five of all reported family violence incidents with a child victim.⁹¹ One anonymous submission said:

While my Mother was terribly abusive herself- especially verbally- I believe that a lot of her emotional instability was as a result of my stepfather's creation of an incredibly frightening, negative household where everybody was reacting out of sheer terror constantly.⁹²

Cumulative harm

Children can suffer cumulative harm when subjected to 'a series or pattern of harmful events and experiences that may be historical, or ongoing, with the strong possibility of the risk factors being multiple, interrelated and coexisting over critical developmental periods.'⁹³ Among these experiences can be parental substance abuse, disrupted living arrangements and neglect, as well as family violence.⁹⁴

The effects of cumulative harm on children can be 'profound and exponential, covering multiple dimensions of [their] life'.⁹⁵ This is recognised in the Children, Youth and Families Act, which requires that practitioners working with vulnerable children consider the 'effects of cumulative patterns of harm on a child's safety and development'.⁹⁶ The Commission was told, however, that cumulative harm is not always fully understood by family violence workers and other practitioners who come into contact with children experiencing such violence. There are a number of different risk assessment frameworks and decision-making tools, that are poorly connected, and this contributes to confusion among practitioners. These systemic problems lead to some practitioners treating violence and abuse as discrete events, and failing to recognise the cumulative harm of such violence, and the trauma to children that can occur as a result.⁹⁷

Effects of family violence on young people

Young people's experiences of family violence and its effects are distinct from those of children, and from those of adults.

Adolescence and young adulthood involve major transitions, such as moving from primary to secondary school, leaving secondary school, gaining employment, forming intimate relationships, moving out of home for the first time, and becoming sexually active.⁹⁸ Young people's experience of family violence can also intersect with and be compounded by a number of other factors; for example, young people are more vulnerable to poor mental and sexual health, homelessness and unemployment.⁹⁹

In addition to the ways in which children experience family violence, young people's experience of such violence can also involve the assumption of caring responsibilities; for example, caring for younger siblings.

Every day I walked home from school I would be terrified, because I was sure it would be the day he'd snapped and I'd walk in to find that he had murdered my Mother and brother. It was like walking into a warzone—I never knew what might have happened or would be about to happen. I used to pray that he would die so that we could be free of him.¹⁰⁰

There is also evidence that experiencing family violence may have different effects on girls and boys and can affect their relationships as adolescents and adults:

Children have a gender differential response to family violence – as a generalisation, girls tend to internalise and boys act out. In terms of risk, gender impacts place girls at higher risk of victimisation as adults and boys at greater risk of perpetration as adults. Having witnessed parental violence, emerged as the strongest predictor of perpetration of violence in young people's own intimate relationships.¹⁰¹

The Commission for Children and Young People submitted that young women who are victims of family violence may have complex issues such as substance abuse and a lack of life skills due to lifelong abuse from their parents and later from partners.¹⁰²

Intimate partner violence can affect young women's income and financial stability, housing security and parenting capacity.¹⁰³ When young parents experience intimate partner violence, there are also concerns about the effect of that violence on their children.¹⁰⁴

Homelessness as a consequence of family violence for young people

Just as family violence causes homelessness for women, it also causes homelessness for children and young people either when they accompany their mothers or when they are forced to leave the family home on their own because of family violence.¹⁰⁵

I took all the abuse because I didn't want to be homeless. Besides I had school to think about and I wanted to pass. How was I going to pass if I was homeless?¹⁰⁶

[W]hen unaccompanied 12 to 18 year olds show up homeless, sometimes it's the first time they have disclosed family violence. The question is: How did it get to this point without being picked up first? Are these people already known in the system? If so, where is the coordination across services and what is capacity to respond?¹⁰⁷

The Australian Institute of Health and Welfare has reported that, nationally, of 44,414 young people seeking the assistance of a homelessness service in 2013–14, 15 per cent identified family violence as the main reason for seeking assistance and a further 13 per cent identified relationship or family breakdown.¹⁰⁸ A 2014 longitudinal study found that of 382 young Australians suffering from long-term homelessness (four or more years), 64 per cent had experienced physical violence in the home and 71.6 per cent had experienced some form of child abuse.¹⁰⁹

In Victoria in 2013–14, 4038 boys and 4338 girls aged 0 to 14 years (the largest age cohort for males, but one of the smaller cohorts for females) were reported as seeking specialist homelessness assistance for family violence reasons.¹¹⁰

Children can experience a range of harms as a result of homelessness. Dr Angela Spinney, a research fellow and lecturer, Institute for Social Research at Swinburne University of Technology, gave evidence on the importance of very young children having stability, including constant schooling.¹¹¹ Merri Outreach Support Service submitted, 'For children homelessness is not just about having a home to live in, it is about feeling unsafe, about being disconnected from supports and not having a sense of security'.¹¹² Other effects include:

- ▶ an increased likelihood of developmental delay, anxiety and depression, low self-esteem and nutritional deficits
- ▶ emotional isolation and difficulty relating to peers
- ▶ discrimination and stigma at school
- ▶ reduced concentration
- ▶ increased school absenteeism
- ▶ an increased risk of infectious diseases as a result of low immunisation levels.¹¹³

Young people and intimate partner violence

The Fifth National Survey of Secondary Students and Sexual Health, conducted in 2013, found that of the students who reported being sexually active, 28.3 per cent ($n=124$) of females and 19.8 per cent ($n=54$) of males reported having experienced unwanted sex.¹¹⁴ Of those who reported having unwanted sex, 60.5 per cent ($n=75$) of young women reported having unwanted sex because their partner thought they should, compared with 37.0 per cent ($n=20$) of young men.¹¹⁵

A 2010 study surveyed 146 Australian women aged 14–18 years, asking about their experiences with boyfriends. It found that more than 90 per cent of the young women had experienced at least one abusive and controlling behaviour and over half of them had experienced five or more such behaviours.¹¹⁶

For young women, the increased risk of intimate partner violence is attributable to a range of factors, such as beliefs about gender roles, limited experience of interpersonal relationships, and lack of access to support services.¹¹⁷

The Youth Affairs Council of Victoria told the Commission that although young people recognise family violence as a problem, they are more likely 'to be poorly-informed about family violence and relationship violence, and to have been influenced by beliefs that encourage or excuse violence'.¹¹⁸ VicHealth's 2013 National Community Attitudes towards Violence against Women Survey found:

- ▷ Twenty-seven per cent of the young men surveyed believed 'domestic violence is a private matter to be handled in the family'—compared with 17 per cent of the survey sample as a whole.¹¹⁹
- ▷ Sixty-six per cent of the young men surveyed and 55 per cent of the young women believed that women could leave a violent relationship if they really wanted to.¹²⁰
- ▷ Forty-six per cent of the young people surveyed believed it was sometimes all right for a man to use a phone or computer to track his female partner without her consent—compared with 38 per cent of the surveyed sample as a whole.¹²¹

Chapter 36 discusses the importance of primary prevention in depth (including primary prevention with children and young people) through, in particular, respectful relationships education.

Other long-term effects of family violence for children and young people

The Commission heard from a number of people who described the long-term effects of family violence for children and young people.¹²²

Professor Newman told the Commission that those who experience family violence in their early years have poorer health outcomes—for example they have higher rates of high blood pressure and Type 2 diabetes as adults as a result of the activity of stress-related hormones.¹²³ Children and young people who have experienced family violence are also at greater risk of drug and alcohol abuse and post-traumatic stress disorder as young people and adults.¹²⁴

Evidence submitted to the Commission showed that there is a strong link between the experience of family violence and contact with the youth justice system and adult criminal conduct.¹²⁵ In 2014 the Youth Support and Advocacy Service analysed Victoria Police referrals to the service's diversion program for people aged 10 to 17 years.¹²⁶ The results showed that 55 per cent of young people who had had recent contact with Victoria Police reported that family conflict occurred in their home 'often' or 'very often'.¹²⁷

The Victorian prison population shows 'considerably higher than average' levels of exposure to sexual, physical and emotional abuse.¹²⁸ Family violence and female prisoners is discussed in Chapter 34.

Intergenerational effects

There is some evidence that children who have experienced family violence are at greater risk of using violence later in life and are more likely to have violence used against them.¹²⁹ Many young women who experience family violence in their early intimate relationships have experienced family violence during their childhood.

The subject of the intergenerational effects of family violence—in terms of both perpetration and victimisation—was raised in many submissions and consultations:¹³⁰

Each relationship is a violent relationship because as children we've never been loved. We come from broken families.¹³¹

If anger and abuse surrounds a young person's childhood, then they will [grow] up only understanding anger and abuse, because nobody has taught them otherwise.¹³²

As a young adult, I replicated what I knew. I entered into and then became trapped in a relationship that was dangerously violent.¹³³

I have six sons, they've all witnessed violence. He was 22 months old, in the refuge and he did exactly the same thing to me as his dad did. My son has only just turned 18, he's got the power in him for how to destroy a person. I taught them 'Youse don't do this to your girlfriends'. They need to be taught.¹³⁴

The Youth Affairs Council of Australia noted that, even when young women did not experience family violence during childhood, intimate partner violence affects young people's earliest experiences of gender roles and intimacy and can 'set a damaging precedent and shape the family lives they later establish as adults'.¹³⁵ Therefore, responding to the problem of intimate partner violence experienced by young people is a crucial element in breaking the cycle of violence and preventing intergenerational violence, as well as to responding to the immediate harm it causes.

The diversity of experiences

Children and young people's experiences of family violence are influenced by their individual characteristics. Some children face specific barriers in gaining access to services or require additional or culturally-specific support. This section examines the experiences of Aboriginal and Torres Strait Islander children and young people, young people who are same-sex attracted and gender diverse, children and young people from culturally and linguistically diverse communities, children and young people with disabilities, and children and young people from rural, regional and remote communities.

Aboriginal and Torres Strait Islander children and young people

Aboriginal and Torres Strait Islander children and young people experience higher rates of family violence than other children and young people. A National Crime Prevention survey conducted in 1998 and 1999 with 5000 Australians aged between 12 and 20 found that Aboriginal and Torres Strait Islander young people were significantly more likely to have experienced physical violence between their parents or parents' partners. In the case of violence from a male parent to a female parent, 42 per cent Aboriginal and Torres Strait Islander young people reported witnessing this, compared with 23 per cent of all respondents.¹³⁶

In its 2009 *State of Victoria's Children* report, Victoria's Department of Education and Early Childhood Development (now the Department of Education and Training) reported that 20.5 per cent of Aboriginal young people aged 15–24 years had been the victim of physical violence and 27.2 per cent had been threatened with violence.¹³⁷ Of those who had experienced physical violence, 82.5 per cent knew the perpetrator.¹³⁸ The Department of Education and Training provided the Commission with a School Entrant Health Questionnaire, which showed that in 2014, 4.2 per cent of Indigenous children compared with 1.2 per cent of non-Indigenous children reported a 'history of abuse'.¹³⁹

For Aboriginal and Torres Strait Islander children and young people, family violence occurs in the context of intergenerational grief and trauma resulting from colonialism, dispossession and loss of traditional language.¹⁴⁰ This has led to communities suffering from a range of adverse effects, among them poor health, poor educational and employment outcomes, poverty, and higher rates of incarceration.¹⁴¹ These effects can contribute to the prevalence of family violence in Aboriginal and Torres Strait Islander communities and compound the impact of violence on these communities.

The Commission heard that both nationally and in Victoria, Aboriginal and Torres Strait Islander children are significantly over-represented in out-of-home care, and that family violence is a central factor contributing to their removal from their home.¹⁴² Fear of having children taken away can also prevent Aboriginal and Torres Strait Islander women from reporting family violence. This was one of the most consistent themes heard by the Commission, and is discussed in detail in Chapter 26.

The child protection system is required to operate under the Aboriginal Child Placement Principle which states that kinship care is the preferred home-based placement type and must be considered and investigated before any other placement option is considered.¹⁴³ In Victoria in 2013–14, 66.9 per cent of Aboriginal children were placed in accordance with the principle.¹⁴⁴ The Commissioner for Aboriginal Children and Young People, Mr Andrew Jackomos PSM, is investigating the circumstances of Victorian Aboriginal children in care with a view to highlighting the relationship between family violence and the placement of Aboriginal children in out-of-home care. The May 2015 Taskforce 1000 report for the South Melbourne area found that four out of five Aboriginal children in out-of-home care in that area had been exposed to family violence and parental substance misuse.¹⁴⁵ Similarly, 86 per cent of Aboriginal children in out-of-home care in the Inner Gippsland area had been exposed to family violence.¹⁴⁶

Commissioner Jackomos has also noted that the number of Aboriginal children placed in statutory care increased by 42 per cent in the 12 months to 30 June 2014 (from 922 to 1308 children).¹⁴⁷ This represents 62.7 such arrangements per 1000 children and compares with 5.1 per 1000 for all Victorian children.¹⁴⁸

Children who are removed from their home, including for reasons of family violence, can suffer major trauma as a result of cultural loss:

If family violence leads to a Koorie child or young person needing to leave their family, sometimes resulting in them being placed in statutory care, this can have a significant effect on their cultural identity and wellbeing. If that placement is not with kin or appropriately within the Koorie community, a child or young person's connection to family, land and culture can be adversely affected or undermined.¹⁴⁹

This loss of connection to family, land and culture can greatly limit a child's recovery from family violence because factors associated with connectedness promote resilience and healing.¹⁵⁰ Dr Miller gave evidence that for Aboriginal children 'connection to culture is healing and needs to be part of our planning and ongoing work with the family'.¹⁵¹ It is therefore crucial that Aboriginal children and young people experiencing family violence have access to culturally competent assessment, intervention and support services that 'emphasise cultural connection as a key aspect of emotional and social wellbeing'.¹⁵² A 2012 report co-authored by the Victorian Aboriginal Child Care Agency, Take Two Berry Street and La Trobe University noted:

For too long Aboriginal children have been assessed using measures and assessment approaches which do not take into account their culture, beliefs, connection to community and place, spirituality and their individual experiences. Furthermore the assessment of an individuals' social and emotional status independent of the family and community is an alien concept to Aboriginal people as well as being ecologically uninformed.¹⁵³

Although the Children, Youth and Families Act requires that the cultural safety of Aboriginal children be protected when these children are placed in out-of-home care, the Commission was told that this often does not occur.¹⁵⁴

The Koorie Youth Council told us that assumptions made about young people on the basis of Western cultural frameworks can be inappropriate if blindly applied to Aboriginal communities without acknowledging cultural differences.¹⁵⁵ For example, in Aboriginal communities there might not be a clear distinction between adolescents and adults, as is the case in mainstream Western cultural frameworks.¹⁵⁶

It is also important that mainstream youth services ensure that their staff are culturally sensitive and that partnerships are developed between Aboriginal community controlled organisations and other youth services.¹⁵⁷ In Chapter 26, we discuss providing capacity to Aboriginal and Torres Strait Islander organisations to give secondary consultations to mainstream services and make recommendations to support culturally safe service delivery.

Chapter 26 provides a detailed discussion of family violence and Aboriginal and Torres Strait Islander peoples.

Children and young people from culturally and linguistically diverse communities

The School Entrant Health Questionnaire showed that in 2014, 13.9 per cent of students were listed as having a language other than English compared with 82 per cent without.¹⁵⁸

There is little specific data on the number of children and young people from culturally and linguistically diverse communities who are affected by family violence.¹⁵⁹ However, there are a number of additional circumstances that can affect their experience of family violence and compound the trauma they suffer as a result. The Commission for Children and Young People told the Commission that these children and young people:

- ▷ can be further traumatised if they are relied on as an interpreter for their mother with police or other services
- ▷ might have witnessed violence in their country of origin
- ▷ might have been forced to flee their country of origin in dangerous circumstances and with an uncertain future
- ▷ might have lost their family networks, extended family and friends and the familiarity of their country of origin
- ▷ might have spent time in a refugee camp or detention centre
- ▷ might have become separated from parents or other family members on being accepted as a refugee.¹⁶⁰

In addition to family violence, children and young people from CALD communities often face other hurdles associated with relocating to a new country—for example, uncertain immigration status, learning a new language, establishing new friendships, learning new cultural norms, and adjusting to a different school system.¹⁶¹ They might also be subjected to racism, have a high degree of responsibility for younger siblings, and have a ‘general feeling of being caught between two worlds’.¹⁶² They need access to services that are both culturally appropriate and child or youth focused.¹⁶³

The Centre for Multicultural Youth submitted that adolescents from CALD backgrounds can face additional challenges associated with ‘the intersection of both adolescence and the broader challenging process of settling in a new country’.¹⁶⁴

A particular concern arises when young CALD people adapt more quickly than their parents to their new environment, for example, learning English at school and adopting values and modes of interaction that differ from those in their country of origin. This can change the power dynamic within families and ‘damage the pride of the adults’, who might use violence to exert control over their children.¹⁶⁵

As a result, the type of family violence these children and young people experience can be quite different from that experienced by other children and young people. The Centre for Multicultural Youth submitted that young CALD women have noted that the perpetrators of family violence against them are more likely to be brothers or fathers, rather than intimate partners.¹⁶⁶ For example, an older brother might adopt a violent disciplinary attitude because of culturally motivated concern about his sister’s behaviour.¹⁶⁷ The mother might be unable to intervene for a variety of reasons, among them feelings of disempowerment associated with parenting in a new culture, and being fearful of trying to gain access to support services.¹⁶⁸ This can have implications for the accessibility of specialist family violence services, which ‘generally target women who are in intimate partner relationships’.¹⁶⁹

The State-wide Children’s Resource Program submitted that solutions need to:

Strengthen the capacity to advocate for the specific needs and resources of children from migrant and refugee families ... use culturally competent practices in supporting children, cultural diversification of the workforce [and] use the expertise of those belonging to particular cultural groups to address family violence.¹⁷⁰

The experiences of culturally and linguistically diverse communities are considered further in Chapter 28.

Young people who are same-sex attracted and gender diverse

In common with adults, same-sex attracted and gender diverse young people are vulnerable to particular types of family violence such as 'outing' violence (the threat of being outed or actually being outed), the withholding of hormones and/or HIV medication, and subjection to psychological, emotional or physical violence in relation to coming out.¹⁷¹

A 2010 study showed that 61 per cent of 3400 same-sex attracted and gender diverse young people surveyed had experienced verbal abuse because of homophobia and 18 per cent had experienced physical abuse; 24 per cent who had experienced abuse because of homophobia were abused at home.¹⁷²

A 2014 study showed there is a link between families' rejection and youth homelessness, disrupted schooling, and suicidal ideation.¹⁷³ Discrimination, shame and abuse can also place young people at greater risk of harmful or exploitative relationships.¹⁷⁴ In addition, same-sex attracted and gender diverse young people can have greater difficulty gaining access to support services as a result of discrimination or lack of staff sensitivity and can also feel uncomfortable in refuges because of homophobic or transphobic views among other residents.¹⁷⁵ They are 'more inclined to sleep rough because of a fear of facing discrimination, homophobia and violence at homeless shelters'.¹⁷⁶

These issues are discussed in more detail in Chapter 30.

Children and young people with disabilities

Children with disabilities are more likely to be victims of family violence—particularly sexual abuse.¹⁷⁷ There is evidence that the prevalence of maltreatment of children with disabilities is 3.4 times greater than that for children without disabilities.¹⁷⁸

My dad used to hit me with the strap. I was 14 when that stopped. Maybe it was my fault, I had an attitude problem. Or maybe because I'm different. I'm the only one in the family who has a learning disability. He didn't give the other children the strap as much.¹⁷⁹

Young women with disabilities are particularly vulnerable to violence by people they know, whether in their home, in schools, group homes, or supported accommodation, as well as to intimate partner violence.¹⁸⁰ One study showed that 90 per cent of women with an intellectual disability have been sexually abused.¹⁸¹

Children and young people with disabilities can have a variety of needs when seeking assistance from family violence services; for example, they might need short-term funds for disability-related support, such as attendant care, hire of equipment, Auslan interpreting or transport costs.¹⁸² In addition, children and young people with disabilities who are forced to leave their home as a result of family violence can be particularly vulnerable to the trauma associated with moving. The Safe Futures Foundation submitted:

Children with a disability are often attending schools that cater to their specific needs. Links to health agencies, home and community care responses, travel and other specialist community supports are also often key to the woman or child receiving the most appropriate support to meet their requirements. Change can be destabilising and supports almost impossible to link to if the family moves from their home and community.¹⁸³

Women with children who have a disability have greater difficulty gaining access to family violence services and refuges, which might not be able to cater to their needs.¹⁸⁴ Women with Disabilities Victoria noted the lack of appropriate refuge options for women and children with disabilities.¹⁸⁵ As one woman said, 'I would have had to give up my job, my house. I can't go to a shelter with a daughter who is bipolar'.¹⁸⁶ Melbourne City Mission noted:

The current supply of emergency accommodation (motel or secure women's refuge) does not have the capacity to physically accommodate women or children with high-support needs—for example, beds with hoists. The staffing model and practice model is not amenable to accompanying children with high physical and/or medical support needs (for example, children who require peg feeding) or children with behavioural support needs (for example, children with autism who have restricted and/or repetitive patterns of behaviour).¹⁸⁷

Young people with disabilities also face major barriers when seeking family violence services.¹⁸⁸ For example, if a young person with a disability is living in a violent household it might be difficult for them to find alternative accommodation that offers the supports needed to enable them to live independently. For young men with disabilities, crisis accommodation options can be even more limited.¹⁸⁹

The Commission was told that the Department of Education and Training does not collect data on out-of-home care status and disability.¹⁹⁰

The Youth Affairs Council of Victoria submitted that young people with disabilities are 'often sidelined from the planning of their own lives'¹⁹¹ and it is important that they receive the necessary supports and information to allow them to make their own decisions.¹⁹²

Chapter 31 provides a detailed discussion of family violence and people with disabilities.

Children and young people from rural, regional and remote communities

There are disproportionate impacts on kids that live outside of the inner metro area due to a dearth of services in the outer suburbs and regional areas.¹⁹³

Children and young people from rural, regional and remote communities are more likely to have witnessed family violence than children living in metropolitan areas.¹⁹⁴ Victoria Police records of family violence incidents where a child is present show a higher rate per 100,000 population in rural and regional areas, in particular the Western Region.¹⁹⁵

There is a lack of family violence services that have a specific focus on children and young people generally (as we discuss in the next section of this chapter), and this is especially the case in rural and regional communities.¹⁹⁶ The Commission was informed that, because of the severe lack of housing, few conditions requiring respondents to move out of the home, are included in intervention orders made in regional and remote communities.¹⁹⁷ This might arise from a concern that requiring respondents to move out of the family home could involve them having to move hundreds of kilometres in order to obtain affordable housing, resulting in loss of contact with children and difficulties with work.¹⁹⁸ On the other hand, if women and children are required to relocate in order to escape violence, this is highly disruptive.¹⁹⁹ Moving to metropolitan areas can also result in further trauma and isolation.²⁰⁰

Youthlaw noted that there are fewer youth services in rural, regional and remote areas, and young people in those areas face barriers to obtaining support services because of concerns about confidentiality in small communities.²⁰¹ The Youth Affairs Council of Victoria also submitted that the protective factors that could be present in young people's lives are compromised in young people in those areas because of shortages of infrastructure such as public transport and relatively limited options for education, employment and social activity.²⁰²

Geographical isolation can also exacerbate young women's vulnerability to family violence. Cobaw Community Health submitted:

Many women, particularly younger women, may not have a driving license making escaping Family Violence particularly problematic. We have seen cases where this significantly increases the risk to women and children experiencing Family Violence, particularly those in isolated areas characteristic of parts of our community.²⁰³

The Commission was also informed that inadequate court infrastructure and a lack of affordable and accessible child care in regional and remote areas result in children being present during intervention order application hearings.²⁰⁴ This can expose a child to the trauma of hearing the details of family violence incidents.²⁰⁵ The lack of dedicated children's spaces at court can also mean that children have informal contact with the perpetrator, which may be confusing for them, especially when they then enter the courtroom and are exposed to discussions about violence in their home.²⁰⁶

Chapter 16 discusses court infrastructure and children. Chapter 33 discusses family violence in rural, regional and remote communities.

Children and young people's resilience

The way each child or young person experiences family violence differs and is necessarily influenced by a variety of circumstances.²⁰⁷ The Commission was told that:

... exposure to domestic violence is not a homogenous one dimensional process where its impact can be neatly examined in isolation from other potential stressors. There is rarely a direct causal pathway to specific outcomes. It often occurs in combination with other factors such as child abuse, poverty, mental health or drug and alcohol issues. Also each child is unique and their reaction will vary according to age, gender, personality, role within the family, socioeconomic status and the frequency, nature and length of exposure to violence.²⁰⁸

The Commission was reminded that many children and young people display great resilience in the face of family violence, and it should not be assumed that they will fare worse than those who have not experienced such violence or that they will grow up to be perpetrators themselves.²⁰⁹ Research shows that at least one-third of children who experience family violence do just as well as children who have not experienced it.²¹⁰ Children's recovery from family violence has also been shown to improve the longer they are free from violence.²¹¹ The majority of children who experience family violence neither grow up to be perpetrators nor become victims in their adult relationships.²¹²

The Australian Institute of Family Studies explained that the correlation between childhood exposure to family violence and future perpetration of violence is likely to be attributable to several factors, rather than to childhood exposure alone. These are factors such as socio-economic disadvantage, parental mental ill-health and substance abuse,²¹³ gender roles and stereotypes and violence-supportive attitudes.²¹⁴ On the other hand, a number of factors can mitigate the effects of family violence, including the presence of a supportive adult or older sibling, and the mother's positive mental health.²¹⁵ Mothers play a vital role in mitigating the effects of family violence on their children:

Research has also indicated that children's ability to cope with the adversity of living in a violent home is linked to their mothers' ability to maintain mothering functions, to model assertive and nonviolent responses to abuse and to maintain positive mental health. High levels of extended familial and social support have also been demonstrated to positively impact children's coping capacity.²¹⁶

A woman told the Commission how she supported her children and ensured they maintained their education, despite their homelessness due to family violence:

I recall reiterating to my children at the time we were staying at the centre of the importance of their education. I couldn't promise that they would never be homeless again, but if they concentrated on their studies, and worked hard, and made the most of opportunities that come their way, there would be less likelihood that they would ever have to be homeless again. I also took the time to teach my boys that it is better to live like this than to live in fear from my husband and how very important it was to me that they never harm their wives/partners ... The children didn't miss any school (still attending their original school) during the 12 months of homelessness.²¹⁷

Identifying family violence against children and young people

Universal services are those that are available to all Victorians. Many staff in universal services, including registered doctors, nurses, midwives, early childhood teachers, school teachers and principals, are required to report risk of harm to children under the Children, Youth and Families Act.²¹⁸ Mandatory reporting to Child Protection is discussed in detail in Chapter 11.

The following discussion focuses on universal services that have the potential to play an important identification and early intervention role in relation to children and young people at risk of, or experiencing family violence, specifically early childhood services and schools.

Universal health services that work primarily with parents—such as antenatal care and child and maternal health services—are discussed in Chapter 19. In that chapter, the Commission recommends mandatory screening for family violence, which currently occurs in child and maternal health services, be extended to all public health antenatal care.

Early childhood services

The Department of Education and Training supports early childhood services for children from birth to age eight. These services include long day care, family day care, occasional care, playgroups, early childhood intervention professionals, school nurses, outside school hours care and kindergarten.²¹⁹ Maternal and child health nurses and enhanced maternal and child health nurses are also funded by the department.²²⁰

Early childhood services constitute one of the largest service systems working with families and young children.²²¹ The evidence presented to the Commission was that more than 1.57 million Australian children attend some form of government-funded early childhood service each year,²²² and in Victoria more than 1200 early childhood centres provide services to more than 270,000 children.²²³

The Victorian Government also funds Early Parenting Centres, which build parenting capacity, skills and knowledge, and support vulnerable parents to nurture and care for their children and build a secure attachment with them.²²⁴ Parenting Assessment and Skill Development Services, which are intensive parenting services for those involved with Child Protection, are also funded by the Victorian Government.²²⁵

Cradle to Kinder is another program that targets vulnerable mothers up to 25 years. We discuss these further in the section 'Parenting programs.'

Schools

It is critical for those caring and teaching children to understand the early signs of stress in children which could be related to the invisibility of Family Violence. All children's service areas should be able to recognise early signs of Family Violence and provide referral and support.²²⁶

The Commission heard examples of excellent practice in relation to identifying family violence in schools, effectively supporting both the children and the mother who is trying to protect them.

When I was pregnant with my fourth child, a teacher from my children's school made contact with me to ask about my five year old who was in prep. He had stopped talking during class and the teacher wasn't sure if he was learning the material being taught. The teacher asked my permission for him to see a counsellor, which I of course approved. Once the counselling session had been completed, the teacher phoned again and asked if they could interview his older brother. After this session, the school asked me to come to speak to them. At this point, I assumed it was in relation to strategies within both of the boys' education to assist my younger child to speak and learn in the classroom. When I attended the school, the counsellor started asking me questions based on answers the children had given during counselling and some pictures my children had drawn which depicted family violence. The counsellor asked me if my children had witnessed family violence in our house, such as my husband pulling me by the hair, or throwing food at me.²²⁷

The children had given detailed descriptions of what they had witnessed and as it was being relayed to me I felt my sad secret was now not only about me. I then realised that they had been witnessing the violent behaviour that my husband was perpetrating and it was affecting them. I broke down in tears as I felt I had let the children down, as it was my role as a mother to provide for and protect these children. I felt I had let them down, that I had failed to some degree. I realised that whilst my husband only occasionally hit our children, they were also affected emotionally by the abuse that was occurring to me.²²⁸

In this particular case the school provided the children's mother with a referral to a refuge and a women's information service helpline. While she initially did not make contact with either of these services, this interaction with the school counsellor was the first time she became aware that the violence perpetrated against her was also greatly affecting her children. This was one of a few points of intervention that culminated in the mother and her children becoming safe.²²⁹

The Commission was told about a number of existing processes, resources and protocols in schools that could be used to strengthen the response to family violence.

Primary school nursing services use the School Entrant Health Questionnaire to identify possible exposure to family violence.²³⁰ The School Entrant Health Questionnaire asks questions relating to abuse of a parent or child and about children or parents 'witnessing' violence.²³¹

Where issues concerning violence are identified, the nurse will facilitate referrals to school support services, local family support agencies or health practitioners.²³² In 2014, 6774 disclosures were made.²³³

The department provides resources and guidelines for staff that set out their responsibilities in responding to risks of harm to children, which includes child abuse and family violence.²³⁴ As noted elsewhere, teachers (including early childhood teachers) are mandatory reporters under Victoria's child protection legislation and so have an obligation to report a reasonable belief that a child may have suffered, or is reasonably likely to suffer, significant harm arising from physical injury or sexual abuse and their parents have not protected, or are unlikely to protect them.²³⁵

In 2013–14 the category of 'education notifier' types reported 15,510 cases to Child Protection of which 4784 had family violence indicated.²³⁶

As discussed in Chapter 6 the Department of Education and Training has an online training tool for teachers and school staff on their mandatory reporting obligations.²³⁷ This training module must be undertaken every year by all teachers and principals registered by the Victorian Institute of Teaching and includes how to identify child abuse, family violence and neglect, how to manage disclosures and how to make a report.²³⁸ The Commission has noted some concerns about the quality of the training and the extent to which staff feel confident to make referrals in respect of their mandatory reporting obligations in Chapter 36.

The department also employs, funds and sets policy and guidelines for wellbeing staff and allied health professionals in government schools.²³⁹

Health and wellbeing staff and services in government schools

- ▶ Student Support Services staff assist children and young people who face learning barriers. They provide individual and group-based support and workforce capacity building and include psychologists, guidance officers, speech pathologists, social workers and visiting teachers.²⁴⁰
- ▶ The Primary School Nursing Program, where primary school nurses visit schools during the year to identify children with potential health-related learning difficulties and to respond to parent and carer concerns about their child's health and wellbeing.²⁴¹ It provides links to community-based health and wellbeing services.²⁴²
- ▶ The Secondary School Nursing Program is in about two-thirds of government secondary schools. The program's objectives include improving health and reducing risk-taking behaviour among young people, including drug and alcohol abuse, eating disorders, obesity, depression and suicide.²⁴³
- ▶ The Primary Welfare Officer Initiative supports students who are at risk of disengagement and not achieving their educational potential. It works in collaboration with students and parents, school staff including principals, teachers, aides, specialist staff, nurses and student support services officers and with broader community agencies.²⁴⁴
- ▶ Student Welfare Coordinators support students in handling issues such as truancy, bullying, drug use and depression.²⁴⁵
- ▶ Koorie Education Coordinators and Koorie Engagement Support Officers are located in each departmental regional office and provide advice about supporting Aboriginal and Torres Strait Islander students at school and facilitate links to local and regional resources.²⁴⁶

The Commission was initially informed that there was no data available on the number of students individually assisted by primary school welfare officers, student support officers or student welfare coordinators, or primary school nurses or secondary school nurses where family violence was flagged, although instances of family violence could be collected from case notes.²⁴⁷ In Student Support Services, in June 2013–14, 287 students had 'family violence' mentioned in the case notes and 280 were mentioned in case notes from June 2014–15.²⁴⁸

However, a family violence 'tag' was made available in December 2014.²⁴⁹ Since then, schools used this indicator in 498 referrals for 496 students for June 2015 to mid-October 2015, indicating that the case notes may under-report family violence.²⁵⁰

The Department of Education and Training, Department of Health and Human Services (Child Protection), licensed children's services and Victorian schools (including Catholic, independent schools and government schools) have a joint protocol on protecting the safety of children and young people.²⁵¹ There is also a partnering agreement between DHHS, the Catholic Education Commission of Victoria and Independent Schools Victoria, which outlines strategies to support the needs of children and young people in out-of-home care in the years they attend school.²⁵² There is a similar agreement in place at the early childhood education level.²⁵³

The Commission understands that DET has established the LOOKOUT program (the pilot starting early 2016 in south-western Victoria and the remaining three centres to be established for the start of the 2017 school year, pending evaluation)²⁵⁴ to support the educational needs of children in out-of-home care.²⁵⁵

LOOKOUT Centres will perform a critical advocacy, support and entitlement function by securing the rights and best outcomes for children and young people in Out of Home Care (OoHC) within the education system. In essence, LOOKOUT Centres will ensure the role of the State as a corporate parent for children and young people in OoHC.²⁵⁶

The Commission was also told that the Victorian Government has funded the Navigator program for 2015–16 to 2016–17, which is a service-based program to be delivered by schools and community agencies 'to provide outreach, follow-up, advocacy, and pathway planning support to young people aged 12 to 17 years who are not connected to schools at all, or who are at risk of disengaging'.²⁵⁷

Beyond early childhood, health and educational services there are a range of other services that play a role in identifying family violence. These include child and family welfare services, such as Child Protection and Child FIRST, which are charged with assisting families experiencing difficulties that may be impacting on their child's development. As part of their work, these services play a role in identifying children at risk of or experiencing family violence and then working with those families. We discuss Child Protection in Chapter 11. Child FIRST and Integrated Family Services are discussed later in the chapter.

Vulnerable Children's Strategy 2013–2022

The need for universal services to improve their capacity to assist vulnerable children is highlighted in Victoria's *Vulnerable Children's Strategy 2013–2022*, which states:

Schools, health services, early childhood services and other services need to foster safe, inclusive environments to enable the identification of family or child vulnerabilities and the provision of positive interventions.²⁵⁸

The strategy's second goal is to 'act earlier when children are vulnerable': 'the earlier we can respond to child vulnerability, the more effective that intervention is likely to be'.²⁵⁹

One of the initiatives designed to support the strategy is the establishment of Children and Youth Area Partnerships in 17 multi-local government areas across the state.²⁶⁰ The Commission was told these are being tested at eight sites (starting in mid-2014).²⁶¹

Parenting programs

Programs for vulnerable mothers

Parenting is crucial in children's development, particularly in the first three years of a child's life, when a child's language acquisition, cognitive development, sense of self and security, emotional regulation and ability to form relationships are shaped by parenting.²⁶² Practitioners highlighted the importance of programs that focus on developing parental coping skills.²⁶³

The Commission heard that some specialist programs are demonstrating good outcomes. The Commission also heard about the importance of consistent, flexible support; the importance of culturally competent programs; and of the need for more targeted programs and supports where there has been intergenerational trauma.²⁶⁴

The Commission heard the following initiatives play an important role in supporting women antenatally and postnatally who have experienced, or are at risk of experiencing family violence. Unlike the Turtle Program described later in this chapter, these are not family violence-specific but many of the young women who use them are likely to be at risk of, or have experienced family violence.

The Cradle to Kinder program for vulnerable young mothers (under 25) is described later in this section.²⁶⁵ It is one of a number of services funded by DHHS that are designed to help young vulnerable parents during the early years. Others include Early Parenting Centres and Parent Assessment and Skills Development services (see next page). The Commission notes that there are some Commonwealth parenting support programs that operate alongside the state-funded ones, for example the Children and Parenting Support services, which 'have a primary focus on children aged 0–12 years and provide support to children and families based on an early intervention and prevention approach'.²⁶⁶

Mallee District Aboriginal Services and Queen Elizabeth Centre's Bumps to Babes and Beyond program for pregnant young Aboriginal women and Aboriginal Cradle to Kinder initiatives are discussed further in Chapter 26.²⁶⁷

Parenting programs for vulnerable families

DHHS funds programs that specifically help build the parenting capacity of vulnerable families, including:

- ▶ Early parenting centres. These build parenting capacity, skills and knowledge to support vulnerable parents to nurture, care and build a secure attachment with their children.²⁶⁸ The assistance is provided either through a residential service, a day stay service or help in the parent's own home.
- ▶ Parenting Assessment and Skills Development. This is an intensive specialist parenting service for parents of children aged up to three years who are involved with child protection. The service helps parents to develop their skills, knowledge and capacity to safely care for and nurture their children.²⁶⁹
- ▶ Enhanced Maternal and Child Health. This provides a more intensive level of support, including short-term case management, particularly for those vulnerable children and families where there are multiple risk factors.²⁷⁰
- ▶ Parentline Victoria. This is a statewide telephone counselling service to parents and carers of children aged from birth to 18 years operating from 8.00 am to midnight, seven days a week. This is funded by the Department of Education and Training.²⁷¹

Cradle to Kinder

Cradle to Kinder is an intensive ante and postnatal support service that provides longer term intensive family and early parenting help for vulnerable young pregnant women aged under 25 years—targeting young mothers who are or have been in out-of-home care, Aboriginal women and women who have learning difficulties—working with them until their child reaches four years of age.²⁷²

There are currently 10 programs (six programs, including one Aboriginal program were introduced in early 2012 with a further six (including another Aboriginal program) announced in January 2014).²⁷³ In 2013–14 the service's budget was approximately \$4.3 million for 220 clients/families.²⁷⁴

The program aims to build the capacity of parents to provide for their children's health, safety and development, and to build their own self-reliance and sustainability through access to education, vocational training and employment. The service is flexible, providing help through a combination of individual and group services that can be delivered in the young woman's home, the agency or in the community.²⁷⁵

While not family violence-specific, the Cradle to Kinder program recognises that family violence is one of the factors that would be experienced by its target group. Program guidelines emphasise the importance of family violence risk assessment and risk management, and encourage staff to consult with specialist family violence services. One of the program's outcome measures is a reduction in (or absence of) family violence incidents.²⁷⁶

The Commission was told by Dr Miller that programs such as Cradle to Kinder are having very positive outcomes and that the program demonstrated the importance of early intervention.²⁷⁷ Dr Miller observed that:

These targeted family services can be circuit breakers for intergenerational patterns of violence and positively interrupt vicious cycles of abuse and neglect of children.²⁷⁸

Dr Miller went on to note some of the valued features of the program, including consistent flexible support that was practical and home-based, and called for an expansion of such services, arguing that although they are seen as more expensive, this was a 'small price to pay' compared to the social, health and economic costs of a child being subjected to family violence.²⁷⁹

An evaluation of the first six Cradle to Kinder programs is under way.²⁸⁰ The Melbourne Research Alliance to end violence against women and their children has recommended that the program be retained and permanently integrated into the service system. It also made suggestions for further developing the program including making it available to women who do not presently satisfy the program criteria (for example, victims of family violence referred by Maternal and Child Health) and improving coordination between the program and local specialist family violence services.²⁸¹

Programs for expectant and new parents

Professor Mark Feinberg, Prevention Research Centre, Pennsylvania State University, gave evidence regarding the Family Foundations program in the United States which aims to support expectant parents in gaining the knowledge and skills necessary for a transition to parenthood.²⁸² Professor Feinberg stated that while the program was not originally designed to address issues of family violence, by focusing on strengthening co-parenting support, this has contributed to lower levels of such violence.²⁸³

In a local example, the Baby Makes 3 program was developed by Whitehorse Community Health Service (now Carrington Health). The program is designed to effect cultural change between new parents in relation to their attitudes about gender roles and responsibilities.²⁸⁴ It targets first time parents with babies under 12 months. Both parents attend with their baby and the program addresses issues such as the transition to parenthood, gender expectations, division of household labour and equality as the basis for a healthy relationship. It consists of three two-hour evening sessions over three weeks.²⁸⁵

The Melbourne Research Alliance to end violence against women and their children noted that while an important step, three group work sessions directed towards fathers within a 'respectful and equal relationship' model provides only 'one spoke in what should be a complex wheel of inter-connected parenting services.'²⁸⁶

The program has now been evaluated across a number of sites.²⁸⁷ Ms Julianne Brennan, Director the Community Crime Prevention Unit, Department of Justice and Regulation, gave evidence that the evaluation has indicated some confusion among facilitators about the aims of the program and whether it is a violence prevention program or a parenting program.²⁸⁸

The Chief Executive Officer of Carrington Health, Ms Ronda Jacobs, stated Baby Makes 3 is designed to be a mainstream program for first time parents, and not a program for parents who are at risk of, or known to be experiencing family violence, with those parents needing to receive the support of specialist services.²⁸⁹

Programs targeted at fathers

Early Childhood Australia submitted that for men new parenthood is a time that they may be more open to receiving information and skills development, as well as to considering alternative models of masculinity as they move into a new parental role.

It is important to promote a greater role for fathers in the day-to-day care of their children including nurture, care, respect and equality to challenge dominant notions of masculinity which play a key role in men's violence against women. There is some research which suggests that engaging men in their children's lives can reduce the risk of family violence.²⁹⁰

The Melbourne Research Alliance to end violence against women and their children also noted research on engaging men as fathers through parenting programs as showing potential in preventing child maltreatment.²⁹¹

The Commission heard about a number of current programs targeted at fathers that currently exist. These are outlined in Table 10.1. Some are focused specifically on men who have perpetrated family violence, while others work more generally with men as an early intervention strategy. Others are culturally specific. This is not an exhaustive list. Perpetrator programs for fathers are also discussed in Chapter 18.

Further research being led by Professor Cathy Humphreys, Professor of Social Work at University of Melbourne, will provide advice about practice guidance in working with men to improve the safety of women and children where there is family violence.²⁹²

Table 10.1 Examples of programs for fathers

| | |
|--------------------------------------|--|
| Aboriginal Fathers Forum | The Victorian Aboriginal Community Services Association Limited is planning an Aboriginal Fathers Forum, which will be a group discussion amongst Aboriginal men and some women 'to yarn about parenting, being a dad and strengthening current and future relationships'. ²⁹³ |
| Active Fathers | Kildonan Uniting Care partners with the City of Moreland, City of Hume and Merri Community Health to deliver Active Fathers, a program that engages new parents, and in particular fathers, in groups to discuss infant needs, the impact of a new baby on the relationship of the parents and dealing with the challenges faced by new parents. It focuses on promoting respectful and equitable relationships between parents and promoting infant development and wellbeing. ²⁹⁴ |
| Children's Protection Society | The Fathers Support Service Team 'works with vulnerable men and their families to encourage, promote and enhance the positive parenting involvement of fathers and/or male carers'. CPS also facilitates 'I'm a Dad' antenatal education program for first-time fathers who are registered at the Northern Hospital. ²⁹⁵ |
| Dads Putting Kids First | This program has been developed by Anglicare Victoria and is available to fathers who have completed men's behaviour change programs. ²⁹⁶ This program aims to teach men about using reparative parenting techniques, after they have ceased their violent behaviour. Anglicare Victoria stated that the program has been found to be effective in an evaluation. ²⁹⁷ |

Services that work with families

Children and young people can come into contact with services as a result of family violence in a number of ways. Police may attend a family violence incident in which a child or young person is present and make a referral to a service or services; a parent may apply for a family violence intervention order in court; a child, young person or parent may disclose family violence to a specialist family violence service or universal service. Young people may leave the family home on their own and seek assistance from various service providers, or they may be victims of intimate partner violence.

In this section we describe some of the key services that come into contact with children and young people experiencing family violence, noting that in many cases it is not the child, but the parent or whole family that is the 'client'. This is a theme we will return to later in this chapter.

Child FIRST and Integrated Family Services

Integrated Family Services is the major program responsible for responding to vulnerable families where there are issues affecting children's development. As a result they have the capacity to play a key role in responding to family violence. In this section we describe their work, and the prevalence of family violence in their current practice.

In this report the term 'Integrated Family Services' refers to those child and family services that provide direct assistance to vulnerable children and their families. Child FIRST provides the intake function to Integrated Family Services.

These services are also discussed in Chapters 8 and 13. In particular, Chapter 13 explores how these services intersect with specialist family violence services, demand generated by police and child protection referrals, and how they might be further integrated into the formal family violence system (alongside police, courts and specialist family violence services).

Service profile

In 2013–14 there were 96 community-based child and family services registered and funded by the Department of Health and Human Services to provide Child FIRST and Integrated Family Services in Victoria.²⁹⁸ In the 2013–14 budget, \$84 million was allocated to Integrated Family Services including \$9.7 million for Child FIRST.²⁹⁹

Child FIRST and Integrated Family Services are designed to assist families when a child's safety, stability or development is affected by factors such as:

- ▷ significant parenting problems that may be affecting the child's development
- ▷ serious family conflict, including family breakdown
- ▷ families under pressure due to a family member's physical or mental illness, substance abuse, disability or bereavement
- ▷ young, isolated and/or unsupported families
- ▷ significant social or economic disadvantage that may adversely impact on a child's care or development.³⁰⁰

Child FIRST, the intake component of the Integrated Family Services system, provides a central referral point to a range of community-based family services and other programs within each of the 23 Child FIRST catchment areas across Victoria. Child FIRST receives referrals directly from families, as well as concerned third parties on behalf of families.³⁰¹ It also receives some police L17 referrals. In 2013–14, 1901 L17 referrals were made by the police to Child FIRST.³⁰² Child FIRST provides information about relevant services, and assessments of children's and families' needs and risks to help determine what services are required. It also makes referrals to relevant agencies, if necessary.³⁰³

One important service that Child FIRST refers families to is the family services program. As family services provide the majority of services, the terms family services and Integrated Family Services are often used interchangeably.

Family services provide assistance to those families that are:

- ▷ likely to experience greater challenges because the child or young person's development has been affected by the experience of risk factors and/or cumulative harm
- ▷ at risk of concerns escalating and becoming involved with Child Protection if problems are not addressed.³⁰⁴

The services work with families to enhance parenting capacity and skills, parent–child relationships, child development, and social connectedness. This assistance may include counselling, as well as in-home support and group work, and may also include secondary consultations with other services.

In each of the 23 Child FIRST catchments there are also community-based child protection practitioners. Their role is to assist with the identification of cases and referrals between Child Protection and Integrated Family Services, provide consultation on specific cases, build the capacity of Integrated Family Services workers and work in partnership with Integrated Family Services to engage families as appropriate, including through joint visits.³⁰⁵

All Integrated Family Services operate under 'best interests principles' which are defined in the Children, Youth and Families Act.³⁰⁶

The Commission received a range of estimates about the extent to which family violence accounts for the work of Integrated Family Services programs. As noted elsewhere in this report, the Victorian Government's advice regarding the costs attributable to family violence indicates that 41 per cent of Child FIRST and 34 per cent of family services cases had family violence flagged in the database.³⁰⁷ However, some submissions indicated that family violence was even more highly represented amongst those families accessing Integrated Family Services.³⁰⁸ A KPMG evaluation found that, in the 12 months to March 2010, around 28 per cent of families accessing Integrated Family Services were experiencing family violence.³⁰⁹

Direct work with children

It is important to note that Integrated Family Services is not designed to be a crisis service in the same way that specialist family violence services are.

The Commission heard that Integrated Family Services programs largely focus on enhancing the capacity of parent(s), both in terms of skills and confidence, to meet their child's developmental needs.

The outcomes we seek to achieve with our families include increased parenting confidence, safety, stability and healthy development, improved overall health, connectedness to community, improved family relationships and resilience.³¹⁰

Its focus is on advocating for the baby/toddler and improving the skills of the parents/carers in order to achieve the best outcome for the baby/toddler.³¹¹

The Commission heard of a number of Integrated Family Services programs that focused on repairing and strengthening the relationship between a mother and her child, in recognition that perpetrators frequently target a woman in her mothering role, which may impair the mother-child bond.³¹²

Specialist family violence services

The role of specialist family violence services is discussed in detail in Chapter 8. This section briefly describes current service provision that is specific to children. It does not consider children's experiences in women's refuges and crisis accommodation as these are discussed in Chapter 9. However, young people's experiences in youth refuges, including that of young women fleeing intimate partner violence, are discussed below in the section entitled 'Lack of accommodation for children and young people'.

The Commission understands that some services have carved out resources from their funding to employ child-specific workers or activities, or sought philanthropic funding to run such programs. The Commission also heard that some services used to run specific activities or designate staff whose sole focus is on children, however due to resource constraints these roles have ceased.³¹³ Training courses are also provided by Domestic Violence Resource Centre Victoria on topics such as 'How to talk to babies in refuge, or the counselling room' and 'Adopting child-led practice'.³¹⁴

At a system level there are three programs that are relevant, although none are solely for children experiencing family violence. Some are for all children who are homeless and some are also for women who are victims of family violence. Across these programs some practitioners are located inside specialist family violence services, others are located in organisations that provide multiple services to families to children. Some are funded under the homelessness stream and others are funded under child protection and family services funding. These are described in the next section.

The only family violence-specific program, Family Violence Support Services, is also referred to as the family violence counselling program, described further below.

Some of the other counselling initiatives described to the Commission include the child-focused counselling and support team and Beyond the Violence, both provided by Anglicare.³¹⁵

There are also activities that sit outside government-funded programs. For example, the Alannah and Madeline Foundation has a Children Ahead intensive case management program to help children to recover from violence and build resilience. Case management is for up to two years and includes ways to maintain and improve their children's health, overcoming education obstacles, developing social skills and parenting support.³¹⁶

Family Violence Support Services (counselling)

Also referred to as the Family Violence Counselling Program, this program aims to help women and/or their children experiencing or recovering from family violence to enhance their safety, confidence, life skills and independence.³¹⁷ Services include individual and group counselling, support and case coordination.

DHHS requires that a minimum of 30 per cent of counselling and support funds are allocated specifically for the provision of services to children and young people.³¹⁸ In 2013-14, 1,891 or 41 per cent of cases involving specialist counselling and support services related to children.³¹⁹

Regional Children's Resource Program

The aim of this program is to improve service delivery for children and young people accessing homelessness and family violence services with their family.³²⁰ Funded by DHHS, there are 10 children's resource worker positions across the state and one children's resource worker for local Aboriginal and Torres Strait Islander communities in Bendigo.³²¹

These staff provide resources, training, information and secondary consultation to homelessness practitioners (including specialist family violence services and advocates) on a broad level to raise awareness of the issues facing children and young people experiencing homelessness and/or family violence.³²²

They also manage brokerage support funds to assist children and young people to engage in and maintain their education and facilitate access to social, recreational and support opportunities in their community.³²³ In 2013–14 the program had brokerage funds of \$136,574 across the state.³²⁴

Homeless Children's Specialist Support Service

This program was established through the initial National Partnership Agreement on Homelessness.³²⁵ It is unique because the child or young person is the primary client.

Located in four service locations with a total budget of \$1.7 million in 2013–14,³²⁶ it provides direct assistance to children and young people aged up to 18 years who have experienced homelessness. The assistance is in the form of intensive one-on-one case management support, therapeutic group work and psychological support.³²⁷ In addition, funding is provided for one service specifically for Aboriginal and Torres Strait Islander children in Gippsland.³²⁸

A 2013 review found the program's achievements included a decrease in the evidence of trauma in children, an increase in family members' capacity to communicate with each other, a greater awareness among agencies of the importance of a focus on children, development of partnerships with schools and local government, and cross agency relationships through co-location and co-case management.³²⁹ The report also noted that the key elements for success include:

- ▷ child-specific services need to be trauma-informed in their design and delivery
- ▷ strong partnerships with specialist children services such as Child FIRST and Child Protection
- ▷ group work, noting that children particularly value peer-to-peer relationships.³³⁰

Challenges included addressing competing interests of multiple siblings and parents, accessing services and treatment support to respond to children's sexualised behaviour and trauma-related issues, and engagement with the education sector.³³¹

Hanover Welfare Services—now Launch Housing—undertook an evaluation of its HCSSS program. The evaluation recommended that the HCSSS program employ a child psychologist/family therapist within the team, given the long waiting list that currently exists for child and adolescent mental health services.³³² The Commission understands that in response, Hanover introduced this as a further stream in its program but it is not known to what extent other HCSSS programs include this element.

Therapeutic supports

Therapeutic care: a definition

Berry Street defines 'therapeutic care' as intensive support for carers and children that aims 'to provide reparative experiences that promote healing and recovery'.³³³ Rather than providing basic care and managing behaviour, therapeutic care emphasises relationships and considers and responds to the child's underlying needs.³³⁴

There are some intensive supports available to children and young people. Below we describe:

- ▷ Take Two, a statewide therapeutic program coordinated by Berry Street Childhood Institute for children and young people in the child protection system
- ▷ Turtle Program, a therapeutic program specifically for children and young people who have experienced family violence who do not meet the criteria for statutory services. This works with children and their mothers.

Other therapeutic services funded by the Victorian Government (but not family violence-specific) include mental health clinical services such as Children and Adolescent Mental Health Services, Orygen Youth Health and a number of youth services.³³⁵ Most Centres against Sexual Assault provide services for children and young people. The Gatehouse Centre, funded as a CASA, is solely for children and young people and covers the north-western metropolitan area of Melbourne.³³⁶ DHHS also funds Therapeutic Residential Care³³⁷ and Therapeutic Foster Care for children and young people on statutory child protection orders who are unable to live safely with their family.³³⁸

The benefit of trauma-based responses designed specifically for children and young people, along with gaps in current provision is discussed in 'Challenges and opportunities'.

The Turtle Program

The Berry Street Turtle Program is a small therapeutic service, which focuses on mother-child attachment and supporting the mother-child relationship as an effective vehicle for children's healing. The Turtle Program is delivered as part of Berry Street's women's specialist family violence service.³³⁹

It is an example of a therapeutic program specifically for children and young people who have experienced family violence who do not meet the criteria for statutory, clinical or associated therapeutic services but who nonetheless may still suffer symptoms of distress and trauma.³⁴⁰

Ms Emma Toone, Senior Clinician, Turtle Program, Northern Family and Domestic Violence Service, Berry Street, gave evidence that programs that link risk management with therapeutic mother-child support can keep women and children safe, while noting that engaging women to support them in their role as a mother and talk about their child's needs is a challenge, as some women may feel the best way to protect themselves and their child is to hide.³⁴¹

Ms Toone went on to note the key features of children's family violence services, which include the capacity to respond to children's relationships; the ability to respond to the trauma that children and parents have experienced; and the ability to do specialised risk assessment, especially post-separation where children may have contact with their father but there is little capacity to assess the risk or intervene with the father.³⁴² She stated:

What we are really missing are services that have Specialised Family Violence Risk Assessment capacity and the capacity to work with children and their relationships in a trauma informed way.³⁴³

Take Two

Take Two is an intensive therapeutic program for children and young people in the child protection system who have suffered trauma, neglect and disrupted attachment.³⁴⁴ Some children will be living away from their family but others will still be with their parent(s) and so potentially still experiencing family violence.

An evaluation found that between January 2004 and June 2007, of 1034 children referred to Take Two, 67 per cent had been exposed to family violence.³⁴⁵

The program is delivered by Berry Street Childhood Institute in partnership with the Victorian Aboriginal Child Care Agency. There are Take Two teams in rural and metropolitan areas as well as some statewide teams such as the Aboriginal team and in Secure Welfare.

Take Two employs psychologists, social workers, nurses and other mental health workers as well as researchers and trainers to build and share knowledge. Following an assessment, an intervention can involve working directly with the child or young person by themselves, with the parent or carer or with others. Take Two also provides consultation, training and guidance to other services.

Ms Beth Allen, Assistant Director, Child Protection Unit, Statutory and Forensic Services Design Branch, Department of Health and Human Services, gave evidence that while the program was 'sizeable' and funded to assist just under 300 clients at any one time, the program constantly reprioritised, with estimated waiting times of three to six months.³⁴⁶

Challenges and opportunities

In this section the Commission reviews the evidence it received regarding the adequacy of response across a number of sectors, before considering specific issues regarding the responses to trauma experienced by children and young people associated with family violence. In the final part of this section we examine in depth the experiences and barriers faced by young people seeking assistance due to family violence.

Children and young people as ‘silent’ victims of family violence

I am a victim of Domestic Violence, where is my real protection? My voice is ignored. My requests are ignored. My doctor and psychologist wrote to the court for me and they were ignored. I spoke to so many people but they have been ignored. How can this be good for children? This has to change for children like me to be safe. My father would record conversations and video us secretly often, on his phone, that I would delete but what do I do to protect myself from this? What rights do I have?³⁴⁷

There needs to be a change, it is easier to build a child than to repair an adult. Children should have the right to a loving relationship without fear, without abuse and without psychological damage. Children have the right to be heard and be involved in decisions that affect them.³⁴⁸

The Commission received a large number of submissions describing the devastating effects of family violence on children.³⁴⁹ Despite this, children are also described as the ‘forgotten’³⁵⁰ or ‘silent’ victims.³⁵¹ This is because family violence services have historically focused on the safety and wellbeing of women (or women and their children). One of the consequences is that there is a significant gap in targeted responses for children and young people.³⁵²

The Commission was also told that although there is a strong evidence base about the physiological, psychological and emotional impacts of family violence on children, knowledge of family violence has not been fully incorporated in the practices of universal services and family violence is not fully understood by professionals who have direct contact with children.³⁵³ As a result, many services—legal, police, educational, medical, psychological, and so on—do not effectively support children who have experienced family violence.³⁵⁴ Other submissions indicated that even where universal services do identify signs of family violence, adequate measures are not always taken to ensure a response.³⁵⁵

It is increasingly recognised that children are not ‘passive’ witnesses or secondary victims and that the impacts of family violence on them are profound—even when they are not directly targeted or do not see or hear the violence.³⁵⁶ Nevertheless, the Commission was told that children’s voices are still infrequently heard, and too often ‘we rely on the voice of workers and mothers over what children and even infants may tell us’.³⁵⁷ Ms Wendy Bunston, senior clinical mental health social worker, family therapist, infant mental health specialist and PhD candidate at La Trobe University, gave evidence that ‘there is little to no research about understanding the impact of family violence from the young child’s perspective’ and ‘no research on an infant’s experience or perspective to living in a home with family violence’.³⁵⁸

Ms Anita Morris, PhD Candidate at the University of Melbourne, gave evidence about a recent Victorian study entitled *Safety and Resilience at Home: Voices of Children from a Primary Care Population*.³⁵⁹ The project involved interviews and focus groups with 18 mothers and 23 children, and it was found that children are ‘rarely asked by professionals about their experiences of family violence and have limited input into decisions that affect their actual safety, and their feelings of safety’.³⁶⁰ Ms Morris also gave evidence that children often have useful knowledge to contribute to their safety and that allowing them to do so makes them feel more in control and supported.³⁶¹

Merri Outreach and Support Service submitted that a ‘cultural shift’ is necessary to ensure that children’s independent needs are considered.³⁶²

Young people fall through the gap

The Commission was also told that adolescents are vulnerable to ‘invisibility’ in the family violence system.³⁶³ Although still under the age of 18 years, they can be forced to leave their home unaccompanied by a parent but might not fall into the well-recognised category of ‘women and their children’ for the purpose of gaining access to family violence services.³⁶⁴ In 2013–14, of 33,684 Victorian women who came into contact with homelessness services and who were in need of assistance from domestic violence services, 11 per cent ($n=3084$) were not provided with this service. The age groups with the largest percentage with an unmet need for assistance from domestic violence services were 18 to 19 year olds (17 per cent, $n=141$) 15 to 17 year olds (17 per cent, $n=102$) and 20 to 24 year olds (14 per cent, $n=438$).³⁶⁵

Melbourne City Mission submitted that some child protection workers consider young people aged 15–17 years ‘old enough to look after themselves’ and so less in need of protection after experiencing family violence.³⁶⁶ The subject was also raised during community consultations: ‘Child Protection won’t pick up on kids 15 and over (unless there are younger siblings)—those kids end up homeless and/or in foster care.’³⁶⁷ The result is that young people experiencing family violence can be ‘too old’ for Child Protection but too young to have access to family violence services, and youth refuges might not be family violence-aware.

Where services do exist, they are not always appropriate for young people.³⁶⁸ For example, workers might not be trained to support young people.³⁶⁹

The Commission was told that the result of these deficiencies is that young people seeking assistance from the specialist family violence sector are referred to a youth homelessness service as ‘the default response’.³⁷⁰ The Youth Affairs Council of Victoria told the Commission:

There is an urgent need for age-appropriate supports, ranging from legal assistance to therapeutic care, for young people who have experienced family violence and relationship violence.³⁷¹

The evidence presented to the Commission was that failure to provide services that are accessible to young people and that reflect their specific needs can have serious implications for a young person’s safety and wellbeing and can lead to an entrenched cycle of violence into adulthood.³⁷²

The potential of early childhood and school settings

The National Children’s Commissioner in her *Children’s Rights Report 2015* noted the importance of the first 1000 days between conception and the age of two as a time for early intervention across a number of domains, including family violence.³⁷³

The Melbourne Research Alliance to end violence against women and their children submitted that ‘the prime time for engagement lies in pregnancy and following the birth of the baby’³⁷⁴ and cited a 2000 report by the National Research Council and the Institute of Medicine that showed intervention early in a child’s life offers cost benefits ‘not only in terms of dollars invested early but in terms of the long-term wellbeing of children.’³⁷⁵

Professor Newman told the Commission that it is ‘essential to identify infants with risk factors impacting growth and development including those with sensory problems, neurological conditions and those experiencing trauma and neglect’.³⁷⁶ Although there is not yet clear evidence on whether neurological changes in a child’s first three to four years of life can be reversed, it is nevertheless important to intervene early.³⁷⁷

Professor Newman gave further evidence that current antenatal systems are not good at identifying family violence and that there should be ‘more systematic ways of identifying family violence experienced by pregnant women’.³⁷⁸ In view of the nature of their work, these health professionals could play an important role in identifying children, and even unborn babies, affected by family violence or at risk of experiencing it and providing support for them and their mothers.³⁷⁹ In Chapter 19 of this report the Commission recommends that family violence screening be mandatory in public antenatal services.

Others noted that early childhood settings are viewed as non-threatening and non-stigmatising as they are not perceived as 'welfare', and are therefore in an ideal position to act as an important entry point to the broader service system.³⁸⁰ It was argued that people working in early childhood services often form trusting relationships with one or both parents and can detect subtle changes in families and children; they are thus in a good position to act as a gateway, or 'soft access point', and make suitable referrals for families experiencing violence.³⁸¹

The evidence before the Commission was, however, that early childhood educators need to improve their understanding of the prevalence of family violence and the impact of such violence on children. Early Childhood Australia submitted that workers currently receive very limited family violence training, despite the fact that families with young children are at greater risk of family violence.³⁸² Goodstart Early Learning submitted:

Once it has been identified that a child has experienced trauma associated with family violence, more could ... be done to ensure that educators understand the impacts on children and the implications for their learning and development, including flow on impacts for children's attachment with parents and other adults in their lives.³⁸³

Ms Gill Callister, Secretary of the Department of Education and Training, gave evidence that from September 2015, early childhood teachers must comply with mandatory reporting requirements for child abuse and neglect, including in the family violence context.³⁸⁴ There is, however, no requirement that staff be informed about family violence or its effect on children. Goodstart Early Learning noted that, as a result of this, its staff training in relation to family violence occurs only in the context of mandatory child protection training.³⁸⁵

The Commission also heard that the early childhood sector is relatively 'silent' in relation to family violence and the impact this may have on children's development and learning:

While there is literature in relation to risk factors and reporting of abuse, and programs available that support teachers in supporting young children experiencing child abuse and mental health issues (KidsMatter Program) there seems to be little mention of domestic violence, as a specific risk factor likely to cause trauma, anxiety and poor outcomes for young children, including mental health issues that have the potential to escalate if left unaddressed.³⁸⁶

The Commission for Children and Young People also expressed concern about the lack of family violence guidelines and other resources for early childhood workers:

Early childhood services, such as long day care and preschools or kindergartens, do not appear to have any specific guidelines or resources for staff in relation to family violence. This is quite concerning given the young age of children being cared for, the likelihood of a high prevalence of family violence occurring, and an apparent lack of training and guidance for staff in being able to recognize indicators of family violence and implement appropriate intervention including referral.³⁸⁷

The Commission asked the Victorian Government for copies of departmental evaluations, policies, practice notes, operational guidance, training and practice materials relating to the introduction and implementation of family violence risk assessment practice—including the Family Violence Risk Assessment and Risk Management Framework (also known as the Common Risk Assessment Framework or the CRAF)—within Early Childhood Services and was told that no relevant documents were identified.³⁸⁸ However, the Department of Education and Training told the Commission (in answer to a separate request) that there are various guidelines in place for action following completion of the family violence flag in the early childhood data set.³⁸⁹

The Commission heard that collaboration between family violence services and other services that have contact with children could also be improved; for example, Goodstart Early Learning expressed the view that family violence services are not always aware of the support early childhood centres can offer, such as fee waivers.³⁹⁰ Early Childhood Australia submitted that collaborative partnerships can improve outcomes for children including by supporting families to access appropriate resources within the community.³⁹¹

The Commission heard that early childhood workers need to expand their capacity for early identification, appropriate responses and the development of referral pathways.³⁹² The Commission was told that early childhood services already have strong connections with the child protection system and that building stronger relationships with the family violence system would be the next step in supporting children and families.³⁹³

An example of a capacity building initiative is the Whittlesea Early Years Family Violence Working Group which aims to strengthen integration between family violence services and early years' services.³⁹⁴ It enables practitioners from a range of services to 'share practice expertise, engage in group problem solving and access peer support with a particular focus on the needs of children (aged 0 to nine years) who have experienced family violence.'³⁹⁵

The Commission heard that, like early childhood services, staff within schools must have the capacity to respond to violence, and link effectively to services. However, the Commission heard that educators do not necessarily have the skills to identify and respond to family violence and referral pathways are under-developed.³⁹⁶ The Association of Child and Family Development submitted that:

There is currently a disjointed systemic approach to addressing these behaviours in the education system, with kindergartens and schools 'referring out' for assistance.³⁹⁷

One person at a community consultation said that schools could use some more training and that they are very unsupportive and don't want to get involved.³⁹⁸ The Commission was also told that there are limited referral pathways for schools because of the lack of child-focused specialist family violence services for children and young people.³⁹⁹

Gaps in service responses

Police and courts

Some submissions noted that police may overlook the details of children when making an L17 referral and suggested that more training would help to improve the capture of information related to children.

Further the information collected on the police VP form L17 highlights the need for ongoing training and improvement in police identification and recording of details about children who regularly reside at, or regularly access, the address of the family violence incident, regardless of whether the children are present or not at the time that the police attend. In addition, police skills need to be enhanced in relation to responding to children in these incidents and the narrative content communicated in the VP form L17.⁴⁰⁰

It was reported that the structure of the current L17 form omits the collection of some information specifically related to children. For example, Berry Street recommended that information about whether a child has intervened to stop violence against their mother should be captured, and that the L17 incident codes to be extended to include incident codes for specific risks to children, such as physical assault to child, child sexual assault, threats to abduct, threats to harm or kill or reference to murder or suicide.⁴⁰¹

The Commission was also told there are issues associated with having multiple police referral points for children experiencing family violence, which have introduced further complexities into the system.⁴⁰² The Commission discusses this and makes recommendations regarding this in Chapter 13.

Some stakeholders expressed the concern that children affected by family violence were not being listed as affected family members on family violence intervention orders.⁴⁰³ This concern was among those raised in Deakin University's Landscapes of Violence report on women experiencing family violence in regional and rural Victoria.⁴⁰⁴ In this research, based on court observations and semi-structured interviews with survivors, workers, lawyers and magistrates, the authors reported hearing of many instances where magistrates were reluctant to include children on FVIOs, particularly in privately initiated applications.⁴⁰⁵ The researchers further noted that, because there is limited space on the FVIO information form to explain the circumstances in which the child may have witnessed violence, magistrates may view such claims as an 'add-on' to the substantive application.⁴⁰⁶ Of particular concern is the report's assertion that:

Workers and women alike told the researchers that private and Legal Aid lawyers for both parties often place a great deal of pressure on women not to include children by arguing that the respondent will consent to an FVIO as long as the children are removed from the application.⁴⁰⁷

Specialist family violence services

Few services are available to directly assist children. A lot of family violence services are, rightly, geared towards assisting the adult survivor, and the general needs – for example, parenting, finances, housing – of the mother and children. But it is hard to access play therapy or specific supports for children. There is often a requirement that therapy for children can only occur once the family is settled and safe. Access to play-based sessions for children would be beneficial for some children in helping them deal with the situations they have experienced. The challenge is to support and enable children to have a voice and be able to share what is happening for them in their families while violence is occurring.⁴⁰⁸

Like Integrated Family Services, specialist family violence services have generally assisted children by providing support for their mother.⁴⁰⁹ Domestic Violence Victoria, the peak body for specialist family violence services, argued the sector has long recognised the need for specialised responses for children and young people, but that underfunding has created demand pressures that have precluded services from responding to either the crisis or ongoing needs of children and young people.⁴¹⁰

The lack of prominence of individual children and young people within the specialist family violence services sector extends to the data collected, which counts children as 'add-ons' to their mothers and does not capture their individual support and counselling needs.⁴¹¹

Nevertheless, Victoria's 2008 practice guidelines *Women and Children's Family Violence Counselling and Support Programs* endorse the principle that responses to family violence can be improved through better recognition of the independent rights and needs of children.⁴¹²

The Department of Health and Human Services has also developed the *Assessing Children and Young People Experiencing Family Violence* practice guide to help family violence workers meet the needs of children affected by such violence. The guide is based on a number of principles, one of them being that children have unique experiences of family violence and are 'service users in their own right', with each child requiring independent assessment.⁴¹³ The guide is mandatory for the Risk Assessment and Management Panels, (RAMPs).⁴¹⁴ It is not mandatory for the family violence specialist support services programs (counselling for women and children)⁴¹⁵ or women's refuges.⁴¹⁶

Submissions said that despite the sector's recognition of children's independent needs, there is insufficient resourcing and workforce capacity to provide suitable services and adequately cater for children's needs.⁴¹⁷ The Australian Institute of Family Studies stated that the family violence sector is currently limited to providing crisis support for children as it lacks the resources to provide continuing assistance or to evaluate its interventions.⁴¹⁸

The Commission heard that the specialist family violence sector consistently points to the need for programs that target children, but that funding streams do not reflect this.⁴¹⁹ The result is that family violence services are often unable to support children separately from their non-violent parent.⁴²⁰

Domestic Violence Resource Centre Victoria submitted that specialist family violence services are primarily funded to work with adult victims and most do not receive dedicated funding for case management of children.⁴²¹ Safe Steps Family Violence Response Centre submitted that they, along with other specialist family violence services, 'regularly work with children, however most family violence services are not specifically resourced to meet children's needs'.⁴²² It also noted that 'there are no resources specifically allocated to supporting children, and some resource allocation models work against agencies' efforts to support children'.⁴²³

Homelessness service, WAYSS, told the Commission that it has two dedicated children's case workers who provide individualised case management but this is not enough to support a large number of the children experiencing family violence who are linked to WAYSS services.⁴²⁴ A participant in a community consultation stated: '[A] [s]ingle worker may have eight clients, there may be 40 children for these eight clients—how do you assess the needs of all those children?'⁴²⁵

An evaluation by Hanover Welfare Services and HomeGround Services—now known as Launch Housing—of its Homeless Children's Specialist Support Service program found that the needs of children and young people who enter the homelessness system (including family violence refuges) are not adequately addressed:

While the situation may be marginally better in the family violence sector, most refuge services are not resourced to look after the needs of children/young people. Many services do not have designated workers to focus on the needs of children. Of those that do, the evaluator is aware of concerns that many of them are not adequately trained.⁴²⁶

Ms Bunston gave evidence that that refuge workers 'often feel very under skilled in working with children and most certainly with infants'.⁴²⁷ She further stated that women's refuges are 'ideal places' to work with infants and children since these individuals are usually the most damaged and traumatised victims of family violence and there are enormous opportunities for engaging with them in this setting.⁴²⁸

In order to improve the response, Domestic Violence Victoria suggested that specialist family violence services should be funded to provide children-specific support services and that a child specialist should be placed in each family violence service to provide individual counselling to children and young people, as well as assisting family violence workers in their work on mother-child relationship issues.⁴²⁹ Similarly, McAuley Community Services for Women submitted that there should be case management for children in 'all women's refuges (with quality assurance and monitoring) to focus on the individual child as well as rebuilding/repairing family trust and bond'.⁴³⁰

Integrated Family Services

The Commission was told that due to demand pressures and their role in crisis response, it is likely that specialist family violence services prioritise working with women who are at the point of leaving, while Integrated Family Services may be more likely to work with families where the perpetrator is still in the home and where there may be other factors that impact on a parent's capacity to meet their children's developmental needs such as substance abuse, housing stress, or mental health issues.⁴³¹

While recognising that specialist family violence services and Integrated Family Services often undertake similar roles such as advocacy and support, it was noted that:

...one of the unique aspects of the family services sector is that we provide support to women, children and young people who are still in a relationship with the perpetrator.⁴³²

A number of submissions suggested that Integrated Family Services required further resources to enable it to respond earlier with families experiencing difficulties, including family violence.⁴³³ The Centre for Excellence in Child and Family Welfare, the peak body representing Integrated Family Services providers, told the Commission that due to the high level of demand, Child FIRST had to prioritise services.⁴³⁴ Safe Steps submitted that in its experience 'Child FIRST and Early Intervention services are under-resourced to meet demand for children who have experienced family violence who are not at immediate risk'.⁴³⁵

A number of Integrated Family Services providers also noted that as a result of demand pressures, there was tension between responding to increasing numbers of referrals via the L17 process, and responding to those who may not be in crisis but are still experiencing difficulties, including children and young people at risk of family violence.⁴³⁶

Family services focus on building the capacity of parents to address their children's needs. The importance of the parenting role is reinforced by the emerging research findings that indicate that the key point of intervention is strengthening of the mother-child relationship that has been impaired by the family violence, in the post-crisis period.

While a wide range of programs and approaches are delivered within the scope of Integrated Family Services, the dominant approach by family services is working with the parent(s) rather than directly with the child and while Child FIRST/Integrated Family Services is considered to be improving responses to families with children, some have concerns regarding their effectiveness in relation to family violence.⁴³⁷

Families may need either specialist family violence services or Integrated Family Services at different times, depending on risk. Both may be needed, potentially simultaneously if a woman is getting support around managing the violence from a specialist and also needs family services support in relation to parenting, or the child's development needs. The lead service response might also change as the level of risk changes, and as the victim moves towards recovery.

The Commission heard that families affected by family violence would substantially benefit from greater cross-sector collaboration between specialist family violence services, Child Protection and Child FIRST.⁴³⁸ It was acknowledged that there is a need for improvements to ensure a more coordinated and integrated approach.⁴³⁹ Some suggested placing specialist family violence children's workers inside Integrated Family Services teams, in particular when the perpetrator is still in the home.

Specialist workers/therapists with Family Violence experience should be embedded within IFS and Child FIRST teams focussing on children and young people and their short and long term needs. These workers should be prepared to work alongside Family Support workers within family units where the perpetrator has not left the family, providing specialist expertise and strategies to manage this issue.⁴⁴⁰

These issues are discussed further and recommendations made in Chapter 13. Recommendations regarding enhanced resources for Integrated Family Services are also made in that chapter.

Lack of counselling and therapeutic interventions

The National Children's Commissioner in her *Children's Rights Report 2015* observed that child victims of family violence are currently provided therapeutic support based on the needs of their parents rather than based on their specific needs.⁴⁴¹ Similar views were expressed in the Commission's community consultations:

[It's a] [m]isnomer that if you treat the mother, the child will be ok.⁴⁴²

Often there's so much support for the parents and the children often aren't included in the support. You're not necessarily re-traumatising them by talking about it. By not talking about it you're denying their experience. It's all about how can we train people so that they can do that in a safe way.⁴⁴³

The Australian Institute of Family Studies submitted that, once immediate safety has been secured for a child, trauma-based and culturally sensitive therapeutic interventions are important and considered best practice.⁴⁴⁴ Angicare Victoria described the benefits of child-focused counselling and support:

Counselling focuses on strengthening the parent-child bond, which is often undermined by violence and its effects ... Counselling also focuses on helping children develop strategies to manage anxiety and other issues related to their trauma, and helping mothers to understand the impact of such traumatic experiences on their children, and steps they can take to ameliorate this impact.⁴⁴⁵

The evidence before the Commission, however, was that lack of resources means that not all children and young people who have experienced family violence are benefitting from counselling or more intensive therapeutic interventions (where these are required).

While some individual and group programs specifically for children have been introduced, the Commission heard that these programs tend to be 'very limited in capacity, time and contingent on insecure funding'.⁴⁴⁶ Ms Bunston told the Commission that while the availability of therapeutic services [for children] 'is pretty poor ... what is available can sometimes lack sophistication therapeutically'.⁴⁴⁷ She further identified that programs that had achieved positive results no longer operated or did so on an ad hoc basis.⁴⁴⁸

The Gippsland Integrated Family Violence Service Reform Steering Committee told the Commission there is a shortage of counselling services for children who have experienced family violence, and waiting lists are long.⁴⁴⁹ This is particularly the case in rural and regional areas.⁴⁵⁰ Central Goldfields Shire Council submitted:

There is limited access to specialist children's counselling and support services who are aware of the impact of exposure to violence on children's emotional, intellectual and social development. Those services available are only available regionally and only cater to the extreme cases such as child sexual abuse.⁴⁵¹

Cobaw Community Health Service also noted the lack of statewide coordination of children's counselling services and limited opportunities for networking to develop consistent best practice standards.⁴⁵²

Barwon Area Integrated Violence Committee submitted that Barwon Centre Against Sexual Assault provides trauma-related therapeutic support for children affected by violence and abuse 'but the service is experiencing significant demand beyond its capacity'.⁴⁵³ The committee stated that 'reducing the impact of family violence and abuse on children and delivering appropriate therapeutic interventions is [a] priority area requiring urgent attention'.⁴⁵⁴

Trauma-informed and therapeutic interventions

The Commission heard evidence that supports the importance of trauma-based therapeutic interventions for children and young people. Dr Miller told the Commission that these interventions can have a powerful impact: for young children, whose brain development is occurring at a rapid rate, early intervention is essential to prevent poor outcomes in the long term and can be a way of breaking intergenerational cycles of violence.⁴⁵⁵

The Play Connect arts therapy program, delivered under the auspices of the Loddon Mallee Homelessness Network, has also been identified as a successful initiative, as have the programs offered by the Royal Children's Hospital.⁴⁵⁶ Other sorts of programs with a mentoring focus such as Big Brother and Big Sister can also provide role models who demonstrate non-violent behaviours, positive adult behaviour and healthy relationships.⁴⁵⁷ Dr Miller gave evidence that such programs can help build the resilience of young people through the development of trusting, ongoing relationships with volunteers who also act as alternative role models.⁴⁵⁸

Although the cost of these programs is relatively small, they have been consistently underfunded.⁴⁵⁹ One of the themes to come out of the Commission's hearings and consultations is that there is little continuity in program availability—many programs are funded for a short period of time and then the funding stops.⁴⁶⁰

The Commission heard that early therapeutic intervention for young people is essential before 'windows of opportunity' are missed—that is, while young people still have connections with extended family and are attending school and before they have become chronically homeless or are engaging in risk-taking behaviours.⁴⁶¹

Failing to intervene at this formative stage can lead to the normalisation of violence: Melbourne City Mission's submission argued that the 'marginalisation of the trauma needs of this cohort is creating the conditions for young women to normalise intimate partner violence and young men to become perpetrators'.⁴⁶² Similarly, Youthlaw argued:

To prevent long term psychological consequences of family violence there must be a large injection of funding into youth appropriate therapeutic services for young people who have experienced family violence. These services need to be accessible and flexible (eg salaried psychologists not sessional & allowing a degree of drop in, and integrated with other youth services). We recommend a starting point would be availability of therapeutic services through youth services that currently support vulnerable young people presenting with homelessness, substance abuse and mental health issues.⁴⁶³

Many submissions called for an expansion of access to therapeutic services. Some proposed that trauma-specific services for children and young people who have experienced family violence should be available within family support services.⁴⁶⁴

The Australian Childhood Foundation, a provider of one of the few specialist programs currently available, recommended that a network of Child Trauma Centres be established across the state to enable the short and long term provision of therapeutic services to children and their networks of adults.⁴⁶⁵

Best practice working with mother and child

The Melbourne Research Alliance to end violence against women and their children told the Commission there is emerging research that indicates the most effective response in the post-crisis period for both women and their children is for them to receive therapeutic interventions together.⁴⁶⁶ This can take the form of parallel women's and children's groups or joint mother-child counselling.⁴⁶⁷ The Commission for Children and Young People submitted:

... the emphasis must be on strengthening the communication between the mother and child and addressing their interconnected needs as part of recovery planning. Intervention should be focussed on supporting the mother and child to move from crisis and trauma to greater stability, and establish a trauma narrative to make meaning out of their individual and joint experiences, look at their identity in the future, and develop a hope based narrative.⁴⁶⁸

Working therapeutically with mothers and children for 12 months can 'decrease children's symptoms of traumatic stress, and depressive symptoms in the child and mother'.⁴⁶⁹ It has also been shown that therapeutic support for children and parents together after a potentially traumatic incident (such as witnessing a physical assault) can decrease the child or young person's propensity to develop post-traumatic stress disorder.⁴⁷⁰

Anglicare Victoria submitted that group work interventions can also be effective—for example, their Beyond the Violence program referred to earlier. Anglicare Victoria surveyed 15 families who participated and found that 87 per cent of the parents thought the program had improved their parenting, 80 per cent said they were more confident in responding to their children's behaviour, and 80 per cent reported improved relationships with their children.⁴⁷¹

The Commission also heard about group work programs which started in 1996 at the Royal Children's Hospital Mental Health Service. 'Parkas' ('parents accepting responsibility kids are safe') is a ten-week group program for children aged eight to 12 and their mothers affected by family violence. Evaluations of the program conducted in 1999 and 2006 reported positive outcomes and overall improvement in children's functioning.⁴⁷² Therapeutic group work with children affected by family violence is described as 'deeply relational', and involving 'an appreciation of and great respect for the relating style children possess and the defences they have adopted in order to survive'.⁴⁷³

Emerging evidence also shows that the most effective interventions for children respond to both the child's caregiver and the child themselves in order to rebuild the bond between them, which might have been compromised as a result of family violence.⁴⁷⁴ A strong mother–child relationship can be important for the recovery of both mother and child, who can be 'promoters' of recovery for each other.⁴⁷⁵

The Commission heard evidence that there is, however, only limited funding for this type of therapeutic intervention. For example, Berry Street's Turtle Program focuses on restoring the mother–child relationship and has 'shown promise' and 'been valued as effective', but it remains a temporary program.⁴⁷⁶ Similarly, Berry Street noted that children experiencing family violence currently 'receive limited and in some cases no service responses that target their relationships'.⁴⁷⁷

Barriers faced by young people experiencing family violence

The Commission received evidence about why young people experiencing family violence may not seek support, and how best to reach those young people.

The Youth Affairs Council of Victoria submitted that young people are less likely than other age groups to seek help, and that this reluctance may be a consequence of 'confusion, poor self-esteem' and lack of accessible information.⁴⁷⁸

Youthlaw emphasised that, when developing family violence services for young people, young people's tendency to rely on pre-existing support networks and their reluctance to seek assistance directly from other services must be borne in mind.⁴⁷⁹ For example, referring a young person to a general practitioner in order to gain access to Medicare-funded counselling will probably be ineffective if the person is unlikely to attend the appointment or the counselling.⁴⁸⁰

It is well established in the youth sector that young people, and particularly vulnerable youth do not readily seek services they need and that they have a very high drop out and low attendance when referred to external or appointment based services. Young people tend to seek services from those they trust including caseworkers, family and teachers. In regard to seeking legal assistance we know that young people rarely directly seek assistance. We factor this into the design and location of our services including co-location and integration with other youth services and outreach methods that connect with vulnerable groups of young people.⁴⁸¹

Face-to-face contact is important:

When talking about young people—the face to face contact really matters—phone stuff doesn't work. People drop off. You need a warm referral for young people.⁴⁸²

The Commission was informed that many young mothers escaping family violence do not seek out available legal services in relation to family law and child custody disputes.⁴⁸³ This can be a consequence of confusion, lack of information or poor self-esteem and can have adverse impacts—not only for the woman's wellbeing but also for that of her children.⁴⁸⁴ In addition, they may not see family violence services as relevant to their own intimate partner relationship because they perceive family violence as 'adult' behaviour.⁴⁸⁵

The Commission was also told during community consultations that high numbers of young parents, particularly in regional areas, come to court to obtain an intervention order but then drop out of the system.⁴⁸⁶ This could be an important point of intervention, presenting the opportunity to link young parents to other youth-specific services they might not seek out themselves.

The Commission heard there is currently a lack of coordination between different youth services and between the youth and family violence sectors, both of which are under pressure from high demand. The Youth Affairs Council of Victoria submitted that current interventions for young people experiencing family violence are 'diverse and piecemeal' and involve a range of short-term projects.⁴⁸⁷

The Commission heard there is also a need to improve communication between family violence and youth homelessness services. Melbourne City Mission submitted that family violence services often make referrals without providing sufficient information to the young person or the agency.⁴⁸⁸ It expressed concern that such 'cold' referrals perpetuate feelings of disempowerment and could cause young people to return to unsafe homes or 'informally enter homelessness by couch-surfing or sleeping rough'.⁴⁸⁹

The Commission heard that youth services—including homework clubs, arts and recreation groups, and specialist services such as homelessness and drug and alcohol organisations—can play an important role in supporting young people experiencing family violence because they represent a non-threatening, 'soft' entry point.⁴⁹⁰ Youth workers work with the young person as the primary client in their own right, 'acknowledging their developing independence, and supporting them to make decisions about their own lives'.⁴⁹¹

The youth sector's interventions aimed at assisting young people experiencing family violence are diverse and include programs such as You, Me and Us, which is a peer educator initiative of Women's Health West Inc.⁴⁹²

The Youth Affairs Council of Victoria submitted that youth services' current interventions aimed at supporting young people experiencing family violence should be evaluated and assessed for their scalability.⁴⁹³ It also noted a 2012 survey it conducted with the Council and the Victorian Council of Social Service of 213 youth services, which found that about a quarter of respondents identified 'sexual assault/domestic violence' as an area of unmet need.⁴⁹⁴

The Commission also heard that youth refuges need to become better at identifying family violence and linking young people to other services if they are unable to provide the services themselves. Youthlaw submitted:

We also observe in the youth service sector and even in our own service that services do not ask about family violence. Increasingly they are doing so (eg. Frontyard) and the data are revealing very high numbers have been exposed to family violence.⁴⁹⁵

The Youth Affairs Council of Victoria submission stated that youth workers should be trained to identify family violence—for example, through youth-focused CRAF training—and to support young people who disclose experiences of it.⁴⁹⁶ Such training should cover cultural competency and family violence among young people from culturally and linguistically diverse and Aboriginal and Torres Strait Islander backgrounds. It should also highlight the unique experiences of same-sex attracted and gender diverse young people and young people with disabilities.⁴⁹⁷

The Commission received proposals for a number of youth family violence-specific initiatives including for the creation of a new service that would be supported by a youth-specific portal.⁴⁹⁸ The Youth Affairs Council of Victoria submitted that existing websites educating young people about healthy relationships—among them Domestic Violence Resource Centre Victoria's Bursting the Bubble—could also be expanded.⁴⁹⁹

It would be useful to consider whether anti-violence initiatives could draw on the findings of models such as eheadspace's online and telephone counselling service, the apps and online forums developed by ReachOut.com, and the Online Wellbeing Centre being piloted by the Young and Well Cooperative Research Project, which links young people to tools about health, relationships, thoughts and emotions.⁵⁰⁰

Youthlaw recommended co-location of services as a means of countering young people's reluctance to seek support from specialist services independently:

A starting point could be a number of services located together with current frontline services that support vulnerable young people presenting with homelessness, substance abuse and mental health issues (such as Frontyard, Youth Support Advocacy Service and Headspace). Such services could include therapeutic services ... These services should be fully integrated with the online/phone service ... and other family violence services (eg safe steps).⁵⁰¹

Lack of accommodation for children and young people

There are two types of crisis accommodation for young people experiencing family violence: youth refuges, and women's family violence refuges. The Commission heard evidence that both have major limitations.

Youth refuges

Youth refuges are funded to provide crisis accommodation and support for young people aged 16–25 years.⁵⁰² Immediate safety and security are the first priority for young people escaping family violence and are a necessary precondition for effective therapeutic interventions that seek to encourage healthy relationships, self-development and the generation of life skills.⁵⁰³

The Commission heard that Victoria's youth refuges have insufficient capacity to meet demand: in June 2014 there were 20 youth refuges, and in July 2015 they had a combined total of 159 beds.⁵⁰⁴ Melbourne City Mission noted that its Frontyard Integrated Youth Services receives more than 200 requests a fortnight from young people with nowhere to sleep.⁵⁰⁵ They stated that with only 109 beds available in metropolitan Melbourne (in 15 youth refuges), demand greatly exceeds supply and the turn-away rate is about 66 per cent.⁵⁰⁶

In Traralgon, the Commission was told there are only 16 beds in the entire region for young people experiencing homelessness.⁵⁰⁷ In addition, Hope Street Youth and Family Services highlighted the lack of crisis accommodation for young people in growth corridors, as outlined in Hope Street's recent report *Responding to Youth Homelessness in the City of Melton*.⁵⁰⁸

It was noted in evidence that young people living in rural, regional and remote communities who do manage to gain access to a youth refuge can find themselves far from their original home and community and isolated from specialist support services and other networks.⁵⁰⁹

If a bed in a youth refuge is not available, the Commission heard that alternative accommodation options for young people are often inappropriate or unsustainable, or both:

In the absence of a youth refuge bed, if a young person is not able to return home because of family violence or family breakdown and is not able to draw on their personal networks to find emergency shelter, the alternative accommodation options are cheap motels and backpacker accommodation. These are neither a sustainable (long-term) option nor a safe option for young people (although they are marginally safer than sleeping rough).⁵¹⁰

Melbourne City Mission said it 'reluctantly' spends about \$100,000 a year on sub-standard accommodation for young people because a place in a youth refuge is not available.⁵¹¹

The maximum length of stay at a youth refuge is usually six weeks.⁵¹² The lack of long-term accommodation options for young people can result in blockages in the refuge system, where there is no option but to extend the person's stay. Melbourne City Mission cited an example of this:

In one recent case, Melbourne City Mission supported a 16-year-old woman from a CALD background to remain at a youth refuge for 12 months, in order to complete Year 11, find part-time employment and secure stable long-term accommodation. The young woman had no family networks beyond her adopted mother (who perpetrated violence).⁵¹³

Mr Arthur Rogers, Deputy Secretary, Social Housing and NDIS Reform and Director of Housing, Department of Health and Human Services, gave evidence that additional resources have been allocated under the National Partnership Agreement on Homelessness (a two-year agreement for 2015–16 and 2016–17) for seven youth refuges to deliver a model of service that focuses on specialist support, family reconciliation and follow-up support.⁵¹⁴ The Commission notes that this is not a family violence initiative and that reconciliation may not be appropriate when violence is or has been present and the young person remains at risk.

Women's family violence refuges

As discussed in Chapter 9 women's family violence refuges are not always accessible to or suitable as accommodation options for young people experiencing family violence. One victim told the Commission: 'I was in a community refuge ... communal lounge ... it was a bit traumatic ... there were so many people, I was young, I was still scared to talk'.⁵¹⁵

Melbourne City Mission told the Commission the arrangements in some women's refuges can be inappropriate for young women who are not at high or imminent risk.⁵¹⁶ Social connections form a large part of young people's identity and are also an important protective factor,⁵¹⁷ so a requirement to cease contact with friends or to refrain from using social media can be isolating and can exacerbate trauma, causing some young women to return to unsafe situations.⁵¹⁸

Some young people face additional difficulties:

- ▷ Young men who are forced to leave their homes as a result of family violence cannot use family violence refuges for women and children. In addition, as discussed in Chapter 9, sometimes male adolescents accompanying their mother are also excluded.⁵¹⁹
- ▷ Contributing to the difficulty associated with leaving a violent relationship is the lack of suitable accommodation for young mothers. The Commission for Children and Young People noted that youth refuges are an option only for young people without children.⁵²⁰
- ▷ Youth refuges might not have the same kind of security as family violence refuges.⁵²¹ The Commission was told this can place young mothers in a difficult position if their children are in out-of-home care and the young mother is trying to demonstrate they can offer a secure home to their children. They will need flexible accommodation that is available to them when they do not have their children with them, and subsequently if they are reunited with their children and require different accommodation.⁵²²

Lack of long-term accommodation for young people

The Commission heard that although the lack of affordable housing in Victoria is a problem for many in the community, it can particularly affect young people, who might be unable to secure private rental accommodation because of both cost and age discrimination.⁵²³ In addition, young people are often excluded from certain types of social housing due to eligibility criteria—for example, a failure to satisfy income requirements.⁵²⁴ Hope Street Youth and Family Services told the Commission that in 2013–14 only one per cent of young people from its crisis accommodation programs were successful in gaining access to community housing.⁵²⁵

In Victoria, the minimum age at which a person can enter transitional housing in their own right is 15 years.⁵²⁶ Young people who go to adult homelessness services but are under the age of 15 are referred to local adolescent community placement services or protection and care units at Department of Health and Human Services divisions.⁵²⁷ Adolescent community placement services provide short and long-term out-of-home placements with approved caregivers.

A related issue is the need to provide appropriate support to the young person alongside the accommodation, so that if they secure a tenancy, they can maintain it. This goes beyond being able to afford rent and can include the need for other supports.

It was submitted that a cycle can develop whereby young people reach the end of their support period in transitional housing and, having failed to secure long-term housing, are forced back to a homelessness access point to re-apply for crisis accommodation.⁵²⁸

The way forward

The Commission heard that being exposed to family violence as a child can have a profound impact on a young person's future.⁵²⁹ If children's schooling is disrupted—for example if escaping family violence means moving away from their home—this will likely affect their chances of obtaining and keeping a job as poor educational outcomes can severely limit life opportunities. Family violence can also lead to children being placed in out-of-home care, which is associated with poorer long-term outcomes for a child.⁵³⁰ This can trap them into poverty, wasting their potential and their talents. Given the number of children and young people affected by family violence, the social and economic costs of this are likely to be significant.

In this section the Commission discusses the need for a system-wide, coordinated response to the specific needs of children and young people, in particular their emotional needs, and makes recommendations to extend the range and quantum of counselling and therapeutic services available to them.

Underpinning these recommendations is the Commission's view that children and young people experiencing family violence should be recognised as victims in their own right—and that their safety and wellbeing are paramount.

In other parts of this report, the Commission makes recommendations to improve the accessibility of specialist family violence services and other agencies, and to support workforce learning and development required to achieve inclusion. We also recommend improvements to risk assessment for children in Chapter 6.

In implementing the Commission's recommendations, these are the principles that should apply in relation to children and young people:

- ▷ Children and young people experiencing family violence should be recognised as victims in their own right and have their needs acknowledged.
- ▷ Children and young people have different needs—this should be recognised when planning and delivering responses to family violence.
- ▷ Many children and young people display great resilience in the face of family violence. Interventions should preserve and strengthen protective factors that might mitigate the effects of family violence, noting that the majority grow up to be neither perpetrators nor victims in their adult relationships.
- ▷ Interventions and support for children and young people who have experienced family violence should focus on:
 - ▷ keeping them safe
 - ▷ supporting them in their recovery from the effects of family violence
 - ▷ providing the right level and type of support when it is needed and for as long as it is needed. Not all children and young people will require an intensive therapeutic approach but those that do should have timely access to this.
- ▷ Services should be accessible, inclusive and responsive to the needs of all children and young people.

A family violence system that includes an equal focus on children and young people

The right of children and young people to live free from violence should be at the centre of family violence policy and practice. Their interests and welfare should be a primary focus—not a secondary consideration for action after the needs of the parents have been accommodated. In view of their unique experiences and vulnerabilities, young people also need to be recognised by the family violence system as a specific cohort, independent of adults and children.⁵³¹

In implementing the Commission's recommendations, services should place children at the centre of responses to family violence so that their safety and wellbeing are paramount. The rights and needs of children should be reflected at a contractual and program standards level to ensure they are upheld in practice. Therefore, the Commission therefore recommends that the Department of Health and Human Services specifically address the rights and needs of children and young people, including how services respond to and integrate their rights and needs in their practice and in the standards of practice for specialist family services and Integrated Family Services.

It is clear that refuges, and specialist family violence services more broadly, currently lack the capacity to respond directly to the needs of children who have experienced family violence. Further, there is a lack of specific family violence services for children and young people in the crisis and post-crisis periods. All of this is exacerbated by increasing demand.

Similarly, for Integrated Family Services, including their intake point Child FIRST, increased demand, issues with the referral pathway, as well as a focus on parenting assistance, mean these services have limited capacity to provide the intense level of support needed to meet demand for children and young people experiencing family violence. This means there is a missed opportunity to intervene earlier and change the trajectory of the child's experience.

We note Ms Bunston's evidence that women's refuges are 'ideal places' to work with infants and children,⁵³² and to start the work to recover. There are also opportunities to work across other disciplines and settings, including through family and health services, schools and youth services. Child-specific family violence programs could be linked with early childhood services, for example by providing family violence counselling and art therapy at child-care centre locations using family violence specialist counsellors and facilitators.

Some examples of effective interventions are noted; however, it is clear these initiatives, welcome though they are, are reliant on the efforts of services already at capacity and are not supported in any systemic way. A much more comprehensive approach to supporting children and young people is needed in order to make the family violence system truly responsive to their needs.

Recommendation 21

The Victorian Government ensure that all refuge and crisis accommodation services catering to families have adequate resources to meet the particular needs of the children they are accommodating, including access to expert advice and secondary consultations in supporting children [within 12 months].

Protecting children with family violence intervention orders

The Family Violence Protection Act allows the court to make a final FVIO if satisfied that the respondent has committed family violence against the affected family member/s and is likely to continue to do so or do so again.⁵³³ Further, before making a final order—even where it has been proposed by mutual consent of the parties—the court must consider whether there are any children who have been subject to family violence, and may, by its own motion, make an FVIO in respect of any child, or include the child in the adult affected family member's FVIO if their need for protection is 'substantially the same'.⁵³⁴

In the Commission's view, it is important, and consistent with the intention of the Act that children who have experienced violence (including through witnessing, hearing or being exposed to it) and are at ongoing risk are protected, either by their own FVIO or by inclusion in an FVIO.

Based on figures noted earlier in this chapter there are disparities between the number of family violence incidents attended by police at which children are present, the number of children recorded by police as affected family members, and the number of children listed on original FVIO applications.

While it is difficult to compare data sets from different agencies, it appears that not all children who are witnessing (or otherwise experiencing) family violence are being considered for protection by an FVIO.

We urge the Victorian Government to address this issue and, in consultation with Victoria Police and the courts, to consider means to ensure that where family violence gives rise to an FVIO application and a child is involved (including through witnessing, hearing or being exposed to the violence), that child is listed on the FVIO.

A rebuttable presumption that a child who has experienced family violence (including through witnessing, hearing or otherwise being exposed to it) is protected by an FVIO should be introduced. We accept that police and courts may require additional resources to comply with that presumption. Nonetheless, in our view it is an option that should be adopted.

Recommendation 22

The Victorian Government amend the *Family Violence Protection Act 2008 (Vic)* to establish a rebuttable presumption that, if an applicant for a family violence intervention order has a child who has experienced family violence, that child should be included in the applicant's family violence intervention order or protected by their own order [within 12 months].

Ensuring schools and early childhood services are equipped

The Commission heard that although there is much evidence of the various deleterious impacts of family violence on children and young people, this knowledge has not been incorporated in universal services' practices and not fully understood by workers who have direct contact with children.

Given that social, psychological and cognitive harm is cumulative and compounded by ongoing exposure to family violence, it is essential that interventions start as early as possible. Early intervention for children experiencing family violence is 'critical to disrupting intergenerational cycles of family violence'.⁵³⁵

As part of this, early childhood services and schools have a crucial role to play in identifying, responding and preventing family violence. As Ms Callister, Secretary of the Department of Education and Training observed in her witness statement, the services of the department are universal, touching on the lives of every Victorian, and children and young people spend a substantial amount of their time in schools.⁵³⁶

It is thus essential that early childhood services and schools augment their capacity to recognise when children are experiencing family violence and provide assistance including linking them to suitable services. We also understand that because of the current lack of child-focused specialist family violence services for children and young people, there are limited referral pathways for schools and other universal services to utilise.

In August 2015 the Victorian Government announced the statewide inclusion of respectful relationships education in the school curriculum from 2016.⁵³⁷ We consider this to be a positive step and have made recommendations about the scope of that program. Chapter 36 provides a detailed discussion of and makes recommendations around primary prevention programs in schools.

As the Commission has previously noted, the effective implementation of respectful relationships education requires a whole-of-school approach.⁵³⁸ Best practice in respectful relationships education requires programs to respond appropriately to disclosures of victimisation.⁵³⁹

This will mean that all school staff will need to be prepared for such disclosures and be supported in responding appropriately. School staff will need greater capacity to recognise the ‘warning signs’ of family violence—for example, when children lack concentration, become withdrawn or lash out at others—and to have referral procedures and strategies for linking affected families to services.⁵⁴⁰ They also need to be aware of the differing ways in which children respond to family violence—for example, internalised as opposed to externalised behaviour—and children’s differing coping mechanisms.⁵⁴¹ When family violence is identified, educators and other staff should be aware that this may be the first time a child realises that the behaviour they are experiencing at home is problematic and further, that respectful relationships education may be traumatic for some children.

Currently, family violence is included in educators’ annual online training modules on mandatory reporting to Child Protection. While this is helpful, given the anticipated increase in disclosures the family violence component of this training should be strengthened.

It is important that clear referral pathways are developed for children who disclose family violence when receiving respectful relationships education. As recommended by the Department of Education and Training in 2009, partnerships with specialist agencies will be important to provide the resources, training and other supports schools will require.⁵⁴² In particular, consultation with local family violence or sexual assault services should be encouraged.⁵⁴³ This not only builds capacity to respond but also ensures that students are linked to external support services where appropriate.

As discussed in Chapter 13, the Commission’s recommendations to augment existing secondary consultation by specialist family violence services, and the establishment of advanced practitioner roles in the proposed Support and Safety Hubs from 1 July 2018 should assist with this process.

Other recommendations of the Commission made in Chapter 40 including for the establishment of a Principal Practitioner, Family Violence in the Department of Education and Training should also assist schools, early childhood services and other education providers such as TAFE by providing proactive practice leadership in family violence. This will include developing guidance and resources, linking workforces to evidence based learning and development (including on the revised CRAF) and working across the department to coordinate family violence policy and practice with other relevant initiatives around vulnerable children and families, including those under *Victoria’s Vulnerable Children Strategy 2013–2022* and those targeting children and young people in out-of-home care.

Increased counselling and therapeutic options

In the submissions received by the Commission the concepts of trauma-informed responses to children, counselling support and more intensive therapeutic interventions were often spoken of interchangeably. What was clear was that children and young people need a range of supports to assist them to deal with the impact of family violence.

For some, particularly in the crisis stage—including when they must leave their home—simple things like having toys, access to play, being at school and having someone to talk to can be key. For others, intensive counselling or therapeutic work is required to assist the child or young person to recover. While these are all distinct interventions they share a common thread—of making sure the child or young person feels safe, valued, and heard. These services also need to respond in different ways to the trauma that family violence causes while recognising and building upon the resilience of the child.

The Commission was told that due to lack of adequate funding, the family violence and youth homelessness sectors are largely limited to providing crisis support for children and young people rather than ongoing assistance. The Commission heard that current funding levels for counselling and more therapeutic interventions for children and young people experiencing family violence are insufficient, despite evidence of their importance. We also heard the sexual assault sector is struggling with the demand for counselling services for children and young people.

In addition to keeping them safe, interventions and support for children and young people who have experienced family violence should focus on supporting them in their recovery from the effects of family violence. This is particularly important given the evidence supporting therapeutic interventions to prevent poor outcomes in the long term and as a way of breaking intergenerational cycles of violence.

The Commission has heard and accepts that an increase in the availability of counselling and other ongoing therapeutic supports for children and young people who have experienced family violence is urgently needed—particularly in rural, regional and remote areas.

In Chapter 20 we consider the availability of counselling for adult victims of family violence. We note there, consistent with the evidence presented in this chapter, that demand for counselling services under Family Violence Support Services (counselling) program exceeds availability. The Victorian Government requires that at a minimum, 30 per cent of counselling provided under that program be targeted to children. The Commission notes that in 2013–14, children accounted for 41 per cent of all people counselled.⁵⁴⁴

Based on the submissions we received regarding lack of access to counselling, it seems that child and adult victims of family violence are competing for a scarce resource. This is not in the best interest of either children or women trying to recover from family violence. Accordingly, in Chapter 20 we have recommended an increase in resources for that program.

The Commission received evidence that there is growing support for trauma-informed care and practice in Australia but that such an approach is not as developed in Australia as it is in the US.⁵⁴⁵ We consider the Victorian Government should fund expansion and evaluation of models of therapeutic intervention for children and young people who are victims of family violence, including age appropriate group work.

In considering the evidence, we identified two existing programs that with adaptation could make a significant difference to the availability of therapeutic support for children and young people. These can be conceptualised along a spectrum of intervention—with the first less intensive.

First, the Homeless Children's Specialist Support Service, which is unique because the child or young person is the primary client, has been positively reviewed.⁵⁴⁶ The Commission considers this model has merit in terms of providing multi-faceted assistance, both directly to the child and in supporting other services such as schools to provide a better response. This one-on-one case management support, group work and psychological support is the sort of assistance that many submissions spoke of as lacking—yet the program is only funded in four service locations.

Second, the Take Two program—which is a more intensive therapeutic program—is achieving good results. However, at the moment it is only available to children and young people in the child protection system. The Commission considers that the therapeutic basis of the program and its mode of delivery can and should be made available for children and young people dealing with the trauma of family violence regardless of their status inside or outside the statutory child protection system. This does not mean that every child who has experienced family violence needs this program. But for those whose level of trauma is such that an intensive intervention is required, a program with these types of features should be made available.

In implementing the Commission's recommendations, there should be a recognition that many children and young people display great resilience in the face of family violence, with the majority neither growing up to be perpetrators nor victims in their adult relationships. Interventions should therefore preserve and strengthen protective factors that might mitigate the effects of family violence and, in turn, interrupt the cycle of intergenerational violence. For example, as mothers play a vital role in mitigating the short and long-term effects of family violence, programs that focus on rebuilding and strengthening the mother-child bond are valuable.

The Commission considers that priority should be given to programs, such as the Turtle Program, that work to rebuild mother-child relationships. Outcomes of the research being led by Professor Humphreys on the experience of children whose fathers have used family violence will also be useful to inform any future investment in programs for fathers.⁵⁴⁷

The Commission recognises that not all children and young people will need programs. In some cases other options will be more appropriate. Some simply need help with practical items such as having clothing, books and toys and getting to school. Currently some brokerage money is held for these purposes by the children's resource worker positions across the state (the Regional Children's Resource Program). However, this is not a significant fund. In order to overcome long waiting lists for places in publicly funded programs, additional brokerage funds should be made available to enable the purchase of a wide range of services to assist children and young people to maintain their education and access social, recreational and support opportunities within their communities.

The Commission notes that Family Violence Flexible Support Packages may also be used to support children and young people. In Chapter 9 the Commission recommends a significant expansion of those packages. Within this, a clear focus on the specific needs of children and young people will be required.

Parenting programs for vulnerable families

Early parenting programs for women experiencing issues that may be affecting their parenting, including family violence, are also worthy of investment where such interventions have been evaluated or otherwise proven to work. Examples include Cradle to Kinder (currently being evaluated). Elsewhere in this report we discuss positive initiatives with young Aboriginal mothers including Aboriginal Cradle to Kinder and local programs such as from Bumps to Babes and Beyond—again these are only available in certain locations.⁵⁴⁸

In relation to Cradle to Kinder, the Commission notes that many of its features, such as the level of intensity, duration, focus on the whole family, and multi-disciplinary team, would be of assistance to some women who are experiencing family violence but are not in the target group. Without wishing to pre-empt the outcome of the evaluation, the Victorian Government may wish to expand the program to ensure greater access to services with these features, such as for women who are older than 25 and/or for those with older children.

Recommendation 23

- ▶ The Victorian Government give priority to funding therapeutic interventions and counselling—including age-appropriate group work—for children and young people who are victims of family violence [within two years]. In particular:
- ▶ The Homeless Children's Specialist Support Service (or a program with similar features) should be extended beyond four service areas to be available statewide and be available to specialist family violence services.
- ▶ Eligibility for the Take Two program and similar intensive therapeutic programs should be introduced for children and young people affected by trauma associated with family violence who are not in the statutory child protection system.

Engaging and supporting young people

Evidence before the Commission indicated that not only are adolescents less likely than other age groups to seek assistance when experiencing family violence, but they are prone to ‘invisibility’ in the child protection and specialist family violence sectors.

In addition to the need for family violence services to provide more youth-focused services, youth services need to be more family violence-focused. Youth services’ capacity to provide a soft entry point to assist young people experiencing family violence should be strengthened. The Commission was told about a number of initiatives by youth services aimed at supporting young people experiencing family violence. These should be evaluated and assessed for their scalability.⁵⁴⁹

In view of young peoples’ reluctance to seek support outside their own networks, assertive outreach to attract young people who have experienced family violence should be explored.

Addressing gaps in accommodation

The Commission heard that demand for youth refuge beds greatly exceeds supply, and that the lack of crisis accommodation for young people in rural, regional and remote areas is even more extreme. The maximum stay at a youth refuge is usually six weeks, but the lack of long-term accommodation options for young people leads to these stays being extended, or to young people being placed in sub-standard or adult-based accommodation or becoming homeless again.

Even if there were sufficient beds in youth refuges staffed by workers trained to deal with children and young people who have experienced family violence, this would be only one part of the solution. Provision of stable long-term accommodation for young people is important to preserve the protective factors that mitigate the negative effects of family violence; it can also reduce the risk of children and young people entering the trajectory of poverty. There is an urgent need for viable accommodation options for young people escaping family violence, as they are too old for Child Protection but too young to gain access to family violence services, government housing or private rental accommodation.

The features of such accommodation must include youth-appropriate settings, a rapid response, and the provision of support integrated with a continuing participation in education and learning.

Recommendation 24

The Victorian Government support and fund youth homelessness and other youth services providers in developing and implementing a broader range of supported accommodation options for young people experiencing family violence [within two years].

Endnotes

- 1 Melbourne Research Alliance to End Violence Against Women and their Children (Cathy Humphreys et al)—01, Submission 840, Briefing Paper 4, 9. See also Victorian Council of Social Service, Submission 467, 60.
- 2 Association of Child and Family Development, Submission 221, 4.
- 3 Ibid 2.
- 4 See, eg, Royal Australian and New Zealand College of Psychiatrists, Submission 395, 13–14.
- 5 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 3. This is consistent with the definition of child in the *Age of Majority Act 1977* (Vic) s 3.
- 6 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 17 (2).
- 7 Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).
- 8 *Family Violence Protection Act 2008* (Vic) s 5(1)(b).
- 9 *Children, Youth and Families Act 2005* (Vic) Part 1.2—Principles.
- 10 Ibid. See Department of Human Services, 'Child Protection and Integrated Family Services: State-wide Agreement (Shell Agreement)—2013', 10.
- 11 *Child Wellbeing and Safety Act 2005* (Vic) ss 4–5.
- 12 Ibid s 5(3)(b).
- 13 State of Victoria, Submission 717, Attachment 2, 4; Kelly Richards, 'Children's Exposure to Domestic Violence in Australia' (Trends & Issues in Crime and Criminal Justice No 419, Australian Institute of Criminology (Cth), June 2011) 2.
- 14 National Children's Commissioner, 'Children's Rights Report 2015' (Australian Human Rights Commission, 14 October 2015) 164.
- 15 Ibid 152.
- 16 Ibid 120.
- 17 Australian Bureau of Statistics, 'Personal Safety, Australia, 2012' (Catalogue No 4906.0, Australian Bureau of Statistics, December 2013) Table 28.
- 18 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 10: Number of family incidents where a child/children were present—Victoria Police, July 2009 to June 2014, 35, provided to the Commission by the Crime Statistics Agency, 8 January 2016.
- 19 Ibid.
- 20 Note that these are not 'unique' children, as the data is incident based, and it is possible that the same children may be present at more than one incident in any one year: *ibid* Victoria Police data source, Table 21: Family incidents where children were present and the number of children present, July 2009 to June 2014.
- 21 Ibid Table 10: Number of family incidents where a child/children were present—Victoria Police, July 2009 to June 2014, 35.
- 22 Victoria Police, 'Code of Practice for the Investigation of Family Violence—Edition 3' (2014) 17.
- 23 Ibid 10.
- 24 In such cases, the number of children present will be recorded, but the age and gender of those children will not be recorded.
- 25 Crime Statistics Agency, above n 18, Victoria Police data source, Table 5: Affected family members by sex and youth-adult age group, July 2009 to June 2014.
- 26 Crime Statistics Agency, above n 18, 31.
- 27 In 2013–14, of 3341 child affected family members there were 1860 female child affected family members (56 per cent) compared with 1481 male child affected family members (44 per cent): *ibid*.
- 28 Ibid.
- 29 The number of affected family members aged under 18 has increased 20.5 per cent from 20,575 in 2009–10 to 24,802 in 2013–14, and the number of affected family members aged 18 and over has increased 28.9 per cent from 23,706 to 30,548: *ibid* Magistrates' Court of Victoria data source, Tab 7, Table 7: Affected family members on original FVIO applications by gender and age group, July 2009 to June 2014, Children's Court of Victoria data source, Tab 8, Table 8: Affected family members on original FVIO applications by gender and age group, July 2009 to June 2014.
- 30 Respondents were 21.3 per cent ($n=5177$) female in 2009–10, 21.7 per cent ($n=5749$) female in 2010–11, 22.1 per cent ($n=6481$) female in 2011–12, 22.3 per cent ($n=6899$) in 2012–13 and 22.5 per cent ($n=7128$) female in 2013–14. *Ibid* Magistrates' Court of Victoria data source, Tab 6, Table 6: Respondents on original FVIO applications by gender and age group, July 2009 to June 2014; Children's Court of Victoria data, Tab 6, Table 6: Respondents on original FVIO applications by gender and age group, July 2009 to June 2014.
- 31 *Ibid* Magistrates' Court of Victoria data source, Tab 7, Table 7: Affected family members on original FVIO applications by gender and age group, July 2009 to June 2014; Children's Court of Victoria data source, Tab 8, Table 8: Affected family members on original FVIO applications by gender and age group, July 2009 to June 2014.
- 32 A 20.6 per cent increase from 19,353 in 2009–10 to 23,332 in 2013–14. Of these, just under half were male (11,574) and just over half were female (11,758). *Ibid* Magistrates' Court of Victoria data source, Tab 7, Table 7: Affected family members on original FVIO applications, July 2009 to June 2014.
- 33 Five to 12 years age group made up 35 per cent ($n=10,417$) in this period, followed by zero to four years (35 per cent, $n=8170$), 13–15 years (13 per cent, $n=3074$) and 16–17 years (seven per cent, $n=1671$).
- 34 In 2013–14 for example, 56 per cent ($n=13,047$) of respondents were between 30–44 years. Of these respondents, 84 per cent were male and 16 per cent female. Crime Statistics Agency, above n 18, 49.
- 35 Increased from 1222 in 2009–10 to 1470 in 2013–14: *ibid* 58.
- 36 *Ibid* Children's Court of Victoria data source, Tab 12, Table 12: Gender and age of respondents where the affected family member is 17 years and younger.
- 37 10–14 years ($n=220$) followed by 15–19 years ($n=171$): *ibid*.
- 38 15–19 years ($n=387$). Those aged between five and 19 years made up 48 per cent ($n=808$) of all female affected family members applying for intervention orders in the Children's Court that year (2013–14): *ibid* Children's Court of Victoria data source, Tab 8, Table 8: Affected family members on original FVIO applications by gender and age group, July 2009 to June 2014.
- 39 North and West Regional Children's Resource Program, 'Through a Child's Eyes: Children's Experiences of Family Violence and Homelessness' (2013) 4.
- 40 Transcript of Newman, 14 July 2015, 114 [6]–[29].
- 41 Tweddle Child and Family Health Service, Submission 554, 3. See also, Commission for Children and Young People, Submission 790, 3–4; Statement of Newman, 14 July 2015, 3 [13]; Statement of Miller, 14 July 2015, 3 [11.2].
- 42 Commission for Children and Young People, Submission 790, 3–4. See also Parent–Infant Research Institute, Submission 611, 3.
- 43 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).
- 44 Anonymous, Submission 68, 1.
- 45 Anonymous, Submission 100, 1.
- 46 Nicole Brand, Submission 385, 1.
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- 48 Statement of Bunston, 8 July 2015, 3–4 [19].

49 Parent–Infant Research Institute, Submission 611, 3. See also Association of Child and Family Development, Submission 221, 1.
50 Statement of Miller, 14 July 2015, 8 [25]–[26].
51 North and West Regional Children’s Resource Program, above n 39, 8; Statement of Miller, 14 July 2015, 3 [11.10].
52 Kelly Richards, above n 13, 3.
53 Safe Futures Foundation, Submission 228, 3, 60–1; Domestic Violence Victoria—04, Submission 943, 6. See also Australian Institute of Family Studies, Submission 827, 9–10; Association of Child and Family Development, Submission 221, 1.
54 Safe Futures Foundation, Submission 228, 60; Statement of Miller, 14 July 2015, 10 [36].
55 Safe Futures Foundation, Submission 228, 9 [30].
56 Anonymous, Submission 80, 2–3.
57 Safe Futures Foundation, Submission 228, 65.
58 Association of Child and Family Development, Submission 221, 4.
59 Safe Futures Foundation, Submission 228, 62.
60 Domestic Violence Victoria—04, Submission 943, 9 citing Monica Campo et al, ‘Children Affected by Domestic and Family Violence: A Review of Domestic and Family Violence Prevention, Early Intervention and Response Services’ (Australian Institute of Family Studies, 2014) and Kelly Richards, above n 13, 1–3.
61 *Family Violence Protection Act 2008* (Vic) s 5(1)(b).
62 Commission for Children and Young People, Submission 790, 5. See also Youth Affairs Council of Victoria Inc, Submission 938, 6–7.
63 Michael Flood and Lara Fergus, ‘An Assault on Our Future: The Impact of Violence on Young People and Their Relationships’ (White Ribbon Foundation, 2008) 8. See also UNICEF, ‘Harmful Connections: Examining the Relationship Between Violence Against Women and Violence Against Children in the South Pacific’ (2015) 11.
64 Statement of Miller, 14 July 2015, 13 [48].
65 Statement of Newman, 14 July 2015, 4 [20].
66 Anonymous, Submission 6, 2.
67 Community consultation, Melbourne, 21 May 2015.
68 Anonymous, Submission 80, 2.
69 Anonymous, Submission 429, 1.
70 Domestic Violence Victoria—04, Submission 943, 6. See also Australian Institute of Family Studies, Submission 827, 6.
71 Belinda Paxton, ‘Domestic Violence and Abuse of Process’ (2003) 17(1) *Australian Family Lawyer* 7, 7.
72 Anonymous, Submission 729, 3.
73 Anonymous, Submission 17, 1.
74 Melbourne Research Alliance to End Violence Against Women and their Children (Prof Cathy Humphreys et al)—01, Submission 840, Briefing Paper 4, 80. Leesa Hooker, Rae Kaspiw and Angela Taft, ‘Domestic and Family Violence and Parenting: Mixed Methods Insights into Impact and Support Needs’ (Landscapes: State of Knowledge Paper No 01, Australia’s National Research Organisation for Women’s Safety, January 2016) 3.
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76 Statement of Miller, 14 July 2015, 14 [50].
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78 *Ibid* 6 [26].
79 Safe Futures Foundation, Submission 228, 64.
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81 *Ibid* 3.
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84 Melbourne Research Alliance to End Violence Against Women and their Children (Prof Cathy Humphreys et al)—01, Submission 840, Briefing Paper 4, 8.
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89 Statement of Miller, 14 July 2015, 14 [51]–[52].
90 *Ibid* 15 [54]–[55].
91 Victoria Police, Submission 923, 35.
92 Anonymous, Submission 80, 3.
93 Department of Health and Human Services, ‘Cumulative Harm: A Conceptual Overview—Best Interests Series’ (March 2008) 1; Statement of Miller, 14 July 2015, 11 [42].
94 Statement of Miller, 14 July 2015, 11 [41].
95 *Ibid*; Department of Human Services, above n 93, cited in Centre for Excellence in Child and Family Welfare Inc, Submission 878, 5. See also Victorian Council of Social Service, Submission 467, 60.
96 *Children, Youth and Families Act 2005* (Vic) s 10(3)(e).
97 Australian Childhood Foundation, Submission 894, 3.
98 Youth Affairs Council of Victoria Inc, Submission 938, 5.
99 *Ibid*.
100 Anonymous, Submission 80, 3.
101 Coroner’s Court of Victoria, ‘Best Interests Case Practice Model—Summary Guide (Department of Human Services)’ (2012), 8, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 1 June 2015.
102 Commission for Children and Young People, Submission 790, 14.
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104 Young People’s Legal Rights Centre—Youthlaw, Submission 539, 6.
105 Youth Affairs Council of Victoria Inc, Submission 938, 9.
106 Janette Kodaih, Submission 16, 1.
107 Community consultation, Melbourne 2, 24 April 2015.
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109 Rosanna Scutella et al, ‘Journeys Home: Research Report No. 4’ (Melbourne Institute of Applied Economic and Social Research, August 2014) 82 cited in Council to Homeless Persons, Submission 920, 6.

- 110 Crime Statistics Agency, above n 18, Specialist Homelessness Services Collection data source, Table 2: Number of support periods for clients seeking assistance for family violence by gender and age of client, July 2011 to June 2014. Note that the age of all clients is not known in all cases, for example in 2013–14 of 62,174 female clients only 56,320 had a known age, and of 12,118 male clients only 9659 had a known age in the data provided to the Commission.
- 111 Statement of Spinney, 20 July 2015, 4 [17].
- 112 Merri Outreach Support Service, Submission 231, 1.
- 113 Homelessness Australia, 'Homelessness and Children' (Factsheet, January 2013).
- 114 Anne Mitchell et al, '5th National Survey of Australian Secondary Students and Sexual Health 2013' (Monograph Series No 97, La Trobe University, Australian Research Centre in Sex, Health and Society, April 2014) 28, cited in Youth Affairs Council of Victoria Inc, Submission 938, 14.
- 115 Ibid.
- 116 Megan Sety, 'What Do We Know About Dating Violence Among Australian Adolescents?' (Thematic Review 4, Australian Domestic and Family Violence Clearinghouse, July 2012) 4 cited in Youth Affairs Council of Victoria Inc, Submission 938, 14.
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- 118 Youth Affairs Council of Victoria Inc, Submission 938, 15.
- 119 VicHealth, 'Australians' Attitudes to Violence Against Women: Findings from the 2013 National Community Attitudes Towards Violence Against Women Survey' (September 2014) 55.
- 120 Ibid 56.
- 121 Ibid 60.
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- 126 Youth Affairs Council of Victoria Inc, Submission 938, 8 citing Youth Support and Advocacy Service, 'Royal Commission into Family Violence (Victoria): YSAS Issues Paper' (2015).
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- 130 See, eg, Tweddle Child and Family Health Service, Submission 554, 3.
- 131 Community consultation, Ravenhall, 11 May 2015.
- 132 Dang Hue Man, Submission 174, 1.
- 133 Charmaine Weeks, Submission 104, 1.
- 134 Community consultation, Ravenhall, 11 May 2015.
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- 136 David Indermaur, 'Young Australians and Domestic Violence' (Trends & Issues in Crime and Criminal Justice No 195, Australian Institute of Criminology, February 2001) 1.
- 137 Department of Education and Early Childhood Development, 'The State of Victoria's Children 2009: Aboriginal Children and Young People in Victoria' (2009) 197 cited in Youth Affairs Council of Victoria Inc, Submission 938, 17.
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- 141 Youth Affairs Council of Victoria Inc, Submission 938, 17.
- 142 Victorian Aboriginal Child Care Agency, Submission 947, 9–10.
- 143 Department of Health and Human Services, *Child Protection Manual: Placing Aboriginal Children in Out-of-Home Care—Advice* (27 November 2015) <<http://www.cpmanual.vic.gov.au/advice-and-protocols/advice/aboriginal-children/placing-aboriginal-children-out-home-care>>.
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- 145 Department of Health and Human Services, 'Taskforce 1000 Report: Southern Melbourne Area' (May 2015), 6, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.
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- 152 Youth Affairs Council of Victoria Inc, Submission, 18.
- 153 Muriel Bamblett et al, 'Not One Size Fits All: Understanding the Social and Emotional Wellbeing of Aboriginal Children' (La Trobe University, 2012) 6.
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- 157 Youth Affairs Council of Victoria Inc, Submission 938, 18.
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- 445 Anglicare Victoria, Submission 665, 7.
- 446 Domestic Violence Victoria—04, Submission 943, 10.
- 447 Transcript of Bunston, 15 July 2015, 416 [10]–[16].
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- 449 Gippsland Integrated Family Violence Service Reform Steering Committee, Submission 691, 12.
- 450 Ibid.
- 451 Central Goldfields Shire Council, Submission 498, 2. See also Cobaw Community Health Service, Submission 396, 4.
- 452 Cobaw Community Health Service, Submission 396, 4.
- 453 Barwon Area Integrated Violence Committee, Submission 893, 18.
- 454 Ibid.
- 455 Statement of Miller, 14 July 2015, 32 [119].
- 456 Cobaw Community Health Service, Submission 396, 15; Victorian Council of Social Service, Submission 467, 61.
- 457 Statement of Allen, 13 July 2015, 33 [166].
- 458 Statement of Miller, 14 July 2015, 33 [123].
- 459 Ibid 33 [123].
- 460 Victorian Aboriginal Child Care Agency, Submission 947, 33.
- 461 Melbourne City Mission, Submission 812, 23.
- 462 Ibid.
- 463 Young People's Legal Rights Centre—Youthlaw, Submission 539, 8.
- 464 See, eg, Family Life, Submission 758, 3; Victorian Council of Social Service, Submission 467, 5; Safe Steps Family Violence Response Centre, Submission 942, 35.
- 465 Australian Childhood Foundation, Submission, Submission 894, 3.
- 466 Melbourne Research Alliance to End Violence Against Women and their Children (Prof Cathy Humphreys et al)—01, Submission 840, Briefing Paper 4, 8.
- 467 Ibid; See also Women's Health West, 'Through the Eyes of all Children: Child-centred Single Session Counselling after Family Violence' (2013) 26(2) *Parity* 49.
- 468 Commission for Children and Young People, Submission 790, 8.
- 469 Statement of Toone, 9 July 2015, 2 [12].
- 470 Ibid 2 [13].
- 471 Anglicare Victoria, Submission 665, 7.
- 472 Wendy Bunston, Tara Pavlidis and Peta Cartwright, 'Children, Family Violence and Group Work: Some Do's and Don'ts in Running Therapeutic Groups with Children Affected by Family Violence' (2016) 31(1) *Journal of Family Violence* 85, 86.
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- 475 Emma Katz, 'Strengthening Mother-Child Relationships as Part of Domestic Violence Recovery' (Research Briefing No 72, University of Edinburgh, Centre for Research on Families and Relationships, September 2014) 72.
- 476 Berry Street, Submission 834, 35.
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- 480 Ibid 4.
- 481 Ibid 6.
- 482 Community consultation, Melbourne 2, 24 April 2015.
- 483 Youth Affairs Council of Victoria Inc, Submission 938, 31.
- 484 Ibid 31–32.
- 485 Youth Affairs Council of Victoria Inc, Submission 938, 31. See also Sety, above n 116, 5–6.
- 486 Community consultation, Melbourne 2, 24 April 2015.
- 487 Youth Affairs Council of Victoria Inc, Submission 938, 32.
- 488 Melbourne City Mission, Submission 812, 23.
- 489 Ibid 22.
- 490 Youth Affairs Council of Victoria Inc, Submission 938, 30.
- 491 Ibid 28.
- 492 Ibid.
- 493 Ibid 29–30.
- 494 Ibid 29.
- 495 Young People's Legal Rights Centre—Youthlaw, Submission 539, 4.
- 496 Youth Affairs Council of Victoria Inc, Submission 938, 30; see also Young People's Legal Rights Centre—Youthlaw, Submission 539, 8.
- 497 Youth Affairs Council of Victoria Inc, Submission 938, 30–31. The Commission notes that workers from the youth and family sectors have participated in Common Risk Assessment Training as described in Chapter 6. See, eg, Department of Health and Human Services, 'Department of Planning and Community Development: Family Violence Risk Assessment & Risk Management Framework Training—Summary Data Analysis Report' (August 2010), 5, provided by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.
- 498 Young People's Legal Rights Centre—Youthlaw, Submission 539, 8.
- 499 Youth Affairs Council of Victoria Inc, Submission 938, 32–33.
- 500 Ibid 33.
- 501 Young People's Legal Rights Centre—Youthlaw, Submission 539, 8.
- 502 Statement of Rogers, 20 July 2015, 12–13 [83].
- 503 Gatehouse Centre, Submission 774, 9.
- 504 Statement of Rogers, 20 July 2015, 13 [84]–[85].
- 505 Melbourne City Mission, Submission 812, 25.
- 506 Ibid 25.
- 507 Community consultation, Traralgon, 13 May 2015.

- 508 Hope Street Youth and Family Services, Submission 851, 7; see also Western Homelessness Network, Submission 532, 11.
- 509 H3 Wyndham, Submission 377, 3.
- 510 Melbourne City Mission, Submission 812, 25.
- 511 Ibid.
- 512 Ibid 27.
- 513 Ibid 27.
- 514 Statement of Rogers, 20 July 2015, 13 [86].
- 515 Community consultation, Shepparton 1, 18 May 2015.
- 516 Melbourne City Mission, Submission 812, 26.
- 517 Ibid.
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- 519 Youth Affairs Council of Victoria Inc, Submission 938, 8–9; Victorian Council of Social Service, Submission 467, 54.
- 520 Commission for Children and Young People, Submission 790, 14.
- 521 Melbourne City Mission, Submission 812, 26.
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- 523 Melbourne City Mission, Submission 812, 26–7.
- 524 Hope Street Youth and Family Services, Submission 851, 8; Anthony Morgan and Hanna Chadwick, 'Key Issues in Domestic Violence' (Research in Practice: Summary Paper No 7, Australian Institute of Criminology, December 2009).
- 525 Hope Street Youth and Family Services, Submission 851, 8.
- 526 Department of Health and Human Services, above n 322, 11.
- 527 Ibid.
- 528 Melbourne City Mission, Submission 812, 27.
- 529 Anonymous, Submission 6, 2–3; Anonymous, Submission 962; Transcript of Newman, 17 July 2015, 150 [3]–152 [17].
- 530 Commission for Children and Young People, Submission 790, 2.
- 531 Youth Affairs Council of Victoria Inc, Submission 938 5.
- 532 Statement of Bunston, 8 July 2015, 13 [62].
- 533 *Family Violence Protection Act 2008* (Vic) s 74 (1).
- 534 Ibid ss 77–8.
- 535 Statement of Bunston, 8 July 2015, 9 [44].
- 536 Statement of Callister, 4 August 2015, 5 [18]. See also Department of Education and Early Childhood Development, 'Respectful Relationships Education: Violence Prevention and Respectful Relationships Education in Victorian Secondary Schools' (2009) 10.
- 537 Minister for Education, The Hon James Merlino MP, 'New Curriculum Supports Students to Build Healthy Relationships and Understanding' (Media Release, 21 August 2015).
- 538 Victorian Centres Against Sexual Assault et al, 'Getting Serious About Change: The Building Blocks for Effective Primary Prevention of Men's Violence Against Women in Victoria' (Our Watch, May 2015) 8.
- 539 Department of Education and Early Childhood Development, above n 536, 43.
- 540 Safe Futures Foundation, Submission 228, 70–71. See also Association of Child and Family Development, Submission 221, 7.
- 541 Association of Child and Family Development, Submission 221, 4, 10.
- 542 Department of Education and Early Childhood Development, above n 536, 83.
- 543 Victorian Centres Against Sexual Assault et al, above n 538, 8.
- 544 Statement of Allen, 13 July 2015, 33 [164].
- 545 Antonia Quadara 'Implementing Trauma-informed Systems of Care in Health Settings' (Landscapes: State of Knowledge Paper No 10, Australia's National Research Organisation for Women's Safety, September 2015) 29.
- 546 An evaluation of one of the four HCSSS programs found that it helped children deal with and process the trauma associated with family violence, played a role in strengthening family coherence and improved confidence on the part of referral agencies to identify and respond to the needs of children experiencing homelessness and violence: see Launch Housing, above n 332, 19. See also State of Victoria, Department of Health and Human Services, above n 325, 115.
- 547 Melbourne Research Alliance to End Violence Against Women and Their Children (Prof Cathy Humphreys et al)—01, Submission 840, Briefing Paper 2, 6.
- 548 Mallee District Aboriginal Services has developed the 'Bumps to Babes and Beyond' program for pregnant Aboriginal women aged 14–25 years, designed to support women during their pregnancy and the first 18 months of their child's life: Commission for Children and Young People, Submission 790, 6.
- 549 Youth Affairs Council of Victoria Inc, Submission 938, 28–30.

11 Family violence and the child protection system

Introduction

In Chapter 5 we describe the various systems that respond to family violence, including Child FIRST and Integrated Family Services, and Child Protection. As discussed in Chapter 10, children may be direct targets of family violence or may be harmed by seeing or experiencing the effects of violence suffered by a parent (usually a mother).

Professor Leah Bromfield, Deputy Director, Australian Centre for Child Protection, University of South Australia and Professorial Fellow at the Royal Commission into Institutional Responses into Child Sexual Abuse, gave evidence that:

[I]n households where there is intimate partner violence children are at heightened risk of experiencing neglect, of experiencing physical abuse, of experiencing sexual abuse and of experiencing emotional abuse. Exposure of children to intimate partner violence is itself a form of abuse for children.¹

Children who are exposed to family violence may come into contact with Child FIRST and Child Protection. The child protection system is a statutory scheme administered by the Department of Health and Human Services. DHHS is the responsible government department for Victoria's child protection system and Child Protection is a specific unit within that department, to which the Secretary of DHHS delegates certain functions and powers under the *Children, Youth and Families Act 2005* (Vic).

Child FIRST and Integrated Family Services may provide support to families who come to their attention because of family violence or other matters. In some cases, children who are reported to Child Protection may not meet the statutory threshold for protective intervention and may be referred to other services, including specialist family violence services, Child FIRST and Integrated Family Services.

This chapter describes how the statutory child protection system can apply to children who are victims of family violence, when other family support services cannot adequately protect them. It does not deal with all aspects of the child protection system but focuses on the intersection between Child Protection and family violence.

We discuss concerns expressed in submissions and evidence about the way family violence is taken into account in the child protection system and discuss the findings of the former State Coroner, Judge Ian Gray, in the coronial inquest into the death of Luke Batty.² We also refer to some of the recommendations and findings of the 2012 report of the Protecting Victoria's Vulnerable Children Inquiry³ (Cummins Inquiry), which made recommendations for improving the child protection system and related service systems, including both universal systems and systems provided by community service organisations. We have taken that report into account to the extent that it bears directly on children who are exposed to family violence.

The Commission acknowledges the complex role of child protection practitioners. Given the critical nature of their role, they must be effectively supported in their difficult task. At the end of this chapter, the Commission recommends policy and practice changes to guide the child protection system's response to children who are victims of family violence.

Data

This chapter relies upon data that was provided to the Commission by DHHS. It is important to note that this data is inconsistent with police data, verified by the Crime Statistics Agency. There are also inconsistencies between the data provided by DHHS to the Commission, and the data provided in witness statements.

For the purpose of this chapter, we rely on DHHS data to illustrate pathways through the child protection system.⁴ Data provided in this chapter focuses on reports to Child Protection, not cases, and does not necessarily identify the number of individuals affected, the number of children or families who were subject to Child Protection reports, or the number of families who have had multiple reports to Child Protection.

Victoria's child protection response

Government-funded support services for families are provided through three systems:

- ▷ the universal and primary service system (maternal and child health, and education services) which delivers services to all Victorian children
- ▷ the secondary service system (Integrated Family Services and services provided to children and parents such as mental health, drug and alcohol services, specialist family violence services and counselling services). This provides targeted supports upon request or referral
- ▷ the statutory system (Child Protection) which intervenes only when the primary and secondary systems are unable to ensure the safety and wellbeing of a child.⁵

Child FIRST and Integrated Family Services

The establishment of Child and Family Information, Referral and Support Teams (Child FIRST) created a point of entry 'to an integrated network of family services'.⁶ Child FIRST and Integrated Family Services are community-based service providers within the meaning of the Children, Youth and Families Act and are funded by DHHS.

There are 23 Child FIRST catchments⁷ in Victoria, of which each provide 'a central referral point to a range of community-based family services and other supports within each of the Child FIRST catchment areas'.⁸ Child FIRST receives referrals from the community, including police L17 referrals, where a person 'has a significant concern for the wellbeing of a child'.⁹ Upon receiving a referral, Child FIRST undertakes assessments of need and risk to a child; may make referrals to other agencies; provide on-going support to a child;¹⁰ and may provide advice or assistance to the child or the family, or refer a family to Integrated Family Services.¹¹

Integrated Family Services comprises a diverse range of service providers, 'including community service organisations, community health, local government, Aboriginal community controlled organisations, culturally and linguistically diverse and specialist services'.¹² Integrated Family Services also has the role of facilitating connections with 'universal services, drug and alcohol services, mental health services, housing and homelessness services and family violence services'.¹³ As at 2013–14, there were 96 community-based family services.¹⁴

There is a Child and Family Service Alliance at each of the 23 Child FIRST catchments, to assist with integration and coordination of services. Representatives include Child FIRST, Integrated Family Services, DHHS and Child Protection, and where possible, Aboriginal community controlled organisations.¹⁵

A 2011 evaluation found that Child FIRST and Integrated Family Services were successfully intervening earlier than statutory-based interventions with vulnerable children and families, and reducing the extent of Child Protection involvement.¹⁶

The Commission heard that between 2009–10 and 2013–14, demand for Child FIRST and Integrated Family Services has seen:

- a 30 per cent increase in new referrals to Integrated Family Services
- a 94 per cent increase in referrals to Integrated Family Services from Child Protection
- an 89 per cent increase in the number of families with children aged 0 to 5 years who have been referred to Integrated Family Services by Child Protection.¹⁷

More detail about Child FIRST and Integrated Family Services is in Chapters 10 and 13.

Child Protection

The child protection system in Victoria intervenes when the primary and secondary systems, described above, are unable to ensure the safety and wellbeing of a child.¹⁸

In their statements to the Commission, Ms Beth Allen, Assistant Director, Child Protection Unit, Statutory and Forensic Services Design Branch, DHHS, and Ms Leeanne Miller, Director Child Protection West Division, DHHS, set out the main roles of Child Protection:

- receive and review reports concerning the wellbeing or protection of children under 17 years
- investigate allegations that children have been harmed or are at risk of harm
- refer children and families to services (including Child FIRST providers and other community-based child and family services) that assist in providing for the safety and wellbeing of children
- initiate applications before the Children’s Court where children are in need of protection because their parents have not protected, or are unlikely to protect, them from harm
- provide care for, and make decisions in respect of, children who are the subject of custody and guardianship orders granted by the Children’s Court, and supervise the care of children who are the subject of other orders granted by the Court
- provide and fund accommodation services, specialist support services, and adoption and permanent care services to children and adolescents in need of such services.¹⁹

Under the Children, Youth and Families Act, a child or young person may be found to be in need of protection when the child has suffered, or is likely to suffer, significant harm as a result of physical injury, sexual abuse, or psychological harm, and the child’s parents have not protected, or are unlikely to protect the child from harm.²⁰ As discussed in Chapter 10, a child’s exposure to family violence, whether as the direct victim or as a witness to violence against another family member, can have a long-term effect on a child or young person.

Family violence has different effects on children at different ages. For example, family violence during pregnancy may cause the miscarriage of a developing foetus, or bring on premature birth or disability. For a young child experiencing family violence, this can impact on their physical and psychological development and may lead to behavioural problems.²¹

Family violence is not defined as a specific harm justifying state intervention under Victorian law, but where a child is directly affected by family violence or is exposed to it, this may constitute grounds under the Children, Youth and Families Act for a child to be considered in need of protection.

Child Protection policy and procedure phases are as follows:

- ▷ Intake—Children who may be in need of protection can come into contact with DHHS through a report from a family member, member of the public, community or other organisation, some of whom are mandatory reporters. Child protection practitioners receive and review reports and assess whether an investigation is required.
- ▷ Investigation—Child protection practitioners obtain more detailed information about the child who is the subject of a report and determine whether the grounds for the report are substantiated, that is, they meet the statutory threshold for protective intervention.
- ▷ Protective intervention—If concerns for a child are substantiated, Child Protection may continue its involvement with the family through an appropriate level of continued involvement and referrals, during what is referred to as a 'protective intervention' phase. Child Protection may close substantiated cases where concerns have been addressed without the need for court intervention.
- ▷ Protection order—If a matter is substantiated and statutory involvement is needed to ensure a child's safety and wellbeing, Child Protection may file an application for a protection order in the Family Division of the Children's Court of Victoria. If the Court considers it necessary to protect a child from harm, there are a number of orders that can be made, including orders placing a child in out-of-home care.²²
- ▷ Case closure—Where protective concerns have been addressed or the matter has been referred to other services to address the concerns, Child Protection may close a case.²³

The vast majority of reports do not result in an investigation being undertaken, or substantiation. An overview of the stages in the child protection system is outlined below.

Figure 11.1 Overview of stages in the Victorian child protection system 2013–14



Source: Based on Department of Health and Human Services, 'Data Request Summary' (9 June 2015), Worksheet 1, produced by the State of Victoria in response to the Commission's notice to produce dated 5 June 2015, clarified on 4 February 2016.²⁴

Child Protection policy and procedure phases are discussed in turn below.

Intake

Child Protection receives reports from a number of sources. Anyone in the community may make a report to Child Protection if they are concerned about the wellbeing of a child,²⁵ or if they believe a child is in need of protection.²⁶

The Children, Youth and Families Act also provides for mandatory reporting of children at serious risk of harm. Certain people, including registered medical practitioners, nurses, midwives, teachers, school principals and police, are required to report to Child Protection when they believe on reasonable grounds that a child is in need of protection.²⁷

When a report is made to Child Protection, it is registered and, after an intake assessment process, the report is classified as either a 'protective intervention report', a 'child wellbeing report' or a report which is 'inappropriate/insufficient', in which case no further action is considered necessary or possible.²⁸ Classification of reports can be described as follows:

- ▷ If Child Protection determines that a child, who is the subject of a report, may be in need of protection, they may determine that the report is a 'protective intervention report' and investigate as soon as practicable.²⁹
- ▷ When reports are classified as child wellbeing reports, contact may be made with the family, child or the reporter to provide them with advice or a referral to an appropriate service and/or refer them to Child FIRST.³⁰

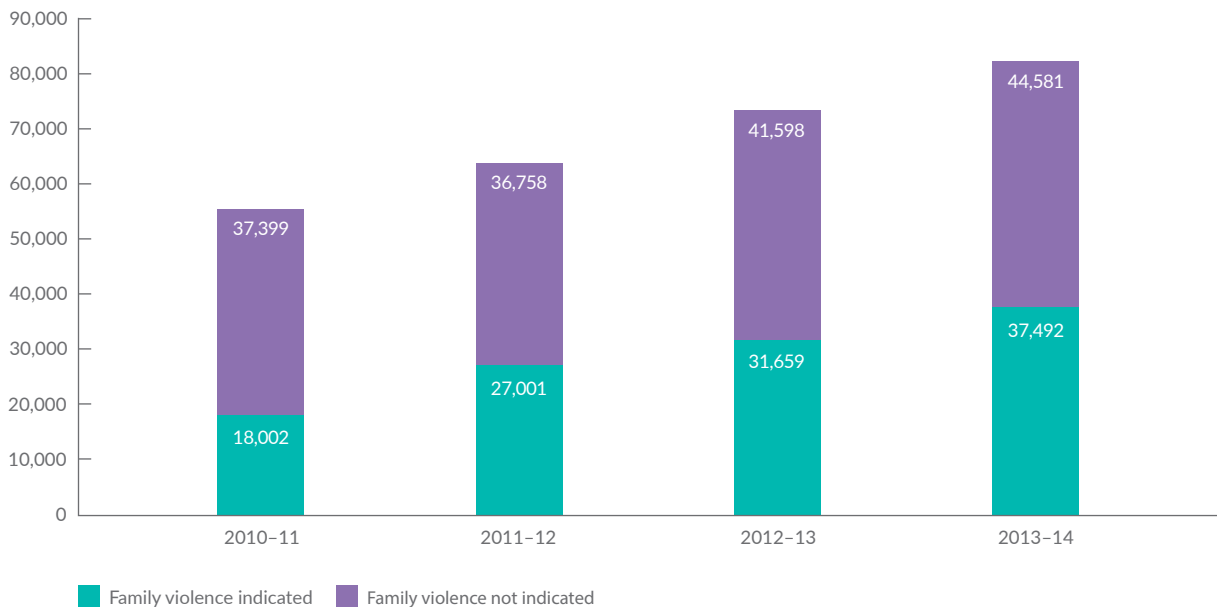
Ms Allen told the Commission that it generally takes up to three days for Child Protection to gather information and classify a report to determine whether a further investigation is required.³¹

Data from DHHS indicates that in 2013–14:³²

- ▷ Child Protection received 82,073 reports.
- ▷ 29.4 per cent ($n=24,139$) of those reports came from police, 23.1 per cent ($n=18,931$) from friends and family including extended family, 18.9 per cent ($n=15,510$) from education notifiers such as school teachers and pre-school teachers, 10.3 per cent ($n=8491$) from a range of community services such as Community Health and Child FIRST, and 9.4 per cent ($n=7697$) from medical notifiers.
- ▷ A total of 24,139 reports to Child Protection were made by police. Of those reports, 14,032 (approximately 58 per cent) were made to Child Protection via the police family violence L17 process.³³

There is some evidence that family violence is a driver for growth in Child Protection reports. In 2013–14, 37,492 reports to Child Protection had family violence indicated at the time of the report.³⁴ Data showing the trend of growth from 2010–11 to 2013–14 is set out in the figure below.

Figure 11.2 Reports to Child Protection where family violence was indicated at the time of the report, 2010–11 to 2013–14



Source: Based on Department of Health and Human Services, 'Data Request Summary' (9 June 2015), 1, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015, clarified on 4 February 2016.

Investigation

Reports classified as 'protective intervention reports' are investigated by Child Protection. The aim of an investigation is to obtain more detailed information about a child who is the subject of a notification, to determine whether the notification is 'substantiated' or 'not substantiated'.³⁵

Child Protection undertakes its investigation by collecting information and interviewing relevant people, professionals and services who are involved with a family or child.³⁶ For example, they may interview parents and caregivers, schools, police and family services.

Child Protection analyses the information gathered during the investigation, based on the Best Interests Case Practice Model³⁷ and makes a recommendation within 28 days of the report as to whether the report is substantiated.³⁸ A Child Protection investigation will be substantiated where there is sufficient reason to believe a child is in need of protection,³⁹ after which a level of risk is determined.⁴⁰

According to DHHS data, of the total 82,073 reports to Child Protection in 2013–14, approximately 26 per cent ($n=21,222$) were investigated. For that same period, of the reports to Child Protection where family violence was indicated at the time of the report, approximately 30 per cent ($n=11,404$) were investigated.⁴¹

Substantiation

Of the reports where family violence was indicated that were investigated, approximately 73 per cent ($n=8278$) were substantiated and approximately 27 per cent ($n=3126$) were not substantiated.⁴² It is important to note that where a report is 'not substantiated', it does not mean that family violence did not occur or that a child is not at risk. Substantiated cases are those where Child Protection considers that a case has met the statutory test for protective intervention.⁴³

Cases that do not move to the protective intervention phase may still receive referrals to other services, such as specialist family violence services and/or Child FIRST as part of the Child Protection case closure procedure.

In 2013–14, of the 3126 reports where family violence was indicated that were *not* substantiated following investigation, by the point of case closure:

- ▷ 1320 (42.2 per cent) had no referrals made but other services were involved
- ▷ 656 (21.0 per cent) had no referrals made and no services involved
- ▷ 585 (18.7 per cent) had other referral or arrangements in place such as school monitoring
- ▷ 240 (7.7 per cent) were referred to Child FIRST (and a further 84 [2.7 per cent] to family services other than Child FIRST)
- ▷ 165 (5.3 per cent) were referred to another service or agency
- ▷ 53 (1.7 per cent) were referred to a family violence service
- ▷ eight cases (0.3 per cent) were referred to a disability service
- ▷ five (0.2 per cent) were referred to a drug and alcohol service
- ▷ seven (0.2 per cent) were referred to a mental health service
- ▷ three (0.1 per cent) had the case closure referral status of not stated.⁴⁴

Protective intervention

Once the threshold for Child Protection statutory intervention has been reached, a report is considered 'substantiated'. Child Protection must then attempt to ensure the safety of the child or children through an appropriate level of continued involvement, including the provision of support services to the child and family.⁴⁵

Protective intervention is the period of intervention with a family, following substantiation of a report to Child Protection.⁴⁶ After an investigation has substantiated child protection concerns, Child Protection has 90 days from the time of the report (or 150 days in exceptional circumstances) to work with families to address the substantiated concerns in an effort to strengthen protection for the child, and prevent the need for court intervention.⁴⁷ The Commission understands that these timelines are rarely met because of the increased number of reports.⁴⁸

Child Protection has a number of options available, including referring the family to a support service, taking no further action, or seeking a protection order application in the Children's Court of Victoria.⁴⁹

Many cases are closed following substantiation, without the need for a court order. In her statement to the Commission, Ms Allen said:

It is common for Child Protection to close substantiated cases without the need for court intervention. This most often occurs where the parents acknowledge the substantiated concerns and the need for change, or are actively involved in addressing the concerns or have addressed the concerns, or the concern for the child's safety and well-being is not significant and does not warrant court intervention.⁵⁰

The Australian Institute of Health and Welfare reported that in 2013–14 the national average of children receiving child protection services is 27.2 per 1000 children.⁵¹ The rate of Victorian children receiving child protection services was lower than in most other Australian states and territories. Nearly 23 (22.9) children per 1000 receive child protection services in Victoria, compared with 71.3 in the Northern Territory, 31.7 in New South Wales and 26.6 in Queensland.⁵²

Protection order

Where concerns for a child's safety have not been adequately addressed, Child Protection may consider an application to the Family Division of the Children's Court of Victoria for a protection order when a child is considered in need of protection.⁵³

The Children's Court can make a protection order under the Children, Youth and Families Act where at least one of six grounds have been made out, including abandonment or incapacity of parents, or where a child has suffered, or is likely to suffer significant harm as a result of physical injury or sexual abuse, or emotional or psychological harm.⁵⁴ Protection orders are regarded as a last resort and cannot be made by the court unless it is satisfied that all reasonable steps have been taken by the Secretary of DHHS to provide necessary services.⁵⁵ The court must make orders based on the best interests of the child.⁵⁶

Of the 17,405 new protective orders issued during 2013–14,⁵⁷ family violence was indicated in 68.6 per cent of cases ($n=11,933$). The Commission notes that this does not mean that family violence was the sole ground indicated.

If the grounds for a protection order are made out,⁵⁸ the court has the jurisdiction to make a range of protective orders, including:

- ▷ an order requiring a person to give an undertaking to do, or not to do, certain things⁵⁹
- ▷ a supervision order granting the Secretary of DHHS responsibility for the supervision of a child and placing the child in the day-to-day care of one or both of the parents, with the possible imposition of conditions made in the best interests of the child⁶⁰
- ▷ an order granting custody of a child to a third party (for example, an extended family member) which may include conditions considered to be in the best interests of the child⁶¹
- ▷ a supervised custody order, granting the custody of a child to a third party⁶²
- ▷ an order granting custody and/or guardianship of a child to the Secretary of DHHS⁶³
- ▷ an interim protection order where a child is in need of protection⁶⁴ but the testing of the appropriateness of a particular course of action before making a final protection order is desirable.⁶⁵

The Commission notes that the protective orders as listed above are subject to legislative amendments that will come into operation on 1 March 2016.⁶⁶

Children's Court conciliation conferences

As part of Children's Court proceedings, conciliation conferences are convened in the Family Division of the Children's Court when ordered by a Children's Court judicial officer.⁶⁷ The current conference process was established in 2010.⁶⁸ 2500 conferences were held in 2013–14.⁶⁹ Conciliation conferences are a form of informal dispute resolution or alternative dispute resolution.

Anecdotal information suggests that the vast majority of conciliation conference cases involve family violence.⁷⁰ The court requires that, prior to a conference, they are informed of the existence of any orders under the *Family Violence Protection Act 2008* (Vic) by the parties or their lawyers.⁷¹

A risk assessment is conducted with each of the parties⁷² prior to the conference by a conference intake officer. A shuttle conference—where the parties do not come into direct contact with each other but only the convenor moves between the parties—may be held if there are safety risks due to family violence.⁷³ Officers have the power to determine that a conference is unsuitable in a particular case, meaning the matter will be listed for hearing by a judicial officer.⁷⁴ The Conciliation Conference Risk Assessment form asks specific questions so as to undertake a family violence assessment.⁷⁵ The Commission notes that this form does not comply with the Family Violence Risk Assessment and Risk Management Framework (also known as the Common Risk Assessment Framework or the CRAF).

Parents in conciliation conferences at the Children's Court do not necessarily negotiate directly with each other. Nevertheless, parents are required to attend the conference jointly and negotiate the care of their children (unless exempted by an intake officer). Given the prevalence of family violence cases in conciliation conferences,⁷⁶ it might be expected that the presence of a victim and perpetrator of family violence at a conference would impact upon the ability of the victim of family violence to advocate for herself and for her children. The presence of lawyers may mitigate the impact of family violence upon the conciliation conference process.⁷⁷

Legal representation of children

In the Family Division of the Children's Court, children aged 10 or above must be legally represented.⁷⁸ Children under the age of 10 are not independently legally represented unless the court identifies that there are special circumstances to warrant representation.⁷⁹

A lawyer for the child will act on the child's instructions⁸⁰ unless the court decides that the child is not mature enough to provide instructions.⁸¹ Where that is the case, the lawyer must communicate the child's wishes to the court, but make submissions based on what he or she believes is in the child's best interests.⁸² Children's lawyers in the Family Division are funded by Victoria Legal Aid.⁸³

A teenage victim of family violence who was removed from her parents' care described her experience of her lawyer to the Commission as the only time an adult had done something constructive for her over the period of the abuse she suffered.⁸⁴

Out-of-home care

Where a child or young person is assessed at risk of significant harm, Child Protection may take steps to remove the child from the care of their parents and place them in out-of-home care.⁸⁵ Child Protection may place a child in an out-of-home care service,⁸⁶ having regard to the best interests of the child and other factors set out in the legislation.⁸⁷

As at 30 June 2014, there were 7070 children or young people in out-of-home care placements in Victoria. Of those children or young people, family violence was indicated in approximately 48 per cent of cases ($n=3400$).⁸⁸

A 2007 summary of Australian research found that the outcomes for children and young people in out-of-home care 'demonstrated a worrying trend of increasingly complex behavioural problems and extensive placement instability. Collectively, the studies found that problems increased the longer the children spent indefinite periods in care.'⁸⁹

Given the timeframes of the Commission, we were unable to inquire fully into experiences of children and young people in out-of-home care due to family violence. However, this is an important issue worthy of a more detailed investigation to determine the impact that out-of-home care has on children who have already been exposed to family violence.

Case closure

Where Child Protection intervention is considered no longer necessary or not possible, a case may be closed. Prior to case closure, Child Protection may make referrals to link families in with family services and relevant support agencies.

As an example, in 2013–14, DHHS data shows that of the 8278 reports that had family violence indicated and were investigated and substantiated, by the point of case closure:

- ▷ 2753 (33.3 per cent) had no referrals made but other services were involved
- ▷ 1621 (19.6 per cent) had the case closure referral status of 'not stated'
- ▷ 1092 (13.2 per cent) reports had other referral or other arrangements in place
- ▷ 906 (10.9 per cent) were referred to Child FIRST
- ▷ 778 (9.4 per cent) had no referrals made and no services were involved
- ▷ 564 (6.8 per cent) were referred to another service or agency
- ▷ 311 (3.8 per cent) were referred to a family service other than Child FIRST
- ▷ 166 (2.0 per cent) were referred to a family violence service
- ▷ 52 (0.6 per cent) were referred to a mental health service
- ▷ 18 (0.2 per cent) were referred to a disability service
- ▷ 17 (0.2 per cent) were referred to a drug and alcohol service.

Based on that data, only about 2.0 per cent of reports were referred to a family violence service for that period. The Commission notes that the data indicates many cases already had other services involved, which may include family violence services.

Similarly, of the total number of reports to Child Protection for the same year where family violence was indicated at the time of the report ($n=37,492$ reports), approximately 2.0 per cent ($n=737$) were referred to a family violence service by Child Protection.⁹⁰

The Commission is unable to establish whether referrals should have been made in cases where this did not occur. Nor could we ascertain whether the services involved were appropriate. The Commission notes that, in cases that are referred to Child Protection by police as part of the L17 process, police may have already referred the parent to a specialist family violence service. When police formally refer an affected family member (victim) to a specialised family violence service, they state if there were any children present at an incident and children will be considered as part of that formal referral.⁹¹

Aboriginal and Torres Strait Islander children in the child protection system

Aboriginal and Torres Strait Islander children are over-represented in Victoria's child protection system. Aboriginal and Torres Strait Islander families experience family violence at far higher rates than the population generally.⁹²

In Victoria, Aboriginal and Torres Strait Islander children are around seven to eight times more likely to be the subject of a report to Child Protection than non-Aboriginal children,⁹³ and are almost 10 times more likely than non-Aboriginal children to be the subject of a Child Protection substantiation (68.6 compared with 7.3 per 1000 children).⁹⁴ Across Australia, Aboriginal and Torres Strait Islander children now account for almost 35 per cent of all children in care, despite comprising only 4.4 per cent of Australia's child population.⁹⁵

A preliminary finding of Taskforce 1000, a collaborative project between DHHS and the Commission for Children and Young People, indicates that family violence is the number one factor for Aboriginal and Torres Strait Islander children in Victoria being placed in out-of-home care, closely followed by, and often related to, alcohol and substance abuse, and neglect.⁹⁶

Adjunct Professor Muriel Bamblett AM, Chief Executive Officer, Victorian Aboriginal Child Care Agency, told the Commission that family violence and the over-representation of Aboriginal and Torres Strait Islander communities must be understood within the context of earlier government policies, including the forced removal of Aboriginal and Torres Strait Islander children from their families and assimilation, together with 'structural inequalities of poverty and systemic racism'.⁹⁷ She said that family violence is predominately prevalent in Aboriginal and Torres Strait Islander families 'experiencing poverty and other issues including drug and alcohol abuse and homelessness'.⁹⁸

In his evidence to the Commission, Commissioner Andrew Jackomos, Commission for Aboriginal Children and Young People, said:

The cause of family violence I believe is to do with the breakdown of our society's values and norms, traditions and culture that has increased over the past 30 or 40 years and its cumulative harm and dysfunction is happening for many families in generation to generation.⁹⁹

Commissioner Jackomos further told the Commission that:

The impact of past government policies and programs have had a devastating effect on my community that continues to this day, but there is no, and will never be, any justification for family violence, family violence that is ripping apart families and ripping apart children from their culture and heritage. From my perspective I'm looking at family violence from the perspective of Koori children in Victoria. In my families under threat from family violence, the offender is not always Koori and the victim is not always Koori, but the constant is that our children, our Koori kids, are always the victim.¹⁰⁰

The Commission consistently heard that a fear of intervention by Child Protection deters Aboriginal and Torres Strait Islander women from disclosing family violence¹⁰¹ and data shows that fewer families and children are accessing services.¹⁰²

Under the Children, Youth and Families Act, there are additional decision-making principles for Aboriginal and Torres Strait Islander children who are referred to Child Protection.¹⁰³ Child Protection is required to consult with the Aboriginal Child Specialist Advice and Support Service about all reports regarding Aboriginal and Torres Strait Islander children, and prior to making significant decisions in all phases of Child Protection intervention.¹⁰⁴

The Act also includes the Aboriginal child placement principle, which requires regard to be given to a range of criteria and principles when deciding if it is in the best interests of an Aboriginal and Torres Strait Islander child to be placed in out-of-home care.¹⁰⁵ To give effect to those principles when considering to place an Aboriginal or Torres Strait Islander child in out-of-home care, the Child Protection Best Interests Case Practice Model and the Act set out that practitioners *must* consult with an Aboriginal agency, the Aboriginal Child Specialist Advice and Support Service, to provide advice, support and advocacy.¹⁰⁶

The Aboriginal Family Violence Prevention and Legal Service Victoria (FVPLS Victoria) believes that greater investment needs to be made in culturally targeted early intervention, including ensuring that Aboriginal and Torres Strait Islander families receive legal education and advice, when there is a risk that a protection order may be made.¹⁰⁷

In its submission, FVPLS Victoria states:

In the case of child protection and the removal of Aboriginal children, FVPLS Victoria believes early referral to specialist, culturally safe legal assistance is fundamental. Sadly, however, too many Aboriginal people in Victoria do not recognise child protection intervention as a legal issue until it is too late. Indeed, FVPLS Victoria routinely hears of clients being advised by Child Protection workers and other support workers that they do not need legal advice.¹⁰⁸

DHHS refuted this claim, referring to Child Protection's legal mandate and information sheets which child protection staff are expected to provide to parents.¹⁰⁹ In particular DHHS drew the Commission's attention to Practice Advice 1340, stating that in proceedings by notice, child protection practitioners should 'encourage and assist' parents to seek legal advice prior to the first mention date and that parents may be directed to Aboriginal Legal Services. In emergency cases, child protection staff are told to direct parents to Victoria Legal Aid or the court registry to obtain legal representation on arrival at court, and that practitioners should also alert the Victoria Legal Aid Coordinator of any new matters at court and the need for children and parents to be seen by a solicitor.¹¹⁰

The practice guidance does not require that a formal referral or notification be made to an Aboriginal legal service provider. FVPLS Victoria recommends implementing a child protection notification referral system for Aboriginal families 'which ensures that upon a child protection notification being received for an Aboriginal family the primary parent is immediately referred to FVPLS Victoria (or another appropriate legal assistance provider).'¹¹¹

Issues relating to child removal and family violence are further discussed in Chapter 26.

Challenges for Child Protection

A number of key themes emerged during the Commission's processes regarding Child Protection's response to family violence. These include:

- ▷ the invisibility of perpetrators of family violence in the child protection system
- ▷ the pressures placed on parents (typically mothers) identified as 'protective parents' and a lack of attention to post-separation violence
- ▷ a lack of support provided to 'protective parents' by Child Protection and the lack of written advice so as to better support parents in court proceedings
- ▷ victims being reluctant to report family violence because of the fear that Child Protection will remove their children
- ▷ concerns with the 'failure to protect' offence and how it can affect victims of family violence
- ▷ the increase in the number of referrals to Child Protection and difficulties with the differential response model in Victoria and the pressure placed on Child Protection
- ▷ concerns with the current family violence risk assessment within Child Protection.

These themes, and others, are discussed below.

The 'protective parent'

The concept of a 'protective parent' is central to the child protection system, including in family violence cases.¹¹²

Under section 162 of the Children, Youth and Families Act, the state has a legislative mandate to intervene in family life only where a child has suffered or is likely to suffer significant harm *and* his or her parents have not protected or are unlikely to protect the child from harm.¹¹³ In cases of family violence, in practical terms, victims may be unable to fully protect their child from harm because of the level of risk posed by the perpetrator. As we discuss below, this may make victims fearful of reporting family violence.

Separation (or attempted separation) is a period of heightened risk and danger for family violence.¹¹⁴ In exploring protective factors, consideration needs to be given to a victim's decision to move away from the perpetrator as this may 'significantly increase the level of risk and must be carefully examined, because it is truly protective only if there is no chance of the perpetrator locating the victim'.¹¹⁵

The Commission heard that separation from a perpetrator of violence could result in Child Protection classifying a victim as a protective parent and withdraw their involvement with a family:

When a mother is acting protectively and leaves a perpetrator, Child Protection services withdraw their involvement; this is in spite of the fact separation is a high-risk time which carries a heightened threat of perpetrators killing women and children. This is the [very] time that Child Protection needs to be further involved, as it one of the few agencies that has a statutory mandate to protect.¹¹⁶

Professor Cathy Humphreys, Professor of Social Work at Melbourne University, explained:

... the child protection system is not designed to intervene effectively where there is a protective mother (or father), but the child and often the mother are continuing to be subjected to post-separation violence and stalking. Much of the abuse occurs when the child moves from time with their father to time with their mother.¹¹⁷

The dynamics of family violence are such that it requires a complex analysis and risk assessment. In determining a parent's capacity to protect a child, Child Protection applies their Best Interests Case Practice Model. The model includes principles of gender analysis in responding to family violence¹¹⁸ and risk assessment¹¹⁹ together with 'stages of professional practice: information gathering, analysis and planning, action and reviewing outcomes'.¹²⁰

Using separation from an abusive relationship as a marker of being a protective parent was a strong focus in the literature and in expert evidence provided to the Commission.¹²¹ This was identified as a problem in many jurisdictions. Dr Katreena Scott, Associate Professor and Canada Research Chair, Department of Applied Psychology and Human Development, University of Toronto, Canada, stated:

Where Child Protection authorities become involved, rather than engage with the perpetrator of the violence, they tend to assess and monitor mothers' capacity to protect their children. There is often an implicit (and sometimes explicit) expectation that, to effectively protect their children, mothers should leave their violent partners (Jenney, Mishna, Alaggia and Scott, 2014). This focus on mothers' capacity to protect *over fathers' need to change* is inappropriate and unjust. It is especially problematic in the context of family courts, which often order children (and therefore mothers) to have ongoing contact with their fathers.¹²²

In her statement to the Commission, Ms Leeanne Miller explained how the concept of a protective parent is translated into Child Protection practice in Victoria:

In investigating child protection matters, Child Protection considers whether or not there is a protective parent. This involves considering the parent's attitudes and response to substantiated concerns concerning the child, as well as the parent's willingness and capacity to protect the child. Assessment of the parent's capacity to protect the child requires sound information-gathering and an analysis of parental attitudes, past behaviours that may be predictive of future behaviours, parental strengths, support systems and the parent's willingness and capacity to engage with support services to achieve change.¹²³

The Commission heard the focus on the protective parent's ability to protect their children from family violence tends to make perpetrators largely invisible to the child protection system. Professor Humphreys explained that 'women are still urged to separate but without the necessary supports to keep themselves and their children safe'. She stated that effective support needs to include: extensive discussion to assess 'readiness'; the evidence to demonstrate the child's father is a danger to the child; proactive links to the family violence support services; and leverage provided with housing services, Centrelink and legal proceedings to ensure there is accommodation (beyond a couple of nights in a refuge), money to live on and legal protection that is enforceable.¹²⁴

Burden placed on protective parents

The Commission heard that relying on a victim of family violence to be the protective parent may expose that parent and the child to further violence. In the inquest into the death of Luke Batty, Judge Gray heard that Luke's mother, Ms Rosie Batty, was assessed by her child protection worker as 'protective' because she had twice notified the police of breaches of the family violence intervention order she had taken out, she had herself sought Child Protection assistance from DHHS, and she was willing, and intended to protect her son.¹²⁵

After discussion with a child protection worker, Ms Batty signed an undertaking in which she agreed to supervise contact between her son Luke, and Gregory Anderson, the perpetrator of family violence. She agreed to prevent Mr Anderson from photographing Luke and keep Luke in her line of sight while he was with Mr Anderson.¹²⁶ The child protection worker in that case gave evidence that the undertaking worked as a safety plan and that she had considered that Ms Batty was the appropriate person to implement the agreement and ensure it was followed.¹²⁷

Under the Children, Youth and Families Act, the Children's Court of Victoria can, with the consent of a parent,¹²⁸ make an order for a person to enter into an undertaking to do, or not to do, certain things. A statutory undertaking normally lasts for six months, and in exceptional circumstances can last for 12 months.¹²⁹ The undertaking Ms Batty signed was not made under the Act.

DHHS practice directions, manuals and training materials do not require a 'protective parent' to sign a non-statutory undertaking,¹³⁰ however:

It is apparent that in the absence of specific policy advice a practice has emerged in parts of the State where undertakings are prepared by child protection practitioners to support safety planning discussions with families, including families experiencing family violence.¹³¹

When asked for information on the number of non-statutory undertakings which DHHS had required from victims of family violence in 2013–14 and 2014–15, DHHS told the Commission that it 'does not have systems in place to generate reports on the number of such undertakings made'.¹³² The extent of their use is unknown.

In the inquest into the death of Luke Batty, Judge Gray observed that requiring victims of family violence to enter into informal undertakings shifts too much responsibility onto protective parents and in that case, required too much of Ms Batty.¹³³ Judge Gray also noted that the undertaking conflicted with the family violence intervention order in place at the time, and that the agreement was not legally enforceable.¹³⁴ Judge Gray recommended that DHHS discontinue the practice of asking women who are victims of family violence, to enter into such undertakings.¹³⁵

The Victorian Government, in its response to Judge Gray's findings in the Luke Batty Inquest, advised that they have commenced implementation of this recommendation and DHHS will communicate to all Child Protection staff, 'that it is not appropriate to require protective parents to manage or supervise the perpetrator of family violence' and will amend the Child Protection Practice Manual accordingly.¹³⁶ This was expected to be done by 31 January 2016.¹³⁷

Lack of support

The Commission heard that women felt unsupported by Child Protection when they went to them for help and this could lead to confusion about what was expected of them by Child Protection.

The Peninsula Community Legal Centre told the Commission that:

Many of the Centre's clients who seek support from DHS, or who have come to the attention of DHS in order to keep their child/ren safe, are not only left with unclear verbal requirements, but are also expected to deal with the perpetrator, who may constantly be drug or alcohol affected or mentally ill, on their own. They frequently present with no written indication of what DHS expects of them, yet are at risk of losing their child/ren if they do not comply, or are unable to ensure that the perpetrator does not have contact with the child/ren as they have had no assistance from DHS to negotiate an appropriate order at the court.¹³⁸

Lack of support to obtain a court order

The Commission was told that women were often informed by Child Protection that they should obtain an FVIO to protect themselves and their children, or risk further involvement by Child Protection.

Throughout our community engagement process, the Commission heard that women who were victims of family violence felt unsupported by DHHS because there was no DHHS practitioner in court to help them navigate the court process, and because DHHS did not always provide information to the court to clarify their views regarding safety:

She was told by DHHS to get an Intervention Order. Violence was against both her and her children. DHHS said either she got an Intervention Order or they would take the children. She went to court by herself—very unhelpful experience, no idea what she was doing. Registrar did not explain anything and DHHS didn't help her.¹³⁹

Child Protection can take a long time and without the supports to be able to take that step you don't have the courage and then you lose your children. DHHS use a bargaining tool—apply for an Intervention Order and leave or lose your children.¹⁴⁰

DHHS tells you what you should do but they don't really help you.¹⁴¹

In her evidence to the Commission, Ms Allen said:

Any stage of Child Protection involvement, if we believe that the mother would require support for an intervention order we can do that through the Children's Court or the Magistrates' Court to support the mother and child in that process.¹⁴²

Ms Allen said that DHHS is encouraging its workforce to offer greater levels of assistance to mothers who are required to seek an intervention order. When asked about whether this assistance happens in practice, Ms Allen responded:

It does, yes. Probably I would say not as much as it could or should. Often what will happen is that mothers will initiate that process independently. What we are encouraging the workforce to do is to be engaging with mothers more frequently to offer greater levels of assistance where we are involved, to say, "Would you like us to go or, if not, have you got a family violence worker you are already engaged with," or, "Do you understand how to navigate the Magistrates' Court. This is what it looks like. This is what you need to do when you get to the registrar. These are the courts to go to where there's family violence specialists" and so forth. So as part of all of the training that we referred to earlier, a lot of that is covered in the training to promote better engagement of Child Protection practitioners with women who are trying to navigate what is a really very, very complex service system.¹⁴³

The Commission also heard that parents may be told by Child Protection practitioners to obtain parenting orders in the federal family courts in order to prevent the other parent from having unsafe contact with the child. However, if a Child Protection case is closed because the mother is regarded as a protective parent, she may not receive any support from Child Protection in applying for a parenting order.¹⁴⁴

In 2010, the Australian and NSW Law Reform Commissions recommended that where Child Protection workers assess a family violence victim as an adequately protective parent and refer the parent to a family court to apply for a parenting order, DHHS should:

- provide written information to a family court about the reasons for the referral
- provide reports and other evidence
- intervene in the proceedings.¹⁴⁵

Intervention in proceedings means that DHHS becomes a party to the proceedings in the federal family courts.

In the Luke Batty inquest, Judge Gray considered that in cases where Child Protection considers whether the other parent still poses a risk of harm, and thus a child is in need of protection within the meaning of the Children, Youth and Families Act,¹⁴⁶ then:

DHS ought supply evidence and/or support to the protective parent in family violence and family law proceedings where the right of the other (non protective parent) to have contact with the child is in issue.¹⁴⁷

Judge Gray considered that in cases where a parent is willing to protect a child, but is unable due to 'surrounding circumstances', that it should be DHHS' mandate to intervene in these circumstances.¹⁴⁸ He also canvassed the importance of ensuring a proper safety plan for the child rather than relying on the protective parent's ability to protect a child.¹⁴⁹

Judge Gray also recommended that:

... where the DHHS assess one parent to be 'protective' but the other is not, that the DHHS provide support to the protective parent, including in court proceedings, to manage the risk posed by the non-protective parent including, (where relevant and appropriate) by recommending that the other non protective parent have no contact with the child.¹⁵⁰

In their response to Judge Gray, the Victorian Government has said that this recommendation will be implemented so as 'to offer as much support as practicable to protective parents including during court proceedings'.¹⁵¹ However, they have confirmed that Child Protection intervention is limited to that necessary under the Act.¹⁵² The Commission has not had the benefit of reviewing the work proposed by DHHS to implement this recommendation but notes the existence of the current Child Protection specialist practice resource guide, *Working With Families Where an Adult is Violent* (2014). This provides some guidance to practitioners on providing information and support to a parent both in FVIO and family court proceedings. The practice guide includes guidance to child protection practitioners when supporting a woman going back to the family court as a result of family violence:

Practical support such as transport, child care and emergency financial assistance are important when you are supporting women to go back to the family court to vary the parenting order. Your emotional support and physical presence is very important as women negotiate the often confusing court experience. Keep in mind that court action of itself can increase dangers and some perpetrators will escalate at this point. If you are concerned about the risk factors, notify the registrar of the court to advise them of the risk and specific circumstances.¹⁵³

In Victoria, there is a protocol between DHHS, the Family Court of Australia and the Federal Magistrates' Court (now known as the Federal Circuit Court), the purpose of which is to facilitate contact between the Department and the courts, to enable cooperation, clarification of procedures, improve decision making and aid effective communication.¹⁵⁴

Information sharing between DHHS and the federal family courts is further discussed in Chapter 24.

Closing Child Protection cases

As we have explained above, a Child Protection case can be closed at any point of the process described above.

The Commission heard of the need for Child Protection to provide better support for families as part of the process of closing a Child Protection case. Berry Street told the Commission that 'a level of safety planning and service referral should be routine' wherever Child Protection is involved and 'whether family violence is disclosed or not'.¹⁵⁵ Research suggests that good Child Protection practice should involve supporting 'the non-abusing parent (normally the mother) and help her to strengthen the mother-child relationship, which will in turn protect the child'.¹⁵⁶

The Commission heard that where a person is considered to be a protective parent, Child Protection frequently decides to take no further action to protect the child. This can result in Child Protection ceasing to be involved with the family at the point of separation, although this can be a time of high danger for family violence.¹⁵⁷

The inquest into the death of Luke Batty found that Child Protection closed its file after Ms Batty signed an undertaking. Judge Gray recommended that in family violence cases, 'such as where one parent is believed to be non-protective' a professional case conference should be convened before closing a Child Protection case,¹⁵⁸ whereby DHHS should, among other things, exhaust best efforts to:

- engage all agencies involved with the family to remediate the issue of services working in isolation and risk assessments being made with insufficient information
- develop a comprehensive and robust safety plan with clear roles and responsibilities as required.

Judge Gray also made a related recommendation regarding a requirement for Child Protection to exhaust all best efforts to interview the alleged perpetrator of family violence.¹⁵⁹ That recommendation is discussed separately below.

The Victorian Government's response to Judge Gray's recommendations in the Luke Batty inquest stated that new legislation will be introduced from 1 March 2016 that will require the development of a case plan for substantiated Child Protection cases.¹⁶⁰ The response was limited to these cases because:

DHHS considers that the recommendation relates to substantiated reports of child abuse, and notes that there is a very large number of unsubstantiated allegations of child abuse and neglect made to Child Protection each year. Direct contact with parents occurs at investigation, and it is from the point of substantiation onwards that the new requirements will have effect.¹⁶¹

The relevant recommendations from Judge Gray would also feature in DHHS case planning processes for all substantiated cases from 1 March 2016. Given the timeframe, the Commission is unable to access or consider either the proposed legislation or new practice processes.

Fear of reporting family violence

The Commission heard that the focus on the behaviour of the protective parent can heighten the fear of some parents that if they report family violence, Child Protection may remove their children from their care:

[H]e was attending the Men's behavioural change program in [removed], the workers had made contact with me as part of the partner support program and I had a couple of meetings with them. They were very supportive and unbeknown to me reported my ex to child protection based on some of the things I was disclosing to them about his behaviour. I also linked in with the social worker at the [removed] hospital for support, and the enhanced care maternal health nurse. Despite these supports, I daren't disclose the extent of what he was saying or doing for fear of my baby being taken into care and away from me. After all I had previously been employed by [removed] ... so I knew this was entirely possible.¹⁶²

Another witness said:

[Y]ou know when you are in so much fear 24 hours a day, it is just a huge thing to deal with, and I'm frightened of not only my safety, my children's safety, trying to do the right thing. I was scared that Child Protection would try and take my children away from me if I couldn't show that I was protecting them, and obviously I couldn't stop him from breaching the orders. So it was pretty horrible ... I was also really scared that if Child Protection found out how much he was breaching the order, that they would try and take my kids.¹⁶³

I was frightened that if Child Protection knew how frequently X was breaching the IVO they would determine I could not protect my children and I would lose custody. In my first meeting with Child Protection, they told me explicitly that they were not interested in me or my circumstances, their only concern was whether my children were protected by me or not. This made me feel highly anxious.¹⁶⁴

An anonymous submission to the Commission articulated similar pressures:

The child services officer informed me that if I didn't kick him out immediately, I would probably be investigated for being a non-protective parent. After that advice, I had no choice, even though, knowing him, it would have been safer to 'make up' with him that evening and leave when I'd done some proper planning and got some money. I tried to explain this to the counsellor, but she kept overriding me, saying the money wasn't important. I realised that if I chose to [go] against their advice and something happened to me and the children, I would be blamed and the kids could be taken away from me.¹⁶⁵

Professor Humphreys has observed that state surveillance of single mothers is most marked for Aboriginal and Torres Strait Islander women.¹⁶⁶ Child Protection intervention has been a significant deterrent for Aboriginal and Torres Strait Islander families to disclose family violence¹⁶⁷ and as a consequence, Aboriginal and Torres Strait Islander women may be unable or unwilling to access support services for family violence. This is further discussed in Chapter 26.

'Failure to protect' laws

The Commission received a number of submissions calling for the repeal or amendment of the failure to disclose offence in section 327 of the *Crimes Act 1958* (Vic).¹⁶⁸

Background to Victoria's 'failure to protect' offences

'Failure to protect' laws are laws that make it an offence for adults to fail to take action when they are aware a child in their care is at risk of abuse or other violence. These laws exist, in broader and narrower formulations, in various jurisdictions including Victoria, South Australia, the Northern Territory, the United Kingdom, United States and New Zealand.¹⁶⁹ These laws can include a failure to report or disclose.

In 2011, as part of its pre-election commitments, the Victorian Government commenced consultation on the introduction of more stringent failure to protect laws.¹⁷⁰ Many organisations cautioned against this approach because of the possibility they could be used against victims of family violence. The Protecting Victoria's Vulnerable Children Inquiry (Cummins Inquiry) noted that caution should be exercised about the enactment of such laws. If they were to be introduced, the prosecution should be required to prove that the accused was not exposed to family violence.¹⁷¹

The Cummins Inquiry also recommended that the Crimes Act should be amended to create a separate reporting duty where there is a reasonable suspicion that a child is being, or has been, physically or sexually abused by an individual within a religious or spiritual organisation, and that this offence should attract a suitable penalty having regard to existing offences in the Crimes Act and the Children, Youth and Families Act.¹⁷²

In 2012, in response to another recommendation in the Cummins Inquiry that a formal investigation be conducted into the process by which religious organisations respond to the criminal abuse of children by religious personnel within their organisations,¹⁷³ the Victorian Government requested that the Family and Community Development Committee (Committee) undertake an inquiry into these processes. In November 2013, the Committee recommended, among other things, that a 'failure to report' offence in relation to child abuse should be introduced into the Crimes Act.¹⁷⁴ It also recommended that this offence should apply not only to religious and spiritual organisations, as recommended in the Cummins Inquiry, but to the community at large.¹⁷⁵ The Committee stated that all adults have a moral responsibility to report any reasonably held suspicions about someone who may be committing acts amounting to criminal child abuse, and that encouraging people to report actual or suspected criminal child abuse was vital.¹⁷⁶

Accordingly, the Victorian Government introduced the Crimes Amendment (Protection of Children) Bill 2014 (Vic) which enacted a 'failure to disclose' offence in the Crimes Act for failing to disclose child sex abuse to the police. Section 327(2) of the Crimes Act, which took effect in October 2014, provides that:

a person of or over the age of 18 years (whether in Victoria or elsewhere) who has information that leads the person to form a reasonable belief that a sexual offence has been committed in Victoria against a child under the age of 16 years by another person of or over the age of 18 years must disclose that information to a police officer as soon as it is practicable to do so, unless the person has a reasonable excuse for not doing so.

The Victorian Government did not take up the suggestion made in the Cummins Inquiry that any 'failure to protect' offence should require the prosecution to prove that family violence is not present.

However, section 327(3) provides a defence if a person has a 'reasonable excuse' for their failure to disclose, including where the person fears on reasonable grounds for the safety of any person (other than the person reasonably believed to have committed the offence) if the information was disclosed to police, and the failure to disclose the information to police was a reasonable response in the circumstances.¹⁷⁷

The maximum penalty for the offence is three years' imprisonment.

Comparison with other offences

In Victoria, there is an existing failure to protect offence in section 493(1)(b) of the Children, Youth and Families Act. This section provides that a person who has a duty of care in respect of a child who intentionally fails to take action that has resulted, or appears to result, in the child's physical development or health being significantly harmed, is guilty of an offence. Sub-section (2) provides that proceedings for an offence may only be brought after consultation with the Secretary of DHHS. The maximum penalty for the offence is 50 penalty units¹⁷⁸ or 12 months' imprisonment.

This offence existed in substantially identical terms in the previous legislation, the *Children and Young Persons Act 1989 (Vic)*.¹⁷⁹ There have only been 13 incidents recorded against this offence by Victoria Police since 2000¹⁸⁰ and the Commission is not aware of any prosecutions to date.

There are important differences between many of the failure to protect offences that exist (both in other jurisdictions and in Victoria) and the offence in section 327 of the Crimes Act. Some of the key differences between section 493 of the Children, Youth and Families Act and section 327 of the Crimes Act are shown in Table 11.1.

Table 11.1 Section 327 of the Crimes Act and section 493 of the Children, Youth and Families Act

| Section 327 Crimes Act | Section 493 Children, Youth and Families Act |
|---|---|
| The offence applies to the whole community (over the age of 18), not just those persons that have a duty of care in respect of a child | The offence applies to those who have a duty of care in respect of a child |
| The conduct required by the offence is limited to reporting to a police officer, not a general duty to 'take action' | The conduct required by the offence is to 'take action'. The appropriate action that should be taken in any particular case would depend on the facts of the case |
| The subject matter of the required disclosure is limited to disclosing information regarding sexual offences that have been committed against a child under the age of 16 | This offence applies to any conduct that has resulted in the child's physical development or health being significantly harmed |
| There is no express element of intention | There is an express element of intention |
| There is a defence of 'reasonable excuse' under section 327 which may apply to victims of family violence | There is no specific defence that applies. However, as noted above, proceedings for an offence may only be brought after consultation with the Secretary of DHHS. |

It has been argued that failure to protect laws should be drafted clearly to lessen their potentially negative effect.¹⁸¹ This may require defining when the duty of care to protect children exists, delineating the steps a person must take when they become aware of the abuse and adopting an affirmative defence to excuse persons who fear for their safety or the safety of abused children.¹⁸² Arguably, the section 327 offence has been drafted to meet some of these suggested criteria.

Concerns about section 327

Those who supported an amendment to the law argued that the Victorian Government should amend the offence to limit it to a failure to disclose by a person in authority within a relevant organisation.¹⁸³

The Commission was told that failure to disclose offences are problematic for a number of reasons. These include:

- ▷ the 'chilling effect' on rates of voluntary reporting
- ▷ the detrimental effect to women who are experiencing family violence because of the high co-occurrence of child abuse and family violence against others (for example, the child's mother)
- ▷ their disproportionate impact on women
- ▷ their relative ineffectiveness.

The Commission heard that failure to disclose laws place responsibility for abusive behaviour on the non-abusive parent, which is inconsistent with recent reforms regarding perpetrator accountability.¹⁸⁴

Several of the submissions argued that the 'failure to disclose' offence is unnecessary, particularly as it applies to individuals. In cases where, for example, a mother has voluntarily participated in the abuse of her children, this conduct would be adequately covered by the law on complicity.¹⁸⁵ The Commission notes that such laws may not cover every situation; for example, where a person had no involvement in the offence and merely had information suggesting that an offence had been committed against a child.

Finally, in relation to the offence under section 327, we were told that the offence is unnecessary because of the existence of section 493 of the Children, Youth and Families Act and that the 'reasonable excuse' defence is inadequate (discussed in detail below).¹⁸⁶

None of the submissions raised concerns in respect of section 493 of the Children, Youth and Families Act, which can also be characterised as a failure to protect offence. Some of the criticisms that were levelled at section 327 of the Crimes Act also apply to section 493 of the Children, Youth and Families Act.

There are clearly competing policy considerations that exist in respect of the offence under section 327 (and section 493 of the Children, Youth and Families Act). On the one hand, it is important to protect vulnerable children from sexual abuse and encourage the reporting of potential abuse. On the other hand, it is also critical to protect victims of family violence from prosecution for failing to take an action that they were arguably powerless to take and which may actually increase the risk to them and the child. It appears the provision has been drafted with these competing considerations in mind.

Invisible perpetrators

In her 2007 issues paper on family violence and Child Protection, Professor Humphreys noted a range of Child Protection practices that contribute to making perpetrators, often fathers, invisible to the system. These include formal Child Protection reports that fail to mention family violence; serious family violence being described by Child Protection as 'family conflict'; family violence being attributed to mental illness or substance abuse; and a failure by Child Protection to engage violent men in assessments.¹⁸⁷

The Commission heard multiple accounts of experiences within the Victorian child protection system on this issue.¹⁸⁸ As described by the Australian Association of Social Workers:

Child protection systems often emphasise the behaviour of the mother as the issue that puts children at risk, rather than it being the abusive behaviour of the perpetrator that places the children at risk. Women victims of violence often bear the full force of official surveillance and judgement of their competence as a parent, with the perpetrator of that violence disappearing from public scrutiny. The perpetrator is not held accountable for his violence, escaping any scrutiny or accountability. Rather than taking this opportunity to engage with the perpetrator and hold him to account for his violence the system misses a unique window to intervene and force him to deal with his behaviour and return the family to safety.¹⁸⁹

Cobaw Community Health argued that failing to engage with perpetrators is partly due to inadequate training of child protection workers who are 'often themselves intimidated by perpetrators and are not skilled enough to address issues of power inequities'.¹⁹⁰

In the Luke Batty inquest, Judge Gray highlighted the need for Child Protection to intervene with the alleged perpetrator when they closed their file. He recommended that DHHS:

exhaust (all best) efforts to:

- (a) interview the alleged perpetrator of the violence to determine whether harm in relation to a child has been substantiated;¹⁹¹

The Commission notes that where the perpetrator has no interest in opposing a Child Protection court order, there is no way of compelling him to participate in a DHHS interview.¹⁹² Dr Robyn Miller,¹⁹³ social worker and family therapist, told the Commission that this is sometimes known as the 'invisible man syndrome'. She said:

This is at times unavoidable because, through no fault of child protection, the perpetrator has made himself scarce and in some cases I've been involved with, has even been hidden by the women because of her fear of his retribution.¹⁹⁴

However, the Commission was made aware of a number of ways that Child Protection could take more proactive steps to engage perpetrators. It was also informed of a number of practice models for working with families where the perpetrator remains in the home or remains connected through children, for example where family court parenting orders allow him contact.

The Caledonian model from Scotland was mentioned in a number of submissions.¹⁹⁵ The model has three elements: a men's program to assess and address men's risks and build on their strengths; women's and children's services to understand and address women's and children's vulnerabilities and strengths; and effective protocols between relevant agencies.¹⁹⁶ The men's program is usually of two years duration and involves 14–20 one-on-one sessions, a 26 week group program and a maintenance phrase delivered on a one-on-one or group basis.¹⁹⁷ The model includes a module on children and fathering and identifies that for many fathers, the desire to be a good father is a motivating factor for change. The child-centred module is designed to help men acknowledge the impact and damage the violence has on their children.¹⁹⁸

The Safe and Together Model, prepared by American Mr David Mandel, was drawn upon by No To Violence, which suggested to the Commission that DHHS adopt a 'perpetrator-pattern, child-centred, survivor strength-based approach to improve outcomes with children and families exposed to domestic violence perpetrator's behaviour'.¹⁹⁹ The model is based on the principle that it is in the best interests of a child to remain 'safe and together' with the non-offending family violence survivor, and that a partnership between child welfare/protection agencies and the non-offending parent is the most effective and efficient way to promote the safety and wellbeing of the child.²⁰⁰ This model was also supported in a number of other submissions to the Commission.²⁰¹

The Commission heard that Mr Mandel's approach has been successful in several US states, and is used in the United Kingdom and parts of Australia.²⁰² It is a 'violence-informed' model which focuses on an assessment of the perpetrator and moves away from child protection system 'failure to protect' approaches to child protection practice.²⁰³ It is underpinned by three factors:

- ▷ first, an understanding that the source of risk to the child is the perpetrator's behaviour
- ▷ secondly, a comprehensive articulation of the nexus between the perpetrator's behaviour pattern and child and family functioning
- ▷ thirdly, an assessment of the man as a parent and a more comprehensive assessment of the protective capacity of the victim of family violence.²⁰⁴

Programs for men under this approach involve co-location and joint training of family violence and child protection workers. DHHS has indicated that Mr Mandel has been engaged to train a small number of practitioners in his approach.²⁰⁵ A key finding in a recent report by ANROWS (Australia's National Research Organisation for Women's Safety) report was that evidence suggests that training alone has little impact upon supporting a major culture and service system change.²⁰⁶ Models such as the Safe and Together Model include 'long-term technical and implementation support rather than one off training days'.²⁰⁷

The evaluation of the Safe and Together model in Ohio found the program led to a greater focus among

Child Protection workers on the entire family, including the perpetrator, less victim blaming, and better screening, assessment and evidence-based practices on the ground.²⁰⁸

Child and Family Services in Ballarat recommended a more coordinated response to provision and referral to men's behaviour change programs, including in the child protection context. It remarked that service demand was being driven by an uncoordinated service referral to the programs from Child Protection, the courts and corrections:

With the ever increasing demands on the MBC [men's behaviour change] services being made by departments that include the Magistrates Court of Victoria, DHHS and Corrections Victoria (CV) from a systems response it now feels like there are at least three bodies (DHHS, Magistrates Court & CV) fighting for their space in the service system. While there maybe discussions occurring at senior levels, at a service system response level there appears to have been little or no obvious communication occurring.²⁰⁹

Dr Robyn Miller told the Commission that a key area for improvement in child protection practice was engaging the perpetrator and holding him accountable for changing his behaviour.²¹⁰ Dr Miller told the Commission that effectively engaging with perpetrators would require partnership with other agencies during both risk assessment and management phases:

The partnership with police is crucial in these cases as at times it is simply unsafe for child protection, family services or family violence practitioners to engage with the perpetrator. Worker safety issues are of critical concern and there are some cases where a social work response is not the answer and the perpetrator requires a targeted police response to manage the criminal behaviour and disrupt the likelihood of further harm.²¹¹

The Commission notes that Child Protection is beginning to place greater emphasis on the ways in which a violent parent may endanger the safety of a child and the parent caring for that child. Since 2014, Child Protection practitioners in Victoria have been guided by a June 2014 DHHS practice guide, *Working With Families Where an Adult is Violent*, which stresses the importance of keeping the perpetrator in the picture and avoiding mother blame.²¹² Domestic Violence Victoria remarked that this resource was 'an important step in building this capacity' of the child protection workforce to work with violent offenders.²¹³

Judge Gray in the Luke Batty Inquest made recommendations in relation to this practice resource. He recommended that DHHS require their staff comply with the practice guide, *Working With Families Where an Adult is Violent* (2014), to ensure:

- when assessing the protective capacity of the non-offending parent, by analysing the protective factors and ensuring they have been weighted against the history
- assessing pattern and severity of harm perpetrated against them
- undertaking a comprehensive risk assessment of the perpetrator and their behaviour and that the department can demonstrate a robust approach to locating perpetrators that are evading service involvement or have no fixed address.²¹⁴

The Victorian Government has confirmed the commencement of the implementation of these recommendations and has indicated that 'DHHS's implementation of this recommendation will include a review of how to strengthen training approaches to mandate child protection participation in family violence training, based on the resource guide'.²¹⁵

There is further discussion on risk assessment in Child Protection practice below and is described in more detail in Chapter 6. Intervention and engagement with perpetrators of family violence so as to better protect victims of family violence, is described in Chapter 18.

Increased reports to Child Protection

The 2012 Cummins Inquiry found that a key challenge for the child protection system was the difficulty of deciding whether 'the right level of statutory child protection services was being provided to the Victorian community'.²¹⁶

Victoria's statutory child protection services ... must therefore address the inherent tension arising from the broadened community view of what places a child at significant risk of harm.

They get criticised for not doing enough to protect some children, whilst at the same time being criticised for being too intrusive or not managing demand.²¹⁷

A 'two-doorway' or 'differential response' system²¹⁸ has been operating in Victoria since 2005. A referral can either be made to the statutory child protection system or to family services through Child FIRST. The key principle behind this system is that children and their families should not be referred to Child Protection except in the most serious cases. Diversion away from Child Protection is intended to direct vulnerable families and children to support services and to encourage increased family cooperation with these services.²¹⁹

The Commission heard that in Victoria there has been a tendency to make blanket referrals to Child Protection when children are exposed to family violence.

The default position in Australia, the United Kingdom (UK) and North America has tended to be to refer all children living with family violence to statutory child protection. Sometimes this is through legislation on mandatory notification, at other times through practice guidance. Hitching children who are living with family violence to 'the child protection juggernaut' fails to acknowledge the differential response that may be needed and more appropriate.²²⁰

The Commission heard that this 'net-widening' approach brings some families experiencing family violence into contact with the child protection system when it may have been more appropriate to provide other forms of support to them. It also has the effect of swamping the child protection system. By swamping the system and expending finite resources on investigations to determine whether a child protection response is required, welfare resources are diverted from family support and prevention services.²²¹

Data on reports to Child Protection where family violence is indicated, is set out above. According to this data, in 2013–14 approximately 70 per cent ($n=26,088$) of these reports were not investigated. As we discuss below, of the police L17 reports sent to Child Protection in 2013–14, approximately 84 per cent ($n=11,764$) were not investigated.²²²

In the Luke Batty inquest, Judge Gray recommended that DHHS provide greater guidance to family violence agencies about when a report to Child Protection should be made.²²³ The Victorian Government has confirmed that they will implement this recommendation.²²⁴ However, the Commission notes that DHHS data provided to the Commission shows that the highest percentage of reports to Child Protection come from police.

Referrals from police

In 2013–14, DHHS data indicates that 24,139 reports to Child Protection were made by police, making up approximately 29 per cent of the total number of reports to Child Protection. Of the reports from police, 14,032 reports were made via the L17 process.²²⁵

Over the last four years, the number of reports by police to Child Protection where family violence is indicated have more than doubled. This is shown in Figure 11.3.

Figure 11.3 Total police reports to Child Protection, 2010–11 to 2013–14



Source: Based on Department of Health and Human Services, 'Data Request Summary' (9 June 2015), Worksheet 4, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015, clarified on 4 February 2016

Police L17 reports to Child Protection and referral pathways

Despite growing numbers of reports to Child Protection, many police reports do not result in an investigation.

DHHS data shows that, in 2013–14, of the 14,032 reports made to Child Protection by police which were made as part of the police family violence L17 process, approximately 84 per cent ($n=11,764$) were not investigated by Child Protection.²²⁶

Following attendance at a family violence incident where a child or young person is present, or has witnessed, or has been affected by family violence,²²⁷ police must make a decision about the most appropriate pathway for their referral. Possible pathways include a referral to the statutory child protection system or to family services through Child FIRST.

The Victoria Police Code of Practice for the Investigation of Family Violence requires that:

- ▷ police *may* make a report to Child Protection or to Child FIRST where they have significant concerns for the wellbeing of an unborn child, child or young person—they should not refer to both systems²²⁸
- ▷ police, as mandatory reporters to Child Protection, *must* make a report to Child Protection if they believe that a child or young person is in need of protection from significant harm as a result of physical injury or sexual abuse,²²⁹ or where they have reasonable grounds to suspect a child or young person has suffered, or is likely to suffer, significant harm as a result of physical injury, sexual abuse, or psychological harm, and the child's parents have not protected, or are unlikely to protect the child from harm.²³⁰

As part of the L17 process, Victoria Police also make formal or informal referrals to specialist family violence services. Police can formally refer an affected family member (usually a parent) to specialist family violence services at the same time they make a report to Child Protection or a child-specific referral to Child FIRST.²³¹ Where police make a formal referral to a specialist family violence service they will state if a child was present at an incident and the child will be considered as part of that formal referral.²³² Police can also make informal referrals for families, which involves them providing the family with contact details for the service.²³³

A police referral to a specialist family violence service means that a family may have already been formally referred to specialist services at the same time they are referred into the child protection system. Further discussion regarding police referrals to specialist family violence services can be found in Chapter 13.

The choice about whether circumstances require a Child FIRST referral or a Child Protection referral requires the exercise of police judgment. Victoria Police told the Commission that, in practice, police L17 referrals are most frequently sent to Child Protection rather than to Child FIRST:

This two-doorway system means Child Protection may receive a large volume of referrals that require their assessment before being deemed below their service threshold and that divert their resources from responding to cases that do merit their intervention (there is a high rate of reports that do not proceed to investigation, suggesting there are a number of reports that are not meeting the child protection threshold). By comparison, police refer relatively few matters to Child FIRST and there is potential to improve referrals to this non-statutory pathway

...

At present, police are expected to make decisions about this pathway in the field, sometimes with limited information.²³⁴

Elsewhere in this chapter, the Commission has relied on DHHS data. To determine police practice in sending L17s, we have used Victoria Police data, which identifies a lower number of police referrals than the DHHS data described above. In 2013–14, police data specified that 11,042 family violence L17 referrals were made by police to Child Protection and 1901 referrals were made to Child FIRST.²³⁵ For that same period, there were 51,628 L17 referrals sent by police to specialist family violence services.²³⁶

During the Commission's community consultation process, the Commission was told that, at least in some areas, duplicate referrals to both pathways into the child protection system were being made by police:

A lot of police are choosing to send the L17 to Child FIRST and Child Protection as they don't know the right agency to send it to. Sending it to the wrong service can provide delays for DHHS. Police need guidelines about who to send it to. Child FIRST are not a crisis service so the L17 can sit there for days before they are sent on to Child Protection.²³⁷

Ms Allen noted that the effect of police reporting most family violence matters involving children to Child Protection was that the differentiated pathway was not being effectively used.²³⁸ She described the impact of this on the child protection system:

This is burdensome for Child Protection as Child Protection must record every L17 report in the Department's Client Relationship Information System, assess each report and classify each report to identify those that require action and those that do not. Sometimes the detail on the forms does not indicate that a child is at risk or in need of protection or even that a support response or investigation is required.²³⁹

Dr Robyn Miller explained:

Child Protection resources are finite, and careful assessment is required so that only the most extreme cases where children are at significant risk and where other interventions have not mitigated that risk, are referred and dealt with by child protection.²⁴⁰

Victoria Police told the Commission that police may be reluctant to refer to Child FIRST as they understand that parental consent is a requirement for a family to engage with Child FIRST and they know that parents may not consent to engage.²⁴¹

The Commission acknowledges that assessing risk can be a balancing act for service providers. The 2012 Cummins Inquiry commented on this point in relation to intervention by Child Protection:

'False-positive' risk assessments occur when DHS, for a number of reasons, over-estimates the risk presenting for a particular child or young person and unnecessarily responds with statutory intervention when this is not required for a given family situation. A 'false-negative' assessment occurs when DHS underestimates the risk presenting for a given report and fails to detect the risk of significant harm of abuse or neglect ... [C]hanging decision-making practices with the objective of reducing false positive assessments will inevitably increase the rate of false negative assessments and vice versa, other things being equal.²⁴²

The Cummins Inquiry commented that Child Protection risk assessments tend to be dominated by a risk-averse approach to avoid the terrible consequences of a false negative involving the death or serious injury of a child who was missed or unprotected by the child protection system.²⁴³ The inquiry concluded that the statutory child protection system had an important role to play in responding to child abuse and neglect but that child protection services must be better connected to a broader government and community response to vulnerable children.²⁴⁴

Improving referral pathways for police

The Commission was made aware of a number of ways that police use of the current 'two-doorway' system could be improved.

Anglicare Victoria argued for a model based on the L17 triaging panels trialled in the Hume Moreland and Metropolitan North East regions, which are located in family violence services.²⁴⁵ Under that model, new referrals would be assessed by a panel comprising of police, family violence workers, Child FIRST workers and Child Protection staff.²⁴⁶ Anglicare Victoria stated: 'our view is that this was much more successful than the process of police or Child Protection simply forwarding L17s to Child FIRST'.²⁴⁷

Other proposals for reform to the present 'two-doorway' system included a single police referral point for child victims of family violence, including a triage and subsequent redirection of each case to Child Protection or Integrated Family Services, as appropriate. This approach was supported by Victoria Police:

Victoria Police ... suggests a single entry point for the referral of child victims, enabling Child FIRST and Child Protection workers to apply their respective powers and expertise to jointly assess the needs of each child victim and determine the most appropriate service pathway. This would ensure all child victims receive a timely initial assessment and are more likely to be directed appropriately in the first instance, and that a family does not end up with a Child Protection record that is not warranted. Importantly, a 'single doorway' approach would enable both services to refer the child to the other so that interventions can be escalated or downgraded as appropriate.²⁴⁸

Professor Humphreys argued that the premise of any new system should be a differential response, with the service response tailored to the varied needs of children who live with family violence.²⁴⁹ Such a system would involve initial rapid risk screening of all police family violence incident reports involving adult victims, perpetrators and children.²⁵⁰ The researchers also recommended that the triage could take place within defined geographic areas to maximise referral pathways.²⁵¹

Other suggestions included mandatory joint visits by police and Child Protection following a police call-out to a family violence incident.²⁵²

The Aboriginal Family Violence and Prevention Legal Service Victoria recommended a review of the L17 process relating to Aboriginal and Torres Strait Islander victims of family violence 'to ensure that culturally targeted and localised referral pathways are implemented in consultation with FVPLS Victoria and other local Aboriginal and Torres Strait Islander organisations across Victoria'.²⁵³ The Victorian Aboriginal Child Care Agency recommended that all Aboriginal and Torres Strait Islander people should be given the option of whether they want to access mainstream services or Aboriginal and Torres Strait Islander services.²⁵⁴

In her statement to the Commission, Ms Allen signalled that DHHS and Victoria Police were engaged in a process of reviewing the L17 form.²⁵⁵ Ms Allen suggested that the redesign of the form, together with further police training, would better assist police in directing their L17 referral to the most appropriate pathway.²⁵⁶

Further discussion regarding pathways in the Victorian family violence system, can be found in Chapter 13.

Response to family violence

Understanding family violence

One of the key issues identified in submissions received by the Commission is that family violence services focus predominantly on the risk to the mother, while Child Protection focuses predominantly on the risk to the child, despite the close relationship between these matters. In its submission to the Commission, Domestic Violence Resource Centre Victoria explained:

Specialist family violence services are primarily funded to work with adult victims and most do not receive dedicated funding for case management of children. Child Protection services, on the other hand, focus on children. However, they generally do not undertake specific family violence risk assessment and risk management for children, nor do they have the specialist knowledge for responding to women and children experiencing family violence.²⁵⁷

The Commission heard that the different philosophies that guide specialist family violence and child protection services can hinder collaboration between the two systems,²⁵⁸ and that a lack of collaboration is 'a significant barrier to effectiveness' in responding to family violence.²⁵⁹

Domestic Violence Victoria submitted:

The historically divergent philosophical and practice responses of the family violence and child protection sectors have developed quite independently of each other resulting in significant barriers for collaboration. The child protection system is statutory, child-focused and involuntary and family violence services are woman-centred and voluntary. Over time these different practice frameworks have created a tension characterised by distrust, poor communication and poor collaboration that can undermine what should be the mutual goal of meeting both mother and children's safety and wellbeing.²⁶⁰

In its submission, the Integrated Family Violence Partnership, Southern Melbourne, suggested that having Child Protection assess the risk to the mother and child concurrently may contribute to improving this problem.²⁶¹

The Commission received many submissions that emphasised the need for child protection workers to better understand the dynamics of family violence.²⁶² The Victorian Council of Social Services submitted that:

... many examples of mistrust and poor practice in the interface between child protection and specialist family violence services have been identified, including:

- the failure of child protection to understand the dynamics of family violence
- holding women, rather than perpetrators, responsible for the protection of children in family violence situations
- inadequate training for child protection workers
- the use of inappropriate ultimatums to women to leave their abusive relationships and keep their children, or stand and lose their children
- lack of cultural awareness regarding Aboriginal and CALD women in family violence situations.²⁶³

Domestic Violence Victoria submitted that:

Current practice within child protection indicates that the lack of understanding of the dynamics and nature of family violence can limit workers' ability to respond effectively where family violence is present.²⁶⁴

The Commission heard that the lack of understanding of the effects of family violence can sometimes result in victim blaming. Cobaw Community Health Service said they believed that child protection workers were insufficiently skilled to address power inequalities between victims and perpetrators and tended to place responsibility for the perpetrator's behaviour upon mothers.²⁶⁵

The Aboriginal Family Violence Prevention and Legal Service Victoria (FVPLS Victoria) said that its clients routinely recount that child protection workers adopt punitive approaches to Aboriginal and Torres Strait Islander women experiencing family violence, and that child protection workers do not abide by statutory obligations towards Aboriginal and Torres Strait Islander children and their families.²⁶⁶

This includes Child Protection workers responding to Aboriginal women as though they are to blame for being victims of family violence and making decisions about their capacity to care for their children on the basis of this misinformed view. This re-victimisation contributes to victims' reluctance to seek help which can contribute to victims/survivors' isolation and vulnerability putting them and their children at greater risk of family violence – and Departmental intervention.²⁶⁷

FVPLS Victoria recommended that a 'fundamental attitudinal shift is required within the Department to reform the way the system responds to Aboriginal [and Torres Strait Islander] victims/survivors of family violence.'²⁶⁸

The Commission heard other examples of Child Protection practice where a better understanding of family violence could have assisted the victim and her children. In an anonymous submission, the Commission heard that a victim's former husband, as part of his continued control over her following their separation, made malicious reports to Child Protection.²⁶⁹ The victim was subjected to repeated investigations and home visits by DHHS staff. The submission states, 'As my sons are happy, loved and well-cared for, these investigations have been a waste of CPS's valuable time and effort'.²⁷⁰

Another woman explained to the Commission that she felt Child Protection staff who were working with her did not have sufficient experience or length of involvement in her case to assess the risk to her and her newborn child from the family violence committed by her partner:

I feel that the issue here is that inexperienced DHS staff was put to supervise access, our case workers who were changed several times for unknown reasons, were all in their 20's and often women. I do not think that they had the experience nor the competence to assess things correctly as, a couple of well-behaved meetings were sufficient for DHS to state that there were no concerns in spite of all the history and past happenings.²⁷¹

Training and support

The 2012 Cummins Inquiry recommended that family violence training should be provided for those who are required to report child abuse to DHHS, including doctors, nurses, midwives, teachers, school principals and police.²⁷²

Submissions received by the Commission also focused on the need for training to increase awareness of family violence among child protection workers. Cobaw Community Health recommended enhanced training for child protection workers around understanding the gendered dynamics of family violence.²⁷³ FVPLS Victoria stated that along with 'family violence sensitivity training', '[w]orkforce development must include widespread, compulsory training for all child protection workers in order to improve cultural respect and awareness' of the experience of family violence for Aboriginal and Torres Strait Islanders.²⁷⁴

Shakti Migrant and Refugee Support Group Melbourne told the Commission that child protection workers should undertake cultural sensitivity training with an emphasis on picking up culturally-specific forms of family violence, such as under-aged or forced marriage, dowry abuse and female genital mutilation.²⁷⁵

Dr Robyn Miller told the Commission that since 2006, child protection practitioners have been trained 'to understand the cumulative harm to children of family violence and also to be able to talk about this in ways with women that do not further diminish their self-esteem or make them feel blamed for the impact on their children'.²⁷⁶ Dr Miller recognised that:

Sometimes child protection saying 'you need to separate from this man or we'll need to become involved' can also result in some women keeping the relationship secret and therefore diminishing her capacity to seek help where needed. This may have devastating consequences for children.²⁷⁷

In 2012, the Office of Professional Practice was established as a result of a departmental restructure which brought together the Office of the Principal Practitioner and the former Office of the Senior Practitioner – Disability.²⁷⁸ Its role within DHHS is to 'build practice and to create an environment which fosters the continual improvement of workforce capability to meet the needs of the Department's clients'.²⁷⁹ The Office of Professional Practice comprises a chief practitioner and director, a senior practitioner disability, an assistant director and two statewide principal practitioners, among others including two co-located child protection practitioners at Victoria Police and the federal family courts.²⁸⁰

The functions of the Office of Professional Practice includes providing practice leadership across DHHS, including making authoritative decisions and recommendations for Child Protection.²⁸¹ The Office fulfils its leadership role by:

- supporting front line practitioners and programs through direct involvement with case work
- monitoring and reviewing practice
- providing practice research and evaluation
- promoting professional development and training
- being the expert spokesperson on professional practice
- influencing policy and program design.²⁸²

Child protection practitioners are able to contact the Office to obtain advice and support in relation to cases they are working on, and a key function of the office has been to consider emerging issues in child protection practice, including family violence.²⁸³ Professional development and training regarding family violence has been provided to child protection practitioners, as well as Youth Justice, Disability Services and Services Connect programs.²⁸⁴

The Commission heard that in recent years DHHS has introduced training to improve understanding of family violence among child protection practitioners. During a four-week long program known as Beginning Practice, practitioners are introduced to family violence legislation; possible Child Protection responses to family violence are canvassed; and family violence case studies are used to teach interview skills and provision of evidence in the context of family violence.²⁸⁵

Targeted programs have been offered to child protection practitioners, Child FIRST and Integrated Family Services, and select Victoria Police members on working with men who use violence. In addition, senior child protection practitioners received training on risk assessment and decision making where there are threats to harm children, partners or other family members. There has also been a number of other training programs to Child Protection practitioners on effective responses to family violence.²⁸⁶ This included training which was delivered by No To Violence and the Office of Professional Practice within DHHS.²⁸⁷ Professor Humphreys noted that '[c]ontinuing to support this professional development will begin to address the shift in "culture" which is required to change the focus of child protection work'.²⁸⁸

The Commission heard evidence about the current Child Protection Operating Model, which commenced in November 2012 and was designed to improve the quality and effectiveness of Child Protection practice by improving supervision of frontline child protection practitioners. This model resulted in the introduction of 'advanced practitioner' roles and is credited with increasing the proportion of child protection practitioners who continue working in that area.²⁸⁹

In addition to the common integrated case model known as the Best Interests Case Practice Model,²⁹⁰ which is used by DHHS staff who work with children,²⁹¹ there are also a number of internal DHHS documents which can be consulted by child protection practitioners. The 2014 specialist practice resource, Working With Families Where an Adult is Violent (noted above in relation to better engaging perpetrators) sets out key legislation relating to family violence, examines the impact of family violence on children, identifies issues faced by women with disabilities, culturally and linguistically diverse women, and Aboriginal and Torres Strait Islander women, and includes sections on risk assessment and child protection and family law.²⁹²

This resource has formed the basis of family violence education offered by DHHS across Victoria.²⁹³ The Commission understands that the Cumulative Harm Specialist Practice Resource also provides practical advice for workers in the area of Child Protection.²⁹⁴

In the Luke Batty inquest, Judge Gray commended DHHS for developing Working With Families Where an Adult is Violent, but noted that there was a failure to follow that guide.²⁹⁵ As discussed above, he recommended that DHHS ensure that all child protection staff comply with the practice resource by ensuring that they take a full history of the violence when determining whether the victim could act protectively, assess the pattern and severity of harm perpetrated against the victim, and undertake a comprehensive risk assessment of the perpetrator.²⁹⁶

The Commission notes that the 2015–16 Victorian Budget allocated \$3.9 million for Child Protection Flexible Responses, a project to co-locate family violence specialist workers in child protection offices.²⁹⁷ The aim of this project is to improve the capacity of child protection practitioners to respond appropriately to cases of family violence and to assist them to navigate the adult family violence service system.²⁹⁸ The money will enable the recruitment of an additional twelve child protection workers and seventeen family violence workers statewide.²⁹⁹

Service collaboration

The Australian Law Reform Commission and NSW Law Reform Commission identified inter-agency collaboration as an important issue in its inquiry into a national legal response to family violence.³⁰⁰ Similarly the Cummins Inquiry noted the presence of 'siloes service systems' and, in a family violence and child protection context, stated that greater clarity is required over which service system is responsible for coordinating and case managing a child or young person and their parents.³⁰¹ The inquiry recommended that there should be improved collaboration and pathways between statutory Child Protection services, Integrated Family Services and other services such as family violence and disability services.³⁰²

The DHHS Strategic Framework for Family Services 2007 acknowledges the need for 'Integrated Family Services to work collaboratively with Child Protection to develop effective diversionary responses that try to prevent families' progression into the statutory child protection system'.³⁰³ The Child Protection and Integrated Family Services State-Wide Agreement (Shell Agreement) 2013 provides a high-level framework setting out the responsibilities of Child Protection and Child FIRST.³⁰⁴ Ms Allen said in her evidence that there are 'high levels of collaboration and mutual understanding of respective roles' between Child Protection and family services such as Child FIRST.³⁰⁵

By contrast, in 2015 the Victorian Auditor General noted that the documented arrangements between Child Protection and Integrated Family Services system are continually being tested because of changes in the external environment, such as the significant increase in demand and complexity of cases, partly due to family violence.³⁰⁶ Numerous weaknesses in communication between DHHS and family service providers were identified. The Auditor-General recommended that DHHS undertake a comprehensive and urgent review of its current approach to early intervention including how it 'investigates and implements ways of improving the effectiveness of its communications about operational and strategic issues between and across the department centrally, regionally and locally, and with community service organisations'.³⁰⁷

One of the key links is the placement of community-based child protection advanced practitioners at each Child FIRST site to facilitate referrals from Child Protection, provide advice on specific cases including safety planning, and manage cases moving from Child Protection to Child FIRST, amongst other activities.³⁰⁸ The role was established in 2006 so as to improve information sharing between Child Protection and family services, enable consultation, assessment of children and families, and 'enable collaborative practice'.³⁰⁹

Dr Robyn Miller, told the Commission that, '[i]n my experience, the role is greatly valued by the family services sector'.³¹⁰ Dr Miller stated that:

the embedding of a specialist child protection practitioner in family services platforms such as Child FIRST is crucial to early intervention and ensuring better outcomes for children. It would be further improved by bridging the knowledge and skill held in the family violence service sector by co-locating family violence specialists in the Child FIRST teams and family services alliances.³¹¹

The 2011 KPMG review of Integrated Family Services found that the placement of child protection practitioners at each Child FIRST site had been critical to developing a service continuum between family services and Child Protection and was the 'lynchpin' between the two sectors.³¹² However, the same review noted that beyond the placement initiative, there were inconsistent links between Child FIRST and Integrated Family Services on one hand and Child Protection on the other. The authors cautioned against over-reliance on one scheme for service connection and suggested a greater focus on improving linkages across the entire workforces of both sectors.³¹³ The review also noted a lack of a shared practice framework, limited shared governance with inconsistent engagement by child protection leadership and challenges presented by workforce turnover and varied workplace cultures.³¹⁴

The 2015 Auditor-General's report into Integrated Family Services found that the role of community-based child protection advanced practitioners had been diluted over time with the assigned child protection workers increasingly required to take on Child Protection cases rather than being available to support Child FIRST and Integrated Family Services with case referrals and risk assessment.³¹⁵

The research project, the Patricia Project, looked at 'what processes or practices do child protection services and specialist domestic violence services or family law engage in so that they can work better together to improve service responses for women and children living with and separating from family violence'.³¹⁶ The project looked at a 24 'models of interagency working between child protection and/or family law'³¹⁷ used both in Victoria, in Australia and around the world. The November 2015 key findings included:

- A stronger knowledge base is needed.
- Quality monitoring of interagency joining up is needed.
- Evidence for underlying practice is as important as evidence for interagency working.
- A common feature of the interagency models was the establishment of formal agreements.
- Training is a frequently used starting point in interagency working.
- Working with the court requires additional formal agreement considerations.
- Further consideration is needed regarding infrastructure to support models.
- There is an apparent lack of child protection presence.
- Evidence may be available in other fields of sectors.³¹⁸

Collaboration with perpetrator interventions is further discussed in Chapter 18. Further discussion on the separation of referral pathways in Victoria and service collaboration can be found in Chapter 13.

Shared principles

In its submission, the Centre for Excellence in Child and Family Welfare proposed legislative amendments to support a shared understanding of family violence between child protection practitioners and other services that provide support to victims and/or perpetrators of family violence.³¹⁹

The Child Wellbeing and Safety Act 2005 (Vic) established the Victorian Children's Council, which independently advises the Minister on policies and services to enhance the health, wellbeing, development and safety of children³²⁰ and the Children's Services Coordination Board. The Children's Services Coordination Board consists of Secretaries of key departments³²¹ and is required to monitor administrative arrangements to support coordination of government actions relating to children, and to report annually to the Minister on outcomes of these actions.³²²

Section 5 of the Child Wellbeing and Safety Act sets out a series of principles which frame the design, development and provision of all services for children in Victoria. It contains a mixture of broad statements about the safety and wellbeing of children and the importance of family,³²³ as well as more specific directives for service provision³²⁴ including the principle that providers of services should cooperate with other services or professionals, work in the interests of the child and family.³²⁵

The Centre For Excellence suggested there might be merit in amending section 5 of the Child Wellbeing and Safety Act, or introducing new principles in the Family Violence Protection Act to create a set of explicit legislative principles that would mandate a consistent approach to family violence across child protection, family services and the family violence specialist service system.³²⁶

Risk assessment

The current Victorian Family Violence Risk Assessment and Risk Management Framework (referred to as the Common Risk Assessment Framework or the CRAF) does not contain comprehensive guidance on assessing the safety of children exposed to family violence. Child protection practitioners have had CRAF training since 2008.³²⁷

The CRAF notes that all interventions with children and families across the family services sector, including Child Protection, are guided by the Department of Health and Human Services' Best Interests Framework for Vulnerable Children and Youth.³²⁸ Additionally, the Working with Families Where an Adult is Violent: Best interests case practice model, provides child protection practitioners with direction and advice in relation to assessing risks to children.³²⁹

Child Protection does not mandate the use of CRAF. The best interests model, which sets out multiple risk indicators, is considered to be the most 'appropriate framework for risk assessment for children'.³³⁰ This model is premised on the view that risks to children are best assessed through professional judgment rather than by use of a particular tool.³³¹

In her statement to the Commission, Ms Allen explained:

Use of the Best Interests Model was a deliberate decision taken by the Department after considerable debate and evaluation of the available literature. The consensus was that the actuarial risk assessment models have too many false positives and false negatives.³³²

She told the Commission that DHHS had decided to invest in workforce training, support and professional development, rather than in a particular risk assessment tool.³³³ She noted that CRAF is 'not instructive about the management' of risks to children³³⁴ and that in the absence of an empirically validated risk assessment tool for children, DHHS considered the Best Interests Case Practice Model was the most appropriate risk management framework to support Victorian child protection practice.³³⁵

The Commission heard there was widespread agreement that the guidance which the CRAF provides on risk assessment for children needs review.³³⁶ The Commission received multiple submissions recommending the development of a specific risk assessment and management tool for children as a priority.³³⁷ Professor Nicky Stanley and Professor Humphreys recommended that child-focused risk assessment processes in the family violence context need to engage with mothers as partners in the assessment, and with men as fathers. Engagement with fathers should avoid collusion in claims that the violence is mutual or minimal by making the harm that family violence causes children much more explicit.³³⁸

In the Luke Batty inquest, Judge Gray recommended that it should be a priority of the Victorian Government to empirically evaluate the current CRAF. Judge Gray noted that the particular risk assessment conducted by the child protection practitioner in that case was not rigorous enough and was weakened by a lack of engagement with the perpetrator.³³⁹

The Child Protection risk assessment carried out for Ms Batty and her son Luke was just one of six family violence risk assessments conducted by various agencies, with each risk assessment performed in a 'silo' without the information received being shared or updated.³⁴⁰ The Victorian Government acknowledged to the Commission that in relation to risk assessment and family violence, 'the culture of "silos" and barriers to information sharing continues'.³⁴¹

Judge Gray found that the consequence of DHHS using a different risk assessment process for child protection purposes from that used by other agencies, was that women and children affected by family violence might experience multiple inconsistent risk assessments from various service providers, each of which assessed only part of the risk posed by family violence. Judge Gray recommended that all state agencies operating within the integrated family violence system should use the CRAF, or risk assessment aligned to the CRAF.³⁴²

There were a number of recommendations from Judge Gray directed to DHHS regarding the use of a proposed revised CRAF:

- I recommend that the DHHS incorporate in its Intake Phases practice where family violence services report family violence, that Child Protection requests a completed CRAF as part of its risk assessment and analysis.
- I recommend that the DHHS introduce a requirement that CRIS notes include the full text of all CRAF risk assessments undertaken in relation to children for whom files are opened.
- I recommend that the DHHS introduce a requirement that prior to, or when, undertaking a CRAF risk assessment, the DHHS obtain from Victoria Police all L17s relating to the child and their parents and any CRAF risk assessment undertaken by a specialist family violence service.
- I recommend that the DHHS introduce process whereby all CRAF risk assessments which include high risk family violence to a child be provided to Victoria Police for consideration of bringing an application for a FVIO.³⁴³

The Victorian Government, in its response to the Luke Batty inquest, has confirmed that they will implement the above recommendations and will finalise the implementation of those recommendations following the completion of this Commission's report and the evaluation of the CRAF,³⁴⁴ which is being undertaken by DHHS.³⁴⁵

Further discussion regarding the CRAF and risk assessment in Victoria is in Chapter 6 where the Commission recommends that the revised CRAF include evidence based risk indicators that are specific to children.

Information sharing

The barriers to effective information sharing emerged as a theme during the course of the Commission's work. Effectively assessing risk relies upon the timely and continuous sharing of information between key agencies dealing with families experiencing violence.

Unsurprisingly, one of the most common developments for interagency working lay with the development of protocols and agreements for ways of working together and information sharing. Given that child protection is a statutory service, any interface in relation to others in the DFV [domestic and family violence] service system will require this foundational development.³⁴⁶

The complexity of the confidentiality provisions in the Children, Youth and Families Act and in other legislation, as well as the existence of numerous information sharing protocols and policies, can lead to confusion and difficulty for both child protection practitioners and other services which support adults and children who are affected by family violence.³⁴⁷

The Act provides for the disclosure of information, in certain circumstances, for the purpose of sharing information with Child Protection. This includes requiring defined professionals, such as police, teachers and early childhood teachers, and registered medical practitioners who may have contact with vulnerable children, to provide information to DHHS.³⁴⁸ There are additional information-sharing provisions to allow DHHS to consult with other community services and agencies, and vice versa, regarding confidential reports.³⁴⁹

Ms Allen told the Commission:

The Department is currently reviewing the information sharing provisions in the [Children, Youth and Families] Act, with a view to simplifying the existing information sharing provisions of the Act and introducing greater clarity and confidence about when, and with whom, information can be shared. The Department recognises that in addition to legislative reform attention must also be given to cultural, leadership and systems issues.³⁵⁰

In addition to legislative and policy complexities, the Commission heard that the level of demand placed on the Child Protection system, coupled with the flaws in the Victoria Police LEAP database system, further discussed in Chapter 15, means that there are significant limitations on the sharing of information, including in relation to feedback loops after an L17 has been sent to Child Protection or family services:

The LEAP database cannot report on the follow up action systemically of the agency that received the L17 referral thereby we cannot report on the follow up action taken by the agency receiving the L17 referral.

Information from the agency regarding the outcome of the referral may be received by members and updated manually into the free text section of LEAP as part of the family incident, however this is not searchable or reportable in terms of being a data set.³⁵¹

Similarly, the Commission heard evidence about a number of issues relating to information exchange between DHHS (and its funded service providers) and courts. Specifically, the Commission heard that Child Protection workers have difficulty accessing information about family violence intervention orders from the Magistrates' Court and that magistrates may not be aware of Child Protection's involvement with a family during an intervention order application.³⁵² The Commission understands that similar issues arise in relation to the Children's Court. These issues are discussed in detail in Chapter 16.

In Victoria, as discussed above, there is a protocol between DHHS and the Family Court of Australia and the Federal Circuit Court of Australia. This protocol, among other things, provides guidance on the sharing of information between DHHS and the courts.³⁵³ Information sharing between DHHS and the federal family courts is further discussed in Chapter 24.

The Commission discusses the above issues, and information sharing more broadly, in Chapter 7 and makes recommendations that will help to improve information sharing between relevant bodies, including Child Protection, the courts and specialist family violence services.

Amendments to the Children, Youth and Families Act

The *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014* (Vic)³⁵⁴ received Royal Assent on 9 September 2014, and the majority of amendments came into effect on 1 March 2016.

Among other things, the Amendment Act imposes a time limit on parents resolving protective concerns before their children are placed on permanent care orders. This time limit is one year, or two years in exceptional circumstances.³⁵⁵

While the Commission heard several areas of concern about the Amendment Act, one of the key concerns was that complex issues, such as the impact of family violence and intergenerational trauma on families, may not be resolved within the one or two year timeframe proposed by the Amendment Act. In particular, the Aboriginal Family Violence Prevention and Legal Service Victoria stated that it is:

... deeply concerned that the 2014 reforms ... will disproportionately impact Aboriginal children and families who are statistically more likely to experience complex trauma – such as family violence – that cannot be quickly resolved according to an abbreviated timeline.³⁵⁶

On 6 August 2015, the Victorian Legal and Social Issues Committee handed down a report on, among other things, the Amendment Act. DHHS advised the Committee that there will be a review of the Amendment Act, scheduled to occur six months after the provisions come into effect on 1 March 2016.³⁵⁷ In evidence given to the Committee, Ms Allen stated that:

It is correct that the Minister has announced a review six months following the introduction of the [Amendment Act] and is very keen to understand the implications and impact of implementation, including any unintended consequences, of the Act.³⁵⁸

The way forward

Children and young people may be the direct target of family violence or may be harmed by being exposed to family violence against a parent. In cases involving physical or sexual violence, police may investigate the matter and charge the perpetrator with criminal offences.

Child Protection has the defined statutory role of protecting a child if he or she has suffered, or is likely to suffer, significant harm.³⁵⁹ The Commission heard that people affected by family violence sometimes look to Child Protection for support. Unless the statutory threshold is met, it is not the role of Child Protection to provide assistance for the adult of the child to address family violence issues or to provide direct assistance to children such as counselling or a therapeutic response. Nevertheless, Child Protection must take account of the close relationship between the safety of the child and the parent caring for the child (usually the mother) and must be aware of the ways which family violence may prevent a parent exposed to family violence from protecting their children. It must not place responsibility on the protective parent to protect a child from the other parent where it is not possible to do so.

Where a parent (usually a mother) seeks help, or Child Protection is otherwise informed that a child is being affected by family violence, it is vital that the parent and the children are referred to other services, including specialist family violence services, so that they can receive appropriate support. Child Protection should take active steps to engage families with specialist family violence services and other services, even where it has no statutory responsibility to intervene to protect the child.

Family violence may only be one of the factors indicated in a referral to Child Protection, as some of the children and families who come to the attention of Child Protection have complex problems, including substance misuse and mental illness. Child Protection can play an important role in linking families into family violence support system and wider services. These services may include Child FIRST, Integrated Family Services, and family violence services. Throughout the processes of intake, investigation and, where necessary, protective intervention, it is important for child protection practitioners to understand the implications for children and families of family violence. Their response must be informed by specialist knowledge on the direct and indirect effects of that violence.

Child Protection should also work with Victoria Police and family violence service providers to ensure that it is better informed about the risks posed by perpetrators when making decisions about whether protective intervention is required or a referral to other services is more appropriate.

Both Child Protection and the broader human services system have experienced increased reporting of family violence. There has been growth in reports to Child Protection, including reports which identify the presence of family violence. DHHS has already done considerable work to improve its response to the needs of children who have been affected by family violence. Recent measures include establishment of the Office of Professional Practice, the placement of child protection practitioners in Child FIRST, co-located child protection practitioners in Victoria Police and the federal family courts, the introduction of specialist practice resources, including Working With Families Where an Adult is Violent, and various other practice resources. Various training programs on family violence have been offered to practitioners. We consider that involvement in such programs should be mandatory for child protection practitioners. The aim of such training should be to increase their understanding of the dynamics of family violence and to encourage a culture of collaboration between child protection practitioners, police and specialist family violence services. Providing leadership on these issues will be an important role for senior child protection practitioners, including supervisors, team managers, practice leaders and the Office of Professional Practice.

Introduction of the Support and Safety Hubs (further discussed in Chapter 13) will bring together Child FIRST and specialist family violence expertise and help to break down the culture of service separation which exists between those who have a statutory responsibility for protecting children and those who assist families experiencing family violence. As part of the transfer of Child FIRST teams into the hubs, existing community-based child protection practitioners will also form part of the hub.

In the meantime more emphasis must be placed on the role which Child FIRST, Integrated Family Services and family violence services can play in supporting families, either while parents remain together or after separation. In the Commission's view an effective response to family violence requires greater investment in Child FIRST, Integrated Family Services and specialist family violence services to support families and children who are victims of family violence. We envisage that Child Protection will, over time, increase its understanding of family violence and its ability to work more effectively with other services, particularly family violence services. Such changes must be accompanied by a number of changes in child protection practice.

Recommendations made should be read in conjunction with matters are covered in other Chapters. We discuss the role of Child FIRST and Integrated Family Services in Chapter 10. Revision of the CRAF is dealt with in Chapter 6, improvements to information sharing are recommended in Chapter 7 and recommendations regarding pathways in the family violence system can be found in Chapter 13.

Supporting 'protective parents'

Discontinuing the use of non-statutory undertakings in family violence cases

In the past a protective parent, who was a victim of family violence, could be required to undertake that their children were not exposed to further family violence by the other parent. This may place victims of family violence in a position where they feel responsible for policing the behaviour of the perpetrator, even when this is impossible. Undertakings of this kind may conflict with the terms of an intervention order, confuse victims about their obligations, and place a victim and their child at further risk of family violence.

Judge Gray recommended that Child Protection discontinue the practice of 'asking women at risk of family violence to enter into undertakings requiring them to supervise or manage the behaviour of the perpetrator'.³⁶⁰ We support this view and support the Victorian Government and DHHS' intention to implement Judge Gray's recommendation and update the Child Protection Practice Manual accordingly.

DHHS should monitor whether the discontinuation of the use of non-statutory undertakings results in an increase in children being made subject to protection order applications.

Ceasing involvement with a family affected by family violence

We heard that once a 'protective parent' is identified in a case where family violence has occurred, Child Protection may close a case because it is no longer considered necessary to remain involved with the family where they are convinced that the child can be kept safe from harm.

However, the identification of a 'protective parent' may be insufficient. The parent may need support and services to address family violence as well as to keep their child safe from harm. We have proposed that Child Protection should strengthen their practice guidelines and procedures to make formal referrals for families to relevant services, including specialist family violence services, during the course of their involvement. If services are already engaged with a family, it is important to consider whether those are the most appropriate services to meet a particular family's needs.

In the Luke Batty inquest, Judge Gray recommended that DHHS adopt a standard practice of convening of a case conference before a Child Protection file was closed and that this should involve exhausting all best efforts to interview the alleged perpetrator, and engaging all agencies involved with the family to work together, share information, and develop robust safety planning. The Victorian Government and DHHS' response to those recommendations foreshadowed a process in which a case conference would precede the closing of a file, 'where the report has been substantiated by Child Protection'.³⁶¹ We understand that this recommendation will be reflected in a legislative amendment that requires the preparation of a case plan for all substantiated cases, with the convening of a case conference to be required as part of the preparation of that case plan.³⁶²

Substantiation of a report made to Child Protection is a statutory test as to whether a child is at sufficiently high risk of harm to be in need of protection and the child's parents are unable or unwilling to protect the child.³⁶³ When a case is 'not substantiated' by Child Protection, it does not mean that family violence did not occur or that the child was not at any risk. We have not had the benefit of reviewing the proposed legislation and it is not clear what DHHS regards as 'substantiation' in this context. It will be recalled that in Luke Batty's case, there was no substantiated need for Child Protection intervention.

It is our view that parents will often require support in these circumstances. The possible limitation on implementation of the Judge Gray's recommendation may be based on resource implications and a concern for 'net-widening'.³⁶⁴ However, we believe that good practice includes ensuring that families who are affected by family violence are provided with appropriate and formal referrals and safety planning, even though the statutory threshold for Child Protection intervention has not been met.

Where family violence has been reported, but the threshold for Child Protection protective intervention has not been satisfied, the case should not be closed without ensuring a safety plan will be prepared and the family is engaged with support services (if they agree). This could be done without requiring the convening of a formal case conference, although a case conference may be appropriate in some situations. Formal referrals and ensuring the preparation of a comprehensive safety plan for a woman and her children, should always be made prior to Child Protection closing their file. However, the referral process should not await the decision to close a case but should be made throughout the course of Child Protection's engagement with a family, as need arises.

We envisage that when the Support and Safety Hubs are established, referrals could be to the relevant hub, which will undertake the safety assessment and make referrals for family members to appropriate supports and services.

We note that by the time of case closure, Child Protection already make referrals for some families. As discussed earlier in this chapter, referrals can be made by Child Protection to other services to better support a family. However, 2013–14 data shows that where family violence is indicated in a report, Child Protection refers only about 10.9 per cent of reports to Child FIRST and 2.0 per cent of reports to family services. We are unable to comment on whether a referral in those cases would have been appropriate or possible, or whether other such services were already engaged with families.

However, we consider that it is important to further develop, strengthen and standardise child protection practice in regard to making formal referrals, linking families with supports, and strengthening safety planning for women and children. The recommendations made below do not require case conferences but are intended to ensure that families who require support are engaged with appropriate services.

Our recommendations about formal referral processes do not affect the recommendations made in the Luke Batty inquest relating to the convening of case conferences as part of Child Protection's case closure procedure, or the decisions of the Victorian Government to implement those recommendations in 'substantiated' cases only.

Legal advice for Aboriginal and Torres Strait Islander families

Given the high number of child removal rates of Aboriginal and Torres Strait Islander families in Victoria, and the high proportion of cases involving family violence where children have been removed from their family, we note the value of a culturally appropriate service being involved when Child Protection is considering intervening with Aboriginal and Torres Strait Islander children.

We support the current legislative requirement obligating Child Protection services to consult with the Aboriginal Child Specialist Advice and Support Service for all reports involving Aboriginal and Torres Strait Islander children. ACSASS provides advice, information and assistance to Child Protection regarding significant decisions and actions concerning Aboriginal children throughout all phases of Child Protection intervention. This includes providing an Aboriginal perspective on risk assessment and safety assessments for Aboriginal children and young people. This would be particularly relevant in the case of reports where family violence is indicated.

So far as parents are concerned, Child Protection staff are required to advise of the availability of legal assistance, encourage parents to seek legal advice, and direct them to services such as FVPLS Victoria and Victoria Legal Aid. However, this is not a formal referral or notification and requires the parent to initiate contact.

We consider that DHHS, together with ACSASS and FVPLS Victoria, should investigate ways of ensuring that parents receive legal assistance and formal referrals to culturally appropriate legal service providers.

Supporting protective parents to obtain court orders

We have considered whether a requirement should be imposed on DHHS to support a protective parent to obtain an intervention order in the magistrates' court. Ultimately, we decided that it would be impracticable to require this in all cases where a report has been made to Child Protection. Such a requirement would be financially costly and would duplicate services provided by duty lawyers or community legal services funded by Victoria Legal Aid. Support for victims of family violence in court proceedings can be achieved by other means such as providing written information and advice to the court.

We make recommendations to better facilitate information sharing between DHHS and the Magistrates' Court of Victoria, so that if Child Protection holds information about a child and family, it should provide information relevant to an FVIO application to the Magistrates' Court. The same should apply to situations where a parent needs a new or amended family law parenting order in the Magistrate's Court of Victoria, as a means to protect a child.

Additionally, police now make the majority of applications for intervention orders, and more systematic provision of information by Child Protection to Victoria Police about children at risk should ensure that the application for an order is made by the police rather than by the parent.

After the establishment of the Support and Safety Hubs, further discussed in Chapter 13, Child Protection should develop practice guidelines to ensure that parents, who are advised to seek an FVIO or a *Family Law Act 1975* (Cth) order to protect their children, are formally referred to the hub. The hub should provide families who need to navigate the court process, with a formal referral to Victoria Legal Aid or a community legal centre to assist the affected family member to obtain legal advice and support in the court processes. In the meantime similar practice guidance will be needed to ensure victims who are advised to seek an FVIO or Family Law Act order are formally referred to family violence services.

Further information regarding information-sharing protocols between DHHS and the federal family courts, is discussed in Chapter 24.

Shifting the focus to perpetrators

Evidence before the Commission, including our own research,³⁶⁵ supports the view that Child Protection must do more to ensure that the risks created by perpetrators are assessed and managed, rather than simply assuming that if a victim is acting as a protective parent, the children will be kept safe.³⁶⁶ We note that there has been ongoing debate about how Child Protection authorities should take account of perpetrator behaviour and, where appropriate, support them to change their behaviour.³⁶⁷

Engaging with perpetrators creates challenges for Child Protection workers, who cannot require perpetrators to attend an interview or participate in a discussion of how to keep children safe. In this area Child Protection needs to work with Victoria Police, who have the capacity to investigate alleged offences.

We recommend that, so far as possible, DHHS ensure that Child Protection investigations involving allegations of family violence, take account of the risks posed by the behaviour of the perpetrator. The fact that the other parent or family member is acting protectively should not be regarded as sufficient in itself to protect the child. Recommendations made below, coupled with the use of the revised CRAF to assess the child and the protective parent's risk of harm and the sharing of information relevant to risk between all agencies, will assist DHHS to focus on the behaviour of the perpetrator where possible.

Further, any risk assessment process which is undertaken by DHHS should take account of the risk posed by the perpetrator's behaviour and the views of the protective parent about that risk. The risk assessment processes recommended in Chapter 6 of this report should facilitate that process.

If a perpetrator of family violence is not interested in maintaining contact with the children in his family, Child Protection cannot compel him to attend a parenting or behaviour change program. However, where there has been a substantiated Child Protection report, a perpetrator who wishes to have a continuing relationship with a child may voluntarily agree to attend such a program. If an agreement that the perpetrator attend a program was made at a conciliation conference to which the parties were referred by the Family Division of the Children's Court,³⁶⁸ the requirement to attend a behaviour change program could be included in a Children's Court order.³⁶⁹ Further discussion about various program models suggested to the Commission is set out in Chapter 18.

DHHS should also ensure that programs are made available to assist violent men to understand the effects of violence on their children, and to become better fathers by, among other things, no longer using family violence against their partners or former partners and children. We make recommendations to that effect in Chapter 18.

Amend the 'failure to protect' offence

We have some concerns about the application of the failure to protect offence in the Crimes Act 1958, section 327, including the 'family violence defence' under section 327(3)(a), in cases where the alleged offender has been subjected to family violence.

There are two key elements to this offence:

- ▷ the person must have feared on reasonable grounds for their own or another person's safety, if they were to disclose the information to police
- ▷ the failure to disclose must have been a reasonable response in the circumstances.

A number of submissions expressed the view that the defence is an inadequate safeguard.³⁷⁰ A victim of family violence may be charged with the offence even though they may not ultimately be convicted.³⁷¹ This may be unfair to victims who cannot protect themselves and their children.

Further, although the person's fear for safety is assessed subjectively (that is, it must be reasonable from their perspective),³⁷² the court must decide whether the failure to disclose the information is a reasonable response in the circumstances. This could expose victims of family violence to the risk that insufficient weight is given to the dynamics of family violence and that unrealistic expectations are imposed on them.³⁷³ While victims of serious and imminent physical violence might be able to satisfy the reasonableness test, 'there are other family violence situations where the perpetrator's tactics of entrapment are more multi-faceted and subtle':

It then becomes harder to explain to a court how her partner's coercive controlling tactics undermine a mother's parenting capacity, and her sense of confidence, capacity and judgment, to such an extent that even when he is not threatening her and has not used overt tactics of violence against her recently, she is still far too constrained to be able to report the abuse of her child.³⁷⁴

The understanding of the nature and dynamics of family violence—within the courts, the police and in the community generally—has not yet reached a point where we can be confident that the defence will operate as intended.

There are a number of ways in which the offence could be amended to protect family violence victims who failed to take steps to protect a child because of their fear of the perpetrator. As discussed earlier, the Cummins Inquiry suggested adding an element to any failure to protect offence such that the prosecution must prove that the person accused was not subject to family violence perpetrated against them by the alleged perpetrator of the child sexual offence.

Other suggested approaches include:

- ▷ inserting a statement of intention that section 327 is not intended to apply to victims of family violence into the Crimes Act
- ▷ requiring approval by the Director of Public Prosecutions before prosecution of an offence under section 327 can commence and/or
- ▷ developing prosecutorial guidelines relating to the exercise of the Director's approval.

The current defences contained in section 327 should also be retained, in order to protect other family members who may not be the direct victim of the family violence (for example, the child's grandparents), who may have fears on behalf of another person (for example, their daughter, the child's mother) if they were to report.

So far it appears that both section 327 of the Crimes Act or section 493 of the Children, Youth and Families Act serve largely symbolic purposes. We are unaware of any prosecutions under section 327 of the Crimes Act. It is undesirable to have offences on the statute book that serve little practical purpose, particularly when there are other offences that could be used to prosecute a person who was actively involved in the abuse of a child by their partner.

However, because section 327 has only been in force since 27 October 2014, it would be premature to repeal it. In the meantime we recommend that approval of the Director of Public Prosecutions should be required before the offence is prosecuted and that there should be guidelines for the exercise of the discretion which make it clear that a person who has been subjected to family violence should not be prosecuted.

It is unnecessary and unsatisfactory to retain both section 327 of the Crimes Act and section 493 of the Children, Youth and Families Act, which overlap to a considerable extent. If the Victorian Government retains an offence of this kind the provisions should be rationalised. We recommend below that the Department of Justice and Regulation reviews and considers rationalising these offences.

Referrals to Child Protection

During the Commission's community consultation processes, we heard that Child Protection's intake processes were in danger of being overwhelmed and that resources which should have been spent on protecting children were being wasted on determining whether intervention was necessary. We were told that DHHS and the Integrated Family Services were not equipped to manage the significant increases in demand which had occurred over recent years.

In 2013–14, approximately 84 per cent of reports to Child Protection from police that were made via the family violence L17 process, were not investigated by Child Protection. This data might mean that police take a cautious approach, erring on the side of reporting to Child Protection in family violence cases because of their role as mandatory reporters. We are unable to determine whether police are unnecessarily referring too many children to Child Protection, rather than to Child FIRST. We are also unable to determine whether the Child Protection threshold for investigation is too high. However, the disparity between the high number of police reports, including L17s, and the high proportion of cases which are not investigated may well be a cause for concern.

The referral pathways to Child Protection, Child FIRST and to specialist family violence services are an important part of the system response to family violence. Specialist family violence services are also an important part of the intervention system for children. Capacity building within the family violence workforce to respond to the needs of children and risk to children is an important part of the referral system. We make recommendations in Chapter 10 regarding building the capability of specialist family violence services to respond to the needs of children and young people living in refuges and crisis accommodation. We also make recommendations regarding the intake processes in family violence cases in Chapter 13.

Referrals from police to Child Protection are also an important part of the family violence system response. The question for the Commission is how this benefit can be achieved without requiring Child Protection involvement where this is not necessary.

There are a number of ways in which police members could be supported in exercising their discretion to refer appropriate cases to Child FIRST rather than to Child Protection. In Chapter 14 of this report ³⁷⁵ we make recommendations relating to police training about family violence. Involving child protection workers and family violence specialist services in police training about nature, dynamics and the effects of family violence, and building professional relationships between police, Child Protection and Child FIRST workers within regions, may support police to make appropriate judgments about whether a report to Child Protection is necessary.

We have also made other recommendations which we believe will, over time, increase police confidence that referral of families to Child FIRST rather than Child Protection will result in families receiving appropriate support. In Chapter 13 we recommend establishing Support and Safety Hubs in the 17 local DHHS areas. These will provide an area-based entry point into family violence services and Integrated Family Services, consolidating the current L17 police referral points for victims, perpetrators and Child FIRST intake. Once the hubs are established police will only need to send one L17, except in circumstances where they have assessed that a referral to Child Protection is required because they believe a child has suffered or is likely to suffer significant harm as a result of physical injury or sexual abuse, and the child's parents are unable or unwilling to protect the child.³⁷⁶

Child FIRST will be part of the hub, along with their community-based child protection practitioner. Police will have increased confidence when making an L17 referral to the hub, as that practitioner can escalate a matter to a formal referral to Child Protection if required. This will ease some of the decision-making burden for police.

We do not recommend any change to the legislation regarding voluntary or mandatory referrals to Child Protection. It is important that referrals can be made speedily to Child Protection in urgent cases where a child is at serious risk of harm.

Improving training and support

We received many submissions supporting better training and support for child protection workers about the dynamics of family violence and the way it affects children. Child Protection and family violence services have different histories, objectives and cultures.³⁷⁷ Child Protection policy and services have developed within a paradigm of protecting children from abuse and have not always had regard to the dilemma faced by mothers experiencing violence or to the extraordinary efforts mothers go to to protect their children from the perpetrator's violence. Specialist family violence services have assumed that protecting women from violence and providing them with support will also protect the child from the effects of violence. This is not invariably the case.

Stronger links must be created between Child Protection, Child FIRST, specialist family violence services and other service providers which respond to family violence. Both Child Protection and Child FIRST must become more informed about the difficulties faced by women to protect their children from violence. Family violence providers need to have greater awareness of the ways that children can be affected by violence in their families, including violence by women who are themselves victims of violence.

Encouraging collaboration between Child Protection and family violence service providers, requires cultural change in both the child protection and family violence systems. This may be a slow and difficult process. Processes to encourage cultural change are already under way. They include:

- ▷ The use of practice guides to assist child protection workers in cases involving family violence.
- ▷ Introducing cross-sector training for workers within all the systems that come in contact with children affected by family violence.
- ▷ Appointing advanced practitioners with expertise in family violence who can be consulted by child protection workers, and vice versa.

We support the work which DHHS has done in developing practice resources for child protection practitioners, noting that these practice resources need to be supported by ongoing training. Family violence training for child protection practitioners should include embedding an understanding of the relationship between Child Protection and other service systems, including the Magistrates' Court and the federal family law system. We make recommendations below to further strengthen and support child practitioner training.

Discussed in further detail in Chapter 40 is the recommendation that the Victorian Government establish a delivery mechanism for comprehensive workforce development and inter-disciplinary learning on family violence across health, and human services and justice workforces. This should include consideration of the NSW Education Centre Against Violence model described in that chapter.

In Chapter 40 we also recommend that family violence principal practitioner positions be established in the Department of Health and Human Services, the Department of Education and Training and Department of Justice and Regulation by 31 December 2016. The role of the family violence principal practitioner in the DHHS will be to, among other things, provide advice on family violence practice issues across the department. While the location of this role would be a matter for government, it could potentially form part of the Office of Professional Practice, providing an additional resource to the Office of Professional Practice to support and build upon the work done in Child Protection to date. Liaison with the Family Violence and Sexual Assault Team would also be required.

Improving family violence risk assessment for children

We recognise the importance of the development of a CRAF that is incorporated into Child Protection intake processes to assist with identifying children and young people who are at risk of family violence.

Recommendation 1 in Chapter 6 proposes the revision of the CRAF to include an actuarial tool to provide guidance on assessing a person's risk of becoming a victim of family violence, and the risk that the perpetrator will repeat and/or escalate violence. We also recommend that the revised CRAF include evidence-based risk indicators that are specific to children. We agree with Judge Gray in the Luke Batty case that all services assisting adult victims and children experiencing family violence should take a consistent approach in assessing the risk posed by a violent perpetrator.

The development of a CRAF to better assess risks to children must recognise the different roles which various organisations have within the system, and allow room for professional judgment. For Child Protection, the application of the CRAF would mean, at a minimum, the alignment with the revised CRAF into the intake phase of the Best Interests Case Practice Model within Child Protection practice.³⁷⁸ The incorporation of the CRAF within Child Protection and Child FIRST processes would create greater consistency in the assessment of risk in family violence cases. DHHS service agreements with integrated family service providers, specialist family violence and other relevant services, should require the use of the CRAF relating to children affected by family violence.³⁷⁹

In the Luke Batty Inquest, Judge Gray recommended further staff training and professional development in CRAF based family violence risk assessments.³⁸⁰ We agree that the introduction of a new family violence risk assessment tool will need to be accompanied by a sustained program to develop the skills and knowledge of the child protection workforce about family violence. Without a thorough understanding of the nature and dynamics of family violence and training in safety planning, any risk assessment tool could simply become a tokenistic check list.³⁸¹ The resources developed by DHHS including *Working With Families Where an Adult is Violent: Best interests case practice model* (2014), and *Assessing Children and Young People Experiencing Family Violence: A practice guide for family violence practitioners* (2013) should be supported with ongoing training and practice guidance to support their application.

Assessing risk at the intake stage

We referred above to Judge Gray's recommendations in the Luke Batty inquest relating to the use of the revised CRAF before Child Protection decides that the matter should not proceed to investigation.³⁸² We support Judge Gray's recommendations regarding risk assessments as part of Child Protection intake processes, though we note that the particular recommendation was limited to cases where family violence services report to Child Protection. We understand that the Victorian Government and the DHHS are taking steps to implement those recommendations.

We make recommendations that build upon those made by Judge Gray, to develop and strengthen DHHS' use of the revised CRAF as part of its intake process in all cases where family violence is alleged and make recommendations that support the sharing of risk assessment information between police, DHHS and specialist family violence services.

In line with recommendations made elsewhere in this report, where reports to Child Protection were initiated by a police L17, relevant information necessary for risk assessment will have been provided to DHHS. As some reports will come to Child Protection from bodies other than police, it is important that assessments made by DHHS which identify that a child is at high risk of harm be provided to Victoria Police for assessment as to whether an application should be made for an FVIO. This was recommended by Judge Gray,³⁸³ and we support that recommendation. When police receive a risk assessment from DHHS, police should inform DHHS of the steps they have taken in response.

Data collection

As discussed earlier, we received inconsistent data from DHHS, both directly and data provided in witness statements. DHHS data was also inconsistent with police data, verified by the Crimes Statistics Agency.

In Chapter 39 we make recommendations to improve the Victorian Family Violence Database. We consider that the addition of Child FIRST, Integrated Family Services and Child Protection data to that database should be a priority.

Development of Child Protection data collection methods and identification of family violence-related events will be important to ensure that that Child Protection data is commensurate with the Family Violence Database standards and definitions.

Amending principles

The Centre for Excellence in Child and Family Welfare suggested that we consider recommending amendments to the Family Violence Protection Act or the Child Wellbeing and Safety Act to mandate a specific approach to family violence across child protection and family violence services.

We note that the harm that family violence can cause children is acknowledged in the preamble to the Family Violence Protection Act, which recognises among other things that:

children who are exposed to the effects of family violence are particularly vulnerable and exposure to family violence may have a serious impact on children's current and future physical, psychological and emotional wellbeing.³⁸⁴

Neither the Children, Youth and Families Act nor the Child Wellbeing and Safety Act refer to specific forms of child abuse. However, the principles set out in section 9 of the Children, Youth and Families Act, which are to be taken into account in considering the best interests of the child, include a requirement that Child Protection and the Children's Court take account of 'the effects of cumulative patterns of harm on a child's safety and development'. It is our view that this provision sufficiently acknowledges the need for Child Protection and, where relevant, the Children's Court to take account of the effects of family violence on children. An amendment of the kind proposed could alter the balance between the various matters which section 9 requires be considered in determining the best interests of a child. There is also a risk that a specific reference to family violence affecting children might have a perverse net-widening effect by increasing mandatory notifications to Child Protection.

It is our view it is unnecessary to amend either of these Acts.

Amending the Children, Youth and Families Act

We acknowledge that the changes made by the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014 (Vic)*, imposing a one-year limit on families to resolve protective concerns, has been raised as a concern by service providers experienced in assisting families in complex situations. We suggest that Victorian Government consider the concerns raised as part of its six-month review of the Amendment Act.

Recommendations

Recommendation 25

The Department of Health and Human Services, together with Victoria Police, develop and strengthen its current practice guidelines to facilitate further engagement with perpetrators of family violence [within 12 months] with the aim of:

- ▷ exhausting all efforts to interview the alleged perpetrator of the violence
- ▷ protecting the safety of child protection practitioners who must work with alleged perpetrators of family violence
- ▷ developing 'feedback loops' with Victoria Police and other relevant agencies—including the recommended Support and Safety Hubs, once established—in order to obtain and share information about family violence perpetrators and so assist with risk assessment and risk management.

Recommendation 26

The Department of Health and Human Services develop and strengthen practice guidelines and if necessary propose legislative amendments to require Child Protection—in cases where family violence is indicated in reports to Child Protection and is investigated but the statutory threshold for protective intervention is not met—[within 12 months] to:

- ▷ ensure the preparation of a comprehensive and robust safety plan, either by Child Protection or a specialist family violence service
- ▷ make formal referrals for families to relevant services—including specialist family violence services, family and child services, perpetrator interventions, and the recommended Support and Safety Hubs, once established
- ▷ make formal referrals for children and young people to specialist services—including counselling services—if children or young people are affected by family violence or use violence.

Recommendation 27

The Department of Health and Human Services revise and strengthen its risk management practice guidelines and procedures for circumstances when a report to Child Protection has indicated the presence of family violence [within 12 months]. Practice and procedural guidelines should be updated to require the child protection practitioner to:

- ▷ without delay, obtain from Victoria Police and any specialist family violence service all police referrals (L17 forms) and the results of any risk assessments that have been performed in relation to the child who is the subject of the report and their parents or other relevant family members
- ▷ ensure that the full text of any risk assessment is recorded in the Child Protection Service's Crisis Referral Information System notes
- ▷ without delay, provide to Victoria Police, the results of any risk assessment completed by the department that indicates a risk of family violence to a child or young person, so as to support Victoria Police in bringing an application for a family violence intervention order in the Magistrates' Court of Victoria. The department should ask that police provide feedback on whether an application to the court has been made.

Recommendation 28

Pending finalisation of the recommended information-sharing regime, the Department of Health and Human Services liaise with the Magistrates' Court of Victoria to develop an information-sharing protocol to ensure that, when a parent seeks a new or amended family violence intervention order or *Family Law Act 1975* (Cth) order in the Magistrates' Court of Victoria, information held by the department in relation to family violence risk is provided to the court [within 12 months]. Where necessary, a child protection practitioner should be made available to give evidence.

Recommendation 29

The Department of Health and Human Services require child protection practitioners to participate in training and professional development about the nature and dynamics of family violence and the department's practice guidelines dealing with family violence.

Recommendation 30

The Victorian Government amend section 327 of the *Crimes Act 1958* (Vic) to require the Director of Public Prosecutions to approve a prosecution for the offence in cases where the alleged offender is a victim of family violence and consider legislative amendments to reconcile section 327 of the *Crimes Act* and section 493 of the *Children, Youth and Families Act 2005* (Vic) [within 12 months].

Endnotes

- 1 Transcript of Bromfield, 12 October 2015, 3357 [28]–3358 [3].
- 2 Coroners Court of Victoria, 'Finding into Death with Inquest: Luke Geoffrey Batty' (28 September 2015).
- 3 Victoria, Inquiry into Protecting Victoria's Vulnerable Children, *Full Report* (2012).
- 4 It is noted that in the data provided to the Commission by the Department of Health and Human Services regarding reports to Child Protection where family violence is indicated, family violence may be present but not necessarily evident at the time of report or the reason for the protective intervention and may have been identified in later stages of involvement with Child Protection. It is also noted that where family violence is present this may not be the reason for the substantiation and that action-causation cannot be imputed.
- 5 Statement of Allen, 13 July 2015, 3 [10.1]–[10.3].
- 6 *Ibid* 4 [14].
- 7 *Ibid* 4 [15].
- 8 Department of Human Services, Child and Family Services Information, *Referral and Support Teams* (3 June 2014) <<http://www.dhs.vic.gov.au/for-individuals/children,-families-and-young-people/family-and-parenting-support/family-services/child-first-child-and-family-information,-referral-and-support-teams>>.
- 9 *Children, Youth and Families Act 2005* (Vic) ss 31–2.
- 10 Statement of Allen, 13 July 2015, 5 [18.2]–[18.5]; *ibid* s 22.
- 11 *Children, Youth and Families Act 2005* (Vic) s 33.
- 12 Statement of Allen, 13 July 2015, Attachment 4, 5–6; Department of Human Services, 'Child Protection and Integrated Family Services State-wide Agreement (Shell Agreement)' (2013) 5–6.
- 13 Statement of Allen, 13 July 2015, 7–8 [32].
- 14 Victorian Auditor-General's Office, 'Early Intervention Services for Vulnerable Children and Families' (May 2015) 6.
- 15 Statement of Allen, 13 July 2015, 6 [22].
- 16 KPMG, 'Child FIRST and Integrated Family Services: Final Report' (Department of Human Services, February 2011) 2.
- 17 Statement of Allen, 13 July 2015, 8 [34].
- 18 *Ibid* 3 [10.3].
- 19 *Ibid* 9–10 [41]; Statement of Miller, 26 July 2015, 4–5 [15].
- 20 *Children, Youth and Families Act 2005* (Vic) s 162(1).
- 21 Victoria, above n 3, 35.
- 22 This summary of processes is developed from Kristy Raithel and Rachel Kilo, 'Child Protection Australia 2013–14' (Child Welfare Series No 61, Australian Institute of Health and Welfare, 2015); Statement of Allen, 13 July 2015, 13–16; Department of Human Services, *Child Protection Practice Manual* (30 November 2015) <<http://www.dhs.vic.gov.au/cpmanual>>. A case can be closed for a number of reasons. A list of reasons is detailed in the Child Protection Manual.
- 23 Department of Health and Human Services, *Closure Policy* (27 November 2015) Child Protection Manual <<http://www.cpmanual.vic.gov.au/policies-and-procedures/phases/closure/closure-policy>>.
- 24 The figures in this pyramid differ from those provided in the DHHS witness statements to the Commission by Ms Allen and Ms Miller and the 2013–14 Annual Report, Victorian Department of Human Services. The pyramid does not include the number of protection applications made to the Children's Court or the number of 'protective orders' made by the court for that period. 2013–14 DHHS data provided to the Commission states that there were 17,405 protective orders. It is not possible to compare the DHHS data with the data contained in the Children's Court of Victoria, Annual Report 2013–14.
- 25 *Children, Youth and Families Act 2005* (Vic) ss 28–30.
- 26 *Ibid* s 183.
- 27 *Ibid* ss 162, 182, 184.
- 28 Department of Health and Human Services, *Receiving, Registering and Classifying a Report, Child Protection Manual* (3 March 2016) <<http://www.cpmanual.vic.gov.au/policies-and-procedures/phases/intake/receiving-registering-and-classifying-report>>.
- 29 *Children, Youth and Families Act 2005* (Vic) ss 34, 187, 205. See also Statement of Allen, 13 July 2015, 12–13 [57]–[58].
- 30 Department of Health and Human Services, above n 28.
- 31 Transcript of Allen, 15 July 2015, 331 [2]–[25].
- 32 Police data, verified by the Crimes Statistics Agency, specified that in 2013–14 there were 11,042 reports made by police to Child Protection via the L17 process: 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 16: Total referrals made following a family incident—Victoria Police, July 2009 to June 2014, 40, provided to the Commission by the Crime Statistics Agency, 8 January 2016. This data is inconsistent with the data provided by DHHS. However, for the purposes of this Chapter, the Commission will use DHHS data when describing the pathway through the Victorian child protection system.
- 33 Department of Health and Human Services, 'Data Request Summary' (9 June 2015), Worksheet 3, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015, clarified on 4 February 2016.
- 34 *Ibid* Worksheet 10. The Commission notes that these figures relate to family violence that is indicated at the time of the report to Child Protection. Later investigation may determine that family violence may also be a factor in a greater or lesser number of reports. The Commission cannot comment on how 'family violence' is imputed and the internal processes within DHHS, when recording family violence as an identifying factor at the point of intake.
- 35 Raithel and Kilo, above n 22, 2–3.
- 36 Department of Health and Human Services, *Investigation* (27 November 2015) Child Protection Manual <<http://www.cpmanual.vic.gov.au/policies-and-procedures/phases/investigation>>.
- 37 Department of Health and Human Services, *Decision Making after Investigation* (27 November 2015) Child Protection Manual <<http://www.cpmanual.vic.gov.au/policies-and-procedures/phases/investigation/decision-making-after-investigation>>.
- 38 Department of Health and Human Services, above n 28.
- 39 A child is in need of protection if the grounds in the Act exist: *Children, Youth and Families Act 2005* (Vic) s 162.
- 40 Department of Human Services, above n 37.
- 41 Department of Health and Human Services, above n 33, Worksheet 9.
- 42 *Ibid*.
- 43 See *Children, Youth and Families Act 2005* (Vic) s 162.
- 44 Department of Health and Human Services, above n 33, Tab 2.
- 45 Raithel and Kilo above n 22, 3.
- 46 Department of Health and Human Services, *Protective Intervention Policy* (29 February 2016) Child Protection Manual <<http://www.cpmanual.vic.gov.au/policies-and-procedures/phases/protective-intervention/protective-intervention-policy>>.
- 47 Statement of Allen, 13 July 2015, 14 [67]–[68]. This period is known as the protective phase.

48 Department of Health and Human Services, 'DHHS Response to Item 3 of the Request for Materials in Relation to the Royal Commission into Family Violence (Day 20)' (8 October 2015), 3 [16], produced by the State of Victoria in response to the Commission's Notice to Produce dated 14 August 2015 (as varied on 20 August 2015 and 20 October 2015).

49 Transcript of Allen, 15 July 2015, 331 [26]–332 [6]. See also Department of Health and Human Services, *Case Management in Protective Intervention* (1 March 2016) Child Protection Manual <<http://www.cpmanual.vic.gov.au/policies-and-procedures/phases/protective-intervention/case-management-protective-intervention>>.

50 Statement of Allen, 13 July 2015, 14 [69].

51 Raithel and Kilo, above n 22, 11.

52 Ibid. This rate does not include children who were the subject of a notification which was not subsequently investigated. The AIHW defines children receiving child protection service as 'one or more of the following occurring within the reporting period: an investigation of a notification, being on a care and protection order, or being in out-of-home care. It is not a total count of these 3 areas; it is a count of unique children across the 3 areas': at 7–8, 11.

53 Raithel and Kilo, above n 22, 3. The court hears a number of primary applications including protection applications (the most common), irreconcilable difference applications, permanent care applications, temporary assessment applications and therapeutic treatment order applications: *Children, Youth and Families Act 2005* (Vic) s 515(1). Secondary applications, including breaches, extensions, variations and revocations, constitute a significant part of the court's work. Primary applications to the Court are usually a last resort—for example, where the families or extended families are unable to provide safe care or where other avenues for resolution of the situation have been exhausted.

54 *Children, Youth and Families Act 2005* (Vic) s 162(1).

55 And no such order can be made without having received and considered a disposition report: *ibid* s 276.

56 *Ibid* s 10(1). Best interests principles and factors which must be considered are set out in ss 10(2)–(3).

57 Department of Health and Human Services, above n 33, Tab 2. Reports may result in more than one Protection Application during the same period. Protective Orders may relate to court orders other than initiating protection applications.

58 Or if there is a substantial and irreconcilable difference between the person who has custody of the child, and the child, to such an extent that the care and control of the child is likely to be seriously disrupted: *Children, Youth and Families Act 2005* (Vic) s 274.

59 *Ibid* s 278.

60 *Ibid* ss 280–2.

61 *Ibid* s 283.

62 *Ibid* ss 284–5.

63 *Ibid* ss 287, 289–90.

64 Or where there is a substantial and present irreconcilable difference between the person who has custody of the child, and the child, to the extent that care and control of the child is likely to be seriously disrupted: *Ibid* s 291(1)(a).

65 *Ibid* s 291(1)(b).

66 See *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014* (Vic) ss 15, 20–31.

67 *Children, Youth and Families Act 2005* (Vic) s 217.

68 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 16.

69 *Ibid* 17.

70 *Ibid* 16.

71 Magistrates' Court of Victoria and Children's Court of Victoria, 'Children's Court of Victoria: Guidelines for Conciliation Conferences' (2013) 2, produced in response to the Commission's request for information dated 5 June 2015.

72 This does not apply to children or young people: *Ibid*.

73 Magistrates' Court of Victoria and Children's Court of Victoria, above n 71, 2, 5.

74 *Ibid* 3.

75 Magistrates' Court of Victoria and Children's Court of Victoria, 'Conciliation Conference Risk Assessment' (2015), produced in response to the Commission's request for information dated 5 June 2015.

76 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 16.

77 In relation to lawyers assisting victims of family violence in the family mediation (family dispute resolution) context, see R M Field and A Lynch, 'Hearing Parties' Voices in Coordinated Family Dispute Resolution (CFDR): An Australian Pilot of a Family Mediation Model Designed for Matters Involving a History of Domestic Violence' (2014) 36(4) *Journal of Social Welfare & Family Law* 392.

78 *Children, Youth and Families Act 2005* (Vic) s 525.

79 *Ibid* s 524(4).

80 *Ibid* s 524(10).

81 *Ibid* s 524(1B).

82 *Ibid* s 524(11).

83 Victoria Legal Aid, Submission 919, 62.

84 Anonymous, Submission 533, 5.

85 *Children, Youth and Families Act 2005* (Vic) s 173.

86 *Ibid* s 173(2)(a).

87 *Ibid* s 174.

88 Department of Health and Human Services, above n 33, Tab 2.

89 Alexandra Osborn and Leah Bromfield, 'Outcomes for Children and Young People in Care' (Australian Institute of Family Studies (Cth), Research Brief No 3, 2007) 1, 12.

90 Department of Health and Human Services, above n 33, Tab 2.

91 Victoria Police, 'Code of Practice for the Investigation of Family Violence—Edition 3' (2014) 45 [6.4].

92 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 13.

93 Statement of Jackomos, 9 July 2015, 4 [21].

94 Statement of Bamblett, 14 July 2015, 8 [38]. See also Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 16.

95 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 16.

96 Transcript of Jackomos, 14 July 2015, 185 [10]–[13].

97 Statement of Bamblett, 14 July 2015, 7 [30].

98 *Ibid* 8 [37].

99 Transcript of Jackomos, 14 July 2015, 170 [22]–[27].

100 *Ibid* 170 [28]–171 [8].

101 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 17.

102 Statement of Bamblett, 14 July 2015, 9 [40].

103 *Children, Youth and Families Act 2005* (Vic) s 12.

104 *Ibid* ss 12–13. See Department of Human Services, *Aboriginal children* (26 August 2015) Child Protection Manual <<http://www.cpmanual.vic.gov.au/policies-and-procedures/aboriginal-children>>.

105 *Children, Youth and Families Act 2005* (Vic) s 13. Further principles are contained in s 14 of the Act.

106 The Best Interests Case Practice Model, summary guide, sets out a number of additional steps practitioners must undertake when considering an out-of-home placement to give effect to the principles under the Act: Department of Human Services, 'Best Interests Case Practice Model: Summary Guide' (2012) 4. See also *ibid* s 323.

107 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 17.

108 *Ibid* 40.

109 These include: Practice Advice Number 1192 'Conducting the first visit' (1 December 2013); Practice Advice Number 1199 'Circumstances for immediate removal of a child' (1 December 2013); Family-Led Decision-Making Program Guidelines (November 2013); 'Information for parents relating to a child being placed in emergency care'; 'When Child Protection workers visit- information for parents' and 'The Children's Court- Information for parents'. See Department of Health and Human Services, 'Response by the Department of Health and Human Services (the Department) to the following oral evidence of Ms Antoinette Braybrook, Aboriginal Family Violence Prevention and Legal Services, during day 6 of the public hearings' produced by the State of Victoria in response to the Commission's Notice to Produce dated 14 August 2015 (as varied on 20 August 2015 and 20 October 2015).

110 See Practice Advice Number 1340, 'Legal Aid representation for parents' (1 May 2013) 2. Department of Health and Human Services, above n 109, 3.

111 Victorian Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 7.

112 Statement of Allen, 13 July 2015, 22 [110].

113 *Children, Youth and Families Act 2005* (Vic) s 162(1).

114 Department of Human Services, 'Family Violence: Risk Assessment and Risk Management Framework and Practice Guides 1–3—Edition 2' (April 2012) 19.

115 *Ibid* 84.

116 Integrated Family Violence Partnership—Southern Melbourne, Submission 224, 9.

117 Statement of Humphreys, 7 July 2015, 9 [31].

118 Statement of Allen, 13 July 2015, Attachment 7, 8.

119 *Ibid* 9.

120 Statement of Allen, 13 July 2015, 23 [115].

121 See, eg, Statement of Humphreys, 7 July 2015, 9–10 [32].

122 Statement of Scott, 15 July 2015, 3 [8] (emphasis in original).

123 Statement of Miller, 26 July 2015, 6 [21] See also Statement of Allen, 13 July 2015, 22 [111].

124 Statement of Humphreys, 7 July 2015, 10 [33].

125 Coroners Court of Victoria, above n 2, 59.

126 *Ibid*.

127 *Ibid*.

128 *Children Youth and Families Act 2005* (Vic) s 278. The court may require that the child, the child's parent or the person with whom the child is living, to enter into an undertaking with their consent.

129 *Ibid*.

130 Department of Health and Human Services, 'DHHS Response to Items 15(a) and 15(b) of the Royal Commission into Family Violence Notice to Produce dated 13 October 2015' (2015) produced by the State of Victoria in response to the Commission's Notice to Produce dated 13 October 2015.

131 *Ibid*.

132 *Ibid*.

133 Coroners Court of Victoria, above n 2, 60.

134 *Ibid* 91.

135 Coroners Court of Victoria, above n 2, 109.

136 Letter from The Hon. Daniel Andrews MP, Premier of Victoria to Judge Ian Gray, State Coroner, 23 December 2015, 11 <http://www.coronerscourt.vic.gov.au/resources/68cf6ac7-e998-468d-a4c4-5ae4b7461378/20140855+response+premier+of+vic_luke+batty.pdf>.

137 *Ibid* 10–11.

138 Peninsula Community Legal Centre, Submission 447, 13.

139 Community consultation, Bendigo 1, 5 May 2015.

140 *Ibid*.

141 Community consultation, Ravenhall, 11 May 2015.

142 Transcript of Allen, 15 July 2015, 393 [19]–[23].

143 *Ibid* 393 [25]–394 [10].

144 Domestic Violence Resource Centre Victoria, Submission 945, 47; Peninsula Community Legal Centre, Submission 447, 13; Cathy Humphreys, 'Crossing the Great Divide: Response to Douglas and Walsh' (2010) 16(5) *Violence Against Women* 509, 511–12.

145 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, Commonwealth of Australia, 2010) 31.

146 *Children, Youth and Families Act 2005* (Vic) s 162.

147 Coroners Court of Victoria, above n 2, 92 [506].

148 *Ibid* 92 [507].

149 *Ibid* 91 [502].

150 *Ibid* 109 [22].

151 Letter from The Hon. Daniel Andrews MP, above n 136, 11.

152 *Ibid* 12. See also *Children, Youth and Families Act 2005* (Vic) ss 10, 162.

153 Statement of Allen, 13 July 2015, Attachment 8, 48.

154 Department of Human Services, Family Court of Australia and Federal Magistrates Court of Australia, 'Protocol between the Department of Human Services, the Family Court of Australia and the Federal Magistrates Court' (May 2011) 6 [1.1]–[1.4].

155 Berry Street, Submission 834, 40.

156 Ellen Fish, Mandy McKenzie and Helen Macdonald, 'Bad Mothers and Invisible Fathers: Parenting in the Context of Domestic Violence' (Discussion Paper No 7, Domestic Violence Resource Centre Victoria, 2009) 39 (citations omitted).

157 Integrated Family Violence Partnership—Southern Melbourne, Submission 224, 9; Victorian Council of Social Service, Submission 467, 65.

158 Coroners Court of Victoria, above n 2, 109 [21].

159 *Ibid*.

160 Letter from The Hon. Daniel Andrews MP, above n 136, 11.

161 *Ibid*.

162 Anonymous, Submission 534, 21.

- 163 Transcript of '37', 23 July 2015 (Confidential) C66 [1]–[8], C68 [15]–[17]. See also Confidential, Submission 38, 3–4; Confidential, Submission 883, 4; Statement of 'Ryan', 23 July 2015 (Confidential) 8 [29.2].
- 164 Statement of 'Ryan', 23 July 2015 (Confidential) 6 [27.4].
- 165 Anonymous, Submission 682, 8.
- 166 Humphreys, above n 144, 509.
- 167 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941.
- 168 EMR Regional Family Violence Partnership and Together for Equality and Respect, Submission 464, 3; Domestic Violence Resource Centre Victoria, Submission 945, 6; Federation of Community Legal Centres, Submission 958, 12; Women's Legal Service Victoria—01, Submission 940, 65; Domestic Violence Victoria—04, Submission 943, 21.
- 169 See, eg, *Children, Youth and Families Act 2005* (Vic) s 493; *Domestic Violence, Crime and Victims Act 2004* (UK) s 5; *Crimes Act 1961* (NZ) s 195A; *Criminal Law Consolidation Act 1935* (SA) s 14; *Domestic and Family Violence Act 2007* (NT) s 124A.
- 170 Kylie Cripps, 'Who's Failing Who? New Failure to Protect Laws in Victoria and the Impact on Indigenous Mothers and their Children' (2014) 8(13) *Indigenous Law Bulletin* 15, 16; Victoria, above n 3, 359–61.
- 171 Victoria, above n 3, 361.
- 172 Ibid 355.
- 173 Ibid 356.
- 174 Family and Community Development Committee, Parliament of Victoria, 'Betrayal of Trust: Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations' (2013) 502.
- 175 We note that the Committee's recommendation was specifically to amend s 326 of the *Crimes Act 1958* (Vic) to remove the element of 'gain', such that a person who failed to report a serious indictable offence involving the abuse of a child would be guilty of an offence (see Ibid Chapter 23). The Victorian Government instead created the stand-alone offence in s 327 of the *Crimes Act 1958* (Vic) (see Victorian Government Response to the Family and Community Development Committee Inquiry into the Handling of Child Abuse by Religious and Other Non-Governmental Organisations, Betrayal of Trust, 8 May 2014).
- 176 Family and Community Development Committee, above n 174, 478. We note there was subsequently some criticism of the Committee for going beyond its terms of reference, which related to institutions rather than individuals, in making a recommendation that applied to the community at large. See, eg, Jane Lee, 'Jail for Silence on Child Sex Abuse', *Domestic Violence Victoria—04*, Submission 943, 20; Federation of Community Legal Centres, Submission 958, 62; Letter from Federation of Community Legal Centres and others to The Hon. Robert Clark, Attorney-General of Victoria, 2 April 2014, 5.
- 177 *Crimes Act 1958* (Vic) s 327(3).
- 178 As at 1 July 2015, 50 penalty units was equivalent to \$7,583.50.
- 179 See *Children and Young Persons Act 1989* (Vic) s 261.
- 180 Victoria Police, *Offence recorded by offence code, 2000/01–2009/10* <http://www.police.vic.gov.au/content.asp?a=internetBridgingPage&Media_ID=60770>; Victoria Police, *Offence recorded by offence code, 2004/05–2013/14* <https://www.police.vic.gov.au/content.asp?a=internetBridgingPage&Media_ID=72209>.
- 181 Jeanne A Fugate, 'Who's Failing Whom? A Critical Look at Failure-To-Protect Laws' (2001) 76 *New York University Law Review* 272, 300–6.
- 182 Ibid. See also Brenda Midson, 'The Helpless Protecting the Vulnerable? Defending Coerced Mothers Charged with Failure to Protect' (2014) 45 *Victoria University of Wellington Law Review* 297, 317–19.
- 183 Federation of Community Legal Centres, Submission 958, 62–3; Women's Legal Service Victoria—01, Submission 940, 65; Domestic Violence Victoria—04, Submission 943, 21.
- 184 See, eg, Federation of Community Legal Centres, Submission 958, 62; Women's Legal Service Victoria—01, Submission 940, 64; Domestic Violence Victoria—04, Submission 943, 20–1; EMR Regional Family Violence Partnership and Together for Equality and Respect, Submission 464, 21.
- 185 See, eg, *Crimes Act 1958* (Vic) ss 323–6.
- 186 See, eg, Federation of Community Legal Centres, Submission 958, 62; Women's Legal Service Victoria—01, Submission 940, 64; Domestic Violence Victoria—04, Submission 943, 20–1.
- 187 Cathy Humphreys, 'Domestic Violence and Child Protection: Challenging Directions for Practice' (Issues Paper No 13, Australian Domestic & Family Violence Clearinghouse, University of New South Wales, May 2007) 8.
- 188 Women's Health West Inc, Submission 239, 36; Kildonan UnitingCare, Submission 770, 12; Jennifer Farey, Submission 747, 48–50; Anonymous, Submission 409, 2.
- 189 Australian Association of Social Workers, Submission 388, 3 (citations omitted).
- 190 Cobaw Community Health, Submission 396, 5.
- 191 Coroners Court of Victoria, above n 2, 109.
- 192 If the perpetrator is interviewed by the police in relation to a possible offence the contents of that interview could be relevant to risk assessment and should be made available to the bodies involved in assessing that risk.
- 193 Former Principal Practitioner, Children, Youth and Families Division; former Chief Practitioner, Child Protection and Youth Justice; and former Chief Practitioner, Human Services and Director of the Office of Professional Practice of what is now the Department of Health and Human Services.
- 194 Statement of Miller, 14 July 2015, 21 [79].
- 195 Bethany Community Support, Submission 434, 12; Commission for Children and Young People, Submission 790, 24.
- 196 Rory Macrae, 'The Caledonian System: An Integrated Approach to Address Men's Domestic Violence and Improve the Lives of Women and Children' (2014) (Autumn) *Ending Men's Violence Against Women and Children* 37, 40–3.
- 197 Ibid 37.
- 198 Ibid, 48–9.
- 199 No To Violence; Men's Referral Service, Submission 944, 49, 82–3.
- 200 Domestic Violence Victoria—02, Submission 943, 36. See also Ibid Attachment 4, 80–9.
- 201 Melbourne Research Alliance to End Violence Against Women and Their Children (Cathy Humphreys et al)—01, Submission 840, Attachment 4, 7–8; Family Life, Submission 758, 32; Commission for Children and Young People, Submission 790, 24.
- 202 No To Violence; Men's Referral Service, Submission 944, Attachment 4, 85. See also David Mandel & Associates LLC and Florida Coalition Against Domestic Violence, 'Safe & Together Model Advocacy Institute Summary Report 2014' (December 2014).
- 203 No To Violence; Men's Referral Service, Submission 944, Attachment 4, 82.
- 204 Ibid.
- 205 Department of Health and Human Services, above n 48, 12 [56].
- 206 Michelle Macvean et al, 'The PATRICIA Project: Pathways and Research In Collaborative Inter-Agency Working' (Landscapes: State of Knowledge Paper No 14, Australia's National Research Organisation for Women's Safety, November 2015) 56.
- 207 Ibid.
- 208 No To Violence; Men's Referral Service, Submission 944, 86.
- 209 Child and Family Services Ballarat Inc., Submission 687, 5.

- 210 Statement of Miller, 14 July 2015, 26 [96].
- 211 Ibid 27 [98].
- 212 Statement of Allen, 13 July 2015, 32 [156]. Statement of Allen, 13 July 2015, Attachment 8, 18.
- 213 Domestic Violence Victoria—04, Submission 943, 16.
- 214 Coroners Court of Victoria, above n 2, 109-10 [24].
- 215 Letter from the Hon. Daniel Andrews MP, above n 136, 13.
- 216 Victoria, above n 3, vol 2 213.
- 217 Ibid vol 2 212.
- 218 Victoria Police, Submission 923, 6.
- 219 Bob Lonnie et al, 'Victoria's Child FIRST and IFS Differential Response System: Progress and Issues' (2015) 39 Child Abuse & Neglect 41, 42-3.
- 220 Statement of Humphreys, 7 July 2015, 8 [25].
- 221 Cathy Humphreys, 'Problems in the System of Mandatory Reporting of Children Living with Domestic Violence' (2008) 14(2-3) Journal of Family Studies 228.
- 222 Department of Health and Human Services, above n 33, Worksheet 9. As noted earlier in this chapter, data focuses on reports to Child Protection, and does not necessarily identify the number of individuals affected or families who were subject to a Child Protection Report. The Commission is aware that know that some families and children may be reported to Child Protection multiple times in a year.
- 223 Coroners Court of Victoria, above n 2, 109 [23].
- 224 Letter from the Hon. Daniel Andrews MP, above n 136, 12.
- 225 Department of Health and Human Services, above n 33, Worksheet 5.
- 226 Ibid.
- 227 Victoria Police, above n 91, 45 [6.4].
- 228 Ibid.
- 229 Ibid 46 [6.4.2].
- 230 Ibid. See also *Children, Youth and Families Act 2005* (Vic) ss 162, 184.
- 231 Victoria Police, above n 91, 44 [6.1.3].
- 232 Ibid 45 [6.4].
- 233 Ibid 45 [6.3]. Where children are formally referred with the affected family member to a specialist family violence service or a report to Child Protection, a duplicate referral should not be made by police to Child FIRST: at Ibid.
- 234 Victoria Police, Submission 923, 6.
- 235 Crime Statistics Agency, above n 32, Tab 31, Table 31: Referrals made by Victoria Police by Police Region and gender of the affected family member, July 2009 to June 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015.
- 236 In 2013-14 there were 51,628 L17 referrals on behalf of affected family members. Of these 39,772 were female. In the same year another 945 L17 referrals were made to the Women's Domestic Violence Crisis Service, now called Safe Steps: Crime Statistics Agency, above n 32, Tab 31, Table 31: Referrals made by Victoria Police by Police Region and gender of the affected family member, July 2009 to June 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015.
- 237 Community consultation, Benalla 2, 19 May 2015.
- 238 Statement of Allen, 13 July 2015, 20 [99].
- 239 Ibid 21 [100].
- 240 Statement of Miller, 14 July 2015, 22 [82].
- 241 Victoria Police, Submission 923, 6.
- 242 Victoria, above n 3, vol 2 212.
- 243 Ibid vol 2 217.
- 244 Ibid vol 2 218.
- 245 Anglicare Victoria, Submission 665, 14.
- 246 Ibid.
- 247 Ibid.
- 248 Victoria Police, Submission 923, 6.
- 249 Melbourne Research Alliance to End Violence Against Women and Their Children (Cathy Humphreys et al)—01, Submission 840, Attachment 4, 9. See also Statement of Humphreys, 7 July 2015, 7 [24].
- 250 Melbourne Research Alliance to End Violence Against Women and Their Children (Cathy Humphreys et al)—01, Submission 840, Attachment 4, 9.
- 251 Ibid.
- 252 Rowena Hammond, Submission 428, 3; Centre for Excellence in Child and Family Welfare Inc., Submission 878, 15.
- 253 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 52.
- 254 Victorian Aboriginal Child Care Agency, Submission 947, 32.
- 255 Statement of Allen, 13 July 2015, 21 [105].
- 256 Ibid 22 [106].
- 257 Domestic Violence Resource Centre Victoria, Submission 945, 42.
- 258 Linda Davies and Julia Krane, 'Collaborate with Caution: Protecting Children, Helping Mothers' (2006) 26(2) Critical Social Policy 412.
- 259 Integrated Family Violence Partnership—Southern Melbourne, Submission 224, 4.
- 260 Domestic Violence Victoria—04, Submission 943, 12-13.
- 261 Integrated Family Violence Partnership—Southern Melbourne, Submission 224, 4.
- 262 See, eg, Victorian Council of Social Service, Submission 467, 10; Melbourne Research Alliance to End Violence Against Women and Their Children (Cathy Humphreys et al)—01, Submission 840, Attachment 4, 7; Federation of Community Legal Centres, Submission 958, 8; Australian Association of Social Workers, Submission 388, 4. See also Community consultation, Bendigo 2, 5 May 2015.
- 263 Victorian Council of Social Service, Submission 467, 66.
- 264 Domestic Violence Victoria—04, Submission 943, 14.
- 265 Cobaw Community Health, Submission 396, 5.
- 266 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 53.
- 267 Ibid.
- 268 Ibid 54.
- 269 Anonymous, Submission 54, 3.
- 270 Ibid.
- 271 Anonymous, Submission 37, 2.
- 272 Victoria, above n 3, vol 2 422.
- 273 Cobaw Community Health, Submission 396, 5.
- 274 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 54.

275 Shakti Migrant and Refugee Women's Support Group Melbourne Inc., Submission 500, 14.
276 Statement of Miller, 14 July 2015, 26 [97].
277 Ibid.
278 Statement of Beaton, 12 October 2015, 3 [17].
279 Ibid 4 [20].
280 Ibid 4 [21].
281 Ibid 3 [18].
282 Ibid 5–6 [23].
283 Ibid 5 [24], [26].
284 Ibid 6 [26].
285 Statement of Allen, 13 July 2015, 26 [125]–[126].
286 Department of Health, 'Child Protection Workforce', produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.
287 Statement of Allen, 13 July 2015, 26 [127].
288 Statement of Humphreys, 7 July 2015, 11 [38].
289 Statement of Beaton, 12 October 2015, 9 [35], 10 [37].
290 Department of Human Services, above n 106.
291 Statement of Allen, 13 July 2015, 23–4 [116].
292 Ibid Attachment 8, 32–53.
293 Statement of Beaton, 12 October 2015, 8 [32].
294 Ibid 8 [33].
295 Coroners Court of Victoria, above n 2, 78–9 [435].
296 Ibid 109–10.
297 State of Victoria, '2015–16 Budget Paper No 3: Service Delivery' (Department of Treasury and Finance, 2015) 5, 7.
298 Statement of Allen, 13 July 2015, 37–8 [190].
299 Ibid 39 [191].
300 Australian Law Reform Commission and New South Wales Law Reform Commission, above n 145, 1373.
301 Victoria, above n 3, vol 2 224.
302 Ibid vol 2 225.
303 Statement of Allen, 13 July 2015, 3 [12.2].
304 Ibid 5 [21].
305 Ibid 16 [76].
306 Victorian Auditor-General's Office, above n 14, 33.
307 Ibid 35.
308 Statement of Allen, 13 July 2015, 16–17 [77].
309 Statement of Miller, 14 July 2015, 28 [104].
310 Ibid 28 [105].
311 Ibid 29 [108].
312 KPMG, 'Child FIRST and Integrated Family Services: Final Report' (Department of Human Services, February 2011) 41.
313 Ibid 42.
314 Ibid 42–4.
315 Victorian Auditor-General's Office, above n 14, 33.
316 Macvean et al, above n 206, 11.
317 Ibid 52.
318 Ibid 55.
319 Centre for Excellence in Child and Family Welfare Inc., Submission 878, 19–20.
320 *Child Wellbeing and Safety Act 2005 (Vic)* ss 8–10.
321 Departments of Premier and Cabinet, Treasury and Finance, Human Services, Education and Employment, Justice and Victorian Communities: Ibid s 14.
322 Ibid ss 13–15.
323 These broad principles include that society as a whole shares responsibility for promoting the well-being and safety of children (ibid s 5(1)(a)), that all children should be given the opportunity to reach their full potential and participate in society regardless of their family circumstances and background (ibid s 5(1)(b)) and that government intervention in family life should be limited (ibid s 5(1)(d)).
324 More specific directives include that children should be able to enrol in kindergarten (ibid s 5(1)(e)), that services should seek the active involvement of the local community's cultural groups, and to be accessible and responsive to the particular cultures, languages and circumstances of the community (ibid s 5(2)(b)), and that services should cooperate with other services or professionals to work in the interests of the child and family (ibid s 5(3)(e)).
325 Ibid s 5(3)(e).
326 Centre for Excellence in Child and Family Welfare Inc., Submission 878, 20.
327 Statement of Allen, 13 July 2015, 27, [132].
328 Department of Human Services, above n 114, 11–12.
329 Statement of Allen, 13 July 2015, 27–8 [133].
330 Ibid 28 [134].
331 Statement of Allen, 13 July 2015, 24 [118], 28 [134]; Coroners Court of Victoria, above n 2, 89.
332 Statement of Allen, 13 July 2015, 28 [135].
333 Ibid.
334 Ibid 28 [137].
335 Ibid 28 [139].
336 Domestic Violence Resource Centre Victoria, Submission 945, 40; State of Victoria, Submission 717, 42.
337 Melbourne Research Alliance to End Violence Against Women (Prof Cathy Humphreys et al)—01, Submission 840, Briefing Paper No 1, 6; Domestic Violence Resource Centre Victoria, Submission 945, 3; Domestic Violence Victoria—04, Submission 943, 12.
338 Nicky Stanley and Cathy Humphreys, 'Multi-Agency Risk Assessment and Management for Children and Families Experiencing Domestic Violence' (2014) 47 *Children and Youth Services Review* 78, 81.
339 Coroners Court of Victoria, above n 2, 86, 90.
340 Ibid 86.
341 State of Victoria, Submission 717, 32.
342 Coroners Court of Victoria, above n 86, 103–4.

343 Ibid 109.

344 Letter from the Hon. Daniel Andrews MP, above n 136, 9–10.

345 Ibid 2.

346 Macvean et al, above n 206, 56.

347 Statement of Widmer, 31 July 2015, 11–12 [47.2].

348 *Children, Youth and Families Act 2005* (Vic) ss 3, 192–202.

349 Ibid ss 35–6.

350 Statement of Allen, 13 July 2015, 29–30 [144].

351 Victoria Police, 'Follow up action taken by the agency receiving the L17 referral' (19 June 2015), 1, produced by the State of Victoria in response to the Commission's Notice to Produce date 5 June 2015.

352 See Statement of Field, 31 July 2015, 10 [42].

353 Department of Human Services, above n 154, 19–20 [10.3]–[10.3.4].

354 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 55; Statement of McGregor, 6 August 2015, 9–10 [45]–[51]; Statement of Brown, 6 August 2015, 12 [63]–[64].

355 *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014* (Vic) ss 27, 34, 36.

356 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 55–6.

357 Legal and Social Issues Committee, Parliament of Victoria, Inquiry into the Children, Youth and Families Amendment (Restrictions of the Making of Protection Orders) Bill 2015 (2015) 12.

358 Ibid Appendix 1, 4.

359 *Children, Youth and Families Act 2005* (Vic) s 162(1).

360 Coroners Court of Victoria, above n 2, 109.

361 Letter from the Hon. Daniel Andrews MP, above n 136, 11.

362 Ibid.

363 *Children, Youth and Families Act 2005* (Vic) s 162.

364 Letter from the Hon. Daniel Andrews MP, above n 136, 11–12.

365 See, eg, Jonathan Scourfield, 'The Challenge of Engaging Fathers in the Child Protection Process' (2006) 26(2) *Critical Social Policy* 440.

366 See, eg, Domestic Violence Victoria—04, Submission 943, 14; Kildonan UnitingCare, Submission 770, 9; Integrated Family Violence Partnership—Southern Melbourne, Submission 224, 9; No To Violence; Men's Referral Service, Submission 944, 84.

367 For a meta-review of evidence of factors which foster the involvement of violent men in support programs see Derrick Gordon et al, 'Engaging Fathers in Child Protection Services: A Review of Factors and Strategies Across Ecological Systems' (2012) 34(8) *Child Youth Services Review* 1399.

368 *Children, Youth and Families Act 2005* (Vic) ss 217–22.

369 Ibid s 224.

370 Federation of Community Legal Centres, Submission 958, 62; Women's Legal Service Victoria—01, Submission 940, 64; Domestic Violence Victoria—04, Submission 943, 20–1.

371 Women's Legal Service Victoria—01, Submission 940, 64; Domestic Violence Victoria—04, Submission 943, 20–1.

372 Department of Justice, 'Betrayal of Trust: Factsheet – The new "failure to disclose" offence' (2014) 1.

373 Women's Legal Service Victoria—01, Submission 940, 64; Domestic Violence Victoria—04, Submission 943, 21.

374 Letter from Federation of Community Legal Centres et al to the Hon. Robert Clark MP, Attorney-General of Victoria, 2 April 2014, 4.

375 Cross-reference to Chapter 14.

376 Victoria Police, above n 91, 45.

377 Commission for Children and Young People, Submission 790, 15; Marianne Hester, 'Commentary on "Mothers, Domestic Violence, and Child Protection," by Heather Douglas and Tamara Walsh' (2010) 16(5) *Violence Against Women* 516, 516, describes the two systems as operating on different planets.

378 Coroners Court of Victoria, above n 2, 109. The Coroner further recommended that the full text of CRAF risk assessments are included in the DHHS information system CRIS.

379 Ibid 104.

380 Ibid 106.

381 Safe Steps Family Violence Response Centre, Submission 942, 46.

382 Coroners Court of Victoria, above n 2, 109.

383 Ibid.

384 *Family Violence Protection Act 2008* (Vic) Preamble (b).

12 Sexual assault and family violence

Introduction

This chapter explores the relationship between family violence and sexual assault. The true extent of sexual assault that occurs within the family violence context is unknown, as the majority of incidents go unreported. What we do know is that it is common, that women are overwhelmingly the victims, and their current or former male partners, the perpetrators. We also know that children are frequently victims of sexual assault by family members.

Often, sexual assault goes hand-in-hand with other forms of family violence:

Intimate partner sexual violence is one of the many abusive tactics that are characteristic of domestic violence and for some women it is a tactic which is central to the violence dynamic of the relationship ...¹

The Family Violence Risk Assessment and Risk Management Framework (also known as the Common Risk Assessment Framework, or the CRAF) recognises intra-familial sexual assault as being at the higher end of seriousness as a form of family violence and lists it as a risk factor for further violence, as well as a risk factor for death. Despite this, when women seek assistance for family violence, criminal justice, health and other workers often fail to ask about sexual assault.

The first section of this chapter considers the various contexts of family violence-related sexual assault. It explores the prevalence and incidence of sexual assault and the intersection between family violence and sexual assault. It also reviews current system responses to family violence-related sexual assault and the effects of family violence-related sexual assault on victims. This section also outlines the interventions available for young people displaying sexually abusive behaviour, and prevention programs aimed at young people.

The second section of this chapter discusses the main challenges emerging from evidence before the Commission relating to the response to sexual assault as a form of family violence. It explores the factors that cause sexual assault to be under-reported, and looks at why there is an apparent sector-wide 'failure to ask' victims about sexual assault. The section also discusses the increased demand for specialist sexual assault services and the need for adequate resourcing for these services, and considers the need for greater coordination between the sexual assault and family violence sectors.

In the final section of the chapter, after considering current practice and the issues raised by stakeholders, the Commission makes recommendations about ways to strengthen coordination and collaboration between the family violence and sexual assault sectors in the short term, including shared case work models and protocols for sharing information, participation in proposed Support and Safety Hubs, and joint education and training. We also recommend that the government investigate whether, in the longer term, the sexual assault and family violence service sectors should be fully integrated. We recommend in Chapter 41 that the Victorian Government complete a demand forecast for family violence that includes sexual violence as a form of family violence and that future investment decisions are based on this forecasting.

The Commission notes a gap in early intervention services for young people aged 15 to 17 with problem sexual behaviour and makes specific recommendations to address this gap.

Context and current practice

Definitions

Sexual assault

'Sexual assault' is a term commonly used to cover many types of unlawful sexual behaviour. It includes crimes involving penetration without consent (for example, rape), crimes involving sexual touching without consent and sexual acts against children, regardless of consent.

For the purposes of the Australian Bureau of Statistics' Personal Safety Survey, sexual assault is defined as:

An act of a sexual nature carried out against a person's will through the use of physical force, intimidation or coercion and includes any attempts to do this. This includes rape, attempted rape, aggravated sexual assault (assault with a weapon), indecent assault, penetration by objects, forced sexual activity that did not end in penetration and attempts to force a person into sexual activity ... Sexual assault excludes brief unwanted sexual touching.²

Academic research sometimes uses behavioural rather than legal definitions of sexual assault which includes a broad range of behaviours ranging from rape, sexual pressure or coercion, to sexualised bullying and sexual harassment.³ Although sexual bullying and sexual harassment do not necessarily involve criminal behaviour, they may fall within the definition of family violence, for example, as forms of sexually coercive behaviour or psychological abuse.

Family violence

The definition of 'family violence' in section 5 of the *Family Violence Protection Act 2008* (Vic) includes behaviour that is physically or sexually abusive. This may include 'sexually assaulting a family member or engaging in another form of sexually coercive behaviour or threatening to engage in such behaviour'.⁴ The Act also makes clear that 'behaviour may constitute family violence even if the behaviour would not constitute a criminal offence'.⁵

Sexual abuse

The term 'sexual abuse' is generally used in relation to sexualised behaviours with a person under the age of consent, where the perpetrator is older or is otherwise in a position of power or authority over the person.⁶ It may also be used in situations where a person is unable to consent to sexual activity due, for example, to cognitive impairment.⁷

Prevalence and incidence

Family violence and sexual violence are the most common types of violence perpetrated against women. The Council of Australian Governments' *National Plan to Reduce Violence Against Women and Their Children 2010–2022* reports:

One in three Australian women have experienced physical violence since the age of 15, and almost one in five have experienced sexual violence, according to the Australian Bureau of Statistics. In 2005, over 350,000 women experienced physical violence and over 125,000 women experienced sexual violence.⁸

The ABS Personal Safety Survey states that in 2012 an estimated 17 per cent ($n=1,494,000$) of all women aged 18 years and over and four per cent ($n=336,000$) of all men aged 18 years and over had experienced sexual assault since the age of 15.⁹ The majority of these people had been sexually assaulted by someone they knew: 1,310,900 women (or approximately 88 per cent) and 252,600 men (or approximately 75 per cent).¹⁰

The Horizons Report

The 'Horizons Report' of October 2015 from Australia's National Research Organisation for Women's Safety (ANROWS) provides the following additional analysis from the ABS Personal Safety Survey data:

- ▷ In the year prior to the survey, 87,800 women were sexually assaulted, which was about one in five of women who had experienced any form of violence.¹¹
- ▷ Close to 2.2 million women reported violence by a male intimate partner since the age of 15, and 800,000 of these incidents were sexual assaults.¹²
- ▷ Most women who had been sexually assaulted since the age of 15 were assaulted by someone they knew in the most recent incident—the largest category was a previous partner (24.9 per cent), followed by a boyfriend or date (23.9 per cent) or a friend, acquaintance, employer or co-worker (22.6 per cent). Only 4.5 per cent of women reported that they had been sexually assaulted by a current partner in the most recent incident.¹³
- ▷ Of the 2.2 million women who had experienced male intimate partner violence since the age of 15, 1.8 million experienced physical violence and 0.9 million experienced sexual violence,¹⁴ suggesting that a large proportion of these women experienced both physical and sexual violence at the hands of intimate partners.¹⁵

The Australian Institute of Criminology also notes that in the vast majority of sexual assaults perpetrators are known to victims¹⁶ and a large proportion are perpetrated by family members:

Sexual assault victims were most commonly victimised by 'known others' or family members. Specifically in 2012, 45 per cent of all victims were sexually assaulted by a 'known other' and 27 per cent by a family member.¹⁷

The prevalence of intimate partner sexual violence is difficult to estimate, given that much of this type of family violence goes unreported. Some commentators believe that it is higher than previously assumed.¹⁸

Victoria Police data provided to the Commission reveals that the proportion of family violence-related sexual offences has increased since 2009–10, when they comprised only 13.5 per cent ($n=957$) of the total recorded sexual offences.¹⁹ By 2013–14 this had risen to 34.8 per cent ($n=3594$).²⁰

Intersection between family violence and sexual assault

The Commission's terms of reference refer to 'family violence' rather than the broader 'violence against women', which would include all forms of sexual assault. Sexual violence in the family violence context includes:

- ▷ intimate partner sexual violence
- ▷ sexual violence by other family members
- ▷ intra-familial child sexual abuse
- ▷ sexual abuse of people in residential care settings (by co-residents and carers where a family-like relationship has formed).

The Director of Public Prosecutions, Mr John Champion SC, noted in his statement the close relationship between sexual assault and family violence:

The experience of the VPPS [Victorian Public Prosecution Service] shows the close links between sexual offending and family violence. The two are often closely intertwined. Legislative reforms and whole of government funding initiatives in the area of sexual offending have impacted on family violence prosecutions.²¹

Sexual assault and physical violence often co-occur within relationships. Intimate partner sexual abuse is frequently violent and repeated and 'forms part of a controlling pattern of behaviour, designed to dominate, humiliate and denigrate a victim'.²² In its submission to the Commission, CASA Forum, the peak body for the centres against sexual assault, commented that 'many of our clients have been sexually abused within a family violence relationship'.²³

The Eastern Centre Against Sexual Assault told the Commission that of its current caseload, 56 per cent of clients use its counselling services for sexual violence issues occurring in the family context.²⁴ The Loddon Campaspe Centre Against Sexual Assault reported a 'significant relationship' between sexual assault and family violence, with over half its current clients experiencing family violence.²⁵

Northern Centre Against Sexual Assault stated:

Many of the clients of Northern CASA have experienced sexual assault within the context of family violence. This might be as a child who experienced sexual abuse committed by a family member or as an adult who has experienced sexual assault by an intimate partner. It also includes many clients with a complex history of childhood sexual abuse and multiple instances of sexual assault within a family violence context, as an adult.²⁶

A sexual assault worker noted:

If he's verbally, emotionally, physically, and financially abusing her, it's highly unlikely he's going to ask her would she like to have sex or take any notice if she says "no".²⁷

An article published in 2011 cited several studies that identified a pattern of abusive partners demanding or forcing sex immediately after physical violence. It also found that women within an intimate relationship are more likely to be repeatedly raped than in cases of acquaintance or stranger rape.²⁸

Similarities and differences

Despite the crossover between sexual assault and family violence shown by the data, there is little research on the similarities and differences.²⁹

The Commission heard that family violence and sexual assault occur within relationships—family violence by definition and sexual assault, most often.³⁰ Sexual assault also occurs in a broader context than family violence, for example, between acquaintances, and a smaller proportion between strangers.³¹

Both sexual assault and family violence are gendered, committed largely by men against women or children (both boys³² and girls) and represent an abuse of control and power.

Deeply embedded societal beliefs—for example, the belief that the way women dress and behave cause men to sexually assault them; that men's intimate partners and children are their possessions to do with as they please; that women are inferior to men—influence not just men's choices to commit sexual and other acts of violence on women and children, but victim/survivors' perceptions of the criminality of such actions.³³

Women and children, like men, are also socialised in a world where such beliefs are embedded in language, the family and other common social institutions and practices ... often the key result is that women and children believe that the violence is their own fault. Believing this, many victim/survivors choose not to tell anyone about the violence and not formally report their experience.³⁴

The 2013 VicHealth National Community Attitudes towards Violence Against Women Survey found that although there has been some improvement in attitudes towards women in comparison with previous surveys conducted in 1995 and 2009, there are still many areas of concern. For example, since 1995 there has been a decrease in understanding that women are at higher risk of sexual assault by people they know than by strangers.³⁵ Further, nine per cent of those interviewed in 2013 believed that a woman cannot be raped by someone she is in a sexual relationship with, compared with six per cent in 2009.³⁶

Family violence (including intimate partner sexual violence) is generally characterised as an ongoing pattern of controlling and coercive behaviour whereas sexual assault outside the family sphere can be a 'one-off attack or series of incidents'.³⁷ Family violence is more likely to involve chronic or repeat victimisation in which 'perpetrator tactics and patterns of coercive control are built up over time within a close family relationship or partnership'.³⁸

Sexual violence as a risk factor for further violence or death

Sexual violence by a male intimate partner is a risk factor for either victim or perpetrator death as well as for victim suicide.³⁹

The associations between sexually abusive behaviour in relationships and lethal outcomes make intuitive sense when perceiving such violence as a feature of controlling behaviour. Sexual assault or rape is an extreme means of dominating and controlling another person (as is taking someone's life).⁴⁰

The CRAF recognises that sexual assault is at the higher end of seriousness and is to be viewed as a risk factor for further violence. It defines sexual assault as 'including rape, coerced sexual activity or unwanted sexual touching' and in the 'Explanation' column it states: 'Men who sexually assault their partners are also more likely to use other forms of violence against them'.⁴¹ The CRAF notes that sexual assault is a risk factor for 'an increased risk of the victim being killed or almost killed'.⁴² See Chapter 6 for a detailed discussion of risk assessment.

The Office of Public Prosecutions told the Commission that there is a 'considerable overlap between offences of serious and/or fatal violence and sexual offending with family violence which is reflected in the Witness Assistance Service prioritisation of cases'.⁴³

Contexts of family violence-related sexual assault

Intimate partner sexual violence

Intimate partner sexual violence is by its nature emotionally abusive, whether or not physical acts are involved: for example, through the use of threats of harm, sexual humiliation/degradation and sexual bargaining as pressure tactics.⁴⁴

Several submissions spoke about the stigma, shame and lack of support from others surrounding intimate partner sexual violence.⁴⁵

There's a lot of stigma involved with the kind of violence that was happening, especially with the sexual assault. No one wants to talk about that. Not many people understand it. A friend asked whether it was sex games gone wrong. Others blamed me for [removed] actions: 'You've been in hospital. You've got a mental health problem'. Or, 'You pushed him to do this'.⁴⁶

ANROWS (Australia's National Research Organisation for Women's Safety) reported that most women who had experienced intimate partner sexual violence did not label the incident as a sexual assault.⁴⁷ Many may not understand that what is happening to them is rape or sexual assault:⁴⁸

We find in our counselling that women often identify physical violence by their partners, however are surprised to learn that non-consensual or forced sex by their partner constitutes sexual assault.⁴⁹

The International Violence Against Women Survey found that women appear better able to identify intimate partner sexual violence by former, rather than current, partners.⁵⁰ The reasons for this may be confusion, loyalty and the desire to forgive current partners and a better understanding of the situation may only emerge after time and with 'the benefits of safety and hindsight'.⁵¹ The ABS Personal Safety Survey results suggest that 80 per cent of the Australian women who had suffered some form of physical or sexual violence from a current partner never reported this to police, compared with 58 per cent of the women who had suffered violence at the hands of a former partner.⁵²

Reluctance to speak out about intimate partner sexual assault may reflect a lack of willingness in our society generally to recognise the criminality of such behaviour:

In Australia, sexual violence by a current partner has the lowest rate of reporting of all assaults. Despite key outcomes in terms of awareness of intimate partner sexual violence (IPSV) and response through the justice system, the broader health and social environment remains resistant to the concept of the criminality of partner rape. Widespread complicity with perpetrators persists, in keeping with historic and outdated notions of 'conjugal rights'. Reluctance by practitioners and community alike to name partner rape results in neglect of women suffering this injustice.⁵³

ANROWS commented that resistance to intimate partner sexual violence must be understood in the context of the relationship, which may involve other forms of violence:

Given that IPSV [intimate partner sexual violence] may occur in relationships with substantial histories of coercive control and violence, the ability for women to 'resist' must always be understood with sensitivity to what types of actions are possible in the context of the violent relationship as a whole. As one woman interviewed for an AIFS research project commented: '... usually he probably would just pin me down. He wasn't violent, he just would hold me down. But if I tried to get away he would increase the pressure in order to keep me there so then it would hurt more'.⁵⁴

Some researchers have queried whether sex in the context of continual family violence can ever be consensual:

... in the context of continual violence, it is arguable that all sex is non-consensual as the capacity for a woman to 'freely consent' to sex may be fundamentally compromised ... As a participant in an Australian Institute of Family Studies (AIFS) research project said '... [b]ecause I was too terrified of him, that if I didn't say yes to that, he would rape me. I agreed to it. But it wasn't really agreeing, because I was agreeing under fear'.⁵⁵

Sexual abuse of children within the family

There are no reliable figures on the prevalence of sexual assault against children in Australia. A meta-analysis of global prevalence rates of sexual abuse that reviewed 331 studies published between 1980 and 2008 (with a total of nearly one million participants) found that 18 per cent of females and eight per cent of males reported a history of child sexual abuse.⁵⁶ The rates for Australia were 22 per cent for females and seven per cent for males.⁵⁷

The only Australian data available apart from crime statistics (which are recognised as being an underestimate due to high levels of non-reporting) comes from surveys of adults. The ABS Personal Safety Survey estimated that:

- ▷ 1,688,400 women (19.1 per cent) had experienced physical or sexual abuse before the age of 15⁵⁸
- ▷ of 1,479,900 women who had experienced partner violence since the age of 15, 36.5 per cent (n=540,800) had also experienced physical or sexual abuse before the age of 15.⁵⁹

ANROWS reported that of the 1,683,700 women who had experienced sexual violence by a male perpetrator since the age of 15, 651,600 (38.7 per cent) had also experienced child sexual abuse by a male perpetrator.⁶⁰

On the issue of child sexual abuse committed by parents, the Australian Bureau of Statistics' 2005 Personal Safety Survey estimated that 14.3 per cent of all people who experienced child sexual abuse were abused by a parent or step-parent, with rates as high as 17.1 per cent for female victims.⁶¹

The Australian Institute of Criminology found that the child victims of parental sexual abuse in the community sample were almost overwhelmingly female (91 per cent) and that more than half the offenders committed between two and 50 sexual abuse offences.⁶²

Victoria Police told the Commission that children are over-represented as victims of family violence sex crimes:

Despite accounting for less than a quarter of Victoria's population, more than six in ten victims of a family violence sex offence in 2014 were children. Despite this overrepresentation, it is highly likely family violence related sex crimes are heavily underreported. The vast majority of family violence related child sex offenders are male; however, the proportion of female offenders is higher than for non-family violence sex crimes.⁶³

While there is little research on the crossover between sexual assault and family violence when both occur in adulthood, there is some research relating to the influence of child sexual assault on future likelihood to suffer family violence. ANROWS reported that women who suffer childhood sexual abuse are more likely to experience intimate partner sexual violence than women who have not experienced childhood sexual abuse.⁶⁴ These women are also more likely to experience domestic violence that is not limited to sexual violence in their adult relationships.⁶⁵

ANROWS identified a number of factors that increased the risk of adult family violence. These include that the child sexual abuse was over a long period of time; occurred frequently; involved the use of force; involved penetration; and was perpetrated by a known person or guardian.⁶⁶ ANROWS pointed out that the impact of childhood sexual abuse may be tempered by 'appropriate and sensitive systems responses to children in need and the provision of ongoing support to women who have experienced abuse'.⁶⁷ It identified a number of situational factors that may make it more likely that a woman who has been sexually abused as a child will experience intimate partner sexual violence as an adult: being incarcerated; being poor; having post-traumatic stress disorder symptoms; having a recent victimisation; and sexual behaviours such as having a greater number of partners.⁶⁸

Experiencing family violence (including sexual abuse) as a child may also be a factor in later sexually abusive behaviour:

Intra-family (within family) sexual violence or sibling on sibling sexual violence is the most common assault pattern of children being treated for Problem Sexual Behaviours (PSB) identified in 2014 Australian research.⁶⁹

Bendigo Community Health Services commented:

Over the past decade, there has been a growing trend of children and young people engaging in problem sexual and sexually abusive behaviours, generally aimed at younger children. Through the Sexually Abusive Treatment Service it is acknowledged that approximately 80–90 per cent had a history of being exposed to family violence and that the trauma had been unacknowledged and not addressed.⁷⁰

Gippsland CASA said in its submission that 'the data from this program [Sexually Abusive Behaviours Treatment Service] reveals that family violence is the highest co-occurring factor for the children and young people referred'.⁷¹

Adult perpetrators may use a child's natural need for love and affection to their advantage. One of the submissions received by the Commission described the emotional manipulation carried out by a father on his daughter:

The dad seemed loving towards them if they went along with his requests. Jessie however often said 'no' to her dad's requests and then he would ignore her for days. He didn't tell her that this was what he was going to do, but she soon realised that this was the pattern, and when she could stand the silence no more, she relented and went looking for him and told him that he could abuse her and he then looked pleased. Whenever she went along with his requests, he told her he loved her and that she aroused him. Her dad promised to repay her in kind if he deemed she owed him something for a kindness shown, and she soon learnt that in kind meant he expected some form of abuse as reward.⁷²

Several submissions told the Commission about the stigma, shame and ongoing devastating effects of childhood intra-familial sexual abuse.

This abuse had a continuing negative impact on me, robbing me of trust at an early age, leading me to experience an enduring and overwhelming sense of shame and confusion over sexual feelings, undermining my self-confidence and compromising my intimate relationships with others.⁷³

Others spoke of lack of support from direct family members who either did not want to know that the abuse was happening or had no means of dealing with disclosures.

The circumstances of my abuse were that when I was six years old, on three separate occasions my father masturbated me. This took place when he and I were in my parents' bed, when my mother had gotten up to make breakfast for the family. Usually, the first thing in the morning my elder brother and I would do would be to go in to my parents' bedroom to have time together for stories or cuddles, before we all got up. On the occasions when my father had touched my genitals, he and I had stayed in the bed after the others had left, so there were no witnesses to what happened.

... It was time to defend myself and for the first time I told her about my father having abused me. She said 'You are lying!', which I immediately denied. To make clear that I was not concocting a story, I was more explicit, saying 'He used his fingers'. The conversation ended then; she was speechless and did not question me any further.⁷⁴

Victims of intra-familial child sex abuse may be left with an enduring feeling of being somehow 'different' to others and wondering if they were to blame for the abuse:

The sense of powerlessness and being different has never left me. I will often feel all wrong and have to leave. I cannot join in conversations as I do not have a shared experience with others. I am deeply ashamed and try so hard to remember how it started, perhaps I am somehow to blame. I can remember when I started to menstruate and he said we now had to be very careful. I still have this sense we were somehow in partnership.⁷⁵

Problem sexual behaviour by adolescents in the home

Historically, sexual abuse of children in the home has focused on adult men, such as fathers, as the perpetrators. However, there is now increasing recognition that sibling-on-sibling sexual abuse also occurs.⁷⁶ Young people with problem sexual behaviour typically target victims on the basis of proximity and vulnerability, making younger siblings common victims.⁷⁷ Some young people with problem sexual behaviour also target adults.⁷⁸

Although it is commonly thought that some adolescents who engage in sexually abusive behaviours go on in adulthood to commit serious sexual and other offences, evidence suggests that the majority do not.⁷⁹

The true extent of adolescent sexually abusive behaviour is unclear, due to its hidden nature, heavy under-reporting and because few adolescents appear before the courts.⁸⁰

The peak age for adolescent sexual offending is 15 and much of this occurs in the family context. The Australian Institute of Criminology writes:

While it is well understood that sexual offending against children may detrimentally impact their development, it is still not widely appreciated that much of that offending is actually perpetrated by adolescents and, in particular, brothers of victims.

... [I]t is clear that sexual abuse of children by other children or adolescents constitutes a significant proportion of sexual offending against children.⁸¹

Some international studies suggest that adolescent sex offenders may account for up to 50 per cent of offences against children and 30 per cent of rapes of adolescent girls and women.⁸² Studies in the United States reveal that between 30 and 60 per cent of child sexual abuse is committed by young people⁸³ and national surveys in the United Kingdom have found that two-thirds of 'contact sexual abuse' of 0 to 17 year olds is committed by peers.⁸⁴

There are a number of risk factors that can contribute to problem sexual behaviour exhibited by young people, including childhood experience of family violence and being a victim of sexual abuse.⁸⁵ CASA Forum commented in its submission that the majority of young people participating in the Sexually Abusive Behaviours Treatment Services programs have experienced family violence.⁸⁶

Sexual abuse of children in care

Section 8 of the Family Violence Protection Act defines 'family member' to include 'a child who normally or regularly resides with the relevant person or has previously resided with the relevant person on a normal or regular basis.'⁸⁷ If a child in residential, permanent or foster care is sexually abused by a live-in worker, carer or another child with whom there is a family-like relationship, this abuse will not only be a crime, it will also be family violence under the Act.

MacKillop Family Services discussed sexual exploitation of young people in care in the context of family violence in its submission, noting that having a history of family violence victimisation may have led young people into out-of-home care in the first place, where they may be vulnerable to sexual abuse:

In relation to the experience of violence toward young people in our care, in MacKillop's view there is a strong link between the issue of sexual exploitation of young people in care and family violence. These issues share many of the same risk factors. As discussed in MacKillop's submission to the Victorian Commission for Children and Young People's Systemic Inquiry into Sexual Abuse and Sexual Exploitation of Children and Young People in Care, some young people in out-of-home care seek out intimacy as a form of connection, comfort and belonging, and some adults will prey on those needs.⁸⁸

An additional four child protection workers were funded in the 2015–16 State Budget (\$2 million over four years) to undertake work with out-of-home care providers, police and other agencies to improve responses to the sexual exploitation of children in out-of-home care.⁸⁹

The Commission for Children and Young People report "*... as a good parent would ...*" examined 189 reports of sexual abuse and exploitation of children in Victorian residential care over the 12-month period from March 2013 to February 2014.⁹⁰ It found that 166 individual children were affected, with 42 children the subject of more than one report of sexual abuse.⁹¹ The types of sexual abuse reported were rape, sexual assault, sexual behaviour and sexual exploitation.⁹² Sixty-three per cent of the total children considered were involved in incidents that were 'other to child'. Thirty-one per cent were 'child to child' and three per cent 'staff to child'.⁹³ It is not known how many of these were family violence-related sexual abuse.

Sexual violence experiences of specific communities

There is little research on specific forms of violence such as intimate partner sexual violence within specific communities that have proportionally small populations.⁹⁴ ANROWS, in its review of 271 studies, reports that 'most studies, however, find differences in the prevalence, nature and lived experience of [intimate partner sexual] violence by women in minority groups'.⁹⁵ Women who live in rural areas, women with low socio-economic status, HIV-positive women, women who are or have been in prison, women with a severe mental illness, women who identify as lesbian or bisexual, transgender women and men and women who work in the sex industry are some of the minority groups that ANROWS identified in this context.⁹⁶

In its submission, Barwon CASA noted very high rates of family violence and sexual assault in rural and regional areas, with long travel times, lack of transport and isolation all issues for women in these areas.⁹⁷

In the community consultations, the Commission also heard that services are limited in regional areas,⁹⁸ and that in smaller communities the fact that everyone knows everyone means that reporting sexual violence can divide the community.⁹⁹ Evidence from the community consultations was that women from culturally and linguistically diverse backgrounds can be particularly vulnerable in isolated areas.¹⁰⁰

It is also recognised that the risk of sexual or physical violence among women from culturally and linguistically diverse backgrounds is exacerbated by a range of other factors. Women who have been sponsored to live in Australia or possess visas with limited rights may not be eligible to work, receive income support or obtain access to subsidised medical services.¹⁰¹ Financial insecurity and fear of deportation may prevent women from reporting sexual violence and escaping violent relationships.¹⁰² Women may also feel obliged to remain with their partners for religious or cultural reasons.¹⁰³ Some countries and cultures do not recognise that women possess rights over their own bodies.¹⁰⁴ Women from these countries may not see sexual violence within marriage as a 'real' crime.¹⁰⁵

Aboriginal and Torres Strait Islander women report higher levels of all kinds of violence. According to the International Violence Against Women Survey, three times as many Aboriginal and Torres Strait Islander women as non-Indigenous women reported experiencing sexual violence in the 12 months prior to the survey.¹⁰⁶ National child protection figures show that in 2013–14, substantiated notifications of sexual abuse of Aboriginal and Torres Strait Islander children occurred at approximately four times the rate of that of non-Indigenous children.¹⁰⁷

It is also known that women with disabilities experience disproportionately high rates of sexual assault compared to women without disabilities.

Studies show that adults with intellectual disabilities, psychiatric disabilities or complex communication disabilities are highly vulnerable to sexual assault ... However, 'there is no standard national data collection that includes the experiences of sexual violence amongst adults with a disability' ... which makes it very difficult to establish reliable prevalence data depicting sexual assault within this cohort.¹⁰⁸

The ABS Personal Safety Survey found that females with psychological disabilities were particularly vulnerable, with the results estimating that they suffered physical and/or sexual violence in the 12 months prior to the survey at twice the rate of all women with a disability or a long-term health condition (12 per cent compared with six per cent).¹⁰⁹ A high proportion of this sexual abuse is committed by intimate partners, who may also be their primary carer.¹¹⁰ Sexual abuse by non-family carers may constitute family violence, as section 8 of the Family Violence Protection Act recognises that 'a relationship between a person with a disability and the person's carer may over time have come to approximate the type of relationship that would exist between family members'.

The limited research into the sexual abuse of older women suggests that while such abuse occurs in a range of contexts, it is likely to happen most frequently in the home, with the perpetrators being intimate partners, or younger generation family members such as sons, sons-in-law and grandsons.¹¹¹ Sexual abuse of older women also occurs in public spaces, residential and community care facilities, and retirement villages and supported residential care services.¹¹² As in disability services, if the perpetrator who is a carer has formed a family-like relationship with the older person, this abuse will also come within the definition of family violence under Victorian law.¹¹³

Seniors Rights Victoria suggested the Victorian Government develop and implement a targeted strategy to tackle this particularly hidden form of sexual assault. The campaign by the government of Québec was cited as a useful precedent. That campaign involved a pamphlet entitled *Sexual assault of the elderly happens and is damaging ... Let's be vigilant*, which describes some of the prejudices that deny the existence of sexual violence against older women, including the myth that you cannot be sexually assaulted in a 'conjugal context'.¹¹⁴

These issues are addressed further in Volume V.

Effects on survivors

Like other forms of family violence, sexual assault has countless harmful effects: psychological, physical, social and financial.

Some of the potential psychological and emotional effects on sexual assault victims are anxiety and persistent fears, feelings of low self-esteem, blaming the self, guilt, shock, denial, suicidal ideation, difficulties with intimate, family and social relationships and post-traumatic stress disorder.¹¹⁵ Physical effects may include headaches, injuries to the sexual organs, gynaecological symptoms and chronic diseases.¹¹⁶

In addition, sexual assault can seriously disrupt a person's social and working life, affecting relationships with family and friends and leading to financial costs, such as loss of earnings and/or earning capacity and health expenses.¹¹⁷ A research study by the University of New South Wales that involved in-depth interviews with 13 female sexual assault victims highlighted how sexual assault and child sex abuse affects their performance in the workplace.¹¹⁸ The study reported that many women had difficulty in holding down a job after experiencing sexual violence because of (for example):

... needing to take extended periods of time off due to medical and emotional impacts, or frequent shorter periods to attend legal and other appointments, without feeling able to disclose or explain to work what was going on.

... low self esteem and depression, feeling shattered 'as if old self gone', making it very difficult to continue carrying out normal work and participate socially or professionally in the workplace.¹¹⁹

Within intimate partner relationships 'the use of sex to control, degrade, and humiliate a person can be a violation of trust, bodily integrity, and autonomy. It may be especially cruel'.¹²⁰

Childhood sexual abuse is a risk factor for mental health problems in adulthood. Research has found that victims of childhood sexual abuse are three times more likely to experience mental health problems as adults than members of the general community.¹²¹ Northern Centre Against Sexual Assault commented in its submission to the Commission that 'victims of childhood sexual abuse ... [are] some of the people who are most deeply impacted by family violence'.¹²²

Childhood sexual abuse is also a risk factor for problematic sexual behaviour by adolescents.¹²³

Current system responses to family violence–related sexual assault

In the last decade there have been significant reforms to procedures, rules of evidence and jury directions in the area of sexual assault. In 2006–07, the Victorian State Budget provided \$29 million over four years and \$1.8 million in capital to the Sexual Assault Reform Strategy, a package of measures designed to improve the response to victims of sexual assault.¹²⁴ An allocation of almost \$8 million over four years was subsequently made in the 2008–09 budget to improve access to prosecution services in regional Victoria.¹²⁵ SARS stemmed from the Victorian Law Reform Commission's *Sexual Offences: Final Report* (2004), which was highly critical of the justice system's response to sexual assault.

The SARS three year evaluation was completed in 2011. The final report found that:

... it is clear that the Sexual Assault Reform Strategy has started to make a real difference for many victim survivors of sexual assault and that the investment in the sexual assault reform is cost effective. However, it is also clear that more still needs to be done to ensure that access to the criminal justice system is equitable for all and that those who manage the process are able to maintain their level of specialisation.¹²⁶

In this section we outline the current system responses to reported sexual assault, including support and counselling services, criminal justice system initiatives and prevention programs.

CASAs

In Victoria, the specialist sexual assault sector comprises non-profit, government-funded centres against sexual assault, along with six multi-disciplinary centres that were set up as part of the 2006 SARS. CASAs have been operating in Victoria since 1979.¹²⁷ The CASA Forum, established in 1992, is the peak body.¹²⁸

There are 15 CASAs across Victoria, including an after-hours phone service (Victorian Sexual Assault Crisis Line). CASAs provide a range of free advocacy and counselling services for victims of sexual assault, crisis care responses, and education and policy work.

CASAs provide crisis care to adults who have experienced sexual assault in the past two weeks or to children who have recently disclosed sexual assault. A crisis care service can be a mix of:

- ▷ 24-hour response to sexual assault
- ▷ crisis counselling in the form of debriefing
- ▷ coordination of service provision
- ▷ information, advocacy and referral
- ▷ practical assistance.¹²⁹

Upper Murray Centre Against Violence has integrated family violence and sexual assault services. In another example, South Eastern CASA runs support groups for survivors of family violence.¹³⁰

CASAs work with a wide range of service systems, reflecting the needs of survivors. In its submission, Barwon CASA describes CASA services as follows:

As a specialist service we work closely with mental health services, drug and alcohol, family violence services, child and family services, child protection, homeless services and placement and out of home care providers. Our partnerships reflect the breadth of complex factors that impact upon the lives of the many individuals and families we support. We aim to provide an empowering, respectful and culturally sensitive service committed to best practice. We are a client focussed service providing specialist therapeutic counselling, assessment, support, crisis intervention, advocacy, information, professional training, secondary consultation and education to individuals, professionals and the community.¹³¹

Funding for CASAs

The Victorian Government submission to the Commission advised that as at March 2015, government had budgeted for expenditure of \$35.3 million in 2014–15 for sexual assault services and programs. This included funding for CASAs, some of which are located in multi-disciplinary centres, for forensic medical examinations and SABTS, and Victoria Police's funding for multi-disciplinary centres.¹³²

Funding was allocated in the 2015–16 Budget for two additional workers to provide a further 600 episodes of assistance for victims of sexual assault over the next four years in the west of Melbourne, and one additional worker at the Ballarat CASA to provide an additional 75 episodes of support each year to victims and survivors of sexual assault.¹³³ The Commission notes:

- ▷ In 2014–15, DHHS allocated \$20.2 million to 10 sexual assault support service providers, or CASAs.¹³⁴
- ▷ The level of funding grew by 22 per cent between 2009–10 and 2013–14.¹³⁵
- ▷ The Victorian Government advised the Commission that in 2013–14 funding was provided for assistance to 12,034 clients, with 13,576 being assisted.¹³⁶

Multi-disciplinary centres

Multi-disciplinary centres co-locate police, child protection practitioners and sexual assault counselling services at one site, to provide integrated support for adults and children who have experienced sexual assault.¹³⁷

In 2014–15 Victoria Police budgeted \$4.79 million for MDCs, and DHHS \$4.69 million. During 2014–15, MDCs were extended to include community health nurses. The nursing service will assist with identifying needs, planning care, referrals to appropriate service providers, and education and awareness raising.¹³⁸

There are currently six MDCs operating in Mildura, Seaford, Geelong, Dandenong, Bendigo and Morwell.¹³⁹

In its pre-election budget update in November 2014, the then State Government announced a \$150 million package for a range of family violence measures, including establishing a new MDC in Wyndham, which would include family violence services. Funding was also announced to broaden the scope of the existing Geelong MDC to include family violence.¹⁴⁰ However, this was deferred pending the outcome of this Royal Commission.¹⁴¹

In its submission to the Commission, the Victorian Government noted that it 'is interested in exploring whether the MDC model could be expanded and/or modified to include a family violence response, and rolled out to priority locations.'¹⁴²

As discussed in Chapter 13, Victoria Police commissioned an evaluation of the MDCs between August and November 2015. The evaluation found that the MDC model has 'significant capacity to deliver improved outcomes for victims of sexual offences'.¹⁴³ The analysis of the data identified that co-location has contributed to close working relationships (including increased respect and more open and trusting communication), positive workplace culture, information sharing and corresponding benefits for victims. Although the evaluation identified a number of areas for improvement (for example, the current under-utilisation of forensic suites at MDCs), the results were positive overall.¹⁴⁴

Justice system initiatives

The main focus of the Victorian Government's Sexual Assault Reform Strategy, implemented in 2006, was to improve the justice system response to sexual assault victims. This included reforms to make it easier for complainants to give evidence, and to simplify jury directions that need to be given in sexual assault cases.

Victoria Police

Some of the key reforms made by Victoria Police over the last decade are:

- ▶ the development and implementation of the Code of Practice for the Investigation of Sexual Assault in 2005 (which the Commission understands is currently under review)
- ▶ the roll-out of the SOCIT model across the state in 2008 (see below for more detail)
- ▶ the realignment of the Sexual Offences and Child Abuse Coordination Office to the Victoria Police Crime Command in 2008
- ▶ the establishment of the Sexual and Family Violence Division, with a dedicated Superintendent, in Victoria Police Crime Command in mid-2011.¹⁴⁵

Sexual Offences and Child Abuse Investigation Teams are staffed by experienced Victoria Police detectives specially trained to respond to and investigate sexual assault and child abuse.¹⁴⁶ The Family Violence Code of Practice states that:

... if a sexual offence is alleged, any action taken must comply with the Code of Practice for the Investigation of Sexual Assault and the relevant SOCIT is to be contacted immediately.¹⁴⁷

The evaluation of the SOCIT/MDC model reported that:

The process of being heard and having allegations of [sexual] assault investigated thoroughly was particularly important to victims. Indeed, knowing that a competent and highly specialised investigator was working on their case was a major determinant of victims' satisfaction, more so than the outcome of the investigation ...¹⁴⁸

Anecdotally, the stakeholders reported that co-location and increased specialisation of police had resulted in a more private, user-friendly, competent and streamlined response, thereby increasing victim reporting and wellbeing.¹⁴⁹

The SOCITs use what they call the 'whole story' approach to investigating sexual crime, including sexual abuse of children.¹⁵⁰ This is based on the notion that sex offending is primarily a 'crime of relationship'.¹⁵¹ The whole story of that relationship is investigated in order to understand how and why events happened as they did, rather than just focusing on what victims did or did not do:

People understand the world in terms of stories, so our idea is, rather than slice and dice this into a moment where that finger went there or that penis went there, it's tell me about the relationship between these two people from start to finish and then let me understand the context. We are asking people to understand offending - how it happens, why people do things, how offenders get them to do things and what that looks like when they come in and tell us their stories.¹⁵²

We discuss the whole story approach further in Chapter 15.

Police may use visual and audio recording of evidence to record the statement of child and cognitively impaired victims of sexual assault or child abuse in order to reduce the need to re-tell every aspect of the incident in court.¹⁵³ This is discussed further in Chapter 16.

The courts

A number of important reforms to the court system were introduced as part of the Sexual Assault Reform Strategy. These were designed to make the experience of going through the legal process less burdensome and traumatic for victims of sexual assault. These initiatives included:

- ▷ creating the specialised Sexual Offences Lists in the Magistrates', County and Children's Courts
- ▷ developing a Specialist Sexual Offences Unit within the Office of Public Prosecutions
- ▷ establishing the Child Witness Service (see box)
- ▷ providing remote facilities for giving evidence (where the victim is cross-examined offsite or behind a screen in order to avoid direct contact with the offender)¹⁵⁴
- ▷ establishing the Forensic Nurse Network to respond to victims and offenders, conduct forensic medical examinations and provide medico legal reports to police¹⁵⁵
- ▷ making changes to jury directions in sexual assault cases (see box).

CASA Forum submitted that these reforms 'saw significant improvements to the responses people experienced when reporting sexual assault'.¹⁵⁶ The evaluation of SARS is discussed above, at the start of the section on 'current system responses'.

Two SARS reforms

Child Witness Service

The Child Witness Service supports children appearing as witnesses in matters involving violent crime (including sexual offences) in Victorian courts. It prepares children for their role as witnesses, familiarises them with court procedures, supports them through the actual process and provides debriefing and referrals. In Melbourne, children give evidence from a remote purpose-built facility.¹⁵⁷

Jury directions

There have been some major changes to jury directions in sexual assault trials, the latest embodied in the *Jury Directions Act 2015* (Vic).¹⁵⁸ The Act is designed to streamline the jury direction process and make directions easier for juries to understand, shorten trials and lessen the likelihood of appeals.¹⁵⁹ It prohibits judges or parties to the proceedings from telling or suggesting to the jury that complainants in sexual offence cases might be unreliable or require greater scrutiny, based on the timing of when they made a complaint.¹⁶⁰

Therapeutic interventions for problem sexual behaviour in young people

Programs for treating children who are exhibiting sexually abusive behaviours can be accessed voluntarily or by order of the Children's Court.

Children's Court therapeutic treatment orders

The Children's Court criminal division hears sexual offence charges against children and young people aged 10 to 17 at the time of the alleged offence. The court told the Commission that a significant proportion of these sex offences occur in a family violence context and that the 'overwhelming majority of victims are also children and adolescents and many are the younger family members of the accused'.¹⁶¹

The Children's Court has developed specialist Sex Offence Lists to hear these matters.

A deliberate effort was made to reduce the number of children, especially the very young, giving evidence. Related to this was the aim, except in cases of very serious offending, to direct offenders into appropriate sex offender treatment or education at the earliest stage.¹⁶²

If convicted of a sexual offence, children and young people aged 10 to 21 may be ordered to attend mandatory therapeutic treatment through the Male Adolescent Program for Positive Sexuality.¹⁶³ This program is run through the Youth Health and Rehabilitation Service.¹⁶⁴

The Children's Court also has power under the *Children, Youth and Families Act 2005* (Vic) to make therapeutic treatment orders (TTOs) for children aged 10 to 14, if the child has exhibited sexually abusive behaviours and the order is necessary to ensure the child attends an appropriate therapeutic training program.¹⁶⁵ TTOs enable early intervention and aim to prevent further, more serious behaviour by requiring the young person to attend a therapeutic treatment program. A TTO can remain in force for a maximum period of 12 months.¹⁶⁶

Due to the TTO regime not being available for 15 to 17 year olds, the Children's Court has created 'quasi-TTOs' in the Melbourne Children's Court Sexual Offences List for low-level offences.¹⁶⁷ Young people are referred for treatment to voluntary programs, with charges being dropped at the end of the treatment period (which can be up to 12 months).¹⁶⁸ This practice has been developed with the cooperation of the prosecution and in consultation with victims and families, but currently has no legislative basis.¹⁶⁹

If a TTO is made, any criminal proceedings against the young person in relation to the sexually abusive behaviour must be adjourned and then dismissed if the young person completes the treatment program.¹⁷⁰ The court may also adjourn proceedings if the child voluntarily participates in a therapeutic treatment program.¹⁷¹ The Commission heard that the majority of young people who engage in sexually abusive behaviour enter into treatment voluntarily, making a TTO unnecessary.¹⁷²

Sexually Abusive Behaviours Treatment Services program

Children aged up to and including 17 years old who exhibit sexually abusive behaviours but who have not been convicted of a sex offence can access the Sexually Abusive Behaviours Treatment Services program, funded by DHHS.

In 2014–15, funding of \$4.86 million was allocated for the SABTS program, which was allocated to 11 providers to deliver 453 'episodes of support'.¹⁷³

SABTS aims to prevent a pattern of sexually abusive behaviours and restore the young person to a normative developmental path.¹⁷⁴ It employs a variety of treatment approaches tailored to individual needs and emphasises 'developmental stages, the effects of trauma, attachment theory and cognitive behavioural therapy'.¹⁷⁵

SABTS can be accessed through self-referral, a community agency or school, Child Protection or after the Secretary of DHHS has prepared a therapeutic treatment report and the family is willing to access the service with no legal intervention.¹⁷⁶ The Children's Court can also make referrals after a TTO has been made.¹⁷⁷ Demand for this type of intervention has grown significantly over the past few years.¹⁷⁸

Available data indicates that of 443 clients referred to SABTS in 2011–12, 25 per cent had a disability. Thirty per cent of those clients had an autism spectrum disorder, 30 per cent had a learning disability or attention deficit disorder and 28 per cent had an intellectual disability.¹⁷⁹

Evaluation of SABTS

SABTS was evaluated over a two year period starting in 2011.¹⁸⁰ The evaluation found that an increasing number of young people accessing the service are achieving positive outcomes: in 2011–12, almost 70 per cent of cases closed reported positive outcomes, compared with 60 per cent in 2008–09.¹⁸¹ The evaluation concluded that:

... SABTS produces positive outcomes for children and young people with PSBs [problem sexual behaviours] and SABs [sexually abusive behaviours], which include reducing or eliminating those behaviours. While it is not possible to be definitive about the extent to which this occurs for all SABTS clients, our assessment is that this occurs for a majority of SABTS clients.¹⁸²

Prevention programs

There are a number of programs operating in Victorian schools designed to promote respectful relationships among school students as a way of preventing future family violence.

In relation to sexual assault, the Building Respectful Relationships curriculum for year 8 and 9 students, which was piloted in 30 schools in 2014, includes discussion of domestic violence and sexual assault in the context of power, social and institutional structure and young people's lives. The Victorian Government has announced that from 2016 respectful relationships education will be included in the curriculum from prep to year 10.¹⁸³ Further discussion about this can be found in Chapter 36.

The CASA Forum highlighted the lack of advanced personal safety programs in primary schools across the state.¹⁸⁴ One such program is Feeling Safe Together, run by South Eastern CASA in a small number of primary schools in Melbourne's South East region.¹⁸⁵

Other school-based programs that have a focus on preventing sexual assault or abuse include:

- ▷ Sexual Assault Prevention Program for Secondary Schools, initiated by CASA
- ▷ Respect Protect Connect for secondary students, delivered by South Eastern CASA
- ▷ Girls Talk/Guys Talk, a Women's Health West initiative for year 9 students
- ▷ Reality and Risk, run by Brophy Family Community Services.

These programs are described further in Chapter 36.

Challenges and opportunities

Under-reporting of sexual assault

The Commission heard evidence from a range of sources about the lack of reporting of sexual assault. The Australian Centre for the Study of Sexual Assault stated it is difficult to estimate the prevalence of sexual assault due to high non-reporting rates and so there is no single data source that can paint a detailed picture of the extent of this abuse.¹⁸⁶

The Commission heard that sexual assault in the family context is more difficult to talk about than other types of family violence.¹⁸⁷ One submission to the Commission described it thus:

... people within the family and within the community don't want to act unless there is definite proof and sexual abuse especially is a crime of secrecy and also people seem to prefer to deny the possibility of sexual abuse, even when there are obvious signs and hints.¹⁸⁸

Another told us:

As a survivor, I believe this underreporting and avoidance of the subject of incest is because it is still considered to be too uncomfortable, abhorrent and distasteful to talk about incest. This may be partly because it is seen to intrude on the 'rights of the family' (that is, the rights of the father).¹⁸⁹

Reluctance to speak out about intra-familial sexual assault may reflect a lack of willingness in society generally to recognise the criminality of such behaviour:

In Australia, sexual violence by a current partner has the lowest rate of reporting of all assaults. Despite key outcomes in terms of awareness of intimate partner sexual violence and response through the justice system, the broader health and social environment remains resistant to the concept of the criminality of partner rape. Widespread complicity with perpetrators persists, in keeping with historic and outdated notions of 'conjugal rights'. Reluctance by practitioners and community alike to name partner rape results in neglect of women suffering this injustice.¹⁹⁰

There is also evidence of under-reporting of sexual abuse of Aboriginal and Torres Strait Islander people, people from CALD backgrounds, children and older people.

As noted in Chapter 26, research suggests that approximately 90 per cent of the violence experienced by Aboriginal and Torres Strait Islander women is not brought to the attention of authorities.¹⁹¹ Many of the factors behind the high rate of non-disclosure are similar to the factors that deter non-Indigenous victims from reporting, but the disclosure of sexual violence within Aboriginal and Torres Strait Islander communities is complicated by a number of social, cultural, historical and practical considerations.¹⁹²

The literature suggests that fear of negative repercussions is a major obstacle to the reporting of sexual violence. Victims worry that disclosure may lead to further violence, cultural punishment, stigmatisation, tension within their families and conflict between their family and the wider community.¹⁹³ Further, victims may fear that the police will respond to their allegations with scepticism and sexual and cultural insensitivity.¹⁹⁴ The over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system and high rate of deaths in custody may also influence victims not to report.¹⁹⁵

In relation to child sexual abuse, there is the additional fear that allegations could result in the removal of the child from the family.¹⁹⁶ As discussed in Chapter 11, this is a significant barrier to women coming forward to report family violence generally and this fear is likely to be significantly heightened where either they, their child or both are being sexually abused. Distrust of authorities and lack of access to culturally sensitive health care also create barriers to disclosure by both the child victim and the non-offending parent.¹⁹⁷

There are also low reporting rates of sexual abuse from people of culturally and linguistically diverse backgrounds. Non-disclosure may be related to the fear of further violence,¹⁹⁸ communication barriers, stigma¹⁹⁹ and lack of access to culturally sensitive services.²⁰⁰

Cultural, religious, political and personal belief systems affect how women interpret relationships and their partner's behaviour ... Adding to that complexity, some languages have few, if any, terms to directly name sexual assault and the behaviours associated with it. This may create challenges for women from culturally and linguistically diverse (CALD) backgrounds experiencing IPSV [intimate partner sexual violence], and the support workers and interpreters who work with them.²⁰¹

Victoria Police told the Commission that it is highly likely family violence-related sex crimes against children are heavily under-reported.²⁰²

The Commission also heard of under-reporting of sexual abuse of older people. Seniors Rights Victoria expressed concern that sexual abuse of older people is not being reported. From July 2012 to June 2014, SRV dealt with 755 advice calls from older people and of these, only two reported sexual abuse.²⁰³

The lack of reports of sexual abuse does not mean that it is not happening. Rather, it reflects a national and international trend of silence and a failure on the part of our culture and our systems to adequately acknowledge and address the sexual assault of older victims.²⁰⁴

Failure to ask about sexual assault

In addition to low rates of reporting sexual assault, research has found that 'domestic violence, criminal justice, health and other workers do not ask about sexual assault when women seek help around family violence'.²⁰⁵ Victorian health professionals interviewed in one study put their hesitancy to raise the issue of sexual violence with their patients down to 'lack of knowledge'; 'feeling unqualified to talk about it'; 'being unsure of their skills to respond'; and 'feeling vulnerable themselves'.²⁰⁶

ANROWS reports that although health professionals are frequently the 'gateway to specialist violence services', they have usually not received any training in the area.²⁰⁷

It further reported that both the sexual assault and family violence service sectors find victims of intimate partner sexual violence 'a particularly challenging client group' and 'for many DV [domestic violence] service staff, ISPV [intimate partner sexual violence] is considered outside their area of expertise'.²⁰⁸

Women's Health Goulburn North East recommended educating legal, health and religious professionals on the four steps in responding effectively to help women suffering partner rape: 'Ask, Name it, Refer, Follow up'.²⁰⁹

Demand and resources

The Commission heard that increased public awareness of family violence and sexual assault in recent years has led to increased demand for services. CASA Forum commented that the reforms of the past decade have raised expectations but there has not been adequate resourcing for the specialist sexual assault service providers to cope with this increased demand. Family violence counselling for women, children and young people was specifically mentioned.²¹⁰

Northern CASA commented on the significant resourcing required to provide the necessary long-term support to people who have suffered multiple instances of family violence and sexual assault.²¹¹

The Commission did not receive data on the number of referrals to sexual assault support services that would indicate the level of demand. However, the Commission heard consistently from stakeholders that demand was increasing.

Barwon CASA, which in 2012 transitioned into the Barwon MDC and since 2013 has extended its services into the Wimmera, notes 'a marked increase in the demand' for its services, supporting 1200 people in 2011-12 and 1800 people in 2013-14. It told the Commission that its waiting lists are generally up to three months, although in the interim it provides some support, including phone counselling and single sessions. Barwon has a high percentage of children as clients, and noted the importance of immediate response:

... addressing the effect of trauma at a young age and close to the event is central to reducing the potential long term developmental and emotional disruption for children. Trauma informed therapeutic practice is essential in working with children who have experienced violence.²¹²

It also recommended 'flexible funding packages to respond to those most at need' and the introduction of sexual assault case management for victims with complex needs:

Introduce case management for sexual assault clients who present with multiple and complex issues. This model is particularly important in providing a more intensive level of care, for example re-connecting traumatised young people with non-offending family, linking adults who have complex trauma into the mental health system, case coordination with child protection, court support etc.²¹³

The Commission heard of strong (unmet) demand for 15 to 17 year olds to attend the Sexually Abusive Behaviours Treatment Services program. Some providers are funded to provide SABTS for children up to and including 17 years, but not all.

The Barwon Area Integrated Family Violence Committee told us that although the SABTS it runs is only funded for 10 to 15 year olds, referrals to the service are often made for adolescents aged up to 17.²¹⁴ Barwon CASA agreed that it often receives referrals to SABTS for adolescents aged 15 to 17²¹⁵ and CASA Forum identified the lack of a funded program for 15 to 17 year olds as a gap.²¹⁶ Barwon noted the importance of treating these adolescents to address early offending²¹⁷ and Gippsland CASA recommended extending the program to 16 to 18 year olds.²¹⁸

Enhancing coordination between the sexual assault and family violence sectors

Australia is one of many countries in which specialist family violence and sexual assault services are provided by distinct sets of professional organisations.²¹⁹ While some CASAs also provide family violence services, including out-of-hours responses, evidence before the Commission shows a clear divide between the sexual assault and family violence service sectors.²²⁰

This divide can be partly explained through the historical development of the two sectors. Family violence and sexual assault services evolved in Australia in the 1970s, with some shared philosophies and principles. These included the understanding that violence against women is a gendered issue and the belief that women have a right to information, choice and control.²²¹ Despite these commonalities, different aims and focal points ensured that the service systems for family violence and sexual assault victims developed as distinct entities. A Duncan and Western paper commented that:

... each sector was compelled by different imperatives in their development and provision of services to women experiencing violence from intimate partners. Domestic and family violence services often evolved with a focus on safe and secure refuge and accommodation, whereas sexual assault services were funded through and aligned with the health sector.²²²

Researchers also tend to classify intimate partner sexual violence separately to other types of family violence.²²³ This separate classification has resulted in a lack of research on the intersection and interdependence between the two types of violence:

Sexual violence has been recognized as a form of partner violence for years; however, much less research attention has been given to understanding the dimensions or severity of sexual violence within intimate relationships compared to understanding and measuring the dimensions of partner physical violence and psychological abuse. It is almost as if sexual violence is tangential to physical and psychological abuse even though sexual violence has been described as one of the most degrading and humiliating experiences a person might endure ...²²⁴

The current policy and practice divide can lead to victims having to attend multiple services and tell their story many times, something that can be re-traumatising. On a very practical level, for example, there are two separate after-hours telephone services: CASA's statewide Victorian Sexual Assault Crisis line and the Safe Steps Family Violence Response Centre crisis line.

The different service systems can also lead to confusion on the part of service providers supporting people who have experienced both family violence and sexual assault.

While sharing many commonalities, domestic violence and sexual assault service provision can and do fundamentally differ. As such, where women attempt to access services in response to, for example, intimate partner sexual violence (which is an obvious crossover between the two areas), they may find the separate practice priorities of domestic violence and sexual assault services difficult to negotiate.²²⁵

There are differences too in the legal responses to sexual assault and family violence. Although sexual assault and family violence victims can access both the civil and criminal systems, research suggests that reported family violence more often than not leads to a civil response whereas sexual assault is criminalised. Sexual offences exist in their own right, whereas some of the behaviours defined as family violence may not constitute criminal offences.²²⁶ The then Department of Justice described it as follows:

... within the Victorian context, sexual assault is perceived and responded to as a 'hard', serious indictable crime. As such, when victim/survivors report, there is a clearly identified and implemented criminal response. In contrast, family violence is perceived by some as a 'soft', less serious crime and there is a predominantly civil and protective response. This response primarily focuses on the protection and safety of women and children and is demonstrated by the use of family violence intervention orders and the new family violence safety notices for Victoria Police.²²⁷

Sexual Assault Reform Strategy

In 2011 the evaluation of the Victorian Government's Sexual Assault Reform Strategy recommended 'that action be taken to integrate the responses to sexual assault and family violence at a practice level'.²²⁸

A working group was established by the Department of Justice which, in a 2013 scoping paper, made a number of suggestions for dealing with intra-familial sexual assault in a more integrated manner. These include:

- ▷ training all frontline responders (for example, GPs, police, emergency staff, ambulance officers) to identify intra-familial sexual assault
- ▷ requiring mandatory screening questions in certain circumstances
- ▷ enhancing the CRAF for early identification of intimate partner violence
- ▷ enhancing support and referral pathways between specialist sexual assault and family violence services
- ▷ enhancing integration at court by:
 - ▷ considering best-practice models in other courts, for example, the New York model of integrating criminal, civil and parenting orders in the one court
 - ▷ improved IT and information sharing
- ▷ developing community education strategies to highlight intra-familial sexual assault
- ▷ providing coordinated training and education for key sexual assault, family violence and justice agencies.²²⁹

The group also noted some of the system barriers contributing to lack of an integrated response to intra-familial sexual assault.²³⁰ These are discussed further below.

Proposals for enhancing integration

The evidence before the Commission revealed general support from specialist sexual assault service providers for greater coordination of family violence and sexual assault services. A number of suggestions were made about how to do this, including:

- ▶ integrating family violence services with existing sexual assault services, using the MDC model as the basis²³¹
- ▶ attaching after-hours family violence response services to the existing after-hours service for sexual assault currently provided by CASA, and expanding the existing after-hours telephone crisis service to include face-to-face assistance on a 24-hour basis²³²
- ▶ requiring services and bodies funded to address family violence to incorporate a focus on intimate partner sexual violence as a distinct form of relationship violence²³³
- ▶ consult the sexual assault and family violence sectors on preferred models for integrating services to women experiencing or recovering from intimate partner sexual violence²³⁴
- ▶ a single place to access all necessary mental health services for victims of intra-familial sexual assault, 'under the auspices of one family violence brand'²³⁵
- ▶ developing a long-term, bipartisan, whole-of-government and whole-of-community plan.²³⁶

The expansion of the MDC model is discussed further in Chapter 13.

New Zealand review

The Commission is also aware of recent developments in New Zealand policy-making about sexual violence. The results of an initial review of the sectors revealed that the service system is fragmented, there is duplication in roles and services and spending does not always reflect effectiveness or client need.²³⁷

A new Ministerial Group has now been formed and is seeking Cabinet agreement for a holistic program of works that focuses on understanding and streamlining the whole system to reduce overlap and address gaps.²³⁸

Factors impeding coordination

While there is general support for greater coordination between the sectors, a number of barriers have been identified. Some of the system barriers identified by the Department of Justice working group considering practice integration include:

- ▶ lack of shared and consistent knowledge across agencies about sexual violence within the family
- ▶ inability of justice agencies to make appropriate referrals and to share information across agencies
- ▶ the single focus of specialised services, which limits their ability to share information, co-case manage and integrate responses
- ▶ the limitations on the justice system in relation to prolonged and repeated intimate partner sexual violence (where lack of evidence or reporting of past incidents may impede prosecution)
- ▶ practical difficulties in merging civil and criminal responses: for example, civil and criminal matters occur within different time frames (sexual assault cases may take months or years to reach finalisation, a civil family violence intervention may take days or weeks).²³⁹

CASA Forum identified the following barriers to greater integration:

- ▶ rising demand for services
- ▶ government silos and competitive funding models
- ▶ lack of face-to-face relationships between organisations, community sector and government
- ▶ lack of up-to-date IT services and databases.²⁴⁰

Some CASAs also cautioned that sexual assault requires a different service approach to other types of family violence. Eastern CASA thought it was ‘important that the discrete focus on sexual assault is not lost’²⁴¹ and Barwon CASA commented that ‘... addressing the trauma of sexual assault is a highly specialised area and requires a deeper understanding and more considered response’.²⁴² Gippsland CASA submitted:

It is important to consider that although sexual assault occurs within, and outside of the family violence context, it is often discussed as being subsumed within, as a form of family violence. Although this is true some important points of difference need to be considered such as sexual assault co-occurs as the experience of violence increases on the continuum, different barriers to disclosure due to the sexual nature of the crime and within the family context the children and young people are more often directly impacted by the violence.²⁴³

The way forward

It is clear that there is considerable overlap between family violence and sexual assault. Women and children are the primary victims of sexual violence, and most sexual assaults are committed by someone known to the victim, in many cases a family member. The 2013–14 Victoria Police data shows that more than one-third of reported sexual assaults by adults occurred in a family context, while CASAs caseload figures show that more than half their clients have experienced sexual assault within the family. The true numbers of sexual assaults are likely to be much higher, as we know that under-reporting of sexual offences is particularly high, especially among culturally and linguistically diverse, Aboriginal and Torres Strait Islander and older people.

Given that sexual violence is an identified risk factor for future serious violence, it is essential that workers who provide services to family violence victims are aware of the overlap and are trained to ask about it. This is particularly important in relation to children, who may have been groomed not to speak up about sexual abuse.

Sexual assault has been the focus of significant reforms over the past decade, and these have led to improvements in the response to victims. The Commission notes the strong increase in reports of family violence-related sexual assault to police over recent years, which may in part be a result of greater community awareness.

Given the overlap between family violence and sexual assault, it is clear that the family violence and sexual assault service sectors need to work closely together. Below we make recommendations about ways to improve existing working relationships, including shared casework models, protocols for information sharing and provision for secondary consultations. We also recommend that the Victorian Government undertake a review into the two sectors with a view to further integration. At this stage, however, we do not consider it appropriate to recommend combining the systems, nor have we suggested merging all family violence services into MDCs, noting, however, that the Victorian Government may wish to proceed with co-locating some specialist family violence workers in the Wyndham and Geelong MDCs.

Our recommendations in other chapters in relation to demand forecasting, education and awareness, prevention, the establishment of the Support and Safety Hubs, and women who work in the sex industry, include specific reference to sexual violence. We also expect that CASAs will be closely involved in the review of the CRAF, referenced in Chapter 6, to ensure that the risk of family violence-related sexual assault is adequately considered in its redevelopment.

Finally, we note a gap in early intervention services for young people aged 15 to 17 with problem sexual behaviours, and make a specific recommendation to address this.

Strengthening coordination between the family violence and sexual assault sectors

The Commission's terms of reference ask us to 'investigate how government agencies and community organisations can better integrate and coordinate their efforts'. The Commission heard that intimate partner sexual violence, child abuse by family members and other forms of sexual violence in the family context often exist alongside other forms of family violence. Despite this, sexual violence within family relationships is often treated by universal and specialist family violence service providers as different to and separate from other forms of family violence.

The Commission heard that the 'siloeing' of family violence and sexual assault services can lead to victims having to tell their stories multiple times, causes confusion for victims, who often have need of services from both sectors, and also causes confusion for referral agencies and service providers.

The Commission is aware that the family violence and sexual assault sectors are two complex areas staffed by people with high levels of expertise, which have, in Victoria, traditionally operated as separate entities. While we recognise that there are significant barriers to achieving integration, including a lack of relationships between some relevant organisations and lack of up-to-date IT services and databases, we consider that aligning the sectors under a common policy framework and within a governance structure that ensures proper cross-agency communication and information sharing is likely to lead to the best outcomes for victims and the best use of resources for government.²⁴⁴

In the short term, in order to provide a more integrated response to intra-familial sexual assault, there is a need for close partnership between the sexual assault and family violence sectors, and for both sectors to be working together. Building on relationships developed to date through, for example, regional integration committees, the family violence and sexual assault sectors should aim to better coordinate their respective services. Improved training and education of the family violence workforce in regard to sexual assault is required, and funding of specialist family violence services and CASAs should be sufficient to enable them to develop protocols to better work together in responding to family violence-related sexual assault.

In the longer term, the Victorian Government should consider conducting a comprehensive review of how the sexual assault and family violence sectors interact with each other and how an integrated response to intra-familial sexual assault may be achieved in the future.

Creating a single entry point through Support and Safety Hubs

The Commission recommends in Chapter 13 the establishment of 17 Support and Safety Hubs by 1 July 2018. The hubs will provide a single area-based entry point into specialist family violence services and Integrated Family Services. It is the Commission's expectation that the hubs will work seamlessly with sexual assault services through warm referrals and that all local agencies will have strong and positive relationships with the hubs. This will help streamline service delivery for family violence, and should help to eliminate the confusion currently experienced by victims of intra-familial sexual violence and service providers.

We do not propose that intake into CASAs be undertaken by these hubs initially, but this may occur over time. However, in areas where shared entry points and/or co-location of family violence and sexual assault services already exist, consideration should be given to including CASAs in the intake team. Similarly, where an MDC operates, these centres may wish to participate in the hub intake team on appropriate cases; co-locate in the same or nearby premises; or enter into local arrangements that protect the viability of the MDC and the shared purpose of the hubs as a gateway to a whole-of-family response.

The existence of Support and Safety Hubs will not mean that sexual assault services and specialist family violence services no longer exist as stand-alone services. Both will continue to operate and their direct service delivery role will not change. The hubs will facilitate referrals to CASAs where sexual assault is identified within family violence and the CASA service is appropriate. CASAs will continue to receive their own referrals for sexual assault outside the family violence context, and should work with their local hubs when they identify that services are required from specialist family violence services, Integrated Family Services and perpetrator programs. In this way the hub can lead the intake into specialist family violence services where appropriate or the CASA may lead it, based on the victim's needs and wishes.

Governmental review

The Victorian Government should move towards aligning policy and practice responses to family violence and sexual assault. As the first stage in this process, consideration should be given to conducting a joint review of the family violence and sexual assault service sectors, along the same lines as that commissioned by New Zealand's Ministerial Group on Family Violence and Sexual Violence. The aims of such a review are to:

- ▷ quantify current spending on these sectors
- ▷ identify which agencies are involved and their mandates to deliver services
- ▷ pinpoint service, funding and skills gaps and areas of duplication, and identify appropriate operational changes to remedy these
- ▷ identify information and data-sharing requirements and data-collection needs
- ▷ identify areas where spending is not aligned with victim needs and/or effectiveness.

Recommendation 31

The Victorian Government ensure funding of specialist family violence and sexual assault services to facilitate their collaboration [within two years] by:

- ▷ promoting and, if necessary, resourcing shared casework models
- ▷ establishing secondary consultation pathways
- ▷ participating in the recommended Support and Safety Hubs
- ▷ developing guidelines and protocols for facilitating information sharing
- ▷ participating in joint education and training.

Recommendation 32

The Victorian Government review [within five years] family violence and sexual assault services to determine whether and, if so, how family violence and sexual assault responses should be unified.

Addressing demand

The Commission heard that properly addressing the long-term needs of sexual assault victims, some of whom have complex needs, requires significant resourcing. The Commission notes Northern CASA's evidence that many CASA clients have experienced sexual assault and family violence on multiple occasions throughout their lives, and agrees that it is important to recognise the complexity of the work required to support these people on a longer-term basis. Many victims of childhood sexual abuse and repeated family violence also suffer from mental illness and have other complex needs.

For child and adolescent victims of intra-familial sexual violence, in addition to ensuring safety, the system must be in a position to provide trauma-informed therapeutic treatment close to the event. The Commission agrees with Barwon CASA that this is vital in addressing the effects of trauma and in reducing potential long-term developmental and emotional disruption for these children.

We were told that some service providers have three-month waiting lists for services. This is concerning. Adequate and coordinated funding to allow services to meet increased demand and to support the longer-term needs of sexual assault victims—both adults and children—is essential. Barwon CASA recommended ‘flexible funding packages to respond to those most at need’ and the introduction of sexual assault case management for victims with complex needs. These ideas are worthy of consideration.

The Commission has recommended elsewhere in Chapter 41 that the Victorian Government complete a demand forecast for family violence and use this forecast to determine funding decisions in the medium term. This demand forecast should include sexual violence as a form of family violence, and the demand implications for both CASAs and specialist family violence services so that adequate resources can be allocated to these services.

Increasing early intervention programs for young people with problem sexual behaviours

Early intervention for adolescents displaying sexually abusive behaviours is a necessary part of any package of measures designed to combat family violence. The Commission heard that many sexually abusive children and adolescents exhibiting sexually abusive behaviours who are accessing (or attempting to access) early intervention programs have complex needs. Timely early intervention for these children is of paramount importance in the prevention of future family and sexual violence, and for providing these young people with pathways into stable and productive lives.

Although the Commission was told the Sexually Abusive Behaviours Treatment Services program is available for children up to the age of 17, we also heard from several CASAs that they were not funded to deliver the program to 15 to 17 year olds, even though they frequently received referrals for adolescents in this age group. It appears that only some of the 11 SABTS providers receive funding to include 15 to 17 year olds in their SABTS programs.

The government should ensure that funding for SABTS is sufficient to meet demand for all age groups, including older adolescents. The Commission has no information on the appropriateness of the current SABTS program for older adolescents. It is possible that adolescents aged 15 to 17 who are displaying sexually abusive behaviours or problematic sexual behaviours have different treatment needs to 10 to 14 year olds, in which case they may require a different program. If this is the case, the government should commission the development of an appropriate program.

The Commission heard that the therapeutic treatment orders regime under the Children, Youth and Families Act is not available for 15 to 17 year olds, but rather is limited to 10 to 14 year olds. As a result of this gap, the Melbourne Children’s Court has created ‘quasi-TTOs’ for low-level sexual offences. Although the Commission understands that most young people charged with sexual offences enter therapeutic treatment programs voluntarily, the lack of a legislative basis for the Melbourne Children’s Court’s approach to 15 to 17 year olds is something that should be remedied.

Recommendation 33

The Victorian Government ensure that the Sexually Abusive Behaviours Treatment Service and other suitable treatment programs are available for all age groups up to and including 17 year olds and resource enhanced delivery of the programs across Victoria [within two years].

Recommendation 34

The Victorian Government amend the Children, Youth and Families Act 2005 (Vic) to extend the therapeutic treatment order regime to young people aged 15 to 17 years, so that the Children's Court of Victoria can order attendance at appropriate programs [within two years].

Recommendations made elsewhere

One of the gaps identified by the Commission was the challenge specialist family violence, health, education, legal and other professionals face in asking about family violence-related sexual assault. The Commission makes recommendations in Chapter 40 to support key professionals to recognise and respond to family violence, including family violence-related sexual assault.

In relation to risk assessment, we consider that CASAs should be included in the consultation in the review of the CRAF to ensure that risk of family violence-related sexual assault is adequately considered in the CRAF's redevelopment. This is discussed further in Chapter 6.

On the issue of preventing family violence, the Commission makes a series of recommendations in Chapter 36.

Endnotes

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- 12 Ibid 30.
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- 15 The PSS counting rules mean that the number of women who experienced both physical and sexual violence from a male intimate partner could be greater than these figures suggest. A single incident involving both sexual assault and physical violence is only counted once, and is counted as a sexual assault: *ibid*.
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- 19 The proportion of total sexual offences that were family incident related in 2010–11 was 24.3 per cent (n=1894); in 2011–12 it was 33.5 per cent (n=2806); and 2012–13, 34.6 per cent (n=3187): Crime Statistics Agency, 'An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14' (January 2016), Victoria Police data source, Tab 35, Table 35: Offences recorded by offence categories and family incident flag, July 2009 to June 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015.
- 20 In 2013–14 10,314 sexual offences were reported to police, of which 3,594 were in a family violence context: *ibid*.
- 21 Statement of Champion, 11 August 2015, 5 [39].
- 22 Rochelle Braaf, 'Preventing Domestic Violence Death: Is Sexual Assault a Risk Factor?' (Research and Practice Brief 1, Australian Domestic and Family Violence Clearinghouse, October 2011) 1.
- 23 CASA Forum, Submission 828, 1.
- 24 Eastern Centre Against Sexual Assault, Submission 393, 1.
- 25 The Loddon Campaspe Centre Against Sexual Assault, Submission 236, 4.
- 26 Northern Centre Against Sexual Assault, Submission 571, 2.
- 27 Duncan and Western, above n 18, 4.
- 28 Braaf, above n 22, 3–4.
- 29 Cox, above n 1, 5. Cox writes: 'Despite significant co-occurrence, both researchers and practitioners have noted a continuing tendency to dichotomise SXA [sexual assault] and DV [domestic violence] into distinct concepts and responses, and to artificially separate women's lived experience into the responsibility of one or other sector... This theoretical and practical separation is particularly apparent in Australia, where the history of DV and SXA services are distinct.' We discuss this silo effect later in the chapter.
- 30 A small proportion of sexual assault occurs between strangers. Stathopoulos and Tidmarsh argued that even so-called 'stranger' sexual assaults are crimes of relationship: '...what about the guy who jumps out [from] behind the bushes and whacks a woman over the back of the head? She's never even been conscious. How can that possibly be a relationship? The answer is because he's still making her be what he wants her to be, even if it's to degrade and humiliate her. That's still generating a relationship': Mary Stathopoulos and Patrick Tidmarsh, *Working With Sexual Assault Investigations (Sexual Offences Child Abuse Investigation Team)* (29 May 2015) Australian Institute of Family Studies <<http://www3.aifs.gov.au/acssa/pubs/workingwith/investigations.html>>.
- 31 The 2012 National Safety Survey found that 3.8 percent of women who had reported sexual assault were sexually assaulted by a stranger: Breckenridge et al, above n 6, 5 citing Australian Bureau of Statistics, above n 2; VicHealth, 'Australians' Attitudes To Violence Against Women: 2013 National Community Attitudes towards Violence Against Women Survey—Research Summary' (September 2014) 11.
- 32 Boys are far more likely to be victims of sexual assault than adult males.
- 33 Department of Justice, 'The Intersections between Family Violence and Sexual Assault: A Think Piece', (26 February 2009), 20–21, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.
- 34 Ibid 21.
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- 36 There is a statistically significant difference between 2009 and 2013: *ibid* 10.
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- 41 Department of Human Services, 'Family Violence Risk Assessment and Risk Management: Framework and Practice Guides 1-3 (Edition 2)' (April 2012) 27.
- 42 Ibid (Figure 5: Factors impacting on the likelihood and severity of family violence).
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- 44 Cox, above n 1, 28–29.
- 45 Western Region Centre Against Sexual Assault, Submission 864, 9–10; Anonymous, Submission 543, 8; Statement of 'Jones', 13 July 2015, 2 [10].
- 46 Anonymous, Submission 970, 4.

- 47 Cox, above n 1, 23.
- 48 Breckenridge et al, above n 6, 4.
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- 50 Duncan and Western, above n 18, 4.
- 51 Ibid.
- 52 Australian Bureau of Statistics, above n 2, Tables 25 and 26.
- 53 Women's Health Goulburn North East, Submission 367, 7.
- 54 Cox, above n 1, 29-30 citing Haley Clark and Antonia Quadara, 'Insights into Sexual Assault Perpetration: Giving Voice to Victim/Survivors' Knowledge' (Research Report No 18, Australian Institute of Family Studies, 2010) 36.
- 55 Cox, above n 1, 29 citing Clark and Quadara, above n 54, 19.
- 56 Antonia Quadara et al, 'Conceptualising the Prevention of Child Sexual Abuse: Final Report' (Research Report No 33, Australian Institute of Family Studies, June 2015) 2.
- 57 Ibid.
- 58 Australian Bureau of Statistics, above n 2, Table 31.
- 59 Ibid.
- 60 Cox, above n 11, 133. 'Sexual violence' is defined as any incidents involving sexual assault and/or sexual threat. 'Sexual threat' involves the 'threat of acts of a sexual nature that were made face-to-face where the person believes it is able to and likely to be carried out': Cox, above n 11, 10. 'Sexual assault' is defined earlier in this chapter. Of the 651,600 women, 89.7 percent had experienced sexual assault and 24.8 percent experienced sexual threat: Cox, above n 11, 133.
- 61 Australian Bureau of Statistics, above n 8, 42.
- 62 Jane Goodman-Delahunty, 'Profiling Parental Child Sex Abuse' (Trends & Issues in Crime and Criminal Justice No 465, Australian Institute of Criminology (Cth), January 2014) 3.
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- 64 Cox, above n 1, 23.
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- 66 Ibid 32.
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- 71 Gippsland Centre Against Sexual Assault, Submission 638, 12.
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13 Pathways to services

Introduction

In its terms of reference, the Commission was specifically asked to investigate the means of having systemic responses to family violence, and how government agencies and community organisations can better integrate and coordinate their efforts.

A common theme in previous chapters has been the complexity of the family violence system. People who have experienced family violence have difficulty navigating services due to the multiplicity of entry points, the lack of visibility of family violence services and a lack of consistent collaboration between services.

This chapter considers entry points into services for both victims and perpetrators of family violence. The focus of this chapter is how the current system response can be improved to make it easier for victims to get the help they need, when they need it.

The first section of this chapter provides an overview of the various entry points into the family violence system, and examines how the inter-related parts of the system work together.

The second section of this chapter explores possible models for reform to simplify the service system, to make it easier to access and to enable people who have experienced family violence to receive a broader range of services.

In the final section of this chapter, after considering the different options for reforming intake into services, the Commission proposes a way forward. The Commission concludes that a single, area-based intake into specialist family violence services (for both victims and perpetrators) and Integrated Family Services is the best model to make it easier for victims to get the help they need.

The Commission recommends the introduction of Support and Safety Hubs in each of the 17 Department of Health and Human Services regions. These hubs will perform triage, risk and needs assessment and ensure people are linked in with services at the local level.

Context and background

Entry points into the ‘family violence system’

There are currently a number of different ways that victims and perpetrators of family violence can access services. The Commission provided an overview of these entry points in Chapter 5.

The main points of entry for victims include:

- ▷ Victoria Police, who upon attending a family violence incident may issue a family violence safety notice, seek an intervention order on behalf of the victim or arrest the perpetrator
- ▷ specialist family violence services for women and children, which receive referrals from police, other services and directly from women experiencing family violence
- ▷ Child Protection, which receives reports from people who consider that a child needs protection from harm or abuse—this may include reports from police, schools or early childhood services
- ▷ Child FIRST, which receives referrals where there are concerns for child wellbeing—this may include referrals from police after attending a family violence incident, or referrals from schools, early childhood services and friends or family members
- ▷ legal services, which may provide legal advice and representation to victims of family violence
- ▷ magistrates' courts, which may issue family violence intervention orders
- ▷ specialist services such as homelessness, sexual assault, mental health and drug and alcohol services, which may be assisting people affected by family violence
- ▷ universal services such as general practitioners or other health practitioners, maternal and child health services, teachers or school counsellors, who may be the first contact point for people who have experienced family violence.

Ms Kym Peake, Acting Secretary of the Department of Health and Human Services (now Secretary), stated that:

... this diversity [of entry points] can be seen as a potential strength of the system as it reflects the need for appropriate access points for people with different needs, circumstances and backgrounds.¹

Ms Peake also recognised that the 'complicated array of entry points' means that the system can be 'difficult to navigate'.² This reflects the experiences of many women who made submissions to the Commission. One woman stated:

In the last three years we have passed through the criminal justice system, legal services, housing, Centrelink, community health, mental health and counselling services, DHS (child protection) and each time feeling more and more disempowered. There needs to be better coordination within the whole service system, one entry point that from disclosure/notification access to support services for families are facilitated.³

The specific challenges facing each of the key entry points is discussed in detail in Chapters 8, 9, 11, 12, 14 and 19. The purpose of the following discussion is to highlight some of the common themes the Commission heard about how these various entry points work together and, in particular, the referral pathways for formal referrals from police via the L17 form.

Lack of visibility of family violence services

One of the consistent themes to emerge from the evidence before the Commission is that people experiencing family violence, their friends and family, and those working with them from other service systems, do not know where to go to find help due to the lack of visible entry points.

In its submission, Melbourne City Mission identified lack of knowledge about who to call for specialist resources or secondary consultations as a challenge. One staff member commented:

The DV sector is invisible. We understand the issues of risk and safety, but most staff and services are hidden away. There are a lot of phone referral services. Where are the access points? We need family violence specialist teams and workers, they need to be visible [to other services].⁴

There is evidence that there is not currently ‘a clear online way to see who the services are or where they exist in certain regions.’⁵ In addition, the Commission heard there is a poor understanding within universal and other services as to what specialist family violence services offer. For example, Ms Ilana Jaffe, who is coordinating a project titled Identifying and Responding to Family Violence for Inner North West Primary Care Partnership, explained that in the process of scoping her project to determine what agencies already knew about family violence services, she discovered that:

There was confusion. They weren’t sure which websites, for example, to look up; what phone number to call; which phone number to call to consult or which number to call for refuge or for case management; and there wasn’t like a one-stop shop where they could really understand the system, it seemed, and particularly because services seemed to be divided into regions, so then which service within their region was most appropriate. It wasn’t promoted or marketed, I would say, enough to mainstream services.⁶

The complexity of referral pathways and specialist family violence services’ lack of visibility in the broader service system can make it difficult for universal services (such as general practitioners, maternal and child health nurses and schools) to know how and when to make referrals to specialist family violence services. The Commission heard that even health practitioners who have received training in assessing family violence risk and making appropriate referrals describe current referral pathways as ‘challenging to navigate [and] chaotic.’⁷ Professor Angela Taft, Director, Judith Lumley Centre, La Trobe University, said that, in the case of primary health care practitioners, 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-related concerns. She said that ‘there need to be trained resources supported and linked in with that family violence system in a systematic way where they are familiar’.⁸

In the context of the education system, the Commission heard that educators and school counsellors need to be trained in referral networks for specialist family violence services.⁹

Lack of consistent service collaboration

Another theme in evidence to the Commission was the ‘siloes’ nature of services that work with people affected by family violence, including specialist family violence services for women and children, men’s behaviour change programs, Child Protection, Child FIRST and Integrated Family Services, homelessness services, sexual assault services and health services such as mental health and drug and alcohol services.

Specialist family violence services and men’s behaviour change programs

The Commission heard that there is insufficient collaboration between perpetrator programs such as men’s behaviour change programs and specialist family violence services for women and their children.

The *Code of Practice for Specialist Family Violence Services for Women and Children* (Code of Practice) does not make any reference to services for perpetrators of family violence. The section on collaborative practice focuses on partnerships with Child Protection and police.¹⁰ The *Homelessness Services Guidelines and Conditions of Funding 2014*, which sets out the standards for specialist family violence services, have little content specific to family violence, and do not require women’s services to work with men’s services.¹¹

In submissions, some organisations said there was a false dichotomy between men’s services and services for women and children, and called for a ‘whole of family approach’, with ‘all services and strategies aligned beneath the recognised ethos of ending family violence, and addressing its impacts upon women and children’.¹² One worker from an organisation providing services to Aboriginal and Torres Strait Islander people commented:

Services often respond to the individual, but it affects [the] whole family. Our service responses aren’t just for the individual, they need to respond to both the victim’s family and the perpetrator’s family.¹³

Kildonan UnitingCare delivers men's behaviour change programs to men who are given mandatory counselling orders and men who attend voluntarily. It told the Commission that:

The family violence sector is segregated with men's services operating almost completely independently from women's and children's services. Most relationships remain intact yet the family violence system largely operates as if this is not the case. The historical divide between men's and women's and children's family services does not reflect the reality of family lives nor the desires of those who turn to the family violence system for assistance. It does little to support the safety needs of children who live with parents where family violence continues, despite statutory and criminal justice intervention.¹⁴

No To Violence members have called for better collaboration between providers of women's services and male family violence programs.¹⁵

The Commission observed that in addition to demand pressures, there are a number of systemic factors that inhibit engagement between women's services and perpetrator interventions. For example, each has separate referral points for police L17s. This means that for a single family violence incident, police send an L17 to a referral point for perpetrator programs and another L17 to a referral point for a women's service (or the Victims Support Agency if the victim is male). Currently there are 20 contact points across Victoria for perpetrator L17s¹⁶ and 19 for women's services.¹⁷ Perpetrator referral contact points are specifically funded for L17 intake, while women's services are not separately funded for this work.¹⁸ This issue is discussed in Chapter 8.

A number of submissions noted that effective risk management and safety planning needs to take into account information about the perpetrator, including the extent and nature of the risk posed to the woman and her children.¹⁹ However, the Commission heard that women's specialist family violence services receive only limited information about perpetrators on L17 referrals.²⁰ Researchers examining the extent of collaborative processes between men's behaviour change programs, police, Child Protection and other human service organisations in Victoria found that:

The feedback loops between agencies, which enable reporting on attendance, breaches of intervention orders, changes to the risk assessment, and progress at formal review points were relatively undeveloped. However, the formal engagement [by perpetrator programs] within domestic violence regional committees and the police was more developed.²¹

The Commission heard that beyond the limited information contained on the incident-based L17, there is no other system for routinely sharing information about the risk posed by perpetrators except in the very limited number of highest-risk cases considered by Risk Assessment and Management Panels (RAMPs) currently operating in two Victorian locations. This contrasts with other jurisdictions where risk information is routinely shared. The Commission discusses this in detail in Chapter 6, and recommends changes to the Victorian privacy regime to allow the sharing of information to assess and manage family violence risk in Chapter 7.

The Commission also heard that there are inconsistent partner contact arrangements when men undertake behaviour change programs (either voluntarily or when required by the court). Although this contact is required under the service standards for men's behaviour change programs,²² in practice performance is patchy.²³ Reasons for this described in evidence include demand management issues and under-developed relationships between men's behaviour change programs and relevant women's specialist family violence women's services in the area.²⁴

Men's behaviour change programs are expected to operate as part of a wider service system response to family violence. Having local partnerships and connections is what No To Violence referred to as providing a 'web of accountability' for perpetrators and is central to the theoretical underpinnings of men's behaviour change programs across the world. In the hearings, Mr Rodney Vlasis, Manager, No To Violence, told the Commission:

Changing men's behaviour is a critical part of what they do, but assisting these other agencies and practitioners from these other agencies to strengthen their ability to manage risk, to create a web of accountability around perpetrators who commit family and domestic violence, and to work towards the safety of women and children is just as critical as changing men's own behaviour.²⁵

Specialist family violence services, Child Protection and Child FIRST

Specialist family violence services are primarily funded to work with adult victims, and most do not receive dedicated funding for case management of children. Child Protection, on the other hand, has a statutory responsibility to protect children from serious harm.²⁶ The Commission heard that specialist family violence services and Child Protection have developed 'quite independently of each other'²⁷ with 'historically divergent philosophical and practice responses'.²⁸ The two sectors have been described as 'operating on different planets'.²⁹

The Commission heard that over time these different practice frameworks have created mistrust, poor communication and limited sharing of information, and significant barriers to collaboration between Child Protection and specialist family violence services.³⁰

The services focusing on adult clients and those focusing on children do not always share information effectively and work collaboratively. This creates a situation in which the links between risk to children and risks to their mothers in the context of family violence may not be recognised and responded to adequately.³¹

The Commission also heard that child protection workers may fail to understand the dynamics of family violence, resulting in women feeling unsupported by the child protection system and being reluctant to disclose the violence, for fear that they will have their children removed.³² This is discussed in Chapter 11. Submissions recommended improved integration and collaboration between Child Protection and specialist family violence services,³³ to develop shared understandings of the needs of women and children and a more holistic and coherent framework for responding to family violence.³⁴

Child FIRST

Child FIRST (Child and Family Information, Referral and Support Teams) and Integrated Family Services work with families with complex needs, including where there is family violence, although family violence is not their sole focus.³⁵ These services aim to divert families from Child Protection and address problems before they escalate, via in-home support, outreach, family group conferencing, group work and counselling. We provide more detail about these services in Chapter 10.

Child FIRST provides area-based intake for the Integrated Family Service system and other support services for vulnerable children and families.³⁶ There are 23 Child FIRST catchments across the state.³⁷ Child FIRST assesses the risk category of families, and refers families at low-risk of Child Protection involvement to community-based services and high-risk children and families to Child Protection.³⁸

Submissions state that families experiencing family violence account for a significant proportion of those accessing Integrated Family Services, with estimates ranging from 32 per cent³⁹ to 75 per cent.⁴⁰ Information provided by the Victorian Government indicates that in 2013–14, family violence was flagged as an 'issue of concern' in 41 per cent of Child FIRST clients and 34 per cent of clients of Integrated Family Services.⁴¹

While Child FIRST is considered to be improving the system's response to children, there are questions about how effective it is in relation to family violence.⁴² Submissions noted that Child FIRST and Integrated Family Services do not receive family violence-specific funding or specialised training.⁴³ Thus they have limited capacity to provide the intensive support needed to meet the needs of families in which there are child victims of family violence.⁴⁴

The Commission heard that families affected by family violence would substantially benefit from greater cross-sector collaboration between specialist family violence services, Child Protection and Child FIRST.⁴⁵ Domestic Violence Victoria recommended developing regional children's protocols and partnership agreements between specialist family violence services, Child FIRST and Child Protection.⁴⁶

In 2008, the then Department of Human Services developed a Partnership Agreement Template between specialist family violence services, Child FIRST, Integrated Family Services and Child Protection.⁴⁷ The purpose of the template agreement is to 'facilitate collaborative working relationships between family violence services, Child FIRST/Integrated Family Services and DHS Child Protection services at the local level'.⁴⁸ Protocols have been developed in the north and west metropolitan region and the eastern metropolitan region, with signatories including specialist family violence services, Child FIRST and Child Protection.⁴⁹

The complexity of referral pathways where children are involved is considered below.

Other services

The Commission heard that the homelessness service sector is similarly 'too separate' from specialist family violence services.⁵⁰ In her evidence to the Commission, Ms Heather Holst, Deputy Chief Executive Officer and Director of Services and Housing at Launch Housing, posited that the two systems should remain separate, as they specialise in separate areas, but that 'they need a rapid and accurate referral system to ensure that all the needs of any person presenting to a homelessness or family violence service are met'.⁵¹ She argued that 'single access points for accessing multiple specialised services and a reliable referral service are essential in assisting people with multiple needs, including people who have experienced family violence'.⁵² She added:

Irrespective of where a woman first seeks assistance, the links between homelessness entry points and family violence specialist services must be strong and timely. Women going into the family violence services very often need housing assistance and correspondingly, women approaching via the homelessness services need ready access to specialist family violence services.⁵³

Similarly, the Commission heard that despite the overlap between sexual assault and family violence, Centres Against Sexual Assault and specialist family violence services operate in separate service systems.⁵⁴ We heard that the siloing of family violence and sexual assault services causes confusion for victims, referral agencies and service providers. The referral pathways between the two services are unclear, and there does not appear to be a delineated role for each. Women attempting to access services in response to intimate partner sexual violence often find the 'separate practice priorities of domestic violence and sexual assault services difficult to negotiate'.⁵⁵ This is discussed in detail in Chapter 12. We discuss recent models of services responding to the interface between family violence and sexual assault below, in addition to other service collaborations and partnerships that seek to address the issues around pathways and connections between multiple systems.

The Commission also heard from a range of sources calling for closer collaboration between mental health and drug and alcohol services, and specialist family violence services. Suggestions included improved channels of communication and information sharing, better and simpler referral pathways, and co-location.⁵⁶

We discuss the intersections between the family violence system and mental health and drug and alcohol systems in Chapter 19, and the sexual assault and homelessness services systems in Chapters 9 and 12. The Commission makes recommendations regarding workforce development and cross-sector collaboration in Chapter 40.

Complexity of entry points where children are involved

The Commission heard that the existence of multiple intake points for children experiencing family violence has introduced further complexities into the system.⁵⁷ The Centre for Excellence in Child and Family Welfare submitted that these 'multiple entry and intake points, in family violence, in child protection and in family services is clearly not efficient and inevitably results in double-handling of clients and missed opportunities'.⁵⁸ Professor Cathy Humphreys, Professor of Social Work at the University of Melbourne told the Commission:

... it's not clear what the pathway is where you have children who are clearly living in situations that are far from perfect, living with domestic violence ... and what goes to the Women's Services and whether they can be capacity built more around their response to children or whether you go into the Child FIRST services. You again have to build capacity there around their response because ... they are not specialised in family violence. So there's an issue there.⁵⁹

Currently one family violence police incident results in up to three police referrals: one for the victim, one for the perpetrator, and a further referral for the child (which can be to either Child Protection or Child FIRST). We describe this process below.

Referrals by police

When police attend a family violence incident, they must assess the interests of children independently from their parents.

The Code of Practice for the Investigation of Family Violence and the family violence referral protocol between the Department of Health and Human Services and Victoria Police set out the steps police must take when a child is present at, has witnessed, or is otherwise affected by family violence.⁶⁰ This includes:

- ▷ an L17 report to Child Protection if they believe a child has suffered or is likely to suffer significant harm as a result of physical injury or sexual abuse, and the child's parents are unable or unwilling to protect the child
- ▷ a referral to Child FIRST if they have significant concerns about a child or young person's wellbeing and a formal referral has not been made to a specialist family violence service for the victim (typically the child's mother)
- ▷ an L17 referral to a specialist family violence service alongside the victim (typically their mother).⁶¹

The Code of Practice states that:

... referral pathways for children should not be duplicated. If children are formally referred with an AFM [the victim] to a specialised family violence service or a report is made to Child Protection, a duplicate referral should not be made to Child FIRST.⁶²

The Commission considers police referral options in more detail in Chapter 14.

Current L17 referral patterns

Police data shows that the majority of child-specific L17 referrals are forwarded to Child Protection rather than Child FIRST. In 2013–14, 11,042 of these were directed to Child Protection, compared with 1901 L17 referrals to Child FIRST.⁶³ This compares with 39,772 formal referrals of female affected family members (victims) by police in the same reference period.⁶⁴ The number of children included in those referrals is not known.

The Commission heard that Child FIRST is struggling to keep up with the volume of referrals which come from other sources as well as the police. The Centre for Excellence in Child and Family Welfare reported that Child FIRST catchments experience 'exceptionally high volumes of L17 referrals' and noted 'significant variations in the volume and quality' of these referrals. They further submitted that 'only a very small proportion of the L17 referrals were triaged through to a service intervention, largely due to capacity limitations either in family services or broader service systems'.⁶⁵

Gippsland Integrated Family Violence Reform Steering Committee stated that there is an inconsistent L17 referral pathway across the state, and significant demand issues from police referrals to Child FIRST. They submitted that 'since receiving L17s in 2014 Child FIRST Latrobe Baw Baw have gone into "restricted intake" on two occasions as they were unable to cope with the demand'.⁶⁶

A number of other submissions noted that Child FIRST had limited success in engaging with women when following up an L17 referral. Anglicare Victoria reported that the proportion of families successfully engaged and receiving Integrated Family Services following an L17 referral was five per cent, 'despite the many hours of service time Child FIRST expends managing each L17 referral'.⁶⁷

According to Anglicare Victoria, this is due to time lags between the family violence incident and making contact with the victim or perpetrator, and the cold-call nature of the interaction, as well as the shame and stigma of family violence, and fears of further involvement from police or repercussions from the perpetrator.⁶⁸

In 2015, the Victorian Auditor-General's report *Early Intervention Services for Vulnerable Children and Families* found that Child FIRST and Integrated Family Services are 'struggling to cope with the increased number and complexity of referrals'. These demand pressures lead to services prioritising high-need families, which means low and medium-risk families miss out, 'yet these are the very families that would benefit most from being able to access early intervention services'.⁶⁹ The Auditor-General also found that it is difficult to determine how effective services are at meeting need because of data limitations and a lack of monitoring of outcomes at the system level.⁷⁰

In regard to L17 referrals, the Auditor-General found that DHHS has not responded to emerging drivers of demand in a timely manner, referring in particular to the time taken to introduce the family violence referral protocol between Victoria Police and Child FIRST/Integrated Family Services.⁷¹ He noted that his report, that actions being taken by the department, are likely to be highly relevant to this Royal Commission.⁷²

The 2015–16 State Budget includes a \$48 million increase over four years to funding for Child FIRST and Integrated Family Services. The Centre for Excellence submitted that this new investment will increase available service capacity by approximately 10 per cent.⁷³

This is seen as a significant lost opportunity to intervene earlier to avoid continuing harm to children.⁷⁴

We collectively believe that the early trauma experienced by a child/young person in this regard is let down by a system overwhelmed by the multitude of cases and referrals hitting both the Child FIRST and Child Protection platforms. ... The system requires the capacity to dial up an intense, differentiated response to match need, particularly in the early stages of connecting with families in crisis.⁷⁵

Quality of L17s and feedback loops

The Commission also heard that, aside from the absence of funding for staff to manage L17 referrals (as discussed in Chapter 8) another challenge facing agencies which process police referrals is the quality of information included on the L17 form itself. Specialist family violence services state that for them to effectively triage referrals and prioritise their responses, the L17 form needs to provide comprehensive and accurate information. This is particularly important given services' limited capacity in the face of very high demand and the need to act quickly during a crisis.⁷⁶ This was a source of frustration for services. Further, the Victoria Police Code of Practice for the Investigation of Family Violence does not require, or provide guidance for, police members to provide family violence services with any additional information that comes to light after the L17 referral and may be relevant to risk.

Conversely, the Commission heard from some police that they were frustrated by the lack of feedback on actions taken by services after receiving an L17.⁷⁷ We note, however, that informal feedback loops do operate in some locations, with services and local police following up with each other after referrals. This matter is discussed further in Chapter 14.

Entry points for perpetrators

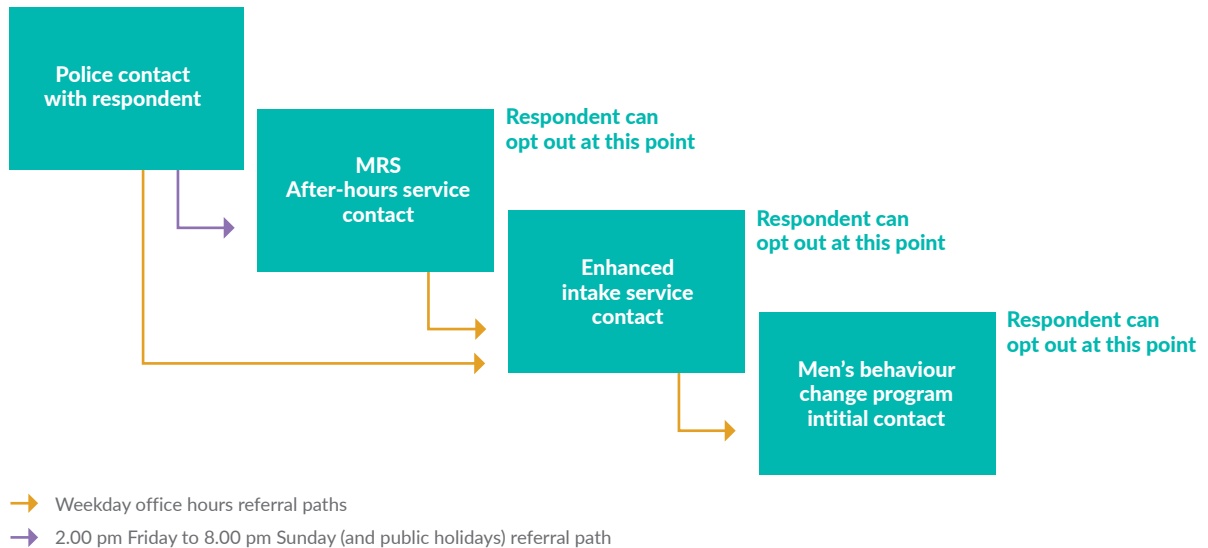
As noted in Chapter 18, there are many different referral pathways for perpetrators, and no set pathway that individuals and services must follow. No To Violence explained:

As well as justice based referral paths such as police, courts and corrections, there are a range of other community based referral pathways which can include the Department of Health and Human Services (DHHS), community agencies and self-referral. The Men's Referral Service (MRS) operates across the sector and state providing phone based, sector wide advice and referral information to men about services in with which they can engage and information and support to family/friends who are experiencing family violence. Referring sources may direct a man to the MRS or directly to a men's behaviour change program (MBCP) or both.⁷⁸

No To Violence submitted that this can and does result in many perpetrators 'falling through the cracks and being lost in the system'.⁷⁹

In relation to the police L17 referral process, where police refer perpetrators to services, No To Violence provided the following diagram to identify the various ‘drop-out’ points in the process between an L17 being made and a man entering a program. It argued that ‘with no single service guiding or supporting a man through the sector, they are, in effect, required to manage their own intake ... in short this can render the system ‘optional’ for perpetrators of family violence’.⁸⁰

Figure 13.1 Path for Victoria Police L17 referrals: perpetrators



Source: Based on No To Violence; Men's Referral Service, Submission 944, 25.

Possible models for reform

Internationally, best-practice responses to family violence involve a highly coordinated, multi-sectoral approach that ‘bring[s] together a range of services and organisations who share a common set of goals to provide more coordinated responses to violence against women’.⁸¹ The United Nations Commission on the Status of Women examined models that have been used in different countries, finding that good practice includes ‘one-stop crisis centres and integrated service delivery models that include multiple stakeholders coordinated through referral mechanisms, as well as multi-disciplinary mobile outreach to individual women and girls’.⁸²

A number of submissions argue for this type of system-level coordination that brings together health, justice, policing and social services responses—consistent with the policy intent of the mid-2000 reforms.⁸³ In Victoria, however, this coordination often relies on good will, cooperation and individual contributions from within agencies that are already under pressure to meet demand, and using existing resources or philanthropic funds.⁸⁴ For example, The Police Association Victoria submitted that inconsistency in referral pathways across the state is due to a number of factors including significant difference in the existence and availability of services and differing levels of integration and connection, which depend in turn on local relationships.⁸⁵ Many submissions also noted that coordination needs to be supported at a regional and statewide level, with clear and compelling guidance and incentives. This is considered further in Chapter 38.

Despite the challenges, the Commission heard that there is ‘considerable energy and commitment from organisations to work together’ and a strong belief, supported by evidence, ‘that long term sustained commitment to properly implement well-coordinated joint effort approaches is the way forward’.⁸⁶

In this section, we look more closely at some examples of coordinated responses in Victoria, examining some of the challenges and opportunities these examples present. The initiatives outlined here are at different stages of development, and are not necessarily fully integrated system responses, but they do show how services can collaborate effectively. They include joint intake and triage models, embedded workers and secondary consultation models, and various forms of collaboration based on co-location. Many of these projects are also discussed in other chapters, reflecting the partnerships that sit behind these efforts.

Secondary consultation models

The Commission heard that collaboration between universal service staff and specialist family violence services staff through secondary consultation could help overcome the lack of visibility of family violence services. Professor Taft gave evidence that:

... for a primary care practitioner to feel that they have the confidence and are supported in asking that question they need to know who the services are and what backs them up. They may have not either the time or the interest and they certainly don't have the specialist knowledge to support the victim in more depth. But if they feel that they have the back up and support, the secondary consultation or for debriefing or for preparation, if they know somebody with a particular problem is coming in because they have an ongoing relationship, then I think they are going to be more willing to take this as part of their professional behaviours and are more likely ... then to take on this task of actually asking difficult questions and following it up.⁸⁷

A number of submissions noted that specialist family violence services already provide this secondary consultation to local agencies and professionals as part of their day-to-day work.

In other cases, more formal partnerships are under way. For example, the Eastern Metropolitan Region Regional Family Violence Partnership described maternal and child health as 'a key setting for disclosure and early intervention'.⁸⁸ This is an embedded worker and co-location initiative between community legal services, two councils and a specialist family violence service 'to build more comprehensive referral pathways between a universal service and justice services to support women's safety'.⁸⁹

Berry Street describes the opportunities it sought to create for 'system bridging' projects, including pilots involving secondary consultation. For example, in 2010 they piloted a family violence secondary consultation within the clinical mental health services, based on a NSW project. They also placed a family violence practitioner in the maternity section of Austin Health, providing a weekly co-location to enable secondary consultation and patient assessments.⁹⁰

These projects have shown promise but remain temporary.⁹¹ According to Berry Street's submission, 'there are high levels of commitment and goodwill to pursue the service and practice integration, but ongoing secure resourcing is required to fully capitalise on that goodwill'.⁹²

Aboriginal and Torres Strait Islander organisations argued strongly for more culturally appropriate service delivery by mainstream family violence services, noting the strong preference for Aboriginal and Torres Strait Islander women to use Aboriginal community controlled organisations.⁹³ The Commission was told that there is currently little capacity for Aboriginal organisations to provide secondary consultations to mainstream services.⁹⁴ One option is for Aboriginal services to be funded to provide secondary consultations, as the Victorian Aboriginal Child Care Agency currently provides through its Lakidjeka Aboriginal Child Specialist Advice and Support Service. This service provides culturally appropriate advice and consultation on decisions that determine the future of at-risk Aboriginal children, such as whether there is a strong need for Aboriginal children to be removed from their families and relocated to a place of safety.⁹⁵ This is further discussed in Chapter 11.

Embedded workers

Submissions describe a number of examples of specialist family violence workers being embedded in universal services or within local service systems. The Commission notes that while these are showing good results, many are on time-limited funding or rely on philanthropic support.⁹⁶ Examples include:

- ▷ family violence specialists within the Neighbourhood Justice Centre Clinical Services team (Collingwood) and Ballarat Family Violence Division Magistrates' Court
- ▷ Hume Early Years Family Violence (HEY Family Violence) project, where a family violence specialist practitioner works alongside a child and maternal health worker to provide joint assessment, debriefing, training, and referral⁹⁷
- ▷ police-led partnerships such as the High Risk Response Conference in Whittlesea, with family violence workers participating in police follow-ups within 48 hours of an incident⁹⁸
- ▷ Repeat Police Attendance and High Risk Response Program, where police and specialist workers from Eastern Domestic Violence Service make weekly joint visits to victims of repeat family violence⁹⁹
- ▷ the Bethany Community Support Men's Case Manager located at Geelong Police Station one day a week to engage immediately with men¹⁰⁰
- ▷ the Whittlesea Family Violence Police Outreach Partnership response, where a family violence outreach worker from Berry Street is embedded at Mill Park Police Station two afternoons a week.¹⁰¹

Perhaps the most frequently mentioned project was Taskforce Alexis, which Commissioners also observed. This is a multi-agency team of workers from a Victoria Police Family Violence Unit based in Moorabbin, specialist mental health (Monash Health) and specialist family violence services (Salvation Army Family Violence Outreach in St Kilda).¹⁰² The team focuses on high-risk and recidivist cases. This project and other partnerships between police and the family violence sector are examined in more detail in Chapter 15.

Domestic Violence Victoria argued that the embedded worker model is superior to service co-location because the family violence worker is a full member of the team; decisions are made jointly before taking action; client management systems are accessible; and information can be shared. They further submitted that:

Specifically, the family violence worker is fully embedded within the Police; her permanent work base is there, she has a designated desk, attends staff meetings and is included as a full member of the team. She works in partnership with the police officer to review and triage the daily L17 cases, with full access to the Police LEAP database and, in consultation with the family violence service and police, she provides joined-up assertive outreach for early intervention. Equally important to the effectiveness of the Taskforce Alexis model is the governance structure supporting the work. The daily operations of the Taskforce are supported by a Coordination Team and Executive Group, which meet monthly and quarterly, respectively. These comprise full and associate members who are senior members of their organisations, with authority to make resourcing decisions and a collective commitment to the process.¹⁰³

Berry Street submitted that this type of cross-disciplinary work at a practice level requires family violence practitioners to have an appreciation of multi-disciplinary practice and awareness and respect for the institutional and cultural ethos of the host organisation. 'The family violence practitioner has to operate as an "outsider/insider" in a host service, while also undertaking the significant task of collaboratively addressing the ramifications of any family violence uncovered'.¹⁰⁴

This is acknowledged by host organisations. Sergeant Mark Spriggs, Family Violence Advisor, North West Metro Division 5, Victoria Police, stated:

[In relation to the Whittlesea Family Violence Police Outreach Partnership] ... we have seen that the family violence teams themselves have got a greater understanding about the service providers and the way they talk, the things that they offer victims, and our family violence teams start to talk and have those same sort of discussions like a family violence worker would, and similarly a family violence worker has in the back of their mind the way police work and the guidelines and limitations on criminal charging and the court process and civil protection and things like that, so they are better able to convey to a victim some of those aspects that would normally be the way the police would talk about it.¹⁰⁵

Shared intake

Submissions identified various options for reforming the current intake model.

The Loddon Campaspe Integrated Family Violence Consortium recommended the development of specialist family violence assessment and child contact centres to 'coordinate family action plans and system response (point of intake to case closure, supervised contact, children's advocates, co-location of services) delivered by specialist family violence providers'.¹⁰⁶

Safe Steps Family Violence Response Centre submitted that it should operate as the central access point for all specialist family violence services. Under Safe Steps' proposal, it would continue to provide 24-hour statewide crisis response in addition to acting as the central referral point, triaging and responding to L17 referrals and providing a front-door access point for onsite services for women and children.¹⁰⁷ It would partner with and provide links to specialist family violence services across Victoria, and could be replicated in regional areas.¹⁰⁸

Others suggested that Child FIRST has the existing multi-agency infrastructure and capability to act as a one-door entry point.¹⁰⁹ The Children's Protection Society submitted that Child FIRST should be expanded to include Aboriginal workers, specialist family violence practitioners and police family violence team members.¹¹⁰ This expanded Child FIRST intake would provide multi-agency pre-screen and rapid risk assessment, directly refer high-risk cases to Risk Assessment and Management Panels and Child Protection, and assess and triage all remaining L17 referrals.¹¹¹

Ms Peake gave evidence that although platforms such as Child FIRST aim to integrate access to services for a particular cohort, these platforms 'largely remain access points for entry to a particular service 'silo' or program area'.¹¹² Further, they do not address the difficulty people with multiple needs have in accessing multiple service sites, programs, case managers and assessments.¹¹³ Nor does Child FIRST work with people who do not have children.

In its submission, Victoria Police also suggested a single entry point for referral of child victims, instead of police having to determine whether the referral should go to Child FIRST or Child Protection.¹¹⁴ It is concerned the current L17 system results in Child Protection receiving a large volume of L17 referrals that are ultimately below their threshold for intervention, thus diverting resources from responding to cases that do merit their intervention.¹¹⁵ Similar concerns were expressed in evidence from Professor Humphreys and others.¹¹⁶ Victoria Police argued that a single entry point would allow 'Child FIRST and Child Protection workers to apply their respective powers and expertise to jointly assess the needs of each child victim and determine the most appropriate service pathway'.¹¹⁷

In her evidence to the Commission, Ms Beth Allen, Assistant Director, Child Protection Unit, Department of Health and Human Services, did not support Victoria Police's proposal for a single entry point on the basis that joint assessment and screening would require substantial resources and does not take into account the need for a differentiated response to children experiencing family violence.¹¹⁸

Joint triage for referrals that include children

Joint triage of L17 referrals that include children has been trialled in the Northern region in a collaboration between Child Protection, Child FIRST, Victorian Aboriginal Child Care Association and Berry Street Family Violence Service.¹¹⁹

This demonstration project aims to create one-door family violence referrals for police, thereby removing double (and sometimes triple) referrals. A further aim of this project is to have a differential response for Child Protection that ensures Child Protection intake only occurs where cases are suitable for investigation.

The triage process considers whether the family already has an engagement with one of the services, and applies an enhanced risk assessment based on shared information between all agencies. Child Protection, as the lead agency, determines which L17 reports are listed for consideration. Data shows that approximately 20 per cent of the 679 L17 referrals to Child FIRST resulted in the provision of family services, noting that around 43 per cent of offers of assistance were declined.¹²⁰

Berry Street stated that joint triage arrangements should be established across the state, with all agencies resourced for their participation (currently the Victorian Aboriginal Child Care Association is not funded for this work)¹²¹ and all partners able to list L17 reports for joint consideration by the triage panel.

Angicare Victoria suggested introducing triaging panels consisting of workers from the three sectors to enable a holistic response to family violence based on this model. It stated:

We contend that the best mechanism for determining whether a family should receive services from Child FIRST or Child Protection would be to have triaging panels—like the L17 triaging panels ... the new referral would be assessed by a triaging panel consisting of police, family violence workers, Child FIRST workers and Child Protection staff whenever it was determined that children reside with the family.¹²²

Whole-of-family triage

The Commission also heard there is poor communication between the four agencies that receive L17s: specialist family violence services, Child FIRST, Child Protection and perpetrator programs. Family Life told the Commission:

The four referral points do not communicate with each other and theoretically referrals should be moved from one to the other if the other systems are deemed more suitable. But in practice, this process can be slow and may not occur at all. This is difficult when the crisis period after a family violence incidence requires speedy, active engagement. Appropriate case direction systems are required to ensure that families are connected to the right responses as early as possible.¹²³

Kildonan UnitingCare submitted:

The L17 approach is siloed ... with referrals for men, women and children ... sent to different services despite the fact most families remain intact ... relevant information which supports the safety of women and children is not shared and family inclusive practice is not supported.¹²⁴

To simplify pathways to perpetrator programs through L17 referrals, No To Violence submitted there should be a central intake point for all men's behaviour programs in the state.¹²⁵ Similarly, Safe Steps proposed a central L17 intake point for all women's services,¹²⁶ but neither submission recommended these two elements be integrated.

Berry Street submitted that male perpetrator details from L17 referrals should be provided to specialist family violence services, and argued for a coordinated response between men's and women's specialist family violence services that respond to L17 referrals—including improved information sharing, co-location and joint triage.¹²⁷

Integration of victim and perpetrator services

The Commission heard that there was some support for more formal integration between men's and women's services. For example, Bethany Community Support, which provides services to men and to women, drew attention to two models: the Gold Coast Domestic Violence Integrated Response and Scotland's Caledonian model.¹²⁸ These models work with perpetrators, victims and children at the same time. Perpetrators participate in behaviour change programs that monitor them and keep them accountable, and this means that services working with the victim and children are better able to assess and manage risk.

Kildonan UnitingCare argued that women may be more likely to engage with the service system through partner contact rather than through an L17 call,¹²⁹ but as noted in Chapter 18, the Commission heard that performance regarding partner contact by men's behaviour change programs is currently mixed.¹³⁰

Bethany Community Support recommended a series of actions focused on more effective information sharing between police, women's services and perpetrator interventions.¹³¹ They suggested memorandums of understanding between all agencies within the family violence system that set out strong expectations for working together, clear guidelines for information sharing and legislative changes to remove current barriers, a statewide family violence client database accessible by men's and women's services, and services sharing information to promote the safety of women and children and hold men accountable.¹³²

Kildonan UnitingCare made similar suggestions about information sharing, but went a step further, and recommended that all L17s should be sent to one service location that creates a plan to prioritise women's and children's safety and engage men in violence cessation.¹³³ They added that service integration through 'service colocation will support enhanced capacity and shared practice frameworks in responding to family violence'.

In some places, the same organisation conducts intake of L17s for both victims and perpetrators. For example, Grampians Community Health has been responding in this way since 2005.¹³⁴

Other examples of organisations who receive L17 referrals for both victims and perpetrators include Eastern Domestic Violence Service, Nexus Primary Health and Primary Care Connect.¹³⁵

An example of an integrated intake and service provision model is the Centre for Non Violence, the lead agency of the Loddon Campaspe Integrated Family Violence Consortium. It provides specialist integrated family violence services and a central intake point for all police, service and individual referrals in the Loddon area.¹³⁶ It developed integrated client services in 2013 with specialised teams called 'pods' that work across all client programs for women experiencing family violence, young women aged 15–25 years who are pregnant and/or parenting and at risk or experiencing homelessness, men who use violence against family members, and children accompanying women. Key workers for male clients are located in the same pod as key workers for their female partners, 'enabling information to be shared when necessary to ensure the safety of women and children accessing the service'.¹³⁷

Service co-location

A number of submissions support service co-location and one-stop models of service delivery. The three Victorian models we examine here are Multi-Disciplinary Centres, the Changing Family Futures Initiative and Services Connect, although they do not all currently include specialist family violence services.

Other one-stop models promoted in submissions include those specific to Aboriginal and Torres Strait Islander communities, where all the needs of a family can be met in one place. Chapter 26 discusses this in more detail. The Commission notes here that it heard some women may be reluctant to access services in a setting that also provides perpetrator services.¹³⁸ The Commission is also mindful of the primacy of victim safety.

The evidence cites a number of advantages of multi-agency co-location:

- ▷ accessibility of services and ease of communication between agencies
- ▷ agencies gain greater understanding of each other's work
- ▷ 'institutional empathy', which is considered critical for Child Protection and family violence workers
- ▷ physical proximity increases productivity and timely service delivery.¹³⁹

It was also put to the Commission that co-location can be a disincentive for many women and children—particularly if police and child protection services are present at the site. Aboriginal and Torres Strait Islander women, women who are refugees or asylum seekers, and women making their first contact with a family violence service may be afraid that it will alert law enforcement and statutory authorities to their situation.¹⁴⁰

Domestic Violence Victoria reflected on this issue in its submission, highlighting that the focus should be on the experience of the woman, not the convenience of the agencies or workers. They state that:

When the focus of co-location shifts from improving agency interactions to the perspective of the women and children using the services, the agencies co-locating are different. Positive examples of agency co-location include family violence services within health and homelessness services, where early intervention opportunities through risk identification by GPs and other service providers facilitate contacts with specialist services, such as the Salvation Army Crisis Centre in St Kilda. Because women are generally safe to visit doctors for themselves and their children, they are more likely to respond well to co-location within these settings.¹⁴¹

Multi-Disciplinary Centres

Multi-Disciplinary Centres provide services to victims of sexual assault and child abuse. They involve the co-location of specialist police Sexual Offences & Child Abuse Investigation Teams, Child Protection and Centres Against Sexual Assault counsellors and advocates within a single building. More detail about MDCs is provided in Chapters 12 and 15.

Several submissions identify MDCs as an existing structure to which family violence services can be added or as a hub model that can be replicated for family violence specifically.¹⁴² Women's Health West Inc. submitted:

Co-location models such as the MDCs provide a practical solution to integration and co-ordination. The proximity of services and the ability to build personal relationships with other workers and police always improves outcomes for clients. This will also increase efficiency across the sectors providing a timely and cost effective response i.e. not having to make multiple appointments to see different services at different locations.¹⁴³

Others suggested expanding MDCs. Such MDCs could include specialist family violence, drug and alcohol, mental health, Office of Public Prosecutions, Victoria Legal Aid, Victims of Crime, financial counsellors and health services, to service sexual assault and high-risk family violence victims—effectively establishing the new MDCs as 'Centres Against Violence'.¹⁴⁴

A recent evaluation of MDCs finds that while each is at a different stage of development, the model has improved the practice and culture of each agency in individual and joint work.¹⁴⁵ The twin elements of co-location and collaboration, combined with the specialist skills of staff, work together to improve outcomes for victims.¹⁴⁶

The evaluation notes there is already considerable work in the area of family violence occurring within MDCs as a result of the co-occurrence of sexual offences and family violence, direct provision of family violence counselling and other services. However, it is cautious about an immediate expansion of MDCs into family violence. It states:

There is strong support for the explicit inclusion of a family violence component in MDCs. However the service delivery design required to enable this to occur is less clear. Evaluation participants expressed the need for care and caution to ensure that an expanded model that explicitly includes family violence does not dilute the specialist response to sexual offences or diminish the positive outcomes being achieved for victims of sexual offences.¹⁴⁷

Concerns identified by the evaluation include that:

- ▷ women may be reluctant to access services in a building that also houses Child Protection and police
- ▷ the MDC could lose its specialised focus on sexual offences
- ▷ locating more staff in a single building could negatively affect professional relationships between MDC staff
- ▷ Centres Against Sexual Assault and family violence services are already managing waiting lists for counselling services, and increasing the demand for counselling services would need to be matched with additional resourcing
- ▷ including family violence services in the MDC could increase safety and security risks
- ▷ the MDC would more closely resemble a police station than a victim-led centre
- ▷ staff workloads are already very high, and including family violence without adequate resources could become unmanageable.¹⁴⁸

The evaluation also finds broad agreement that it is not suitable to include a crisis police response in the MDC, 'as this would likely negatively impact on the discrete, anonymous and therapeutic nature of the existing MDC building environment found to be an important contributor to improved client outcomes'.¹⁴⁹

Potential benefits identified in the evaluation include:

- ▷ better sharing of information, increased intelligence and ease of exchange of information
- ▷ Sexual Offenders and Child Abuse Investigation Teams would be better able to refer tasks associated with intervention orders and safety notices to a family violence unit, freeing up their time
- ▷ improved understanding of the roles of family violence services, child protection practitioners and police members in relation to family violence
- ▷ increased usage of forensic suite facilities
- ▷ a more specialised response to family violence would improve responses to people experiencing family violence
- ▷ the ability to provide a 'systems response' to a 'systems' issue
- ▷ including a child protection family violence team in the MDC involved could open the gates to collaborative work.¹⁵⁰

The evaluation also canvasses other ways to enhance family violence responses without directly co-locating family violence services in MDC buildings. These include 'visiting services' by legal and family violence services; mirroring the MDC approach but locating it in a separate building and co-locating a remote witness facility at the MDC with links to the court that may benefit both sexual offences and family violence victims, particularly in applications for intervention orders.¹⁵¹

The evaluation concludes that any expansion of the MDC model to include a family violence response must be underpinned by the following principles:

- ▷ maintaining an explicit and specialist focus on sexual offending
- ▷ maintaining a discrete, victim-friendly and safe environment and fit-for-purpose building design
- ▷ providing accurate and timely information that empowers women to make informed choices
- ▷ sharing information among key agencies to improve the timeliness and quality of investigations
- ▷ employing skilled specialist staff, for example, police, Child Protection and family violence staff with a deep understanding of the issues, nature, prevalence and implications of family violence.¹⁵²

Gippsland Changing Family Futures Initiative

The Gippsland Changing Family Futures Initiative is an example of the co-location of Child Protection and police in Morwell, Bairnsdale and Sale. It aims to:

... minimise repeat reports to Child Protection by providing parents and children who are reported to Child Protection and have experienced family violence, with timely and targeted assessment; wrap around support to reduce the impact of trauma and protective strategies that facilitate family safety and stability.¹⁵³

According to the Department of Health and Human Services, the initiative aims to improve:

- ▷ early identification of family violence
- ▷ protective factors
- ▷ access to and use of supports and services
- ▷ multi-disciplinary coordination.

It also seeks to coordinate information, data and activities with relevant stakeholders and enhance the level of knowledge, depth of experience, standards of practice and evidence used when supporting Child Protection clients who have experienced family violence.¹⁵⁴

The Commission was advised that the initiative is directed towards high-risk groups including:

- ▷ children who have already been the subject of three or more reports to Child Protection linked to family violence
- ▷ families with infant or unborn children who have been reported to Child Protection due to family violence
- ▷ families that have experienced a 'significant' family violence event
- ▷ male perpetrators; Aboriginal families; and adolescents.¹⁵⁵

Under the model, two intake workers with specialist family violence experience and two community-based child protection practitioners work at the point of intake and case closure to ensure improved end-to-end case management.¹⁵⁶ The intervention phase is underpinned by case conferencing with practitioners across agencies such as Victoria Police, Child FIRST, Families First and family violence services.¹⁵⁷

The Commission heard that this has been seen as a positive pilot, enabling information exchange, joint planning and action focused on recidivist cases, and timely and coordinated mobilisation of the teams and cross-sector practice and skills exchange.¹⁵⁸

However, the Gippsland Integrated Family Violence Service Reform Steering Committee also states that:

- ▷ there has been a huge increase in workload and a decrease in funded operational staff
- ▷ while information sharing is working well, the change of personnel in police family violence teams can inhibit consistency
- ▷ there is a lack of specialist services for referral of clients
- ▷ secondary consults are not occurring, due to overworked practitioners.¹⁵⁹

They state that 'the model is good, however with the huge caseloads and increased complexity of the cases it can be difficult to work within that model'.¹⁶⁰

Services Connect

Kildonan UnitingCare recommended that the 'Services Connect platform should be piloted as a platform to respond to family violence'.¹⁶¹ A number of other submissions also identified Services Connect as a space in which family violence responses might be co-located. Mallee Family Violence Executive stated that they 'watch with much interest the establishment/piloting of Services Connect models across Victoria as potentially this can reduce the impact on people who require multiple services'.¹⁶²

Services Connect is a:

... small-scale trial of a model for integrated human services in Victoria, designed to connect people with the right support, address the whole range of a person's or family's needs, and help people build their capabilities to improve their lives.¹⁶³

Ms Gill Callister, Secretary of the Department of Education and Training, formerly Secretary of the Department of Human Services, gave evidence that Services Connect was 'in its original intent about how we build a strong primary care workforce with the capability to help people get much better outcomes'.¹⁶⁴ According to the evidence of Dr Pradeep Philip, the then-Secretary of the Department of Health and Human Services, a key part of Services Connect is the client support model, which includes:

- ▶ a key worker who is the primary support worker and plans, coordinates and delivers services for a client and their family
- ▶ a holistic needs identification and assessment, by which comprehensive information is collected so that people do not need to keep re-telling their story
- ▶ a single plan that considers the full range of a client's and their family's needs, goals and aspirations, and covers the full range of services they will receive
- ▶ one client record instead of multiple records held by different services
- ▶ a greater focus on the achievement of outcomes in service planning and delivery, and in the monitoring and evaluation of services.¹⁶⁵

Three tiers of support are provided, depending on the complexity of a person's or family's needs. These include self-support, guided support and managed support.¹⁶⁶

After testing at departmental lead sites, an evaluation identified four improvements:

- ▶ improved information sharing and more comprehensive needs identification
- ▶ client engagement that engenders client-directed needs assessment and goal setting
- ▶ increased focus on outcomes in the planning process
- ▶ greater collaboration and information sharing between engaged services and workers.¹⁶⁷

Services Connect has now been expanded to eight external sites, where non-government community service providers of child and family support, mental health, alcohol and drug treatment, family violence, homelessness, housing, disability and Aboriginal-specific services came together to test the model in the 'Partnerships Trial'.¹⁶⁸

The Commission understands that there is variability in terms of how each of the eight sites operates. For example, some partnerships have services co-located whereas others have key workers conducting their Services Connect role from their home agency.¹⁶⁹ Not all of the Services Connect sites include a specialist family violence worker.¹⁷⁰ According to the department, these variations 'are due to geographic locations, diversity of services within the local area and approaches to service delivery'.¹⁷¹

There was also evidence to suggest that the variability has been a source of confusion. Ms Kathy Prior, Deputy Director, North East Services Connect, Berry Street, said:

... it's been tricky, though, in the life of Services Connect in that the language has changed throughout its time. So the understanding of the Services Connect pilot sites, therefore, has been quite challenging for the sector in terms of knowing what they can do, because there's also the diversity across each of the eight sites and also the difference between the internal DHHS Service Connect pilots as well.¹⁷²

North East Services Connect Partnership

Several representatives from the North East Services Connect Partnership gave evidence about its co-located model, where there is a single intake point and clients are allocated to any key worker within that partnership. Key workers are responsible for assisting clients by providing the service themselves where possible, regardless of that worker's specialised knowledge base. In doing so, the key worker can consult with other specialist workers within the partnership.

The co-located model was said to present a 'unique opportunity for organic consultation to occur where it wouldn't ordinarily'¹⁷³ and to cut down the barriers associated with navigating what can be a complicated service system.¹⁷⁴

Other features of the North East Services Connect Partnership model that were referred to in evidence include:

- ▷ clients do not need to be in a crisis situation in order to access support¹⁷⁵
- ▷ subsequent referrals are viewed positively rather than being seen as failing the first time around¹⁷⁶
- ▷ there is not the same stigma attached as might be the case with specific types of service¹⁷⁷
- ▷ the model has potential to fill service gaps, such as working with perpetrators who have not formally presented within the family violence system.¹⁷⁸

This trial ends in October 2016.¹⁷⁹ An evaluation is due by 31 December 2016 that will make recommendations about matters including effect on client outcomes and system effectiveness and future implementation of the 'integrated community care' model.¹⁸⁰

Service hubs

To conclude this section on service co-location, we note that several organisations proposed establishing family violence 'hubs'. For example, Safe Futures said:

... we need a circle of support/service which puts the person in the centre and brings in the services that the person needs. This could/should be through a hub, or one-stop-shop, or shared facilities ...¹⁸¹

Whittlesea Community Connections suggested that family violence hubs should be located in accessible safe areas, such as shopping centres, that are linked to public transport, and provide opportunities to access support without fear of being seen going into a family violence service or being tracked by phone by the perpetrator to that service. They add that 'these hubs are particularly important in growth areas ... where services do not currently have a presence but population growth is among the fastest in the nation', suggesting that existing community activity centres could be used to house these hubs.¹⁸²

Some proposed long-term investment in multi-agency hubs that promote collaboration between police, courts, legal services, family violence and sexual assault specialists and recovery-based services such as housing. Court Network's vision was for hubs to:

... case-manage the multiple social support and legal needs of women at higher risk of family violence, and provide 'wrap around' services to women and children specific to their needs. They will also provide coordinated interventions to men at high risk of perpetrating violence, and perpetrator interventions that traverse the prevention spectrum. Service infrastructure should also be designed to build capacity within surrounding communities that can achieve outcomes post-intervention and in primary prevention.¹⁸³

Court Network also submitted that these hubs should include specialist family violence courts with co-located specialist family violence and sexual assault services.¹⁸⁴ The Magistrates' Court of Victoria Family Violence Taskforce submitted that 'organisations should be co-located where appropriate, informed by best practice evidence' but did not specify whether this should include co-location with courts.¹⁸⁵

Others reflected that the hub should be seen as a model of service, rather than a physical location, that would allow women and their children to have their full range of needs met (such as accommodation, counselling, material aid and legal help).¹⁸⁶

As discussed in Chapter 6, Multi-Agency Safeguarding Hubs have been established in the United Kingdom to respond more effectively to children at risk of abuse and violence. An evaluation of the MASH found that although local models appear different, they are all largely based on three common principles: information sharing, joint decision making and coordinated intervention. Agencies are often co-located within these hubs, or within virtual arrangements, and include local authority children's and adult services (the equivalent of DHHS), police, health and probation.¹⁸⁷

The evaluation found that the success factors for multi-disciplinary co-location were:

- ▷ several agencies working together in an integrated way
- ▷ the involvement of a health care professional
- ▷ co-location of agencies
- ▷ a shared risk assessment tool
- ▷ good leadership and clear governance (including an operational manager who is seen to be independent)
- ▷ frequent scrutiny and review
- ▷ strategic buy-in from all agencies involved
- ▷ an integrated IT system.¹⁸⁸

This is consistent with recent findings by ANROWS (Australia's National Research Organisation for Women's Safety), which conducted a meta-evaluation of the effectiveness of multi-disciplinary approaches between family law, family violence and child protection/family services across various jurisdictions. ANROWS concludes that while there is little evidence to support specific directions for interagency arrangements, it recommends that:

When joining up, services should pay considerable attention to how the infrastructure (e.g. governing structures, management and operations, quality assurance of services) surrounding the interagency collaboration may support this work.¹⁸⁹

The way forward

The Commission heard that the way that various parts of the family violence system work together make it harder for women and children to access support, and for the service system to collaborate to provide a broad range of services. These problems may be even more acute for victims of family violence other than intimate partner violence.

- ▷ Women do not know where to go for help, and universal service providers such as general practitioners do not know where to refer women who disclose family violence.
- ▷ Women find it hard to navigate the service system, particularly in regional and rural areas, and may have to travel to multiple services.
- ▷ Referrers and service users are faced with a complex and disparate array of entry points to the family violence system, including 23 Child FIRST, 19 specialist family violence services and 20 L17 referral points for men's behaviour change programs.
- ▷ There is a lack of government-driven coordination between Integrated Family Services and specialist family violence services.

- ▷ Current police referral pathways over-emphasise the role of Child Protection.
- ▷ Women’s and men’s services operate in isolation, and there are unclear referral pathways and agency roles when the perpetrator remains in the home.
- ▷ Separate L17 referrals for men, women and children work against a whole-of-family approach and contribute to perpetrators’ lack of visibility.
- ▷ There is a lack of consistent information sharing between specialist family violence services and other services that work with victims and perpetrators of family violence.
- ▷ Intake is not funded discretely. Specialist family violence services conduct intake using their case management resources—whereas men’s behaviour change programs and Child FIRST have dedicated resources for intake.
- ▷ Specialist family violence services do not act as intake points into a network of services, which means women may have to go through multiple assessments or are refused service.

At local and regional levels, some services already work closely with each other and there are good examples of collaboration, co-location and partnerships. However, these initiatives have come about through the work of integration committees, services and individual champions. As a result, they vary widely, and have not been driven by a statewide approach to system design. Local circumstances need tailored solutions, and they must be backed by strong governance and system-level arrangements.

In addition to urgently addressing demand, there is also a need for structural changes to ensure better coordination within the service system. The most important reform is to bring together the different entry points for victims, children and perpetrators, so that the system as a whole has a much stronger eye on the perpetrator, a clearer focus on the needs of children, attention to the needs of the adult victim and a simpler means for families—in all their forms—to get the help they need when they need it.

Options for reforming entry into the service system

Below, we set out the four options the Commission considered for reforming intake to services assisting people affected by family violence. The Commission has focused on intake arrangements because the point of intake is critical to ensuring that people are connected with the services they require as quickly as possible, and importantly, that the capacity to provide a crisis response is available.

When assessing the reform options below, we focus on four main criteria:

- ▷ making the pathway to help easier and simpler
- ▷ encouraging referrals between specialist family violence services and other services
- ▷ helping families to get the support they need
- ▷ clarifying service roles when children are present
- ▷ keeping a closer watch on perpetrators.

Option 1

Maintain current arrangements and resource women’s services to respond to L17s

Option 1 is to maintain current arrangements, with all L17 referrals continuing to go to one of the 19 specialist family violence contact points, which would receive dedicated intake funding.

This would address the substantial inequity between funding for women’s and men’s family violence services to respond to L17 referrals: men’s services receive dedicated funding for this function, while women’s services do not. We also note that Child FIRST receives discrete funding for its intake function.

Advantages of this approach include the following:

- ▷ It allocates dedicated resources to referrals, instead of redirecting them from case management.
- ▷ It maintains the focus on local initiatives such as joint triage and embedding workers in other services.

Disadvantages include:

- ▷ It does not address issues of inconsistency across the state.
- ▷ It does not address the lack of government-led coordination between Integrated Family Services and perpetrator interventions.
- ▷ It maintains separate L17 referrals and different pathways for victims, children and perpetrators.

Further, simply leaving things as they are does not resolve the other limitations of the current system, such as the lack of visibility of specialist family violence services to those outside the system. Nor does it address the current limitation that L17 referral points do not have booking rights to other services, and must make a series of referrals to multiple points with multiple eligibility assessments.

For these reasons, the Commission considers that a bolder reform is needed.

However, we recommend that as an immediate first step the Victorian Government should resource existing women's specialist family violence service L17 referral points to undertake L17 processing and response. This is a necessary precondition for success for the Commission's longer-term recommendations for system reform.

Option 2

Single statewide entry points

Option 2 is to have a single statewide entry point for women's services, and another single statewide entry point for perpetrator interventions.

Safe Steps, which currently provides the 24-hour crisis telephone response, submitted that its role should be expanded to fulfil this function. It proposes a single statewide family violence response centre that can be replicated in regional hubs run by Safe Steps.¹⁹⁰

Similarly, No To Violence, including the Men's Referral Service, recommended a single, statewide entry point to respond to all men involved in incidents of family violence 'for specialised assessment, safe engagement, and appropriate referral whether identified as perpetrator or affected family member'.¹⁹¹

Advantages of single entry points for these two system components include the following:

- ▷ It simplifies and standardises intake.
- ▷ It builds on the existing after-hours referrals infrastructure.
- ▷ It gives a strong overview of system-wide demand, and would offer collection points for comprehensive demand data.
- ▷ It provides a consistent response across the state (assuming service delivery is also controlled by the two statewide intake points).

Disadvantages include:

- ▷ The intake team does not have the ability to 'book' people directly into services, which is a necessary reform.
- ▷ The model does not include coordination with Integrated Family Services.
- ▷ The two statewide services will have a monopoly, which could lead to the loss of local service knowledge and a Melbourne-centric approach.
- ▷ Service users may not wish to use a statewide service, and may feel more comfortable going through a local provider.

- ▷ It maintains separate L17 referrals and different pathways for victims, children and perpetrators.
- ▷ There is the risk of delays in accessing services if statewide intake is overwhelmed.

This model also goes against the principle of responsibility residing at the lowest level of government that can perform the role effectively (subsidiarity). This principle recognises that an understanding of community needs and a capacity to use flexible and locally tailored approaches will be greater at the local level. While this principle is usually associated with government, it also has value when thinking about service design.

For example, Safe Steps proposes to run regional hubs under their Victoria-wide entry point. We are concerned that this may not take advantage of existing relationships and service connections at the local level, and that Safe Steps would need to recreate these connections.

The Safe Steps proposal also does not address a whole-of-family approach—perpetrators would still be largely invisible to services working with women and children, putting the burden of safety on women.

For these reasons, the Commission does not consider it prudent to establish two separate, single statewide entry points into men's and women's family violence services.

Option 3

Merge family violence services with multi-disciplinary centres

This option would adapt sexual assault multi-disciplinary centres (MDCs) to include specialist family violence services.

Advantages of adapting MDCs include the following:

- ▷ It improves understanding of family violence services and responses within MDCs.
- ▷ It fosters closer alignment with police investigatory processes to improve evidence gathering and strengthen prosecution of perpetrators.
- ▷ It enhances cooperation between police and human services on cases where family violence co-exists with sexual assault.

Disadvantages include:

- ▷ It broadens the focus of MDCs and potentially undermines a specialist approach to sexual offending and family violence.
- ▷ There is a risk that the family violence crisis response would overwhelm MDCs.
- ▷ It does not address the lack of government-led coordination between family violence services and Integrated Family Services.
- ▷ Currently there are only six MDCs in Victoria.

In assessing this option, the Commission notes that the recent evaluation of MDCs discussed previously considers the case for including family violence services within MDCs. The evaluation cautioned against co-location of family violence services in MDCs, stating that it would create a very different, less therapeutic environment. The evaluation concluded that a better option would be for MDCs to focus on providing a therapeutic response, and instead improve information-sharing practices between agencies to manage family violence risk.

The Commission is also concerned that the presence of police and Child Protection in the MDC may also create a barrier for some women who do not trust these agencies. Another very practical limitation is that extending MDCs across the state would require substantial investment. While this may be a viable long-term option, it would mean that in the short term we would use scarce family violence resources to expand what is primarily a police and sexual assault investigation and case work response.

Merge family violence services with Services Connect

The advantages of merging specialist family violence services with Services Connect include the following:

- ▶ It improves cross-sectoral collaboration as a result of co-location of key workers from various disciplines (where co-location is the Services Connect model in that area).

The disadvantages include:

- ▶ Services Connect is not designed as a crisis response.
- ▶ Without significant expansion, Services Connect will not meet the volume of demand for specialist family violence services.
- ▶ There is a risk that family violence would swamp Services Connect, and that clients who have complex needs apart from family violence issues would miss out.
- ▶ There is a risk that the specialist expertise of family violence services would be diluted.

In examining the evidence regarding Services Connect, the benefits of bringing family violence into this program are difficult to determine because there is no single model, and not all of the current sites have a specialist family violence staff member in the key worker team.

The strongest benefit appears to be the cross-sectoral collaboration that naturally emerges when practitioners from various disciplines come together in one location. This was clear in the evidence from practitioners from the North East Services Connect Partnership, and is also a feature of the MDC model above.

Having a key worker also has advantages for clients who would not have to tell their story multiple times, but it is less clear whether clients would still need to be re-assessed for certain services which they may need as part of the family violence response. A further benefit is that the key worker potentially minimises the need for multiple workers being involved, as the model is premised on the key worker delivering a range of services themselves rather than referring to others.

Where access to other services is required, the key worker can play a vital role in linking people into necessary services, including those with complex needs requiring more specialised assistance, such as from alcohol and other drugs, mental health and disability services. This has the potential for streamlining access to services, especially for those family violence victims who have a need for multiple services and coordination of these services is required.

It is unclear to what extent specialisation could be accommodated in the Services Connect model, which is predicated on a key worker providing direct services to a range of clients or linking clients to other services.

The Commission notes that the previous internal trial sites have now closed and the new partnership trial is funded until October 2016.¹⁹² Its future beyond that date is not known.

We therefore recommend that if Services Connect or 'integrated community care' is expanded across human services, it should not be used as the major service platform to provide a family violence response. Family violence should not be 'bolted on' or used as a budgetary vehicle to expand Services Connect.

Our reasoning is threefold. First, Services Connect cannot effectively respond to crisis demand.

Secondly, risk is dynamic and we need specialists to manage it, particularly where the victim is at medium to high-risk. Elsewhere we argue that keeping victims and their children safe requires workers to be familiar with the specific dynamics of family violence, as well as skilled in risk assessment and risk management, both of which are specialised skills. This is especially important in the initial stages of seeking assistance, which is a period of acute crisis for some women.

It is also important that the role of 'navigator' of the system has specialised skills and knowledge of family violence. The Commission considers that the 'navigator' role is critical to helping victims access the services they need. This role encompasses more than simply referring to services or being knowledgeable about the service system. Instead, the task of referring and coordinating services for and on behalf of family violence victims requires a level of specialisation.

Thirdly, there is a risk that moving to the generic key worker model will dilute the specialist family violence response. The Commission heard that women valued having the support of a caseworker who understood the dynamics of family violence and what they had experienced.¹⁹³ The risk with the key worker model is that this specialist knowledge becomes diluted. This is not to say that responses to family violence should be 'stand-alone'. An integrated intake into both specialist family violence services and Integrated Family Services (considered in Option 4) retains and builds upon the specialist expertise of both sectors and provides a streamlined entry into services that are already substantially involved in responding to victims of family violence.

In summary, the Commission is not confident that Services Connect can provide a sufficiently specialist response to people experiencing family violence. It may be a useful addition to casework in the post-crisis phase if specialist family violence practitioners are included in the team, but it should not be the sole intake point for, or replace, specialist family violence services.

Option 4

Area-based, single intake into Integrated Family Services and specialist family violence services, including perpetrator interventions

Option 4 is to merge the existing Child FIRST and specialist family violence L17 contact points (men's and women's) into a single, area-based intake for all three types of service. In effect, this introduces a new integrated intake service through sub-regional/local hubs.

This option combines the existing Child FIRST structure with family violence. Specialist teams would be retained, but integrated through single intake management arrangements. Cases would be allocated to the most appropriate team, with cross-consultation. Existing community-based child protection practitioners would be retained and their role extended to provide input to specialist family violence services as well as Child FIRST.

In this model, police would send a single L17 to the hub, which would also receive referrals from non-family violence services and individuals. The only exception to this would be referrals to Child Protection, which would still be made if police believe a child has suffered or is likely to suffer physical injury or sexual abuse, as per the *Children, Youth and Families Act 2005* (Vic), and the Victoria Police Code of Practice for the Investigation of Family Violence.¹⁹⁴ An alternative model is to have a single L17 that includes Child Protection.

The advantages of this model include the following:

- ▷ It provides prominent and visible referral points for police and other services, as well as information and contact points for victims, family, friends and community.
- ▷ It puts emphasis on meeting the needs of children.
- ▷ Intake has a whole-of-family view of risk and need, and provides a gateway to a network of services 'behind the door'.
- ▷ A single referral for each family violence incident supports an integrated approach to the family, as well as individualised responses for the victim, perpetrator and children.
- ▷ It recognises the significant overlap between family violence and Integrated Family Services.
- ▷ It will promote practice excellence and consistency across two distinct services (family violence and family services).
- ▷ It provides a package of services rather than single, sequential episodes of service.
- ▷ It has the capacity to provide a crisis response.

As noted earlier in this chapter, family violence was flagged as an 'issue of concern' for 41 per cent of Child FIRST clients in 2014–15, and one in three clients of Integrated Family Services that year.¹⁹⁵ This suggests that these two service systems have common clients, and that efficiencies could be gained by sharing an intake function that uses a comprehensive risk and needs assessment to match the right kind of service to the particular circumstance.

There may also be distinct advantages in terms of triage and capacity to assess children's needs, which is a substantial gap in the current family violence response. Collaborative teams of family violence workers and Child FIRST intake workers would enhance the complementary knowledge and skill sets of both types of worker.

The challenges of this model include the following:

- ▶ The change is substantial and will require reorganisation and rationalisation of current entry points.
- ▶ The focus on families may deter people without children; similarly, the focus on safety may deter people or referrers who are seeking family services rather than a family violence response.
- ▶ Child Protection would remain as a separate intake point, so there is still a dual L17 referral pathway for some children.
- ▶ Women who currently seek to engage their violent partner through family services without him seeing this as a family violence intervention may not seek this help.

It would also require significant effort to bring together two service systems with very different focuses and service models. For example, the information each collects at intake, and the initial responses to clients, are different. Family violence intake work includes crisis and risk assessment, risk management and safety planning, with the primary aim of protecting women and their children from perpetrators. Family service work includes assessment of family relationships with a view to improving relationships, parenting, and outcomes for children. Family violence interventions will often precede family services' work. To resolve these differences will require substantial work to align approaches without losing the specialist knowledge that each brings to working with families and children. In particular, the Commission recognises that specialist family violence services have developed expertise in crisis responses whereas Child FIRST and Integrated Family Services are not a crisis service and do not necessarily have family violence expertise.

In addition, some women's services may distance themselves due to concerns that men's intake should not be part of the intake team, or that information may be inappropriately shared. Currently, some but not all, men's services contact women's services before attempting to contact men, to ensure that the women's service has contacted the woman and has a safety plan in place.¹⁹⁶ The after-hours Men's Referral Service does not contact women's services because they seek to make contact quickly after police contact. This is a contested issue.

At the moment, men's intake workers may occasionally provide information to police or women's services, but it is rare for women's services to provide information to men's intake services. This is because there are limited benefits to sharing information, and a fear that the men's worker might inappropriately or inadvertently share information that increases risk. This is a matter of professional practice that will need to be resolved for this model to work. The Commission expects that all workers at the hub will understand that a victim's safety is their primary goal and will not share information that could place victims at risk. This is similar to the way that existing contact workers in men's behaviour change programs must not inappropriately share information.

Enhanced safety for women and children and reduction in risk will be paramount in any proposed model.

The Commission has determined that despite the risks, complexity and substantial change, Option 4 is our preferred option for the following reasons:

- ▶ It would keep intake services separate from case management, thus freeing up more resources for case management.
- ▶ As specialist designated and funded intake services, hubs would provide an enhanced assessment and referral response for each family member.
- ▶ Using technology, hubs would provide feedback to police on every L17 they receive (men, women and children) so that police have confidence that the referral has been actioned, and also get feedback on the accuracy of their risk assessment and the completeness of information in the L17s. This complements and builds on existing local relationships, but makes them part of the system.

- ▷ Hubs would reduce duplication of intake work. A specialised co-located intake function would provide more appropriate referrals. It would also assess families' full range of needs, and link people to a wider range of other services.
- ▷ The specialised focus on intake assessment would improve the timeliness and efficiency of information gathering, particularly in relation to high-risk families, and it would enable better information sharing with partner agencies. This would be facilitated by a Central Information Point (described below).
- ▷ Triage would be improved with the implementation of a statewide best-practice approach.
- ▷ The contact process for women and children would be improved, providing a consistent response across Victoria.
- ▷ The hub will provide initial case coordination until the case can be passed to an appropriate service for continuing case management. Depending on the level of need and what the major presenting issue is, continuing case management could be performed by a specialist family violence service, Integrated Family Service or another service such as sexual assault, mental health or drug and alcohol.
- ▷ Child FIRST and family violence intake workers would gain increased knowledge and skills in working with children affected by family violence.
- ▷ The hub model would maintain the safety benefits to be gained from separating men's and women's services in service delivery, while providing a whole-of-family approach to risk assessment. It would increase the visibility of the perpetrator to the family violence system, consistent with existing successful consortium models such as that delivered by the Centre Against Violence.
- ▷ In the longer term, it could include co-location with, or sessional services provided by, other services such as legal services, drug and alcohol, and mental health services, depending on local networks and arrangements. In those areas where MDCs or Service Connect sites operate, the hub could be close by or in the same building.

Why not a single integrated intake for Child Protection, Integrated Family Services and family violence services?

The Commission has considered whether Child Protection should be included in the hub and has determined on balance that this would not be appropriate. This is because for Child Protection intake to be transferred to the hub, hubs would need to become statutory services—that is, part of DHHS. This is not appropriate for a family violence response.

Further, including Child Protection intake in the hub may exacerbate women's reluctance to seek assistance because of the close alignment with Child Protection. There is also the substantial risk that crisis work would 'swamp' and crowd out family services and family violence services, including redirecting resources to statutory work. None of this is in the interests of women and children who are victims of family violence.

There is a risk that retaining a separate intake for Child Protection maintains a dual-track pathway for police for referrals involving children, and that police will continue to over-refer to Child Protection. This brings women experiencing family violence with children into contact with Child Protection, when in fact many of them need support and assistance rather than statutory intervention.

Child FIRST will be part of the hub and will bring its community-based child protection practitioner. Police will have more confidence that when they make an L17 referral to the hub, a community-based practitioner is available to escalate the matter to a formal referral to Child Protection if necessary. This eases some of the decision-making burden for police members when their assessment of a family violence incident is not clear-cut and they manage risk by erring on the side of a higher level of intervention. However, for this to be successful, Child Protection must ensure that the community-based child protection practitioner has full access to Child Protection information and data.

Role of the community-based child protection practitioner

Community-based child protection practitioners are placed at each Child FIRST site to facilitate referrals from Child Protection, provide advice on specific cases, including safety planning, and manage cases moving from Child Protection to Child FIRST, among other activities.¹⁹⁷

The 2011 KPMG review of the Integrated Family Services system found that the placement of child protection practitioners at each Child FIRST site had been critical to developing a service continuum between family services and Child Protection and was the lynchpin between the two sectors.¹⁹⁸

However, the same review noted that beyond the placement initiative, there were inconsistent links between Child FIRST and Integrated Family Services on one hand and Child Protection on the other. The reviewers cautioned against over-reliance on one scheme for service connection and suggested a greater focus on improving linkages across the entire workforces of both sectors.¹⁹⁹

The 2015 Auditor-General's report into the Integrated Family Services system found that the role of community-based child protection advanced practitioners had been diluted over time with the assigned child protection workers increasingly required to take on Child Protection cases rather than being available to support Child FIRST and Integrated Family Services with case referrals and risk assessment.²⁰⁰

Support and Safety Hubs

The Commission proposes the establishment of Support and Safety Hubs in each of the 17 DHHS local areas. A single, area-based and highly visible intake will make it easier for victims of family violence to find help quickly. This also needs to capitalise on the respective roles of specialist family violence services, child and family services, and perpetrator interventions.

Intake should be built around one referral for each family, accompanied by individual assessments for the perpetrator, the victim and any children. This will give services and police all the information about risks and needs of different family members.

Because they are sub-regional hubs, they can:

- ▷ build on existing knowledge of local services, established referral pathways and partnerships developed by specialist family violence services
- ▷ provide a focal point for referral
- ▷ be a one-stop shop for people requiring related services.

The Commission recommends one hub in each of the 17 DHHS regions to maximise the opportunities for accessing other services identified as necessary for victims and perpetrators of family violence and their children. Most of these services are funded by the DHHS and they are currently funded to provide intake within the department's area boundaries (either partly or fully). This includes housing services, homelessness assistance, mental health services, drug and alcohol services and women's health services.

The Support and Safety Hubs will provide:

- ▷ single (area-based) intake for specialist family violence services (for women and children and also perpetrator interventions) and Integrated Family Services, including triage, risk assessment and needs assessment
- ▷ case coordination for the women, children and perpetrator (including booking and warm referral) until each is linked into appropriate services.

These will replace the current 23 Child FIRST intake points, the 19 L17 contact points for specialist family violence services and the 20 L17 contact points for men's behaviour change programs.

Safe Steps and Men's Referral Service will continue to operate as police L17 referral points after hours, as it would be inefficient to operate 17 hubs outside business hours.

The Victims Support Agency will continue to be the statewide L17 contact point for male victims both during business hours and after hours.

Each of the 17 Support and Safety Hubs will include:

- ▷ an intake and assessment team that will assess the risk and needs of victims, perpetrators and children—this may have multiple practitioners dependent on demand levels
- ▷ a RAMP coordinator to coordinate responses to the highest-risk cases
- ▷ an advanced family violence practitioner to lead practice in the hub and support secondary consultations with universal service providers
- ▷ a mechanism to ensure police and hub liaison (embedded family violence worker with the local Victoria Police specialist family violence team/or police member participation in intake/triage, depending on local circumstances)
- ▷ access to after-hours support
- ▷ technology to assist victims, which may include remote witness facilities
- ▷ a community-based child protection practitioner who will 'transfer' with Child FIRST
- ▷ resources to access secondary consultation from Aboriginal community controlled organisations
- ▷ access to real-time information from a secure, Central Information Point, bringing together relevant information from Victoria Police, DHHS, Department of Justice and Regulation (Corrections Victoria) and the Magistrates' Court of Victoria, for comprehensive risk assessment and management.

The hubs will not replace specialist services providing casework, support and accommodation but will provide intake and initial case coordination until people are linked into those services. Specialist family violence services, Integrated Family Services and perpetrator interventions will continue to operate and deliver services with better resources, as recommended later in this chapter and in Chapters 8 and 18. It is not the Commission's intention that the services available 'behind the door' of the intake point will change, including statewide services such as InTouch Multicultural Centre Against Violence and Seniors Rights Victoria.

Current providers of L17 referral points for women, perpetrators or Child FIRST may choose to come together at the local level to provide the hub, subject to the usual tendering processes. Some already work in regional or subregional networks or service consortiums, and others already provide more than one type of L17 referral point.

Beyond the core functions described above, other services that may wish to co-locate or locate close to the hub may include specialist family violence services, Integrated Family Services, community legal centres, Victoria Police family violence teams, drug and alcohol services, mental health services and Centres Against Sexual Assault. For instance, the Commission notes that there are already a number of large community-based organisations that deliver both Integrated Family Services and specialist family violence services within one organisation. However, these are not minimum requirements for the hub.

As noted in Chapter 16, the Commission considers there are opportunities for greater engagement between services assisting people affected by family violence and the Magistrates' Court. The Commission envisages that the applicant and respondent support workers will be able to refer people to the hubs (and vice versa), and that there will be opportunities to build stronger connections between these workers and the hubs at the local level.

In addition, the hubs should develop collaborative relationships with family law services to enable effective referrals for clients experiencing relationship breakdown, including the specialised family and relationship services funded by the Commonwealth Department of Social Services under the Families and Communities Program.

The Support and Safety Hubs will make warm referrals to Centres Against Sexual Assault where sexual assault is identified within family violence and the CASA service is appropriate. CASAs will continue to receive their own referrals for sexual assault, outside family violence, and should work with their local hubs if they receive a referral of sexual assault where family violence is present and services are required. This will allow the hub to coordinate this process with the CASA and based on the victim's needs and wishes.

Activities and functions of the hub

Telephone numbers for the hubs will be widely promoted, including via the website the Commission recommends in Chapter 8. This will mean that people experiencing family violence, their family, friends, and other service providers, will know how to contact the hubs for help.

The hubs will be safe places for women to meet with the workers who are helping them, but for safety reasons, they will not have a 'branded shopfront' presence. In this sense, the Commission envisages that the hubs will operate in a similar way to some Child FIRST intake points.

The hubs will receive referrals from women with or without children, their families and friends, universal services such as general practitioners, schools and child and maternal health nurses, police, the courts and from perpetrators seeking voluntary participation in men's behaviour change programs. They will also receive referrals for programs for adolescents who use violence in the home and their families, which the Commission recommends be rolled out statewide (see Chapter 23).

The hubs will operate during business hours, with after-hours intake for women and children undertaken by Safe Steps and for men by Men's Referral Service. Hubs will collaborate closely with Safe Steps and Men's Referral Service.

Hubs will receive L17s from Safe Steps and Men's Referral Service that have been received outside business hours and need to be actioned, based on the triage work undertaken by Safe Steps and Men's Referral Service. In addition, each hub will have the ability to activate an after-hours face-to-face response to receive urgent referrals from Safe Steps where women need emergency contact after hours. Specific after-hours arrangements will vary depending on the local area. In some cases, it may involve the expansion of the Crisis Advocacy Response Service, which exists in some parts of metropolitan Melbourne.²⁰¹

The hubs will undertake risk and needs assessment—a specialist function that requires sophisticated skills to identify risks, needs and preferences, and develop an appropriate safety and service plan. The assessment will consider both the risk and needs of the family as a whole, and each individual family member.

The intake and assessment functions of each hub will be undertaken by a team of experienced specialist workers who are suitably qualified and trained to work with women and children experiencing family violence, perpetrators, families and children. It would be a considerable challenge for all hub workers to respond to all three groups. Specialist skills and knowledge are required for each of the three groups. Hence, it would normally be expected that family violence women's workers will work with women, family violence men's workers will assess men, and children's specialists will assess children's needs. The importance of having specialist workers perform intake and assessment functions was recognised in the evaluation of the RAMPS:

The pilots demonstrated the requirement for skilled family violence practitioners to provide intake and engagement functions, as well as provide ongoing case management to women and children at high risk of serious injury and lethality. Not only is it critical to maximise the chances of engagement, and develop a robust and comprehensive risk management plan, the nature of the work demands a high level of knowledge, experience and maturity in order to avoid vicarious trauma, and harmful exposure to dangerous situations.²⁰²

Hubs will undertake both initial assessments and comprehensive assessments. Assessments will be completed over the phone, and face-to-face (especially with children). Outreach assessment and support will be required for a proportion of clients. Hub workers will need to undertake face-to-face assessments, using age-appropriate techniques and tools. Assessments should be undertaken at suitable (neutral) sites with appropriate specialist assessment tools, equipment and play areas.

The intake team will be supported by both the advanced family violence practitioner and the community-based child protection practitioner. The advanced family violence practitioner will also lead secondary consultation with universal service providers. Their role is more fully described in Chapter 40.

The community-based child protection practitioner who comes across from each Child FIRST team will support intake processes and provide advice to other services, as well as make referrals to Child Protection where necessary. They will not perform intake into Child Protection, as this function is undertaken by child protection staff within DHHS. However, it will be important for the community-based child protection practitioner to have access to the Client Relationship Information System so that they can access information necessary to manage risk. The presence of the community-based child protection practitioner will need to be communicated clearly so as not to create a barrier to access.

The effective operation of the proposed model relies on specialist family violence services and Integrated Family Services accepting referrals from the intake team without re-assessing for eligibility—without this agreement, the benefits of a single intake point would be minimised. The Commission notes that Child FIRST and Integrated Family Services already operate on this basis.

The intake team will be able to book assessed clients into services such as specialist family violence services, Integrated Family Services and perpetrator programs to ensure that people receive the help they need.

Hubs will need access to accommodation vacancy registers. These are currently held by specialist family violence services. The hub will be able to book women into emergency accommodation in their local area. Hubs will also need an allocation of brokerage funds that can be used to access or purchase a range of services and supports.

Safe Steps will continue to arrange after-hours emergency accommodation and will be able to book crisis accommodation (refuges) for women who need to leave their home.

Role of police

There are many ways police could be involved in the hub, and these can be determined at the local level.

One viable option is that the hub embeds a family violence worker in the relevant local police family violence team. We base this assessment on the positive reports of current initiatives, and our observation of these in the field, including Project Alexis, noting the value of this close collaboration in the immediate attendance and follow-up to incidents.

The other option would be for police to participate in joint triage of L17s. By participating in this way police could obtain additional up-to-date information about the perpetrator during the holding period; provide feedback information to police; communicate with other police members about the accuracy and comprehensiveness of their L17 assessments; provide input to planning the response to the perpetrator; and take action when relevant information is discovered about the perpetrator by police and/or other services.

When developing arrangements for police involvement in the hub, the Commission believes that preference should be given to those arrangements that maximise continuity and consistency of police involvement and prioritise police resources for those cases that are highest risk. Police involvement in the hub will be critical to its success and the Commission envisages that, regardless of the arrangements in place at the local level, they would be actively supported by the local police family violence team leadership.

Links to service delivery

The hubs will provide immediate assistance, particularly in response to crisis. The intake process will not delay responses to immediate need, but rather shift the focus to ensuring that the response is appropriate.

While most services will still be delivered by services to whom each hub refers, the hubs will have a direct service-delivery role including:

- ▷ a capacity to activate a face-to-face crisis outreach response after hours
- ▷ access to brokerage funding for immediate needs, including emergency accommodation, and possibly also an individualised support package when continuing case management by a service is not required. Family Violence Flexible Support Packages are discussed in Chapter 9
- ▷ interim service pending allocation to a service for continuing assistance (case coordination). In some cases this could be done in a few hours, in other cases it may take more time to arrange hand over to the appropriate service for continuing case coordination, depending on the level of risk and range of needs identified.

The standard that must apply is that no victim should be left without a response or placed on a waiting list for a service without other supports in place.

Preconditions for success

It is clear that bringing together intake for three discrete service types, each with its own ethos and practices, will be challenging. However, we do not consider these challenges to be insurmountable if a disciplined and staged approach is taken, if services and relevant stakeholders are actively involved in design, and if the following preconditions for success are put into place. This approach should be clearly defined and articulated in planning and governance arrangements, which report back to the responsible ministers—see Chapter 38.

Given the challenges in implementing the hubs, the Commission considers that the process should be driven by a dedicated 'change facilitator' position at each of the proposed 17 hubs for 12 months who will work with stakeholders to bring the three service sectors together and manage the transition to the hubs.

Additional resources for service delivery beyond the hubs

The greatest risk is that lack of capacity 'behind the door', that is, in local specialist family violence services, will clog the system, so that family violence cases remain in intake or in a holding pattern at the hub. This would leave us with the same problem we have now, where demand grossly exceeds available support.

An associated risk is that parenting and child development referrals or lower-risk family violence cases could be wait-listed if there is a large number of high-risk family violence cases and there is no throughput to services. For this reason, the Commission recommends additional investment in specialist family violence services to meet demand. The hubs will not work without this additional investment, and scarce resources will be spent on improving intake while the system itself continues to be overloaded.

Clear role and focus of Child FIRST

Child FIRST will likely play a more prominent role in working with families with children where family violence is indicated but the risk level is assessed as low.

Child FIRST workers will require training to provide an adequate response and undertake risk assessment for women and children (not just children), to be able to engage with women, develop safety plans, provide case coordination for women and children while they wait for services, and refer them to services that offer crisis support for women and children.

Indeed, improving this capability is one of the primary aims of this reform. It will be important, however, to ensure Child FIRST is not overwhelmed by family violence crisis response referrals. Specialist family violence services should continue to perform this function, particularly in medium to high-risk cases.

The combined effect of joining Child FIRST to the family violence service system, together with moving police referral practices away from over-referring to Child Protection, are likely to result in an increase in the number of intake assessments that Child FIRST will undertake within the hub. Without adequate resourcing, there is a risk that the Child FIRST component of intake will be overwhelmed by demand driven by family violence crisis assessments.

Child FIRST providers state that they are currently inundated with referrals. Re-focusing on early intervention is a priority for Child FIRST, as described in its legislative framework and program guidelines. In order to provide an early intervention service, a dedicated early response by Integrated Family Services will need to be funded.

For this reason, in addition to increased resources for specialist family violence services, the Commission also recommends an increase in resources for Integrated Family Services to meet the increased demand in family violence work that we anticipate will flow from this reform.

The right skill set

Work with women, children and men is best undertaken by specialists in each of these fields. For example, family violence intake work is best undertaken by women who are experienced and trained in the area of family violence, including engaging women, risk assessment (including the use of the Family Violence Risk Assessment and Risk Management Framework, also known as the Common Risk Assessment Framework or the CRAF) and safety planning.

Children's intake work is best undertaken by workers who understand the need to protect children, and who can assess and engage with them. Child FIRST works with children primarily through a focus on parenting, and specialist family violence practitioners have traditionally focused their assessments around women. The model implicitly assumes that family violence intake workers and Child FIRST workers will both have their capacities enhanced to undertake adequate risk assessments of children who have experienced family violence.

One skill set that is currently underdeveloped is that of working with families where the perpetrator remains in the family home. As discussed in Chapter 8, the Commission heard that this was a service gap, and that there was limited guidance for practitioners working with these families. This skill set should be strengthened across specialist family violence services and Integrated Family Services.

Intake into perpetrator interventions—which at the moment are exclusively men's behaviour change programs—is best undertaken by men who are familiar with, and who have run these programs, who have specific training in engaging and working with men who use violence, and who are accredited to work to No To Violence standards (noting that the programs themselves may be co-facilitated by women). However, as noted elsewhere in this report, perpetrators with significant criminogenic factors and who are not suitable for these programs need referral to a broader range of interventions. Capability in assessing these complex needs is also required. Processes and standards around contact with men to ensure victim safety will also need to be clearly articulated and followed.

Workers in each field of expertise operate according to different frameworks, standards and guidelines, and use different techniques and tools. A necessary precondition for an integrated intake will be to enhance the skill set of each and to revise these various standards and guidelines to reflect an integrated approach. Hubs will require a very good knowledge of all available services, locally and further afield, including services for older people, people from lesbian, gay, bisexual, transgender and intersex communities, people with disabilities and people from culturally and linguistically diverse communities.

Relatively high staff turnover and burnout is a risk due to the crisis focus, the intensity, and the risks associated with the job. There are likely to be significant shortages of workers with appropriate skills in some subregions. It will be particularly difficult to recruit men's workers (both male and female practitioners) with appropriate skills and experience. For these reasons, the Commission has recommended a comprehensive industry plan to meet workforce needs over the next decade. This goes beyond workforce needs of the hubs to the whole-of-system response and family violence prevention. This is discussed in Chapter 40, noting that one of the key issues that will need to be resolved is current funding anomalies and workforce remuneration differences between Child FIRST and specialist family violence services.

Links to Aboriginal community controlled services

The Commission is also mindful that in making recommendations regarding future system design, the preferences of Aboriginal and Torres Strait Islander peoples need to be respected.

Each Support and Safety hub will need to make arrangements with local Aboriginal organisations to ensure that where a person wishes to receive a service from an Aboriginal organisation, this occurs quickly and safely; and that where a person does not, the service the hub provides is culturally appropriate.

This will require all hubs to have in place:

- ▷ agreements with relevant local Aboriginal organisations to facilitate their involvement in intake and assessment, either as part of the hub intake team/joint triage or through consultation with that agency
- ▷ warm referral arrangements with Aboriginal organisations
- ▷ secondary consultation arrangements with relevant Aboriginal organisations. We have recommended that this be built into the funding model in recognition that such work by Aboriginal organisations should be recognised and resourced
- ▷ the capacity to deliver a culturally safe service if the person does not wish to engage with an Aboriginal-specific agency.

In some cases Aboriginal organisations might form part of the hub, be the lead agency, take part in joint triage or provide secondary consultation. Either option would require additional investment in Aboriginal-specific services, given the current level of unmet need described in submissions and evidence to this Commission.

Hubs might look different in different places and would need to be developed in ongoing consultation with Aboriginal community controlled organisations with appropriate expertise to ensure that the system design meets the needs of this community.

In some cases, existing partnerships might transfer because Child FIRST will form part of the hub. Similarly, because RAMPS will be linked to the hubs, involvement of relevant Aboriginal organisations in the RAMP will also need to take place.

In areas where Koori Family Violence Police Protocols operate, hubs will need to ensure that their processes comply with the protocol. This may mean, for example, that police will need to continue to despatch L17s to the agreed Aboriginal organisations and the hub unless/until these organisations agree to establish a new process.

As we have recommended that the hubs be established within three years, settling these arrangements will be an important part of both the system design, consultation and negotiation at a local level.

CRAF review must be completed and RAMPs rolled out

Hubs will need to use a consistent process to assess risk and need. At present the CRAF is used for women and children experiencing family violence, and the Best Interests Framework is used for children. The hubs will continue to use both these frameworks, but they need to be more closely aligned.

In particular, we have recommended that the revised CRAF contain tools that include evidence-based risk indicators that are specific to children, as well as greater guidance for assessing perpetrator risk of repeat and/or escalating family violence. We have also recommended that the CRAF allow for a ranking of low, medium and high risk, combined with professional judgment, to help guide decision making. This is particularly important for the proposed hub model, because medium or high-risk referrals will trigger a request to the Central Information Point. We describe this later in this chapter.

Given its central place in our family violence system, the Commission has recommended the Victorian Government begin implementing the revised CRAF by 31 December 2017 (see Chapter 6).

Locating RAMP coordinators within the hubs will facilitate the identification of the highest-risk clients, and assist the coordinator to ensure risk management continues until the RAMP meeting. However, the roll-out of RAMPs across the state has been delayed for some time. There is an urgent need to get these into place and this should not be delayed for the establishment of the hubs.

Legislative impediments to sharing information must be removed

Sharing information is a critical part of effective risk management. Sharing information in a timely manner is necessary to effectively manage the risk posed by the perpetrator and to ensure strategies are in place to keep victims safe. The hubs will not be able to undertake risk assessment if they do not have access to information. Currently, however, Victorian legislation does not explicitly provide for sharing of this information for the purposes of family violence risk assessment and management.

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.

One of the main functions of the Support and Safety Hubs is to conduct comprehensive family violence risk assessments. As a result, hubs will be prescribed organisations and specifically authorised to collect information from other prescribed organisations, including via the Central Information Point (described below, and in detail in Chapter 7) when it is necessary for them to:

- ▷ conduct a family violence risk assessment
- ▷ determine what service(s) are appropriate for the victim(s) or perpetrator
- ▷ refer a victim or a perpetrator to appropriate service(s).

Information sharing under the new regime must respect a victim's right to choose whether information about them is shared. As a general principle, prescribed organisations, including the hubs, must not share information about a victim without their consent. Under the Commission's recommendations, the only circumstances in which information can be shared without the consent of the victim is when there is a serious or imminent threat to their life, health, safety or welfare because of family violence.

However, in regard to information about the perpetrator, we recommend that information sharing for either risk assessment or risk management should not require his consent. This is justified because the information-sharing regime applies only when there is a current intervention order or family violence safety notice in force, or when an organisation (in this case the Support and Safety Hub) reasonably believes there is a family violence risk. It is our strong view that managing risks to safety takes priority over the privacy rights of the perpetrator. This will be proportionate to risk because to comply with the proposed amendments to the Family Violence Protection Act, the information shared must be necessary to conduct a family violence risk assessment, make an appropriate referral or manage a risk to safety.

In regard to information concerning children, consistently with the principles just outlined, the Commission has recommended that where the victim and perpetrator have children, the consent of the victim (usually the mother) should be sought when sharing information about children. The consent of the perpetrator will not be sought or required.

These changes to legislation are an immediate priority and an essential first step to better protect victims. They are also necessary for the hubs to be able to do their job effectively. We recommend these reforms be completed within 12 months.

Establishing the Central Information Point

Achieving a more permissive information-sharing regime will also require new infrastructure in addition to legislative change.

We have recommended in Chapter 7 that a statewide Central Information Point (CIP) be established to provide up-to-date information to inform risk assessment and risk management in medium to high-risk cases. The Commission's recommendation to introduce an actuarial risk assessment tool within the CRAF (Chapter 6) will assist determining which cases fall into the medium to high-risk category.

The CIP will be a co-located multi-departmental team, led by Victoria Police, with representatives from the Departments of Justice and Regulation (including Corrections Victoria) and Health and Human Services (health, drug and alcohol services, mental health, Child Protection, housing and homelessness, and youth justice), and a member of the registry staff of the Magistrates' Court of Victoria. Each agency represented at the CIP should be a prescribed organisation under the new information-sharing regime in the Family Violence Protection Act. This will allow information sharing between members of the CIP, as well as with other prescribed organisations, such as the Support and Safety Hubs. Our proposal is loosely modelled on the South Australian MAPS and the United Kingdom MASH (discussed in Chapter 6). More detail on the CIP is provided in Chapter 7.

Upon receiving an L17 or other referral, including self-referrals, a hub will be able to make a request to the CIP for information necessary to assess or manage a risk of family violence. Upon receiving such a request, each departmental representative at the CIP will be authorised to access their individual agency's databases and provide any information that may be held in relation to nominated individuals. The information obtained from the CIP will primarily be about the perpetrator. Information about the victim may be obtained from her directly, or from the CIP with her consent. As described above, the only circumstances where victim information can be provided by the CIP without the victim's express permission is where an imminent or serious threat exists (either to the victim or their children).

Information in agency databases may include information about criminal history, community correction orders, parole, Child Protection, mental health, drug and alcohol and other health services, disability services, youth justice, and housing services. The CIP would consolidate relevant information from each agency's database into one report and provide it to the hub the same day of the request.

The Commission intends that the CIP will provide updated information to the Support and Safety Hub in relation to a perpetrator who has already been the subject of a request for information. For example, the CIP should provide information to the Support and Safety Hub before a perpetrator is released from prison, or when a perpetrator is the subject of an L17 referral with respect to a different victim. This means the CIP needs to have the capacity to run searches on individuals who have previously been the subject of a request for information, and to have a mechanism for flagging important dates such as the expiry of family violence intervention orders and prison sentences. The hub should in turn share this information with agencies working with the victim where it is necessary to manage the risk to the victim's safety. The Commission acknowledges that the ability of the CIP to provide updated information to the Support and Safety Hubs may require enhancements to the information technology systems of Victoria Police and other agencies in the CIP. This will need to be considered in the implementation planning and funding arrangements for the CIP and is discussed in Chapter 7.

In addition to the hubs, Risk Assessment and Management Panels, Safe Steps, Men's Referral Service and Victims Support Agency should also have access to risk information from the CIP. Safe Steps and Men's Referral Service will continue to be responsible for after-hours referrals, and the Victims Support Agency for L17 referrals involving male victims. Each of these will require accurate and comprehensive information to assess and manage risk.

The Commission notes that the establishment of the CIP is not intended to replace information sharing between agencies at the local level, which will continue to be an important part of risk assessment and risk management.

The CIP must be established by the time the hubs begin operating, but establishing the CIP does not need to wait until the hubs are rolled out—in the meantime, the CIP could support RAMPs, local information sharing and other measures to monitor perpetrator risk. The Commission recommends establishing the CIP by 1 July 2018.

Implementing the hubs

Below we discuss some of the issues associated with the practical implementation of the hub model.

Appropriate leadership will be required

Implementation requires as a minimum the cooperation of the family violence and family services sectors. Given the historical background, different cultures and other differences in these sectors, and the potential challenges outlined in this chapter, strong leadership will be required at ministerial and departmental levels, including a commitment to provide the required additional resources. There will need to be joint commitment by senior staff within DHHS, by Victoria Police, peak bodies and by other people and groups charged with the responsibility to progress the implementation of the hubs.

Detailed design

Implementing the hubs will require considerable design and planning work to bring together intake for specialist family violence (women's and men's) and family services sectors. Government will need to consult with these service sectors to ensure that the design is responsive to local needs, including resolving any geographical boundary issues. The redesign should build on the strengths of both sectors, and be planned in such a way that the transition is as smooth as possible, with minimum disruption to service delivery.

The design process will include:

- ▷ detailed description of the service model, including referral pathways, target groups, hub activities, and relationships with Integrated Family Services and specialist family violence services (men's and women's)
- ▷ amendments to the Victoria Police Code of Practice for the Investigation of Family Violence and referral practices
- ▷ a revised CRAF and associated assessment tools and resources
- ▷ a development plan for each of the 17 hubs, including expected levels of demand, resources required, staffing structures and performance measures
- ▷ establishment of the Central Information Point and protocols for communication and referral
- ▷ operating guidelines for workers in hubs and intake tools (including referral forms, assessment forms, data collection)
- ▷ revision of service standards, frameworks and practice guidelines for specialist family violence services, men's behaviour change and Child FIRST/Integrated Family Services to reflect the new arrangements
- ▷ workforce needs assessment and strategy for transition to a more integrated approach
- ▷ resolving anomalies between funding and assumed remuneration rates between the specialist family violence and Integrated Family Services workforces²⁰³
- ▷ infrastructure planning, including a consistent data system for hubs and services, which may involve the development of new information technology platforms
- ▷ communications and promotions strategies to guide people to the hubs.

The Commission recommends elsewhere that the Victorian Government undertake comprehensive family violence demand forecasting for investment and service planning. These demand forecasts should be undertaken every two years. This information will be used to plan and deliver the hubs at a subregional level, in order to determine both hub size, staffing levels and likely demand. This will also need to determine the resources for services to which the hubs refer, in particular specialist family violence services, Integrated Family Services and perpetrator interventions. Given that the community-based child protection practitioner will be an important part of each hub, it will be necessary to ensure that there are adequate numbers of these positions to support the expected workload of the hubs.

A new intake—not an expansion of Child First

The central feature of the proposed hubs is that intake becomes integrated across specialist family violence (men's and women's) and Integrated Family Services, with each service system having a clear focus on family violence risk. The Commission recognises that this may create dislocation for Integrated Family Services and create some disruption to existing family service alliances.

A simplistic response to reforming current intake arrangements would be to simply expand Child FIRST (or another model such as Services Connect) to include family violence intake. However, the Commission does not recommend this, as it would diminish the emphasis on family violence and potentially leave women and children at risk. 'Bolting on' bits of family violence to other systems is not the intent of this reform, and doing so would work against the higher level of integration that we seek.

For this reason, we recommend that the Victorian Government fund the hubs as a new model. However, we urge the government to avoid the mistakes that have been made in some jurisdictions where simply 'spilling funding' has led to too much focus on competition. We seek to mitigate the risk that providers without experience will enter the field because of economies of scale and low price, and cause significant disruptions to service. These can be avoided through a staged approach to reform, active participation of the Integrated Family Services and specialist family violence sectors in design and development of the final model, and a recognition of prior performance in determining the best providers.

The Commission recommends that this start with a period of 'co-design' that builds on the expertise of existing providers and acknowledges the importance of community trust that existing providers have built over many years.

Conditions for selecting providers might include:

- ▷ the consortium/provider is located in, or auspiced by, an agency that has provided intake services in the specialist family violence sector, including receiving police L17 referrals
- ▷ has support from the family violence regional integrated committee
- ▷ existing subregional coverage with established linkages and referral pathways, including examples of collaboration between specialist family violence services and Integrated Family Services.

As a key component of the family violence system and the human services system more broadly, the hubs have an opportunity to be exemplars of practice to support the prevention of family violence. This includes having a range of workplace policies and practices that support gender equity, address the needs of staff affected by family violence when this occurs, and encourage and support bystanders.

It will also be vital that the purchasing process has sufficient rigour to prevent agencies from straying from the basic model, while allowing some adaptation to subregional circumstances. A key challenge will be ensuring agencies address and respond to the service model, while providing capacity to deliver tailored responses that keep women and children safe.

Governance arrangements

Consideration will need to be given to local and statewide governance arrangements, and how these will fit with, or evolve from, existing arrangements.

Existing leading practice needs to build on the relationships and expertise that have developed since the mid-2000s. It is not the Commission's intention that family violence regional integration committees cease to operate or be subsumed into the governance arrangements of the hubs. Their function is much broader and brings a whole-of-system approach, of which the intended intake focus of hubs is a subset. The Commission considers that family violence regional integration committees should be maintained. In particular, they will continue to play an important role in driving prevention efforts and regional collaboration and integration of response across multiple systems.

It is critical that specialist family violence services and Integrated Family Services form part of the governance arrangement that supports the hubs. The model is premised on collaboration and engagement of both sectors.

Bringing service sectors together will require time and adequate resourcing. Appropriate governance arrangements will need to be designed for the proposed hubs, including consideration of how arrangements may affect existing structures. In doing so, lessons from previous reforms, including the establishment of Child FIRST, need to be considered in order to give this reform the best chance of success. For example, the three-year evaluation of Child FIRST conducted by KMPG in 2011 set out the following features that influence capacity for shared governance:

- ▷ shared vision, goals and actions
- ▷ high levels of leadership commitment to the partnership
- ▷ effective resourcing of the partnership
- ▷ a focus on equity and inclusion
- ▷ sustainable relationships
- ▷ a growing emphasis on critical reflection and review.²⁰⁴

Even where there is goodwill and an agreement to move towards new arrangements, services will need to prepare their workforce and help to design arrangements that work best in a local context. This will be challenging given the high volume of demand and the many other changes following this Royal Commission.

This means that effective implementation of the hubs' governance arrangements will require resourcing at the local level, both in terms of time, resources and possibly additional funding. One option for resourcing might involve allocating additional resources on an interim basis to support the transition process.

Local arrangements will also need to be informed by and guided by a statewide policy framework that ensures a consistent approach to cases where there are both family violence and child development and parenting difficulties. Such a framework should outline the unifying principles that will govern how specialist family violence services (men's and women's services) and Integrated Family Services will work together. This framework should be developed by DHHS, in consultation with these sectors.

Building on reforms to date

The terms of reference ask the Commission to 'investigate how government agencies and community organisations can better integrate and coordinate their efforts'. Our recommendation to bring the specialist family violence and Integrated Family Services sectors closer together through shared intake, and greater resources for services on the ground, is an important and necessary reform to achieve this.

In many ways, our proposal is a natural progression from the first-generation reforms of the mid-2000s—specifically the introduction of the L17. This second-generation system will bring information about the whole family into one place, ensuring that services flow according to need and preserving the specialist responses to different family members. It will build on success to date, and challenge related systems to contribute effort to family violence—effectively forcing integration towards the next level.

There are further reforms that could occur in the long term. For example, at this stage we have not recommended that intake into sexual assault services be included in the Support and Safety Hubs, as we consider that further work is needed to build upon the existing cooperative arrangements and expertise that CASAs and specialist family violence services share at a local level. There may, however, be opportunities to trial such an approach once the hubs have been firmly established. The inclusion of family violence practitioners in the Geelong and Wyndham MDCs will also be a source of information about the risks and opportunities of such an approach.²⁰⁵ This could inform further integration of the family violence and sexual assault sectors as a third-generation reform.

However, the immediate priority is to put in place the necessary building blocks for transition to the hub model. The first of these is funding existing women's L17 referral points for the cost of processing those referrals. This must be done within 12 months. Similarly, relieving existing demand pressures through increased investment must occur to provide a circuit breaker for the system and remove the tendency for demand to skew our attention away from broader systems thinking.

Other reforms this Commission recommends, in particular amending the privacy regime, reforming the CRAF, establishing the Central Information Point, rolling out the RAMPs and undertaking comprehensive workforce planning under the Industry Plan, must all be completed for the Support and Safety Hubs to succeed.

Given these dependencies, the Commission is of the view that a realistic timeframe for establishment of the Support and Safety Hubs would be in the order of two years. Accordingly we recommend that they be established by 1 July 2018.

Recommendations

Recommendation 35

Pending the establishment of the recommended Support and Safety Hubs, the Victorian Government provide additional resources to ensure that the costs of processing and responding to police referrals (L17 forms) received by women's specialist family violence service L17 referral points are fully and discretely funded [within 12 months].

Recommendation 36

Pending the establishment of the recommended Support and Safety Hubs, the Victorian Government ensure that Integrated Family Services has sufficient resources to respond to families experiencing family violence [within 12 months].

Recommendation 37

The Victorian Government introduce Support and Safety Hubs in each of the state's 17 Department of Health and Human Services regions [by 1 July 2018]. These hubs should be accessible and safe locations that:

- ▷ receive police referrals (L17 forms) for victims and perpetrators, referrals from non-family violence services and self-referrals, including from family and friends
- ▷ provide a single, area-based entry point into local specialist family violence services, perpetrator programs and Integrated Family Services and link people to other support services
- ▷ perform risk and needs assessments and safety planning using information provided by the recommended statewide Central Information Point
- ▷ provide prompt access to the local Risk Assessment and Management Panel
- ▷ provide direct assistance until the victim, perpetrator and any children are linked with services for longer term support
- ▷ book victims into emergency accommodation and facilitate their placement in crisis accommodation
- ▷ provide secondary consultation services to universal or non-family violence services
- ▷ offer a basis for co-location of other services likely to be required by victims and any children.

Recommendation 38

The Victorian Government, in establishing the Support and Safety Hubs, provide additional funding [within three years] to allow for:

- ▷ co-design of the hubs with local providers
- ▷ appropriate infrastructure, including technology
- ▷ establishment of integrated intake teams with expertise in family violence, family and children's services, and perpetrator assessment
- ▷ appointment of an advanced family violence practitioner to provide practice leadership and secondary consultation
- ▷ capacity to activate an after-hours face-to-face crisis response where required
- ▷ provision of secondary consultation by other specialist organisations, including Aboriginal community controlled organisations, to the intake team.

Recommendation 39

The Victorian Government, on the basis of demand forecasting, provide sufficient funds to specialist family violence services and Integrated Family Services to allow them to support people referred by a Support and Safety Hub, maintain their safety and help them until their situation has stabilised and they have the support necessary to rebuild and recover from family violence [by 1 July 2018].

Recommendation 40

The Victorian Government revise relevant policy frameworks and service standards in the light of the new Support and Safety Hubs and the redesigned service system. This includes revising standards for family violence service providers (including men's behaviour change programs) and key health and human services that respond to family violence, as well as the Victoria Police Code of Practice for the Investigation of Family Violence [by 1 July 2018].

Endnotes

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- 34 Women's Health West Inc., Submission 239, 36; Domestic Violence Victoria—04, Submission 943, 12–13; Victorian Council of Social Service, Submission 467, 66.
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Glossary

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|---------------------------------------|--|
| 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. |
| Crimonogenic | 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. |

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| 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). |

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| 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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Volume III

Report and recommendations

March 2016

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The Hon. Marcia Neave AO – Commissioner
Patricia Faulkner AO – Deputy Commissioner
Tony Nicholson – Deputy Commissioner

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Contents

| | |
|--|-----|
| 14 Police: front-line operations and workforce | 1 |
| 15 Police: leadership, resourcing and organisational systems | 49 |
| 16 Court-based responses to family violence in Victoria | 117 |
| 17 Offences and sentencing | 189 |
| 18 Perpetrators | 241 |
| Glossary | 313 |

14 Police: front-line operations and workforce

Introduction

Police play a very important part in the front-line response to family violence, and are integral to the broader family violence system in Victoria. Police members who respond to family violence incidents are often the first contact that a victim has with the family violence system. An effective police response is essential to victims' ability to remain safe, receive a fair outcome, and recover from the violence.

The Royal Commission acknowledges the significant and ongoing changes that have taken place within Victoria Police in the past 15 years. As an organisation, Victoria Police has shown great leadership and commitment to improving the way it responds to family violence. The Commission also recognises that improvements must be made in order to ensure that family violence is regarded as core business, to improve the investigation of offences, and to ensure that police interact appropriately with victims and with other service systems.

This chapter examines front-line operations and workforce matters; Chapter 15 looks at leadership and systems. The two chapters should be read together.

The first section of this chapter provides an overview of the context and current police practice in relation to family violence. It outlines the evolution of the police response to family violence in the past 15 years, from a situation where family violence was seen as a private matter and often ignored or dismissed, to one in which police are now governed by a Code of Practice for the Investigation of Family Violence that helps keep victims safe and hold perpetrators to account.

The second section of the chapter explores issues and challenges associated with front-line police operations and the police workforce. While the police response has improved, there are still inconsistent approaches that can lead to very different experiences for victims, depending on the circumstances of their interaction with police. These inconsistencies are particularly evident in the way police use the L17 (the family violence risk assessment and risk management report). This section discusses the difficulties and issues around identifying the primary aggressor in cases involving intimate partner violence, and notes that incorrectly identifying the primary aggressor can have serious consequences for a victim. In addition, the Commission examines the way police respond to reports of contraventions (breaches) of intervention orders and the evidence that police might sometimes fail to respond appropriately.

The section goes on to consider challenges related to education and training and supervision and support. It considers the culture and attitudes within Victoria Police and draws on the recent Victorian Equal Opportunity and Human Rights Commission report on this subject. This Royal Commission also acknowledges that police members and employees themselves are not immune from the experience of family violence, as both perpetrators and victims, and examines the organisational response to this.

In the final section of this chapter, after considering current practice and the concerns raised by a number of stakeholders, the Commission puts forward its opinions and proposes a way forward. The recommendations the Commission makes about Victoria Police's front-line operations and workforce development include improving training and processes relevant to L17 risk assessments, reviewing and strengthening police practice identifying the primary aggressor, and establishing a Family Violence Centre of Learning to bolster police education and training.

In relation to the issues identified around police culture, the Commission endorses the recommendations made in the Victorian Equal Opportunity and Human Rights Commission's report supporting the creation of a more diverse, gender equitable workplace. It also recommends that Professional Standards Command review Victoria Police policies and procedures relating to police employees and family violence.

The chapter does not deal explicitly with the question of increased demand for police services in connection with family violence incidents. This is examined in detail in Chapter 15, although it is relevant to all the matters canvassed here.

Context and current practice

Responding to family violence occupies a significant proportion of Victoria Police time and resources throughout the organisation—including general duties police, family violence specialists, and other specialist areas such as criminal investigation units or sexual offences and child abuse investigation teams. Responding to family violence engages all parts of Victoria Police since such violence is involved across a broad spectrum of offending.

In 2011 Victoria Police introduced the Enhanced Family Violence Service Delivery Model, which outlines a three-tier response to family violence. The first tier encompasses the role of general duties police as first responders to family violence incidents. The second tier involves escalating risk and police involvement, for example through applications for family violence intervention orders and the laying of criminal charges. The third tier targets the highest-risk offenders, which can involve management by family violence teams or other specialist units, multi-agency interventions and enhanced victim support.

The police response to family violence is governed by the Code of Practice for the Investigation of Family Violence (2014, version 3), which was first introduced in 2004.¹ The Code of Practice clearly expresses the response and service levels expected of Victoria Police members. It outlines the actions police members are required to take to assess and manage risk via criminal, civil and referral options, as well as expectations for victim support and sensitivity to the experiences of particular population groups.

In early 2015 Victoria Police established Family Violence Command to monitor the organisational response to family violence, maintain organisational accountability and improve police responses to family violence, sexual assault and child abuse. Family Violence Command does not control the allocation of resources to family violence, either in terms of general duties police or specialist family violence teams and roles. Decisions of that nature, as well as operational accountability, reside at the regional level and are determined by the Regional Assistant Commissioner.

In addition to the material presented in this chapter, the 'Context and current practice' section of Chapter 15 examines other relevant matters, including Victoria Police's strategic vision and regional structure.

The evolving Victoria Police response to family violence

Victoria Police has a crucial role in responding to family violence in our community. Society entrusts police with powers and responsibilities to maximise the safety and support of victims, identify and investigate incidents of family violence and prosecute perpetrators, and assist in the prevention and deterrence of family violence by responding to it appropriately.²

Public confidence in the police response to family violence influences victims' willingness to report violence in the first place. Effective police responses can help victims to access support and legal processes designed to protect their safety, as well as hold perpetrators to account and deter them from committing further violence.

Historically, Victoria Police, like its counterparts in other jurisdictions, did not tend to treat family violence as an important part of its work. As Domestic Violence Victoria noted

... police responded to family violence as a private matter, ignoring or minimising it – largely mirroring mainstream community views. It was commonplace for women seeking crisis help to report unhelpful, dismissive and uninformed responses from police.³

The situation has improved since 2001, with the appointment of Chief Commissioner Christine Nixon APM and the publication of Victoria Police's Violence against Women Strategy, *A Way Forward*, in the same year. Victoria Police has introduced a number of reforms in the last decade and continues to do so.

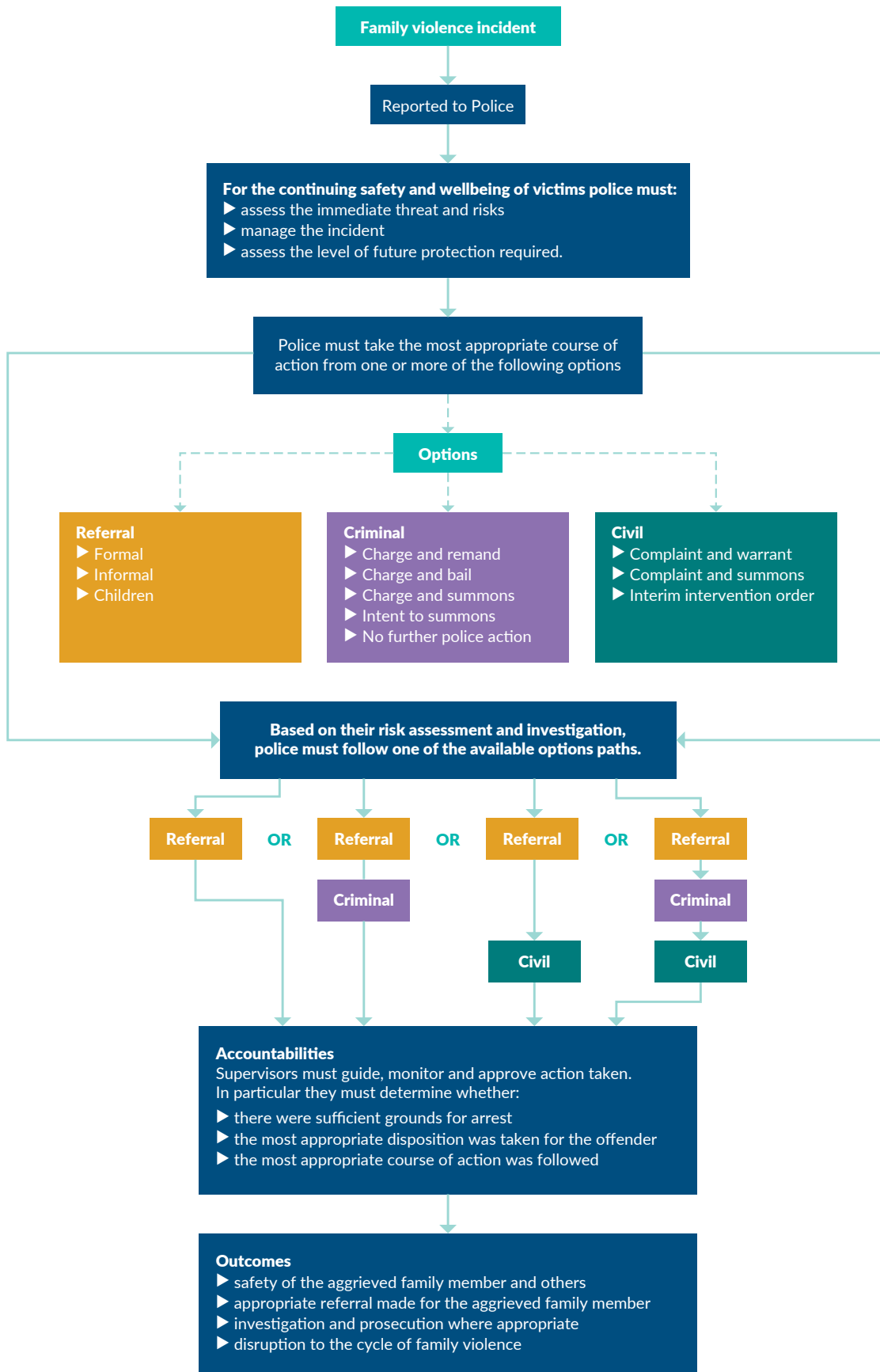
Police operating procedures

The Code of Practice for the Investigation of Family Violence stipulates a policy of compulsory action by police, who are required to:

... respond to and take action on any family violence incident reported to them ... based on risk assessment and risk management, regardless of whether the AFM [affected family member] makes a verbal complaint or written statement.⁴

Police must respond to family violence as a 'priority unless it is clear that the report relates to a past violence and there is no risk of imminent danger or the person is seeking advice only'.⁵ The Code of Practice states that in meeting the policy of compulsory action, police will, among other things, take immediate action to protect and support affected family members (victims) and their children, perform a family violence risk assessment, and use their professional judgment to determine the most appropriate risk management strategy.⁶

Figure 14.1 The Police Options Model: In response to and investigation of family violence



Source: Based on Victoria Police, Code of Practice for the Investigation of Family Violence—Edition 3' (2014) 21.

Risk assessment

The Code of Practice requires that a family violence risk assessment and management report, known as an L17, be completed for every family violence incident reported to police.⁷ This guides police through the complex process of assessing and managing risk in order to protect victims' safety and wellbeing and potentially break the cycle of violence.⁸ The L17 is aligned with the risk indicators in the Family Violence Risk Assessment and Risk Management Framework (also known as the Common Risk Assessment Framework, or the CRAF).

Civil options

The intervention order scheme was introduced to complement rather than replace existing criminal law remedies.⁹ When this civil option was introduced it was seen as an effective way of protecting women and children, in view of the high standard of evidence required for proof of criminal offences and the fact that criminal law looks to past criminal offending rather than future offending.¹⁰

Police may pursue civil options whenever the safety, welfare or property of a family member appears to be endangered by another family member. These options may be pursued without the agreement of the affected family member.¹¹

The two civil law responses available under the *Family Violence Protection Act 2008 (Vic)* are:

- ▷ family violence intervention orders either interim or final¹²—these orders are made by the Magistrates' Court or the Children's Court¹³
- ▷ family violence safety notices, which are temporary orders issued by police that remain in force until the court decides the FVIO application.¹⁴

Police may issue FVSNs without application to the court¹⁵ and, since November 2014, at any time.¹⁶ Before then, they could be issued outside court hours.

As noted in Chapter 10, children witness or are otherwise affected by a significant number of family violence incidents. Police members must assess the interests of children independently from those of their parents, since their needs might be quite different, and the best interests of the child are of paramount importance.¹⁷ Children can be included on FVIO applications for the affected family member if their needs are similar, but a separate application can be required for a child where 'unique conditions arise and they are not able to be covered in the parent's application'.¹⁸ In addition to providing guidance on the use of police holding powers under the Family Violence Protection Act, the Code of Practice also outlines the ongoing requirements for police informants to support FVIO applications. This includes liaising with the police prosecutor or police lawyer,¹⁹ advising the affected family member of court procedures and discussing any safety concerns, support needs and required FVIO conditions.²⁰

Criminal options

Family violence incidents may give rise to a range of criminal offences, including contravention (often called a breach) of an FVIO, assault, property damage, stalking or threatening behaviour, sexual offences, aggravated burglary, and kidnapping or abduction.²¹ The Commission was advised that, since family violence is 'often inextricably intertwined in criminal proceedings', it is common for other criminal charges to appear alongside contraventions of intervention orders.²²

Contravening an FVIO is a summary offence.²³ In 2012 new indictable contravention offences were added:

- ▷ contravention of an FVIO intending to cause harm or fear for safety
- ▷ contravention of an FVSN intending to cause harm or fear for safety
- ▷ persistent contravention of notices and orders.²⁴

The Code of Practice notes that pursuing criminal charges is a primary responsibility of police responding to family violence incidents.²⁵ It stipulates that police conduct a thorough investigation of all reported family violence incidents, including taking notes of observations and conversations, preserving any physical evidence, taking photographs or fingerprints, and collecting other evidence.²⁶ In appropriate cases the forensic services department, the local criminal investigation unit, the sexual offence and child abuse investigation team or a crime squad may be called to assist.²⁷

The Code of Practice expresses a pro-arrest, pro-charge policy where warranted on the evidence, as noted during the Commission's hearings:

The Code of Practice is a pro arrest document. So where we have the power to arrest someone we will use it so that we are sending a strong and consistent message to the perpetrators that they will be held to account for their actions.²⁸

A brief of evidence must be prepared in every case where an offence is deemed to have been committed, and a supervisor decides whether the brief will or will not be authorised for prosecution.²⁹ Police may proceed with charges if warranted, even if the affected family member is reluctant to give evidence.³⁰

Assistant Commissioner Dean McWhirter, Family Violence Command, gave evidence that for 2013–14, in relation to reported crime (not guilty finding or convictions):

- ▷ Offences arising out of family violence incidents accounted for 41.7 per cent of all crimes against the person.
- ▷ Family violence-related assaults accounted for 45.7 per cent of all assaults (with the proportion of family violence-related assaults steadily increasing in the past 10 years).
- ▷ Family violence-related rape offences made up 34 per cent of all rape offences (an increase of 15.6 per cent on the previous year).
- ▷ Family violence-related abduction or kidnapping accounted for 41.7 per cent of all abductions (again an increase on previous years).³¹

In 2013–14 police laid charges for 27,701 family incidents.³² As principal offences, the most serious offences committed during a family violence incident—crimes against the person—made up the bulk, at 61.4 per cent ($n=17,020$) of charges laid, followed by breaches of orders (22.2 per cent $n=6143$) and property and deception offences (9.1 per cent, $n=2521$).³³

The Sentencing Advisory Council reported that from 2009–10 to 2014–15 the percentage of police-recorded family violence incidents where charges were laid increased from 22.3 per cent ($n=7944$) in 2009–10 to 38.2 per cent ($n=27,058$) in 2014–15.³⁴

Referral options

Formal referrals occur by police forwarding an extract of the L17 to an external service funded by the Department of Health and Human Services to assist people affected by family violence. The service will then make contact with the affected family member or perpetrator (as required). The L17 is directed to one of 19 area-based catchment points for women and children's family violence services including Safe Steps Family Violence Response Centre (after hours). The Code of Practice stresses that referrals are in addition to, and do not replace, the pursuit of criminal charges or the seeking of civil protection in response to family violence.³⁵

Referrals occur in accordance with a family violence referral protocol between DHHS and Victoria Police.³⁶ Formal referrals are made if, for example, police intend to pursue criminal or civil options, if there is a likely future risk of violence, or to address recidivism.³⁷

The Code of Practice states that informal referrals can be appropriate when no evidence is available to pursue a criminal or civil option and there are no immediate concerns for the affected family member's or a child's safety or welfare. Informal referrals involve police in providing affected family members or perpetrators the details of relevant services they might wish to contact.

As described in Chapter 13, both the Code of Practice and the referral protocol with DHHS stipulate multiple referral pathways when children are affected by family violence:

- ▷ When police refer a female victim to a family violence service provider, they must provide details of any children present at the incident. The service will consider the needs of the child and refer on to Child FIRST if required.³⁸
- ▷ Police must make a report to Child Protection if their statutory mandatory reporting obligations are triggered under the *Children, Youth and Families Act 2005 (Vic)*.³⁹
- ▷ Police may make a report to Child Protection if they have a reasonable belief that a child or young person is otherwise in need of protection within the meaning of the *Children, Youth and Families Act*.⁴⁰
- ▷ Police may make a referral to Child FIRST if they have concerns about the welfare of a child but have not otherwise made a referral to Child Protection or a family violence service.⁴¹

In evidence, Sergeant Mark Spriggs, Family Violence Advisor, North West Metro Division 5, explained:

Ordinarily, members make notes at the scene of a family violence incident, return to their station, complete the electronic L 17 Forms on LEDR MK 2 and submit the form to a Sergeant for approval. At that point the referrals are automatically sent to family violence services according to the pre-set referral matrix. A Sergeant checks and approves the report and it is then committed to LEAP. The report will continue to exist on both LEDR MK 2 and LEAP.⁴²

Challenges and opportunities

This section considers the challenges and opportunities associated with Victoria Police's front-line operations and workforce. It examines victims' experiences, as well as the experiences of particular population groups, before looking at risk assessment, identifying the primary aggressor and contraventions of intervention orders. Following that, this section discusses workforce development themes such as education, training and supervision, and family violence experienced by, or involving police members.

Victims' experience of police

A number of concerns related to how victims experience the police response were raised with the Commission. The Commission heard that, despite major reforms in recent years, police service standards in response to family violence remain inconsistent. Domestic Violence Victoria stated:

The role of police is critical to an effective family violence system that provides safety for women and children and holds perpetrators accountable for their behaviour and over the past 15 years Victoria Police have undertaken major structural, procedural and cultural reforms to fulfil this role ... DV Vic believes it is important to acknowledge and commend Victoria Police for the leadership, commitment and profound changes to police responses to family violence in Victoria.⁴³

Many submissions noted the positive impact of key reform initiatives on the quality of police responses, among them:

- ▷ the Code of Practice⁴⁴
- ▷ the introduction of family violence safety notices and the willingness of police to pursue intervention orders⁴⁵
- ▷ family violence teams and other Victoria Police specialist family violence positions.⁴⁶

The Commission also heard the personal accounts of victims who have had positive experiences with police:

My first experience was with the police, when the police came. I'm a bit jittery. So my eldest daughter rang the police and they came and that was the best thing that could have happened. It was a violent interaction with him. They sent the family violence police officers. That was fantastic.⁴⁷

[M]y ex at the time, we had recently separated, came to my house and became incredibly violent. I called the police and they arrived and put a protective order in place. The police initiated that order. I was totally unaware of the process. The police were great. The normal police came and then the dedicated family violence unit arrived.⁴⁸

Variable responses across police stations and members

The Commission heard in public consultations and through submissions from victims that the quality of police responses varies from station to station and from police member to police member:

... the hardest part ... is an inconsistency of response—one police officer who is on board and educated and then an officer who has no idea.⁴⁹

Police, so inconsistent, some are great [and] some are awful, they don't keep in touch with women, there are police prosecutors who seem to act on behalf of the perpetrator.⁵⁰

Doncare,⁵¹ Women's Legal Service Victoria⁵² and Cobaw Community Health,⁵³ among others, reported that victims of family violence have negative experiences with individual police members who do not address risk, are dismissive or are reluctant to pursue contraventions of intervention orders. These experiences can deter women from making future reports.

Assistant Commissioner Luke Cornelius, then Assistant Commissioner for the Southern Metropolitan Region, acknowledged in his evidence that responses to family violence vary across stations and members:

Walking up to a station to seek assistance on a family violence matter, look, I would have to say, and the evidence discloses this, it's a bit of a lottery. I would love it for it not to be a lottery. I would love at every point where people contact Victoria Police that they got the level of service that I have articulated and as reflected in the Code of Practice. But it doesn't happen.⁵⁴

Variable responses for types of violence

The Commission also heard that police provided inconsistent responses depending on the type of family violence experienced by the victim even though the Code reflects the range of family violence types under the Family Violence Protection Act.

Family violence workers at three of the Commission's community consultations said that police focus on physical violence and might not recognise psychological and economic abuse, controlling behaviour or other non-physical forms of violence.⁵⁵ This view was shared by Deakin University Centre for Rural and Regional Law and the Goulburn Valley and Loddon Campaspe Community Legal Centres.⁵⁶ Women's Legal Service Victoria put it this way:

While the Family Violence Code recognises economic abuse, our experience indicates that police often focus on physical and sexual abuse and can overlook economic abuse. Police officers may be better equipped to identify economic abuse if the Family Violence Code was amended to include practical examples of this type of abuse.⁵⁷

Communication with victims

In addition to dismissive attitudes and limited understanding of non-physical violence, the Commission heard that lack of continuity in police contact with victims was another area of inconsistency.

Family violence workers and victims expressed concerns in community consultations about delays resulting from police informants' shift, leave and other work arrangements and frustration at the apparent lack of collective accountability or communication between police members.⁵⁸ As described by Quantum Support Services:

Some women have reported feeling re-traumatised by having to repeat their lived experience with family violence in their interactions with different police personnel. Some have also advised of an inconsistent response across police personnel and a lack of understanding of the complexities of family violence. Some have described their concern with a lack of focus on offender accountability despite repeated interactions with the police, leaving the family far from feeling safer, but further disempowered and victimised by the system itself ...⁵⁹

Consistency concerns were also raised in relation to police informants keeping victims updated on progress. This included not passing on information relevant to safety, such as when a perpetrator has been released on bail.⁶⁰ The Commission was also told that, while the police response was good after an incident, communication waned as time passed.⁶¹

Response times

Inconsistency in how long it took police to respond to family violence incidents was also raised as an area of concern: 'Need immediacy around response from the police—sometimes you call and then [the] phone rings out'.⁶²

The Commission heard that police resourcing and rostering practices were also a factor behind inconsistent response times, particularly in rural and regional areas. Family violence sector workers at one community consultation noted that '... family violence doesn't happen between 9 and 5 Monday to Friday' and suggested that weekend staffing levels at some towns result in delayed responses, which acts as a disincentive to call police.⁶³

Assistant Commissioner Cornelius stated that demand pressures also affect response times:

Of course, there are occasions when we do have a number of critical incidents at a given point in time and its going to be difficult for us to have the resources available to respond to every one of those incidents. Of course, if we are not able to deploy local resources to attend to those priority 1 matters, we will look to draw on resources and response capacity from elsewhere across a local area command or elsewhere across a division or elsewhere across a region.

The key point for us is we seek to line up the available resource and get it there as quickly as we can, but there are a whole range of factors which impact on how long that might take.⁶⁴

Evidence from Victoria Police suggested that the way people contact police affects response times:

... if you are the victim of a breach of an intervention order, call 000. All calls to 000 are recorded ... There is an accountable record made of that contact. 000 calls are allocated for service via CAD, and, again, that's an accountable process.⁶⁵

The experience of particular population groups

Another theme that emerged from the evidence before the Commission was that despite specific guidance in the Code of Practice regarding communities that face specific barriers to seeking help, certain population groups in the Victorian community continue to face challenges in accessing quality police responses to family violence. The barriers these groups faced are discussed in detail in the introduction to Volume V of this report; what follows here is a brief outline.

Aboriginal and Torres Strait Islander peoples

The Aboriginal Family Violence Prevention and Legal Service Victoria (FVPLS Victoria) told the Commission that the legacy of Australia's colonial history persists, with Aboriginal victims of family violence facing significant barriers to reporting such violence and seeking and obtaining support. Among the barriers are poor police responses, discriminatory practices, and a lack of cultural competency.⁶⁶

The Commission heard about constructive initiatives between police and the Aboriginal community statewide and at the local level. This includes the work of the Indigenous Family Violence Regional Action Groups (IFVRAGs) to engender confidence in the Aboriginal community about reporting family violence to police, improved police responses where Koori Family Violence Police Protocols (the Koori Protocols) have been implemented, enhanced service responses from family violence teams, and numerous local-level collaborative initiatives.

However, evidence provided to the Commission from Aboriginal and Torres Strait Islander peoples, suggested continuing challenges: 'Police are no good. You have to be bashed before they come out. They take so long to come out, especially once they know [you are] Koori'.⁶⁷

Aboriginal stakeholders told the Commission police do not always comply with the Code of Practice when responding to Aboriginal people.⁶⁸ The FVPLS Victoria submission stated that lawyers reported inadequate responses from police, including comments from police members to victims that minimised the violence and discouraged them from seeking intervention orders.⁶⁹

People from culturally and linguistically diverse communities

The Ethnic Communities' Council of Victoria told the Commission that it is difficult for women with limited English language skills to gain access to police or support services.⁷⁰ A further barrier is fear of being stigmatised and ostracised in their community.⁷¹ Those who have experienced conflict-related trauma and poor police practice before moving to Victoria or who have had negative experiences in Victoria can also distrust police.⁷²

Moonee Valley City Council noted the importance of building partnerships with community leaders: 'Working with CALD community leaders as important supports and advocates can instil change at community level and build trust to work with Police and local authorities over time'.⁷³

InTouch Multicultural Centre Against Family Violence told the Commission that police, while well intentioned, can be insensitive to the needs of women and children from culturally and linguistically diverse backgrounds and can misunderstand cultural responses to family violence.⁷⁴ Both InTouch and the Ethnic Communities' Council of Victoria highlighted the importance of providing culturally sensitive training in family violence to police, and engaging professional interpreters as early as possible.⁷⁵

In 2014, following the release of its Equality is not the Same report and the associated three-year action plan, Victoria Police established a number of portfolio reference groups representing a number of communities—Aboriginal and Torres Strait Islander, disability, LGBTI, mental health, multicultural, older people and young people. Each group is chaired by an assistant commissioner and is made up of representatives of key peak bodies and advocacy groups representing their community.⁷⁶

During hearings InTouch representatives highlighted that Victoria Police is doing positive work:

... there is a lot of willingness and effort from the police to engage with CALD communities. I have to say that there are issues, but we are working on them and the partnership has been really good.⁷⁷

Lesbian, gay, bisexual, transgender and intersex people

The Commission heard that lesbian, gay, bisexual, transgender and intersex people also face barriers in reporting family violence to Victoria Police. The Victorian Gay & Lesbian Rights Lobby (referencing the NSW Inner City Legal Centre) submitted that:

Stigma still surrounds domestic violence in LGBTI relationships, and LGBTI communities are less likely to report, seek support, or identify experiences of domestic violence and abuse, at least in part because of a fear of 'outing', gender stereotypes, and perceived and actual discrimination and harassment.⁷⁸

These views were reinforced by Gay and Lesbian Health Victoria, which noted that Victoria Police has made significant progress in developing relationships with the LGBTI community, including through the network of Gay and Lesbian Liaison Officers.⁷⁹ However, the Commission was advised that although the Liaison Officer role is important for people, the number of officers and their availability are limited.⁸⁰ Gay and Lesbian Health Victoria told the Commission that family violence training at all levels should incorporate material relevant to the LGBTI community.⁸¹

People with disabilities

The Commission heard that people with disabilities face a number of difficulties associated with the police response to family violence.⁸² Victoria Police acknowledged that reporting of family violence by people with a disability does not reflect the prevalence of violence against people with disabilities.⁸³ The Victorian Equal Opportunity and Human Rights Commission noted in its *Beyond Doubt* report that it had received reports of police members failing to take family violence reports from victims with disabilities.⁸⁴

The Code of Practice for Investigation of Family Violence states that police should engage the services of a support person or independent third person as soon as possible in an investigation involving people with disabilities.⁸⁵ The Commission received evidence from the Victorian Public Advocate, however, that police do not always do this, and that there are disparities in the use of the independent third person program in Victoria.⁸⁶

These concerns also affect people who experience mental illness. The Women's Mental Health Network Victoria told the Commission its clients have reported that making complaints to police about family violence is a 'horrendous experience':

When I said I had a mental illness I was treated as though I was not credible ...
I am not believed.

I called police to report violence, they said I had [a] mental illness so they would have
to call the clinic to ask for proof I was credible.⁸⁷

Moreland Community Legal Service highlighted the lack of specialist resources for front-line police to draw on.⁸⁸ The Commission also heard about new initiatives to improve Victoria Police's capacity to identify and deal with mental health problems, particularly in the context of family violence, related to either victims or perpetrators. NorthWestern Mental Health submitted:

Mental Health services have received additional funding to support one shift per day of a senior clinician who goes with police as a secondary response to situations where it is believed mental illness or disorder is a contributing factor. A significant number of calls to [police] involve family violence. The clinician is able to undertake an assessment with police present to determine whether the person should be referred for further treatment, or admitted to an inpatient unit, or indeed whether a criminal justice outcome would be more appropriate. An indirect benefit of this service is an improved understanding of the roles and modes of working by police and mental health practitioners and greatly improved sharing of information.⁸⁹

In its submission Victoria Police highlighted two new programs—Police and Clinical Emergency Response Units and Taskforce Alexis. PACER Units involve a police member and a mental health clinician operating as a secondary response unit to provide assistance to divisional vans. Taskforce Alexis provides a local coordinated response to family violence, mental health, and youth and crime prevention. The 24-person taskforce comprises a Family Violence Team, a Mental Health Team and a Proactive Team co-located at the Moorabbin Police Complex. The task force also involves a family violence key worker (a qualified social worker funded by the Salvation Army), a mental health clinician (part of the PACER model with Monash Health) and a police intelligence practitioner. The task force meets monthly with key external partners to coordinate responses and discuss responses to vulnerable families.⁹⁰

People in rural, regional and remote communities

Another issue raised with the Commission concerned the impact of small-town culture on policing services in rural, regional and remote communities, particularly where perpetrators have existing relationships with police members. Primary Care Connect told the Commission of multiple cases where victims living in smaller communities were reluctant to report family violence because of connections between individual police members and perpetrators through sporting clubs, pubs and other social contexts.⁹¹ One victim explained:

... [I] experienced prejudiced attitudes and threatening behaviour, mostly by officers who knew my husband and did not wish to assist me, or worse still, openly made threatening statements towards me to discourage me from following through on applications. I believe this situation was exacerbated as I was living in a rural area.⁹²

Other submissions stated that local police might be reluctant to take action because they do not believe the perpetrator could have committed family violence or because they wanted to ‘keep the peace’.⁹³ Geographical isolation was also raised as a factor affecting victims’ perceptions of how responsive police could be:

I get nervous in my town as there is only one road in/out and at times I feel trapped. I try to tell myself that it makes it safer for me. I feel isolated and have no faith that the police will respond promptly if I need them.⁹⁴

Numerous submissions also expressed concern about there being insufficient police resources (specialist and general duties positions) in rural, regional and remote areas:⁹⁵

Specialist police in regional and rural areas typically cover large catchment zones and have extensive caseloads. Consequently ... ‘[w]hile women and workers generally recognised the value of Family Violence Liaison Units, some participants reported extensive waits to speak to the unit’ (Jordan and Phillips 2013) ... Difficulties experienced by survivors in accessing specialist police, not only Family Violence Liaison Officers but also Aboriginal Liaison Officers and Multicultural Liaison Officers must be rectified.⁹⁶

Male victims

Through some submissions and in community consultations the Commission was told that police do not take male victims of family violence seriously and that police lack the resources to investigate false allegations of family violence against men.⁹⁷ Male victims are discussed in detail in Chapter 32.

Although it is important to recognise that men can be victims of family violence, the Commission was also told that some men believe women use the family violence intervention order system unfairly against them, when the women are in fact doing so to seek safety.⁹⁸

Risk assessment and the L17

Victoria Police's front-line response to family violence depends on accurate risk assessment and appropriate risk management strategies, as outlined in the Code of Practice.

Risk assessment, including the L17, is discussed in more detail in Chapter 6. Below we summarise some of the community feedback on police risk assessment practice.

Domestic Violence Victoria explained the broader significance of Victoria Police risk assessment as follows:

The role of police in undertaking family violence risk assessment is a critical linchpin in the integrated family violence system. The information gathered by police when they attend a family violence incident, is essential to building a comprehensive understanding of the level of risk faced by a particular family. With the specialist family violence services, this information informs subsequent decision-making and the support received from there on.⁹⁹

The Commission heard from a range of sources that police proficiency in conducting risk assessments affects the quality and consistency of responses to family violence.

A number of people expressed concern about the Victoria Police risk assessment process. Aunty Janine Wilson, Chairperson of the Northern Loddon Mallee Indigenous Family Violence Regional Action Group, told the Commission:

Once it gets past the sergeant, can't fault the system. It's the response of the officer or the two officers that attend the 000 phone call that seem[s] to [not] get it.

[T]hat officer that does his risk assessment that's not doing his job. You have some good police who do it, you have some stalwarts that just won't do it, and you have some young ones being taught some bad habits. So I'm not picking on one officer, I'm not picking on one station, I'm picking on a system that can't get it right from the hierarchy down.¹⁰⁰

Domestic Violence Victoria stated that family violence workers have a range of concerns with the L17 risk assessment process,¹⁰¹ among them the following:

- ▷ Police can treat risk assessment as a form-filling process.
- ▷ Police can view family violence incidents as one-off events, rather than as part of a pattern of coercive control and abuse.
- ▷ Evidence gathering should not detract from risk assessment. Both are vital roles in the police response to family violence incidents, but sometimes evidence gathering received priority at the expense of risk assessment.
- ▷ The risk assessment process does not allow for new information to be shared about an alleged offender or victim.
- ▷ Standard police training covers only basic risk assessment.
- ▷ Training in use of the CRAF is not widespread among police, and the framework is not tailored for a police context.
- ▷ Police might not have a good understanding of how to assess risk for children.¹⁰²

Victoria Police noted that family violence training was provided from 2008–09 to support the implementation of the Family Violence Protection Act. This included risk assessment information congruent with the CRAF and was provided to 6013 police members between 2008–09 and 2010–11.¹⁰³ Training on use of the L17 is included in foundational training for all police recruits.¹⁰⁴

Domestic Violence Victoria raised other questions relating to the quality of L17s –for example, police members not collecting enough information, leaving consent checkboxes blank, failing to verify contact details (for instance, when alleged offenders provide false phone numbers) and including only limited excerpts of information for family violence agencies.¹⁰⁵

During the community consultations family violence workers also raised concerns about the lack of feedback loops between police and family violence services in relation to the outcomes of L17 referrals.¹⁰⁶ Feedback on the outcome of referrals is encouraged under the referral protocol, but workers said this depended on individual relationships on the ground.¹⁰⁷

Police members are reportedly frustrated about the absence of feedback they receive on the outcome of L17 referrals.¹⁰⁸ The Commission heard that once an L17 has been sent to a referral agency, confidentiality and privacy laws prevent police from providing any additional pertinent information about the perpetrator or victim to the relevant service.¹⁰⁹

The former State Coroner, Judge Ian Gray, also identified a number of shortcomings associated with the current L17 system in his report on the inquest into the death of Luke Batty:

- It does not explicitly address or assess risk factors for children exposed to or experiencing family violence;
- It provides little guidance on how to weight and combine risk factors (and is better characterised as a risk identification tool rather than a risk assessment tool);
- It does not provide any guidance to the officer completing it to identify the nature of the likely future harm about which a person/child is being assessed. Therefore, an assessment of likelihood of risk of harm is unable to be linked to a particular kind of harm or any narrative analysis of the assessment of those risks;
- Police officers do not to [sic] receive adequate training on how to conduct a family violence risk assessment.¹¹⁰

Judge Gray also found that the L17 process is not designed to accommodate changing risk factors and views incidents in isolation.¹¹¹ More broadly, he found there is a lack of information sharing between agencies that respond to family violence.¹¹²

During the community consultations, family violence workers expressed similar concern about the lack of information sharing in relation to risk assessment, which, they argued, detracts from integrated service delivery.¹¹³ Domestic Violence Victoria noted that, because police L17s generate separate referrals for women, men and children, family violence services perform risk assessments 'without access to full information about the critical relational aspects of a woman's experience of violence.'¹¹⁴ Broader aspects of information sharing, and multi-agency and integrated service delivery models or initiatives, are discussed in Chapters 7 and 13.

Risks to children

Another concern related to the L17 referral process, as raised with the Commission, is to do with police members being unsure about whether to make a referral to Child Protection, Child FIRST or a specialist family violence service when children are present. For example, family violence workers in Shepparton described their uncertainty about whether matters involving children should be referred to Child Protection or Child FIRST.¹¹⁵ This lack of clarity can delay contact with the family, which the Children's Protection Society says can reduce the likelihood of engagement with services.¹¹⁶ Anglicare submitted that the system is not responsive enough to make the best use of crisis situations to secure engagement.¹¹⁷ Chapter 13 discusses this issue further.

Connections UnitingCare noted that some referrals contain only limited information, which makes it difficult to act on them; the Children's Protection Society stated that police rostering is such that it can be hard to get in touch with the relevant police member to fill information gaps, contributing to delays in responding to families.¹¹⁸

Victoria Police acknowledged the challenges its members face when assessing risk to children and making appropriate referrals:

At present, the response options available to police are limited to mandatory reports to Child Protection where there are protective concerns, or referral to Child FIRST where there are more general concerns. This two-doorway system means Child Protection may receive a large volume of referrals that require their assessment before being deemed below their service threshold and that divert their resources from responding to cases that do merit their intervention ... At present, police are expected to make decisions about this pathway in the field, sometimes with limited information.¹¹⁹

Assistant Commissioner McWhirter elaborated on this during the hearings:

From a Victoria Police perspective, we are not trained experts. We are doing an initial assessment to actually direct somebody else who has those specialist skills to actually make that [decision] about what service should be provided to that child in that family situation.

...

We can't be all things to all people. I think we clearly have the capacity to identify that a child is at risk. But in terms of the actual support that needs to be provided as a follow-up, that is not our role or our obligation ...

...

[F]rom our perspective it should be a single referral to a location with specialists who understand about child protection, understand about the nuances and implications around risk for children and that they should be making those decisions about what services are provided, whether it's Child FIRST or whether it's Child Protection.¹²⁰

The police perspective on risk assessment

In addition to the views of external stakeholders, the Commission considered Victoria Police's 2013 review of the Code of Practice. This review identified a number of shortcomings associated with the L17 process, including:

- ▷ Police members who have not had an opportunity to rotate through a Family Violence Team are frustrated at the number of questions on the L17.¹²¹
- ▷ These members view the L17 as a data-collection tool for other agencies, a view stemming from a lack of understanding of the purpose and meaning of the risk assessment process.¹²²
- ▷ There is a tension between the practice of completing L17s back at the station (and relying on memory) and the need to base decisions in the field on risk assessments.¹²³
- ▷ Risk assessment is a secondary guide to other factors.¹²⁴
- ▷ There is evidence that police do not identify some well-known danger signs—such as pregnancy or a new child, harm to pets, the presence of disability, the respondent being excessively jealous, or having made threats or demonstrated coercion, and where the violence has included sexual assault or strangulation.¹²⁵
- ▷ Supervisors noted that some members tended to view the incident but not the history behind it and the presence of non-criminal risks, and identified the need for better training to resolve quality shortcomings—such as incomplete narratives, consideration of prior histories of violence and assessment of future risk.¹²⁶

The Police Association Victoria's submission emphasised that the process of completing L17s and the associated paperwork remains time consuming. This is despite the improved recording practices brought about by the LEDR Mk II program, which allows police to enter L17s directly into the statewide LEAP (Law Enforcement Assistance Program) database. The association's submission contains quotes from police members that illustrate the ongoing administrative burden associated with family violence paperwork:

A major problem with Victoria Police is that we're doing half the things on paper, half the things digital. The fact that you've got to do your L17, and then wait two days to have a sergeant put it on LEAP and then go, 'Oh, don't forget to file these criminal investigations'. But you couldn't put those criminal investigation 25 forms on because you didn't have a LEAP incident number.

There is a button that says 'add sub-incident'. It doesn't work. You can't use that. But there should be something that you can click and go, 'I want to add to this that he also did this'. And then you save on having to re-enter the victim's information and the address another 20 times for your threats to kill and your unlawful assault and your aggravated assault and all your breaches. Sometimes it's like six pieces of paperwork with the same information on it.¹²⁷

Trial of actuarial risk assessment and triage tool

Assistant Commissioner McWhirter also outlined for the Commission changes under way to resolve some of the difficulties with the L17 process.

Victoria Police has engaged the Centre for Behavioural Science, at Swinburne University of Technology and Forensicare to develop triage tools, including a revised L17 form, for use by general duties police members at family violence incidents to determine the level of specialist police response required.¹²⁸ This will be trialled in 2016 in specific locations in Western Melbourne.¹²⁹ Assistant Commissioner McWhirter described the rationale for the trial:

So it's about ... understanding that there are differences of where we need to invest our resourcing. What that will mean is that it should actually give some clarity for members in terms of risk assessment. Clearly we need a whole lot of education around that if we go down that path and we would need to pilot, which is our intention, and it is part of my responsibility in terms of Family Violence Command. What it needs to do is to look at our approach to the L17.¹³⁰

In summary, the trial will use an actuarial screening tool based on a large sample of Victoria Police data to predict the likelihood of a perpetrator or victim being involved in a further police family violence incident in the next 12 months.

Police attending incidents will use this tool to determine whether a full risk assessment (using a revised L17 form) should then be conducted.¹³¹ Incidents that do not reach the threshold score on the triage tool will not have a full L17 completed, and will not have a formal referral to a victim or perpetrator service.¹³² Victoria Police advised, however, that these incidents will continue to receive the standard criminal, civil or referral response consistent with the Code of Practice and that the categorisation under the tool will not influence the criminal prosecution response.¹³³

If an incident does meet the threshold score, the completed L17 will be sent to the family violence team for further assessment (using another tool also being developed), to determine the level of intervention by that team,—either 'standard preventative follow-up' or 'a more intensive level of assessment and management'.¹³⁴ As is the case now, the L17 will also be sent to the relevant specialist family violence service or men's intake for follow-up.

There is an option for police members to over-ride the points assessment in cases where the incident has reached the threshold score but using their professional judgment they consider the matter requires escalation to the Family Violence Team.¹³⁵

This is a three-year project, the final report and evaluation being due for completion by December 2018. An initial evaluation of the triage instrument will be completed by December 2016.¹³⁶ The trial is discussed in more detail in Chapter 6.

Identifying the primary aggressor

The primary aggressor

The Code of Practice for the Investigation of Family Violence defines 'primary aggressor' in the following terms:

Primary Aggressor – the party to the family violence incident who, by his or her actions in the incident and through known history and actions, has caused the most physical harm, fear and intimidation against the other.¹³⁷

The Code of Practice stipulates that identification of the primary aggressor is compulsory for police members. It also states that only one primary aggressor should be identified, and that 'cross applications for intervention orders should not be made'.¹³⁸

The Code of Practice provides the following guidance for police in identifying the primary aggressor:

Key indicators to identify the primary aggressor include:

- Respective injuries
- Likelihood or capacity of each party to inflict future injury
- Whether either party has defensive injuries
- Which party is more fearful
- Patterns of coercion, intimidation and/or violence by either party

If it is unclear who the primary aggressor is, the AFM [affected family member] should be nominated on the basis of which party appears to be most fearful and in most need of protection. Record reasoning as appropriate in the Case Progress Narrative.¹³⁹

Elsewhere, the Code of Practice urges police members to take the time to accurately identify the primary aggressor:

Police must remain patient during their response and investigation and not make assumptions when assessing evidence and determining who the likely primary aggressor is. It is also important for police to be cautious of undue influence, power imbalances and/or possible manipulation by the alleged perpetrator.¹⁴⁰

The Commission heard from a number of sources that police members can sometimes incorrectly identify the 'primary aggressor' in family violence cases. It was said this can have adverse consequences for the administration of justice and it can give rise to lost opportunities for family violence services to engage with victims. The Commission also understands that if it is later established a woman was incorrectly identified as a primary aggressor there is no mechanism, or a perception that there is no mechanism, to update LEAP and ensure she can obtain appropriate support.

Over the past five years in Victoria there has been a slight increase in the proportion of women arrested in family violence incidents and as respondents in FVIO applications. Table 14.1 provides a gender breakdown of charges recorded on LEAP for the main categories of family violence offences: crimes against the person, property and deception offences, and justice procedure offences.

Table 14.1 Gender of perpetrator for charges laid for: key family violence offence types, 2009–10 to 2013–14¹⁴¹

| Gender | 2009–10 | 2010–11 | 2011–12 | 2012–13 | 2013–14 |
|---------------------------------------|---------|---------|---------|---------|---------|
| Male perpetrators % | 87.06 | 85.59 | 85.34 | 84.61 | 84.51 |
| Female perpetrators % | 12.94 | 14.41 | 14.66 | 15.39 | 15.49 |
| Number of charges laid ¹⁴² | 7150 | 9461 | 14,339 | 21,848 | 25,642 |

a. A small number of offences are excluded when the gender of the 'other party' is missing—13 in 2009–10, 21 in 2010–11, 47 in 2011–12, 70 in 2012–13 and 82 in 2013–14. Note: Offence types are crimes against the person, property and deception offences, and justice procedure offences. Source: Crime Statistics Agency.¹⁴³

A number of people expressed concern that police members sometimes inaccurately identify victims as primary aggressors. One individual told the Commission:

Many Police still cannot tell who the primary aggressor is when confronted with a situation at a family home. Police are still taking [out] family violence safety notices on victims and perpetrators at the same time.¹⁴⁴

Women’s Health West Inc. submitted:

Our experience tells us that when police refer women to us as respondents, they are most often the primary victims of family violence, having used violence in self-defence or in response to an act of violence initially directed at them. They are not the primary aggressors, as commonly reported by police in their L17s.¹⁴⁵

Ms Jacky Tucker, Family Violence Services Manager at Women’s Health West Inc, offered some insight into the scale of this problem during the Commission’s hearings:

In June we received 57 referrals from police identifying the female as the respondent. Of those, after assessment and conversations with all the women, we identified six perpetrators of family violence out of the 57.¹⁴⁶

Ms Tucker went on to clarify the assumptions sometimes made about women in family violence situations:

I think that there’s probably a little bit of myth around the presentation of women who are victims of family violence, that somehow they are submissive in behaviour ... Because a woman is angry, there’s some reason that anger is then transferred to identifying her as the perpetrator, where in fact she is not the perpetrator.¹⁴⁷

Safe Steps provided insight into the dynamics behind difficulties identifying the primary aggressor:

Perpetrators of family violence regularly use the privacy of the home and the incident-based responses of police to conceal the extent of violence. At incidents attended by police perpetrators can appear calm and reasonable, and suggest to police that the woman is unreasonable due to her apparent agitation. Police must be trained to identify the primary aggressor in family violence incidents.¹⁴⁸

The Commission also heard that primary aggressor difficulties are particularly relevant for marginalised groups in the community—for example, people from culturally and linguistically diverse backgrounds, who may have reactions to violence that are culturally different from those with whom police are familiar and are therefore misinterpreted by police.¹⁴⁹

Women with Disabilities Victoria stated that women with disabilities reported being misidentified as primary aggressors; Flat Out Inc. told the Commission women who have a criminal record can be similarly misidentified.¹⁵⁰

The Aboriginal Family Violence Prevention and Legal Service Victoria stated that it has assisted a number of clients in situations where the police have not properly identified the primary aggressor, which can lead to further victimisation of the affected family member. It provided a case study to illustrate the point.¹⁵¹

Case study: Sarah

Sarah had experienced a history of family violence by her partner, Peter—most of which she had been too frightened to report as she lived in a small town where Peter had significant influence and friends in the police force.

In one instance, Sarah was physically assaulted by Peter and fled the family home with her four children. Peter drove after her, speeding, shouting and driving dangerously. Sarah drove to the police station with Peter in pursuit.

When Sarah arrived at the police station, a police officer asked the children what had happened and they said, 'Daddy hurt Mummy'. Peter subsequently arrived at the police station and another police officer who knew and was friends with Peter took Peter aside.

The police asked Sarah whether she had anywhere to stay that night. Sarah said that she would have to go to the next major town which was more than two hours drive away. The police officer told Sarah that was too far and that she should 'let the kids stay in their own beds tonight.' Sarah was told to come inside the station and let her children go home with Peter. The police told her they would help her find somewhere safe to stay. Sarah was incredibly distraught and upset and did not feel like she had the emotional resources to disagree with the police officers. She waited at the station for five hours until they found her accommodation in the same town she had originally intended to go to.

As Sarah got up to leave the police station, she was served with an intervention order application taken out by the police against Sarah for the protection of Peter and the children. The police did not make a similar application against Peter for her protection, nor did they advise her to obtain legal advice about the matter. Sarah was shocked and confused.

Sarah ultimately sought advice from FVPLS Victoria who assisted her to lodge a police complaint, obtain her own IVO, regain her children and dispute the police application against her.

The Commission was told that the L17 forms generated by Victoria Police can wrongly identify female victims as the perpetrators of family violence against their male partners.¹⁵² Conversely, Victoria Police can incorrectly refer the male partner to the Victims Support Agency for assistance when he is in fact the primary aggressor. Indeed, the Victims Support Agency's Victims of Crime Helpline Practice Manual notes that some male primary aggressors can be incorrectly referred by the police to the agency.¹⁵³

The Victims of Crime Helpline Practice Manual describes how to establish whether a man is using violence or requires protection from family violence. It lists indicators that might help in determining whether the man is a victim—for example, if the offender is also male.¹⁵⁴

Similarly, the Helpline's Male Family Violence Practice Manual annexes primary aggressor guidelines prepared by No To Violence. These guidelines encourage the use of techniques that focus on questioning, rather than confrontation.¹⁵⁵ They also provide a comprehensive list of open-ended questions that might be asked.¹⁵⁶ Additionally, the manual sets out a corrective process to be used in the event that police have incorrectly identified a man as the affected family member.¹⁵⁷

Further submissions outlined other negative consequences of failing to identify the primary aggressor. For example, the Footscray Community Legal Service stated that police sometimes initiate cross-applications, contrary to the Code of Practice and having failed to identify the primary aggressor. This, it was said, can impede the administration of justice:

[I]t would appear that a common approach by Victoria Police officers is to initiate cross-applications where there is uncertainty as to who is the primary victim in a domestic violence incident, resulting in an increased number of unmeritorious applications, and a drain on court and legal services.¹⁵⁸

Women's Legal Service Victoria described the effects of cross-applications resulting from police incorrectly identifying the primary aggressor. These include not holding the primary aggressor to account and not keeping the victim safe.¹⁵⁹ It also argued that cross-applications consume court time and add to delays:

Duty lawyers (of both parties) and police representatives spend a significant amount of time on the day of the mention hearing establishing what has happened in the case. Regularly the police informant is not available and the police representative is not able to withdraw one of the applications. The matter is usually adjourned.¹⁶⁰

Lessons from other jurisdictions

Researchers in other jurisdictions have examined the primary aggressor question in some detail. In their report entitled *Family Violence—A National Legal Response* the Australian Law Reform Commission and the New South Wales Law Reform Commission noted that primary aggressor policies arose in the United States after mandatory or pro-arrest statutes led to an increase in the number of dual arrests in family violence incidents.¹⁶¹ Academic commentators explained:

These mandatory and presumptive statutes encouraged police to adopt a more legalistic orientation and avoid the use of discretion. As a result, when police encountered two violent parties, they increasingly chose to arrest both parties and assumed that the prosecutor would determine who should be charged and/or the court would determine who the guilty party was.¹⁶²

Research from a number of North American jurisdictions shows an increase in the number of women arrested for intimate partner violence since the implementation of mandatory or pro-arrest policies.¹⁶³ A number of authors criticise these pro-arrest policies, suggesting that innocent women are arrested after defending themselves against their abuser.¹⁶⁴

As a consequence, by 1 July 2012, 34 states in the United States had enacted primary aggressor laws.¹⁶⁵ The laws vary in their detail, but aim to ensure that police receive guidance in determining who is the 'real' offender; this includes looking at the history of abuse.¹⁶⁶

In New South Wales in 2012, the Standing Committee on Social Issues noted there has been an increase in police proceedings against women for domestic violence offences—however, the report stated that this is one of the most controversial aspects of its inquiry.¹⁶⁷ The Standing Committee report found that between 2001 and 2010, there was an average increase of 10 per cent a year in the number of females subject to police proceedings for domestic assault, compared with a two per cent increase for males.¹⁶⁸ These findings are controversial, and the consensus is that there is insufficient evidence to explain the true cause of the trend. Many participants in the New South Wales inquiry recorded strong views and policy prescriptions on the subject. Very many saw it as an unintended consequence of pro-arrest policies and the inability of police to correctly identify the primary aggressor;¹⁶⁹ others saw it as 'reflect[ing] the reality of female domestic violence offenders which has historically gone unrecognised and unaddressed'.¹⁷⁰

The debate is also reflected in the literature, which suggests that women might use force as a result of past victimisation and their relative powerlessness.¹⁷¹

Improving the police approach

A number of submissions to this Royal Commission called for improvements to police training and for support and guidance to better equip members to accurately identify primary aggressors.¹⁷²

One member of the public advised the Commission that the difficulties surrounding police identification of the primary aggressor could be resolved through greater use of specialist, highly trained family violence units.¹⁷³ This aligns with the Standing Committee's report, which noted that participants identified a greater role for skilled police in conducting investigations or supervising staff and providing guidance on primary aggressor identification.¹⁷⁴

The New South Wales report also recommended that further research be done on police investigations and the primary aggressor, with the findings to guide actions in relation to legislation, policy, practice and training.¹⁷⁵ The Australian and New South Wales Law Reform Commissions report also endorsed further consideration being given to counsellors attending family violence incidents with police, a suggestion that arose in a 2008 review of Western Australian family violence laws (and was based on the Australian Capital Territory model).¹⁷⁶

As one Canadian study found, adequate police training in relation to primary aggressor policies can be effective in reducing the rates of dual arrest at family violence incidents.¹⁷⁷

The police response to contraventions of intervention orders

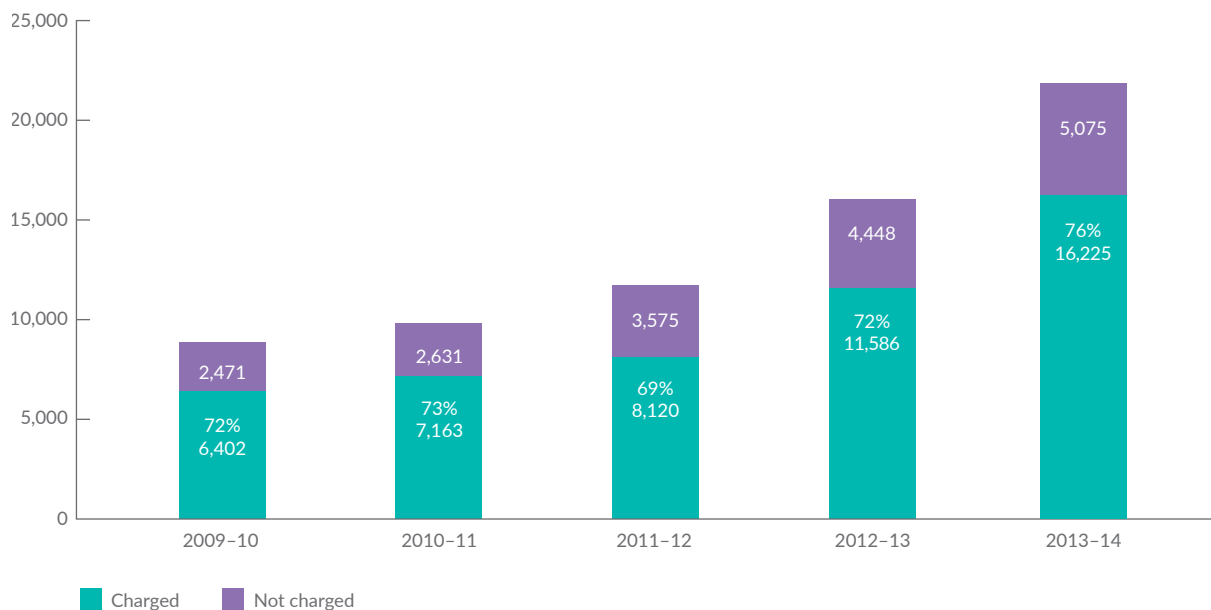
The police response to contraventions (breaches) of intervention orders was raised by many people at the Commission's community consultations and in submissions.¹⁷⁸

It is not possible to discern what percentage of family violence intervention orders are breached because there is no link on police or court data systems between granted intervention orders and FVIO contraventions. The Commission was told that Victoria Police is trying to redress this limitation.¹⁷⁹ Chapter 39 examines the technology limitations between various data systems.

Figure 14.2 shows that the number of reported family violence-related breach offences increased by 140 per cent between July 2009 and June 2014. In 2009–10, 8873 breach offences were reported to and recorded by police, compared with 21,300 in 2013–14.¹⁸⁰ In the nine months from July 2014 to March 2015 a total of 20,195 breach offences were recorded, indicating that 2014–15 will show an increase on the preceding year.¹⁸¹

Of the 21,300 recorded breach offences in 2013–14, charges were laid for 16,225 (76.2 per cent). In 2009–10 the percentage was 72.2 per cent and, as Figure 14.2 shows, the proportion has changed little in the five years since 2009–10.¹⁸² The data should, however, be interpreted with caution. As the Sentencing Advisory Council noted, 'multiple contravention charges may relate to a single FVIO, and the rate of contraventions may be inflated due to a small number of repeat offenders'.¹⁸³

Figure 14.2 Recorded family violence breach offences, charged and not charged: Victoria Police, 2009–10 to 2013–14



Source: Victoria Police (prepared by the Crime Statistics Agency), 'Table 1: Number of Recorded Offences for Breach of Family Violence Intervention Order by Offence Code, Police Region and Investigation Status, July 2009–March 2015', produced by the State of Victoria in response to the Commission's Notice to Produce dated 14 August 2015 (as varied on 20 August and 20 October 2015).

The data provided to the Commission includes a breakdown of the number of charges (and no charges) for the new offences of contravention of a family violence intervention order or family violence safety notice, with intention to cause harm or fear for safety and persistent contravention of order. During 2013–14 there were 3428 recorded contraventions with intent to cause harm or fear for safety (both FVSN and FVIO). Of these, police laid charges for 2031 offences (59 per cent). The charge rate for these offences increased to 67 per cent ($n=2092$) for the period July 2014 to March 2015.¹⁸⁴

Police laid charges in 1084 of 1166 recorded persistent contraventions in 2013–14 (93 per cent). For July 2014 to March 2015, the charge rate for this offence was 86 per cent ($n=1193$). In view of the short time that these offences have been in existence, it is not possible to draw any conclusions about trends.¹⁸⁵ Sentencing for contravention offences is discussed in detail in Chapter 17.

The Victoria Police Manual and the Code of Practice make it clear that police are obliged to treat contraventions of FVIOs seriously. The Code of Practice states:

FVIOs and FVSNs must be strictly interpreted and enforced. There is no such lawful term as a 'technical' contravention and police must lay charges for any contravention.¹⁸⁶

Decisions to prosecute are based on the evidence gathered and should not be a subjective assessment by the responding police as to the seriousness of the contravention.¹⁸⁷

Assistant Commissioner Cornelius reiterated this point during the hearings:

I don't think we could have made it any clearer in the Code of Practice just how seriously we want our members to take family violence related matters and the level of attention that they ought pay to them ... I have also been made aware of some of the public commentary and some anecdotes that I'm aware of around, 'Don't call us until you've got bruises' and that sort of commentary. I really want to take the opportunity here today to say to the community, but also more particularly to every serving police officer in Victoria Police, that is absolutely not in keeping with the expectations set out in the Code of Practice. Every breach of an intervention order, every act of family violence is required to be dealt with under the Code of Practice as a serious matter.¹⁸⁸

A breach of an intervention order is a breach of an intervention order, and my expectation is that breaches will be charged ... and the offender will be held accountable for that breach.¹⁸⁹

The Commission was told, however, that Victoria Police could do more to charge perpetrators for breaches of FVIOs, especially when the breaches involve non-physical abuse and may not as readily result in an assault charge. One victim of family violence said:

... [I]t is getting better, massive changes in police ... but breaches of intervention orders are still a joke. How many times do you have to go into there and complain? They think it is a joke and ignore you.¹⁹⁰

Women's Legal Service Victoria submitted:

[T]here continues to be inconsistency in charging for breaches. In our experience as duty lawyers, there are number of reasons:

- police are reluctant to prosecute a breach if there is no corroborating evidence and they only have a complaint made by the victim.
- a distinction made by some police officers between 'technical' or 'non-serious' breaches and 'serious' breaches.¹⁹¹

This reasoning aligns with the evidence of victims suggesting that police might take action only if they see the breach as 'serious':

The police on duty basically told me to go away as they had real crimes to deal with. They said that it is not a breach of an intervention order to call someone and I couldn't prove that anything wrong had occurred. I urged them to look up my order and confirm that what he was doing was a breach. They said they couldn't see that. More importantly they gave no importance to the crime that was committed against me.¹⁹²

Some victims suggested that police do not understand the serious effect that an apparently 'minor' breach can have on a victim; stating that '[I]f the victim is saying they are feeling fearful they should be believed. We are not delusional or imagining it'.¹⁹³

Deakin University Centre for Rural and Regional Law and Justice and the Domestic Violence Resource Centre Victoria both raised concerns about the police response to breaches committed by electronic means, the former arguing that there is confusion about the rules of evidence in such cases.¹⁹⁴ At a community consultation one victim described her experience:

I was getting about 200 texts and messages in an 8-hour period but each one was not counted as a breach because the definition is consecutive days in a 7 day period, so it was counted as one. The police never really explained that.¹⁹⁵

The Commission heard evidence that failure to act on breaches can undermine the integrity of the intervention order scheme, emboldening offenders and discouraging victims from reporting further breaches. The Federation of Community Legal Centres noted:

It gets cast as ‘just a minor breach’ but there will often be a series of them. Respondents are always testing the boundaries. Our clients make regular complaints to the duty lawyer about police not prosecuting breaches—particularly electronic communication breaches. This can lead to clients ceasing to report incidents when the violence may be more serious in the future.¹⁹⁶

The Doncaster Community Care and Counselling Centre Inc.¹⁹⁷ and the Loddon Campaspe Community Legal Centre made similar points, submitting that, ‘A significant proportion had given up on making reports about breaches because of this. Others crafted their own solutions, like moving town, to feel safer.’¹⁹⁸

Nevertheless, the Commission also heard that the police response to breaches is improving. Service providers at one community consultation said that until a year ago ‘there was this idea of a “technical breach” ... now ... a breach is a breach.’¹⁹⁹ At another community consultation, we were told that the establishment of a family violence team had changed local police attitudes to breaches from the historical view that ‘it’s your word against his’.²⁰⁰

Workforce development

In addition to these issues associated with the front-line police response, the Commission identified consistent themes relating to workforce development—in particular, education, training, supervision and support. Chapter 15 discusses similar issues in relation to specialisation within Victoria Police and the role of family violence teams.

Police education and training

The Commission heard evidence from a range of sources highlighting the importance of education and training in supporting an effective police response to family violence.²⁰¹

Although writing in the US context, Eigenberg, Kappeler and McGuffe made observations that also apply in Victoria:

In general, training is critical because it allows police departments to demonstrate priorities and reinforce policies. Domestic violence training is essential, given the rapidly changing nature of domestic violence legislation, the unique attention given to the police response in these cases, and the unique nature of the crime itself.²⁰²

The 2013 Victoria Police review of the Code of Practice noted the importance of specialist family violence education and training for:

- ▷ looking behind a particular crisis or incident to obtain the full story²⁰³
- ▷ equipping police to make effective risk assessments and apply suitable risk management strategies—for example, training in identifying the primary aggressor²⁰⁴
- ▷ maintain police morale and a positively disposed culture, so as to avoid frustration and cynicism—particularly in relation to women who choose to remain at home with the perpetrator.²⁰⁵

Current education and training arrangements

Victoria Police provided a range of documents to the Commission and gave evidence at the hearings to explain the current approach to family violence education and training. This is summarised in Table 14.2.

Commission personnel also attended the Police Academy to observe both theoretical and practical aspects of foundational training in family violence. The Commission greatly appreciated this opportunity, which helped us understand the current educational program, and provided first-hand exposure to the commitment of trainers and recruits alike.

Table 14.2 Victoria Police’s current approach to family violence education and training

| Training type | Action |
|------------------|--|
| Specific purpose | <ul style="list-style-type: none"> ▷ 6500 police members received a half-day training session on the Code of Practice within 18 months of its introduction in August 2004.²⁰⁶ ▷ 4500 police members were trained in the three months preceding the introduction of holding powers in 2006, via an online training package, in-van/in-station reference materials and a general refresher course.²⁰⁷ |
| Foundational | <ul style="list-style-type: none"> ▷ Police recruits/probationary constables receive foundation training during a 33-week cycle at the Police Academy. ▷ 17 dedicated family violence sessions are delivered, including one session on protecting children, one on personal safety intervention orders and two revision sessions. Practical skills are also assessed with three days of family violence practical applications. ▷ Sessions are structured around the following modules: <ul style="list-style-type: none"> ▷ an introduction to family violence—including the nature of family violence, myths of family violence, factors that inhibit reporting, and the cycle of violence theory ▷ Family Violence Protection Act ▷ the Code of Practice ▷ criminal options ▷ firearms ▷ holding powers ▷ risk assessment—the L17 form ▷ civil options ▷ referral options ▷ practical application of the knowledge.²⁰⁸ ▷ The Victoria Police Centre for Ethics, Community Engagement and Communications provides instruction to recruits on, among other things, the <i>Charter of Human Rights and Responsibilities Act 2006 (Vic)</i> and the Victims Charter. This includes material on dealing with the challenges of family violence in diverse communities.²⁰⁹ |
| Promotional | <ul style="list-style-type: none"> ▷ The Sergeants’ Qualifying Program includes a two-hour session on family violence, with the aims of: <ul style="list-style-type: none"> ▷ changing the thinking and language to do with family violence ▷ understanding the psychology of being a victim ▷ developing strategies for creating a robust victim support culture.²¹⁰ ▷ Family violence is a topic in the planning and risk management section of the Senior Sergeants’ Qualifying Program, participants being required to apply a change-management process to a recidivist offender scenario.²¹¹ ▷ The Constables’ Qualifying Program (a transition program for protective service officers) includes sessions focusing on family violence—including legislation, powers and procedures.²¹² |
| Ongoing | <ul style="list-style-type: none"> ▷ Family violence advisors, pursuant to their standard operating procedures, are required to provide family violence training to members in their division.²¹³ |

On-the-job training

Police members stated unequivocally that on-the-job training is the most important part of gaining confidence in policing family violence.²¹⁴ The review of the Code of Practice also noted that police members said that, while the training at the academy is useful, there is limited time spent on each topic and the ‘real’ learning occurs on the job.²¹⁵ Academy personnel shared this view, noting that in the time available they can only provide foundational training that focuses on family violence law and the appropriate use of powers.²¹⁶

The review of the Code of Practice also emphasised the important educative and awareness-raising function of family violence teams:

A standout issue in relation to quality of policing of family violence appeared to be associated with the presence and training offered by specialist family violence teams. The greater understanding of the dynamics of family violence (in particular the recognition of coercive control and the reasons for victim withdrawal from civil and criminal court proceedings), the stronger engagement with the [affected family member] and the stronger collaborations with external agencies came through in the interviews as subtle but consistent findings from those with the experience of the specialist teams.²¹⁷

The review also found:

- ▷ Members with family violence team experience reported a more complete understanding of family violence procedures and how to facilitate positive outcomes, along with improved efficiency in completing administrative and processing requirements.²¹⁸
- ▷ Members with family violence team experience were more likely to identify the L17 risk assessment process as a factor guiding their decision making.²¹⁹
- ▷ Supervisors recognise that family violence team rotations lift capability and reduce the need for station-level micro-management.²²⁰
- ▷ Disaffection and frustration are more prevalent among police members without specialist family violence training.²²¹

Opportunities for improving education and training

A number of submissions to the Commission raised the need to improve the family violence education and training provided to police. The Police Association Victoria identified limitations with the current approach:

A new recruit at the Academy will spend approximately two weeks studying family violence. While one or two days are spent providing context to family violence as a social issue, the majority of this time is spent learning the increasingly complex and convoluted legislative and policy requirements necessitated by the interface of civil and criminal justice processes. Once on the job, members estimate that 60–70 per cent of their time on the frontline is spent tending to family violence matters. Despite this, additional training is organised and provided at the local level on an 'as needed' basis. This inconsistent approach to training is highly problematic for members.²²²

It also identified the need for different levels of family violence training, including more in-depth training for those entering or in specialist family violence roles.²²³

The Victoria Police submission noted the need to take a comprehensive approach to family violence education and training, including through:

... a Victoria Police Family Violence Centre of Learning to deliver a range of education programs to police members, tailored to rank, role and career stage. This would be a best practice hub based at the Victoria Police Academy dedicated to developing and embedding family violence learning throughout Victoria Police.²²⁴

The Commission notes the Victorian Equal Opportunity and Human Rights Commission's recent review of sex discrimination, sexual harassment and predatory behaviour in Victoria Police, which made recommendations about improving academic quality and consistency. VEOHRC recommended that People Development Command establish an academic governance body that includes independent expert(s) with a primary focus in the field of gender, sex discrimination and sexual harassment, to advise on academic policies and curriculums, and ensure consistent, evidence-based training and learning outcomes.²²⁵

Comprehensive and ongoing training on the nature and dynamics of family violence

Safe Steps stated in its submission that despite dramatic improvements in the police response to family violence since the introduction of the Code of Practice, many police members are unfamiliar with the Code's requirements. Problems include that police:

- ▷ believe the perpetrator's account rather than that of the victim
- ▷ do not believe a woman who has a history of drug or alcohol use, and assuming her distress is a result of substance use
- ▷ dismiss women who make repeated reports—particularly if the woman has chosen to remain at home
- ▷ assume that both the woman and the man are in a mutually abusive relationship when there is evidence of the woman resisting abuse or defending herself
- ▷ assume that abuse in same-sex relationships is mutual
- ▷ assume that women who are agitated, distressed or anxious are not credible or reliable
- ▷ treat Aboriginal women and children poorly and not believing their accounts, leading to a reluctance to report
- ▷ treat women with a disability poorly, assuming their reports are unreliable or, if they have communication or behaviour support needs, disregard their reports in favour of the perpetrator's account.²²⁶

Safe Steps argued that this demonstrates the need for compulsory and comprehensive training on family violence and the Code of Practice—including specific training in identifying the primary aggressor in family violence incidents.²²⁷

Loddon Campaspe Integrated Family Violence Services Consortium, Darebin Community Legal Centre, the Law Institute of Victoria and the Australian Women Against Violence Alliance all called for improved training for Victoria Police, specifically focusing on the nature and dynamics of family violence;²²⁸ understanding and responding to emotional and psychological abuse, in addition to physical and verbal violence;²²⁹ and '[c]oordinated training for police, the community sector, judicial officers and court staff in all areas of family violence', including the specific needs of particular cohorts such as older people.²³⁰

Domestic Violence Victoria stated that it was '... unable to obtain detailed information about the training provided to Police, or how it is developed, reviewed and delivered'.²³¹

... DV Vic endorses the recommendation made by No To Violence in their submission to the Royal Commission that all Victoria Police members, current and future, participate in a minimum two-day post-Academy introductory training on family violence, including components on perpetrator engagement and that this training be refreshed through one-day booster trainings on a two-yearly basis.

...

It is DV Vic's position that a multi-disciplinary, cross-sectoral collaborative approach informed by minimum standards and shared goals would constitute best practice for police training in a fully integrated system.²³²

The Commission notes that Victoria Police's review of the Code of Practice found that a greater understanding of the dynamics of family violence—particularly the use of coercion and control of victims and the reasons why a victim might withdraw support for civil or criminal proceedings—results in stronger police involvement with victims and support services.²³³

Domestic Violence Victoria's view that police training needs to be ongoing was shared by a number of others who made submissions to the Commission—among them No To Violence, Women's Legal Service Victoria, Gippsland Lakes Community Health and the Magistrates' Court of Victoria Family Violence Taskforce.²³⁴

Training in relation to specific population groups

Another strong theme raised before the Commission concerns the need to equip police members to respond sensitively and effectively to the needs of various population groups.

Seniors Rights Victoria stressed the need for improved police training in relation to elder abuse;²³⁵ the Eastern Elder Abuse Network also pointed out problems associated with a lack of training for police in elder abuse (including appropriate referral options) and called for an educational awareness raising campaign to address this.²³⁶

InTouch Multicultural Centre Against Family Violence highlighted the importance of cross-cultural training to assist police in responding to family violence involving people from culturally and linguistically diverse backgrounds. It stated that 'Although the vast majority of police officers who assist victims of family violence are professional and empathetic, many remain unaware of the barriers CALD women face when it comes to accessing police services.'²³⁷

The need for better cross-cultural training was also raised in a number of submissions.²³⁸ The Women's Mental Health Network Victoria submitted that there is a need for strengthened police workforce development in relation to better understanding mental illness and its intersection with family violence.²³⁹ The Victorian Gay & Lesbian Rights Lobby, Safe Steps and No To Violence all called for improvements to police members' sensitivity to victims of family violence in the lesbian, gay bisexual, transgender and intersex community.²⁴⁰

A number of Aboriginal community controlled organisations and Indigenous Family Violence Regional Action Groups also mentioned culturally appropriate practice by police and the need for training in this regard—noting, in particular, that where Koori police protocols are in place, progress has been made.²⁴¹ This is discussed further in Chapter 26.

Supervision, support and accountability

Another theme in the evidence before the Commission was the importance of supervision and support in relation to quality assurance and performance monitoring, forming attitudes and the culture of police members, and dealing with the confronting nature of family violence.

As discussed in relation to training, most police learn how to respond to family violence via on-the-job training. This underscores the vital importance of supervision and support if there is to be a quality police response to family violence.

The Police Association Victoria pointed out the challenges family violence policing can pose for members early in their career as many police members are young and are expected to provide advice, guidance and support to people who are older than them or whose life experiences are vastly different to theirs.²⁴²

Domestic Violence Victoria stressed the importance of adequate supervision in such a challenging operational environment:

... some Police are concerned that new graduates' limited life experience can result in them experiencing vicarious trauma, or becoming desensitised to or overwhelmed by family violence. DV Vic has concerns about unstructured training in high pressure environments, which may not be adequately supervised nor subject to appropriate system-level oversight. Further, given that police are members of the broader community, DV Vic is also concerned about the risks of adopting myths and misconceptions about family violence.²⁴³

Victoria Police's review of the Code of Practice emphasised that the quality of supervision provided, together with the attitudes of supervisors towards family violence, are crucial:

Supervision is the only way to ensure that 'good habits' are formed so that procedures are comprehensively followed. Equally, poor supervision will promote poor habits and allows practice gaps to develop.²⁴⁴

Supervision and support arrangements are set out in the Code of Practice. The arrangements include the following:

- ▷ Police supervisors are required to check the appropriateness and quality of the police response to family violence incidents, including monitoring incidents via LEAP case management for compliance with the Code of Practice across the initial response, risk assessment and risk management and ongoing investigations, and keeping the victim updated on the progress of any criminal matters.²⁴⁵
- ▷ Family violence liaison officers who operate at every 24-hour police station, have a responsibility to monitor adherence to the Code of Practice.
- ▷ Family violence teams have a range of functions under the Code of Practice. In addition, their standard operating procedures outline their responsibilities for checking L17s and monitoring family violence incidents via LEAP case management.²⁴⁶
- ▷ Family violence court liaison officers (of which there are 15) have some quality assurance functions, including identifying and reducing errors in procedure and LEAP management.
- ▷ Family violence advisors (17 positions) are responsible for coordinating best practice responses to family violence across police divisions and have a range of functions with a strategic focus. The standard operating procedures for the role state that this can include conducting audits and case reviews to ensure compliance with the Code of Practice.²⁴⁷

Sergeant Deryn Ricardo, Family Violence Advisor for Eastern Region Divisions 5 and 6, and Sergeant Spriggs, provided insights into how this occurs in practice. Sergeant Ricardo stated that the demands on family violence liaison officers make it necessary for family violence advisors to assist with quality assurance:

I consider it important that responsibility for overseeing and monitoring family violence incidents is taken on by the FV Advisor and not left solely with the FV Liaison Officer at local stations. This is because the FV Liaison Officer role, particularly in rural areas, is often one of a number of portfolio duties that the Liaison Officer has to perform, resulting in significant time constraints on their family violence duties. Compliance checking of an incident should be performed in a timely fashion so that if there are any issues, oversights or additional action required, this can be addressed immediately.²⁴⁸

Sergeant Spriggs outlined some of the proactive methods for monitoring compliance with the Code of Practice:

I encourage Family Violence Liaison Officers to access and review family violence related LEAP incidents, conduct audits and case reviews to ensure compliance with the Code of Practice, and to liaise with me to establish consistency and compliance through training and information provision.²⁴⁹

Assistant Commissioner McWhirter explained how the various positions with supervisory and quality assurance functions work together to provide a comprehensive framework to ensure accountability for compliance with the Code of Practice:

We have a whole range of supervisory responsibilities around family violence in terms of from the initial commencement of the L17 into the LEDR system in terms of authorisation of that and reviewing that. The family violence liaison officers have to review the L17 process in terms of the approach by the members. Any briefs of evidence that actually come from a family violence environment or situation all have to be checked in terms of the actual credibility of what's taken place by the members and validating what's taking place.

Family violence teams, as we have learnt this morning, clearly have a responsibility in terms of checking the work that's done on the front-line by the actual front-line service delivery by our members. So, there are a whole range of accountabilities in place to actually check to make sure that the members in the first response do the right thing.²⁵⁰

As noted, the Commission was informed that the Code of Practice is not always followed.

The Code of Practice also outlines processes available for people who are dissatisfied with the services police provided. It states that in the first instance this should be dealt with at the local level by a family violence liaison officer or another supervisor or the officer in charge of the relevant station. Unresolved matters can be referred to the family violence advisor or the family violence team.

However the Commission heard from a range of sources that mechanisms for dealing with both individual complaints and systemic feedback are deficient and need to be improved. A family violence victim argued that 'there should be an avenue for you to report that person and they can be disciplined'.²⁵¹

Dr Chris Atmore, Senior Policy Advisor at the Federation of Community Legal Centres, told the Commission:

... a Code of Practice doesn't really mean much if when there is a breach and it's not responded to properly and a victim complains about it nothing happens. There has to be accountability and publicly transparent complaint processes when what the Code of Practice says you should not do happens. At the moment that's not our experience. We have many frustrated clients who say, 'This didn't happen to me. I have tried to pursue it with police or my advocate tried to pursue it with police. We got nowhere'.²⁵²

Domestic Violence Victoria raised the need for a formal process of feedback and evaluation between family violence services and police in order to ensure continuous improvement '... so that errors and omissions are routinely detected, systems reviews conducted at regular intervals (quarterly or bi-annually) and regular multilateral evaluation meetings [are held]'.²⁵³

Some submissions took accountability a step further and proposed systematic audits of police compliance with the Code of Practice.²⁵⁴

Victoria Police was receptive to the proposal to establish a standing body comprising police, service providers and other stakeholders (such as courts) that could provide feedback on concerns and complaints about police processes at the systemic level:

... in our submission we are very clear on having a strong governance framework in relation to family violence and ... what that governance framework would provide would be exactly that, some permanency in relation to engagement with the sector, right across government as well, in terms of listening to those sort of concerns, so Victoria Police as the first responders in most cases can actually respond to those criticisms if they are there.²⁵⁵

Culture and attitudes

As outlined, the Commission heard that some police members continue to hold negative or dismissive attitudes towards victims of family violence. The Commission also notes recent work by the Victorian Equal Opportunity and Human Rights Commission in relation to sex discrimination, sexual harassment and predatory behaviour and work by the Independent Broad-based Anti-Corruption Commission on predatory behaviour against vulnerable persons.²⁵⁶

The VEOHRC report stated that ‘... Victoria Police has been a leader in reforming community understanding and responses to family violence and sexual assault ... providing a model for police services in Australia and [overseas]’.²⁵⁷ In calling for Victoria Police to bring the same urgency to tackling sex discrimination and sexual harassment in the force however, VEOHRC made a number of concerning findings in relation to Victoria Police culture, including the following:

- ▷ There is an entrenched culture of ‘everyday sexism’, along with unequal power between men and women and rigid adherence to gender stereotypes, supported by structural and attitudinal barriers to gender equity.²⁵⁸
- ▷ Sexual harassment is experienced within a broader pattern of sexist hostility that has the tacit endorsement of supervisors, who often fail to set appropriate standards or to act on harmful workplace behaviours.
- ▷ Management quality and understanding of gender inequality is inconsistent, while station officers in charge and sergeants have the most direct effect on shaping police members’ attitudes.
- ▷ The workplace culture makes it challenging to recruit and retain women.
- ▷ It is more difficult for women to be promoted, and women are significantly under-represented in supervisory and management roles.
- ▷ Workplace values and behaviours are not seen as a central element of performance.
- ▷ Specialisation within Victoria Police can undermine equality, some work areas such as crime and homicide being seen as traditionally performed by men, and sexual offences and the mounted branch by women.
- ▷ Many personnel do not report sexual harassment because of the convoluted complaint mechanisms, which lack confidentiality as well as a fear of being considered disloyal or a feeling that it would not make a difference.²⁵⁹

The VEOHRC report also found, however, that many men and women in Victoria Police are and will continue to be committed to cultural change and that many reported an extremely positive working environment.²⁶⁰ The report sets out detailed recommendations within a three-phase action plan to reset the organisational culture of Victoria Police.²⁶¹ Among the actions of particular interest to this Royal Commission are the following:

Recommendation 2: Victoria Police establishes independent advisory structures to guide the intent and implementation of the Review's recommendations.

Recommendation 3: Victoria Police develops a whole-of-organisation Gender and Diversity Vision and Strategy linked to performance and capability.

Recommendation 9: Victoria Police reviews its training and education functions to align learning intent and future capability needs as expressed in the Education Master Plan with organisational processes.

Recommendation 12: Management performance in workplace equality and respect should be a compulsory performance field or performance appraisal and reward and incentive systems. Victoria Police should review and identify the appropriate tracking and recording mechanism(s) for inappropriate workplace behaviours that warrant ongoing supervision and management.

Recommendation 13: Victoria Police establish a workplace harm model as outlined in the Review, including

- Immediate establishment of an external 'safe space' service to provide confidential support to victims/targets of workplace harm
- An internal victim-centric workplace harm unit to triage and case manage internal complaints about workplace harm
- An Independent Advisory Board (IAB) to provide expert advice and support to the Workplace Harm Unit.²⁶²

Family violence involving police

The Code of Practice stresses that the police response to a family violence incident in which a police member is either the victim or the perpetrator of family violence should be of the same standard as that afforded any other incident: a thorough investigation is undertaken, civil and criminal options are pursued as appropriate, and the primary aggressor is identified. The Code also requires that a supervisor be notified and must attend the incident. If a criminal offence has occurred, including a breach of an FVIO, the Victoria Police Professional Standards Command must be notified. There are further reporting requirements in the Victoria Police Manual for employees serving an FVIO on another employee and for an employee being served with an FVIO.²⁶³

The terms of reference for the VEOHRC inquiry explicitly excluded consideration of the prevalence of family violence where Victoria Police personnel are alleged perpetrators.²⁶⁴ The VEOHRC report did, however, draw a link between poor attitudes in Victoria Police and the interaction between police members and the community:

The need to ensure a gender balance that reflects the community it services is crucial, particularly for building safety and trust in the organisation by women who need the help of Victoria Police to feel confident they will be believed and treated with respect. To maintain and continue to build community confidence, Victoria Police will need to model safety and respect among all its employees.²⁶⁵

The report also noted that police work can be conducive to the forming of relationships between co-workers, and that culturally Victoria Police is like a family to its members, one female interviewee stating:

You can't address family violence in the community unless you address family violence in the force. Violence against women in the force is a form of family violence because Victoria Police is 'home' for so many people. It's our blue family. But it's not called out ...²⁶⁶

This Royal Commission was able to locate little published research or statistical information on family violence committed by police members in Australia. Mr Alan Corbett, who presented a submission, directed the Commission to an article he authored containing statistical information obtained from Victoria Police under freedom of information laws:

Data, extracted from VicPol's Register of Complaints and Serious Incidents Database (ROCSID), revealed that in the calendar years 2011–2014, a total of 190 Victorian police of various ranks were respondents to a court issued Family Violence Intervention Order ...

However, these statistics are very likely to be a gross underestimate of the actual incidence of PODA [police officer domestic abuse].²⁶⁷

Limited research on the prevalence of family violence committed by police has been undertaken in the United States. Some studies suggest that the rate of domestic violence in law enforcement families is much higher than in the general population.²⁶⁸ More recent research notes that, while two small studies from the early 1990s point to higher rates of domestic violence in law enforcement families, no large population-based studies have been conducted since that time.²⁶⁹ The authors went on to quote the US National Institute of Justice, which has stated that police domestic violence is 'an almost entirely unstudied phenomenon'.²⁷⁰

Despite the lack of data, Mr Corbett's submission raises concerns about the prevalence of family violence committed by police members, the barriers facing victims, and the lack of adequate acknowledgment of and response to this issue by Victoria Police and political leaders.²⁷¹ Among other things, Mr Corbett's submission asserts the following:

- ▷ Victims of family violence perpetrated by police members can be distinguished from other victims because they must seek help from the organisation the perpetrator belongs to, creating additional barriers to reporting.
- ▷ Police culture can prevent members from speaking out and taking action against colleagues who commit family violence.
- ▷ Family violence perpetrated by police members undermines public trust and thus undermines all police in preventing and responding to family violence.
- ▷ Victoria Police should, in conjunction with other Australian police services, formulate a comprehensive, transparent, stand-alone policy on family violence perpetrated by police members and should publish existing policies and statistics online.²⁷²

Mr Corbett's submission referred to model policies published by the International Association of Chiefs of Police (2003) in the United States and the Association of Chief Police Officers of England, Wales and Northern Ireland (2004, 2008), while noting that the former has had scant take-up, and the latter became outdated as a result of regulatory change.²⁷³

Table 14.3 summarises the main components of the International Association of Chiefs of Police model.²⁷⁴

Table 14.3 Primary components of the International Association of Chiefs of Police model: a summary

| Policy component | Key points |
|--|--|
| Prevention and training | <p>Zero tolerance policy towards police officer domestic violence, with ongoing training to every officer throughout all phases of their career.</p> <p>Development of training on family violence and the zero tolerance policy through ongoing partnerships with local victim advocacy organisations.</p> |
| Early warning and intervention | <p>Pre-hire investigation and screening-out of candidates with a history of perpetrating violence.</p> <p>Periodic outreach to officers and their family members within information on the policy, the point of contact within the police service and local support service contacts.</p> <p>Provision of non-punitive early intervention and referrals.</p> <p>Supervisors to document any patterns of problematic behaviour, review with the officer, report and refer to psychological and other services.</p> <p>Officers who fail to report knowledge of abuse or who fail to cooperate in investigating it will be subject to severe discipline.</p> |
| Incident response protocols | <p>All domestic violence calls or reports will be documented.</p> <p>Reports of possible criminal activity against police will be treated in the same manner as domestic violence reports against civilians, and will also be forwarded through the chain of command.</p> <p>Dispatchers will immediately notify the duty and dispatch supervisor of any domestic violence call involving an officer.</p> <p>Upon attendance at a domestic violence call, the response unit will immediately notify dispatch and request a supervisor of higher rank than the involved officer to report to the scene. The supervisor will notify the Chief and the accused officer's immediate supervisor as soon as possible.</p> <p>The Chief will ensure that all officers are debriefed, including a review of confidentiality requirements and a direct order prohibiting discussion of the incident outside official inquiries.</p> |
| Victim safety and protection | <p>Police departments will work with community resources and advocacy agencies to connect victims and their children with services.</p> |
| Post-incident administrative and criminal decision | <p>Police departments will conduct separate parallel administrative and criminal investigations in a manner that maintains the integrity of both processes and promotes zero tolerance.</p> <p>If warranted, administrative action will be taken as soon as possible independent of any criminal proceedings.</p> <p>The officer's departmental, union and legal rights will be upheld.</p> <p>Administrative investigations will be conducted by Internal Affairs Departments. Administrative action will also be taken against officers who had knowledge of violence but failed to notify the department or interfered with the investigation.</p> <p>Criminal investigations will be conducted by the domestic violence unit, or if none exists, an investigations unit or detective division.</p> |

Source: Based on International Association of Chiefs of Police, 'Domestic Violence by Police Officers: Concepts and Issues Paper' (United States National Law Enforcement Policy Center, July 2003).

The way forward

Every day and night, across our state, Victoria Police members respond to family violence incidents—on average about one every eight minutes. For many women and their children, police not only provide protection at a time of crisis but are the entry point to the broader family violence system. The quality of the police response is therefore crucial.

There is no doubt that Victoria Police has made considerable progress in its front-line response to family violence in the past 15 years, but the evidence before the Commission demonstrates that there remains room for improvement. High-quality police risk assessments, in particular, are essential to ensuring an effective police response and to keeping women and children safe.

The Code of Practice for the Investigation of Family Violence has been transformative, setting out clear standards of practice in recognition that the nature and dynamics of family violence mean that family violence is not just another crime. Similarly, introduction of the L17 has brought considerable improvements: there are now many more formal referrals to family violence services and men's behaviour change services. Nevertheless, some front-line police still have difficulties with the L17 system and it does not yet provide an unambiguous, consistent pathway to a more specialist police response.

Central to the success of these previous reforms, and to future improvement, is the skill and commitment of police members. Ensuring that police members have the training, support and supervision to properly fulfill their role is integral to meeting community expectations and to keeping women and children safe. This learning needs to continue throughout police members' careers.

The Commission heard that there is a number of areas where focused effort is required to improve the police response to family violence—for example, improving the identification of the primary aggressor, better investigating breaches of FVIOs, and building relationships with specific communities. The Commission makes recommendation in relation to education and training; supervision, support and accountability; and the culture of Victoria Police, including how the organisation deals with family violence involving police personnel.

Responding to family violence is 'core business' in modern policing. A broad program of work is required to embed good practice throughout Victoria Police, so that all police take family violence seriously and see it as an essential part of their role.

Risk assessment and risk management

The Victoria Police L17 risk assessment and risk management process has been a key factor in improving the police response to family violence and engaging victims with family violence services. There are, however, a range of interrelated matters that still need attention, including the following:

- ▷ Police members' proficiency in conducting risk assessments.
- ▷ Some police members view the L17 process as a form-filling exercise and understanding of the purpose and importance of risk assessment is variable.
- ▷ Some police members view the risk assessment process as relating to a single incident, as opposed to a pattern of abuse.
- ▷ The L17 process is administratively burdensome for police and, in a high-demand environment, this can contribute to quality concerns.
- ▷ The lack of mobile technology results in police completing L17s back at the station.
- ▷ Police have limited guidance on assessing risks to children.
- ▷ The ad hoc nature of feedback loops detracts from quality assurance and can add to police cynicism about the process.
- ▷ L17 referrals are overwhelming to family violence services and add to demand pressures on Child Protection.
- ▷ Police have limited ability to share information relating to risk assessments; for example, perpetrator information cannot be provided to women's services.
- ▷ Risk assessment processes are not dynamic, and there are no mechanisms for integrating successive risk assessments or providing updated information.

To resolve this situation, the Commission urges Victoria Police to improve the education and training provided to recruits and police members in relation to the purpose, importance and methodology of risk assessment. A revised approach to education and training will increase the level of understanding of the nature and dynamics of family violence throughout the force. This will be reinforced through greater access to specialist family violence teams and positions for support, advice and quality assurance and a focus on supervisor knowledge and capability, recognising the central role that supervisors play in setting cultural and practice standards and expectations.

Elsewhere in this report the Commission makes a number of recommendations that will streamline and simplify the risk assessment process for police. For example, we recommend that the CRAF be reviewed and that an actuarial tool be included in it—see Chapter 6. In addition, in Chapter 15 the deployment of mobile devices is recommended, to facilitate L17 risk assessments and to allow referrals to be prepared in the field. The benefits of reducing the administrative burden associated with L17s will be twofold: front-line police will be able to spend less time doing paperwork and more time providing policing services (including responding to family violence), and the cynicism some police feel towards the current risk assessment process will be minimised. It is important to note that the L17 feedback loops are a mutual frustration for Victoria Police and the specialist family violence system. This is discussed in Chapter 13. Addressing both perspectives will be important if we are to make risk assessment and management processes more robust.

L17s for children

The Commission gave careful consideration to the Victoria Police proposal for a single intake point in relation to children. The Commission agrees with Victoria Police that the current L17 arrangements can create duplication and that streamlining is required. To assist with this, elsewhere in this report we recommend the establishment of single, area-based intakes into specialist family violence services for women, Child FIRST/Integrated Family Services and perpetrator programs. We refer to these as Support and Safety Hubs, and discuss the proposal in detail in Chapter 13.

Once the hubs are established (by 1 July 2018), all L17s other than those that must be sent to Child Protection will be sent to the local Support and Safety Hub for assessment and action. So, instead of sending a separate L17 for the perpetrator, the victim, and potentially, the child, the vast majority of L17s will be able to go to one point.

The Commission chose not to recommend including Child Protection in the Support and Safety Hubs because that could overwhelm and dilute the focus on family violence. Nonetheless, each hub will have a community-based child protection practitioner; this will give police members greater confidence that the best interests of children, including any protective concerns, are being adequately considered as part of the intake and risk assessment conducted at the hub.

Hub providers will also be required to give feedback to Victoria Police on the outcome of police referrals, and the Commission also recommends introducing formal mechanisms so that hubs can provide feedback on the quality of Victoria Police risk assessments. This would allow the hubs to quickly and easily follow-up with police and also identify individuals and areas within Victoria Police that would benefit from improved supervision, training, additional specialist support or the provision of additional resources. The Commission also recommends that consideration be given to having, as part of each hub, a family violence worker embedded in local police family violence teams or alternatively, to police participating in triage with the hub.

The hub model will also address the static nature of risk assessment under the current system. For example, the Commission's recommendations in relation to information sharing in Chapter 7 would see hubs, service providers and police sharing information that is pertinent to risk assessment and risk management, using a Central Information Point led by Victoria Police and, at the local level, through collaborative relationships.

Finally, the hub model is premised on an expansion in the capacity of local Integrated Family Services and specialist family violence services (including men's behaviour change programs), so police can make referrals comfortable in the knowledge that the service system has the ability to intervene in a meaningful way.

Identifying the primary aggressor

The Commission recommends strengthening police practice in relation to identification of the primary aggressor through improvements to training, supervision and quality assurance, procedural changes and closer working relationships with specialist family violence services.

The Code of Practice for the Investigation of Family Violence is a sound framework to guide police members in identifying the primary aggressor and reflects primary aggressor statutes in other jurisdictions. Indeed, the relative lack of controversy surrounding dual arrests in Victoria compared with the experience in other jurisdictions shows that the Code of Practice and other police initiatives have been successful in guiding police decisions.

The Commission also acknowledges that there are male as well as female victims of family violence, and identifying the primary aggressor is not simply a matter of ‘choosing’ the male. Neither does the Commission underestimate the complexity of the police task in identifying the primary aggressor at challenging and emotionally charged family violence incidents, and in the context of increasing demands on police services. Nonetheless and despite the lack of research, the Commission is satisfied on the basis of anecdotal evidence from a broad range of sources that police do continue to misidentify the primary aggressor in family violence incidents. Ms Tucker suggested that it may be commonplace. This can have dire consequences for a victim’s safety and access to support services. It re-victimises her and is a missed opportunity to hold the perpetrator to account, and it diverts scarce justice system resources away from where they are needed.

The Commission does not recommend providing statutory guidance in relation to identification of the primary aggressor. This did not emerge as a major concern in the evidence received, and in any case with the view expressed in the Australian–New South Wales Law Reform Commission report, that this difficult and nuanced task is better dealt with through education, training and police codes of practice. Victoria Police should work to strengthen the following:

- ▷ the accuracy of the primary aggressor identification process
- ▷ members’ ability to be sensitive to the primary victim when seeking to identify the primary aggressor
- ▷ any remedial measures to be taken should the primary aggressor be wrongly identified—for example, withdrawing FVSNs, withdrawing applications for FVIOs, or notifying the Victims Support Agency when there has been an inaccurate identification
- ▷ amending LEAP processes to facilitate the removal of the name of a person wrongly identified.

Foundational, promotional and ongoing training for police members in family violence should include investigating and identifying the primary aggressor and victims. Training for police supervisors is particularly important, in view of their vital role in guiding the actions of front-line police and ensuring service standards are maintained. For example, supervisors should be alert to cross-applications, and either take corrective action as early as possible or identify additional support, training or oversight required by individual members.

The Commission also considers that police family violence specialist positions will play a more prominent role in helping general duties members respond to family violence, including identifying primary aggressors. General duties police and supervisors should be able to draw on the advice and expertise of specialist family violence positions—family violence liaison officers and family violence team members—in real time to assist with identifying the primary aggressor in complex cases. Specialist positions will also have increased capacity to perform a quality assurance and monitoring role.

The Commission considered the ALRC–NSWLRC report’s position that skilled counsellors should attend family violence incidents with police. We do not think this is feasible at present because of the high number of family violence incidents in Victoria. However, we have made a number of recommendations aimed at promoting multi-disciplinary models, including options to embed family violence workers from Support and Safety Hubs and other services within police. This will provide further specialist resources to offer advice and support to general duties police, particularly in complex cases.

The creation of Support and Safety Hubs, as recommended in Chapter 13 of this report, will also afford an opportunity to improve quality assurance in relation to the identification of primary aggressors. Hubs will facilitate stronger more efficient engagement with victims and perpetrators of family violence, and allow errors in the identification of the primary aggressor to be quickly brought to the attention of police and corrected.

The Commission also reflected on the debate in the literature about the appropriateness of the term 'primary aggressor'. Once again, this did not emerge as a matter of great concern in the evidence it received. In any case, the term 'primary aggressor' is well known to both police and family violence services. Improving police practice would be better served by retaining the existing terminology, cognisant of the significant changes that will be experienced throughout the system in response to the Commission's recommendations. Once service standards and levels of consistency are raised, police and the broader service system might wish to revisit the terminology.

Recommendation 41

Victoria Police amend the Victoria Police Code of Practice for the Investigation of Family Violence to ensure it provides suitable guidance on identifying family violence primary aggressors [within 12 months]. This includes:

- ▷ procedures for amending the Law Enforcement Assistance Program (LEAP) when a service provider or a Support and Safety Hub subsequently informs Victoria Police that a person is not the primary aggressor
- ▷ details of specialist support available to assist in identifying the primary aggressor.

Victoria Police should provide training at all appropriate levels on the amended requirements relating to identifying primary aggressors.

Workforce development

There is compelling evidence that police members who have a strong understanding of the nature and dynamics of family violence are better equipped to provide sensitive and effective service responses.

Improving police education and training

Education and training throughout police members' careers is central to responding efficiently and effectively to the complex area of family violence. The Commission acknowledges the commitment and efforts of specialist instructors at the Police Academy and the local training initiatives delivered by family violence advisors. The preponderance of evidence it received, however, revealed that family violence education and training needs to be greatly strengthened within Victoria Police.

Although force-wide family violence training was delivered as part of the implementation of the Family Violence Protection Act and foundation training for all recruits includes family violence, many longer serving police members did not receive the level of training that is now provided at the academy.

The Commission therefore supports Victoria Police’s recommendation for the creation of a faculty-style Centre of Learning for Family Violence within People Development Command at Victoria Police. Together with Family Violence Command, the Centre for Learning should be responsible for the following:

- ▷ conducting a family violence education and training needs assessment of Victoria Police—including benchmarking against best practice
- ▷ developing a Victoria Police Family Violence Education and Training Strategy setting out how these needs will be met, through a mix of classroom-based, flexible and on-the-job methodologies
- ▷ developing content, supporting materials and delivery mechanisms for implementing the strategy
- ▷ working closely with the family violence sector in performing these tasks—using co-design approaches where appropriate
- ▷ coordinating with partner agencies and whole-of-government governance mechanisms so that Victoria Police education and training reinforces common understandings and approaches essential for responding to family violence system
- ▷ coordinating with developments at the national level, including with the Australia New Zealand Policing Advisory Agency.

The Royal Commission notes the Victorian Equal Opportunity and Human Rights Commission’s recommendation that People Development Command establish an academic governance body.²⁷⁵ If such an academic structure is established, Victoria Police should consider including family violence expertise on the body.

In the Commission’s view, the Centre for Learning and Family Violence Command should be guided by a number of principles:

- ▷ Victoria Police members need comprehensive education and training in the nature and dynamics of family violence, in addition to legal and procedural requirements.
- ▷ Victoria Police members need comprehensive education and training in how to deal sensitively with family violence affecting marginalised population groups within the community.
- ▷ Training should be tailored to the role of particular police members for example, the training needs of those performing specialist family violence roles differ from those of general duties police.
- ▷ The family violence sector should be closely engaged in developing education and training curriculums for Victoria Police.
- ▷ Police members should be given regular refresher training on family violence.
- ▷ Promotional training programs should include material on family violence.
- ▷ Additional education and training should be provided to members and/or stations where problematic service responses have been identified.

The Commission also notes the evidence associated with the limitations of classroom-based training in relation to the policing context, and the importance of on-the-job learning. Well-trained supervisors who understand the dynamics of family violence and are sensitive to victims’ needs have a strong influence on the attitudes and performance of general duties members in the family violence field (and therefore on the victim experience). Family violence should be at the heart of all training for promotion for all ranks.

Recommendation 42

Victoria Police establish a Family Violence Centre of Learning with external academic governance to improve family violence education at all levels in the organisation [within two years].

Supervision, support and accountability

Despite the detailed Code of Practice and the supervision and quality assurance procedures in operation within Victoria Police, the Commission became aware of many examples of poor service levels. More needs to be done to ensure consistent compliance with the Code of Practice.

The Commission notes that, because of the prevalence of family violence, front-line police members will continue to shoulder much of the responsibility for the response. These members, often young and relatively inexperienced, need effective support and supervision to meet required service levels in compliance with the Code of Practice and to cope with the challenging and often confronting nature of family violence policing. This is doubly important in view of the influence of supervisors in setting culture and attitudes.

Implementation of recommendations made elsewhere in this report will lead to improvements in the quality of supervision and support provided to front-line police members. In particular, the Centre of Learning for Family Violence will assist in the development of education and training material for those in supervisory roles, in terms of their understanding of the nature and dynamics of family violence, their proficiency with the Code of Practice and the setting of cultural values.

Enhanced education and training will therefore improve the quality of supervision provided to front-line police members. It will also raise the proficiency of members themselves in policing family violence in compliance with the Code of Practice.

The Commission also proposes that a clearer specialist family violence career path be established in Victoria Police. This should take into account the need for family violence liaison officers and family violence teams to be adequately resourced to effectively fulfil their duties—including their supervisory, support and quality assurance responsibilities. In this regard, the Commission considers that Victoria Police needs to build capacity for more proactive, comprehensive quality assurance practices. It appears at present that much of the police quality assurance effort focuses on the adequacy of the initial response, as encapsulated by the L17 risk assessment and management process. This is probably a result of demand pressures on supervisors and those in specialist family violence positions.

While the adequacy of the initial response is very important, there were concerns about non-compliance with the Code of Practice, both in relation to the initial and the ongoing police response. The concerns related to, among other things, a lack of follow-up with the victim before court appearances, a failure to provide updates on criminal charges, delays in the service of orders (or applications for substituted service) and, importantly, failure to act on reports of breaches of intervention orders. Chapter 15 also discusses concerns about compliance with other police procedures in family violence cases, including the Victoria Police Intelligence Doctrine and the Advancing Investigation Management Compliance Package.

The Commission considers that Victoria Police should increase its emphasis on auditing as a quality assurance tool. This could include Family Violence Command providing guidance and setting targets for the conduct of regular file audits and case reviews by specialist family violence positions. This should also include a mix of random audits as well as targeted activity where compliance shortcomings are identified—for example, through performance levels, feedback from the family violence sector or patterns of complaints. The opportunity should also be taken for some audits and file reviews to seek and incorporate feedback from family violence victims.

Audits should be viewed as an opportunity to increase compliance levels with the Code of Practice, rather than as a punitive exercise. For example, audits might bring to light systemic problems requiring amendments to the Code of Practice or education and training curriculums or individual member or station problems warranting the delivery of specific training initiatives or other actions at the local level—for example, in relation to non-compliance with the code in relation to investigation breaches of family violence intervention orders.

In addition to these regular operational-level audits, every five years, there should be an independent, force-wide audit of compliance with the Code of Practice and other key procedures relating to family violence every five years. The results of this audit should be published, along with a Victoria Police response setting out how the matters raised will be remediated.

Audits will be unlikely to pick up instances of police members failing to record an interaction with a member of the public, in breach of the Code of Practice. For example, the Commission learnt of many instances in which victims contacted a police station or informant directly to report a breach and this was not acted upon. This is very concerning not only because the immediate response might be inadequate but also because this information will be invisible to the broader family violence system, hampering ongoing risk assessment and management.

Improved education, training and supervision will help to allay these concerns, although the Commission also considers that complaint mechanisms need to be clearer and communicated more effectively.

In developing a more clearly defined family violence specialist career path, Victoria Police should be more prescriptive about the functions of various specialist positions in considering complaints about police responses, including escalation pathways. These functions should be outlined in some detail in the Code of Practice, and victims should be given clear information about their options if they want decisions relating to their case reviewed. The Code of Practice should also note that individuals have the right to make a complaint to the Independent Broad-based Anti-corruption Commission.

Finally, the Commission is concerned about the risk of vicarious trauma being suffered by police members as a result of exposure to family violence. Victoria Police should give further detailed consideration to this and determine whether any changes in practice or procedure are advisable so that members have adequate access to support and supervisors have the capability and tools they need to prevent and manage this risk. The Commission discusses vicarious trauma across a range of professions that work with victims and perpetrators of family violence in Chapter 40 and notes that Victoria Police is currently conducting an investigation into improving the mental health of police personnel.

Recommendation 43

Victoria Police ensure that specialist family violence position holders perform regular random file and case reviews to monitor compliance with the Victoria Police Code of Practice for the Investigation of Family Violence and other important procedural requirements relating to family violence—for example, in relation to investigations of contraventions of family violence intervention orders. Victoria Police set timing targets for these file and case reviews [within 12 months].

Recommendation 44

The Victorian Government and Victoria Police establish a regular cycle of comprehensive and independent audits of Victoria Police's compliance with the Victoria Police Code of Practice for the Investigation of Family Violence. The results of the audits should be published, and include, among other things, any divisional variation and the measures that will be taken to resolve any concerns.

Cultural considerations

The Commission notes the concerning cultural norms and attitudes the Victorian Equal Opportunity and Human Rights Commission identified within Victoria Police relating to sexism, adherence to rigid gender stereotypes and gender inequality. Such a finding is congruent with the concerns we heard from some victims and stakeholders in relation to inconsistent police responses to family violence and the persistence of dismissive attitudes among some police members. Likewise, VEOHRC's findings are consistent with evidence about attitudes among some work units within Victoria Police, that family violence is a 'general duties problem', and that there is a tendency to give priority to other types of crime through tasking and coordination processes.

VEOHRC's work also underscores the importance of supervisors and other leaders in setting and maintaining workplace values standards. The following statements by then Chief Commissioner Ken Lay, APM, speaking in relation to the broader community, are apposite:

Our culture is filled with men who hold an indecent sense of entitlement towards women.

Our culture is heavy with warped and misspent masculinity.

And every single day the casual groping and lewd comments that go unchallenged erode our standards.

And if none of us are saying anything, then this feral atmosphere gets worse, until it becomes an endorsement of violence against women.²⁷⁶

The Commission is also concerned that the predominance of these attitudes might diminish public confidence in the ability of police to respond to family violence sensitively and effectively. This could create barriers to reporting violence and put victims at risk. It could also hinder the recruitment of police members and employees with the diverse skills and experience that will underpin a more effective response to family violence in the future.

We therefore endorse VEOHRC's recommendations, noting that successful implementation of cultural change and the creation of a more diverse, gender equitable workplace will complement and facilitate implementation of the recommendations the Royal Commission makes in this report.

Police employees and family violence

The Commission has noted elsewhere in this report that family violence is insidious, and affects the whole community. It stands to reason therefore that Victoria Police—which itself is a reflection of the broader Victorian community—will have within its ranks perpetrators and victims of family violence.

Noting the absence of published research and data on this subject, the Commission considers that there are sound reasons for Victoria Police to focus on family violence affecting its members as a matter deserving of special attention. Among these reasons are the following:

- ▷ VEOHRC found that there are cultural attitudes held among members of Victoria Police that are consistent with family violence risk factors.
- ▷ VEOHRC found that the nature of police work is such that it is not uncommon for intimate relationships to form between colleagues.
- ▷ Victims of family violence perpetrated by police members can face additional barriers to reporting.
- ▷ Transparency and rigour in relation to how Victoria Police deals with family violence within its own ranks are critical to ensuring that the public has confidence in the ability of police to respond effectively to family violence in the broader community.

Although the Code of Practice and the Victoria Police Manual set out requirements for a supervisor to attend any family violence incident involving a police member, the Commission considers it timely for Professional Standards Command to conduct a review of Victoria Police policies and procedures in this regard. The review should consider the following, among other things:

- ▷ any synergies with recommendations made by VEOHRC—including any potential family violence role for the ‘external safe space’ service and the Workplace Harm Unit, along with the streamlining and simplification of the police disciplinary system
- ▷ the relevance and desirability of elements of the model policies developed by the International Association of Chiefs of Police and the Association of Chief Police Officers of England, Wales and Northern Ireland
- ▷ intersections with family violence perpetration among Victoria Police personnel and any instances of predatory behaviour towards family violence or sexual assault victims in the community.

Recommendation 45

Victoria Police’s Professional Standards Command review Victoria Police policies and procedures relating to police employees and family violence [within 12 months]. The review should consider:

- ▷ the adequacy of and any necessary improvements to current policies and procedures
- ▷ best-practice approaches and model policies developed in other Australian jurisdictions and internationally
- ▷ potential synergies with Victoria Police’s response to the Victorian Equal Opportunity and Human Rights Commission’s independent review of sex discrimination and sexual harassment in Victoria Police.

Endnotes

- 1 Victoria Police, 'Code of Practice for the Investigation of Family Violence—Edition 3' (2014) 2.
- 2 Ibid.
- 3 Domestic Violence Victoria—03, Submission 943, 6.
- 4 Victoria Police, above n 1, 8.
- 5 Ibid 9.
- 6 Ibid 8.
- 7 Ibid 17.
- 8 Ibid 20.
- 9 Victoria, Parliamentary Debates, Legislative Council, 25 March 1987, 564 (The Hon JH Kennan).
- 10 Ibid.
- 11 Victoria Police, above n 1, 31.
- 12 *Family Violence Protection Act 2008* (Vic) ss 53, 74.
- 13 An application for an FVIO may be made by either police, an AFM, or a person who has the consent of an adult AFM to apply on their behalf, or a person acting on behalf of a child AFM. *Family Violence Protection Act 2008* (Vic) s 45.
- 14 *Family Violence Protection Act 2008* (Vic) ss 24–26.
- 15 Ibid ss 24, 26. An FVSN is taken to be an application for an FVIO: *ibid* s 31.
- 16 See the *Family Violence Protection Amendment Bill 2014* (Vic) cl 5, which resulted in the current provisions in the *Family Violence Protection Act 2008* (Vic) s 5(b).
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- 30 Ibid 27.
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- 32 Victoria Police (prepared by the Crime Statistics Agency), 'Proportion of Repeat Other Parties and Where a Referral Has Been Made But With No Civil or Criminal Action—July 2013 to June 2014; Family Incidents by Principal Offence Where Charges Have Been Laid by Police—July 2013 to June 2014', Tab 2, Table 2: 'Family incidents by principal offence where charges have been laid by police—July 2013 to June 2014', produced by the State of Victoria in response to the Commission's Notice to Produce dated 14 August 2015 (as varied on 20 August and 20 October 2015).
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- 40 That is, a reasonable belief that a child is in need of protection due to physical injury or sexual abuse. See Department of Health and Human Services, above n 36, 9.
- 41 Ibid 8–9.
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72 Ethnic Communities' Council of Victoria, Submission 879, 6; Victorian Multicultural Commission, Submission 887, 11; Transcript of Becker, 11 August 2015, 2645 [31]–2646 [5].

73 Moonee Valley City Council, Submission 204, 2.

74 InTouch Multicultural Centre Against Family Violence, Submission 612, 4.

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- 138 Ibid 17.
- 139 Ibid.
- 140 Ibid 3.
- 141 Offence types that have been included are 'Crimes against the person', 'Property and deception offences' and 'Justice procedures offences'. Offence types that have been excluded are 'Other offences' (drug offences, public order and security offences, and other offences) and 'No offence' (Victoria Police have recorded that a charge was laid but no offence has been recorded).
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- 166 Ibid 167.
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- 174 Legislative Council Standing Committee on Social Issues, above n 167, 215.
- 175 Ibid 218.
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15 Police: leadership, resourcing and organisational systems

Introduction

Chapter 14 examines Victoria Police's front-line response to family violence, including workforce development through education, training and supervision. This chapter takes a broader view, looking at leadership, resourcing and organisational systems.

The first section of this chapter provides an overview of Victoria Police's strategic vision, regional structure and organisational design. It looks at the strong leadership Victoria Police has shown and the performance measures used to determine resource allocation. It also discusses the question of demand, which is relevant to both this chapter and the preceding one. Demand is determined by a variety of factors, among them the fact that recidivist offenders account for a large proportion of family violence incidents.

The second section of the chapter explores the challenges and opportunities that were commonly raised in evidence in relation to Victoria Police's organisational structures and processes. Escalating demand is placing a significant strain on general duties police, and this has flow-on effects for how Victoria Police resources its family violence response. Criminal investigation of family violence is also considered. Although there is now more focus on investigations, the Commission received evidence that this task tends to be left to general duties police and might not be receiving priority in resourcing decisions.

This chapter also examines the question of family violence specialisation in Victoria Police's organisational structure. The Commission heard that specialists can offer advantages in terms of supporting front-line police and responding effectively to family violence, and it therefore considers the need for a specialist career path in Victoria Police. On this point, the Commission notes that a balance needs to be struck between increasing specialisation and ensuring that general police members see family violence as part of their 'core business'. The resourcing and functioning of specialist family violence teams is also considered.

The final part of this section looks at systems issues related to the capacity of police to respond to family violence, such as whether allowing police to issue family violence intervention orders in the field might improve victims' safety and justice outcomes. Proposals to change the requirements for police to personally serve orders are discussed, as is the use of body-worn cameras to record evidence at the scene of a family violence incident and whether information technology could be improved to reduce the administrative burden on police.

In the final section of the chapter, after reviewing current practice and concerns raised by a number of stakeholders, the Commission presents its opinions and proposes a way forward. One of the recommendations that the Commission makes is that Victoria Police Family Violence Command should revise the Violence Against Women and Children Strategy to clarify Victoria Police's vision, strategic objectives, key actions and roles and responsibilities in combatting family violence. The Commission also proposes that Victoria Police develop a stronger focus on recidivism and high-risk offenders, and increase its organisational capacity and responsibility for criminal investigations.

Family violence specialisation and the role and resourcing of family violence teams need to be strengthened. Given the differences in how these teams currently operate, the Commission proposes setting a baseline model for family violence teams, with each region being able to allocate resources over and above the baseline model. The Commission suggests that, in time, a more centralised model for the resourcing of specialist roles and family violence teams is developed.

The evidence and recommendations in this chapter should be read alongside those in the preceding chapter.

Context

The 'Context and current practice' section in Chapter 14, also provides background information relevant to the organisational matters examined in more detail in the present chapter. This chapter explores how the police response to family violence is reflected in Victoria Police's strategic vision and regional structure, as well as its organisational design.

Strategic vision

Victoria Police's operational and strategic vision is guided by several high-level policy documents.

The *Victoria Police Blue Paper: A Vision for Victoria Police in 2025* sets out Victoria Police's long-term strategy and operating model, which responds to internal trends as well as projected changes in policing demands, as a result of broader social, economic and environmental trends, including in relation to family violence.¹ The Blue Paper is complemented by the Victoria Police Corporate Plan 2015–18—Year 1, which also assigns priority to family violence as a performance focus and proposes specific actions and projects.²

Victoria Police has articulated its current vision and strategy in relation to family violence in *Living Free from Violence—Upholding the Right: Victoria Police Strategy to Reduce Violence against Women and Children 2009–2014*.³ Table 15.1 shows the objectives and performance measures set out in the strategy.

Table 15.1 The Victoria Police Strategy to Reduce Violence against Women and Children 2009–2014: objectives and measures

| Objective | Measures over the next five years |
|--|--|
| Respond to and investigate family violence, sexual assault and child abuse more effectively. | Increase family violence reports to Victoria Police by 10% and charges laid by 5%. Increase sexual assault reports to Victoria Police by 15%. Increase family violence intervention order applications by 10%. |
| Take a leadership role in driving integrated service delivery. | Increase referrals from police to family violence services by 15%. |
| Reduce the risk to children and young people of ongoing exposure to violence through prevention and early intervention. | Increase reports for child physical assault (family related) by 10%. |
| Increase members' understanding of violence against women and children in order to provide appropriate policing responses. | Demonstrated increase in members' understanding of violence against women and children. |

Source: Victoria Police, *Living Free from Violence—Upholding the Right: Victoria Police Strategy to Reduce Violence against Women and Children 2009–2014* (November 2009) v.

In addition, the 2015 publication *Future Directions for Victim-centric Policing* outlines Victoria Police's commitment to, among other things, embedding victim-centric processes in the organisation, enhancing service delivery for victims and those in need of assistance and developing support and intervention referral pathways in partnership with family violence service providers.⁴

Regional structure

Victoria Police consists of the Office of the Chief Commissioner and five executive portfolios—Regional Operations, Specialist Operations, Capability, Business Services and Infrastructure—each headed by either a deputy commissioner (police member) or an executive director (public servant).⁵

Each executive portfolio comprises between three and seven commands or departments, each managed by either an assistant commissioner (police member) or a director (public servant). These cover a range of operational and non-operational areas, such as Road Policing Command, Crime Command, the Human Resource Department and the Operational Infrastructure Department.⁶ The Family Violence Command was established in 2015.⁷

Victoria Police delivers its front-line policing services through four regional commands. Two regions cover metropolitan areas (North West Metro and Southern Metro) and two regions cover both regional and metropolitan areas (Western Region and Eastern Region). Each region is managed by an assistant commissioner.⁸ Throughout the regions there are 21 divisions, which contain a total of 54 police service areas.⁹ Each division is made up of several police service areas and is managed by a superintendent. Each police service is managed by an inspector and contains a number of police stations, some of which are open 24 hours a day. Police stations are managed by a senior sergeant.

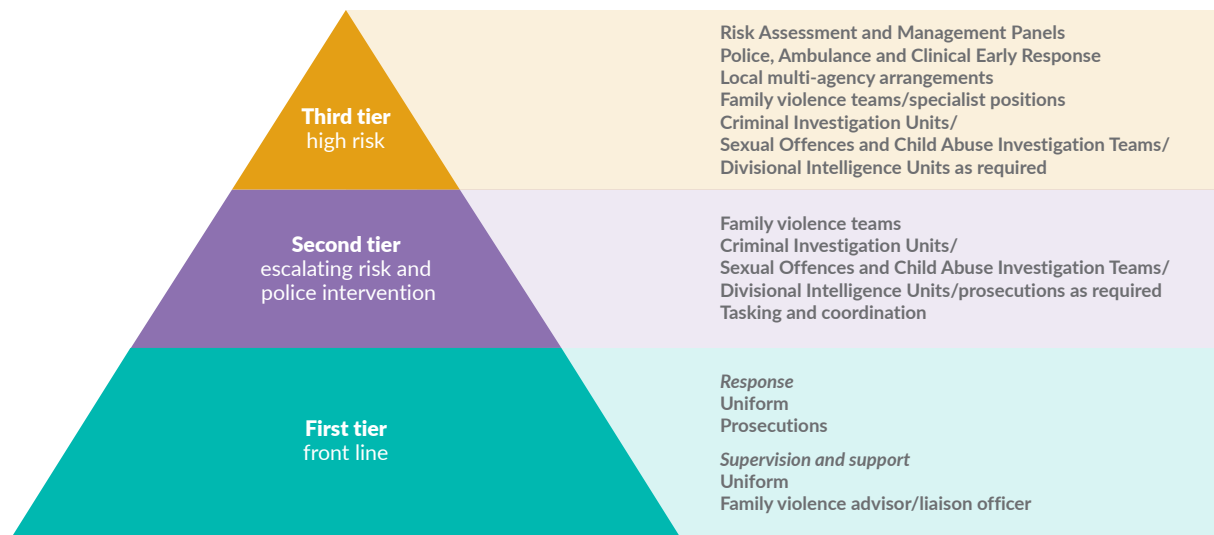
Organisational design

Victoria Police's policy and operational settings for responding to family violence and delivering on its strategy and its corporate mission confer functions on generalist and specialist work units, and individual members.

The Enhanced Family Violence Service Delivery Model (EFVSDM) launched in 2011, outlines a three-tiered response to family violence. Under this model, the intensity of the police response increases with risk and seriousness (and the number of cases decreases). The second and third tiers focus on recidivism and risk, which is discussed Chapter 6.¹⁰

Figure 15.1 depicts this model of the main Victoria Police work units and positions involved in each tier throughout the service's regional structure.¹¹

Figure 15.1 The Victoria Police Enhanced Family Violence Service Delivery Model



The following are among the notable features of Victoria Police's organisational design:

- ▷ The allocation of resources to specialist family violence teams and roles is controlled at the regional and local levels, rather than centrally.
- ▷ General duties police shoulder most of the responsibility for responding to family violence incidents.
- ▷ Few specialist family violence roles are gazetted (permanent) positions.
- ▷ The functions, resources and operating models of family violence teams vary considerably.
- ▷ Station-level management and supervision have a major impact on the local-level response to family violence.

Within this framework, a number of Victoria Police positions and work units have responsibility for delivering police services in response to family violence:

Table 15.2 Victoria Police positions and work units with responsibility for family violence-related services

| Position/unit | Roles and responsibilities |
|--|--|
| Executive Command | <ul style="list-style-type: none"> ▷ Overall responsibility for Victoria Police's strategic direction and performance.¹² |
| Family Violence Command | <ul style="list-style-type: none"> ▷ Monitoring Victoria Police's organisational response to family violence, maintaining organisational accountability and improving police responses to family violence, sexual assault and child abuse.¹³ |
| Regional/ Divisional/ Police Service Area Command Management | <ul style="list-style-type: none"> ▷ Regional assistant commissioners are responsible for policing services in their region and determine resourcing levels and operating models for family violence teams. ▷ Victoria Police monitors the response of regions through the release of monthly scorecards, which inform the allocation of resources and prioritisation of tasks.¹⁴ Assistant commissioners and divisional superintendents conduct monthly tasking and coordination meetings to review performance, including against family violence targets. ▷ Police service area command managers (inspectors) oversee compliance with the Code of Practice for the Investigation of Family Violence in their police service area, ensuring that stations are meeting or exceeding performance measures. |

Table 15.3 shows the police positions and work units that have primary responsibility for delivering or supervising operational policing services relating to family violence.

Table 15.3 Victoria Police positions and work units with responsibility for delivering or supervising family violence-related operational policing services

| Position/unit | Roles and responsibilities |
|---|--|
| General duties police | <ul style="list-style-type: none"> ▷ General duties police members provide primary response and general patrol duties, including front-line responses to family violence incidents 24 hours a day, seven days a week, across the entire state. ▷ Their actions are guided by the Code of Practice and the Victoria Police Manual.¹⁵ ▷ This includes conducting a risk assessment and adopting one or more of the risk management options in the Code of Practice (criminal, civil and referral options). |
| Supervisors | <ul style="list-style-type: none"> ▷ Officers ranked leading senior constable or below are supervised by a Sergeant (or above) whose role is to ensure that family violence matters are handled appropriately, and that victims are updated on progress of cases concerning them.¹⁶ |
| Station officers in charge | <ul style="list-style-type: none"> ▷ Station OICs (senior sergeant rank) have family violence accountabilities that include ensuring people in leadership roles are available and have adequate non-operational time to perform their duties and that all station members are complying with the Code of Practice.¹⁷ |
| Investigation and response units Criminal Investigation Unit Sexual Offences and Child Abuse Investigation Teams (SOCITs) | <ul style="list-style-type: none"> ▷ Investigation of serious family violence-related criminal offences. ▷ Victoria Police crime screening principles require an investigation and response unit to investigate all crimes against the person and all matters in accordance with the Code of Practice except:¹⁸ <ul style="list-style-type: none"> ▷ minor assaults, where the offender is identified but not present and the investigation is of a non-complex nature and does not require significant follow-up ▷ when front-line police are able to arrest and process the offender within the shift or where there is no significant follow-up.¹⁹ ▷ The Code of Practice states that an investigation and response unit must take responsibility for, or actively oversee, investigations involving:²⁰ <ul style="list-style-type: none"> ▷ stalking ▷ threats to inflict serious injury or death ▷ sex offences ▷ assault involving injury (including strangulation or attempted strangulation) or involving a weapon ▷ significant property damage ▷ historical offences not previously reported. ▷ SOCITs are specialised response and investigative teams for sexual assault and/or child abuse matters. The Code of Practice states that, depending on the circumstances, attending police may request SOCITs to be involved.²¹ |

| Position/unit | Roles and responsibilities |
|--|---|
| Family violence advisors | <ul style="list-style-type: none"> ▷ Family violence advisors (sergeants) provide the interface between operational units, family violence liaison officers and local agencies. ▷ They train operational units in family violence responses and provide information on new initiatives, policies and frameworks. ▷ They identify local issues, trends and incidents of family violence and developing strategies to break the cycle of family violence.²² |
| Family violence liaison officers | <ul style="list-style-type: none"> ▷ Family violence liaison officers (sergeants) are located at every 24-hour police station in Victoria. ▷ They ensure that their station or cluster provides a consistent and coordinated approach to family violence. ▷ They monitor and report on family violence, including members' adherence to the Code of Practice.²³ |
| Family violence teams | <ul style="list-style-type: none"> ▷ Family violence teams are drawn from the general duties uniform roster. ▷ They provide an immediate specialist response to family violence incidents. ▷ Their functions vary greatly and can include proactive investigations and case management of recidivist offenders and high-risk clients and work with external agencies.²⁴ |
| Divisional intelligence units | <ul style="list-style-type: none"> ▷ Divisional intelligence units generate family violence recidivist lists and other intelligence products such as incident and trend analyses, target profiles, threat assessments and intelligence assessments. ▷ They coordinate tasking and coordination processes to ensure that resources are deployed effectively and efficiently for maximum impact on the highest priority family violence recidivists.²⁵ |
| Divisional tasking and coordination committees | <ul style="list-style-type: none"> ▷ Divisional tasking and coordination committees decide on the basis of the available information and intelligence which family violence recidivists have highest priority.²⁶ |

Leadership and resourcing

Strong leadership at the highest levels of Victoria Police has been a hallmark of family violence reform and improved practice in the past decade. The Commission also heard directly from a number of police members in specialist family violence roles who are providing leadership at the operational level.²⁷

The Commission notes the evidence of Victoria Police representatives to the New South Wales Legislative Council Standing Committee on Social Issues in relation to the effect of senior leadership within the service:

Our Chief Commissioner, going back to when we had Christine Nixon as our Chief Commissioner, right through to our current Chief Commissioner, Ken Lay, have made it clear it is a mandate to keep this as one of the targeted areas ... over the next five years. I think that has been heard clearly throughout the organisation. I think it has dramatically changed management's views of the importance of it in responding appropriately and having an impact in the Community.²⁸

The establishment of Family Violence Command within Victoria Police in early 2015 was designed to create a single authoritative voice communicating a clear family violence vision, strategy and operating model for Victoria Police.²⁹ It was said that Family Violence Command does not have line management control over family violence teams or other police resources dedicated to family violence, since these decisions rest with the regions. As Assistant Commissioner Dean McWhirter of Family Violence Command said:

... So Family Violence Command is set up as a central command to provide the organisation with policy guidance and direction in relation to family violence as such. All the responsibility for front-line service, family violence teams, all the actual positions that actually support family violence, sit within the four regional areas. My responsibility will be to actually identify good practice and then work with the Assistant Commissioners to actually [deliver] that good practice in the regions in terms of the response.³⁰

Assistant Commissioner McWhirter also told the Commission about the monitoring mechanisms used to assess regions' performance in relation to family violence:

Victoria Police monitors the response of regions through the release of monthly scorecards, which analyse how each region is trending against a set of performance measures for a range of themes, including family violence.³¹

Regions are measured against performance measures that have been established in the *Living Free From Violence 2009–2014—Violence Against Women and Children Strategy*. Many of the measures are focused on increased reporting rates for family violence and sexual assault.³²

Assistant Commissioners McWhirter and Luke Cornelius explained how scorecards are used to drive resource allocation and measure performance against:

The scorecard process informs Tasking and Coordination processes across Victoria, which is the allocation of resources and prioritisation of tasks at a range of levels across the organisation.³³

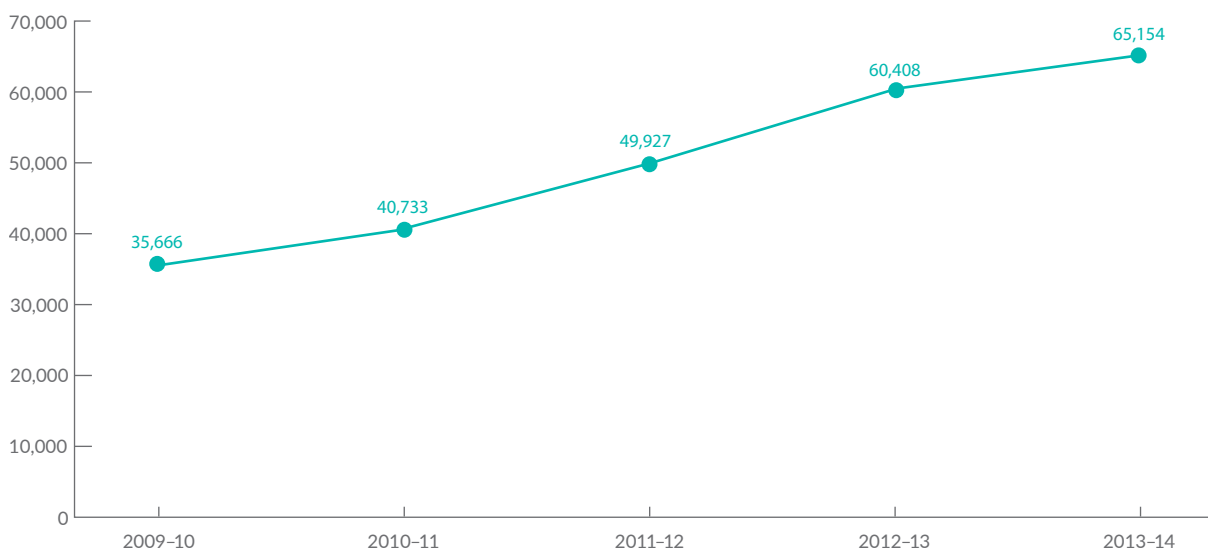
... every region conducts a monthly regional tasking and coordination meeting and we review ... the family violence scorecard, to challenge ourselves around making sure that we – you will see we are by and large exceeding the targets – but it really is around holding ourselves accountable against this scorecard.³⁴

Current demand

The question of demand cuts across all aspects of the police response to family violence.

Police data analysed for the Commission by the Crime Statistics Agency provides a measure of the growing demand for policing services generated by family violence. As a starting point, Figure 15.2 shows that the number of family violence incidents resulting in the completion of an L17 by police increased by 83 per cent in the five years to 30 June 2014.³⁵ A further increase was seen in 2014–15, when there were 70,906 family incidents recorded by police.³⁶

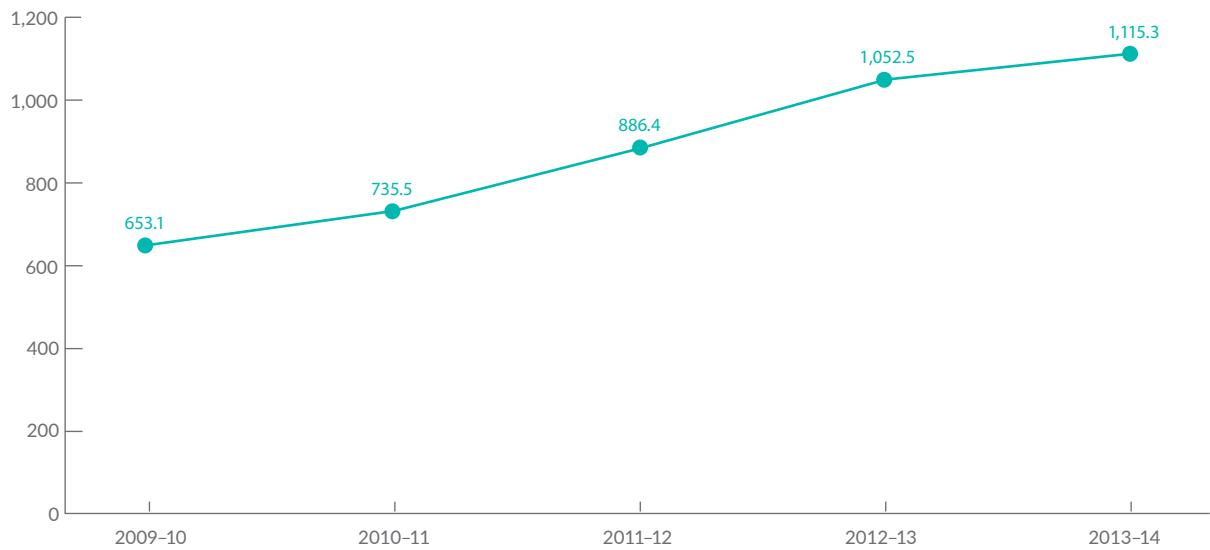
Figure 15.2 Family violence incidents recorded on an L17 form by Victoria Police, 2009–10 to 2013–14



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), Victoria Police data source, Tab 1, Table 1: Family violence incidents recorded and family incident rate per 100,000 population, July 2009 to July 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015.

Furthermore, family violence incident reports are increasing: Figure 15.3 shows that the rate of family violence incident reports per 100,000 people increased by 71 per cent over the five years to 30 June 2014; a further increase was seen in 2014–15, when there were 1191.5 family violence incidents per 100,000 people.³⁷

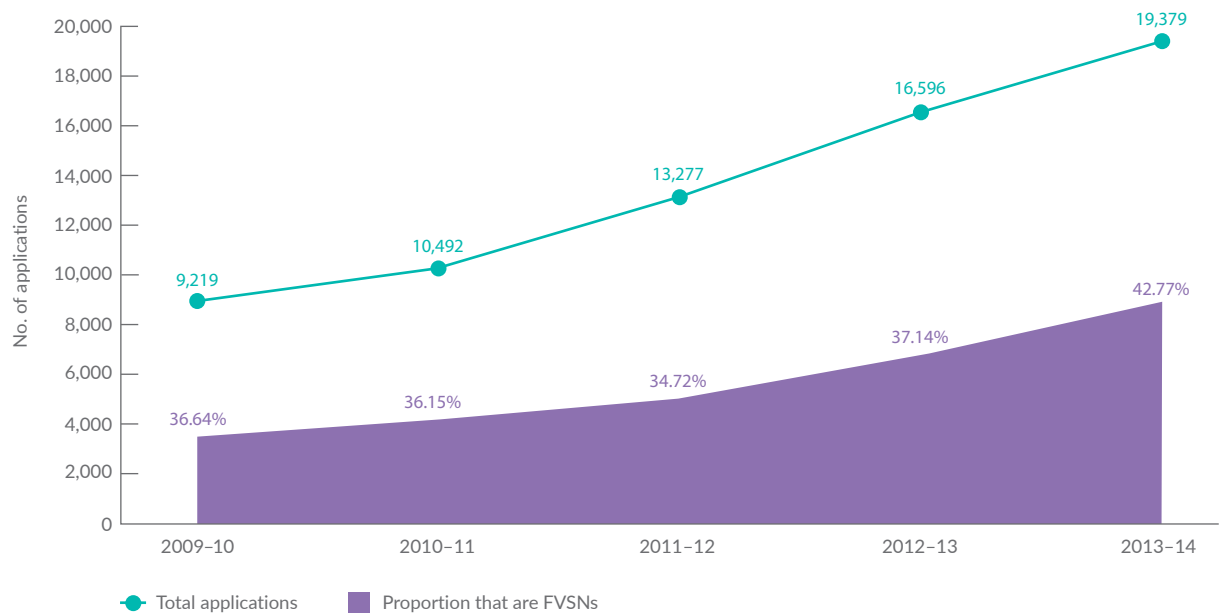
Figure 15.3 Family violence incidents per 100,000 people, as recorded on an L17 form by Victoria Police, 2009–10 to 2013–14



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), Victoria Police data source, Tab 1, Table 1: Family violence incidents recorded and family incident rate per 100,000 population, July 2009 to July 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015.

In addition to the volume of reports, Crime Statistics Agency data provides some insight into the changing nature of the police response. Figure 15.4 below shows that the number of police applications for family violence intervention orders and safety notices has increased by 110 per cent in the five years to 30 June 2014. It shows a gradual increase in the proportion of police applications initiated by the issuing of a family violence safety notice, rather than an application and summons or application and warrant.

Figure 15.4 Police applications for family violence intervention orders and safety notices, 2009–10 to 2013–14

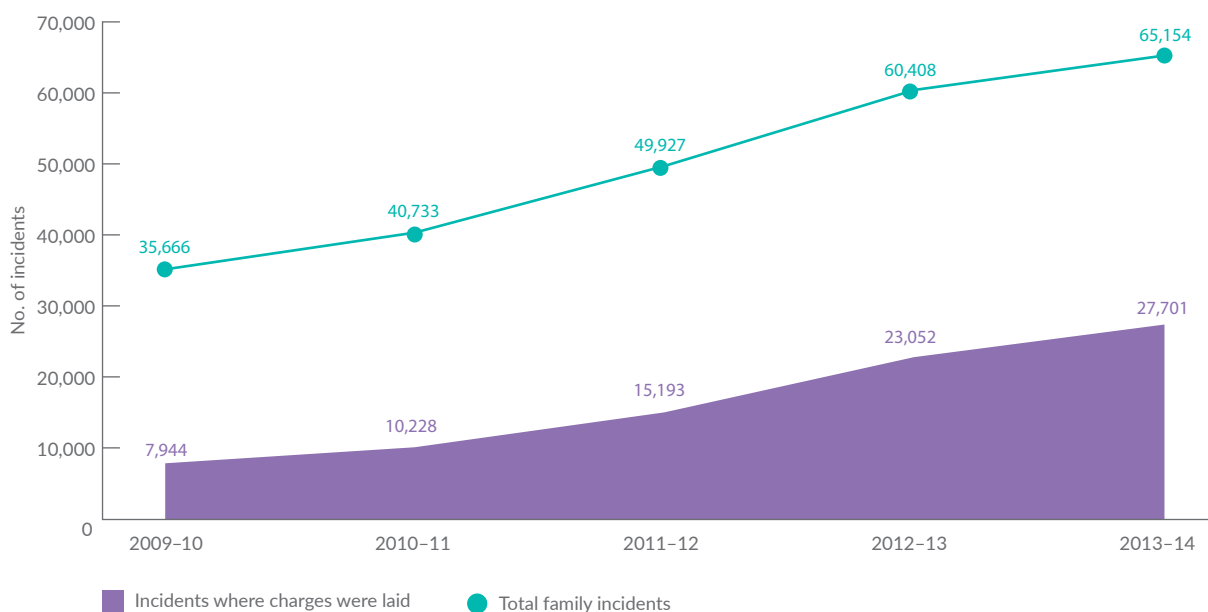


Note: The police may make a single application for a family violence intervention order in relation to multiple family violence incidents and attendances. The police may also attend family violence incidents where there is already family violence safety notice or intervention order in place and hence no application is required. This may explain why the number of police applications for family violence intervention orders is lower than the number of family violence incidents.

Source: Based on Crime Statistics Agency, *An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14* (January 2016), Victoria Police data, Table 19: Family Violence Intervention Orders and Safety Notices sought by Victoria Police, July 2009 to June 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015.

Similarly, Figure 15.5 shows that the number of family violence incidents resulting in criminal charges increased by 249 per cent in the five years to 30 June 2014.

Figure 15.5 Family violence incidents where charges were laid, 2009–10 to 2013–14



Note: The police may lay charges for either or both a contravention of a family violence safety notice or intervention order and other offences arising out of a family violence incident.

Source: Based on Crime Statistics Agency, *An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009-10 to 2013-14* (January 2016), Victoria Police data, Tab 20: Table 20: Family incidents where charges were laid, July 2009 to June 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015.

Assistant Commissioner McWhirter told the Commission family violence offences account for a significant and increasing proportion of all crime against the person:

Since 2004/05, the rate of family incident-related crime against the person per 100,000 people in the Victorian population has increased by 211%, while the rate of such crime from non-family incidents has decreased by 6.8%. Offences arising from family incidents accounted for over a third (41.7%) of all crime against the person offences in 2013/14.³⁸

Other evidence provided to the Commission suggests that it is difficult to precisely quantify the amount and proportion of police time spent on responding to family violence. One difficulty is the fact that a range of police units might respond to a family violence incident, depending on the nature of the incident:

Family violence incidents can take a wide variety of forms and can require different responses from a wide range of specialist units within Victoria Police. As an example, in the 2014 calendar year the Dog Squad was called to assist in over 450 family violence related incidents ...³⁹

In 2013/14, 41.7% of all kidnap/abduction offences arose from family violence incidents (263 of 630 kidnap/abduction incidents). These incidents often require a heightened response from specialist units involving large numbers of police personnel, including large-scale response from the Critical Incident Response Team or the Special Operations Group.⁴⁰

Assistant Commissioner Cornelius stated that about 40 to 60 per cent of front-line police activities relate to family violence.⁴¹ Victoria Police gave the Commission an estimate of expenditure relating to family violence in 2013-14 and 2014-15: it suggests that police expenditure attributable to family violence in 2014-15 was around \$779 million on the basis this amounted to 40 per cent of police activity.⁴²

Recidivism

The Commission engaged the Crime Statistics Agency to analyse the levels and predictors of recidivism among family violence perpetrators in Victoria, using Victoria Police data. 'Recidivism' was defined as the recording by police of more than one family violence incident involving the same perpetrator since police data was available for this. This does not, however, reflect the true incidence of repeat perpetration of family violence.

As discussed in Chapter 3, the Australian Bureau of Statistics' Personal Safety Survey data indicates that one in nine women in Australia (that is 961,500 women) have experienced multiple assaults by the same man since the age of 15.⁴³ Much of this violence is not reported to police. Indeed, the Code of Practice states:

Not all family violence matters are disclosed to police so that even an AFM [affected family member] who has not previously been reported to police may have been exposed to significant or repeated abuse, and police should factor this into the response.⁴⁴

The Crime Statistics Agency analysis showed that a relatively small number of recidivist perpetrators account for a disproportionate number of family violence incidents attended by Victoria Police. As shown in Table 15.4, in the decade from 2004–05 to 2013–14 recidivists accounted for 69 per cent ($n=279,230$) of 403,991 family violence incidents, despite comprising only 37 per cent ($n=72,778$) of 197,822 perpetrators. Notably, nine per cent of perpetrators were responsible for 34 per cent of family violence incidents.⁴⁵ This group of recidivist perpetrators had five or more recorded family violence incidents.

Table 15.4 Incidents recorded for perpetrators, by number of incidents, 2004–05 to 2013–14

| Number of incidents | Perpetrators | | Incidents | |
|---------------------|--------------|----|-----------|----|
| | <i>n</i> | % | <i>n</i> | % |
| 1 | 125,044 | 63 | 125,044 | 31 |
| 2 | 32,889 | 17 | 65,778 | 16 |
| 3 | 14,797 | 7 | 44,391 | 11 |
| 4 | 8,178 | 4 | 32,712 | 8 |
| 5 or more | 16,914 | 9 | 136,349 | 34 |

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 42: Number and proportion of incidents recorded for perpetrators who committed 1, 2, 3 and 4 or more incidents between 2004–05 and 2013–14, 106, provided to the Commission by the Crime Statistics Agency, 8 January 2016.

The Crime Statistics Agency analysis also showed that the proportion of perpetrators associated with more than one family violence incident in a year increased during this 10-year period, from 18 per cent ($n=4,157$) in the year ending 30 June 2005 to 25 per cent ($n=11,160$) in the year ending 30 June 2014.⁴⁶ The Commission notes, however, that improvements to the policing of family violence and increasing reporting rates may have affected this trend.

The Crime Statistics Agency also selected a cohort of perpetrators whose behaviour could be tracked over time in order to identify patterns and predictors of recidivism in greater detail. The cohort selected was perpetrators with one or more recorded family violence incidents in 2010–11.⁴⁷ The analysis found as follows:

- ▷ Just over half (51 per cent, or 15,611) of all alleged perpetrators recorded for at least one incident in 2010–11 (the 'index incident') were recorded for one or more further incidents by the end of March 2015.
- ▷ The median number of further incidents was two.
- ▷ Perpetrators with one to two previously recorded family violence incidents were 2.26 times more likely to be recorded for a recidivism incident than those with no previously recorded incidents (within the period of the study), and those with three or more prior-recorded incidents were 4.5 times more likely to be recorded for a recidivism incident.
- ▷ Perpetrators with a previously recorded contravention of a family violence order offence were more likely to be recorded for a recidivism incident.
- ▷ Perpetrators whose index event was against a current or former partner were more likely to be recorded for a recidivism incident than those whose index event was against another type of family member.
- ▷ If children were present at the index incident, there was a higher likelihood of a recidivism incident.
- ▷ Recidivist perpetrators were more likely to have the following risk factors recorded by police at the time of their index incident—unemployed; drug use possible/definite and/or victim alcohol use possible/definite; depressed/mental health issue, escalation of violence (increase in severity or frequency) or victim pregnancy or new birth.⁴⁸

The last part of the Crime Statistics Agency study looked at the time elapsing between index incidents and recidivism incidents.⁴⁹ The CSA found that as the number of recidivism incidents increased, the time between the incidents decreased. The median number of days from an index incident to the first recidivism incident was 275. For those with three recidivism incidents, the median number of days between the first and third recidivism incident was 156 and, for those with four, the median number of days between their third and fourth recidivism incident was 109.⁵⁰

Recidivism incidents occurred more rapidly after the index event for perpetrators who at the time of the index event:

- ▷ were male
- ▷ were in a younger age category
- ▷ perpetrated violence against a partner or former partner
- ▷ had a history of earlier recorded violence incidents—in particular, contraventions (breaches) of family violence intervention orders (the latter were ‘much more likely’ to have had a recidivism incident within six months of the index incident).⁵¹

At the six-month point, 40 per cent of those with three or more previously recorded family violence incidents had been recorded for a recidivism incident; this compares with only 14 per cent of those with no previous recorded incidents.⁵²

The police response to recidivism

Victoria Police defines recidivist perpetrators and ‘repeat victims’ in terms of three or more attendances at family violence incidents involving both parties or either party within a rolling 12-month period.⁵³ In broad terms, each police response option in the Code of Practice is directed towards preventing family violence recidivism and repeat victimisation. Specifically:

- ▷ One purpose of criminal sanctions is to deter individual offenders and the broader population from committing family violence crime in the future.
- ▷ Civil orders are designed to protect victims and their children from further family violence, thereby preventing recidivism.
- ▷ Formal referrals to specialist services aim to support victims and to link men to perpetrator programs in order to address and change their behaviour.⁵⁴

Recognising the harm caused by recidivist perpetrators and the vulnerability of repeat victims, Victoria Police also has in place processes, procedures and initiatives for focusing specific effort on these cohorts. As a starting point, the Code of Practice states that recidivism strategies are required to ensure that interventions are effective and reduce the likelihood of violence recurring.⁵⁵ It also directs members to the Victoria Police Intelligence Doctrine for guidance on responses.⁵⁶ (The approach to recidivists is also summarised in the Standard Operating Procedures for Family Violence Teams.⁵⁷)

The Victoria Police Intelligence Doctrine is confidential because of its operational sensitivity. The Commission can therefore only refer to it in broad terms. Divisional Intelligence Units have primary responsibility for identifying recidivist family violence perpetrators (family violence persons of interest, or POIs) and referring them to Tasking and Coordination meetings.⁵⁸

The tasking and coordination process, which family violence liaison officers or family violence team officers in charge attend, assigns priority to family violence POIs and allocates management responsibilities for the highest priority matters to a specified workgroup.⁵⁹ A key function of most family violence teams is to manage family violence POIs and repeat victims.

Management plans for family violence POIs are tailored to particular circumstances. This can include passive or overt monitoring—for example, making contact with the individual to put them in touch with local agencies, case conferencing with other relevant services, and enforcement of any offences. Family violence POI ‘flags’ are created in the LEAP database, alerting police who come into contact with the person of their status; management plans are entered into the Interpose IT application.⁶⁰

Participants in the Commission’s community consultations provided practical insights into how family violence teams manage recidivist perpetrators and repeat victims. For example, in Warrnambool the Commission was told that family violence team members contact the perpetrator and the victim, monitor the relationship and talk to agencies about any recent dealings;⁶¹ in Geelong we heard that family violence team members work with repeat victims to reinforce safety plans, ensure referrals are put in place, and let them know that police take them seriously.⁶²

In his report on the inquest into the death of Luke Batty, the former State Coroner, Judge Ian Gray, noted that Victoria Police had initiated some work to reduce repeat family offending, but that formal work was still required to ensure that the monitoring of repeat offenders and case management of repeat victims systematically occurred.⁶³ In his recommendations, Judge Gray noted that the evaluation of the Family Violence Risk Assessment and Risk Management Framework (also known as the Common Risk Assessment Framework, or the CRAF) should include an assessment of how accurately the framework can identify a perpetrator’s risk of repeat and/or escalating family violence.⁶⁴

In addition, Judge Gray explicitly recommended that police ‘cease to use the current definition of “recidivist” family violence offender’ and instead develop a uniform definition of ‘high risk’, with consistent risk management strategies.⁶⁵ Building on these proposed developments, Judge Gray recommended that additional mechanisms include warning flags in LEAP; more intensive monitoring of the offender (including bail conditions), and a priority focus on the execution of all warrants.⁶⁶

The Commission was informed that family violence teams have implemented a number of local, multi-agency initiatives that draw on the expertise of a range of relevant services to assist in the management of recidivist and high-risk family violence perpetrators.⁶⁷ (These initiatives are discussed in the next section, ‘Collaboration.’) Senior Sergeant Fiona Alexander, Officer in Charge, Integrated Response Team Initiative, of Taskforce Alexis, described the rationale and potential benefits of multi-agency approaches:

We offer a holistic approach. So we can’t change recidivism by ourselves. Vic Pol just – that’s just an impossibility. It needs to be an all-of-community problem and everybody needs to address it; so by having the holistic approach, having the key worker involved, having buy-in from all our support agencies so that they provide that smooth interface, and then having the enforcement conducted by police, where I think we are actually achieving some pretty big goals and making sure that everything that needs to be done is currently being done.⁶⁸

In addition, the forthcoming local trial of triage and risk assessment tools (discussed in detail in Chapter 6), will test actuarial tools designed to identify perpetrators most likely to be repeat offenders within 12 months, allowing for their referral to the family violence team for management.⁶⁹ This trial will take place in North West Metropolitan Region North Division from June 2016.

The Commission also heard that recent initiatives by police and the courts are showing promising signs in terms of reducing recidivism. The following are two examples.

The Dandenong pro-arrest policy

Since December 2013, Victoria Police in Dandenong have strictly adhered to the pro-arrest policy outlined in the Code of Practice. Assistant Commissioner Cornelius told the Commission that Dandenong is part of the police division with the highest rate of reported family violence in the state.⁷⁰ Twenty-one per cent of family violence offences were said to be perpetrated by recidivist offenders.⁷¹

Under the policy, suspected family violence perpetrators are arrested and remanded in custody for four hours.⁷² Assistant Commissioner Cornelius explained:

It's the difference between a suspected offender sitting in the comfort of an interview room or that person spending time in a police cell alongside a drug dealer and a car thief. If we do this stuff to car thieves and drug dealers, we should absolutely be doing it to family violence offenders. They need to be in the same boat as any other common suspected criminal.⁷³

Although the policy is aimed at all perpetrators, its effect can be most clearly measured in its impact on repeat offences. The Commission was told that the policy has led to a 'highly significant reduction in recidivism and repeat victimisation' in Dandenong.⁷⁴ It was piloted in Springvale in December 2013 and January 2014, and Victoria Police reported that in the month of January 2014 there were 64 family violence incidents,⁷⁵ which compares with 128 in January of the previous year.⁷⁶

Assistant Commissioner Cornelius told the Commission the family violence recidivism rate in Dandenong is now much lower than the state average:⁷⁷

The policy has also resulted in a highly significant reduction in recidivism and repeat victimisation in Dandenong. Prior to the commencement of the Pro-arrest Policy, locally sourced police data has indicated that repeat perpetrator rates in Southern Division 3 were increasing on a year to date rate as at January 2013 at 31% annually. Since commencement of the Policy, repeat perpetrator rates have shown a steady decline. This turnaround is in stark contrast to the State average and that of the whole of the SM [Southern Metropolitan] Region.⁷⁸

The Commission was told the policy could build credibility and confidence in the police response, which might mean that perpetrators take the court and police responses more seriously.⁷⁹

The Commission was also advised, however, of concerns about such policies in relation to similar police approaches overseas. The Police Association Victoria submitted:

At a practical level, the experience of [its] members reflects recent research that pro-arrest and pro-charge policies may have the unintended consequence of decreasing reporting for those victims who simply seek respite from the present violence rather than punishment for their partners.⁸⁰

The Commission was told that mandatory arrest laws in the United States go further than pro-arrest policies and are designed to deprive police of their ability to exercise discretion when determining whether to make an arrest when responding to a family violence call (if there is 'probable cause' for an arrest to be made).⁸¹ Professor Leigh Goodmark, Professor of Law at the Francis King Carey School of Law University of Maryland, gave evidence that under these mandatory arrest laws, it is not possible for family violence victims to say, 'I want the police to intervene at the intermediate moment to stop this violence, but I'm not interested in prosecuting, I'm not interested in being part of the criminal justice system'.⁸²

Assistant Commissioner Cornelius confirmed that under the Dandenong pro-arrest policy, individual officers have discretion to exercise their powers to arrest or remand someone.⁸³

Furthermore, the Commission was told that, in addition to reducing recidivism in the police division with the state's highest rate of reported family violence, adoption of the Dandenong pro-arrest policy:

... allows police to provide support to the victim, including to arrange alternative accommodation for the perpetrator or victim if necessary, and to investigate whether to lay charges. It also has a positive effect on the perpetrator. It takes control away from them and makes clear to them that their conduct is criminal.⁸⁴

The Fast Track Project

The Fast Track Project model began in December 2014 in Dandenong Magistrates' Court, and has since been expanded to venues including Ballarat, Ringwood, Broadmeadows and Shepparton.⁸⁵ It provides for criminal matters in the Magistrates' Court to be determined within a short period, by means of a practice direction issued by the Chief Magistrate and corresponding operating procedures of Victoria Police prosecutors.

Although the project has not been fully evaluated, magistrates, legal practitioners and others consider it has great potential to:⁸⁶

- ▷ limit delays between the occurrence and final determination of a criminal offence
- ▷ increase the number of early guilty pleas
- ▷ increase the participation of victims of family violence
- ▷ limit the time during which victims of family violence must participate in legal proceedings
- ▷ impose swift and certain consequences on perpetrators of family violence
- ▷ limit the opportunity for perpetrators to re-offend before criminal proceedings are finalised.

This is discussed in more detail in Chapter 16.

Collaboration

Family violence teams have also developed a range of multi-agency and collaborative models to manage recidivist offenders and repeat victims and to strengthen the management of very high-risk cases. These include the Risk Assessment and Management Panels, or RAMPs, discussed in Chapter 6. Other operating models include:

- ▷ *Taskforce Alexis*. A Salvation Army specialist family violence social worker is embedded full time in Division 2 of the Southern Metropolitan Region.⁸⁷
- ▷ *Whittlesea Family Violence Police Outreach Partnership response*. A family violence outreach worker from Berry Street is embedded in the Whittlesea Family Violence Team (at Mill Park Police Station) two afternoons a week.⁸⁸
- ▷ *The Repeat Police Attendance and High Risk Response Program*: Victoria Police family violence team members and domestic violence advocates from the Eastern Domestic Violence Service make weekly joint visits to repeat victims.⁸⁹
- ▷ *A Case Manager at Geelong Police Station*. A Bethany Community Support Men's Case Manager is located at Geelong Police Station one day a week to engage immediately with men.⁹⁰

Taskforce Alexis

Taskforce Alexis is a pilot program based at Moorabbin Police Station; it provides immediate response and ongoing oversight and management of high-risk and recidivist family violence, mental health and youth offending cases.⁹¹

The task force consists of a family violence response team, a mental health response team and a youth/crime prevention/victimisation response team.⁹² A Salvation Army key worker is embedded in the task force to address an identified gap in the provision of services to victims of family violence, in that many victims and perpetrators do not engage with support services through the normal L17 referral process.⁹³

The key worker assists with triage and provides identified recidivist and high-risk families with assertive outreach, links to services and, as required, case coordination for complex situations.⁹⁴

The Taskforce Alexis response team takes over incidents from first responders when the perpetrator is known as a recidivist or when the family violence incident is of a serious nature.⁹⁵ Wherever appropriate, the response team applies to remand perpetrators under the *Bail Act 1977 (Vic)*; 52 family violence perpetrators were remanded between 1 December 2014 and 5 August 2015.⁹⁶

Taskforce Alexis manages about 50 to 60 families at any time, with at least one visit made each week to monitor victim safety and ensure that the respondent has not breached their intervention order or bail condition and that the victim is not inviting contact that would constitute a breach.⁹⁷

The key worker's ongoing role in relation to recidivist incidents involves engaging with and acting as a conduit to services such as drug and alcohol or gambling counselling, mental health services and housing.⁹⁸ The key worker closes the file on a family either when there is no further offending or they have been handed over to a partner agency to manage.⁹⁹

A Taskforce Coordination Team of government and non-government agency partners meets monthly to ensure that there is appropriate support for families who need coordinated case management; 24 families have been case-managed over four meetings since February 2015.¹⁰⁰

To ensure that perpetrators are held to account, Taskforce Alexis creates a sense of urgency and accountability in relation to breaches of intervention orders by prompt attendance and prosecution of every breach where there is sufficient evidence.¹⁰¹

RMIT will begin an evaluation of Taskforce Alexis later this year, although early signs are that recidivism rates for people managed by the task force have declined: the 56 clients engaged by the key worker since December 2014 had an average of two L17s per person over eight months; compares with 5.3 L17s per person in the 12 months preceding Taskforce Alexis.¹⁰²

Northern High Risk Response Conference and Whittlesea Family Violence Police Outreach Partnership Response

The Northern High Risk Response Conference is a police-initiated and led multi-agency response designed to reduce risk and potential harm for victims at serious and imminent risk (regardless of age, sex or relationship), as identified by family violence teams in the north-west of Melbourne.¹⁰³

The conference is made up of relevant service providers, including representatives of Child Protection, Child FIRST, Community Correctional Services, Northern Area Mental Health Services, Berry Street, Kildonan UnitingCare and Safe Steps.¹⁰⁴ It meets for a full day every fortnight to discuss the top 16 to 20 cases (807 cases had been assessed through the conference as at 27 July 2015).¹⁰⁵ Victoria Police stated that this process has resulted in new intervention orders being made or stricter conditions imposed, identification and pursuit of breaches, greater engagement with services, improved safety planning including security reviews, revocation of parole, more charges being laid, and more perpetrators being remanded in custody.¹⁰⁶

The Whittlesea Family Violence Police Outreach Partnership involves a family violence outreach worker from Berry Street being embedded in the Whittlesea Family Violence Team two afternoons a week. The outreach worker assists with triage of family violence incidents and makes contact with women experiencing family violence to offer them a service (conducting joint home visits with a member of the family violence team when it is safe and appropriate to do so).¹⁰⁷

The Repeat Police Attendance and High Risk Response Program

The Repeat Police Attendance and High Risk Response Program began in March 2014, and involves Victoria Police and Eastern Domestic Violence Service working together to connect high-risk victims of family violence with services. The program operates out of Glen Waverley and Croydon Police Stations and involves joint Victoria Police and EDVOS visits to women affected by recidivist offenders. At these visits the family violence team members give the woman information about intervention orders and take statements concerning criminal offences. EDVOS assesses the woman's needs and provides information and referral to appropriate services. In addition, representatives of EDVOS and Victoria Police (Child Protection officers are also invited) meet monthly to report on the progress of clients and discuss any concerns.¹⁰⁸

The program's success rate in engaging with women is significantly higher than the standard engagement strategy of phoning women to offer information and support: from March 2014 to February 2015 the Glen Waverley team made 174 home visits and 79 per cent of women engaged with EDVOS and participating in safety planning.¹⁰⁹

The Commission received evidence from Victoria Police members about the benefits some of these local initiatives such as those discussed here:

So collectively it [the Northern High Risk Response Conference] strengthens our risk assessments, provides individual further risk assessment around the children and it also allows us to build our action plans as a team ... certainly there's actions that have come out of there that could not have happened any other way.¹¹⁰

Senior Sergeant Alexander gave evidence to the Commission about the benefits of Taskforce Alexis, including buy-in from local agencies, the value of the key worker role and enforcement by police.¹¹¹

The Commission was also told that local multi-agency initiatives will continue to have a role after the statewide roll-out of the RAMPs, as discussed in Chapter 6. Assistant Commissioner Cornelius told the Commission:

... if you take a high-volume family violence location like, for example, Cranbourne, where in excess of 320 high-risk perpetrators are located and are actively managed, well, the RAMP that's proposed for division 3, which covers Greater Dandenong, Cardinia and Casey, will only get 70 of those. So you will see a significant quantum of residual high-risk matters that will have to be managed outside of the RAMP process.¹¹²

So we are certainly seeing in many divisions across the state a piece of thinking which is not just about tooling up to support our part in the RAMPs, but also it's about thinking through what local arrangements and relationships do we have to build to allow us to manage residual risk ...¹¹³

Victoria Police members also told the Commission they see the expansion of multi-disciplinary centres to include a family violence response as a promising operating model. MDCs bring together Victoria Police, Child Protection and sexual assault counselling services at one site to provide integrated support for adults and children who have experienced sexual assault:

We see that there is a huge opportunity in relation to family violence response to apply that multi-disciplinary centre response. So that would be expanding our current response to sexual assault and child abuse victims and our investigation and our relationship with those other departments that sit within those multi-disciplinary centres, and then place family violence teams and those services that support victims of family violence in that multi-disciplinary environment.

Why? Because it's about providing the victim an immediacy of response that deals with their needs in crisis ...¹¹⁴

Assistant Commissioner McWhirter said that MDCs could therefore form part of the service mix of family violence teams:

The multi-disciplinary centre approach is just one aspect of how you respond. You can't have a multi-disciplinary centre in every geographical area ... That's where the flexibility of a model would then come in terms of a systems perspective. We were talking about ... different models of embedding specialists into family violence teams.¹¹⁵

Expanding MDCs to cover family violence was supported by the Eastern Centre Against Sexual Assault.¹¹⁶ Others suggested the independent co-location of police and family violence services, building on the Taskforce Alexis model.¹¹⁷ Chapter 13 further discusses co-location models and embedded workers, and the Commission makes recommendations with a view to promoting greater collaboration.

Challenges and opportunities

The Commission received evidence about a number of challenges and opportunities for Victoria Police's response to family violence, in areas such as the changing pattern of demands on police leadership and accountability, the importance of criminal investigation of family violence incidents, the role and resourcing of family violence specialists in Victoria Police, and maximising police capacity to respond to family violence.

Demand

High and escalating workloads associated with family violence are placing significant strain on front-line police, which could affect the sustainability of recent gains and the viability of further reforms. The Police Association Victoria stated:

... Victoria Police has in many ways been at the forefront of necessary change with respect to addressing violence against women for over a decade. However, such evolution inevitably places demand on police time. Coupled with the sharp increase in reports to police, and in the absence of commensurate increases in police numbers and organisational infrastructure, the continued introduction of reforms place a strain on frontline members and stretch resourcing to its limit.¹¹⁸

The Police Association Victoria argues that among the effects of this demand pressure are the need to triage calls; extended response times, which can lead to missed opportunities to issue family violence safety notices; decreasing morale, which can result in attrition; and insufficient time to attend to other matters.¹¹⁹

Victoria Police told the Commission that the requirement for police members to personally serve intervention orders and applications on respondents imposes significant demands on police time and resources.¹²⁰ Assistant Commissioner Cornelius gave evidence that:

Police informants drive the process for serving IVOs. In many cases, personal service is difficult, with informants having to make multiple attempts to locate a Respondent amongst all of their other general policing duties. Some Respondents are itinerant, and some Respondents deliberately evade police. These challenges result in a significant amount of time being expended on the task of serving IVOs ... which creates a risk for victims.¹²¹

Furthermore, Assistant Commissioner McWhirter noted that Victoria Police does not have a time attribution process for response and resourcing.

It's really difficult. We don't have a time attribution process within Victoria Police in terms of allocating time specifically to family violence or really to other forms of matters that we respond to. It is really difficult because ... of the complexities of family violence and the numbers of people who actually are involved in it from a policing perspective.¹²²

The time spent dealing with a specific incident can also vary greatly. Sergeant Mark Spriggs, Family Violence Advisor for Division 5 of the North West Metro Region, told the Commission:

Obviously the time that members would spend at an incident can vary dramatically depending on the nature of the incident. If we are talking about a verbal only incident it may be a 15-minute discussion at the scene and it may turn into 20 minutes of filling out an L17 back at the station, obviously travel time to the incident, travel time to the station before they are available again to attend another incident, unless it was given priority over the reports. That's at the lower end of the scale.¹²³

At the upper end of the scale where we are talking about criminal offending, if we have to gather evidence, if we have to obtain statements at the scene, it may go out to two hours or more. If we need to engage the services of interpreters that will slow it down even further. But we do have some incidents that will take a van crew off the road for the entire eight-hour shift and even longer, taking into account the actual scene and the processing and then application for remand if that's applicable.¹²⁴

I did a time attribution study some time ago back when the L17 used to have on it an indication by the members how long they were tied up at the family violence incident, and that showed to be 2.2 hours per family violence incident on average; so taking into account the long ones and the short ones.¹²⁵

That is at the scene and processing, but will not include brief preparation or court time.¹²⁶

More broadly, the Commission heard anecdotal evidence from a range of sources suggesting that about half of general duties police members' time is spent responding to family violence. Assistant Commissioner Cornelius stated:

... my sense of it, based on various anecdotal exchanges with my members, is that 40 to 50, maybe as high as 60 per cent, is not a bad indication for the amount of time that members spend per shift dealing with family violence related matters and it's borne out by the crime offence data ... but that relates only to offence related matters, that doesn't include all of the other non-assault related offences that of course occur in the family violence space.¹²⁷

The Police Association Victoria's submission contained feedback from its members that generally accords with Assistant Commissioner Cornelius's view:

Today we're so strict about compliance and so strict about enforcement with family violence provisions that that's consuming 60, 70 per cent of our time in terms of doing general crime, basically.¹²⁸

Many in management calculated the time cost of responding to family violence incidents with respect to the task of determining rosters. From this perspective, the crime category of family violence was seen to account for the majority of first responder's time ...¹²⁹

Police resources

A variety of inquiry participants commented on the adequacy of police resources. The Police Association Victoria stated that an increase in police numbers is urgently required to meet current and future demand driven by family violence:

It is an unfortunate reality that many of the well intentioned and positive organisational reforms to the policing of family violence are yet to be met with commensurate resourcing. Chronic understaffing necessitates a process whereby members are compelled to triage responses. The limited human resources create delays in responding to family violence incidents, leading to missed opportunities to issue Family Violence Safety Notices. Further, the allocation of human resources must be based on demand.

A need-based resource allocation of police, with respect to police numbers and infrastructure, will ensure that victims are not subject to postcode justice. The Police Association of Victoria ... submits that the determination of frontline numbers should be based on a per capita minimum benchmark, based on current figures and projected population growth.¹³⁰

Good Shepherd Australia New Zealand expressed support for more resources for response and follow-up:

The feedback from Good Shepherd staff that work directly with family violence victims is that there has been a significant improvement in the way Victoria Police members respond to family violence incidents. There is no doubt that the Victoria Police Code of Practice into the Investigation of Family Violence has re-instilled the community's trust and faith in the police. However, the strain on Victoria Police resources is becoming evident to those working at the coalface.¹³¹

... we advocate for a significant increase in the number of frontline members so as to guarantee a timely and adequate response *and* follow-up to family violence incidents.¹³²

McAuley Community Services for Women argued that a lack of police resources can put women's safety at risk:

Victoria Police report that family violence work takes up an average of 50% of all police work across the state, and in some areas it is as high as 90%. Despite high levels of awareness, inconsistent response by Police and lack of resources means that women can not rely on Police to remain safe. For example, it can take up to 3 weeks for Intervention Orders (IVOs) to be served – a time at which risk of violence is greatest.¹³³

Domestic Violence Victoria also linked a lack of police resources with the ability to keep women safe:

The most important element, without which women are not able to exercise their right to remain safely at home, is guaranteed legal and police protection, particularly in relation to the power to exclude perpetrators from the home, and this again, is an issue of adequate police resources.¹³⁴

Melbourne City Mission submitted that the adequacy of policing resource levels can vary according to location:

Staff also note that even where culture and expertise are outstanding, this can be compromised by insufficient resources to respond (for example, to police call-outs).

[Some] women who try to report DV are at a disadvantage to do so purely by where they live.¹³⁵

Gippsland Integrated Family Violence Service Reform Steering Committee, Colac Area Health, the Centre for Rural Regional Law and Justice, and a family violence worker in Warrnambool raised particular concerns about the adequacy and consistency of resourcing for specialist family violence roles in Victoria Police.¹³⁶

A number of other individuals, organisations and members of parliament also made submissions calling for police to be adequately resourced to meet demand.¹³⁷ A key stakeholder at one of the Commission's community consultations succinctly summed up the situation: 'Police are under-resourced and what is expected of them now is huge'.¹³⁸

Although Victoria Police did not specifically call for an increase in police numbers or resources in its submission, evidence from senior officers highlighted the effect of competing priorities on the ability to respond to family violence incidents.

Leadership and accountability

In relation to this environment of high and increasing demand, the Commission received evidence on a range of leadership and accountability matters that are linked to inconsistent service levels. Responding to these concerns might offer a way of further improving the Victoria Police response to family violence.

Women's Health West Inc. submitted that there is a need for sustained leadership to effect cultural change throughout Victoria Police and deal with pockets of uneven practice:

... cultural change is a huge undertaking requiring long-term leadership, commitment and dedication; and that for an organisation as large as Victoria Police there are bound to be pockets of unevenness across the workforce with respect to understandings of, and responses to, family violence.¹³⁹

In connection with this, Domestic Violence Victoria informed the Commission that translating strong senior leadership to changes on the front line is an ongoing challenge:

While the strong leadership of Victoria Police has achieved much, there is still more to do. The process of effecting such deep cultural change within an organisation as large as Victoria Police takes time. Promoting the reformist agenda into policing practice on the ground is a challenge ...¹⁴⁰

The Commission also notes that passionate senior leadership, although crucial, is not of itself sufficient to embed practice change at the front line:

Cultural change is by nature a slow process and while the Victorian Police can be commended on its high-level leadership on the issue, changing the culture and practice at the general duties level of policing is a bigger challenge. An over-reliance on passionate leadership and an under-reliance on embedding change and skill development within the force runs the risk of undermining the good work that Victoria Police is doing in prioritising family violence.¹⁴¹

This accords with the New South Wales Legislative Council Standing Committee on Social Issues' recommendation that:

... the NSW Police Force should, as a priority, develop and implement a strategy to enhance leadership in respect of domestic violence, to ensure that police responses to domestic violence are of consistently high standard across the State. The leadership strategy should address how the NSW Police Force will harness the skills and commitment of police in leadership roles at all levels, from the Commissioner down to the Sergeant supervising general duties officers and the DVLO responsible for quality assurance of other officers' work. The aim should be to strengthen leadership at all levels, especially within the senior ranks of all local area commands. The strategy should also decide the accountability structures that will support the performance measurement approach within the Domestic Violence Justice Framework, and provide mechanisms to ensure that performance monitoring feeds into operational planning, policy development and systemic improvements.¹⁴²

In addition to the importance of sustained leadership throughout the organisation, the Commission considered evidence highlighting the need for effective performance monitoring and reporting.

The Victorian Auditor-General stressed the importance of performance measurement in relation to leadership and accountability in his 2009 review of the implementation of the Code of Practice for the Investigation of Family Violence:

Police will be able to assess the effectiveness of their own procedures and policies if they establish comprehensive baseline data measures and performance monitoring over time. This will allow them to identify gaps in the service system requiring support from other agencies to reach designated targets and outcomes. Police must demonstrate the impact of policing strategies, particularly whether they can reduce the incidence and severity of family violence and protect victims. Potential measures include reductions in repeat offending, reductions in the frequency and severity of incidents and victim satisfaction with the police responses.¹⁴³

Similarly, the Australian Institute of Criminology has noted that performance monitoring is required to answer a number of fundamental questions relating to the policing of family violence:

Members of the public may ask: *How well are police responding to family violence in my neighbourhood? How are they dealing with offenders? Is it worth reporting to police?* For policy makers, the question is: *What policies could be changed to assist and improve police performance in family violence, and how?* Finally, police need to know: *Are our family violence policing strategies effective in reducing victimisation and protecting victims? How do we know? Is our response to victims appropriate? How can we encourage victims to come forward and report?* To answer these questions, specific performance measures need to be identified and monitored.¹⁴⁴

The Institute identified a range of possible performance measures—including the following:

- ▷ a reduction in repeat victimisation
- ▷ a reduction in repeat attendances
- ▷ a reduction in repeat offending
- ▷ accurate identification and recording of incidents
- ▷ an increased number of offenders charged and successfully prosecuted
- ▷ more arrests and charges for breach offences
- ▷ ensuring police are adequately informed about previous attendance and criminal histories before arriving at an incident
- ▷ improved willingness on the part of victims to call and/or cooperate with police and increased victim satisfaction with the police response.¹⁴⁵

Criminal investigations

As well as receiving evidence relating to inconsistent service levels, the Commission heard various views about Victoria Police's criminal investigations of family violence incidents. Senior police told the Commission the Code of Practice expresses a clear expectation that police members will collect evidence to support criminal prosecutions in appropriate cases:

It's my expectation that if we come upon a scene where clearly there's been some acts of violence and there's clear evidence of destruction, I would be wanting to see photographs being taken. If there's blood on the wall or somewhere, I would be wanting to see that being photographed. I would be wanting to see a record of a conversation with witnesses or indeed affected family members who are present around, 'Whose blood is this? How did it get there? What occurred?' so that we get that contemporary record from the people who are present at the scene as to what occurred ... That's an expectation. But, Commissioner, that does not occur in all situations.¹⁴⁶

As noted the proportion of family violence incidents for which criminal charges are laid has grown substantially in the past five years. Charges were laid in 42.5 per cent of incidents (approximately 65,154) in 2013–14, compared with 22.3 per cent (approximately 35,666) of incidents in 2009–10.¹⁴⁷

The Commission also heard about innovative approaches to investigating criminal offending associated with family violence. This includes embedding detectives in some family violence teams:

Detectives are not typically part of a family violence team. We have embedded detectives in all three of our teams ... The benefits of adding a detective to the team is that some investigations require the investigation to be handed over to the Criminal investigation Unit. What we find when we put the detectives into the team is that the members who are within the team with the guidance of the detective are able to retain more complex investigations and build their skills and knowledge with regard to investigating matters of that level.¹⁴⁸

They also have superior skills in tracking and locating offenders via various tools that we use, and they can spread that knowledge through the members. We also use the family violence detectives in relation to our priority target management plans in relation to at-risk juveniles.¹⁴⁹

This is in contrast with feedback relating to investigations conducted by general duties police: it was submitted that in many cases these do not meet the expectations set out in the Code of Practice:

[T]he difficulty is, ‘How do we move that idea of managing the scene?’ – which they do, separating the respondents, having the conversation with one and the other, but also in that process identifying that this is an opportunity to collect evidence, that this is an opportunity to – you know, it rarely happens that any photographs are taken of any injuries to the woman at the time of the incident, whether there’s damage to property, whether there’s evidence of, you know, the scene of the property where there’s furniture broken, there’s holes in the wall, everything else is not there.

If that case does not proceed to an assault, there is absolutely no evidence track about what had previously happened ...

So all that sort of thing is engrained or change a little bit of the culture to say, ‘Yes, it’s part of your work that you treat people with respect and listen to people and have empathy, but it’s also your remit to prepare the scene, to collect the evidence and to build a case for future prosecution, whether it’s going ahead this time or next time.’¹⁵⁰

Material the Office of the Public Advocate provided to the Commission suggests that police need greater expertise in investigating crimes against older victims of family violence, including financial abuse crimes.¹⁵¹ The material highlights the approach taken by the Seattle Police Department, where two detectives specialise in financial abuse of at-risk adults. Their investigative techniques include meeting victims, obtaining financial records, and freezing or seizing assets.¹⁵² The Commission notes that Victoria Police has similar powers at its disposal under the *Confiscation Act 1997 (Vic)* and that its 2014 Blue Paper acknowledges the need to adapt to meet growth in the extent of crimes such as fraud.¹⁵³

The Commission also examined a number of internal Victoria Police documents that identified areas for improvement in the investigation of family violence crime. For example:

- ▷ Some family violence advisors and family violence liaison officers interviewed as part of the review of the Code of Practice in 2013 pointed to a cultural distaste for criminal investigation units to assume responsibility for family violence matters.¹⁵⁴
- ▷ An internal Victoria Police implementation review of the Enhanced Family Violence Service Delivery Model concluded that divisional information units provide little by way of intelligence support to family violence teams.¹⁵⁵

The following are among other concerns noted in reviews:

- ▷ Non-family violence crimes are receiving resource priority by divisional investigations and response, and tasking and coordination managers, which is not reflective of organisational priorities.
- ▷ Family violence is listed as a priority for divisional managers and action plans, but this is not reflected in the allocation of resources or treatment at tasking and coordination committees.
- ▷ Autonomy in implementing the Enhanced Family Violence Service Delivery Model has allowed divisional management to minimally resource family violence, giving precedence to other community safety concerns such as volume crime and road trauma (for which divisional management is held to account).
- ▷ When it comes to family violence, there is a lack of Advancing Investigation Management compliance and a disjunction between family violence teams, general duties members and criminal investigation units, such that serious crimes and complex investigations are routinely assigned to junior members.
- ▷ Family violence liaison officers have oversight of the majority of family violence cases, with only about 13 per cent of incidents managed by family violence teams, yet most family violence liaison officer positions are portfolio positions, which means that family violence is just one aspect of their role. This situation is exacerbated by a lack of specialised training and rostering of family violence liaison officer shifts that do not reflect service demand.
- ▷ Family violence tasking and coordination is in reality performed at senior sergeant rank and below, and there is no avenue for obtaining additional resources through divisional tasking and coordination processes.
- ▷ Family violence is excluded from the investigation and response sphere, providing another example of a police culture that sees family violence as a general duties problem.¹⁵⁶

Within Victoria Police, there was a range of views about how the organisation might improve its investigative response to family violence, in addition to the task force model and the embedding of detectives in family violence teams, as previously mentioned.

Assistant Commissioner Cornelius explained the broader implications and potential benefits of embedding more detectives in family violence teams:

... it is certainly the case that a number of family violence units have detectives seconded to them, and that certainly has significant benefits for us where we have the capacity to do it. But in high-demand areas, where, for example, we are facing very high demand across a whole range of crime outputs as well as family violence, we have actually found—and this is certainly the case in division 3, Dandenong and Casey particularly—that we actually get better capacity and capability to apply investigative skills by allocating those more complex investigations out of the family violence unit into the local [Criminal Investigative Unit].

Of course, they maintain a close connection with the family violence unit members ... [so that] appropriate handover occurs with the affected family members and also with the perpetrator so that you get that seamless handover from one area of service delivery in our front-line op space to the investigation space.

But, look, if I had my druthers, I would love to see detectives located with family violence units. But, as my colleague Assistant Commissioner McWhirter pointed out on Monday, this question about the shape and structure of family violence units is quite rightly up for review and reconsideration.¹⁵⁷

He also raised the prospect of integrating family violence teams and sexual offences and child abuse investigation teams, or SOCITs:

But it's a moot point, for example, as to what ought the relationship between family violence units and SOCITs look like, given that in fact many family violence unit matters in fact are a SOCIT matter because they entail a sexual assault. So there's a question ... is it time for us to actually look at integrating those components.

If we do that, of course, there are significant capacity and cost implications for us. It, for example, costs us a lot more to pay detectives than it does members who are taken out of station. So members who come out of stations earn overtime. Members who are detectives receive both a detective's allowance and a commuted overtime allowance. These are all things that ultimately will ramp our costs. ... [And] there's a need for those [cost] implications to be funded.¹⁵⁸

Detective Senior Sergeant Bryce Pettett, the Officer in Charge of the Dandenong SOCIT, gave evidence about the potential for adopting a model similar to the Embona model, which is used in the investigation of armed robberies:

... there is usually a qualified detective sergeant, a couple of detectives and then uniform personnel that are brought in to upskill the uniform members and to offer additional support. A model like that I think in the family violence space could work.

Currently a lot of the family violence units are just uniform police. I'm sure that their hearts are in the right place and they are trying to do the very best they possibly can, but we have a training system where people go through what's called the field investigators course, which is the preliminary course to the detective training school, and usually the Embona participants have at least done that, so they have qualified in the first aspect of detective training.

So if we had some senior guidance to junior and they work as teams on individual cases and they have very successful results. I think a model similar to that could be effective.¹⁵⁹

In its submission, Victoria Police also explained the use of the 'whole story' approach and suggested extending it to family violence cases:

Under this approach, the emphasis would shift from the victim's actions and the tendency to make victims account for their reactions, to understanding how the offender made them react or behave in the way they did through fear and intimidation. In a family violence dynamic where a relationship is ongoing and abuse may have occurred and escalated over time, with manipulation, intimidation and threats a key characteristic, a more holistic view of the situation would be beneficial. In particular, there is often misunderstanding of why victims choose to remain in relationships, and this can become an undue focus that detracts from holding perpetrators accountable. The concept could be applied to family violence investigations and court matters in recognition of the similar style of relationship-based dynamics that occur and would allow greater understanding of offending patterns and shift the focus from victim justification, to perpetrator accountability.¹⁶⁰

Superintendent Paul Naylor, Divisional Superintendent for North-West Victoria, also raised the importance of 'whole story' training for those investigating family violence incidents while noting the potential for 'upskilling' family violence team members in investigations to augment the status and attractiveness of those roles:

Our police are very much going from job to job and they don't always have the opportunity to get the whole story and there is some specific training around that for SOCIT investigators to try and tease out that a bit more, that can sometimes be the trigger for realising the real depth of the problem. I think our people need to get exposed to that.

At the moment our family violence unit in the Mallee has a turnover of people. We expose those that want to be exposed to it for around three months, it's a little bit plus or minus. There are other times where we have to task members into the family violence unit. Some enjoy the challenge. Others prefer the ongoing, you never know what's going to happen part of policing. So it's about making it a little bit more attractive than what it is now, and to hear the thought around the field investigators course is a really good stepping stone and it's a model similar to what the Major Collision Investigation Unit did around changing the mind set around fatal motorcar accidents where they have now had those investigators with a detective status.¹⁶¹

Specialisation

Chapter 14 discusses general duties policing. This chapter considers specific roles that have developed in the past decade to support police attending family violence incidents. For ease of reference, these are referred to as 'specialist' roles, although police members do also attend family violence incidents and work directly with victims and perpetrators in operational roles.

Since 2004 Victoria Police has introduced a range of specialist family violence roles, and the range has expanded with time.¹⁶² Victims and service providers gave evidence suggesting that specialist family violence positions—and, in particular, the family violence teams, are highly regarded.

Quantum Support Services Incorporated stated:

In Gippsland we have three of these specialised family violence police units, in Morwell, Sale and Bairnsdale and Quantum work with all three units to varying degrees. We have experienced significant improvement at all levels of policing in these units and have found members provide a consistent, informed and appropriate response. Further, we believe these specialised units demonstrate a clear commitment to address family violence at higher levels of policing by engaging with community at events and local forums and undertaking specialised family violence training (CRAF).

Quantum strongly supports the focus of the specialised family violence units on recidivist offenders and has found they are more responsive to issuing multiple charges, acting on order breaches and work to educate other members across the region from non-specialised family violence units. Further, this consistent approach from the specialised family violence units builds confidence in the women to report, knowing that police will respond appropriately.¹⁶³

Gippsland Integrated Family Violence Service Reform Steering Committee observed:

It is generally agreed by workers that there can be an inconsistency with Police response when dealing with family violence. But in the areas where there is an established Police Family Violence Unit an informed, consistent and appropriate response is gained from Police.¹⁶⁴

And Melbourne City Mission stated:

Melbourne City Mission particularly commends the location of specialist resources at different police stations and courts. Staff supporting clients with issues related to family violence provide many anecdotal examples of positive cultural transformation and best-practice responses to family violence within Victoria Police:

'Everyone treated her well. They were really lovely in their communication with her and ensured she understood the process. She was interviewed by the SOCIT team and they organised for an independent person to support her while she was interviewed. Prior to reporting, she'd been worried about how she would be treated. But they believed her, and they made all the right referrals for her and her daughter.'

'Another of our workers supported a mother with intellectual disability at Flemington police station to organise an IVO against an abusive partner. In this instance, the young mum was wanting to engage with a particular policewoman she had spoken to on a previous occasion. At the station the presenting officer was very helpful and went on to explain to the woman and reassure her that she had done the "Lighthouse training" and would be able to take her statement. When the woman declined, the officer was helpful with information which would enable the client to return and make a report.'¹⁶⁵

Community consultations with service providers also suggested an association between family violence teams and an improved police response.¹⁶⁶

One submission provided an anecdote to illustrate the difference a specialist response can make to a victim's experience and trajectory:

Police attitude is pinnacle when a person first presents at a police station. The first officer I disclosed to responded by saying 'what do you want me to do about it'. I walked away and didn't return to the station till some months later.

It was then I met an officer from [the Sexual Offences and Child Abuse Investigation Team] who was empathetic and willing to help me stand up to my perpetrator and have him charged. This process was excruciating but she was with me right to the very end. She was determined to see that I was able to take control of my journey and ensured I was communicated to frequently throughout the process. It is this type of commitment that is a strength of the Victorian police force but it should not be isolated flashes.¹⁶⁷

Assistant Commissioner Cornelius explained the challenge of getting the balance right between a focus on family violence specialisation on one hand and maintaining flexibility on the other:

... our front-line response has to have the adaptive capacity and the agility to deal with whatever a van crew member finds on his plate when he starts a shift and heads off into a night full of surprises dealing with all of the demands that the community have on us. So wherever there is a proposal to increase or extend the specialisation of some of that adaptive capacity we of course going forward limit our flexibility as an organisation to move with the demands and the needs of the community.¹⁶⁸

Finding this balance is central to Victoria Police responding effectively to family violence.

Family violence teams

As noted, family violence teams are drawn from the general duties uniform roster, and provide an immediate specialist response to family violence incidents. Resourcing decisions in relation to family violence teams rest with regional management:

Certainly in relation to volume and demand, in terms of the capacity for them to actually provide resources into those family violence teams rests with the Assistant Commissioners and their relevant Superintendents.¹⁶⁹

Information Victoria Police provided shows that there are 32 family violence teams in the state.¹⁷⁰ Victoria Police also shows that the equipment, facilities and other resources available to family violence teams can vary. While larger family violence teams mostly have access to dedicated vehicles, computers and office space, a number of the smaller teams do not have access to these dedicated resources.

The Police Association Victoria stated that family violence teams are hampered by inconsistent and at times insufficient staffing and resourcing levels:

[Family Violence Tasking Units] are not currently resourced adequately and often do not have access to computers or vehicles ...

The overwhelming majority of members supported the introduction and continued work of Family Violence Tasking Units. However, these units were consistently identified as severely under-resourced and limited in their capacity. It is evident that there is a way to go before Family Violence Tasking Units are able to reach their full potential.¹⁷¹

Information Victoria Police provided to the Commission also reveals variation between family violence teams in terms of the duration of assignments (see Table 15.5).¹⁷²

Table 15.5 Family violence teams: assignment lengths

| Rank | Duration of assignment |
|----------|---|
| Sergeant | <ul style="list-style-type: none">▷ Only one family violence team officer in charge gazetted.▷ Where information disclosed, most sergeants assigned for 12 months. |
| Other | <ul style="list-style-type: none">▷ Significant variation in length of assignment.▷ Usually six months or less, although up to 12 months in some teams.▷ One family violence team also offers an eight-week placement for police members at a designated training workplace police station. Designated training workplaces are those stations where recruits, as probationary constables, perform duties as part of their training. |

As noted, Victoria Police members also gave evidence about the optimal balance between gazetted and fixed-term rotational positions in family violence teams.¹⁷³

Functions

The functions of family violence teams vary throughout the state.¹⁷⁴ Table 15.6 provides a snapshot of the various functions and responsibilities.¹⁷⁵

Table 15.6 Family violence teams: functions and responsibilities: a summary

| Coverage | Functions and responsibilities |
|------------|--|
| All teams | <ul style="list-style-type: none"> ▷ Manage recidivist and high-risk offenders. |
| Most teams | <ul style="list-style-type: none"> ▷ Manage repeat and high-risk affected family members. ▷ Manage juvenile affected family members. ▷ Monitor and triage all divisional family violence incident reports. ▷ Monitor and take over high-risk cases not fully dealt with by general duties. |
| Many teams | <ul style="list-style-type: none"> ▷ First response—often conditional; for example, subject to availability, afternoon shift only, managed persons only, weekend and peak only. |
| Some teams | <ul style="list-style-type: none"> ▷ Perform family violence court liaison officer functions. ▷ Manage Divisional Intelligence Unit prison releases with family violence. ▷ Arrest team and execute charge and warrants. ▷ Provide back-up to first responders. ▷ Liaise with relevant family violence liaison officers regarding outstanding files. ▷ Take over family violence safety notice and charge and warrant processing from general duties. ▷ Assist uniform when staffing is inadequate—watch house/custody/van. |

There are regional variations in how family violence teams understand and perform their role. In some cases, the teams will provide a first response to family violence incidents, whereas in other cases they are second responders, identifying high-risk or recidivist cases, and assisting non-specialist police teams in investigating them, and ensuring that perpetrators and victims are referred to and in contact with appropriate services.

Sergeant Spriggs described how family violence teams in his area combine their first and secondary responses. About half of their time is spent reviewing family violence incidents that have occurred in their division, identifying high-risk or recidivist matters and assisting first responders; the other half is spent on first responses to family violence incidents. Sergeant Spriggs explained:

Originally in my area we were just doing ... recidivist reduction, morning and afternoon shift. However, it became clear to me that there was a need to provide some relief to the general duties members in providing the [first] response to family violence. So the decision was made between myself and the superintendent of the day to split the response 50/50 so that we had that response capability to provide relief to the vans when they most needed it ... as well as providing ... for recidivist reduction.¹⁷⁶

Assistant Commissioner Cornelius expressed some reservations about family violence teams as first responders:

... whenever we have dedicated specialist units to front-line response, we have lost them within an hour of the commencement of the shift and then we are back to front-line response providing that response. So that specialist front-line response exists in name only ...¹⁷⁷

Assistant Commissioner Cornelius said the 'greatest value' of specialist units is 'to support and provide the engagement and the specialist skills ... to address the underlying behaviours and the ongoing needs of victims and perpetrators'.¹⁷⁸

Operating models

Family violence specialists in Victoria Police told the Commission family violence teams operating models vary:

There are different operating models ... Some are geared towards high risk. Some are geared all towards recidivist reduction. Not too many are providing primary response. Mine probably is unique in that we have split it down the middle and we have response crews available on every afternoon shift from every family violence team.¹⁷⁹

An internal Victoria Police review of the implementation of the Enhanced Service Delivery Model found that the limited central guidance in relation to the expansion of family violence teams has resulted in a variety of approaches being adopted without evaluation and follow-up.¹⁸⁰

Assistant Commissioner McWhirter noted that Family Violence Command would be developing a baseline model for family violence teams:

... the family violence teams were set up as a divisional response ... through the Enhanced ... Service delivery model which was developed in 2010–2011. However, one of my key responsibilities at Family Violence Command is ... to actually ... develop a baseline model for family violence teams in a principles-based approach and then negotiate back with the regional Assistant Commissioners as to how that would be applied in practice in their divisional responses.¹⁸¹

The Commission also heard, however, that differences can be a legitimate response to local needs:

Many of these models have differences ... informed by who the local players are, who the local agencies are, who the local service providers are, and I think it's quite right that we give our people the ability to leverage those local services and those local capabilities.¹⁸²

Elsewhere, the Commission was informed that family violence teams use a range of mechanisms to triage family violence incidents and so identify matters requiring each team's attention. Ten family violence teams use the First 48 risk assessment tool, which was developed by a Victoria Police member, and has not been evaluated.¹⁸³ In another example, between January and July 2015 a senior clinical and forensic psychologist was embedded in the Maribyrnong Family Violence Team to make enhanced risk assessments using the Brief Spousal Assault Form for the Evaluation of Risk (B-SAFER) tool developed in Canada.¹⁸⁴

The Commission was also told that family violence teams can have different operational tactics and procedures. For example, it was said that the Family Violence Advisor in Divisions 5 and 6 of Southern Region of Victoria Police (Gippsland) has focused significant effort on educating police members in relation to the importance of prosecuting all intervention order breaches and associated offences against the person and property.¹⁸⁵

It is thus evident that family violence teams have different emphases: some focus on high-risk matters, others on recidivist cases, and others on providing comprehensive first responses to family violence incidents. The distinction between high-risk and recidivist cases is crucial and is considered further in Chapter 6. There might be cases in which a pattern of recidivism has not developed, but there are risk factors that make the situation extremely dangerous for the victim; equally, there could be value in a firm and thorough response in the first instance to prevent recidivism or an escalation of risk.

Limited tenure in family violence specialist roles

In community consultations and submissions, the Commission was advised that the rotation of members of family violence teams and the limited number of gazetted (permanent) family violence roles can see knowledge, expertise, relationships and trust with the service sector being built up and then lost.¹⁸⁶

The Police Association Victoria stated:

The constant rotation of members within the FVTU [Family Violence Tasking Unit, or Team] has a number of clear implications for the development and retention of expertise. Those currently or formerly working within Family Violence Units related the following concerns:

- There is no 'best practice' model in relation to the scope and tasks of the FVTU. Members describe a process whereby nearby PSAs [Police Service Areas] with existing FVTUs are asked for advice as to how to establish and maintain new units. This has led to inconsistency in practice across the state.
- There is currently insufficient opportunity for training and professional development within FVTUs. As such, success, particularly initially, is often contingent on the member's level of knowledge and understanding of, and experience with, family violence.
- Further, 'the members are for the most part young and are often dealing with people who are older than them, whose relationships are older than they themselves are, and/or who often have greater life experience or at least a life experience that [is] totally alien to the member's own experience. Yet these members are expected to intervene and provide support, advice and guidance.'
- The FVLO [Family Violence Liaison Officer] role requires relationship building with the community and an establishment of trust. Constant rotations see new members starting at square one. FVTUs are not currently resourced adequately and often do not have access to computers or vehicles.
- FVTUs often operate one-up due to leave and frequency of staff rotations.¹⁸⁷

Similarly, the Gippsland Integrated Family Violence Service Reform Steering Committee saw a need for longer tenure in family violence teams:

In two out of the three Police family violence Units (Sale and Bairnsdale), 12 month appointments are offered, then a complete roll over of staff occurs. This is not considered long enough as all knowledge, expertise and development of relationships, particularly in the Aboriginal sector is lost. The Morwell model works much better where staff are retained. Most workers agree that these positions should be gazetted positions so that the Police who really want to be in these roles will apply.¹⁸⁸

Domestic Violence Victoria echoed this view:

There is considerable turnover of police ... working in the family violence area which impacts on communications within police and with FV agencies, institutional knowledge on family violence, and quality and consistency of practice.¹⁸⁹

Victoria Police members told the Commission that there are arguments for and against both gazetted and rotational family violence specialist roles. Sergeant Deryn Ricardo, Family Violence Advisor for Divisions 5 and 6 of the Eastern Region, who favoured gazetted positions, summarised the competing imperatives:

We need people in those roles that want to do the job, not be told that they are doing that. Sometimes with the family violence liaison officers it's part of a portfolio that they have along with a number of other things, and people are told they are doing it. Another aspect of that, we have rotation through these units. We lose the experience. They gain experience, they go back out. There is two schools of thought, that they are taking that experience back to the uniform. But when we are losing that within the team it makes it hard because they have networked and that takes a while to do.¹⁹⁰

Sergeant Spriggs explained the benefits of rotating staff through the family violence teams, with sergeants spending 12 months and constables and senior constables six months on a rotation:

... we want to build the expertise within the team to that where they are providing a specialist response. If we churn the members through there too fast that expertise is difficult to maintain. Also the training requirements on the sergeants and the other members there, when you are constantly pushing new members through, tends to take more of a front seat than the actual work. So if we slow the churn rate through the family violence team down, we get a lifting of the specialist skills and we also reduce the pressure on the sergeant to constantly be training.¹⁹¹

Superintendent Stuart Bateson, Divisional Commander for Division 2 of the North West Metro Region, also spoke about this:

I think the ideal model from my point of view would be to have two or three members stay there and then rotate some others through, because there is a benefit of rotating members through; they do build their expertise, they do build their knowledge and they take it back to the front-line. So striking a balance of building the expertise and spread[ing] the knowledge is important too.¹⁹²

Assistant Commissioner McWhirter explored these competing imperatives and how a balance might be achieved:

[T]here are huge benefits to actually putting people in roles for a certain period of time to get that experience, to increase their level of understanding and knowledge and then going back into the front-line and actually sharing that knowledge and educating those. It's just another way to actually educate our workforce ... Whether six months is enough for constables and senior constables is to be decided. It may be 12. But ... you have to find people who actually want to stay in one location such as a specialist team for 12 months as well.

Some people won't be suited to it, either ... If you want to deal with specialist environments, dealing with really critical issues of victims, you also have to have the right people doing those roles. So management need to have the flexibility, if they put somebody in those roles, to also move them out if they are not suitable.

So, permanency of roles is more about, from my perspective, permanency of positions under a proper management structure, not necessarily having permanent people in those positions for extended periods of time.¹⁹³

The educational and training benefits of rotations through family violence teams are discussed in Chapter 14.

The Commission also notes that, beyond family violence teams that are made up of general duties police, family violence liaison officers, who are present at all 24-hour police stations, are portfolio roles, meaning that many police members are part time and not fully devoted to the family violence function. In contrast, family violence advisor positions are gazetted roles. Sergeant Spriggs explained the expectations of a portfolio role to the Commission:

It is a portfolio role, so they are expected to do normal sergeants' duties which will include patrol supervisor duties as well and just do their portfolio work. They will be assigned time to do that on their roster.¹⁹⁴

On a related matter, the Commission was told of significant demands are made on family violence liaison officers' time.

Maximising police capacity to respond to family violence

The Commission received evidence on possible changes to police powers and responsibilities, tactics, tools and resources to support the delivery of high-quality, victim-centred responses to family violence in an environment of escalating demand.

Powers and responsibilities

Body-worn cameras

In a letter dated 14 December 2015, the Chief Commissioner of Police, Graham Ashton AM APM, outlined for the Commission's consideration a proposal to deploy body-worn cameras to improve the police response to family violence.¹⁹⁵ The Chief Commissioner met with the Commission on 18 December 2015 to provide further details about his proposal. He described the rationale underlying his proposal:

Improved evidence collection, processing and prosecution are some of the primary reasons why Victoria Police is considering BWCs [body-worn cameras]. In particular, we are of the view that there is potential for BWCs to be a beneficial tool in the response to and management of family violence incidents. Capture of the crime scene and the immediacy of victim and perpetrator statements could drive both increased pleas and successful prosecutions and also reduce the impact of the justice process on victims (by allowing them to make statements at the time of first police attendance).¹⁹⁶

The Chief Commissioner noted that legislative amendments would be required in order to gain the full evidentiary benefit of BWCs, as alluded to by the Director of Public Prosecutions, Mr John Champion SC, who lent his support to consideration of the use of the cameras:

... I would be very interested to see whether or not a system could be engaged where a police officer who may have a camera attached to them is able to effectively take a statement contemporaneously from the victim when he or she attends at the commission of the crime, at the home or wherever, so that if a complainant is making a complaint in only perhaps a short time after the event has happened, I think we need to think about whether or not the recording of that piece of evidence can be rendered into an admissible state.

Why I say that is that one of the problems that does beset us, particularly in the family violence area because of the complexity of the relationships, is that people do back out of a prosecution six, 12 or 18 months down the track.¹⁹⁷

As the Chief Commissioner observed, BWCs have been trialled or adopted in a number of jurisdictions in Australia, in the United Kingdom and North America, often in the hope of improving the police response to family violence, among other things.¹⁹⁸ In New South Wales, for example, amendments to criminal procedures legislation took effect from 1 July 2015, allowing for video-recorded statements taken using BWCs to be admitted as evidence. The Domestic Violence Evidence in Chief initiative aims to reduce trauma for victims, reduce difficulties associated with remembering incident details, bring the victim's experience to the courtroom, and reduce or eliminate intimidation of the victim to change their evidence, thereby increasing guilty pleas and conviction rates.¹⁹⁹

The Domestic Violence Evidence in Chief initiative includes a number of safeguards aimed at protecting the rights of victims and perpetrators. NSW Police members who exercise their discretion to use a BWC must do so overtly—for example, by informing individuals that they will be recorded.²⁰⁰ Police members must undergo specific training before operating BWCs in the field. The victim must give their informed consent for their statement to be recorded by BWC.²⁰¹ Once the video statement is obtained, however, it is the prosecutor who decides whether the statement will be used in evidence (even if it is against the victim's wishes). The rights of defendants to procedural fairness are protected by a right to view the video footage and to cross-examine the complainant.²⁰²

The New South Wales body-worn camera program is being evaluated by Charles Sturt University.²⁰³ The London Metropolitan Police implemented a large-scale pilot of BWCs in May 2014,²⁰⁴ but to the Commission's knowledge the results of the evaluation of the pilot have not yet been published. A body of literature on the use of BWCs by police is, however, emerging, albeit based on a limited number of studies of smaller-scale trials that vary in focus, technology and procedure.²⁰⁵

The literature and commentary on BWCs in the family violence context identify both promising and beneficial aspects, and areas of caution and concern. Surveying the evidence in 2014, White identified the following perceived benefits and concerns:²⁰⁶

Benefits

- ▷ increased transparency and legitimacy
- ▷ improved police officer behaviour
- ▷ improved citizen behaviour
- ▷ expedited resolution of complaints and lawsuits
- ▷ improved evidence for arrest and prosecution
- ▷ opportunities for police training

Concerns

- ▷ citizens' privacy
- ▷ officers' privacy
- ▷ officers' health and safety
- ▷ training and policy requirements
- ▷ logistical and resource requirements, including data storage and retrieval.

An evaluation of a trial in Phoenix, Arizona, found that after BWCs were introduced, domestic violence cases were significantly more likely to be initiated and result in charges and a guilty plea or verdict.²⁰⁷ The evaluation also raised questions, however, about the effect of BWCs on processing times—for example, with officers reporting that downloading data was time consuming and prosecutors expressing concern about not having enough time to view videos before court.²⁰⁸ The Phoenix study also reviewed other BWC evaluations, noting the following:

- ▷ A trial in Plymouth, United Kingdom, found that BWCs improved evidentiary quality and charge rates, while reducing the time spent on paperwork and complaints against police.
- ▷ A trial in British Columbia, Canada, found that the approval rate for charges submitted increased, but more officer time was required to complete the paperwork.
- ▷ Two trials in Scotland found that BWCs resulted in cases being processed to guilty pleas or verdicts faster than those outside the study period.²⁰⁹

The Commission is not aware of any studies that have examined the effect of BWCs on victims' experiences, although academic commentators have expressed concern about possible unintended consequences. Professors Heather Douglas, Professor of Law, Queensland University and Leigh Goodmark, Professor of Law, University of Maryland have observed that, by the time police attend a family violence incident, the perpetrator might seem calm while the victim appears irrational or angry, such that BWC footage can undermine the victim's credibility in court.²¹⁰ One-off video footage can also fail to capture the complexity of the abuse and provide a misleading picture of the relationship, potentially criminalising the victim if it depicts injuries inflicted on the perpetrator in self-defence.²¹¹ Videos might also be used to coerce participation of victims of family violence in criminal proceedings.²¹² The Commission notes that in the ABC Television documentary *Hitting Home* a victim was initially reluctant to make a video statement but was eventually persuaded to do so by her sister and the police officer.²¹³

The Victoria Police submission acknowledged that victims might have 'legitimate reasons' for not wanting to prosecute the perpetrator.²¹⁴ The submission echoes this sentiment by stating that requiring victims to give direct evidence to the court places considerable pressure on them and shifts the burden of holding the perpetrator to account onto the victim.²¹⁵

During debate on the New South Wales legislative amendments designed to facilitate the use of BWCs in family violence cases, it was noted that the recorded material will often be highly personal and extremely graphic.²¹⁶ Although there are legislative safeguards to protect a victim's privacy,²¹⁷ in practice the ease of uploading recorded material to the internet, and then the considerable difficulty of having it deleted, creates an increased risk of a recorded statement being disseminated. Perpetrators can use this as a tactic to embarrass, intimidate or threaten the complainant.

The New South Wales Attorney-General outlined the benefits of allowing victims of family violence to give their evidence-in-chief by way of a previously recorded video or audio statement:

The power dynamic that typifies domestic violence does not stop at the courtroom door. There is a risk of re-traumatisation of victims. They must attend court and give oral evidence from memory, and usually in front of the perpetrator, about a traumatic incident. They may face pressure from a perpetrator to stop cooperating with the prosecution. This can result in victims being reluctant to come to court or changing their evidence once in the witness box. Some may choose to not report an incident to police. The Bureau of Crime Statistics and Research estimates that only half of domestic assaults are reported to police. New measures for giving evidence using available technology are needed to reduce the trauma faced by victims when in court.²¹⁸

Personal service of orders by police members

The Commission considered evidence on the efficacy and efficiency of police being responsible for personally serving orders under the *Family Violence Protection Act 2008* (Vic).

Generally speaking, police and the courts cannot enforce family violence intervention orders until the order is personally served on the respondent. Specifically, the offences of contravening of a family violence intervention order (interim or final) contained in the *Family Violence Protection Act* apply only if the respondent has been served with a copy of the order, or has had the order explained to them in accordance with:²¹⁹

- ▷ section 57 of the Act, which requires the appropriate registrar to give a written explanation—and, if the person is before the court, a clear oral explanation—of an interim order to the respondent (and protected person) or serve it on the respondent (and protected person) if they are not before the court²²⁰
- ▷ section 96 of the Act, which requires the court to give a clear oral explanation of a final order, along with written explanation of the order, to the respondent (and protected person) if they are before the court.²²¹

The *Family Violence Protection Act* provides that if a court makes, varies, extends or revokes an interim or final family violence intervention order a copy of the order must be personally served on, among other people, the respondent, each party to the proceeding and the Chief Commissioner of Police.²²² The court may make an order for substituted service (by any means considered appropriate) if it appears that it is not reasonably practicable to effect personal service.²²³

Although there is no statutory obligation for police to effect service of orders under the Act, police uphold this responsibility as a matter of practice and in the absence of any alternative arrangements.

Assistant Commissioner Cornelius' statement outlined the procedural steps for service:

- ▷ The court registrar faxes a copy of the order to the Victoria Police Central Data Entry Bureau, which records its existence on the LEAP database.
- ▷ The court registrar faxes another copy of the order to the relevant police station.
- ▷ The police station arranges service.
- ▷ Once the order is served, the police member completes an affidavit of service, notifies the affected family member, faxes a notification of service to the Central Data Entry Bureau, which records service on LEAP, and then the member records service directly on LEAP themselves.²²⁴

Assistant Commissioner Cornelius also noted that the number of attempts to effect service and how long police persist in such attempts are at the discretion of the relevant police officer. He added that Family Violence Command is reviewing relevant parts of the Victoria Police Manual to clarify the time frame within which a family violence intervention order should be served or, if it is unable to be served, returned to the court for consideration of substituted service options.²²⁵

The Western Melbourne Child and Family Services Alliance also expressed concern about the time lag between the making of an order and its being served on the perpetrator and the risk posed to women and children if service cannot be effected.²²⁶

As noted, McAuley Community Services for Women holds the view that limited police resources can affect the timely service of family violence intervention orders.²²⁷ The Federation of Community Legal Centres agreed, stating:

There are safety issues for [affected family members] when orders have not been able to be served on respondents, because interim orders are then not enforceable. [Community Legal Centres] recognise that sometimes in these situations delay is unavoidable, especially in rural or cross-border contexts where it may be hard to locate the respondent. Police are also under-resourced for this task in some regions.²²⁸

Victoria Police provided to the Commission the data shown in Table 15.7 on the length of time that it takes to serve orders.²²⁹

Table 15.7 Number and percentage of family violence orders served, by type and days taken to serve, 2014–15

| Days taken to serve | Intervention orders | | Safety notices | | Total | % of total |
|---------------------|---------------------|-------------------|----------------|--------------------|--------|------------|
| | No. | % of total orders | No. | % of total notices | | |
| 0 days | 17,487 | 61.09 | 10,815 | 98.48 | 28,302 | 71.46 |
| 1–5 days | 5,494 | 19.19 | 163 | 1.48 | 5,657 | 14.28 |
| 6–10 days | 2,099 | 7.33 | 2 | 0.02 | 2,101 | 5.30 |
| 11–15 days | 1,069 | 3.73 | 1 | 0.01 | 1,070 | 2.70 |
| more than 15 days | 2,477 | 8.65 | 1 | 0.01 | 2,478 | 6.26 |
| Total | 28,626 | 100.00 | 10,982 | 100.00 | 39,608 | 100.00 |

Note: Days taken are calculated as the difference between 'date served' and 'date order valid from'.

Source: Victoria Police, 'Time taken* (days) to serve intervention orders and safety notices, Victoria, 2014/15' (12 November 2015) provided to the Commission by Victoria Police, 17 November 2015.

Victoria Police proposed removing the requirement for personal service of family violence intervention orders and instead allowing alternative service methods.²³⁰ The rationale for this approach is that:

- ▷ In many instances police must make multiple attempts to locate a person for service.
- ▷ Some perpetrators deliberately evade police, delaying execution of protective mechanisms.
- ▷ If no existing protections are in place, any delay poses a risk to victims.
- ▷ The intention is not to require the use of alternative means but to remove the current need for personal service. If a person is known to have a cognitive impairment or to face language barrier, they could still be served personally to ensure that they understand the order.²³¹

In his report on the inquest into the death of Luke Batty, Judge Gray noted concerns about delays in the service of orders. In particular, he found, '[D]elays in serving FVIOs resulted in protective measures for Luke expiring'.²³² He found further that in this case 'the delay in serving the FVIOs was as important as the delay in executing the warrants [for arrest]'.²³³

Judge Gray recommended:

all FVIOs be served on the Respondent with priority and where service can not be effected substituted service from the Court be obtained within 24 hours;²³⁴

all warrants issued in relation to family violence related incidents be executed with high priority ...²³⁵

In response to this recommendation, Victoria Police and the Victorian Government stated:

A review of guidance in the Code of Practice which requires service of intervention orders to be executed within a 'reasonable time' is currently underway, and Victoria Police is also exploring options for interim measures to ensure service of FVIOs are prioritised.

The 24-hour time frame is not considered feasible, as in many cases personal service can require more than one service attempt by police and an inability to serve an order within 24 hours is not necessarily indicative of a perpetrator proactively avoiding service.

If unserved intervention orders were to be returned to court within 24 hours of issue, this is likely to significantly increase the number of intervention order subject to a substituted service order and potentially increase the likelihood of contraventions due to respondents not being aware of orders or the conditions of orders.

Victoria Police will consider improvements to these processes in line with the Victoria Police submission to the Royal Commission into Family Violence, suggesting that wider reforms to the service of intervention orders are required to reduce the need for personal service.²³⁶

Police-issued intervention orders

When police attend a family violence incident they have the power to issue family violence safety notices without court approval in order to afford victims immediate protection.²³⁷ Family violence safety notices are an interim measure and last up to five working days.²³⁸ In Chapter 16, the Commission recommends that the effectiveness of safety notices be extended from five to 14 days after the notice is served and sets out its reasoning for this recommendation.

Safety notices also serve as a police application to the relevant court for a family violence intervention order.²³⁹ At present only a court can make a family violence intervention order, which provides protection for a set period. Victoria Police considers its members should be able to make family violence intervention orders in the field, without the need to go to court (although parties could elect to do so). This would replace the current family violence safety order process.²⁴⁰ In its submission, Victoria Police advocated enabling police to vary intervention orders in the field.²⁴¹

Plenty Valley Community Health called for police to adopt some of the powers currently held by the court and seemed to support the notion of police being able to issue at least some intervention orders:

It is our view that the process of seeking intervention orders from the Magistrates' Court and prosecuting breaches of these orders ties up an inordinate amount of valuable Police time. We believe that many of the interventions required of the Magistrate's Court could be replaced by processes that could be automatically enacted by the Police. We believe that this approach could release scarce Police resources for purposes of directly curtailing, preventing and responding to family violence. In cases where a victim agrees to vacate an intervention order against the perpetrator, then the basic conditions (apart from access exclusion but prohibiting family violence, destruction of property etc) should be held in force for a minimum period of one year.²⁴²

The Victoria Police submission pointed out the advantages of its proposal, along with the things that would need to happen before the proposal could be implemented—such as enhanced risk assessment and improved training. Victoria Police argued that police-issued family violence intervention orders would better safeguard victims and hold perpetrators to account by:

- ▷ enabling police to tailor orders to the behaviour of the perpetrator and the specific circumstances of the victim
- ▷ enabling swift action on behaviour of concern
- ▷ immediately serving the order if the perpetrator is present
- ▷ enabling police to act immediately on any breach
- ▷ sparing victims further impacts associated with travel, contact with the perpetrator or attending court when neither party contests the terms of the order.²⁴³

Further, Victoria Police stated that police would use the standardised and updated Family Violence Risk Assessment and Management Framework (also known as the Common Risk Assessment Framework, or the CRAF) to differentiate levels of risk and response according to agreed criteria.²⁴⁴ As recommended in Chapter 14, a Victoria Police Family Violence Centre of Learning would deliver tailored training programs in this regard.²⁴⁵

On the question of safeguards, the Victoria Police submission stated that 'victim and perpetrator would reserve the right to appeal the order at court' and that acceptance of the order would not amount to an admission of guilt by the perpetrator.²⁴⁶

Assistant Commissioner McWhirter told the Commission the primary motivation behind this proposal is to provide better support to victims:

[T]his is about looking through the lens of the victim. If you think about the fact that we are called into their house, location, wherever they may be, if we think about the process that then has to follow for the victim, it's an extremely onerous, difficult path that they then have to go through. So, in terms of practice, they still have to turn up to court, they still have to think about child arrangements, they still have to think about work arrangements, then when they get to court they do not even know when they could be actually getting heard ... So the intent around issuing an intervention order immediately is about the immediacy of the response, the immediacy of the protection and the capacity for it to take that pressure off the victim, because it's all about them. It's not about Victoria Police and Victoria Police powers. It's not about the judicial process. It's about looking after the victim.²⁴⁷

Assistant Commissioner McWhirter also argued that these police-issued orders would save time for police and the courts but emphasised that this is secondary to the main aim of increasing safety for victims.²⁴⁸ The Victoria Police submission stated:

For the system, freeing police from preparing matters for court, attending court (sometimes on multiple occasions), and locating the perpetrator in order to serve the application or interim or final order, would enable them to focus more intensely on at-risk and high-risk families. The court would be freed from the volume of administrative applications and uncontested orders in order to focus on hearing appeals, family violence charges and oversighting compliance with conditions ...²⁴⁹

Assistant Commissioner Cornelius also told the Commission that police-issued orders would hold perpetrators accountable and prevent them from 'gaming' the system. The orders would afford victims:

... immediate justice in terms of holding an offender accountable so that he doesn't have the opportunity to walk away before process is served on him, but also is put in a situation where he is clearly given to understand what his obligations are and then he knows that the police are going to hold him accountable to it, without an opportunity for him to drag the victim back before the court or indeed to get the court date and then not turn up.²⁵⁰

Apart from the Victoria Police material and the Plenty Valley Community Health submission, the Commission received little oral or written evidence exploring the merits or otherwise of police-issued intervention orders. The 2010 Australian Law Reform Commission—New South Wales Law Reform Commission report *Family Violence: A National Legal Response*, did, however, canvass the topic of police-issued intervention orders in some detail.²⁵¹ The commissions took account of submissions from a broad range of stakeholders and specific feedback on questions about police-issued protective orders posed in a consultation paper.²⁵² They concluded that family violence protection orders should, wherever possible, be made or authorised by a judicial officer for a number of reasons:²⁵³

- ▷ Decisions that curtail individual rights and liberties should ideally be made by judicial officers.
- ▷ Judicial officers bring strong training and an understanding of family violence dynamics and legislation to bear when considering orders.
- ▷ The parties have a greater opportunity to be heard and have the benefit of lawyers, translators and support services.
- ▷ The judicial officer can impress on perpetrators society's intolerance of family violence.
- ▷ Courts can refer perpetrators and victims to services and programs.²⁵⁴

The commissions noted that a number of submissions argued that police-issued orders can be valuable in emergency situations²⁵⁵ but few supported a broader roll-out of police powers to make orders as with the Tasmanian model.²⁵⁶ In its submission to that inquiry, the Police Association of New South Wales, noted that 'more victims will come forward if they do not need to go to court'.²⁵⁷

The Commission understands that Tasmania, which is a much smaller jurisdiction than Victoria, is the only state that empowers police to issue family violence intervention orders for extended periods—in Tasmania's case, for up to 12 months. The *Family Violence Act 2004 (Tas)* provides that a police officer of the rank of sergeant or above, or authorised by the Chief Commissioner of Police may make a police family violence order and issue it to a person if satisfied that the person has committed, or is likely to commit, a family violence offence.²⁵⁸ A PFVO can include a range of conditions, including to:

- ▷ vacate premises and/or not enter premises except on certain conditions²⁵⁹
- ▷ surrender any firearm or other weapon²⁶⁰
- ▷ refrain from harassing, threatening, verbally abusing or assaulting the victim²⁶¹
- ▷ not approach within a specified distance the victim, named other person or premises²⁶²
- ▷ refrain from contacting an affected or named person otherwise than under specified conditions.²⁶³

As noted, a PFVO may be made for up to 12 months, and it can be varied, extended or revoked by the Magistrates Court on application by police, the victim or the perpetrator.²⁶⁴

PFVOs can be issued by a sergeant or authorised constable if a risk assessment suggests a low or medium risk of further family violence and if it is necessary to protect the safety, wellbeing and interest of victims.²⁶⁵ If the risk assessment suggest high risk, police must apply to the Magistrates' Court for a family violence order.²⁶⁶

The Commission studied a range of reports on and evaluations of the Tasmanian model. A review of the Tasmanian Act commissioned by the Tasmanian Department of Justice in 2008 found that 'the safety of adult victims of family violence has seen improvement, particularly at the first point of contact with police, as a result of the new police powers and changed practices',²⁶⁷ although the extent to which this can be attributed to PFVOs was not specifically explored.²⁶⁸

The review also found that defendants and complainants do not always understand their obligations in relation to police and court-issued orders—particularly if English is a second language, if poor literacy is a feature or if younger people are involved.²⁶⁹ In addition, while some stakeholders viewed the PFVOs as problematic as a matter of legal principle, the balancing factor of parties being able to apply for variations obviates the need for the court to review every matter and provides an avenue for both parties to seek variation of an order.²⁷⁰ Other stakeholders expressed concern that 'blanket' PFVOs—especially in relation to contact between defendants and children—often require variation by the court.²⁷¹

A similar point was made in a 2015 Tasmanian Department of Justice internal performance review of the Safe at Home program. This review acknowledged the ability of a PFVO to provide immediate safety to the victim but noted stakeholder feedback suggesting PFVOs that exclude the offender from the home could lead victims to avoid engaging with the system if future violence occurs.²⁷² Stakeholders recognised, however, that PFVOs can be varied or revoked in court (see Table 15.8), which 'helps overcome these long term exclusions'.²⁷³

Table 15.8 Number of PFVOs issued, revoked and varied, 2009–10 to 2013–14

| | 2009–10 | 2010–11 | 2011–12 | 2012–13 | 2013–14 |
|-------------------------|---------|---------|---------|---------|---------|
| PFVOs issued | 1885 | 1709 | 1631 | 1559 | 1634 |
| Revocation applications | 46 | 52 | 55 | 43 | 58 |
| % of PFVOs revoked | 2.44 | 3.04 | 3.37 | 2.76 | 3.55 |
| Variation applications | 59 | 61 | 82 | 77 | 85 |
| % of PFVO varied | 3.13 | 3.57 | 5.03 | 4.94 | 5.20 |

Note: The number of PFVOs issued is sourced from the Department of Justice. The number of revocation and variation applications are sourced from the Magistrates' Court. While these may relate to different datasources, the percentages above give an indication of the number of revocation and variation applications as a percent of the total number issued.

Source: Sentencing Advisory Council (Tas), *Sentencing of Adult Family Violence Offenders: Final Report No 5* (Department of Justice (Tas), October 2015) 9; Magistrates' Court of Tasmania, *Annual Report 2012–13* (2013) 37; Magistrates' Court of Tasmania, *Annual Report 2014–15* (2015) 39.

The efficacy of PFVOs was recently considered by the Tasmanian Sentencing Advisory Council in its report *Sentencing of Adult Family Violence Offenders: Final Report No. 5, October 2015*.²⁷⁴ The report notes that the breach rate for family violence orders has increased in the past decade, at the same time as the number of protection orders issued declined.²⁷⁵ It observes that consideration could be given to moving away from the PFVO system in favour of a Victorian-style family violence safety notice approach, resulting in greater court supervision of the process.²⁷⁶ This view is based on the following points:

- ▷ The lack of court supervision can mean offenders might not fully understand or appreciate the force the order carries, leading to increased numbers of breaches.
- ▷ Family violence incidents are often highly charged situations, and offenders might be affected by alcohol and other drugs, which can further exacerbate the difficulties in ensuring that offenders understand the terms of the PFVO.
- ▷ PFVOs cannot be tailored to suit the family unit as a whole in the way that court-supervised orders are. The Sentencing Advisory Committee's report emphasises that no breach is acceptable, but argues that this lack of flexibility might be contributing to an increase in breaches for objectively less serious behaviours or 'unwitting' breaches.
- ▷ There is a lack of understanding about the procedure for changing or revoking a PFVO.
- ▷ the Victorian system of family violence safety notices might be a better solution since the notices also function as a summons to appear to have an appropriately tailored final order determined by the court.²⁷⁷

The report also argues that adopting safety notices instead of PFVOs might reduce the numbers of applications to vary or revoke orders and free up court time to deal with more serious breaches.²⁷⁸

Information technology

The Police Association Victoria argued that inadequate information technology (IT) systems are administratively burdensome and do not provide real-time access to information that would facilitate decision making in the field. It stated that, although the introduction of the LEDR Mk II system has improved recording practices, the process is still very time consuming and members often have to do overtime to complete paperwork associated with family violence incidents.²⁷⁹ The Association also noted that paperwork is completed back at the station, which means that information is not recorded on the system in real time.²⁸⁰ This poses safety concerns, as noted by a police member quoted in The Police Association Victoria's submission:

... when a complaint and warrant is taken out by a member after hours it is not recorded on LEAP and as such if the male is checked by another unit they are not aware of the outstanding file, this is the same for complaint and summons.²⁸¹

The Code of Practice review that Victoria Police commissioned quoted feedback from a sergeant about the benefits to risk assessment of having access to LEAP in the field:

Risk assessment could be improved as it's most often done at the station and not at the scene. Members access LEAP at the stations and use LEAP to check history rather than asking the AFM [affected family member]. Members also act on the incident they are presented with and don't necessarily take the time to talk with AFM about the history until they get back to the station. So they rely on LEAP. Improvements could be to enable LEAP access at the incident to enable and encourage questioning about other historical reports and questioning for details about past incidents.²⁸²

The potential benefits of mobile technology were noted in the report on the coronial inquest into the death of Luke Batty:

The suggestion by the Expert Panel that officers be given electronic equipment such as iPads to fill in L17s at the point of contact has considerable merit in ensuring risk assessments are contemporaneous, accurate and comprehensive.²⁸³

In its submission, The Police Association Victoria illustrated the potential benefit of mobile technology by quoting a front-line police member:

If you had a laptop you could do it all while you're sitting around the kitchen table. Get it knocked over and then move onto the next job. Because you're doing it all anyway in your notebook. You get verbal family violence incidents – you might go to two or three a shift. And, if you're busy, you can't go back to the station to do the first lot of reports. So you're at the back end of the shift and you've got three lots of 10 reports to do.²⁸⁴

The introduction of mobile technology also aligns with Victoria Police's strategic direction. In the 2013–14 State Budget, Victoria Police received funding for the Policing Information Process and Practice Reform Project, which will shape long-term development of information requirements for operational police.²⁸⁵ An immediate focus of the PIPP Project is to expand mobile technology to enable access to information in the field.²⁸⁶ Victoria Police began building the case for mobile technology capability for front-line policing in 2013–14.²⁸⁷

Victoria Police's focus on mobile technology is also in keeping with developments in other jurisdictions. For example, Tasmania Police has issued laptops to all operational police members, giving them access in the field to key police databases and, for example, enabling victims to sign statements on site. Western Australia, New South Wales and Queensland Police have conducted or are conducting trials of mobile devices for certain applications.²⁸⁸

The Victoria Police Blue Paper sets out a vision for technology-enabled policing that offers benefits beyond providing mobile applications and streamlined administrative arrangements for key family violence processes and procedures. IT enhancements will deliver administrative efficiencies more broadly for a police service in which members currently spend about 50 per cent of their time on each shift in the station and a large proportion of this time is dedicated to information capture and reporting:²⁸⁹

A policing future enhanced by technology will see Victoria Police members freed from time-consuming processes and awkward information systems, so that they can spend more time on prevention on the frontline.²⁹⁰

The way forward

Victoria Police has shown great leadership in its response to family violence and changing community attitudes associated with such violence. For example, it has developed a Code of Practice to guide members and established specialist family violence roles, teams and, most recently, Family Violence Command. It has responded to an increasing number of incidents and has taken criminal and civil action in an increasing proportion of cases.

The Commission was informed that the task of responding to family violence, more than other crime types and community harms, falls largely to front-line police. At the same time, recidivist offenders take up a disproportionate amount of police resources. High and escalating demand is placing pressure on police. Police members grapple daily with archaic IT systems that limit the availability of information in the field and are administratively burdensome. And they spend a large amount of time personally serving family violence orders and applications.

A central decision for the leadership of Victoria Police concerns striking the right balance between specialisation and ensuring that all police members are sufficiently responsive to family violence. Leadership must also ensure that family violence attracts the same rigour in investigating, tasking and coordination as other crimes.

Victoria Police is well placed to build on its achievements and drive further reform, elevating the response to family violence to the next level. To succeed in this, it will need to work in close partnership with government, the courts and family violence services.

Leadership on family violence must extend beyond Executive Command and family violence specialists to the regional and divisional managers who allocate resources, senior sergeant officers in charge at stations, sergeants in supervisory positions, and members in investigative and response units, and intelligence units.

Promoting leadership on family violence broadly throughout the organisation will be facilitated by clearly outlining roles and responsibilities in relation to family violence in a revised operational 'doctrine'. It will also be achieved by making competency in family violence integral to career progression in the force and through implementation of other recommendations the Commission makes—for example, in relation to the development of a family violence career path and enhanced education and training throughout the force.

The reality is that family violence is now core police business. The challenge for Victoria Police is to ensure that this is reflected in all parts and at all levels of the organisation. This will involve hard work. At times it will require difficult choices and resistance may be encountered from some people in and outside the organisation. But it is a path that must be taken if Victoria Police is to continue to fulfill its mission to provide a safe, secure and orderly society by serving the community and the law. Indeed, Victoria Police is already well down this path. The Commission's recommendations in this chapter provide a road map for further action.

A new authorising environment

Revising the Violence Against Women and Children Strategy

Victoria Police Executive Command should assign to Family Violence Command the task of developing a revised Violence Against Women and Children Strategy, describing Victoria Police's vision, strategic objectives, key actions, and roles and responsibilities in combatting family violence. The revised strategy should have a clear focus on violence against women and children, but also reflect poorly understood forms of family violence as well as the diverse range of victim experiences. Among other things, the revised strategy should do the following:

- ▷ make it plain that family violence is a priority of, and core business for all of Victoria Police
- ▷ outline the roles and responsibilities of all parts of the organisation in preventing and responding to family violence
- ▷ emphasise that strong leadership is required from regional and divisional management, in addition to Family Violence Command, to achieve Victoria Police's and the government's objectives and to meet community expectations in this area.

As part of the revised strategy, Family Violence Command should develop and explain a Victoria Police operating model or 'doctrine' governing the response to family violence. This should provide a tiered response that clearly sets out the roles and responsibilities of each work unit in preventing and responding to family violence, so that every member and employee in the organisation understands how their actions contribute to broader organisational goals. The doctrine should include a baseline operating model for family violence teams, work on which is already under way. (The Commission's views on the baseline model are discussed shortly.)

The Commission notes that the Enhanced Family Violence Service Delivery Model, while conceptually sound, has been neither clearly communicated nor uniformly implemented, which has contributed to inconsistent police responses. To be successful, the revised strategy will require the commitment of strategic management centrally and regionally, secured and maintained through strong governance arrangements. It will also require renewed leadership throughout the organisation, strong performance monitoring and a performance management framework to promote consistent service levels, and adequate resourcing.

A new performance management framework

As part of the revised strategy, Victoria Police should develop a new family violence performance management framework. This will ensure accountability and provide incentives throughout the organisation to encourage adequate commitment of resources to family violence across the state, so that service levels are consistent and outcomes are aligned with organisational strategy and expectations.

This process should include developing a broader range of performance measures than are currently included in the Violence Against Women and Children Strategy. Those measures were suitable for their time, but they now need to be expanded to include outcome and qualitative measures that provide a more holistic view of police service levels.

The Commission suggests that Family Violence Command take as its starting point the list of possible performance measures developed by the Australian Institute of Criminology:

- ▷ a reduction in repeat victimisation
- ▷ a reduction in repeat attendances
- ▷ a reduction in repeat offending
- ▷ an accurate identification and recording of incidents
- ▷ an increased number of offenders charged and successfully prosecuted
- ▷ more arrests and charges for breach offences
- ▷ ensuring police are adequately informed about previous attendance and criminal histories before arriving at an incident
- ▷ improved willingness on the part of victims to call and/or cooperate with police and increased victim satisfaction with the police response.

Specific measures could also be included in relation to compliance with the Code of Practice and other material such as the Victoria Police Intelligence Doctrine and the Advancing Investigation Management Compliance package—for example, measures such as the number of investigations undertaken by investigative and response units, the level of intelligence support, and the number of family violence persons of interest being managed. These and other measures should:

- ▷ align with Victoria Police's key family violence policing objectives and provide a fair and accurate measure of performance against those objectives
- ▷ provide appropriate incentives in terms of practice and resource allocation
- ▷ be supported by appropriate data sets and collection methodologies
- ▷ constitute or align with the additional performance measures recommended for inclusion in the state budget (see Chapter 41)
- ▷ be integrated with key organisational performance processes such as the Integrated Planning and Risk Management Model outlined in the Victoria Police Blueprint 2012–15.²⁹¹

On this last point, the Commission notes that the new performance framework will probably require the use of new methodologies, beyond reliance on administrative data sets. These methodologies should include:

- ▷ victim satisfaction surveys
- ▷ legal system victim impact statements as a mechanism for using feedback to promote improvement²⁹²
- ▷ member surveys—for example, to provide a baseline and then monitor shifts in police attitudes to family violence—and self-reported understanding of the dynamics of family violence and proficiency in applying the Code of Practice. This could also be used as a mechanism for generating ideas for practice improvement
- ▷ a program of local and strategic compliance audits, as discussed under the heading 'Supervision, support and accountability' in Chapter 14.

Family Violence Command should manage performance monitoring and report to Executive Command on measures provided to it at regional, divisional and police service area levels. Furthermore, local-level reporting currently done by family violence liaison officers and family violence advisors should be standardised and the reports provided (in part or in full) to Family Violence Command, which could use this information to identify:

- ▷ emerging trends, problems or areas of concern
- ▷ high-performing areas, both for acknowledgment and to enable the dissemination of good practice
- ▷ areas where additional support or remedial action is required to lift standards.

In its annual report, Victoria Police should also report on satisfaction of performance measures included in the revised strategy. This should include performance on a statewide and regional or divisional basis. This is important for transparency and to build and maintain public confidence in the police response to family violence.

Building a robust performance management and evaluation framework is one thing. To meet the targets under the framework and encourage continual improvement, specialist and general duties police members and work units will need tools and supports. The Commission makes a number of recommendations to facilitate this in the remainder of this chapter. But before doing so it briefly describes its views on the role of Family Violence Command.

Family Violence Command

The establishment of Family Violence Command presents an important opportunity to re-invigorate and focus leadership on family violence in Victoria Police and set the foundation for improvements in the future. Family Violence Command's success depends on it having the authority to lead the organisational response to family violence and manage change within the organisation—noting that it does not control resource allocation or have line management responsibility for specialist family violence positions.

Victoria Police will need to ensure that Family Violence Command has sufficient staff with a diverse range of skills and capabilities—including for example, policing; research and evaluation; stakeholder engagement; project management; psychology, criminology, social work and other social sciences; and experience working in family violence services. Family Violence Command will also need to establish strong links with regional management and work units within Victoria Police, along with formal and informal consultative structures with the family violence sector, government partners, academia and other stakeholders. These will provide the base for closer working relationships throughout Victoria Police.

A structured approach will be especially important in promoting close engagement with the courts, family violence and other legal and human services and to measure performance against indicators dependent on collective efforts—for example, on management of high-risk perpetrators.

Additionally, Family Violence Command's authority will depend on its reputation in providing leadership on evidence-based approaches to policing family violence, along with expert advice to facilitate effective service delivery, which remains a regional responsibility. It is therefore important for Family Violence Command to be resourced to:

- ▷ perform or commission program evaluations of particular Victoria Police initiatives
- ▷ monitor national and international research and practice
- ▷ commission research or enter research partnerships with ANROWS (Australia's National Research Organisation for Women's Safety) and academic institutions.

This will position Family Violence Command to build an evidence base of actions that work in response to family violence which can then be used to prompt continual improvement throughout Victoria Police.

Recommendation 46

Victoria Police revise its Violence Against Women and Children Strategy and amend it to cover all forms of family violence, a diverse range of victims and all areas of operations and governance [within 12 months].

Recommendation 47

Victoria Police develop a new family violence performance management and reporting framework, with a broader range of quantitative and qualitative performance measures [within 12 months] against which it reports annually and publicly, on a statewide, regional and divisional basis.

Recommendation 48

Victoria Police's Family Violence Command set performance measures for policing of family violence at regional levels, taking into account demand for family violence policing at police service area and divisional levels. Regional Assistant Commissioners should report to the Chief Commissioner of Police and Executive Command through the Family Violence Command against these performance measures [within 12 months].

Specialisation in family violence

The Commission received strong positive feedback on the competence, sensitivity and understanding of police members in specialist family violence roles.

Although general duties police will continue to be the crucial first-responders in the future, in view of the number of family violence incidents reported in the state, stronger specialisation is needed in order to further improve Victoria Police service levels. A suitable level of specialisation will contribute to:

- ▷ a tiered police response, with an escalating level of management and intervention depending on the seriousness and complexity of the case
- ▷ expert advice and support for front line police
- ▷ quality assurance, supervision and training for the front line
- ▷ improved and consistent service standards, leading to improved outcomes for victims and their children and for the broader community.

A clear career path

Victoria Police's organisational structure does not yet reflect the importance of family violence as a community safety concern, or its significance as a driver of demand for police services. The current family violence career path is limited by the scarcity of gazetted positions and the lack of opportunities for promotion—particularly beyond the rank of sergeant. A well-developed organisational structure and career path will encourage the best and brightest in Victoria Police to serve in this area and will also attract people with diverse, non-traditional skills and experience to pursue a career with Victoria Police.

In order for this to be achieved, the Commission proposes that Victoria Police review its specialist roles to develop an organisational structure with clear and logical management lines and positions with complementary and aligned functions. The family violence structure should also include positions of the necessary rank to allow equal participation in decision-making forums such as the Tasking and Coordination Committees (discussed shortly).

This review should consider the adequacy of resourcing for the family violence liaison officer role (that is, the specialists based at 24-hour police stations). In particular, it should consider whether this should remain a portfolio role. Being in a portfolio role can make it difficult to attract personnel, and it can result in specialist skills and expertise built up and then lost. It also inhibits the development of close working relationships with family violence and other services.

A family violence liaison officer role has a broad span of responsibilities and provides a specialist point of contact at the station level for other police members, victims of family violence and service providers. They also have important quality assurance and compliance functions, which should be expanded. It is critically important for Victoria Police to ensure that the resourcing model for family violence liaison officer positions is adequate to allow incumbents to perform all their functions effectively.

Recommendation 49

Victoria Police adapt its career structures to reflect family violence as core business [within two years] by:

- ▷ providing an organisational structure for specialist family violence positions
- ▷ providing a clear career progression path for members who have a continuing interest in family violence policing—including through gazetted additional positions
- ▷ having positions with appropriate ranks to represent family violence policing in key operational and strategic management forums and processes
- ▷ ensuring that resourcing models and processes enable police in specialist family violence roles to perform their functions
- ▷ considering involving non-sworn employees with relevant skills in incident response
- ▷ recruiting personnel from a broader range of disciplines—such as social work, psychology or specialist family violence services.

Family violence teams

The expansion of family violence teams to 32 locations in the state has been a positive development in improving the quality and consistency of police responses to family violence. The Commission heard, however, that there is much variation from team to team in terms of their functions, focus, resourcing levels, staff tenure and operating models.

A consistent operating model

Variation in operational models can encourage innovation and provide flexibility to meet local needs. For example, some family violence teams have embedded in them professionals from family violence services or other disciplines, and local multi-agency initiatives to coordinate the management of high-risk and complex cases have been established.

The Commission also acknowledges Assistant Commissioner Cornelius' point that differences in operating models are necessary adaptations to local service systems. The Commission does not want to stifle innovation, especially since specialist police responses to family violence are still developing. Victoria Police should be encouraged to try new approaches to build on the principles set out in the Violence Against Women and Children Strategy, provided these approaches are based on sound logic, their effectiveness is evaluated, and they give priority to the safety of victims.

Nevertheless, having multiple models of what a family violence team does, and how it does it, can also give rise to inconsistent service levels and a lack of clarity about the role of the teams and their relationship with general duties police. Greater clarity and consistency in relation to the size, function and composition of family violence teams is needed. Work on this has already begun: Family Violence Command is developing a baseline family violence team model. This will allow a balance to be struck between adopting a common focus and evidence-based, consistent operating models, while still preserving the flexibility needed to respond to local demands.

This also presents an opportunity for Family Violence Command to develop a suite of evidence-based and centrally supported operating models that can be built on according to local circumstances. The evidence base should be drawn from review and evaluation of current approaches and from best practice in other jurisdictions.

In support of that review the Commission considers that the core functions of family violence teams should include:

- ▷ managing high-risk, complex and recidivist cases
- ▷ investigating serious and complex cases
- ▷ supporting general duties police and specialist units.

Before discussing these core functions, the Commission notes that in developing a baseline family violence team model, Victoria Police will want to be open to flexible staffing arrangements in different locations. For example, in some parts of the state it might be appropriate for an Aboriginal community liaison officer to sit within a family violence team; in other cases, police might take a multi-disciplinary approach by employing, say, a family violence worker, a social worker or a psychologist to meet the needs of a particular locality. Greater use of or links with youth resource officers, as is the case with Taskforce Alexis, to respond to adolescent use of violence in the home, would also be of value.

Managing high-risk, complex and recidivist cases

A primary function of family violence teams should be the management of high-risk, complex and recidivist offenders within their relevant geographic catchment areas. This is not, however, the task of family violence teams alone. Family violence is the responsibility of all parts of Victoria Police.

At present family violence teams focus particularly on recidivist offenders and victims of repeat violence, 'recidivists' being defined as those who have been involved in three or more family violence incident reports in a rolling 12-month period. Although recidivism should be taken into account as part of the risk assessment process, it should not of itself escalate a matter to the attention of a family violence team ahead of higher risk cases. There are indeed connections between recidivism and risk, but the relationship is not linear.

Different family violence teams currently use different risk assessment tools to determine which perpetrators should receive a more intense police focus. This contributes to inconsistency and is inefficient. The Commission is particularly concerned that variations in risk assessment methodologies adopted by family violence teams and the continued use of risk assessment tools that have not been validated, are leading to differing service levels according to where an incident occurs. Family violence teams should use a common tool or process for this task.

Investigating serious and complex cases

Family violence teams should have a clearly defined investigative role. This role should focus on more serious and complex cases that would stretch the capability of general duties police but are not so serious as to warrant being handed over to an investigation and response unit.

Family violence teams need to lift their investigative capability and capacity to fulfill this function. There are many ways of achieving this, as discussed shortly in the 'Criminal investigations' section. Whatever option is chosen, the Commission notes that, if the investigative capability of family violence teams improves, so too will their status, profile and attractiveness as places to work.

Supporting general duties police and specialist units

Family violence teams should provide a clear and consistent service to general duties police and specialist work units. This will raise the teams' profile and expand understanding of their role and value in the force.

In the Commission's view, family violence teams should be available to provide specialist real-time support for front-line general duties police and should perform the function of serving family violence intervention orders and related documentation on respondents who are elusive or evasive. The educative role of family violence teams should be explicitly recognised.

The Commission was attracted to the benefits of family violence teams providing a first-response function, as outlined in Sergeant Spriggs' evidence and summarised in Table 15.9. It is, however, also mindful of Assistant Commissioner Cornelius' evidence that the first responder role is not the best use of family violence team resources in the busiest areas of the state.

As part of the process of developing a baseline family violence team model, Victoria Police should adopt a consistent position on family violence teams' first-response role. One option is for this to be a local decision but one that is in keeping with criteria that are set centrally; for example, the family violence team should perform first-responder duties so long as the local demand for managing high-risk and recidivist offenders is not too great. The Commission is particularly concerned, however, that any baseline family violence team model does not lead to the unintended consequence of family violence being seen as marginal, rather than core business.

Victoria Police should weigh up the advantages and disadvantages of giving family violence teams the first response role—see Table 15.9.

Table 15.9 Family violence teams and first response: advantages and disadvantages

| Advantages | Disadvantages |
|--|---|
| <ul style="list-style-type: none">▷ Provides increased first-response capacity to local supervisors, which is important given high demand (and may become more important if family violence teams increase in size and have gazetted positions).▷ Frees up general duties officers for other patrol duties.▷ Demonstrates the value of family violence teams to general duties police.▷ Ensures high use of resources.▷ Provides specialised response and investigative capacity in relation to more serious or repeat offending, and additional support to affected family members. | <ul style="list-style-type: none">▷ Given the high volume of family violence cases, family violence team members will probably be despatched and be unavailable for other incidents early into any shift.▷ Could limit family violence teams' ability to focus on their other functions, undermining the specialisation model.▷ Assigning first response to specialists might contribute to family violence continuing to be seen as outside core policing.▷ Keeping first response with general duties police is central to underlining family violence as core business and to achieving cultural change; leaving first response to specialists might see family violence continue to be seen as marginal. |

The quality assurance role currently performed by family violence teams in terms of reviewing all L17s and identifying opportunities for improving practice is very useful. Once the Support and Safety Hubs are established (as recommended in Chapter 13) it would be useful if the hubs and family violence teams in each area aligned their quality assurance practices to ensure there is active feedback between them.

This should not, however, replace Victoria Police's duty to exercise suitable quality controls in relation to the accuracy and comprehensiveness of risk assessments done using the L17. Arguably, with an active feedback loop, the amount of time family violence teams devote to this task should decrease, allowing the teams to devote more time to perpetrator and victim management and investigations.

The composition of family violence teams

A more consistent approach to resourcing family violence teams is necessary. As a starting point, family violence teams need a uniform management structure. This should include gazetted positions for all officers in charge of family violence teams and consistent reporting lines.

The Commission heard cogent arguments from police members and the family violence sector in favour of both gazetted and rotational positions in family violence teams. Ultimately, we came to favour a balance of ongoing and fixed-term positions, with a gazetted officer in charge and a core of other staff, along with a number of rotational positions. Such an approach will achieve a number of things:

- ▷ provide a secure pathway for police members and employees who wish to pursue a career in family violence policing
- ▷ ensure that there is a critical mass of ongoing staff who have highly specialised knowledge and can develop strong networks with local service systems
- ▷ provide continuity and stability to partner organisations
- ▷ enable general duties members to increase their skills and capabilities in family violence policing through a placement in a family violence team
- ▷ provide incentives for police members to gain experience in family violence policing—for example by favouring those who have taken a placement in a family violence team (and performed well) in promotional opportunities, including detective training.

Resourcing family violence teams

The Commission considered whether Family Violence Command should determine the size and composition of each family violence team and the resources made available to it on the basis of relevant family violence rates and other determinants of demand, such as peak incident times.

Responding to family violence is ultimately a regional and divisional responsibility, and local managers will want to retain flexibility to deploy resources to best meet local needs and balance competing priorities. This will also promote a collective responsibility for performance in the field of family violence, rather than it being viewed as the responsibility of the family violence team alone.

As a matter of principle, however, the Commission considers that, to ensure that regions and divisions focus adequate resources on specialist family violence roles, resourcing for these roles should be allocated separately from resourcing for general duties policing. This will provide a measure of consistency in service levels throughout the state.

One way to achieve this would be for Family Violence Command to stipulate a minimum number and type of personnel required to fulfil the core functions for the baseline model of a family violence team. The regions could then have the flexibility to dedicate further personnel and resources to the teams on a planned basis, as local circumstances require. In practice this would mean that each of the roles in the baseline team model could be filled in the way the region thinks best. We refer to this as Option A.

Alternatively, specialist resourcing levels could be set centrally, in keeping with a formula drawing on advice from Family Violence Command on baseline operating models and requirements to achieve relevant quantitative and qualitative performance outcomes. This would also need to take into account variables such as population, demographic and geographic characteristics, and existing and projected demand levels (including unmet demand and an estimate of latent demand). The Commission understand this would put family violence on a footing similar to that of road policing, another area where the challenges of volume, seriousness and complexity of impact intersect. Under this model decisions about how many roles need to be on rotation, how many are gazetted and other resourcing, would be centrally determined. We refer to this model as Option B.

It is the Commission's view that, by calling on Family Violence Command's expertise and combining this with the authority of the Chief Commissioner to determine overall resourcing, the right balance is struck between the autonomy of the regions and the reform required to entrench a suitable level of specialisation. The Commission recognises, however, that moving to a more centralised model of resource allocation would be a major step for Victoria Police and one that brings with it some challenges. Accordingly, the Commission prefers a phased approach—with Option A beginning immediately and Option B to follow.

Providing this direction, and holding regions and divisions accountable against a more comprehensive set of performance targets and measures—which could include, for example, the proportion of high-risk matters managed by family violence teams and recidivism rates for perpetrators managed by the teams—will provide a transparent and flexible mechanism for ensuring that adequate resources are devoted to family violence teams.

The Commission expects that family violence teams will need to increase in size to fulfil their functions and meet desired service standards. Resourcing is discussed shortly, in the section entitled ‘Enablers of an effective police response’.

Recommendation 50

Victoria Police’s Family Violence Command develop a core set of functions to be delivered by all family violence teams across Victoria. This should form the operating model for resourcing decisions from 1 July 2017. Thereafter, Victoria Police should move towards a centralised model of resource allocation for family violence, placing family violence on a footing similar to that of road policing.

Recommendation 51

Victoria Police’s Family Violence Command evaluate current localised models for family violence teams and from 1 July 2017 roll out preferable operating models in areas with similar family violence incident patterns.

Managing recidivist and high-risk perpetrators

Responding to recidivist perpetrators accounts for the bulk of family violence incidents attended by police. These offenders cause significant and ongoing harm to victims—and reducing recidivism will help keep women and children safe and pave the way for recovery. It will also, over time, reduce demand (or the growth in demand) for police services.

The Commission cautions, however, that a stronger focus on recidivist offenders must occur in tandem with—not at the expense of—managing high-risk perpetrators. Access to an escalated police response needs to be based on risk of future harm, with a threshold number of police attendances providing only one indicator of risk. As noted in the Code of Practice, and drawing on what we heard about patterns of violence, a victim who has not previously reported to police might have been exposed to significant or repeated abuse. The Commission takes this view with the following in mind:

- ▷ Risk assessment by police is incident-based, yet risk is dynamic. The actions of the perpetrator beyond the incident to which the police have been called might be equally serious or more serious.
- ▷ Harm is cumulative and not always physical.
- ▷ In view of under-reporting and the dynamics of family violence, solely focusing on recidivism as currently defined might further disadvantage population groups who face structural and cultural barriers to reporting incidents.

Developing a better understanding of recidivism

Victoria Police requires a clear strategy for addressing recidivist and high-risk perpetrators. As a threshold matter, Victoria Police and other justice agencies need to develop a better understanding of patterns of offending and the characteristics of recidivist family violence perpetrators in order to design effective policy and operational responses and allocate resources efficiently.

Research on recidivism is difficult to do because of low reporting rates and limitations with the data on reported family violence incidents. Apart from the Crime Statistics Agency's analysis of Victoria Police data conducted for the Commission, there is at present no publicly available information about the levels of family violence recidivism or the characteristics and behaviours of perpetrators over time in Victoria.²⁹³ The Commission considers that Victoria Police should take the opportunity to build on the momentum generated by the Crime Statistics Agency's work.

The Crime Statistics Agency made a number of suggestions for further research in this regard—for example, incorporating Corrections Victoria and court data to improve the modelling associated with recidivism; statistical analysis to determine whether the serious recidivists (those recorded for five or more family violence incidents between 2004–05 and 2013–14) are 'significantly different' from other perpetrators; analysis of the family violence histories and characteristics of those who commit very serious family violence incidents; and analysis of the relationships between perpetrators' family violence incidents and other recorded offences.²⁹⁴ The Commission supports these suggestions.

Family Violence Command also needs to provide further guidance on effective strategies for dealing with recidivism. This process will need to be evidence led and adaptive, drawing on the evaluation of current initiatives, research and practice wisdom. Local innovation should continue to be encouraged, but with parameters set by Family Violence Command to ensure monitoring, evaluation and dissemination of good practice. The goal should be consistent service outcomes throughout the state.

Responsibility for managing recidivist and high-risk perpetrators

The Commission stresses the importance of Victoria Police tasking and coordination processes, at all levels, giving appropriate attention to the identification and management of high-risk and recidivist family violence offenders.

Tasking and coordination is a difficult process, requiring the allocation and constant re-assessment of finite resources across disparate threats to community safety. Due weight must, however, be given to the harm caused and threatened by family violence. Implementation of the Commission's recommendation for a more meaningful and clearly defined set of family violence performance indicators will ensure that family violence harm is treated on the same footing as the harm caused by other crime types and threats to community safety. The expectation is that accountability against improved performance measures will sharpen the focus on recidivism and family violence at tasking and coordination meetings.

The Commission also expects that this will result in more resources being devoted to the management of recidivist and high-risk family violence perpetrators and support to victims of repeat violence.

As noted, a central function of family violence teams should be the management of high-risk and recidivist perpetrators and the provision of support to victims of repeat violence. But responsibility for managing recidivist family violence perpetrators must not fall to family violence teams alone: demand and the circumstances of particular cases, will require that this responsibility be shared by investigative response units, general duties members and others.

Close working relationships with the specialist family violence sector and other services will remain crucial to reducing recidivism and repeat victimisation. The Commission agrees with the view put by Senior Sergeant Alexander—that police cannot change recidivism on their own. Engagement with services is necessary to tackle the risk factors that under-lie recidivist behaviour and make women and children vulnerable to repeat victimisation.

Criminal investigations: increasing responsibility and capacity

Effective criminal investigations and prosecutions are vital to holding perpetrators account able for their actions and to keeping victims safe.

On the evidence provided, the Commission is satisfied that Victoria Police has improved its practice in terms of investigation and prosecution of family violence offences. This is evident in the report of the Sentencing Advisory Council who reported that from 2009–10 to 2014–15 the percentage of police-recorded family violence incidents where charges were laid increased from 22.3 per cent ($n=7944$) in 2009–10 to 38.2 per cent ($n=27,058$) in 2014–15. This increase in the number of criminal charges demonstrates that police now view, or are increasingly viewing, family violence as a crime, not a private matter. This has involved a significant increase in investigative effort, especially given the double-digit growth in the number of family violence incident reports between 2009–10 and 2013–14.

The Commission is also satisfied, however, on the evidence provided, that the quality of criminal investigations of family violence incidents should be improved. Criminal investigations are often left to general duties police even when policy requires the involvement of specialist investigators. As discussed in Chapter 14, the Commission was also informed that general duties officers can be reluctant to lay charges when confronted with ‘minor’ contraventions of intervention orders.

The new family violence operating model will need to clearly express where investigative responsibilities lie for family violence offences. This should broadly correlate with the current approach, whereby the police investigative response is calibrated to the seriousness of the offence. Nevertheless, the Commission recommends a number of actions to strengthen the investigation of family violence offences.

In keeping with the greater emphasis to be placed on family violence in tasking and coordination, the Commission considers that Victoria Police (Family Violence Command and the Intelligence and Covert Support Department) should review the level of specialist intelligence resources focused on supporting the response to family violence. Once intelligence support needs are identified, consideration should then be given to whether the Victoria Police Intelligence Doctrine needs to be updated to reflect the specific nature and challenges of family violence policing.

General duties police will continue to be responsible for investigating and prosecuting the majority of family violence offences. To continue the upward trend in charge rates, police training and supervision should highlight the importance of laying charges wherever the evidence allows it. Specific training or guidance in investigative techniques should be considered for breaches committed by electronic means, which the Commission understands have been met with inconsistent responses.

As part of their leadership, education and quality assurance functions, specialist family violence positions and family violence teams should encourage general duties members to identify and prosecute all breaches and substantive offences against the person and property—including, for example, financial abuse.

Taking this a step further, Victoria Police should also consider expanding the Dandenong pro-arrest policy to other divisions, along with the fast-tracking of criminal matters. This should, however, occur only after these initiatives have been evaluated and the effect on police resources considered. In particular, any pro-arrest initiatives must guard against re-victimisation resulting from incorrectly identifying the primary aggressor.

The investigative capability of family violence teams also needs to be enhanced. This will allow family violence teams to retain responsibility for more complex criminal investigations and will also raise the profile, status and attractiveness of the teams across the organisation.

The Commission received a number of suggestions for achieving this but, in view of the significant operational, industrial and funding implications of these approaches, it decided that Victoria Police should determine the best approach. The Commission is, however, attracted to the following proposals:

- ▷ embedding detectives in family violence teams, on a portfolio basis at first followed by gazetted positions if the model proves successful
- ▷ increasing the investigative capability of family violence team members by providing access to the field investigators' course, along with training in 'whole-story' investigative techniques
- ▷ providing greater intelligence support to family violence teams, in keeping with their enhanced investigative responsibilities and other functions.

The Commission also considers that greater emphasis needs to be placed on ensuring that investigation and response units are discharging their responsibilities in connection with family violence-related investigations, in compliance with the requirements of the Code of Practice and the Victoria Police Manual. This can be achieved through the development and monitoring of relevant performance measures and targets or through audit processes overseen by Family Violence Command.

Recommendation 52

Victoria Police develop a model to strengthen the investigation of family violence offences and focus additional specialist investigative and intelligence resources on serious family violence offending [within 12 months]. Victoria Police should develop performance measures for the revised approach, against which it reports annually and publicly. To improve the investigation of family violence, Victoria Police should:

- ▷ embed investigators in family violence teams where appropriate
- ▷ ensure that investigation and response teams take on or actively oversee investigations
- ▷ give tactical and divisional intelligence support to family violence teams
- ▷ give family violence team members access to the field investigator's course
- ▷ equip first responders with technology that will facilitate timely on-site evidence capture
- ▷ ensure that family violence advisors are involved with divisional tasking and coordination committees and that advisors are of an appropriate rank to participate effectively.

Recommendation 53

The Chief Commissioner of Police report in the Victoria Police annual report on the revised model(s) for and progress in strengthening the investigation of family violence offences.

Enablers of an effective police response

Sustaining the improvements that Victoria Police has made in the past decade requires generating efficiencies and improving effectiveness. This will release members' time to focus on useful interventions with victims, perpetrators and vulnerable families in compliance with the Code of Practice.

The Commission identified a number of options for increasing Victoria Police's capacity to respond to family violence. Although these options are not mutually exclusive, each carries with it unique resourcing requirements and implications for policy and operational design. The options identified are:

- ▷ changing the priorities for police resources
- ▷ reducing demand through a stronger focus on recidivist offenders
- ▷ making changes to police powers, functions and procedures to lighten workloads for police
- ▷ making efficiency gains through improved training, streamlined administrative arrangements and information technology improvements.

Police resources

Adequate resourcing for Victoria Police is essential to ensuring that women and their children are safe and perpetrators are held to account.

A range of parties informed the Commission that front-line police are struggling to keep up with the demand to respond to family violence. The Commission considers that resources must be focused on family violence policing to ensure the sustainability of recent gains and to give the reforms it recommends every opportunity for success. This can be achieved in a number of ways.

The already high demand for services will probably continue to escalate as the systemic response to family violence continues to improve and victims become more confident about coming forward and reporting abuse. Police members also need to devote more time to responding to family violence incidents, to ensure that service standards are consistently in line with the Code of Practice. The improved supervision and compliance arrangements the Commission recommends are directed to this objective.

The Commission also notes that a number of other recommendations will, directly or indirectly, place further demands on police resources. Victoria Police can meet these additional resourcing requirements in a range of ways:

- ▷ through internal reprioritisation
- ▷ through efficiency gains that allow re-investment of savings into family violence policing
- ▷ through additional appropriations.

As noted, family violence resourcing levels for front-line and operational positions are set at the regional and divisional levels. There is, however, variability in the priority regions and divisions accorded to family violence. Bringing all areas up to best-practice standard would result in an increase in organisational effort and resources focused on family violence.

More work needs to be done to ensure that, in all police regions and divisions, the resources allocated to family violence reflect its seriousness as a public safety concern, and its impacts on individual victims and their children. In the past decade Victoria Police has re-prioritised significant resources so as to expand its capacity to respond to family violence. Further, an increased focus on family violence at the regional and divisional levels would probably affect the resources available for other crime types and public safety problems. Efficiency gains and appropriations will therefore form an important part of the resourcing mix in the future.

The Commission identified a number of potential efficiency gains that could release police time and resources to focus on family violence:

- ▷ an enhanced IT environment to reduce the administrative burden and improve operational efficiency
- ▷ changes to family violence intervention order service requirements and methodologies, to reduce the police workload associated with personal service of documents
- ▷ greater support for front-line police from specialist family violence roles and teams
- ▷ more effective management of high-risk and recidivist offenders through an enhanced specialist response, improved compliance with the Code of Practice and Victoria Police Intelligence Doctrine, increased investigative capacity, and greater use of multi-agency collaborative approaches (including fast-track and pro-arrest approaches).

These measures should be viewed in the context of the broader recommendations put forward in this report, which aim to deliver a better resourced family violence system that is more effective in preventing family violence and intervening early to prevent its escalation.

The efficiency and demand-reduction gains associated with police-specific initiatives and others will take time to realise, while the cost of implementing the Commission's recommendations will be felt in the short term. Victoria Police re-prioritisation opportunities and efficiency gains, once calculated, might also fall short of what is required to implement the Commission's recommendations and deliver consistently high-quality services that meet relevant performance measures.

The Commission considers that any additional investment to support a more intensive police response to family violence—if designed and implemented well and linked to improved service and performance levels—will deliver considerable future social and economic benefits to the Victorian community by reducing family violence levels. Victoria Police and the Victorian Government will need to take these matters into account in determining a sustainable basis for resourcing the police response to family violence and implementing the Commission's recommendations.

Enhanced information technology

IT enhancements could greatly increase the efficiency and effectiveness of the L17 process and other elements of family violence policing. More generally, a refreshed IT environment would reduce the demands of administrative tasks on operational police and increase their capacity to respond to family violence.

In the short term, the Victoria Police should upgrade the LEDR Mk II system to address problems such as those identified in The Police Association Victoria's submission. System enhancements should be assigned priority following a cost-benefit analysis.

In the medium to longer term, Victoria Police should roll out mobile devices and applications to allow police members to obtain the information they need in the field for conducting a thorough risk assessment, and completing the L17 onsite at an incident. A mobile solution would also streamline procedures for seeking approval of and issuing family violence safety notices and enable efficient, effective service of warrants.

Realising the Blue Paper's vision for technology-enhanced policing will also provide the infrastructure for enhanced information sharing with partner agencies, improving the quality of responses for all agencies in the integrated family violence system.

Recommendation 54

The Victorian Government and Victoria Police deploy mobile technology for police members, including capability to use the Law Enforcement Assistance Program (LEAP), complete and despatch police referrals (L17 forms), take victim and witness statements and process and issue family violence safety notices in the field—recognising that this is contingent on the adequacy of Victoria Police's broader IT environment [within three years].

Reducing the administrative burden

Legislative and administrative changes should be made in relation to the personal service of applications for FVIOs and FVIOs, to increase victim's safety and to allow Victoria Police members to spend more time on higher value policing activities.

The Commission shares Victoria Police's concern about the potential for respondents to deliberately avoid service of applications and orders. This can jeopardise victims' safety and welfare by enabling respondents to continue engaging in abusive or intimidatory behaviour without criminal sanction. The increasing use of family violence safety notices by police extends civil protection provided to victims, since the safety notice has effect until a family violence intervention order is served. But, safety notices are not available or appropriate in many cases, and it remains important to minimise the chance that respondents will avoid service.

The requirement to personally serve applications and FVIOs places major and growing demands on Victoria Police resources. Furthermore, Victoria Police applications for substituted service are creating an increased workload for the Magistrates' Court. It is therefore important for service and other procedural obligations to be as streamlined as possible to ensure police and court time is spent protecting and supporting victims and holding perpetrators to account.

At the same time, service arrangements must engender a high degree of confidence that an individual respondent is made aware of any FVIO made against them and, if so, of the restrictions it places on their conduct and the consequences for breaching the order. This is important for fairness and efficacy, since respondents are unable to comply with, and cannot be held criminally responsible for obligations of which they are unaware.

Family violence intervention orders should be personally served on respondents and protected persons. Personal service provides a high level of assurance that the respondent will be made aware of the order, promoting compliance, accountability and the safety of the protected person. Personal service also provides a further opportunity for the state to impress on the respondent the seriousness of the situation and that they will continue to be held accountable for their behaviour. The Commission considers this particularly important in higher-risk cases.

There might, however, be cases where personal service by police is not necessary to ensure the respondent is aware of the order. In lower-risk cases police might be able to satisfy a magistrate that service can be effected by other means (for example, by email or registered post) and service by the alternative means proposed will not materially diminish the safety of the protected person or dilute the accountability of the respondent.

In addition, where personal service is required, that service could in suitable cases, be effected by an entity other than Victoria Police—for example, the sheriff or private process servers engaged by the court or Court Services Victoria. Including this in the suite of alternative service methods would depend on an assessment of:

- ▷ any safety considerations for process servers and/or sheriff's officers
- ▷ the cost-effectiveness of this model
- ▷ the effect of this model on prompt and accurate information sharing — for example, to allow prompt recording on LEAP and notification of the police informant that service has been effected.

There is also a need to improve police practice in relation to personal service of family violence intervention orders.

As a first step, the Code of Practice and the Victoria Police Manual should be amended to provide both greater emphasis and greater guidance in relation to the service of FVIOs. The Code should emphasise that service is essential to the integrity of FVIOs, and it should set out clear expectations in relation to the following:

- ▷ actions that should be taken to effect service of family violence intervention orders
- ▷ time lines within which such actions should be taken
- ▷ escalation requirements, commensurate with levels of risk, where attempts to serve family violence intervention orders have been unsuccessful
- ▷ responsibilities for undertaking, and for supervising, the activities just outlined
- ▷ explanatory and training material on the amended Code of Practice should also include a refresher on law and procedure relating to service.

It is the Commission's expectation that compliance with the revised procedures for service will be monitored by police supervisors with the same rigour as compliance with L17 requirements. Family violence liaison officers or family violence teams should have an oversight function in terms of monitoring risk levels associated with unserved family violence intervention orders in their operational catchment areas, reporting on compliance with the Code of Practice, and dealing with individual and systemic concerns. Consideration should also be given to using family violence teams as a point of reference and advice for general duties police who are experiencing difficulties in locating a respondent or otherwise effecting service and to take over responsibility for the personal service of certain family violence intervention orders—for example, in high-risk cases where the inability to serve the FVIO creates safety concerns.

Recommendation 55

In order to improve the supervision of the service of family violence intervention orders, Victoria Police [within 12 months]:

- ▷ amend the Victoria Police Manual and Code of Practice for the Investigation of Family Violence to provide clearer guidance on and increased supervision of service of family violence intervention orders
- ▷ establish procedures for giving priority to the service of family violence intervention orders on high-risk perpetrators or those suspected of avoiding service—including tasking family violence teams to effect service or seeking relevant court orders, or both
- ▷ provide training at all appropriate levels on the amended requirements relating to service of orders
- ▷ regularly and publicly report on performance in the service of family violence intervention orders.

Recommendation 56

- ▷ The Victorian Government—working with Victoria Police, the courts and other relevant stakeholders—trial and evaluate the use of agencies or service providers other than Victoria Police to effect personal service of applications for family violence intervention orders [within two years].

Recommendation 57

The Victorian Government amend the *Family Violence Protection Act 2008* (Vic) to extend the ability of the Magistrates' Court of Victoria and the Children's Court of Victoria to order service of applications for family violence intervention orders and orders in the first instance other than by personal service, if the court is satisfied that alternative service:

- ▷ is likely to be effective
- ▷ will not result in an unacceptable risk to the safety of the protected person or any other person
- ▷ is, in all the circumstances, appropriate [within 12 months].

Police powers

The Commission received evidence about a number of potential changes to police powers and procedural requirements. The primary purpose of any such changes should be to improve the effectiveness of the police response to family violence and enhance the safety and support provided to victims; changes might, however, provide efficiency gains that free up police time for direct service delivery.

Body-worn cameras

Body-worn cameras have recently been deployed in New South Wales but have not yet been evaluated. Overseas studies show some benefits associated with their use and have also identified some challenges. The Commission considers that body-worn cameras potentially offer a number of benefits

- ▷ for victims—by reducing the trauma associated with giving evidence in court
- ▷ for police—by assisting with investigations and encouraging guilty pleas in appropriate cases
- ▷ for prosecutors and courts—by providing higher-quality evidence that might increase guilty pleas where appropriate
- ▷ for the community—who may have greater confidence that offenders are being held to account.

The Commission is concerned, however, about potential unintended consequences—in particular for victims—and therefore considers it imperative that body-worn cameras be subject to a rigorous trial and evaluation. A well-designed and evaluated trial will allow the benefits of the cameras to be assessed, and potential risks to be identified and managed. Such a trial does not need to be statewide: a more prudent course would be to limit it to specific geographic areas.

The trial should monitor whether video footage from the scene is used against victims, either undermining their credibility or being directly used against them. This is of particular concern given the uncertainties associated with identifying the primary aggressor, as discussed in Chapter 14. The Commission therefore considers that a precondition for the use of body-worn cameras is to train police in the nature and dynamics of family violence and identifying the primary aggressor, rather than focusing training on the use of the technology. Simply teaching police how to turn on the technology is not sufficient. They must also be aware of the need to avoid re-victimisation by pressuring the victim to give an immediate statement on camera and to conduct an assessment to ascertain whether, by using the camera, the victim is placed at further risk.

The Commission is also concerned about the potential use of video evidence to coerce victims in participating in prosecutions against their will. It agrees with Victoria Police's submission that there could be sound reasons why victims do not want to prosecute the perpetrator. The risk of coercion will be minimised by requiring the ongoing consent of the victim to use the evidence in court.

Project governance arrangements should include representatives from family violence services so that victims' voices are taken into account when developing the body-worn camera trial and its evaluation. The trial should also be designed to maximise efficiency gains for police and the administration of justice more generally. This will be important to test, given the mixed results in overseas jurisdictions.

Among the questions the trial should seek to resolve are the following:

- ▷ Will evidence from body-worn cameras be available for use in criminal matters only, or will it be available for family violence intervention order applications too (or a subset thereof)?
- ▷ How will body-worn cameras be integrated with the Victoria Police IT and security environment?
- ▷ What will be the downstream effects for police prosecutors, the Office of Public Prosecutions and the courts?
- ▷ Are victims' experiences improved?
- ▷ Does the quality of evidence improve?

More broadly, the evaluation should seek to determine whether body-worn cameras can lead to more efficient administration of justice while avoiding any of the potential concerns or unintended consequences. It should canvass the views of victims, police, the courts and others such as the family violence sector and legal stakeholders.

Recommendation 58

Victoria Police conduct a trial in two divisions of the use of body-worn cameras to collect statements and other evidence from family violence incident scenes [within 12 months]. The trial should be supported by any necessary legislative amendment to ensure the admissibility of evidence collected in criminal and civil proceedings. It should also be subject to a legislative sunset period, evaluation and the use of any evidence only with the victim's consent.

Police-issued family violence intervention orders

The Commission does not support the introduction of police-issued family violence intervention orders at this time. It does, however, recommend that the Victorian Government reconsider this matter within five years, once the effect of the Commission's broader recommendations is known.

In ordinary circumstances, the Commission would have dismissed the proposal for police-issued FVIOs as a matter of legal principle. These orders can impose significant restrictions on individual rights and liberties, including exclusion from one's place of residence, restrictions on freedom of movement and association, and requirements to attend programs. In our legal culture, such restrictions on individual rights and liberties should be imposed only through the exercise of judicial power. It is important to note that any party to an FVIO can make an application to have it varied or revoked.

Because of the scale of family violence and the urgency of the task to develop a better response to it, however, the Commission carefully considered the benefits and risks of police-issued family violence orders, as summarised in Table 15.10.

Table 15.10 Benefits and risks associated with police-issued family violence orders

| Benefits | Risks |
|--|---|
| <ul style="list-style-type: none"> ▷ Improved experience for victims, who receive the immediate protection of an intervention order and are spared the need to go to court, which can be both re-traumatising and disruptive, especially if the respondent does not attend. ▷ The immediacy of the order may have a stronger deterrent effect on respondents and allow police to take prompt action if a breach occurs. ▷ Alleviates gaps in civil protection caused when police cannot locate respondents to personally serve final orders. ▷ Will reduce demand for intervention orders in magistrates' courts, freeing up capacity to, for example, provide greater judicial oversight of perpetrators and more allowing time to consider contested or high-risk matters. ▷ Will have a net reduction on police workloads (less time preparing for court and serving orders), allowing resources to be re-focused on other public safety priorities (including family violence recidivists). ▷ May improve the overall police response, since power to issue orders would need to be accompanied by additional training and a stronger focus on investigation to fully understand circumstances. ▷ Makes practical sense since many intervention orders are made by consent. | <ul style="list-style-type: none"> ▷ Police-issued orders may have less of a deterrent effect on perpetrators than orders imposed by a magistrate in court. This could lead to more breaches and diminished victim and community safety. ▷ Some other benefits of court appearance would be lost, such as victims' and perpetrators' access to court-based legal and support workers. It would also be difficult for police to require perpetrators to attend necessary programs, and to determine which programs were suitable. ▷ May lead to a significant number of variation or revocation applications, offsetting any potential efficiency gains for police and courts. ▷ May result in poorly tailored or targeted orders, as front-line police are unlikely to have the time, training or information available to thoroughly assess the situation. ▷ Burdens front-line police, who often have limited experience, with the responsibility of assessing the situation and gauging appropriate legal response (and bearing any consequences if the response fails to prevent future harm). ▷ Risk aversion may see a default position of restrictive intervention orders. ▷ Respondents may not understand the conditions of the order, causing breaches—with a potentially disproportionate effect on certain population groups such as culturally and linguistically diverse communities, Aboriginal communities and people with disability. ▷ Respondents may not understand or have the wherewithal to act on their right to seek a court variation. ▷ Likely to require significant, 'upskilling' of police, with upfront and ongoing resourcing implications. ▷ Arguably unfair as it imposes serious restrictions on the alleged perpetrator without the benefit of legal advice and the opportunity to test allegations in court. ▷ Would accord unprecedented power to police members to administratively impose significant restrictions on liberties. Legal principle supports such restrictions being imposed through the exercise of judicial power only. |

A central argument in favour of police-issued FVIOs is victims' varied and often poor experience of the court system. The Commission was advised that attending court can be re-traumatising and disruptive for victims; that in any event most orders are made by consent; and that the experience of many victims does not correspond with the supposed benefits—for example, the opportunity to engage with legal services might mean a hurried conversation in a public area before the matter is called; the knowledge and gravitas of the judiciary might equate to the momentary attention of a magistrate managing a busy list; and links to services might mean a referral to an overstretched service provider.

Elsewhere in this report, the Commission makes recommendations aimed at improving the court experience. This includes expanding specialist family violence courts, streamlining registry administrative processes to allow a greater focus on client management, and measures to reduce adjournments, manage list sizes, and to make it easier to give evidence remotely. It would be premature to radically reform the system by allowing police-issued FVIOs before the effect of these recommendations can be assessed.

In particular, the Commission is concerned about the evidence relating to inconsistent service quality. We heard evidence of cultural and attitudinal problems within Victoria Police, limited understanding among some police members of the nature and dynamics of family violence, difficulties in undertaking risk assessments and incorrectly identifying the primary aggressor, and concerns about police engagement with marginalised groups. The Commission considers that police capability and the quality and consistency of the police response to family violence need time to improve before police-issued FVIOs can be more fully considered.

These improvements could be effected through some of the other recommendations the Commission makes, and its concerns about the fair and effective administration of a police-issued FVIO scheme could be reduced when these recommendations are implemented successfully.

Despite the risks identified above, the Commission recognises that a police-issued FVIO scheme—administered fairly, safely and effectively—could free up police and court resources. It therefore proposes that the Victorian Government revisit this matter after five years, noting the Commission’s recommendation that all FVIO applications be heard in headquarter magistrates’ courts in five years time, and provided the following circumstances still apply:

- ▷ Demand continues to stretch the capacity of police and the courts to respond to family violence.
- ▷ There is an actuarial risk assessment tool contained within the revised CRAF that can accurately and consistently distinguish between cases that can be safely and appropriately dealt with by police-issued FVIOs and those that, owing to their risk and complexity, require a court response.
- ▷ Police capacity to respond to family violence and deliver consistently high service standards has comprehensively and demonstrably improved.
- ▷ The family violence system can engage with victims and perpetrators to ensure they are supported, understand their legal rights and obligations, have their broader health and human services needs met, and that the perpetrator is kept in view.
- ▷ The court experience for victims is problematic.

The Commission also proposes that any future police-issued family violence intervention order system must include the following safeguards:

- ▷ Police-issued FVIOs cannot be made in high-risk cases or where police have reason to suspect that a party is aged under 17 years or less, has a cognitive impairment, is drug or alcohol affected, or for any other reason is unlikely to understand the nature or effect of the order—for example, because an interpreter is not available.
- ▷ The issuing police member has no reasonable grounds for suspecting that a *Family Law Act 1975* (Cth) order, child protection order or community correction order is in place that could be inconsistent with the FVIO that the police member intends to make.
- ▷ Implementation is preceded by comprehensive training in relation to issuing FVIOs, and only police members who have completed the training are authorised to issue the orders.
- ▷ An officer of the rank of senior sergeant or above must make the FVIO on application by the police member in the field and on hearing from the victim and, if practicable, the perpetrator.
- ▷ A family violence team must review the circumstances in which each police-issued FVIO is made and provide advice on its appropriateness to an officer of the rank of inspector or above, who must review the order and confirm it has been appropriately issued within three days.

- ▷ On serving a police-issued FVIO a police member must explain the nature, effect and consequences of a breach of the order and the parties' rights to opt out of this process and have the matter heard in court. They must also provide a written notice outlining this information (using an interpreter where required), along with contact numbers for legal advice and other support services.
- ▷ On serving a police-issued FVIO a police member must explain the further contact and support that parties will receive from both police and the broader service system in the foreseeable future, and must also provide a written notice outlining this information (in the appropriate community language).
- ▷ Legislation implementing the scheme should contain a sunset clause, along with a statutory requirement for an independent evaluation to be conducted within two years and the report of the evaluation to be tabled in parliament.
- ▷ A project board with membership from across government and key non-government stakeholders should closely monitor the scheme to ensure that it is administered fairly, safely and effectively, is aligned with its objectives and that no unintended consequences are evident.

Recommendation 59

The Victorian Government consider [after five years] whether Victoria Police should be given the power to issue family violence intervention orders in the field, subject to the recommended Statewide Family Violence Advisory Committee and Family Violence Agency advising that Victoria Police has made significant improvements to its response to family violence, taking into account the Commission's recommendations.

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16 Court-based responses to family violence in Victoria

Introduction

For many victims and perpetrators of family violence, courts are central to their experience of the family violence system. For individuals and organisations supporting victims and perpetrators, the court is often a principal place of work. Courts are sites where inequity and the abuse of power can be redressed; where individual rights to autonomy, safety, dignity and freedom from fear can be protected; and where those who violate society's standards are held to account. When effective, courts can be safe, orderly, accessible places that vindicate and protect those who have experienced family violence and impose swift, certain and appropriate consequences on those who perpetrate that violence.

While many people find their involvement with the court system a source of empowerment and a crucial intervention towards a safer future, many others have negative experiences. The court process can be intimidating, confusing and unsafe. Court users may have inadequate access to support services and face long delays and inappropriate outcomes. The challenges of responding to family violence—in particular, the continuing increase in applications for family violence intervention orders in many magistrates' courts—mean that new approaches to the structure and function of courts need to be tested. These approaches must place the needs of court users above what is familiar and expedient to the court.

This chapter provides an overview of the role of Victorian courts, primarily the Magistrates' Court, in responding to family violence, identifies gaps in current responses, and recommends a way forward. The first section explains how different courts interact directly and indirectly with people affected by family violence.¹ The majority of family violence matters arising in the court system relate to family violence intervention orders, which are most commonly heard in the Magistrates' Court. Intervention orders in the Children's Court are considered in Chapter 10. Family law and the Family Court are discussed in Chapter 24; Child Protection and its relationship to the Children's Court are discussed in Chapter 11. While some of what follows applies to both criminal and civil proceedings, criminal offences and sentencing raise distinct issues which are discussed in more detail in Chapter 17.

The second section of this chapter summarises what the Commission heard from court users and service providers that support them. The submissions the Commission received and the evidence it heard were largely concerned with men's use of violence against women, most commonly in the context of an intimate partnership. Consequently, this section largely reflects the views of women who sought, or on whose behalf the police sought, family violence intervention orders. How the court engages with perpetrators of family violence is also considered in this section. The experiences of members of particular groups—among them children, Victorians of culturally and linguistically diverse backgrounds and Aboriginal and Torres Strait Islander peoples—are noted; the experiences of these groups are explored in more detail in Chapter 26. The role of legal service providers, who are an integral part of the court process, is also discussed.

After reviewing the experience of court users, this chapter looks at the challenges the court system faces—in particular, managing the demand for its services. Some of the current practices of magistrates' courts in managing court lists and communicating within and across courts are discussed, including recent changes in practice in response to increasing demand. The Commission notes that training for members of the judiciary and the broader court workforce in relation to the causes and dynamics of family violence and responding appropriately to both applicants and respondents, was consistently raised in evidence. This issue is considered in more detail in Chapter 40.

The Commission is cognisant that many of the issues raised in evidence relevant to the Magistrates' Court, for example difficulties with IT systems and infrastructure, are also relevant to the County and Supreme Courts. These issues should be addressed across the court system.

In the final section of this chapter the Commission proposes that the Magistrates' Court and the Children's Court move towards a more therapeutic approach to family violence cases. The Commission proposes a way forward in delivering this approach, in particular by expanding specialist family violence courts. The Commission recommends a number of practical and procedural changes to manage demand better so that the court is well placed to adopt a more therapeutic model, including improving list management, and improving court infrastructure to make the court experience safer and more accessible for court users. The Commission further recommends that the time limit for a family violence safety notice to be brought before the court be extended to 14 days.

The Commission notes that an amendment to the *Family Violence Protection Act 2008 (Vic)*, to allow for self-executing family violence intervention orders, is due to come into effect on 1 July 2016. For the reasons expressed in the final section of this chapter, the Commission recommends that this provision be repealed.

This chapter uses some legal terminology—for example, the Commission refers to applicants, respondents, parties to a dispute, affected family members and protected persons. We use these terms to make clear that our comments refer to a specific legal context (most commonly, FVIO proceedings in the Magistrates' Court). In using these terms, we do not seek to diminish or depersonalise victims of family violence, nor do we presume the guilt of respondents, though at certain points comments are directed to respondents who have perpetrated the alleged violence. When using the terms affected family member, protected person or applicant we mean the victim. In using the words respondent or other party, we mean the perpetrator.

The Commission acknowledges the valuable contribution of Dr Karen Gelb, researcher and criminologist, who was commissioned to prepare a report based on her observations of eight magistrates' courts in Victoria.

Family violence and the courts

Cases involving family violence are heard in many different legal jurisdictions. The following are the main ways in which Victoria's court system responds to family violence:

- ▷ Applications for family violence intervention orders can be heard by the Magistrates' Court.² Many of the 53 magistrates' court venues in the State set aside specific days of the week to hear FVIO applications.³ The Magistrates' Court also has a 24-hour service for considering urgent police-initiated applications.⁴
- ▷ FVIO applications can also be heard by the Children's Court in some situations, including those involving children and young people aged between 10 and 17 years who are respondents in FVIO applications.⁵
- ▷ Contravention of an FVIO is a summary criminal offence and will usually be heard in the Magistrates' or Children's Court.⁶ In 2012 additional 'aggravated' contravention offences were added: contravention of an order intending to cause harm or fear for safety, contravention of a family violence safety notice intending to cause harm or fear for safety, and persistent contravention of notices and orders.⁷ These offences carry a maximum of five years' imprisonment.⁸ Criminal offences relating to family violence are considered in Chapter 17.
- ▷ A range of criminal offences that occur in the context of family violence can be heard by the Magistrates' Court, the Children's Court or the County Court—for example assault and damage to or destruction of property. The Supreme Court hears the most serious criminal cases, including family violence homicides and attempted murder.⁹
- ▷ Child protection proceedings involving allegations of family violence are heard in the Children's Court, which estimated that, in May 2015, 94 per cent of protection applications before the court related directly though not exclusively to family violence.¹⁰ The connection between family violence and child protection proceedings in the Children's Court is discussed in Chapter 11; and adolescents who use violence against family members are discussed in Chapter 23.
- ▷ The Victims of Crime Assistance Tribunal is the primary forum for victims of crime seeking financial assistance. It operates as a division of the Magistrates' Court.¹¹ Applications for financial assistance can be made by victims of an 'act of violence', including family violence.¹² More information on VOCAT is provided in Chapter 20.

- ▷ Some civil matters in which family violence can be involved—including tenancy, guardianship, employment and debt disputes—are heard by the Victorian Civil and Administrative Tribunal.¹³ For example, the Guardianship List at VCAT can consider claims of financial abuse, exploitation, neglect or violence by carers against people with disabilities and older people.¹⁴ The Magistrates' Court also hears a range of civil matters (such as financial disputes and personal injury claims) that can involve family violence.¹⁵ Issues relating to VCAT are considered in Chapters 20 and 21.
- ▷ The Neighbourhood Justice Centre is a multi-jurisdictional court that sits as a magistrates' court, children's court, VCAT and VOCAT and can hear a wide range of matters that involve family violence. The Centre's features include infrastructure to support the safety and wellbeing of parties, and an array of legal and non-legal support services, including employment and drug and alcohol services.¹⁶

The greatest volume of family violence matters is heard in the Magistrates' Court. This chapter therefore focuses on FVIOs in the Magistrates' Court. As at the date of writing, with the exception of the Melbourne Children's Court, the Children's Court sits at magistrates' court venues in metropolitan and regional locations across Victoria.¹⁷

The Magistrates' Court and family violence intervention orders

In 2013–14, the Magistrates' Court finalised 35,147 applications for FVIOs.¹⁸

An FVIO is an order made by a court that seeks to protect a person from a family member who is using family violence.¹⁹ An FVIO includes conditions to stop the person against whom the order is made (the respondent) from using family violence.²⁰ If the respondent breaks the conditions of an FVIO the police can charge them with a criminal offence.²¹

An application for an FVIO can be made by the person affected by the violence, by police or, in certain circumstances, another person on the affected family member's behalf.²² Police-initiated FVIO applications made up about two-thirds of all finalised applications in the Magistrates' Court in 2013–14.²³ A police-initiated FVIO can be made without the affected family member's consent, but an order made without the consent of the affected family member may only contain limited conditions. For example, the order cannot exclude the perpetrator from the home.²⁴

If a person needs immediate protection, an application can be made for an interim intervention order.²⁵ An interim order can be made without the respondent being at court or knowing about the order (though it must be served on them once made).²⁶ An interim order will usually last until the first court hearing where the respondent has an opportunity to be present.²⁷ The magistrate may then decide to make a final order or to extend the interim order until the matter is resolved or may refuse the application.²⁸

A magistrate can make a final order if the court is satisfied on the balance of probabilities that the respondent has committed family violence against the protected person and is likely to do so again.²⁹ A magistrate can also make a final order if both sides agree (consent) to the order being made or the respondent has not opposed the order, for example, they did not turn up to the hearing.³⁰ It is up to the magistrate to decide when a final order ends.³¹ If there is no date specified on the order, it only ends if the order is revoked (cancelled) by a magistrate or set aside on appeal.³² If an FVIO ends and a person still needs protection, an application must be made for a new order.

During the term of an FVIO, an application can be made (including by the person protected by the order, or the respondent) to 'vary' the conditions of the order if, for example, there has been a significant change in circumstances since the order was made. An application can also be made to revoke or extend the FVIO.³³

A family violence safety notice is a notice issued by the police to protect a person from a family member who is using family violence until an FVIO application can be decided by the court.³⁴

Specialist family violence courts and services

Two magistrates' courts in Victoria, at Ballarat and Heidelberg, have a special Family Violence Court Division.³⁵ Additional magistrates' courts at Melbourne, Frankston, Sunshine and Werribee are Specialist Family Violence Services courts.³⁶

These venues offer a range of services to support parties involved in family violence matters, such as:

- ▷ trained family violence registrars
- ▷ applicant support workers
- ▷ co-located legal and non-legal support services
- ▷ dedicated police prosecutors for police-initiated applications
- ▷ family violence training for magistrates and staff.³⁷

In addition, the Ballarat and Heidelberg Family Violence Court Divisions have gazetted magistrates and respondent workers and can mandate participation at men's behaviour change programs when making final FVIOs.³⁸ They also tend to hear related proceedings (criminal, crime compensation and other civil matters) when hearing FVIO proceedings (though this is sometimes done in other courts, including the Specialist Family Violence Services Courts).³⁹ The Commission notes that Heidelberg Court has been damaged by flooding and closed since mid-2015. It is expected to reopen in the third quarter of 2016.⁴⁰

Recently some features of the FVCD and SFVS courts have been expanded.⁴¹ First, Frankston and Moorabbin Magistrates' Courts were given the capacity to mandate participation in men's behaviour change programs, and both courts now have family violence registrars and applicant and respondent workers to support that function.⁴² More recently, the Magistrates' Court of Victoria received funding to expand placement of family violence registrars and applicant and respondent workers to all headquarter courts where they were not already in place.⁴³ As of the beginning of 2016, recruitment for these positions is advanced but ongoing. When complete, 13 of 53 magistrates' court venues will have these features.⁴⁴

At date of writing the court was developing best practice guidelines for all magistrates' court support workers.⁴⁵

Support services at the Magistrates' Court

Many magistrates' courts have support services on site to assist court users, including court users involved in family violence matters. In particular, some magistrates' court venues are equipped with the following:

- ▷ *Court Network*. This is a volunteer service that provides onsite support, information and referrals to individuals in 18 magistrates' courts in Victoria. Court Network volunteers 'walk the floor', offering help to people in court when a need is recognised. They also see clients referred from services outside court.⁴⁶
- ▷ *The Court Integrated Services Program and the CREDIT/Bail Support Program*. These are case-management and referral services for people who are on bail or summons and are accused of a criminal offence. Both seek to help with underlying difficulties experienced by the accused—for example, drug and alcohol misuse, homelessness and health problems.⁴⁷
- ▷ *Co-located family violence services*. These services may provide information, advocacy and referrals for court users. These may be specifically funded for court work or may attend their local magistrates' court as part of their case-management role. These include Berry Street and InTouch Multicultural Centre Against Family Violence.⁴⁸

The applicant experience

As noted, the submissions the Commission received and the evidence it heard were largely concerned with the experience of women seeking (or the police seeking on their behalf) FVIOs against male respondents as a result of intimate partner violence. This section is therefore structured to reflect the pathway of family violence victims through the court system.

There are a number of steps between applying for an FVIO and a final order being made. The Commission heard that the court process can be fraught with delays, including delays in having the application heard, serving the application on the respondent, and delays in subsequent hearings for a variety of reasons. The Commission also heard that applications made by police, although facilitating streamlined hearings, can be brought too quickly to court, leaving victims little time to prepare for the consequences of an order.

A common theme raised in evidence before the Commission was that applicants do not understand the court process and that support prior to the hearing, and assistance in understanding the conditions of an order, is lacking. Respondents may also have difficulty understanding the court process and orders. Each of these issues is considered in turn below.

Applying for a family violence intervention order

As discussed above, most applications for an FVIO are made and heard at the Magistrates' Court. FVIO applications involving children, and particularly child respondents, may be heard in the Children's Court.⁴⁹ If a party's residence is within a relevant postcode or the alleged violence occurred within a relevant postcode, the matter can be heard in one of the two Family Violence Court Division courts, at Ballarat and Heidelberg.⁵⁰ Otherwise, the court decides which venue will hear a matter brought under the Family Violence Protection Act having regard to a range of considerations, including the parties' safety, their capacity to attend court, the availability of family violence services at court and case flow considerations.⁵¹ Appeals of FVIOs are usually heard in the County Court.⁵²

As noted above, applications are usually made by the victim, or by police.⁵³ Police applications are considered further below. FVIO applicants commonly attend a magistrates' court to make their application—sometimes having made an appointment with the registrar. They will fill out an information form and be interviewed by a registrar, who on the basis of the information form, the interview, and any accompanying evidence provided by the applicant, will prepare a summary, which forms the basis of the application.⁵⁴

A number of submissions the Commission received drew attention to the complexity of applying for an intervention order and the lack of support available to victims applying on their own behalf.⁵⁵ The information form asks the applicant, among other things, to confirm whether different forms of violence have occurred and what, if any, charges have been laid; to describe the most recent instance, and any previous instances of violence; and to explain why they want or do not want immediate protection.

In its submission the Mallee Family Violence Executive stated:

[T]o apply for a family violence intervention order in Victoria, a person must fill out a 12-page form ... For many applicants, it can be a difficult exercise. The trauma of violent or intimidating behaviour can be debilitating and answering such a comprehensive range of questions in that moment can amplify the problem.⁵⁶

Court Network's Executive Director, Dr Melanie Heenan, observed in her statement to the Commission:

The Information Form is incredibly lengthy ... It is impossible to complete for those women who are illiterate or semi-literate. Even for highly literate people, it is difficult to capture the reasons why they want the order on the form...The Magistrate does have access to the 12 page document, but they are also under time pressure.⁵⁷

The Commission heard that the capacity of registry staff to help applicants complete the form is limited by other demands on their time.⁵⁸ Not all registrars have an equal understanding of family violence, and the availability of other court-based services to assist applicants varies.

Some submissions noted that a lack of assistance for applicants in drafting the application and submitting supporting material can complicate FVIO proceedings. The Federation of Community Legal Centres suggested that requests for 'further and better particulars' are made during the FVIO hearing because applicants 'do not know what to focus on or what is relevant, and may omit important information' when making their application.⁵⁹ The Law Institute of Victoria reiterated this concern:

[T]he paperwork can be confusing for applicants who are upset or overwhelmed. It is common for allegations to be broad and not particularised, leaving AFMs [affected family members] at risk of worthy cases failing to satisfy a magistrate of relevant matters and respondents unable to properly assess the case against them.⁶⁰

The Commission is aware that during its deliberations the Neighbourhood Justice Centre developed an online FVIO application form. At the time of writing, the form is being extended to further high-volume magistrates' courts in Victoria.⁶¹ Among the features of the form are the following:

- ▷ the capacity for applicants to quickly exit the form (for example if a perpetrator enters the room), which is automatically saved, and can be completed at any time within a month
- ▷ information boxes that provide an explanation of questions on the form
- ▷ notification of registrars when the form is submitted
- ▷ an algorithm that collates the responses into a narrative that can be reviewed by a registrar or magistrate and assigns a 'high risk' classification to the form as necessary.⁶²

The Commission also notes that on 25 November 2015 the Magistrates' Court of Victoria, with the support of Victoria Legal Aid, launched a new website for people involved in family violence proceedings. The website provides detailed information for applicants and respondents on what constitutes family violence; how to apply for an FVIO; what parties can expect before, during and after the hearing; and details of relevant support programs. Information about court procedures is presented partly by means of video scenarios.⁶³

The Commission's views on these measures, and potential further measures to improve the application process and 'front-end' case management are expressed in 'The way forward' section.

Initial delays

Some applicants may require immediate protection. If so, an interim FVIO can be made *ex parte* (where only the applicant appears before the court) as soon as possible and, where possible, on the day the application is made.⁶⁴

The Commission's attention was drawn to delays that can occur before an interview with the registrar is secured and/or before the *ex parte* interim hearing takes place. The Commission was told of delays of up to two weeks between the applicant's first visit to court to make an application and the interview with the registrar leading to lodgment of the application.⁶⁵

The Law Council of Australia noted the increased demand for interim orders in its submission:

[I]n many cases it is no longer guaranteed that a person who attends a Magistrates Court, will have their application for an interim order dealt with that same day. In many cases the applicant is asked to make an appointment with court staff, on a later date, at which time they will then complete the application and have the matter heard on an interim basis by a Magistrate. Anecdotally, we understand that appointments are often made a week away from the person's initial attendance at Court in some registries.⁶⁶

Several submissions noted the substantial detrimental effects this initial delay can have for applicants, the most obvious being the immediate, often serious, risk to the applicant's safety and wellbeing.⁶⁷ The Law Council submitted:

It is sometimes difficult for a person living in a violent relationship to safely attend Court the first time. They are often subjected to controlling behaviour from their partner who demands to know their whereabouts at all times, or who covertly tracks their movements. Many people are too frightened to call Victoria Police, and prefer to use the ex parte family violence process. However, those people are placed at risk if they attend Court and the Court is not able to assist them that day. They may find it difficult to attend Court again without their partner's knowledge, or they may face an escalation of the violence because their partner discovers their first (unsuccessful) Court attendance.⁶⁸

Some individuals told the Commission that the visit to court had triggered an escalation in the violence against them.⁶⁹

Evidence shows that for women experiencing intimate partner violence, the period immediately before and after separation is a time of heightened risk. It also shows that an individual's level of fear is a reliable indication of their actual level of risk.⁷⁰ To the extent that applying for an FVIO might signify a victim's recognition that they are in danger and be a definitive step towards ending or altering a violent relationship, the application period will be a time of heightened risk for the applicant. During this period the victim does not have the protection of an intervention order and might not have had contact with police or specialist services.

Another consequence of this initial delay is that women can face 'the uncertainty of not knowing whether ... an order for their protection (and their children) will be made on a final basis'.⁷¹ That uncertainty means making decisions about housing, employment, parenting and personal safety planning will be more difficult.⁷²

One submission the Commission received suggested that, as well as immediate risks, the delay between the incident that led to the application and the lodgment and hearing of the application can lead to the incident's gravity being underestimated:

Unless there are further incidences of family violence between making the appointment and the appointment, there is a danger that the seriousness of the behaviour that initiated the application may be minimized and not be regarded as urgent ...⁷³

The Commission explores various means of addressing delay, and improving case, list and demand management in 'The way forward'.

Serving an application

After an interim order is made the usual next step is a mention hearing, which the respondent can attend.⁷⁴ If an interim order is not required the application is directly listed for a first mention.⁷⁵

Before the first mention the respondent must be served with a copy of the application and summons, and the interim order if made. The summons tells the respondent the nature of the claim and when and where to appear in court.⁷⁶

Serving orders, applications, summonses and other court documents on a respondent is not always straightforward and difficulty serving respondents can be a source of delay. The Commission was told this can be a result of difficulty in locating the respondent and a respondent's attempts to evade service.⁷⁷ Some submissions reported that delays in the service of applications and interim orders have flow-on effects, delaying not just the first mention but all further hearings.⁷⁸

Delays in the service of orders were noted as an area of concern in the coronial inquest into the death of Luke Batty. In his published findings, the former State Coroner, Judge Ian Gray noted, '[D]elays in serving FVIOs resulted in protective measures for Luke expiring'. Judge Gray recommended that 'all FVIOs be served on the Respondent with priority'.⁷⁹

The role of Victoria Police, whose members are responsible for serving orders, is discussed in Chapter 15.

Delays between hearings

At the first mention hearing it is open to the respondent to consent to an FVIO without admitting guilt, in which case a final order can be made at this hearing. This is common. Orders made by consent are discussed later in this chapter, under the heading 'Consent orders'.⁸⁰

If a respondent wants to contest an order, the application is usually listed for a directions hearing. If the application continues to be contested at the directions hearing, a contested hearing will usually be scheduled. The court can make an interim FVIO at any stage in the process.⁸¹

The Commission was informed that further delays can occur between the mention and the directions hearing. Ms Alice Cooney, a former civil advocate at the Melbourne Magistrates' Court, told the Commission that there can be delays of between two to three months between the first mention and a directions hearing.⁸² Contested hearings, where necessary, were then often scheduled for about a month after the directions hearing.⁸³ The Law Council of Australia submitted, '[I]t is not uncommon for final hearings to be listed at least six or more months' after the initial hearing and that the time between the interim order being made and the final hearing in 'some, albeit complex cases ... has exceeded more than a year'.⁸⁴

A November 2014 Resource and Costing Model report produced by the Magistrates' Court of Victoria pursuant to the Commission's request for information noted that the intervention order backlog (for both family violence and personal safety orders) 'has experienced the fastest rate of growth in the Court', 'dampening the timeliness rate and exerting upward pressure on delays'.⁸⁵ According to the report, 19 of every 20 intervention orders were finalised within six months (with this proportion remaining relatively stable over time), but there was an increase in the number of matters pending for more than 12 months.⁸⁶

The Magistrates' Court of Victoria *Family Violence Operating Procedures* provide some indication of typical time lines. The procedures state that applications for variation, revocation or extension of an intervention order should ideally be listed within seven to 14 days from the date the application is filed,⁸⁷ and that a directions hearing is generally listed for four to six weeks after the mention date.⁸⁸

Improving management of demand, cases and lists is considered in 'The way forward' below.

Delays caused by respondents

The conduct of respondents can delay proceedings. Delays can be caused by the perpetrators lawful assertion of procedural rights; for example, it is not uncommon for the respondent to seek 'further and better particulars' about the application and to be given the opportunity to consider those particulars. There may need to be an adjournment to allow the applicant to respond to that request.⁸⁹

However, the Commission was informed that there are instances where perpetrators abuse legal processes in order to delay the final hearing or pressure the applicant to withdraw their application. A common example cited is when the respondent applies for their own intervention order (called a 'cross-application') without legitimate reasons.⁹⁰

Many submissions from legal and community support services and individuals remarked on the adverse effects on the victim caused by cross-applications, among them the following:

- ▷ delaying and complicating proceedings (including by initiating proceedings in a different court venue)
- ▷ limiting a victim's readiness to report contraventions of orders for fear they might also be found in contravention
- ▷ imposing an unnecessary onus on victims to defend themselves, their conduct or their version of events
- ▷ limiting victims' access to legal services as a result of conflicts of interest
- ▷ contributing to a misperception that the violence between family members is usually mutual.⁹¹

The Commission was informed of a 2009 New South Wales study that found that matters involving cross-applications were much more likely than sole applications to result in the withdrawal of the initial application and that women involved viewed the cross-applications as an 'extension of the abuse they were seeking protection from'.⁹²

Perpetrators of family violence can also use other delaying tactics. For example, they can fail to appear at hearings,⁹³ evade service of orders, seek adjournments at short notice, apply for a rehearing in the Magistrates' Court or an appeal in the County Court without good reason, or make false or misleading statements in court.⁹⁴ In some criminal family violence proceedings in the Magistrates' Court, they may also have a right to withdraw consent to the Magistrates' Court's jurisdiction (requiring the matter to be heard at a higher court) at a late stage, delaying their trial.⁹⁵

The Commission heard that in some cases, these tactics are part of the violence perpetrated against the victim and are calculated to terrorise, disempower, humiliate and undermine the victim's attempts to protect herself (or himself) and other family members. In its submission, Women's Legal Service Victoria explained the distinction between legitimate litigation practices and abuse of process:

Procedural fairness is a key component of the family violence jurisdiction. We recognise that appropriate mechanisms must be available in the intervention order process for perpetrators to challenge allegations of family violence, make cross-applications and seek review of judicial decisions. There is, however, a category of cases where court mechanisms are abused by the perpetrator for the purposes of continuing to exercise power and control over the victim ...

Often these cases fall short of satisfying the high threshold of vexatious litigant protections yet they are cases that absorb an enormous amount of court time including the time and resources of Magistrates, court staff and duty lawyers.

It is difficult to measure the impact this course of action has on victims who are forced to come back to court on multiple occasions to justify the need for an intervention order. It requires them to tell their story multiple times to multiple Magistrates, court staff and duty lawyers. The trauma and feelings of powerlessness to stop abuse perpetrated through the system have a profound effect on the physical and emotional well-being of victims as well as their ability to heal and recover from their experiences.⁹⁶

A number of proposals were put to the Commission in relation to reducing the opportunities for perpetrators to abuse the court process, among them the following:

- ▷ require that the prospective cross-applicant seek leave of the court to make a cross-application⁹⁷
- ▷ prohibit cross-applications by consent and require family violence registrars to more rigorously assess the merits of an application before filing it⁹⁸
- ▷ improve front-end FVIO application case management to ensure that applications are complete and properly prosecuted (which will ensure that a respondent has limited bases on which to claim that the case against them is unfair, unclear or incomplete).⁹⁹

In 2013–14 the County Court of Victoria heard 66 FVIO appeals from the Magistrates' Court and between July 2014 and May 2015 it heard 124 appeals.¹⁰⁰ In its submission, the County Court recommended a review of the appeal process in order to obviate abuse of process by respondents or appellants:

Appeal processes can sometimes be used by the alleged offender as a mechanism to further harass and intimidate a victim. In some cases the alleged offender (appellant) lodges an appeal and does not appear at the pre-appeal mention or appeal, but the victim is required to do so. The Commission should explore the option of legislative change to give the court the power to strike out the IVO appeal at the pre-appeal mention where the appellant does not appear. Such processes would need to ensure procedural fairness. For example, if the court was given such a power the pre-appeal mention should be adjourned while the appellant is served with notice that the appeal will be struck out if the appellant fails to attend court for the next mention date.¹⁰¹

The Commission notes that there are means by which courts can compel the attendance of respondents in FVIO hearings. Section 50 of the Family Violence Protection Act permits magistrates or registrars to issue warrants for a respondent's arrest if they believe on reasonable grounds that this is necessary to ensure the safety of the affected family member, to preserve the affected family member's property, to protect a child subjected to family violence by the respondent, or to ensure that the respondent attends court at a mention date.

Delays related to parallel proceedings

In some cases delays can occur because other proceedings are happening at the same time in another court or in another jurisdiction of the same court. Parallel proceedings create delays because of both technical and procedural obstacles. The Magistrates' Court database has limited capacity to identify parallel proceedings within the Magistrates' Court and is not connected to other courts' databases. This means that magistrates are not automatically made aware of parallel proceedings involving one or both of the parties to an FVIO application.

Magistrate Noreen Toohey, the Regional Coordinating Magistrate for Sunshine/Werribee, told the Commission that when a magistrate is hearing an FVIO matter it is sometimes unclear whether parallel criminal charges have been listed for trial or pre-trial proceedings, or whether criminal charges are pending but have yet to be filed. Magistrate Toohey recounted having to adjourn directions hearings in FVIO matters in order to ascertain the status of criminal proceedings.¹⁰²

Dr Karen Gelb reported to the Commission that one police prosecutor she had interviewed during her observation of magistrates' courts, noted that FVIO briefs are not always comprehensive. She noted that the lack of adequate information in some applications, especially in relation to parallel proceedings and associated orders, was a source of frustration for magistrates she interviewed. The concern for magistrates was twofold: they did not want to make an order that would be contrary to an order already in existence (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.¹⁰³

Dr Gelb suggested to the Commission:

Better information is needed in family violence matters. Police need to improve their collection of information from affected family members so that police prosecutors can be fully briefed about the circumstances of both the affected family member and the respondent to be ready to answer the magistrates' questions at court. Arrangements need to be implemented to facilitate sharing of information between the Department of Health and Human Services and the courts, and among the courts, on matters involving child protection issues and family law issues. This would reduce the number of matters that need to be adjourned for follow-up investigation or for 'further and better particulars'.¹⁰⁴

The Commission's views on measures to improve the preparation of applications are covered in 'The way forward' below. Information sharing more broadly is considered in Chapter 7.

Magistrate Toohey told the Commission that adjourning FVIO proceedings might be inevitable if a criminal trial or plea is forthcoming, since the victim and the accused have different rights and roles in criminal and civil jurisdictions.¹⁰⁵ Criminal guilt and civil liability are subject to different standards of proof and carry different sanctions—notably, imprisonment is a sanction for some criminal offences.¹⁰⁶ A respondent who knows they are, or will soon be involved in criminal proceedings, might be reluctant to give evidence in an FVIO proceeding that could jeopardise or complicate his criminal case. Further, an applicant who is a witness in a criminal proceeding involving the respondent to her FVIO application, might also be reluctant to give evidence in her FVIO proceeding before the criminal proceeding is finalised.¹⁰⁷

Adjourning FVIO proceedings until a criminal matter is finalised can result in a significant delay before a final order is made.¹⁰⁸ Prosecutions for summary offences usually must begin within 12 months of the offence occurring. Indictable offences are bound by different time limits, depending on the offence.¹⁰⁹ Deputy Chief Magistrate Felicity Broughton told the Commission that the period between an offence occurring and criminal proceedings concluding can vary widely but might well amount to 'many, many months and on occasions a year'.¹¹⁰ Ordinarily, if an indictable offence is not tried summarily there must be a committal proceeding, and (subject to the outcome of the committal) the matter must be set down for a jury trial.¹¹¹ This amounts to an extended period of uncertainty for the applicant.

In his published findings following the inquest into the death of Luke Batty, Judge Gray identified delays in the hearing of criminal proceedings related to family violence as a concern. Gregory Anderson, the perpetrator in that case, was at one point charged with making a threat to commit serious injury and a threat to kill and contravening an FVIO. These charges had not been heard more than a year later, when Mr Anderson killed his son. Judge Gray described this as a 'very significant delay' that 'represented a lost opportunity to bring Mr Anderson to account, sentence him in respect of his offences (if they were proven), potentially place him on correctional orders and potentially engage him with mental health treatment services'.¹¹²

Proceedings in other civil jurisdictions can also be delayed in the absence of a final FVIO. For example, VCAT's capacity to terminate a tenancy agreement and compel the landlord to enter into a new agreement with the protected party to an FVIO applies only when a final order is in place.¹¹³ Similarly, VOCAT has specific powers to suspend its consideration of an application if civil and criminal proceedings are under way or about to begin and are reasonably likely to resolve within six months.¹¹⁴ Protraction of legal proceedings also increases legal costs. Victoria Legal Aid is resourced to assist with certain matters and aspects of the process but not all.¹¹⁵ Many women told the Commission about the prohibitive costs of legal services and the financial consequences of pursuing court matters.¹¹⁶ This is discussed below, under the heading 'Legal services'.

The Commission notes that in December 2014 the Magistrates' Court, working with Victoria Police and Victoria Legal Aid, introduced a model for the 'fast-tracking' of criminal family violence matters. The model commenced operating in Dandenong Magistrates' Court and has since been expanded to several other venues including Ballarat, Ringwood, Broadmeadows and Shepparton.¹¹⁷ At Dandenong Magistrates' Court for example, all charges arising out of family violence incidents are listed within the following time lines:¹¹⁸

- ▷ if the accused person is on bail, one week between the release on bail and the first listing of the charges
- ▷ if the accused has been summonsed, four weeks from the date of issue of the summons to the first listing of the charges
- ▷ four weeks between the first and second listing
- ▷ four weeks from the second listing to the contest mention
- ▷ four weeks from the date of the contest mention to trial.

At the time of writing, the model is yet to be formally evaluated. The Commission has heard, however, that the model is showing great potential to limit delays between the occurrence and final determination of a criminal offence.¹¹⁹ By decreasing delays in criminal proceedings, this approach could also reduce delays in parallel civil proceedings—both FVIO proceedings and, for example, matters in VCAT and VOCAT.

A consistent theme in the evidence before the Commission concerned the need to pursue a ‘one judge/court, one family’ approach, under which the same judicial officer has oversight of a matter for its duration.¹²⁰

The Magistrates’ Court Family Violence Operating Procedures state that criminal offences arising from or including allegations of family violence and civil proceedings should be listed before the same magistrate on the one occasion wherever practical and appropriate.¹²¹

The Commission gives its view on ways to expedite and consolidate proceedings in ‘The way forward’ section of this chapter.

Applications made by police

Police-initiated FVIO applications made up 66 per cent ($n=23,216$) of all finalised applications to the Magistrates’ Court in 2013–14.¹²² The Commission notes that some of the difficulties and delays experienced by applicants before the court hearing—for example, resulting from difficulty comprehending or filling out the application form and serving the respondent—can be alleviated when police make the application.

The Commission also heard, however, that there can also be problems caused by the haste with which police applicants sometimes bring FVIO applications before the court. Professor Leigh Goodmark, from the Francis Carey School of Law at the University of Maryland in the United States, told the Commission about the increased use of mandatory arrest powers and ‘no-drop prosecutions’ in relation to intimate partner violence in the US. In some US states police who attend a family violence incident where there is probable cause to suspect violence has occurred must make an arrest and when there is sufficient evidence of intimate partner violence, prosecutors must prosecute.¹²³

Professor Goodmark said this has resulted in cases where women are rapidly, sometimes involuntarily, drawn into the criminal justice process and exposed to legal consequences for not cooperating with prosecutors. She observed that, although this approach was designed to deliver a fast and powerful response to family violence, it has had the perverse effect of alienating and diminishing those it is seeking to protect and vindicate: ‘When we do that we essentially put the State in the shoes of the batterer by allowing the State to make decisions that control her life in the way that the batterer was doing previously’.¹²⁴

As noted, our FVIO process is a civil one (although contravening, or ‘breaching’ an FVIO is a criminal offence). However, the Commission received evidence that reflects in part the situation Professor Goodmark described.

Family violence safety notices are issued by police in Victoria and can take effect within hours of a family violence incident. Police-initiated FVIO applications can be made without the affected family member’s consent and can be issued within a few days of a family violence incident. Women’s Legal Service Victoria provided a case study to the Commission that illustrates some of the unwanted consequences of such an accelerated process:

On Sunday, Sam pushed Angie into a cupboard door and she called the police. Angie was taken to hospital with broken ribs and bruising. The police removed Sam from the house and Angie’s mum came over to look after the baby. A police officer visited Angie in hospital (she was still there at midnight) and was advised that she would have to go to Court on Monday because a safety notice had been taken out – the police officer explained that they were taking out an intervention order against Sam.

Angie knew very little about intervention orders. She had heard of them but didn’t know what it would mean for her and even though she had been at hospital until 2am on Monday morning, the police officer had told her and given her a piece of paper that said she had to be at court on Monday at 9.30am. The hearing notice said her hearing would take five minutes. She had mixed feelings about Sam – she was frightened of him and wanted the violence to stop but she also didn’t want him to be unable to come home and spend time with their daughter.¹²⁵

The Commission also heard evidence that a significant proportion of first appearances at court are adjourned because of a lack of preparation by police. In her report to the Commission, Dr Gelb noted that at the eight magistrates' courts she observed, an average of 14 per cent of matters were adjourned without any orders imposed and a further 11 per cent were adjourned with interim orders.¹²⁶ Dr Gelb stated:

Most of the adjournments ... seemed to be needed to allow police to conduct additional investigation for the civil application. At times this involved providing further and better particulars about the incident – perhaps when police had not had sufficient time with the victim to elicit the full details of what happened. Other times the police prosecutor or civil advocate was not able to inform the magistrate about the affected family member's wishes with regard to the intervention order. For example, if the police informant had not spoken to the victim since the initial police report, then it could be unclear to the prosecutor if the conditions sought by police would be appropriate. In these circumstances, the matter was adjourned to allow the police to contact the victim to ascertain her or his wishes.¹²⁷

Ms Melinda Walker, an accredited criminal law specialist who appeared at the Commission's hearings, also noted a lack of preparation by police in criminal proceedings for FVIO contraventions. In her statement, Ms Walker explains:

... I have observed an increase in police charges for breach of IVOs. However, although the police lay the charges, they often do not properly investigate and gather evidence sufficient for a prosecution. This is more obvious since the introduction of the *Criminal Procedure Act 2009* (Vic) and its requirement for the preparation of a preliminary brief. Police may lay 35 charges of breach in relation to 35 text messages, for instance, but they don't collect the evidence of the text messages. I have had many cases where charges end up being withdrawn because police informants fail to gather evidence in an admissible form. In those cases where the defendant has been in custody and then released after the withdrawal of the charges for want of prosecution there is a realistic risk that the accused will blame his victim for what happened.¹²⁸

A victim of family violence may face a range of concurrent legal issues, including family law, child protection, property or contractual issues, which also need to be resolved. In their capacity as FVIO applicants, the police may have limited capacity to assist with these related issues.

We discuss our view on police applications and ways to ensure a consistent level of preparation in the sections titled 'Applications made by police' and 'Managing lists'.

Understanding the court process

The Commission heard that a general lack of support and guidance for parties before they attend a hearing contributed to heightened uncertainty and anxiety.¹²⁹ The Commission was also informed that, in addition to heightening the applicant's anxiety, a lack of pre-hearing support can unfairly influence court outcomes.¹³⁰

Loddon Campaspe Community Legal Centre provided to the Commission the results of a recent survey of 190 women whom the centre supported in obtaining intervention orders in rural and regional magistrates' courts.¹³¹ Many of the women surveyed said they had a poor understanding of court processes or of what would be expected of them once they arrived in court:

We [the applicant and her mother] went in there as complete amateurs, knew nothing about the system, knew nothing about anything and that's what it's been like all the way through. We just clawed our way through in the dark.¹³²

A 2013 Victims Support Agency survey of the experiences of victims and witnesses of crime (a majority of whom were victims of and witnesses to family violence-related offending) found that more than two-thirds ($n=46$) of respondents ranked their knowledge of court processes as 'very low'. The survey authors noted that this unfamiliarity, and the fear and uncertainty it creates, can lead to the withdrawal of proceedings because a victim feels unprepared to testify.¹³³

Attending court

Concern about the safety and wellbeing of applicants and witnesses in court before and after hearings and about the unsuitability of courts for family violence matters were among the most prominent themes in submissions the Commission received. It is an issue on which the judiciary, court staff and administrators, lawyers, service providers and court users all seem to agree.

Dr Heenan described the scene at the Melbourne Magistrates' Court prior to parties being called into court for their FVIO hearing as follows:

Women are required to assemble on level 6 where the court room and legal services are located. There are people everywhere; the waiting area is completely insufficient for the number of people attending court. Women sit on the floor nursing their babies and toddlers. Women's Legal Service and Legal Aid provide advice to women from a tiny alcove. Applicants are told to wait in the alcove area and respondents are told to wait down the other end of the floor, but the applicants and respondents are in direct line of sight of each other. Many women are terrified and have to sit there for hours waiting for their matter to be called on whilst being directly exposed to the perpetrator. Some respondents behave in a threatening and intimidating manner whilst waiting for the matter to be heard which further exacerbates the anxiety of the applicant ... You can see the anxiety levels rising in the waiting area as the day wears on ... For some women, the longer they sit in the waiting area and reflect on things, the more they see taking out the intervention order as the least safe option for them, thinking it will only inflame the perpetrator.¹³⁴

The Commission heard that entrances to magistrates' courts are often poorly designed. In most courts applicants and respondents in all cases listed for that day will be attending court at the same time. This means long queues at the court entrance.¹³⁵ The presence and extent of security varies between courts, and existing security might not be able to supervise the area beyond the court entrance, so crowding at this point creates the potential for unsupervised contact between applicant and respondent:

There have been cases where things go on out front of court building, but security at the door don't do anything as it isn't their job. The car park is at the back of the court, out of sight of security. Asking lawyers to walk them to the car is putting lawyers at risk also. The Court just tells you to contact the police, but police have no one there to do it ...¹³⁶

The Commission also heard that the design of many court entrances did not contemplate the use of modern security screening tools (such as X-ray scanners and metal detectors) and in many cases no such screening occurs.¹³⁷ Mr Chris Casey, a Senior Lawyer at the Loddon Campaspe Community Legal Centre, told the Commission of an incident in which a man had taken a knife into the waiting area of a regional magistrates' court in his bicycle basket. Mr Casey noticed the knife more than an hour later, whereupon police attended.¹³⁸

The Commission visited a number of regional and metropolitan courts throughout Victoria and observed courtrooms with inadequate bathroom facilities; crowded and unsafe waiting areas; conflicts between parties that required the intervention of security; and court proceedings continuously disrupted by loudspeaker announcements.¹³⁹ The Commission notes that in its 2006 review of family violence laws, the Victorian Law Reform Commission identified safety at courts as a major issue:

[M]any victims said they feared for their safety in the court building when seeking an intervention order. They reported feeling unsafe when entering or exiting the courtroom, when waiting for their matter to be heard, or in the courtroom itself.¹⁴⁰

The most frequently raised concern was that a lack of separate waiting space in some courts exposes applicants to abuse by respondents, or by their family or friends, while they are waiting for their matter to be called.¹⁴¹

The desire for separate waiting areas also extended to separate entrances, and particularly exits, to the courtroom.¹⁴²

Long queues are also common at court registry counters. In a number of courts registry counters are shared by applicants and respondents and can also be used by multiple services—including, for example, legal and family violence specialist services located within the court. This makes it difficult for service providers to maintain confidentiality with their clients and puts victims at risk of being in the same queue as the respondent. Registry counters are sometimes exposed to general waiting areas and, when there is insufficient time or space for a private meeting with registry staff, court users can be compelled to divulge traumatic personal information in the view and earshot of others.¹⁴³

Legal representatives, usually from Victoria Legal Aid or a community legal centre and sometimes VLA-funded private practitioners, are on site at many magistrates' courts. The Commission was advised that a number of courts do not have sufficient designated space for the provision of legal advice. This can compromise the confidentiality of the advice provided or impede a frank and complete exchange between client and lawyer. It was said that lawyers at some courts were obliged to give legal advice outside, in parking areas or under trees adjacent to the court building.¹⁴⁴

Once at court, people often have to wait a long time before their matter is heard.¹⁴⁵ Some magistrates' courts do not have designated waiting areas for applicants and respondents or these areas are not designed to offer privacy for applicants. Confrontations between applicants and respondents waiting for an FVIO application to be heard are not uncommon:

Serious incidents occur in the court surroundings with some regularity. Lower order harassment and intimidation is commonplace eg respondents, their friends and relations eyeball applicants and make threats and harassing comments.¹⁴⁶

The psychological and practical effects of long waits at court before a hearing can be significant for the victim:

For his hearing, I had to wait in the same court room for six hours. During this period, he tried to intimidate me by threatening me with gestures, mouthing threats and insults, sitting directly in front of me or glaring at me.¹⁴⁷

Where women are informed, often by police that they need to be at court at 9.30am on a Monday morning (or other nominated day), women assume this to mean that they have an appointment for 9.30am. They do not know that in all likelihood they will be at court for most of the day. So, many women come without nappies for their babies or toddlers, without lunch, without having made arrangements for school pick up of older children. As their day in court drags on, and on, women become even more anxious about being at court as the demands of their role as mother begin to press in on them.¹⁴⁸

The Commission was informed that some magistrates' courts do not have adequate child-care facilities, which can expose children attending court with their parent or family members to fear and trauma.¹⁴⁹

In its submission Court Services Victoria suggested that there are limits to what can be done to improve security in many court buildings because of the buildings' age,¹⁵⁰ although there are 'opportunities to improve the facilities at the remaining government owned regional and suburban courts and leased facilities'.¹⁵¹

The Magistrates' Court of Victoria and the Children's Court of Victoria recommended that resources be provided so that court buildings can be 'safe, comfortable and accessible for parties in family violence cases'¹⁵² and that there be '[i]nvestment in security and safety measures to ensure all court buildings and related off site facilities are safe environments'.¹⁵³

The Commission notes that the Victorian Government has allocated \$2.75 million to the Magistrates' Court to create safe waiting areas in more courts, to the extent that current infrastructure permits.¹⁵⁴ It has allocated an additional \$1.5 million for minor works and arrangements to accommodate specialist court staff and Court Integrated Services Program staff.¹⁵⁵ The court has conducted a preliminary assessment of a non-exhaustive range of issues at 20 courts, and estimated that approximately \$13 million would be required to address the main issues identified at these venues (additional venues requiring substantial works were not included in this assessment).¹⁵⁶

In addition, a broader safety audit of Magistrates' Court venues has been conducted. Fifteen venues were visited and the remainder subject to a 'desktop' audit. Stakeholders were also consulted as part of this audit.¹⁵⁷

The Commission's views on improving court infrastructure are expressed below in 'The way forward' section below.

At the hearing

Whether an application is initiated personally or by police, the applicant is generally expected to be physically present in court with the respondent (whom the applicant might have gone to great lengths to leave, escape or avoid) and to give evidence in the respondent's presence if required.¹⁵⁸ As a number of submissions noted, the hearing can be a very difficult experience for victims of family violence:¹⁵⁹

Here's how the victim sees this process: 'it's not what they say, it's how they say it', 'it can be the way he looks at me', 'I'm frightened and feel I will lose it on the stand if he shouts at me', etc ... After years of abuse, just being in the same room as the perpetrator, irrespective of how many Police Officers are in the same room, it is a terrifying experience. Just being confronted by the perpetrator once more ... When certain words or phrases have been instilled into the victim's mind, the perpetrator only has to make sure that is said to the victim and they feel intimidate[d], harassed, terrified out of their minds ... The idea of a Protection Order is to make the victim feel safe, but to get it the victim has to put themselves through hell again.¹⁶⁰

Some submissions stressed the importance of a magistrate's language, manner and behaviour in court, to ensuring that parties feel respected and heard, that they understand the court process, and that their situation and its relationship to the dynamics of family violence are properly understood.¹⁶¹ The Judicial College of Victoria submitted:

For victims, for whom coming forward to apply for an intervention order may have taken many years and much courage, a magistrate who responds compassionately and understands the nature and complexities of family violence can help her feel confident that it has been a process worth undertaking. If the victim feels she is being dismissed or misunderstood by the court, she may not trust the court to help in the future.¹⁶²

Some submissions praised the approach of particular magistrates.¹⁶³ Others, however, described negative interactions with magistrates. A study conducted by the Centre for Rural and Regional Law and Justice found as follows:

[A] number of women reportedly felt intimidated by the magistrate, being 'talked down to' or being told off for talking. Negative interactions with magistrates minimised women's experiences, mirrored prior experiences of abuse and reinforced feelings of disempowerment.¹⁶⁴

Court users and legal services described instances of magistrates communicating in abrupt, dismissive and disrespectful ways and trivialising violence, especially non-physical violence.¹⁶⁵ The Commission was told that some magistrates have asked victims why they let perpetrators into the house or why they returned to perpetrators¹⁶⁶ and others have spoken to applicants in a critical or frustrated manner, reminding victims of their experience of violence.¹⁶⁷

The magistrate dealing with an FVIO matter can also change during the course of hearings (and with them, the approach taken or level of family violence expertise)—and, of course, different judicial officers may be dealing with different aspects of the same matter. In addition, changes of location and other personnel, and the need to re-tell one's story multiple times or to correct misunderstandings caused by limited information sharing can greatly exacerbate the stress associated with court hearings for victims of family violence.

The Commission notes that section 69 of the Family Violence Protection Act allows for FVIO proceedings 'to be conducted from a place other than the courtroom by means of a closed circuit television or other facilities that enable communication between that place and the courtroom'.¹⁶⁸ Section 360 of the *Criminal Procedure Act 2009* (Vic) also provides for alternative arrangements for giving evidence in a number of circumstances—including in matters involving family violence as defined by the Family Violence Protection Act.

The Commission was informed that the Magistrates' Court and Women's Legal Service Victoria have introduced a video-conferencing pilot that allows affected family members at high risk to attend court from a confidential remote location, preventing potential contact with perpetrators and improving access to justice for women in regional or remote locations.¹⁶⁹

The Commission also notes that \$14.7 million has been provided to the Magistrates' Court to upgrade its videoconferencing facilities. The upgrade will involve the installation of 148 video-conferencing units in courtrooms across Victoria. It is expected that all venues will be equipped by March 2017.¹⁷⁰

Concerns about the conduct of some magistrates, particularly in FVIO proceedings, are exacerbated by perceived difficulties in raising these concerns with the court. For example, the recent Deakin University *Landscapes of Violence* report on women experiencing violence in rural and regional Victoria noted that some advocates were reluctant to proceed with complaints on their own behalf or a client's behalf, 'regardless of whether they believed others could substantiate' the complaints, because they 'feared the possible repercussions', and were worried that 'they and their future clients might encounter animosity from court officials'.¹⁷¹ Some workers and lawyers felt that court user meetings were a 'comfortable alternative space in which to raise concerns', but others felt they were not an appropriate forum.¹⁷² Some victims of family violence who had made official complaints found the complaints process 'disempowering and the outcomes frustrating'.¹⁷³

The Commission notes that the Magistrates' Court's complaints policy aims to effectively handle complaints (where possible, at a local level) in a fair, prompt and impartial manner, and to incorporate feedback into its planning and improvement efforts.¹⁷⁴

We also note that at date of writing, the Judicial Commission of Victoria Bill 2015 (Vic) is being debated in the Victorian Parliament. If passed into law, this would amend the *Constitution Act 1975* (Vic) to establish a Judicial Commission with the authority to hear complaints about the conduct of judicial officers and VCAT members, whether such complaints are from members of the public (including, but not limited to legal practitioners) or via referral from the Attorney-General.¹⁷⁵

The conditions of intervention orders

Section 81(1) of the Family Violence Protection Act provides that the court may include 'any conditions that appear to the court necessary or desirable in the circumstances' when making an FVIO. Conditions that can be included are listed in the Act, with the proviso that they do not limit the conditions that can be made under section 81(1).

The Commission heard that in the context of a busy family violence list there might be a tendency for magistrates to treat this list as exhaustive, rather than tailoring conditions to the parties' circumstances.¹⁷⁶

The Commission was told that the language used in orders can be confusing and this can affect parties' ability to exercise their rights and meet their responsibilities under an order.¹⁷⁷ This difficulty arose in the inquest into the death of Luke Batty. In that case, the operation of exceptions to conditions excluding Gregory Anderson from contact with Luke and his mother, Ms Rosie Batty, was unclear. Judge Gray noted:

There were ambiguities in the successive FVIOs made against Mr Anderson. The language used was unclear ... I agree with Magistrate Goldsbrough's evidence that there is room for improving the drafting of the orders. It is important that [an] FVIO be written in a simple and unambiguous manner. Greater clarity would assist victims, offenders and police officers to understand what the orders mean and how they are to be interpreted and enforced.¹⁷⁸

The Commission's views on judicial training in the nature and dynamics of family violence are considered in Chapter 40. Strategies to make better use of the time and skills of the magistracy, and improve the language of intervention orders are considered in 'The way forward'.

Orders made by consent

The Commission was told that a high proportion of FVIOs are made by consent; that is, the terms of the order are agreed by the parties (often through their representatives) and then proposed to the magistrate.¹⁷⁹

If the respondent contests an FVIO application, the court must satisfy itself on the balance of probabilities that the respondent 'has committed family violence against the affected family member and is likely to continue to do so or do so again'.¹⁸⁰ However, if the parties mutually consent to the orders sought, the court may (unless the respondent is a child) make the order agreed upon without satisfying itself that family violence has occurred or is likely to continue or recur, and without the respondent admitting to any or all of the allegations set out in the application.¹⁸¹

The court has discretionary power under the Act to test the basis of orders sought (even if they are agreed on by both parties). It can elect to conduct a hearing into the particulars of the order sought if it is in the interests of justice to do so, and can refuse to make the order sought if it believes that it may 'pose a risk to the safety of one of the parties or a child of the affected family member or respondent'. The court is also required to consider whether there are any children who are family members of the affected family member or respondent, who may have been exposed to family violence, and may on its own initiative add the child to any orders made or make separate orders in respect of the child.¹⁸²

Information provided by the Magistrates' Court of Victoria in response to a request for information from the Royal Commission showed that in 2013–14, 13,228 intervention orders were finalised by consent in the Magistrates' Court and 597 in the Children's Court.¹⁸³ Ms Leanne Sinclair, Family Violence Program Manager at Victoria Legal Aid, told the Commission that 'the greater majority of [FVIO] matters in which duty lawyers assist would resolve by consent without admissions'.¹⁸⁴ Acting Inspector Paul Rudd, Officer in Charge, Melbourne Prosecutions Unit, Victoria Police, told the Commission that orders made 'by consent without admissions on a first mention [amount to] around about 50 per cent, give or take 10 per cent'.¹⁸⁵ Former police lawyer/civil advocate Ms Alice Cooney, stated that 'the jurisdiction is heavily reliant on the consent without admission framework, including both to an interim order and a final order'.¹⁸⁶

Dr Gelb observed that in the eight Victorian magistrates' courts she attended final orders were made by consent in, on average, 69 per cent of all cases where respondents were present, 'with only a small proportion of matters being adjourned for contest'.¹⁸⁷ Dr Gelb added that on the days of her observations at court:

There seem[ed] to be no (observable) specific relationship between the nature of the conditions imposed and the willingness of the respondent to consent to the order. Consent orders were observed in matters where limited conditions were imposed, in matters where comprehensive conditions were imposed and in matters where a men's behaviour change program order or condition was attached.¹⁸⁸

Many members of the judiciary, lawyers and service providers encourage the making of orders by consent.¹⁸⁹ This process reduces the volume of court work to some extent and for the applicant, it reduces the duration and expense of the legal process, limits their obligation to present or give evidence, and expedites the attainment of final orders, with the certainty and safety that brings.

The Commission did, however, hear some evidence that in busier lists, the time available to scrutinise orders by consent is reduced.¹⁹⁰ Mr Casey noted that they are often resolved in a matter of minutes, involving a brief exchange advising the magistrate that the matter has resolved by way of consent without admissions, and the magistrate accepting this statement and making the order.¹⁹¹ Mr Casey then qualified this evidence, noting that the example he provided was less typical under the Family Violence Protection Act and in the local regional court where Loddon Campaspe Community Legal Centre lawyers often appear.¹⁹²

Ms Sinclair observed that the nature of consent order proceedings:

... varies greatly, especially if we look at some of our specialist courts ... [where] a lot more time is spent by the magistrate reading through the terms of the order, especially where there are children involved. Some magistrates will comment that children need to be raised in a safe environment, that some of this behaviour complained of is characterising what is family violence, that family violence has a very broad definition, and will go through accountability, stress the importance of compliance with the orders, setting out the penalties and the criminal repercussions for breach of an intervention order. Some magistrates will talk about variations to orders and how that's to take place. In cases where there are safe contact orders which are being made, so the parties may be resuming a relationship, some magistrates will then talk about referrals to services and the like. But most certainly I do agree that in some courts it is a very abbreviated service which is being received.¹⁹³

Lay witness, Ms 'Anna Jones' recalled the following experience of her application for an extension of an FVIO:

The result of the contested hearing in 2015 was that the Magistrate granted a 12 month extension of the existing Intervention Order. The Magistrate declared a number of times throughout the hearing that he was 'not really prepared to adjudicate' the matter and that he would leave it to my Legal Aid representative to direct the process. Although I was technically 'successful', I am very disappointed by the Magistrate's conduct of the proceeding.¹⁹⁴

The Commission notes that in Victoria, mediation is used as part of the personal safety intervention order process, which applies when a person fears for their safety because of the behaviour of another person who is not a family member.¹⁹⁵ If the court considers mediation appropriate, it can direct parties to attend a mediation assessment.¹⁹⁶ Because the context giving rise to the mediation will most often involve violence or threatened violence, safeguards exist for assessment of the suitability of mediation and for the safety of the alleged victim.¹⁹⁷

A review of the pilot project established with the Dispute Settlement Centre of Victoria and the Magistrates' Court of Victoria for non-family intervention order cases in 2002–03 found high levels of participant satisfaction with the mediation process and a reduced average disposition time for intervention order cases.¹⁹⁸

A mediation process is incorporated in the FVIO process in the Australian Capital Territory, where the registrar will refer parties to mediation in certain circumstances.¹⁹⁹

In 2010 the Australian and New South Wales Law Reform Commissions recommended that jurisdictions permitting the use of mediation in FVIO processes proceed with caution. The Commissions' report noted the importance of safety during the negotiation process and the need for adequate court officer training in relation to risk assessment.²⁰⁰ They recommended as follows:

Recommendation 23–1 Where state and territory family violence legislation permits the use of alternative dispute resolution in family violence protection order proceedings, such legislation should provide that violence cannot be negotiated or mediated.

Recommendation 23–2 State and territory legislation and policies for alternative dispute resolution in family violence protection order proceedings should provide for comprehensive screening and risk assessment mechanisms.

Recommendation 23–3 State and territory governments, courts, and alternative dispute resolution service providers should ensure that, where alternative dispute resolution is permitted in relation to family violence protection order proceedings, education and training is provided to judicial and court officers and alternative dispute resolution practitioners on:

- (a) the nature and dynamics of family violence; and
- (b) the conduct of alternative dispute resolution processes in the context of family violence.²⁰¹

The Family Violence Protection Act does not provide for the use of alternative dispute resolution in the Victorian FVIO process.

Permanent and self-executing orders

The Commission heard about two proposals for amending the way orders operate. The first is that they should operate 'in perpetuity', so that—rather than, for example, remaining in force for 12 months, they remain in force indefinitely unless and until a party applies for a withdrawal or variation. Orders operate in this way in New Zealand.²⁰² Among the perceived advantages are that the people protected by the order do not need to return to court after a certain time has elapsed to seek an extension or variation, and risk coming into further contact with the perpetrator.²⁰³ The indefinite status of the order also obviates the need for the court to fix a term—which may require an uncertain prediction about the level of medium to long-term risk of further violence—and the need for police and others to be aware of the impending expiration of the order and consider taking further measures to protect the victim once the order expires.

The second proposal, enacted by the *Family Violence Protection Amendment Act 2014* (Vic) provides for the introduction of 'self-executing orders'²⁰⁴ and is due to come into force on 1 July 2016. It will allow for the inclusion of a 'finalisation condition' on interim orders, to provide that the interim order becomes a final order, with the same conditions as the interim order, 28 days after being served on the respondent. A finalisation condition will only attach if the court is satisfied that it is appropriate, having regard to a range of factors including

- ▷ whether there is a history of family violence
- ▷ the existence of family violence risk factors
- ▷ whether there are other legal proceedings between the protected person and the respondent
- ▷ whether the affected family member has obtained legal advice
- ▷ whether the affected family member and respondents will understand the written explanation of the interim order that is provided with the order
- ▷ the existence of factors making it desirable that the respondent attend a hearing for the final order.²⁰⁵

A similar regime operates in New Zealand.²⁰⁶ There, the temporary protection order will usually be made permanent after three months if not contested. The potential advantages of this approach include reduced demand pressures on courts, and the victim of family violence avoiding the potential re-traumatisation of having to attend court.

After the hearing

It is evident that some applicants may leave an FVIO hearing without a clear sense of what took place or what will follow²⁰⁷ and without feeling that they were able to communicate their experience and needs to the court or have these needs understood.²⁰⁸ This may be because the magistrate had little time to explain the substance of the hearing or the next steps to a satisfactory extent and that there was little or no opportunity for parties to debrief with court staff or legal services.²⁰⁹

The Commission was told that, even when an effort is made to explain orders, directions or procedural matters, applicants might not be in a state of mind to process the information. Ms Abbey Newman, Family Violence Applicant Support Worker at Sunshine Magistrates' Court, explained:

... a lot of the information is going over the applicant's head because they are in a state of trauma. If they are coming on a Monday, quite often the incident has happened from Friday onwards. Things are really fresh. They're coming to a system that most people haven't had experience with. We talk a very different language. The setting is pretty unfamiliar to most people. We are also bringing them in a state of trauma. So, what they are actually required to do is understand our system, understand our language, to make decisions [that will] affect the rest of their lives and their children's lives, and make those decisions pretty quickly with a very short engagement with legal services, with myself, with the whole court experience ...

We are asking people to be lawyers, to understand legal language and also understand how it is, what actually happens when you breach, when there's breaches, what constitutes a breach, what police should be listening to, how to report breaches.²¹⁰

Court Network emphasised the lack of support for victims after the hearing. It noted that Court Network staff try to redress this by, for example, asking an applicant how they are leaving court and what safety plans they have, assisting with referrals, and putting in their diary the applicant's next court date so that they can arrange to meet with her and, if necessary, arrange support services on her return court date.²¹¹

Court Network also drew attention to the often ad hoc safety measures for women leaving court:

Court Network is concerned that the increased safety needs for women exiting court are not being addressed. In some courts creative solutions are put in place such as creating a 'window' for the woman to leave whilst the court is preparing final papers for the man. In other courts she may be assisted to exit via a 'back door'.

If the best that the court system can offer women, in order to safely exit the building, is to leave by a back door, then we have serious and urgent questions to ask of the system we have devised to enable protection for women via attending court to seek a court order. Court Networkers express their sense of high anxiety and feelings of helplessness about the moment when a woman leaves the court premises knowing that this is the time when she is most vulnerable (having challenged his controlling behaviour by seeking an intervention order). The court sees a successful outcome in getting another case through the list. Networkers see success as a woman safely supported during and **following** the court process. They are hoping they don't hear about the woman they were supporting that day on the news – as a fatality.²¹²

A further matter brought to the Commission's attention is the fact that respondents can leave court without being served with orders, with the result that service must be effected by police subsequently. This results in unnecessary expenditure of police time and resources and in some cases, delay before an order comes into force. Service of orders by police is discussed further in Chapter 15.

The Commission's views on improvement of court infrastructure and processes, which bear on safety of parties after court and the capacity of court staff to assist them throughout their time at court, are explored in 'The way forward' section of this chapter.

The court experience of particular groups

Children and young people

A 2010 CREATE Foundation study of children and young people attending the Children's Court of Victoria found that all 25 participants felt the court was 'scary' the first time they walked in.²¹³ One child described their experience: 'I first went when I was seven and I was so scared, I should not have gone when I was so young. I had nightmares for ages'.²¹⁴ Some children reported that what intimidated them was the 'airport-style' security at the entrance to Melbourne Children's Court.²¹⁵ The Commission was told that the 'dynamic security' system at the Neighbourhood Justice Centre in Collingwood is preferable:

We have a 'dynamic security' system at the NJC. We made a conscious decision not to have security screening at the front door. Instead we have a concierge function built into the security contract. There is always a security guard on the court floor and another security guard who roams the building. The security guards will talk to and interact with every person who comes into the building. They are the first port of call. They also attend staff meetings and professional development. We are the only court in Victoria with such a concierge system.²¹⁶

The CREATE Foundation also recommended that children's court buildings be redesigned to be 'young person-friendly':

... with bright colours on the walls and things to play with. An outdoor area where children could play and where children can be children was also a priority. Young people wanted to have time out on their own to digest what was happening or be able to spend time with family that they don't often get to see, in a private space.²¹⁷

The Commission notes that the new children’s court facility in Broadmeadows, incorporating the Family Drug Treatment Court, will have child- and family-friendly public spaces, as well as multiple waiting areas and a purpose-designed separate waiting area for children in safe custody.²¹⁸

Older people

Some older people may experience particular difficulty in accessing and using the courts. As noted, many courts have deficient physical infrastructure, which may create problems for people with age-related mobility or sensory impairments.²¹⁹ For example, some courts have insufficient seating; heavy doors, or steps leading up to entrances; inadequate toilet facilities; and a system for announcing hearings by loud speaker, which people who are hard of hearing cannot hear.

Culturally and linguistically diverse communities

Between 2009–10 and 2013–14 an average 1.8 per cent of all affected family members and 1.6 per cent of respondents were recorded as needing an interpreter.²²⁰ The Commission was told of a number of difficulties relating to the consistency, availability, quality and impartiality of interpreters in the courts.²²¹ This is discussed in Chapter 28.

Some submissions pointed out that magistrates’ courts are not uniformly equipped with multi-lingual signage and that forms, orders and information provided to parties can be unavailable in languages other than English.²²²

The difficulties with the application process outlined above can be exacerbated for people facing language barriers. One individual who has worked with culturally and linguistically diverse court users told the Commission:

CALD community members coming to Court to make an application typically work through the form with the assistance of a telephone interpreter slowly, one question at a time. This procedural obstacle (that is, the form is only available in written English) can unintentionally lead to frustration for both applicants and Registry staff. Completion of the application almost always exceeds the amount of time expected by applicants and prolonged engagement with Registry staff is often the norm.²²³

People in rural and regional communities

Many of the difficulties outlined in the section entitled ‘Attending court’ are exacerbated for people in rural and regional communities. The Commission visited a number of rural and regional courts. There is a higher likelihood that an applicant or respondent will encounter people familiar to them—people with whom they share friends, a school, a workplace or a neighbourhood—in the court, among court staff, or even among the magistracy.²²⁴ The problem of lack of anonymity is magnified when there are no private interview rooms or waiting areas in courts—as is more often the case in rural and regional magistrates’ courts, some of which are among the oldest and most poorly equipped in the state.²²⁵

The risk of encountering people known to them can discourage individuals from bringing an application and attending court.

People with disabilities

People with physical, intellectual, sensory, communication or mental health disabilities can experience additional difficulties when trying to make their way through the court environment.²²⁶

A recent disability access survey report by Women With Disabilities Victoria identified a wide range of practical obstacles experienced by women with disabilities attending magistrates' courts. Issues included an inability to access private interview rooms in a wheelchair; women with impaired hearing missing their matter being called over the PA system; and stairs, heavy doors and other impediments which made the court premises difficult or impossible to access.²²⁷ These issues are considered further in Chapter 31.

The Commission notes that the Judicial College of Victoria, with assistance from the Victorian Equal Opportunity and Human Rights Commission, is preparing a bench book to assist courts and judicial officers in better accommodating people with disabilities.²²⁸

Aboriginal and Torres Strait Islander peoples

The Commission was informed that Aboriginal and Torres Strait Islander people can find courts culturally insensitive,²²⁹ and that family violence training and specialisation and cultural awareness training for magistrates was important to ensure Aboriginal and Torres Strait Islanders receive appropriate and effective legal outcomes.²³⁰

Some Aboriginal and Torres Strait Islander people can also experience other barriers to their contact with the courts. The fraught history of the state's engagement with Aboriginal and Torres Strait Islander communities and the over-representation of Aboriginal and Torres Strait Islander people in the prison population have led to a reluctance among some communities and families to become involved with police, courts and legal services. In particular, Aboriginal and Torres Strait Islander women can be less willing to work with police in applying for FVIOs and might experience heightened vulnerability to violence as a consequence of taking court action.²³¹

The Commission was advised of the Koori Family Violence and Victims Support Program (formerly the Koori Family Violence Court Support Program), which provides assistance to Koori families who have a family violence-related matter before the court. The program employs a Koori male and Koori female family violence support worker to provide information and guidance about the court process and available family violence services. Referrals are accepted from court registry staff and magistrates, other court programs, Victoria Police and external agencies. The program is located in Melbourne, although staff do attend other metropolitan courts.²³² However, we understand that funding for this program has been discontinued (discussed later in this chapter).

Lesbian, gay, bisexual, transgender and intersex people

Some of the particular challenges confronting LGBTI people in relation to family violence court proceedings include:

- ▷ being treated less seriously than heterosexual people in comparable circumstances in a court setting
- ▷ having to explain their sexual preference, gender identity or relationship to magistrates and/or court staff
- ▷ having to deal with the limited understanding of some members of the judiciary in relation to LGBTI identities and relationships.²³³

Engaging with perpetrators

In its 2015 report entitled *Opportunities for Early Intervention: bringing perpetrators of family violence into view*, the Centre for Innovative Justice refers to the benefits of the justice system effectively involving perpetrators by being:

... an active and involved participant that can interrupt [the cycle of family violence] and make those who use it more visible – monitoring a perpetrator’s behaviour; bringing him back to court to account for his commitments; making sure he is known to relevant service agencies; addressing related addiction, mental health or accommodation problems; and identifying whatever stake he may have in becoming a safer man.²³⁴

Effective involvement requires that the perpetrator understands what is happening:

Research concerning procedural fairness confirms that the way in which a defendant is treated in the courtroom – including whether he feels heard and respected, and whether communication is clear – has a profound effect on his perception of the process, as well as the likelihood of him complying with court orders and the law generally.²³⁵

It also requires meaningful communication between a magistrate and respondent in court, to impress on the respondent the seriousness of their wrongdoing and challenge ‘the denial and minimisation that so many family violence perpetrators display.’²³⁶

The Centre for Innovative Justice’s report concludes that an interaction with the justice system that is unnecessary, superficial or perfunctory:

... propels perpetrators from scrutiny ... compounds existing isolation and, in some cases, vindicates a perpetrator’s sense of justification or entitlement by failing to respond in an adequate or timely way.²³⁷

Many court-based professionals advised the Commission about the assistance provided to respondents in FVIO proceedings.²³⁸ Ms Julie Davies, the family violence respondent support worker at the Ballarat Magistrates’ Court, explained the substance and value of her role:

My role is supportive. The first thing I do when I meet a respondent is tell them my role and that I am there to support them ... and outline what the process will be for the morning in court. I explain the nature of the application to the respondent and inform them that the proceeding is a civil proceeding and not criminal. I will also take the respondent into the courtroom to familiarise them with the set up and where they will sit, if they are unfamiliar and stressed. In my experience, this process helps to reduce the anxiety of the respondent. They often seem relieved just by me taking them through these basic steps ...

My aim is to help reduce the respondent’s initial anxiety. If they are calm, they are more rational ... I try to challenge the respondent’s thinking without being judgemental. My philosophy is that giving appropriate attention to the perpetrator will ultimately help the applicant.

Another important aspect of my role when I meet with respondents is to find out why family violence is occurring. I try to work through issues with respondents to determine why they are perpetrators of family violence ...

In my experience, respondents are quite agitated at first ... Often [they] don’t know what the intervention order process involves and they don’t understand the terms of the order. For example, they don’t know if they can or can’t see their kids and they generally don’t understand what they can and can’t do because no one has explained the order to them. Respondent workers can help with this.²³⁹

As discussed further below, duty lawyers also have an essential role in relation to respondents. Victoria Legal Aid regularly advises and represents respondents in FVIO matters. In its submission, it stated:

Victoria Legal Aid has extensive experience providing legal services to people who are accused of committing family violence related criminal offences. By providing these services we do not condone or excuse the conduct. By providing legal services to accused, respondents and offenders, we uphold their rights to a fair hearing and ensure that all relevant information is put before the court, necessary for the court to decide or arrive at fair and appropriate disposition. There are also secondary benefits that flow to the legal system and victims of crime where an accused has access to legal representation.²⁴⁰

Similarly, the Centre for Innovative Justice observed:

Interaction with a lawyer is another opportunity for the respondent to hear that his behaviour will not be tolerated by the justice system; that he must comply with any intervention order made; and that he should consider referral to a relevant service agency for any associated problems he may have. Legal advice also means that perpetrators are more likely to negotiate terms of an order with which they are able to comply.²⁴¹

Ms Helen Fatouros, Director, Criminal Law Services, Victoria Legal Aid told the Commission:

Defence practitioners ... strike a difficult balance between protecting an accused person's rights and also being assertive in professionally challenging and encouraging clients with a range of vulnerabilities to make decisions that support rehabilitation and early resolution where appropriate; or which lead to well focused contests where the issues and cross-examination of victims and witnesses is confined, well-prepared and in the best interests of their client.²⁴²

Conversely, respondents without legal assistance (especially those unfamiliar with the court setting and process) may feel confused and alienated, and so be less likely to abide by the court's decision or reflect critically on their own behaviour.

An issue of considerable concern is that respondents often do not attend court, despite having been served with the application and summons. In Dr Gelb's observations of eight magistrates' court venues, she noted that, averaged across the courts, the respondent was present in just 47 per cent of matters. As Dr Gelb points out:

This can be problematic, as without a respondent there is no opportunity for the court to impart the seriousness of the order and the consequences of breach ... Respondent absence also raises concerns with regard to procedural justice: if the respondent is absent, there is no opportunity for him ... to be heard at court.²⁴³

Legal services

Much of the work of legal services takes place outside courts. For example, Victoria Legal Aid has a free telephone information and advice service, Legal Help, which in 2013–14 provided assistance in 8432 family violence matters and made 4247 referrals.²⁴⁴ In its response to the Royal Commission's notice to produce, Victoria Legal Aid explained:

Legal Help takes over 100,000 calls each year. We provide information, advice and referral on a wide range of legal problems and related social issues, including family violence ...

Legal Help is accessible for culturally and linguistically diverse communities ... we provide 20 dedicated language lines and use the telephone interpreter service to assist callers who require assistance in other languages without a dedicated phone line.²⁴⁵

Victoria Legal Aid and community legal centres also provide community legal education and training services. For example, Victoria Legal Aid's Settled and Safe project focuses on helping people from new and emerging communities improve their understanding of legal rights and responsibilities around family relationships, including family law, family violence and child protection. It includes training to increase settlement service providers' knowledge of family violence and Victorian legal responses to family violence. Victoria Legal Aid services are collaborating with settlement service providers to deliver legal information-sharing programs to new and emerging communities.²⁴⁶

Within courts, the duty lawyer scheme is an important source of legal assistance for intervention orders and family violence-related criminal matters. Duty lawyers attend courts on particular days to provide assistance to parties who do not have legal representation.²⁴⁷ Victoria Legal Aid provides or arranges the delivery of duty lawyer services at all major metropolitan magistrates' courts and at most rural and regional magistrates' courts, though the level of service varies.²⁴⁸ Community legal centres provide duty lawyer services in 29 magistrates' courts in Victoria. Private practitioners funded by Victoria Legal Aid also deliver duty lawyer services. Duty lawyers can represent clients in hearings or provide advice, information and referrals. In many cases Victoria Legal Aid will act for respondents and community legal centres for applicants, to avoid any conflicts of interest (generally, a lawyer cannot act for both parties to a dispute).²⁴⁹

Evidence from a number of sources suggests that legal representation can alleviate the burden felt by many applicants in FVIO proceedings.²⁵⁰ In its 2006 review of family violence laws, the Victorian Law Reform Commission found:

Where applications for intervention orders are contested, legal advice and assistance can be particularly useful to applicants to prepare the case and present appropriate evidence for the hearing.²⁵¹

More recently, applicants surveyed by the Loddon Campaspe Community Legal Centre said they felt safer and better informed and were more able to participate and be heard in the court process when represented by a good lawyer.²⁵² One survey respondent noted:

[M]y lawyer has been absolutely brilliant, she has bent over backwards, any question she didn't know she has found out, she has kept me informed, ringing me straight away, she has made everything easy, communicating by email ... I probably ask stupid questions all the time, but ... [s]he's very patient and understanding and takes the time to help me understand. You sort of feel empowered, you're understood and not in the dark anymore.²⁵³

Deakin University's *Landscapes of Violence* report on the experiences of victims of family violence in rural and regional Victoria found that the women consulted 'valued lawyers who listened to their concerns and requests, demonstrated empathy, and understood the impact of violence on their and their children's lives'.²⁵⁴

The value of independent legal advice for affected family members, even when police bring the application, was also raised with the Commission. Ms Cooney noted in her statement:

As the civil advocate is employed by Victoria police in their capacity as a solicitor, the relationship between the police member who initiates the [FVIO] application for an (informant) and the Civil Advocate is a client/lawyer relationship. The Civil Advocate appears on behalf of the informant ...

As the legislation allows for the police to seek an IVO independently from the wishes of the AFM [affected family member], it is always desirable for an AFM to be represented independently. Independent representation for all parties ensures that there is no confusion as to the position of the police applicant and the Civil Advocate, especially where this position contradicts that of the AFM.

Where the AFM has an independent lawyer this can help to clarify the situation, particularly where the police are seeking an IVO against the wishes of the AFM. If the AFM has an independent lawyer, the lawyer will sometimes appear in court for the AFM, and at other times will confine their assistance to taking instructions, providing advice, and communicating with the other parties on behalf of the AFM. When an application proceeds to a contested hearing and the AFM is supportive of an IVO, the AFM's lawyer, the civil advocate and the informant often work closely together in tasks such as the production of further and better particulars, and in determining who will question witnesses in the hearing.²⁵⁵

In some cases police will make the initial application on an affected family member's behalf but will not appear at any subsequent application to extend (or vary or withdraw) that application.²⁵⁶ It was suggested to the Commission that providing independent legal support to the victim in such circumstances ensures they are fully informed about the substance of the order and what may need to occur in future should they wish to extend or vary it.²⁵⁷

The Commission was also informed that the necessity for independent legal advice for applicants whose application is brought by police is under-appreciated.²⁵⁸ In her report Dr Gelb commented on the lower rate of representation for affected family members in police applications:

... while most applicants on private days are represented by duty lawyers, it appears that affected family members in police matters are not receiving additional legal representation, but are being deemed to be 'represented' by the police.²⁵⁹

Some victims of family violence reported negative experiences with lawyers. The Commission received evidence of some lawyers communicating and behaving dismissively and disrespectfully and being unduly suspicious of their client's claims or unduly pessimistic about their prospects of success.²⁶⁰ Deakin University's study of survivors of family violence found:

Some survivors talked about negative encounters with lawyers, whom they felt did not listen to them or were disinterested in family violence work. Jane said that a lawyer she engaged was dismissive; she 'would just look at her watch and roll her eyes' during their meetings. Alita 'had lawyers before for family law but they weren't really interested in the family violence'. Likewise, Helen sensed that her lawyer 'wasn't really interested in what he was doing' and that 'he really didn't understand domestic violence'. Consequently, she believed that he 'wanted to take a quick [approach], you know, get it over and done with quickly', which 'meant going along with' her husband's lawyers. Women did not always feel that their lawyers understood or heard them; one woman expressed the view that her lawyer 'wasn't representing me' because she was not listening to her ...

Sometimes lawyers did not recognise the harms associated with non-physical abuse, which could mean that they were reluctant to assist survivors.²⁶¹

Ms 'Jones' gave the following evidence:

I have been very frustrated by the legal representation I have had, especially considering how expensive it is. I have found that I am constantly battling my legal representatives because they do not agree with the outcome that I want or think that I am being unreasonable ... It has seemed to me that even my own legal team would prefer to ignore the issue of family violence to negotiate on simpler terms for the custody arrangements. Now that I am more experienced with the process of the legal system, I would like to represent myself because I know my story better and I can no longer afford private legal representation. I find it very frustrating that I have to pay someone to talk about my personal life. However, I continue to experience that courts have a negative attitude towards self-represented parties. In an earlier mentions hearing, a Magistrate at the Magistrates' Court commented to me that 'everyone wants their 15 minutes'. I found this comment so demeaning. Speaking about my experience of family violence in court is not about getting my '15 minutes', but about making sure the details and history of my case are properly and accurately told.²⁶²

Throughout the hearing, the Magistrate and my ex-husband's barrister spoke to me in a belittling way. They were unnecessarily rude and insensitive. I felt that I was penalised for being confident and articulate, and the fact that I did not fit the Magistrate's preconceived idea of a victim of family violence.²⁶³

Women surveyed in the Deakin University study also commented on 'familiarity' within the legal community and the impact this can have on an applicant:

[A]ll the barristers are friends with each other, and all the magistrates are, and they're all really chummy with each other and it [is] kind of, and I hate to say this, at a higher class than where I am, so their ideals and standards are here, I'm coming from there and so there's a huge class difference and they haven't been in the position that I am at the moment so they have no idea what it's like to have to see your abuser there [at court] three or four times a week.²⁶⁴

The Commission heard that cross-examination in both FVIO and in criminal proceedings can be traumatic for applicants/witnesses. In response to this, Ms Fatouros gave the following evidence:

The majority of defence practitioners are doing their best in the best interests of their client when they approach the very difficult task of cross-examining a victim, particularly a victim in a sexual assault case, family violence case and particularly if it's a child. I have not yet met a defence practitioner within my own practice area that I oversee, but also within the private profession at the Bar, who has said to me the task of cross-examining a child or a victim of a family violence or sexual offence, that it's a task they relish.²⁶⁵

Highly trained and skilled advocates know that it is in their client's best interest to approach the task of cross-examination in a focused, well-prepared, thoughtful way that is confined and goes just to the issues in dispute and that does not ... attack the credibility of the witness unless that is part of the case. Of course, attacks on credibility are always very sensitive and fraught and get raised often in this context. The credibility and demeanour of a witness is a relevant part of any criminal trial, but it should be done in a particular way and only where it is necessary to that particular defence.²⁶⁶

...

This is where the evidence provisions have actually been strengthened and there are specific provisions now, both recent and over the last five years, that go to particularly oppressive or improper or demeaning cross-examination or questioning, and there is a very significant role that both prosecutors and judges should play in holding practitioners accountable through those provisions. They have the power to do it and they should be doing it and they should be objecting more and intervening more, depending if it is the prosecutor or the judge. In my view, it sometimes doesn't happen as quickly or as readily as it should.²⁶⁷

The Commission notes that the *Evidence Act 2008 (Vic)* provides that the court may disallow improper questions or questioning put to a witness and must disallow such questions or questioning put to a 'vulnerable witness' in cross-examination. Improper questions or questioning include questions or sequences of questions that are misleading, confusing, unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive, or put to the witness in a manner or tone which is belittling, insulting or otherwise inappropriate, or which have no basis other than, for example, a racial, sexual or other stereotype.²⁶⁸ A 'vulnerable witness' includes a child, a witness with a cognitive impairment, or a witness the court considers vulnerable having regard to the circumstances, including the nature of the proceeding, any relationship between the witness and any other party, or a relevant characteristic of the witness, including their gender or ethnic and cultural background. Victims of family violence may meet these criteria.²⁶⁹

A self-represented respondent in FVIO proceedings may not personally cross-examine an affected family member or protected person, a child, a family member of a party to the proceeding, or any other person who the court is satisfied has a cognitive impairment or otherwise requires protection. The only exception to this rule is if the person the respondent seeks to cross-examine is an adult and consents to being cross-examined and the court decides that the cross-examination will not have a harmful impact on that person.²⁷⁰ Beyond this exception, a respondent must have a legal representative to conduct the cross-examination. If the respondent fails to obtain legal representation, the court must order Victoria Legal Aid to represent them. Additionally, if the person the respondent seeks to cross-examine is a self-represented applicant (other than Victoria Police) the court must order VLA to represent them (unless the applicant objects to being represented).²⁷¹

The expense of legal advice is a common concern for applicants.²⁷² VLA applies eligibility criteria for ongoing legal representation in most cases. Relevant criteria include an individual's financial means, as well as the likelihood of success of their case.²⁷³ At present, duty lawyers and/or VLA-funded lawyers provide assistance to applicants and respondents in the first mention of FVIO proceedings without considering their financial means. However, both parties will generally need to meet eligibility criteria to receive legal assistance for a contested hearing.²⁷⁴ A May 2015 VLA board paper assessing demand for duty lawyer services in family violence matters stated:

At present, parties to an FVIO matter do not receive comparable or consistent access to the duty lawyer service across major courts in Victoria. At the Melbourne Court, a duty lawyer service is provided 44 percent of the time. However, at Dandenong, Frankston, Latrobe, Ringwood and Werribee, in contrast, the duty lawyer service is providing assistance in less than 30 percent of applications. FVIO duty lawyer services need not be provided at a level that ensures 100 percent service provision ... For those that do seek assistance from a duty lawyer service, though, the availability of that service should not be determined by the court at which the matter is listed. Access should correspond with need.²⁷⁵

Community legal centres offer a free alternative to VLA's services but generally only have the capacity to assist only a subset of clients who are in court for family violence proceedings, as demand for the duty lawyer service is at saturation point.²⁷⁶ The Federation of Community Legal Centres' submission to the Commission noted, for example, that (at date of its submission), Gippsland Community Legal Service was only funded to provide a duty lawyer service at the Latrobe Valley Magistrates' Court, so that many other remote courts—such as Bairnsdale, Wonthaggi, Korumburra and Sale—did not provide duty lawyer representation, which 'significantly disadvantages those who live in rural areas who have matters listed at these courts'. Elsewhere, Goulburn Valley Community Legal Centre was able to provide a duty lawyer service one day per week at Shepparton and Seymour Magistrates' Courts and one day a fortnight at Cobram.

The Federation recommends adequate funding for duty lawyers for both applicants and respondents and noted its members would welcome the opportunity to offer representation at directions hearings and contests, as well as assisting affected family members with initial FVIO applications.²⁷⁷

The Commission heard that, even for those clients whose means exceed the upper limit for eligibility for legal aid funding, the cost of a lawyer is often prohibitive. Ms 'Jones' stated:

At the start of my legal proceedings, I was ineligible for legal aid because I had some savings in the bank ... I find it a sad irony that after stepping forward and negotiating through over 12 months of legal proceedings, the opportunity to have my case heard and finally determined by a Magistrate was out of reach [financially] ...²⁷⁸

In its 2006 review of family violence laws, the Victorian Law Reform Commission found:²⁷⁹

It is difficult to obtain legal assistance in family violence intervention order applications and many applicants are told that lawyers are unnecessary. The cost of legal assistance provided by private practitioners remains a significant barrier to many in the community.

The Commission's views on resourcing legal services are provided in 'The way forward' below.

Challenges for the court

The Commission heard that the Magistrates' Court is confronting unprecedented demand pressures and that demand has increased faster than the system's response and has not been accompanied by a commensurate increase in funding.

The increase in intervention order matters

Many of the problems litigants experience and many of the pressures the court workforce and the judiciary experience are in large part the consequence of growing demand. Between 2009–10 and 2013–14 the number of finalised applications for FVIOs in the Magistrates' Court increased by 34.5 per cent, from 26,124 to 35,147. In 2013–14 there were 52,777 affected family members and 29,987 respondents listed on original FVIOs.²⁸⁰

Demand is not evenly distributed among court venues. Information provided by the Magistrates' Court shows that headquarter magistrates' courts heard just over three-quarters of finalised FVIO proceedings between 2009–10 and 2013–14.²⁸¹ In contrast, in 2013–14, 19 magistrates' court venues recorded fewer than 100 FVIO matters each. Collectively, these venues make up around one-third of the state's magistrates' court venues but handled less than 1.5 per cent of FVIO proceedings in 2013–14.²⁸²

The increased volume of family violence matters in the Magistrates' Court is discussed further in Chapter 3.

Demand in areas of court business unrelated to family violence, including time consumed in determining straightforward or procedural matters, may also affect the court's ability to manage FVIO demands. These other areas of court business include adjudication and administration of traffic matters, including low-level offences such as driving a vehicle in a toll zone without registration; and straightforward interlocutory proceedings.

Taken together, these matters can constitute a significant proportion of court business.

The Commission notes that a range of other matters adjudicated by the Magistrates' Court can be heard and determined by judicial registrars, who are independent judicial decision makers appointed by the Governor in Council to assist the Magistrates' Court in a variety of matters that fall within the court's criminal and civil jurisdiction.²⁸³ Under the *Magistrates' Court (Judicial Registrars) Rules 2015* (Vic) the Chief Magistrate has delegated authority to judicial registrars to determine certain classes of matters.²⁸⁴ Judicial registrars may not currently determine proceedings under the Family Violence Protection Act.²⁸⁵

Demand for duty lawyers

Legal service providers told the Commission that their duty lawyer services in particular are routinely overwhelmed by the demand for their services and are under-resourced to meet this demand, which adversely affects their capacity to provide tailored, comprehensive services to clients.²⁸⁶

Victoria Legal Aid submitted:

The pressure of demand for family violence legal services is more acute at some court locations. This is due to a number of factors including local law enforcement efforts by Victoria Police, geographic court boundaries and population growth. We recognise that access to legal assistance is not consistent across the state. We know that many people are missing out on legal services and that some services are so time challenged as to be sub-optimal.

Court observations have shown that duty lawyers in high volume courts have assisted up to 17 clients on a single day, selected from an even busier list with many other potential clients, not being seen or assisted in a meaningful way.²⁸⁷

On the basis of her observations of eight magistrates' court venues, Dr Gelb found:

[T]he most common service that was accessed was legal in nature. That is, many people (an average of 48 per cent of applicants and 57 per cent of respondents, or an average of 53 per cent overall) had some sort of private or legal aid representation, or representation by the local community legal centre. Not all parties, however, were represented, with enormous variation across the courts in the proportion of respondents represented, ranging from a very low 12 per cent in Dandenong to a high of 86 per cent in Geelong and at the Neighbourhood Justice Centre.²⁸⁸

Dr Gelb reported that hearings involving self-represented parties can take additional time:

Self-represented parties often struggle to keep up with court processes. Their matters tend to take additional court time as the magistrate has to explain both substantive (content) issues and more administrative (procedural) ones.²⁸⁹

There are numerous courts where only one duty lawyer is available. In busy magistrates' courts, even when there is more than one legal service operating on site, the sheer volume of matters means that some people cannot be represented or can be seen for only a few minutes.

Ms Sinclair, of Victoria Legal Aid told the Commission:

[T]he duty lawyer system, it's not broken, it just needs an investment of resources so that we are able to ... spend more time with clients. In courts that have smaller lists where we may only be advising five or six clients, we are able to spend more time with that client, ensure that we are providing advice, referrals, assistance, looking at other co-related matters. It's when those lists get bigger that we are just buckling under the demand ... So what happens is there's often a more abbreviated service ... if we were properly resourced, we would be able to see more clients who might benefit from a legal service, but also be able to address more of the specific issues, legal and other, that are experienced by that client ...²⁹⁰

Mr Casey of the Loddon Campaspe Community Legal Centre provided similar evidence:

[Y]ou have a process that's very much tailored towards expediency, that's tailored towards trying to get a huge churn through the courts, with very little resources, and a proper holistic approach would be a step back from that ... [and] would tailor each individual scenario to the needs of that individual victim ...

[The Court]'s a 2008 model vehicle that's actually suitable for purpose, but it's not being resourced, it hasn't got fuel in it, it has bald tyres, it's crashing and burning, so it's unsafe.²⁹¹

The Commission notes that concerns about demand for, and undersupply of legal services are part of a broader discussion about the resourcing of legal services, which was noted in submissions and hearings. For example, the Australian Women Against Violence Alliance noted that the Productivity Commission's Access to Justice Arrangements Report had proposed additional funding of \$200 million a year was needed to ensure that legal services continue to meet the needs of the community.²⁹² In December 2013, the Commonwealth Government announced cuts to legal assistance services of over \$43 million over four years. That decision was substantially reversed in March 2015.²⁹³ However, the Alliance noted 'there is still a need for additional funding from Federal and state and territory governments to implement the recommended funding allocation outlined by the Productivity Commission',²⁹⁴ and significant concerns remain about the future funding of legal services, with substantial reductions forecast by the Commonwealth Government for 2017–18. The Alliance submitted:

It is important to continue to have specialist women's legal services, including Aboriginal and Torres Strait Islander women's legal services. Such services have a thorough understanding of the nature and dynamics of domestic and family violence and why such violence is primarily perpetrated against women and children. Such services are important for empowering and supporting women victims/survivors of violence. They provide a safe space for women and children and strongly support holding perpetrators to account. They also recognise the intersecting and compounding forms of disadvantage that women face for example, due to their sex; gender identity; sexual orientation or intersex status; race; disability; age; and/or social and/or economic disadvantage, which can significantly limit women's "full enjoyment of citizenship", including access to justice.

It is also important that victims/survivors of violence have a range of legal services from which to choose so they can exercise agency or, where there is a conflict of interest, there is another legal assistance service to offer assistance. There also needs to be separate and additional funding for civil law matters (including family law matters) and criminal matters as recommended by Australia's Productivity Commission. Such funding should not be taken from criminal law funding. Given the high number of domestic and family violence homicides in Australia referred to above, the loss of liberty and loss of life arguments which arise with respect to criminal law matters are just as pertinent in family law matters where domestic and/or family violence is present. The Commonwealth and State and Territory Governments should therefore adequately fund all legal assistance services and increase funding amounts to an adequate and sustainable level.²⁹⁵

The Commission notes that the 2015–16 State Budget allocated an additional \$3.3 million for legal assistance for one year.²⁹⁶

According to information provided by the Crime Statistics Agency, the number of services provided by Victoria Legal Aid where the primary matter was family violence-related has increased by 8.5 per cent between 2009–10 and 2013–14, and in the latter period amounted to 21,172 services: approximately half (10,610) of which were duty lawyer services.²⁹⁷

Demand for court-based service providers

Like legal services, other service providers based in courts reported an acute need for their services and difficulty meeting demand.²⁹⁸ Court Network submitted that women found the court process complex and did not feel properly informed about what was happening.

... people attending court for family violence matters have limited information about, and are bewildered by court processes. This is compounded by long waiting times for their court appearance, feeling scared and unsafe, the pressures of other demands such as fear of losing their home, picking up children from school, and their own health needs.²⁹⁹

By assisting court users at the outset, for example in understanding forms and processes, Court Networkers and other service providers can improve the efficiency of courts. Women told the Commission they greatly valued the presence of their specialist family violence worker at court—both their support as well as their advocacy services.³⁰⁰ However, this support is not universally available. For example, Eastern Domestic Violence Service identified legal assistance as a significant gap.

Women leaving violent partners/ex partners (or other family members) often have complex legal needs, including negotiating time with children, responsibility for debt, division of property, tenancy and immigration status and obtaining court orders. Some women also require legal advice in relation to criminal matters. Our DVAs [Domestic Violence Advocates] spend a considerable amount of time arranging and attending legal appointments with their clients. It is not unusual after waiting for and attending such appointments that the organisation approached refuses or is unable to assist.³⁰¹

Currently the Victorian Government funds four specialist family violence services to provide non-legal court-based support at the Ballarat and Heidelberg courts.³⁰²

In addition to the four services specifically funded for court work, other specialist family violence services told the Commission that they attend their local Magistrates' Court as part of their case-management role.³⁰³

Court Network also provides a free court support service delivered by trained volunteers who provide confidential support, information and referral to all court users, including applicants, respondents, victims, witnesses and defendants, and their families and friends who attend with them.³⁰⁴ It operates in 18 Magistrates' Courts.³⁰⁵ Of the people assisted by Court Network in 2013–14, 32 per cent were involved in family violence matters³⁰⁶ although the submission notes that for many Networkers, family violence matters can account for between 80 and 100 per cent of their time.³⁰⁷

A number of submissions commended the Womens Lawyers Workers Project, funded by the Legal Services Board, now run by Women's Legal Service Victoria, called LINK Outreach.³⁰⁸ This service enables women to access a lawyer via Skype for initial legal advice and referral. It was noted that this project allows a family violence caseworker to attend the appointment with the woman's permission. It was submitted that the external evaluation of this project found it to be effective in reaching and supporting women who have experienced family violence in rural and metropolitan areas, as well as increasing the capacity of specialist family violence practitioners to support women to navigate legal systems. Berry Street submitted that '[f]or rural women, where they have been "conflicted out" of the only legal practice in their area, the Link Outreach service has been vital'.³⁰⁹

A number of women involved in court processes may not be involved with specialist family violence services, particularly if there was no police involvement or L17 referral. Court is a point at which links can be made between a victim and specialist support services. In this regard, Court Network and others have a key role to play. This referral into the system will also be improved if there are both clearer intake points and capacity to adequately respond to demand.

In recognition of the importance of supporting women during the court process, the Department of Health and Human Services has funded Court Network to pilot specific training in family violence for volunteer Networkers at the Sunshine court with around 88 women expected to be assisted by June 2016.³¹⁰ A training module will also be developed for broader rollout, subject to the outcome of the pilot. One element of the pilot is to strengthen the referral pathways with specialist family violence services. This will be particularly useful for those women who have sought an FVIO without police intervention, and as such, would not have been referred to services through the L17 pathway.

At least one specialist family violence agency proposed that they be funded for lawyers to provide women with a range of services, such as immediate legal advice during intake and beyond, including preparing and representing the women at both interim and contested order hearings assistance with the Family Court, Children's Court, VOCAT and the Immigration Review Board, as required.³¹¹

Court infrastructure

A consistent theme in evidence before the Commission concerned the need for improvements to both 'hard' infrastructure, including technology, and 'soft' infrastructure such as court listing and information-sharing practices at the Magistrates' Court.

Information technology systems

It is widely acknowledged, including by the Magistrates' Court itself, that the court's IT systems, in particular Courtlink, are outmoded.³¹²

Courtlink was introduced in the 1980s and remains the court's primary repository of information about court matters, including parties' details and hearing dates. It is used by registry staff, magistrates' clerks and other court staff. The Magistrates' Court and the Children's Court informed the Commission:

Courtlink is the court record and case management system for MCV, CCV and VOCAT. Courtlink was developed and deployed in the 1980's and currently handles in excess of 300,000 cases and more than one million transactions each year. Courtlink is described as a 'legacy system' for good reason. It is out-dated, inadequate and has not evolved to reflect the increased complexity and breadth of the courts' caseload nor the massive increase in the volume of cases each court is now required to manage. This creates significant operational and organisational risk and heavily impacts upon the courts ability to develop and deliver a modern, integrated service delivery model. There are real risks to the stability of Courtlink.

The Platypus system (LEX) is a system which comprises the CCV's Family Division case management system for child protection matters, as well as providing the client databases for criminal and family violence support services in the MCV. The major barriers created by current technology infrastructure and functionality include:

- Lack of visibility for cases across all divisions of the courts. For example, a name search of the criminal database of Courtlink will return results only for that division. There is no ability to see related cases which may be listed in the Children's Court, or to see related intervention order matters or VOCAT applications without undertaking a separate searches [sic] in each of those separate databases ...
- The difficulty of updating and upgrading these systems. Upgrades and program changes to reflect legislative change and to enhance the courts' capacity to efficiently manage caseload are complex, expensive and time-consuming.

- Increasingly, as these [systems] age, reliability and performance are being compromised as they struggle to cope with the growth in caseload, users, and new changes, which impacts the courts' daily business.
- While data links between Courtlink and other justice systems do exist, these links are unsophisticated and do not provide the full range of the information that needs to be, and should be, transmitted between agencies.
- The limitations of these system [have] necessitated many manual 'work-arounds' to fill gaps in system capacity to meet modern business requirements. Invariably, these measures are comparatively inefficient and they increase the overall cost of administering not just family violence cases but all court cases.
- The modern demand for data to support the operational and planning requirements of the Court to respond to the justice needs of the community cannot be adequately met.³¹³

As noted by Deputy Chief Magistrate Broughton:

[C]ourt events are rich opportunities for intervention and compliance and accountability. Our ability to enrich that opportunity at court relies upon being able to have the appropriate information before the judicial officer who is presiding on that occasion. So to be able to identify that it is a family violence related case, to be informed ... that there are indeed other charges pending of a similar nature, that there might be warrants outstanding in relation to the individual if he fails to turn up at a court event, these are really, really rich and missed opportunities, in my view, at the moment because the system doesn't facilitate that level of information sharing to be available before the judicial officer.³¹⁴

The Commission heard that these constraints compound the inadequacy of resources to meet existing caseloads, since staff must engage in a high volume of manual processing tasks. One example provided in the Magistrates' Court of Victoria and Children's Court of Victoria submission involves the requirement that courts fax intervention orders to police stations for service: the Commission was told that tasks such as this could be automated with an appropriate technology platform.³¹⁵

The Commission understands that substantial proportions of the court's time and resources are consumed by the management of cases.³¹⁶ Much of that work involves manual processing and data entry related to case management.

Family violence intervention order application materials and accompanying documents are stored in a physical file. If the court determines that the 'proper venue' for the matter to be heard is different from the venue at which the application was made, the physical file must be copied and transferred to the new venue, which entails manual processing work at both venues.³¹⁷ Other areas that can involve family violence, such as VOCAT, and in civil and criminal matters lodgment of claims, also rely on manual processes.

The Commission heard that, in relation to criminal matters, improvements in recent years in communications between LEAP (the Victoria Police database) and Courtlink mean that some information relating to any accompanying criminal charges is automatically transferred from the police to the court database.³¹⁸ However, data linkage remains incomplete and some manual processes persist.

Different registries manage data entry demands in different ways. Court staff, including registrars, must divide their time between administration and case management. Some registries remain open on days when the court is not sitting in order to deal with the administrative backlog.

Listing practices

As noted in 'Attending court' above, at present most magistrates' courts manage long court lists by requiring that all parties arrive at the beginning of the court day, and then hearing each case in turn. The Commission was told this leads to long waiting times for parties (who might be accompanied by children) and heightens the risk of confrontations or safety concerns in court. It was suggested that staggering court lists—that is, requiring the various parties to arrive at different times throughout the day—could be a potential solution. However, it was also noted that this can cause greater complexity and delays, partly because it is difficult to predetermine how much time it will take to prepare and hear particular matters, and partly because court staff do not know whether both affected family members and respondents will appear, so that an adjournment may be necessary.³¹⁹

Coordination meetings

The Commission was provided with the Magistrates' Court of Victoria's *Family Violence Court Division Operating Procedures*, which provides guidance on the conduct of coordination meetings in the Family Violence Court Divisions of the Ballarat and Heidelberg courts. The operating procedures describe the purpose of such meetings thus:

[T]o ensure that representatives of key agencies supporting the operating of the daily list share a sufficient level of information relating to proceedings to increase the safety of aggrieved family members, and improve efficiency in the management of the list ...

[T]he coordination meeting formalises communication about the daily list, and demonstrates the Court's commitment to meeting the expectations of the Victorian Government regarding interagency collaboration and integration in responding to family violence.³²⁰

The procedures recommend that meetings be attended by a number of individuals:

- ▷ registrar/s
- ▷ bench clerk/s
- ▷ applicant and respondent support workers
- ▷ a Victoria Police prosecutor and court liaison officer (or the civil advocate/police lawyer)
- ▷ duty solicitors from Victoria Legal Aid and community legal centres.³²¹

In order to prevent accidental disclosure of information to unauthorised parties, the guidelines provide that nobody else should attend the meetings, although the registrar should brief the sitting magistrate on any procedural or practical matters arising from the coordination meeting before the first hearing of the day.

Coordination meetings also occur at other courts (beyond Ballarat and Heidelberg). During visits to magistrates' courts throughout Victoria the Commission observed several coordination meetings—usually held before the court's first sitting on family violence list days and sometimes subsequently throughout the day. The Commission was informed that these meetings are not always routinely held.³²² Risk assessments are sometimes completed by applicant workers for triaging purposes, but these are not usually provided to magistrates.³²³

In its March 2015 report titled *Opportunities for Early Intervention: bringing perpetrators of family violence into view*, the Centre for Innovative Justice notes the Western Australian practice of conducting 'pre-court reviews' attended by the sitting magistrate, the prosecutor, defence legal services, and other relevant agencies. The CIJ explains:

During these meetings, the progress of an offender is discussed so that the Magistrate is aware of any issues affecting his engagement in a behaviour change program, for example. Participants are careful not to discuss any matter which may jeopardise the safety of victims, or prejudice a fair hearing or sentencing at a later date.

The value of these meetings then translates to the interaction between the Magistrate and the offender when in court. The CIJ heard that offenders engage more readily when it is clear that the Magistrate is already aware of their circumstances and knows specific details of their lives, such as the names and ages of their children ... The CIJ heard this 'choreographed' exchange leads to offenders feeling more accountable to the court as they know that the same Magistrate will hear of any non-compliance ...³²⁴

Risk assessment

The concept of risk assessment and management is considered in Chapter 6. The Commission understands that the capacity of court staff to assess and respond to immediate safety concerns for court users affected by family violence may be hindered by demand pressures. In Judge Gray's report into the death of Luke Batty it was recommended that the Magistrates' Court of Victoria:

- ▷ ensure that all staff receive training in the Family Violence Risk Assessment and Risk Management Framework (also known as the Common Risk Assessment Framework or the CRAF) and that external service providers working within the courts make use of the CRAF where appropriate
- ▷ simplify the FVIO1 information form and integrate a CRAF-based checklist for applicants to complete when making an FVIO application
- ▷ introduce training for registrars who interview applicants and prepare FVIO documentation, to ensure that the CRAF is applied and risks are identified and included in the application for an intervention order
- ▷ ensure that applicant support workers complete the CRAF with the affected family member in family violence intervention order cases.³²⁵

In response to Judge Gray's findings, the Magistrates' Court noted that it was incorporating elements of the CRAF into the application materials to ensure easier identification of risk and safety concerns. It also noted that family violence registrars have undertaken a CRAF training session, and that further specialist training is planned; and that all applicant support workers complete the CRAF with affected family members as part of their assessment.

As noted above, during the Commission, Court Network also began upgrading the service its workers provide at Sunshine Magistrates' Court to include risk assessments and referrals to appropriate services.³²⁶

Information sharing between courts and other parts of the family violence system

The Commission heard that there are limitations on information sharing between the Magistrates' Court, the Children's Court and other parts of the family violence system. Child protection workers told the Commission that better feedback loops with the courts were necessary, and that the lack of up-to-date information on FVIOs, including when they are varied or breached, made it difficult to engage in safety planning for women and children.³²⁷

Ms Karen Field, a Specialist Family Violence Service Registrar at the Sunshine Magistrates' Court, told the Commission that:

There should be better systems for sharing information between the Magistrates' Court and other agencies, such as the Department of Human Services, Corrections and Victoria Police, and also the Family Court, Federal Circuit Court and Children's Court. We can't access any information held by these agencies which would no doubt be relevant to an intervention order application. On the other hand, at Sunshine, we are constantly processing requests from these agencies for information about intervention orders.³²⁸

Under the *Magistrates' Court Act 1989* (Vic), non-parties to an intervention order proceeding (for example, government agencies) are entitled to inspect that part of the Magistrates' Court register that contains a final order made in the proceeding (subject to there not being a suppression order in place and payment of the prescribed fee).³²⁹ On the face of it, any non-party should be able to obtain copies of final FVIOs by going through an administrative process only.

However, according to the Magistrates' Court's Family Violence Operating Procedures, it has received advice that it is prohibited from allowing access to final FVIOs pursuant to Part 8 of the Family Violence Protection Act.³³⁰ This Part prohibits the publication of details of proceedings or orders that may lead to the identification of a person involved in an intervention order proceeding, unless the Magistrates' Court otherwise orders or an adult victim consents to the publication.³³¹ The operating procedures provide that, as a matter of best practice, registrars should always put the matter before a magistrate who will make a determination under section 169 of the Family Violence Protection Act regarding whether to allow the release.³³²

This means that any person that is not a party to the proceeding (such as, for example, the Department of Health and Human Services is required to submit a formal application, and have an order made by a magistrate, to obtain access to a final FVIO.

Further, the operating procedures provide that non-parties are not entitled to inspect any additional information that relates to the application or any interim FVIOs.³³³

A similar process exists in relation to accessing final orders in the Children's Court: non-parties to proceedings must obtain approval from the magistrate before they can inspect final orders made in the Children's Court.³³⁴ Further, access to court files will not be provided in any circumstances unless so ordered by the President or a magistrate.³³⁵

The way forward

Family violence intervention orders made in magistrates' courts are an important way of keeping victims safe and preventing perpetrators from continuing their use of violence. Magistrates' courts also keep perpetrators accountable by convicting and sentencing offenders for family violence-related offences. In discussing the way forward the Commission focuses mainly on the Magistrates' Court's civil jurisdiction but also makes some recommendations for changes to the way it exercises its criminal and other jurisdictions.

The role of the Magistrates' Court in making intervention orders is different from the traditional role of courts in deciding civil and criminal cases. In intervention order proceedings, magistrates do not simply determine the facts about past events and apply the law to those facts. They have to make decisions about the extent of ongoing risk, which may profoundly affect the victim's future safety.

Court staff and magistrates must also manage the fact that parties come to the court at a time of crisis. Applicants are often distraught and fearful. They may have found the courage to report violence after it has been occurring for a long time and still be at risk. They may fear that the violence will escalate because they have reported it and that the perpetrator will attack or harass them while they are at court or afterwards. Perpetrators may be concerned that if they are excluded from the family home they will have nowhere to live and may not be able to see their children. Both parties are likely to have very limited understanding of court processes and may not have a lawyer to advise or represent them.

As well as dealing with these issues, magistrates must make decisions about whether the alleged acts of violence occurred and must act fairly and impartially. When they determine the orders that are necessary to keep a victim safe, they are reliant on processes and services that are the responsibility of other agencies, for example police who apply for intervention orders and prosecute breaches of orders, and services aimed at preventing perpetrators acting violently in the future.

We are increasingly seeing models of courts that take a more problem-solving or therapeutic approach in deciding some types of cases. Over the past decade courts in the United States, Canada and to some extent Australia, have moved towards providing greater support to witnesses in criminal cases who have suffered traumatic experiences (for example, witnesses in sexual offence cases) and to some categories of defendants in criminal cases, including those who have complex needs who may repeatedly re-offend unless these needs are addressed (for example, people with an intellectual disability or acquired brain injury). These changes are examples of a 'therapeutic justice' approach, which emphasises the importance of solving the problems that bring people before court. Another example is the establishment of specialist sexual offence courts³³⁶ in some jurisdictions, which seek to provide a more supportive process for complainants in sexual offence cases, without detracting from the need to provide a fair trial for people accused of sexual assault.

In Victoria the establishment of the Magistrates' Court Family Violence Division, and Specialist Family Violence Services Courts, also reflects the increasing influence of therapeutic and problem solving approaches. The Neighbourhood Justice Centre is another example of this approach. These innovations have provided support to affected family members and enabled magistrates to engage with perpetrators, to emphasise the effects of what the perpetrator has done, and to require them to participate in programs to address their behaviour.³³⁷ Ensuring that these perpetrators are referred to appropriate interventions that may prevent them from being violent in the future is not inconsistent with the goal of ensuring they are held accountable for their wrongdoing. The Commission notes that service providers, such as Women's Legal Service Victoria, that are concerned primarily with the safety of victims of family violence, advocate the use of a therapeutic model where either the victim or the perpetrator presents with complex needs.³³⁸

So far, the Magistrates' Court adoption of a more therapeutic approach has largely focused on making support services available at the court or to referring parties to services outside the court. The concept of therapeutic justice has had much less influence on case-management and listing processes, which continue to follow a relatively traditional path, except perhaps in the NJC. The high volume of family violence cases, out-of-date information technology that requires court staff to spend a large amount of time on manual entry of data and the lack of appropriately skilled court staff, has made it difficult to change the ways in which family violence cases are managed and listed, particularly outside the specialist and divisional courts.

It is the Commission's view that the Magistrates' Court should, so far as possible, take a problem-solving and therapeutic approach to exercising its FVIO jurisdiction. The Commission recommends that as part of the move towards a more therapeutic approach, all headquarter courts should be specialist courts with the same powers and features as Family Violence Divisional Courts. If adequately funded, the creation of specialist courts at all headquarter courts will create the opportunity to revise all aspects of court process and procedure. The aim should be to ensure that high levels of demand are managed carefully, cognisant of the risk to victims. Such courts must also be safe for victims, accessible and supportive for those who use them and have the powers to assist perpetrators to change their behaviour.

The Commission's proposals and recommendations in this section are directed to ensuring that magistrates' courts are set up for success in delivering a therapeutic model. The Commission recommends a number of strategies to support both specialist and other magistrates' courts to make the transition from a reactive and piecemeal approach to managing FVIOs, towards a court culture and practice that supports positive and effective interventions for affected family members and perpetrators.

The Commission recognises of course that courts are independent entities that determine their own models of administration. Our recommendations to the Magistrates' Court and Children's Court should be read in that light. Further, it would be desirable for the Department of Justice and Regulation to consult with the courts on any legislative changes required by our recommendations.

The Commission notes that some of these recommendations—for example, relating to remote facilities and the transfer of proceedings to headquarter courts—may raise distinct complexities in relation to children. We therefore have not prescribed the application of all of our recommendations to the Children's Court. However, we encourage the Children's Court to consider whether and to what extent they might adopt our recommendations.

A specialist and therapeutic approach

It is not acceptable that some victims and perpetrators in FVIO matters have the benefit of specialised magistrates and support people, while other parties do not. All FVIOs should be heard in courts that have the therapeutic features of the FVCD and specialist courts.

Such courts should also have the capacity to deal with criminal, civil, crime compensation and other matters at the same time as they deal with FVIO proceedings. As things stand, it is necessary for some affected family members to re-tell their story in multiple forums or proceedings. For example, the victim may have to seek an FVIO to exclude the perpetrator from the home, and give evidence against the perpetrator in criminal proceedings for breach of an earlier order.

As Judge Gray observed in his findings in the inquest into the death of Luke Batty '[T]his case has demonstrated that the response by the Magistrates' Court to family violence is optimal when there is an alignment between criminal cases and family violence cases affecting the same parties'. Judge Gray described the specialist courts as constituting a 'sound model' that 'ensures integration of relevant jurisdictions'.³³⁹

A victim may also have to give evidence to support an application for a parenting order under the Commonwealth Family Law Act. Again, so far as possible victims should be able to have all their legal issues determined in the same court.

Expanding the number of courts with the power to determine a broader range of issues in the same proceedings is a key means of moving towards a more unified approach. Magistrates should be encouraged and trained to deal with criminal, civil, crime compensation, and, subject to the restrictions in the *Family Law Act 1975* (Cth), family law matters, at the same time as they deal with FVIO proceedings.

The Commission also notes the 'fast-tracking' model for conducting criminal family violence proceedings that began at Dandenong Magistrates' Court. If the model continues to prove successful, it may be an essential aspect of combatting delays.³⁴⁰ We suggest that it be evaluated as soon as possible and, pending any serious difficulties identified by that evaluation, that other suitable sites for the model be identified.

The Victorian Government is in the process of appointing specialist family violence registrars and applicant and respondent workers to all headquarter magistrates' courts in 2016.³⁴¹ The government has also accepted, in principle, Judge Gray's recommendation that key features of the FVCD model be expanded statewide.

The Commission welcomes these commitments. Although we do not consider it feasible to introduce these features to all magistrates' court venues (some noted above will only deal with a small number of FVIO matters each year), we recommend:

- ▷ first, the expansion of key features of the Family Violence Court Division to all headquarter courts (presently Ballarat, Bendigo, Broadmeadows, Dandenong, Frankston, Geelong, Heidelberg, Melbourne, Latrobe Valley, Ringwood, Shepparton and Sunshine) and other specialist family violence courts (presently Moorabbin and Werribee), effectively expanding the number of specialist courts
- ▷ second and subsequently, procedural changes to ensure that a greater volume of family violence matters can be and are transferred to these courts as a matter of course (subject to exceptional circumstances which outweigh the benefit of transferring proceedings in particular matters).

The transfer of a greater volume of matters to headquarter courts will require practical changes, to ensure that all people affected by family violence receive the support and services they require. People living in rural and regional areas may not have access to a headquarter court. For that reason, we envisage that they should be able to appear in FVIO proceedings in a headquarter court through the use of remote witness facilities, located either in the court venue nearest to them, or in places close to where they live, for example, at the premises of specialist service providers, legal services or health-care providers. For those who use courts in regional and rural Victoria, the improvement of remote facilities for conducting proceedings, as well as for use in receiving legal advice and support from specialist workers, is an essential prerequisite of transferring matters from these regional and rural courts to headquarter courts. We expand on these remarks below under 'Better use of remote facilities'.

Because magistrates will be dealing with criminal proceedings related to FVIOs, the Commission recommends that applicant and respondent support workers in specialist family violence courts be able to assist parties in proceedings for FVIO contraventions, as well as in FVIO proceedings.

The use of headquarter courts to hear the vast majority of family violence matters will also require legislative amendments. For example, the 'proper venue' provisions will need to be revised to ensure that proceedings are usually initiated in or transferred, as a matter of course, to headquarter courts. The amendment will need to provide safeguards to ensure that the decision to transfer proceedings is made in view of the circumstances, safety and convenience of the parties and the interests of justice in a particular case. In particular, emergency interim orders may need to be made at the court at which a party has applied.

Other legislative impediments to the expansion of access to the specialist courts will also need to be reviewed. The Commission notes, for example, that the effect of section 133 of the Family Violence Protection Act is that the Secretary of the Department of Justice and Regulation must authorise the engagement of the individual who is to conduct an interview and prepare a report regarding a respondent's eligibility for counselling and the relevant counselling program. The Magistrates' Court of Victoria and Children's Court of Victoria submission reported that this section made it difficult to appoint respondent workers quickly.³⁴² It argued that the section is not necessary and is inconsistent with the establishment of Court Services Victoria as an independent body of the Department of Justice and Regulation. The Commission encourages the Victorian Government to take account of this particular consideration when contemplating any necessary regulatory and legislative changes. Further, as a greater volume of matters are transferred to headquarter courts, staffing and resourcing will need to be carefully monitored to ensure that the headquarter courts are capable of taking on a greater share of matters.

These recommendations are not intended to limit changes that respond to the needs of people affected by family violence. Decisions about demand management in particular courts or regions are properly made by the courts and Court Services Victoria in light of changing variables, among them the needs of the local population and the relative proximity of alternative court venues. For example, the Commission heard that there is both need and potential for the Moe Magistrates' Court to be redeveloped as a FVCD court.³⁴³ The Commission encourages the Magistrates' Court of Victoria and the Victorian Government to consider this proposal, as it should other similar proposals elsewhere. In some cases, it may also be desirable for some specialist family violence courts to operate at other courts on a 'circuit' basis (so that judicial and specialist staff visit other courts on days set aside for family violence proceedings).

The capacity of specialist courts to hear related aspects of a case—criminal, civil, family law, compensation and other matters—must be fully utilised. Police who are applying for intervention orders may have limited capacity to advise affected family members on related legal issues, for example family law matters. This underscores the need for the affected family member to have independent legal representation, even in police-initiated intervention order proceedings.

In its response to Judge Gray's findings following the death of Luke Batty, the Victorian Government noted plans for the Department of Justice and Regulation to undertake an evaluation of the features of the FVCD.³⁴⁴ This is a welcome development. While in the Commission's view there are compelling indications of its effectiveness, and very widespread support for the division, it is sensible that the expansion of the model should be accompanied by an evaluation of its features to identify any areas for improvement.

Recommendation 60

The Victorian Government ensure that all Magistrates' Courts of Victoria headquarter courts and specialist family violence courts have the functions of Family Violence Court Division courts [within two years]. These courts should therefore have:

- ▷ specialist magistrates, registrars, applicant and respondent workers to assist parties in applications for family violence intervention orders and any subsequent contravention proceedings
- ▷ dedicated police prosecutors and civil advocates
- ▷ facilities for access to specialist family violence service providers and legal representation for applicants and respondents
- ▷ power to make counselling orders under Part 5 of the *Family Violence Protection Act 2008* (Vic)
- ▷ remote witness facilities for applicants
- ▷ the jurisdictional powers of the Family Violence Court Division under section 41 of the *Magistrates' Court Act 1989* (Vic), including the power to make parenting and property orders under the *Family Law Act 1975* (Cth).

Recommendation 61

The Victorian Government legislate to ensure that, subject to exceptional circumstances and the interests of the parties, all family violence matters are heard and determined in specialist family violence courts [within five years].

Managing demand

The high volume of FVIO cases in some magistrates' courts has affected the capacity of court staff, registrars and magistrates to take a more therapeutic approach to family violence. The Commission understands that demand in some courts has increased to the extent that managing that demand has become an end in itself and something that requires substantial planning, ingenuity and coordination. In some courts a primary focus on managing demand has affected how services are administered. It is evident that different courts have devised piecemeal innovations at different times in response to increased demand. This has led to a degree of incoherence across the court system, overlap between the roles of different court staff within one court, or inconsistency regarding the role of particular court staff positions across different courts.

This leads to further inefficiency because the time of particular staff—for example, the duty lawyer, or the Court Networker—is taken up explaining the 'division of labour' to the person who has come to court. (Equally, as things presently stand this is part of the value of the duty lawyer or Court Networker: we note Judge Gray's remarks about the absence of a central person to guide the applicant through the process and manage their expectations—in many cases, the duty lawyer's role, for example, may be to do just that.)

The courts will not be well placed to adopt and consolidate a therapeutic approach unless demand is effectively managed. Magistrates are much more likely to make appropriate, tailored and effective FVIOs when they are supported by adequate resources and systems that are fit for purpose. The Commission makes a number of suggestions and recommendations directed to enhancing the efficiency and responsiveness of the court to family violence cases. These recommendations are intended to apply to all courts prior to the establishment of specialist family violence courts at headquarter courts. They will also be rolled out to manage demand in headquarter courts when they become specialist courts.

Making better use of the time and skills of the magistracy

Infringements and minor civil disputes are high-volume matters that form a large segment of court business yet are often very straightforward. An in-person hearing might not be needed in many cases. Similarly, some interlocutory disputes might not require in-person hearings. More efficient management of matters such as these might allow for existing resources to be better directed to FVIO matters.

The Magistrates' Court might consider expanding the range of (non-family violence) matters determined 'on the papers' and establishing a process for determining 'on the papers' matters online. Such processes would, of course, provide for in person hearing where necessary.

A further option would be to delegate magistrates' powers to deal with some family violence matters, or some classes of matters (for example, granting adjournments, or making interim orders and/or substituted service orders) to judicial registrars. The Commission accepts that there are circumstances where it may be appropriate for a magistrate to make these decisions. However, we are confident that judicial registrars have the capacity to determine whether a particular matter requires the involvement of a magistrate.

A further option would be to transfer a larger volume of family violence matters to the Neighbourhood Justice Centre. This would be consistent with the Commission's view that a therapeutic justice approach should be adopted in determining FVIO applications. We note that, pursuant to the Magistrates' Court Act, the NJC's jurisdiction is limited to a particular district,³⁴⁵ so that a notice in the Victorian Government Gazette would be required to expand its sphere of operation. This decision would have to be made in consultation with the NJC, so that the desirable features of the NJC model would continue to apply.

Finally, the Commission accepts that the court's capacity to manage family violence matters is compromised by the volume of cases in areas other than family violence. In particular, low-level penalties and traffic matters consume substantial time and resources. We understand that progress in this direction is ongoing, and note for example that the Infringements Court (a venue of the Magistrates' Court) deals with a significant number of matters and that the *Fines Reform Act 2014* (Vic) may help reduce the number of fine-related matters that come to the Magistrates' Court. Nonetheless, the Commission recommends that the Victorian Government conduct a review to consider further ways of increasing the capacity of the Magistrates' Court to focus on family violence matters by managing high-volume but straightforward matters more efficiently.

Recommendation 62

The Victorian Government enact legislation and take other steps as necessary to support the capacity of the Magistrates' Court of Victoria (and, where relevant, the Children's Court of Victoria) to grant family violence intervention orders speedily and with due regard to the interests of justice and the safety of affected family members.

The Victorian Government consider [within two years]:

- ▷ transferring some of the jurisdiction of the Magistrates' Court of Victoria to another forum— for example, fines and traffic infringements
- ▷ expanding the range of matters which can be determined on the papers— that is, without an in-person hearing
- ▷ funding the appointment of a greater number of judicial registrars to deal with certain matters or classes of matters.

The Magistrates' Court of Victoria (and, where relevant, the Children's Court of Victoria) consider whether the caseload of magistrates could be better managed [within two years] by:

- ▷ re-assigning some family violence intervention order applications currently heard at the Melbourne Magistrates' Court to the Neighbourhood Justice Centre
- ▷ delegating authority to judicial registrars to deal with certain matters or classes of matters under the *Family Violence Protection Act 2008* (Vic)—for example, allowing them to grant adjournments or make interim orders and/or substituted service orders

The Victorian Government should take any necessary action to implement these recommendations if the Magistrates' Court of Victoria advises this is desirable.

Upgrading information technology systems

The continued use of an outmoded IT system that does not allow visibility across criminal, civil and family law systems (and non-legal systems) in respect of a single matter increases the burden on magistrates and court staff.³⁴⁶ It requires magistrates to adjourn matters when all the material they require is not before them. It also puts people at risk and limits the potential benefits of other reforms.

An upgraded, fit-for-purpose IT system is an essential precursor to change. Such a system has the potential to support timely updating and sharing of information; collection and cross-correlation of reliable data on court use and performance, which can be used to measure and adapt court practice; and the provision of evidence, legal services and other supports to people in refuges or remote locations.

The Commission recommends that the Magistrates' Court and Children's Court move away from inefficient manual and paper-based processes towards electronic and online processes.

The courts should establish an 'e-registry' through which the core registry work is done online. The e-registry should allow online inquiries, initiation of proceedings, listing of hearings, upkeep of court files, lodgment of documents, notification of outcomes and other relevant processes. This should take place via a central online portal. Parties and police should have sufficient access to the portal so that police can transfer information directly into the online portal; and individuals, or legal services and registrars on their behalf, can submit documents online.³⁴⁷

Such changes may need to be supported by legislative and regulatory amendments if current laws and regulations prescribe paper-based processes (including fax) or do not permit electronic signatures. Additionally, as reliance on paper files diminishes, court protocols that prescribe processes for managing and keeping paper files will need to be amended.

Other jurisdictions have made the transition to digital case management: Western Australia and New South Wales have moved to paperless processes for a range of criminal and civil matters, and the ACT has recently purchased the Western Australian case management system.³⁴⁸ The Commission also notes the piloting of the Neighbourhood Justice Centre's digital court coordination system. Ms Kerry Walker, the NJC's Director, explains that the system:

...connects the Magistrate and bench clerk with registry, lawyers, police, client services and the court user. In this way the clients are kept up to date with the status of their case and whether there is anything further they are required to do.³⁴⁹

We encourage the Magistrates' Court to investigate whether the NJC's system could serve as a model for, or for some aspects of, an 'e-registry'.

A move away from physical files to a centralised online portal means that a person can inquire about their case through any court. Consequently, there should be scope to centralise registry-related queries—for example, by developing a specialised workforce (whose work need not be carried out at a court venue) to field online and phone queries relating to procedural and filing matters.

The objective of these developments is faster, less labour-intensive court processes and court registries that are better able to provide information promptly to magistrates, legal practitioners, the police and others. An important benefit of this approach would be to free registry staff to provide more tailored assistance to parties consistent with the adoption of a more therapeutic approach in family violence matters. The workforce should be equipped to redirect its priorities, so changes to court processes and systems should be accompanied by training, recruiting and other efforts to reshape the court workforce, to enable it to focus on case management and judicial support rather than transactions, data entry and manual processes. Training of the court workforce is considered further in Chapter 40.

These developments must be of a piece with the general improvement of the court's IT systems. It is essential for the appropriate adjudication of FVIO proceedings, and criminal proceedings involving family violence, that judicial officers are aware of relevant parallel proceedings both within their court, and in other courts across the state and federally.

Unfortunately, persistent difficulties with IT in the justice system—in particular, the Integrated Courts Management System³⁵⁰—may have contributed to a circumspect approach to the improvement of courts' IT. However, there is no reason that a user-friendly, reliable, integrated IT platform for use by Victorian courts should be considered unachievable. The Commission believes it is an essential element in improving responses to family violence and must be a priority for government. This issue is considered further in Chapter 7. We also acknowledge that the Department of Justice and Regulation is undertaking a review of information-sharing needs and barriers across the justice system.³⁵¹ The Commission encourages the department to consider these observations as part of its review.

Recommendation 63

The Magistrates' Court of Victoria (and the Children's Court of Victoria) consider establishing an 'e-registry' as a central online file-management portal and an offsite contact centre for managing registry-related queries [within five years].

Managing lists

Managing court lists is an administrative process for determining when, and the sequence in which, cases will be heard. This affects the volume of cases heard by the magistrate and how long people will have to wait at court. Case management should also involve triage so that cases where an affected family member is at high risk of harm are given priority over cases with lower risk. A high volume of cases makes it difficult for registrars and court staff to manage this process. Different courts adopt different practices in triaging and managing court lists.

Information sharing and risk management

The Commission encourages the Magistrates' Court of Victoria to consider comprehensive coordination meetings as a standard component of list management, involving not only legal practitioners but also, where relevant, non-legal service providers, applicant and respondent workers, registry staff and others.

The Commission recommends that the standards for coordination meetings set out in the *Family Violence Court Division Operating Procedures* provided to us by the Magistrates' Court should be adopted—and, where necessary, adapted (for example, if stipulated attendees are not deployed at a particular court venue)—for use in all courts where particular days and lists are set aside for the hearing of family violence-related matters.

There is also scope for improving and coordinating the risk assessment standards that court staff use to determine listing priorities.

The Commission supports Judge Gray's proposals in relation to risk assessment, noting his recommendations relating to a revised CRAF. Risk assessment is discussed in Chapter 6. In particular, the Commission recommends that prescribed organisations (including the courts) be required to have risk assessment practices consistent with the CRAF. Where practicable, service agreements with court-based service providers should also require that any risk assessments they complete are consistent with the revised CRAF.

It is important that registrars and other court staff have a clear sense of how and when they should apply their CRAF training. There are clear instances in the courts where this should occur: for example, registrars may apply their CRAF training in considering the urgency and salient features of a particular matter; applicant support workers should complete the CRAF when meeting applicants; and the triage meetings that occur at courts should take family violence risk factors into account in assessing how to prioritise and manage cases.

Questions arise in relation to whether magistrates should receive pertinent information yielded by coordination meetings and risk assessments. Although this can vary between cases, the general position of the Commission is that they should receive all relevant information where possible.

Some interested parties expressed concern about the potential danger to victims being exacerbated by respondents having access to such materials. The Magistrates' Court Family Violence Operating Procedures advise that while parties are entitled to inspect and receive a copy of any order made in FVIO proceedings:

The court is not required to enter information from the Information Form or other material into the court register. Accordingly, respondents are not entitled to inspect these documents as of right.

If a respondent seeks to access documents (other than orders), the registrar should put the application before a magistrate to determine whether those documents should be released.³⁵²

The Commission acknowledges that in such proceedings, there may be broader natural justice considerations that may compel a magistrate to provide a respondent or their legal representative with the risk assessment (such considerations may arise, for example, if a decision to make a particular order was influenced by the assessment). Further, there may be cases where the risk of violence is exacerbated by the provision of such information to the respondent. Any such risks in certain cases must be weighed against the broader risk of depriving magistrates of potentially pertinent information about the risk posed by the perpetrator. Accordingly, we suggest that in implementing this recommendation, the Victorian Government consider the views of the magistracy.

In the Commission's view, it would assist magistrates to determine the orders, if any, which should be made, if Victoria Police were required to provide a broader range of information in support of the application. As a standard practice, Victoria Police should provide to magistrates an affidavit attesting to the relevant features of a matter: in particular, whether there have been any prior FVIOs or L17s, whether there are prior or forthcoming criminal proceedings, whether the respondent is on bail (and if so, the conditions of bail), relevant risk factors relating to the current incident, and the orders sought by police. In addition, we recommend that registrars provide magistrates with a summary of the status of proceedings in other relevant jurisdictions—including, for example, the Federal Circuit Court, the Children's Court, the Family Court, the Victims of Crime Tribunal and the Victorian Civil and Administrative Tribunal.

The Commission notes that in some instances, police are already providing this information and that some of it will usually be provided as part of completing the application form. Our objective is to ensure that best practice is the general practice. We anticipate that better preparation of police applications will ensure that magistrates, and respondents against whom orders are sought, are fully informed from the outset, so that there are fewer adjournments, strike outs or requests for further and better particulars, and a better chance of a matter finalising at or soon after the first mention. We accept that in some cases this will impose a greater burden on police, and make recommendations that they be given more time to bring to court applications that have been the subject of a family violence safety notice.

Earlier in this chapter and in Chapter 7, we discuss the improvement of the court's IT platform—in particular, with a view to allowing searches to occur across courts to identify parallel proceedings involving particular parties. We expect that over time, these improvements will mean that the obligations that our recommendations impose on police and registrars become significantly easier to fulfil.

In addition to enhanced information sharing within the courts, the process for sharing information between courts and other parts of the family violence system should be much simpler and more accessible. Relevant agencies such as DHHS should not be required to seek a court order to obtain access to a final FVIO. They should also be able to access any additional information in the court's possession which is necessary to assess or manage risk to a person, such as risk assessments or interim FVIO.

The Commission's recommendation in relation to this issue is outlined in Chapter 7. In short, the Commission recommends that courts should be prescribed bodies under the proposed privacy regime in the Family Violence Protection Act, subject to some safeguards. This would confirm courts' ability to share information with another prescribed organisation without that organisation having to seek an order to gain access to the information in question.

Recommendation 64

The Magistrates' Court of Victoria staff hold a daily coordination meeting before hearings begin in a family violence list [within 12 months]. The purpose of the meeting would be to give priority to high-risk cases, ensure that interpreters are available, liaise with legal representatives to manage conflicts, and liaise with applicant and respondent support workers.

Recommendation 65

The Magistrates' Court of Victoria develop and implement a process [within two years] of equipping court staff to actively manage the family violence list, having regard to risk assessment and management factors, and provide magistrates the information the Commission recommends in this report.

Recommendation 66

Victoria Police ensure that before applying for a family violence intervention order the relevant magistrate receives an affidavit (prepared by the police prosecutor or civil advocate) [by 31 December 2017] specifying:

- ▷ any previous family violence intervention orders relevant to the affected family member and respondent
- ▷ whether the respondent is on bail for any offence and the conditions of any such bail
- ▷ whether any previous family violence intervention orders have been breached
- ▷ whether there are previous or forthcoming criminal proceedings, and the status of any such proceedings
- ▷ whether there have been previous family violence incident reports (L17 forms) relating to the same parties
- ▷ relevant risk factors relating to the current incident—including a status update on any risk factors described in the L17 relating to the application
- ▷ the family violence intervention orders sought by police and whether the affected family member consents to those orders.

A Victoria Police representative—for example, the police prosecutor, a civil advocate or the family violence court liaison officer—should discuss the particulars of the affidavit with the affected family member before the hearing.

Recommendation 67

The Magistrates' Court of Victoria registry, in all police-initiated applications for family violence intervention orders provide to the magistrate a summary indicating the status of any related proceedings in the Children's Court of Victoria (or vice-versa), the Family Court of Australia and/or Federal Circuit Court of Australia. If information is not available from other jurisdictions, this should be stated. In non-police initiated family violence intervention orders, the Magistrates' Court registry should also provide the information recommended to be provided by Victoria Police in an application initiated by it. The Magistrates' Court registry should also adopt a practice of providing risk assessments made by applicant and respondent support workers to magistrates as a matter of course [by 31 December 2017].

Capping lists

One way of managing case volumes and enabling the court to be more responsive to parties is by 'capping' the number of matters that can be heard on family violence sitting days. This means setting a maximum number of matters, or matters of a particular kind, that the courts will hear on a particular day. The Magistrates' Court is moving in this direction.

After an extended period of consultation, discussion and design, the Broadmeadows Magistrates' Court was chosen as a site for testing the effectiveness of capping lists. In October 2015, Chief Magistrate Peter Lauritsen issued a practice direction requiring the number of FVIO applications heard in the Broadmeadows Magistrates' Court to be capped at 40 in a single daily list.³⁵³ This includes primary applications and applications to revoke, vary or extend orders; it excludes urgent applications for interim FVIOs, which are allocated to a courtroom separate from the courtroom hearing the capped list.

In the practice direction, the Chief Magistrate noted:

In recent years, the number of applications for Intervention Orders under the Family Violence Protection Act 2008 has grown significantly. The ability of the Court, lawyers, police, support workers and other professionals to perform their respective roles has been compromised. Effective family violence outcomes require sufficient time for the Court to address the requirements of the Act and for lawyers, police, support workers and other professionals to conduct themselves in accordance with relevant standards ... The introduction of this process at Broadmeadows is the first stage. The impact of capped lists will be monitored and will inform the expansion of capping to other regions of the Court.³⁵⁴

The Commission endorses the Magistrates' Court's testing of 'capping' and encourages the court to consider expanding this approach to other suitable venues, acknowledging that different venues will have different needs, and a different volume and mixture of cases. One potential risk of capping—as the Magistrates' Court is aware—is the creation of delays for some litigants. In some cases, the strategy might need to be paired with the allotment of extra days for hearing family violence matters.

Reducing court waiting times

One of the problems faced by affected family members and respondents is that they may have to wait many hours before their matter is called on the hearing day. To some extent this reflects the difficulty of managing lists when it is not clear whether or not parties (particularly perpetrators) will actually appear and the time that particular hearings will take is uncertain. There is a concern that the time of magistrates and lawyers will be wasted if hearings are scheduled for particular times and then have to be adjourned.

It is the Commission's view that a more therapeutic approach to family violence requires courts to consider ways of alleviating the stress and frustration that victims and respondents experience because of indeterminate waiting periods. One possibility would be to stagger lists so that parties are advised that their matter will be heard in either the morning or the afternoon. There may also be technological solutions to the problem.

As noted earlier in this chapter, the Neighbourhood Justice Centre told the Commission it is piloting a digital case-management system. Using a real-time airport-style electronic display of listed matters, and alerts transmitted to parties' mobile phones, parties will be able to observe their place in the order of matters being heard on a given day. This will enable them to more effectively plan and structure their time in court (including leaving to return closer to their hearing time if they wish) and to make transport, work and child-care arrangements. Another aim is to help alleviate the distress and frustration caused by an indeterminate waiting period. Other courts should consider combining it with conventional list management processes.

Another possibility would be the provision of devices to court users that allow them to leave the court but remain nearby, so that they can be called to the court when required.

The Magistrates' Court and the Children's Court might also explore the use of 'benchmarks' for common court processes. Benchmarks might stipulate, for example, the maximum number of hours that parties to a listed first mention, direction hearing, or an ex parte interim hearing should have to wait in court before their matter is called, maximum periods between a first mention and a directions hearing, and so on. Effective use of benchmarks necessitates data-collection practices that allow courts to reliably measure performance. In addition, the use of benchmarks and caps carries certain risks: an unduly inflexible approach might see the exclusion of matters that require extra time, or warrant greater urgency. Any workable scheme must be subject to sensible discretion and continuous revision.

Legal and non-legal services that work within courts should be consulted in determining the readiness and appropriateness of particular venues for particular list management strategies.

Recommendation 68

The Magistrates' Court of Victoria consider for each court [within 12 months]:

- ▷ capping lists of family violence matters at a level that allows magistrates sufficient time to hear each matter
- ▷ staggering family violence lists to provide greater guidance to parties as to when cases will be heard
- ▷ increasing the number of days dedicated to listing family violence matters
- ▷ introducing benchmarks for the maximum amount of time parties should wait for a listed family violence matter to be heard.

Resourcing

Increased demand and inadequate resourcing leads to a deterioration in the comprehensiveness and quality of services court staff can provide. Most obviously, gaps in resourcing mean that the people who require services—security services, access to applicant or respondent workers, Court Networkers, or specialist family violence services—do not receive them at all or receive only limited services. Inadequate resourcing also leads to a workforce preoccupied with transactions and 'throughput' rather than with the safety and wellbeing of court users. The frustration some court users reported in connection with court-based services reflects this state of affairs.

Resourcing should not simply enable services to subsist in the face of growing demand, but should enable them to develop their expertise to contribute to the safety and wellbeing of court users, to find new ways to cooperate with other services, and to be part of the continuous improvement of the courts.

Registrars

Registrars have an important role in supporting a therapeutic approach. For many court users, the first substantial encounter they have is with a registrar or registry staff. For private applicants, a registrar might be the first person they have spoken to about the violence they have experienced. Registry staff must be equipped to assist parties and identify any problems or discrepancies at an early stage, including supporting them in making correct and complete applications, assembling documents for the hearing and understanding the court's process. Ensuring lists are well managed and that magistrates are supported to consider applications efficiently and comprehensively, is also likely to alleviate some of the burden on courts.

The Commission proposes that registrars be supported to become highly skilled and proactive case managers for both court users and the judiciary, rather than having their time and efforts directed to 'throughput' operations. Registrars should devote significant time to answering inquiries related to case files, having ongoing contact with court users as required, and preparing risk assessments for the magistracy.

This will require a shift from the current transaction focus of the registry in some magistrates' courts, to a service focus, and should be supported by a workforce development strategy. The e-registry recommended above, that will allow courts to provide a number of registry services online, is a significant step towards equipping registrars to fulfil their role as case and list managers.

Legal services

The Commission accepts the evidence we heard about the importance of adequate legal services for court users. Victoria Legal Aid and community legal centres must be resourced to provide adequate duty lawyer services in all magistrates' court venues.

In keeping with the views of the Australian Women Against Violence Alliance, the Commission considers that providing legal services in family violence matters requires a workforce that has the agility to respond to growing and changing patterns of demand; that is resourced to design, develop and evaluate new ways to work; can strengthen and maintain links with other (legal and non-legal) service providers; and can attract and develop staff over the long term. This in turn requires funding which is sustained, secure and sufficient.

The high cost of legal services, the limited availability of free or subsidised services, and the pressure on existing services, are perennial concerns. Limited services are particularly concerning in the context of family violence, when the parties may have unequal access to resources and legal processes can be used by the perpetrator to continue dominating the victim. Victims may also endure significant financial hardship to engage legal representation, including depleting their savings, incurring debt and selling or mortgaging property and assets. Yet these assets and resources may be a protective factor, and their depletion may inhibit a victim's autonomy and increase their vulnerability to further violence.

One of the more difficult responsibilities of Victoria Legal Aid and Victoria's various community legal service providers is prioritising their service provision to ensure as many people as possible, and those people in the greatest need, receive legal services. In circumstances where finite resources are applied to growing demand, such a balancing exercise is necessary and appropriate. However, the resourcing of legal services must be sufficient to ensure that those who clearly require duty lawyer services in FVIO proceedings—whether applicants or respondents—are able to access them.

Expanding access to specialist courts will entail adequate resourcing for the provision of legal services at these venues. This is so not just because there will ultimately be a greater number of matters heard at headquarter courts, but because legal service provision is often more intensive at specialist family violence courts, where a wider variety of matters are heard. This is noted in a May 2015 Victoria Legal Aid board paper assessing duty lawyer service demand, that notes that the specialist court model 'necessitates additional lawyer time with each respondent/applicant to appropriately tailor orders', because magistrates will wish to ensure that lawyers have 'screened for family law and criminal law issues and have provided referrals to criminal and family law legal services'.³⁵⁵

It must be emphasised that the availability of duty lawyer services is just one aspect of the role played by community legal centres and Victoria Legal Aid. They also provide services outside of court—notably, Victoria Legal Aid’s Legal Help service, in-person consultations, and community legal education services. These services (and perhaps community legal education in particular) are an invaluable aspect of ensuring that the community—and in particular, potentially vulnerable or isolated members of the community—are aware of their legal rights and how to exercise them. Educating and equipping people before they come to court lessens the burden on court staff and court-based services when people do attend court, and improves the ability of court users to initiate and participate in proceedings.

The Commission is aware that a review of access to justice in Victoria led by the Department of Justice and Regulation is currently under way, and will deliver its final report in August 2016. Its terms of reference include the availability and distribution of funding among legal service providers, the availability of pro bono legal services, and support for self-represented litigants. The cost of legal services will also be considered.³⁵⁶ We anticipate that it will assist in addressing some of the resourcing concerns raised in submissions to this Commission.³⁵⁷

Recommendation 69

The Victorian Government, through the Council of Australian Governments Law, Crime and Community Safety Council, pursue the expansion of resourcing for legal services, including Victoria Legal Aid and community legal centres, to resolve current under-representation by and over-burdening of duty lawyer services in family violence matters [within 12 months].

Making courts safer and more accessible

The Commission was told that many magistrates’ courts are unsafe and inaccessible for affected family members (and sometimes respondents). This was confirmed by the Commissioners’ observations at the courts we visited. The infrastructural deficits, including a lack of space, privacy and signage, across many magistrates’ court venues present serious obstacles for many court users.

As a community we should not tolerate situations where emotionally stressed and fearful victims, who are often accompanied by young children, have to spend lengthy periods in court waiting areas in the vicinity of perpetrators and, sometimes, perpetrators’ supporters. Nor should we tolerate situations in which people with disabilities or people who are from culturally and linguistically diverse backgrounds and others are forced to attend court premises that do not meet their needs or which make them feel unsafe. It is unacceptable that people are given legal advice under a tree or in their lawyer’s car because there is no space within the court.

In an attempt to identify problems in court facilities, the government has funded an audit of magistrates’ courts to identify potential improvements to infrastructure. This is a welcome development. However the audit does not address all matters relevant to safety and accessibility raised in the evidence heard by the Commission. The Commission makes a recommendation below about the infrastructure required at courts that hear applications for family violence intervention orders

We also recommend below that greater use should be made of remote witness facilities to enable witnesses to give evidence away from the court or from court-based interview rooms. To some extent this will reduce the need to make infrastructure changes at all magistrates’ courts.

Family violence-related demand is not evenly dispersed across the courts. There would be little use in retrofitting all courts to incorporate all of the features we consider necessary pending the move to headquarter courts. Nevertheless, we believe that the Victorian Government should consider the findings of the court infrastructure and safety audits and the recommendations in this report and complete necessary changes at courts with high volumes of family violence-related matters.

Prior to the move to headquarter courts, the Commission also recommends that the court give particular consideration to the viability of using pre-existing local facilities and structures, such as halls and offices, to supplement inadequate court premises (for example for the purpose of providing safe waiting areas). These structures may already have some of the characteristics listed in the recommendation below, or they may have greater potential to be 'repurposed' to incorporate them. The Commission recognises that this may be particularly important in rural and regional areas.

Accessibility for particular groups and communities

Elsewhere in this report the Commission discusses the barriers confronting some people and communities—including people of culturally and linguistically diverse background, members of the lesbian, gay, bisexual, transgender and intersex communities, Aboriginal and Torres Strait Islander peoples and people with disabilities—in relation to gaining access to and obtaining the full benefit of the court system. Factors affecting these groups and communities are explored further in Chapters 26.

In the Commission's view, it is essential that the range of services made available at specific court venues reflects the needs of the local population, including those of particular groups and communities.

Concerns were raised about the availability and quality of interpreters. Obviously, any risk that an interpreter might (even through no fault of their own) present a barrier to the exercise of legal rights, rather than be a central element of access to justice for, for example, CALD women or AUSLAN users, must be minimised.³⁵⁸ This is discussed in Chapter 28.

The Commission was advised that funding for the Koori Family Violence and Victims Support Program ceased on 30 June 2015. This disappointing development warrants reconsideration. If a magistrates' court venue is used by a substantial number of Aboriginal and Torres Strait Islander people, it is vital that culturally safe and appropriate services are offered at that venue. In Chapter 26 we make recommendations regarding this program.

The Commission welcomes the introduction of the Judicial College of Victoria resource to educate and guide judicial officers interacting with people with a disability which has been prepared for the Magistrates' Court by the JCV.

Recommendation 70

The Victorian Government fund and complete works to ensure all Magistrates' Court of Victoria headquarter courts [within five years]:

- ▷ provide safe waiting areas and rooms for co-located service providers
- ▷ provide accessibility for people with disabilities
- ▷ provide proper security staffing and equipment
- ▷ provide separate entry and exit points for applicants and respondents
- ▷ provide private interview rooms available for use by registrars and service providers
- ▷ provide remote witness facilities, to allow witnesses to give evidence off site and from court-based interview rooms
- ▷ provide adequate facilities for children and ensure that courts are 'child-friendly'
- ▷ use multi-lingual and multi-format signage
- ▷ use pre-existing local facilities and structures to accommodate proceedings or associated aspects of court business—for example, for use as safe waiting areas.

Prior to all family violence matters being heard and determined in specialist family violence courts, the Victorian Government should fund and complete works to ensure that those magistrates' courts (and children's courts) that deal with a high volume of family violence-related matters have similar capacity.

Better use of remote facilities

Victims' experiences of giving evidence in FVIO and other family violence-related proceedings can often be improved by allowing them to give evidence via a remote facility. For some time, this process has been available for vulnerable witnesses in some court proceedings.

At present section 69 of the Family Violence Protection Act allows evidence to be given outside the courtroom in FVIO proceedings, but the Commission understands that video link facilities are underutilised. This may be because the current technology for hearing witnesses through remote facilities requires improvement so that their use does not slow down hearings and make it more difficult to complete court lists.

The Commission acknowledges that section 69 of the Act be strengthened to establish a rebuttable presumption that evidence may be given outside the courtroom (using closed-circuit television or similar means) in FVIO proceedings unless the affected family members wishes to give evidence in court. Upgrading of technology should permit this to be done without excessive delays. Section 363 of the *Criminal Procedure Act 2009* (Vic) mandates the use of closed-circuit television for complainants in sexual offence cases. We recommend that this section be extended to criminal proceedings arising out of family violence.

Legislation allows pre-recording of the evidence of children and people with cognitive impairments for certain offences, and use of the pre-recording in court.³⁵⁹ We suggest that the government investigate the possibility of prerecording the evidence of victims of family violence (or some categories of victims, for example victims with disabilities) for use in family violence-related criminal prosecutions.³⁶⁰

The Commission acknowledges the recent efforts of the Magistrates' Court and Women's Legal Service Victoria in establishing its video-conferencing pilot, which allows affected family members at high-risk to attend court and receive legal advice from a confidential remote location, avoiding potential contact with perpetrators and improving access to justice for women in regional and remote locations.³⁶¹

The use of remote facilities (and associated technologies) for a wider range of purposes should also be explored. The Commission notes Women's Legal Service Victoria's LINK Outreach service, which uses Skype to enable rural women who are experiencing family violence to obtain legal advice. The Women, Lawyers, Workers Project, has also provided for women in rural and regional areas to receive legal advice via Skype. As Deakin University's *Landscapes of Violence* report notes, projects of this kind can:

... overcome significant social and geographic boundaries, in essence creating new, borderless, confidential and safe spaces where survivors can obtain assistance.³⁶²

Finally, a note of caution: in her evidence to the Commission, Ms Field, Specialist Family Violence Service Registrar at the Sunshine Magistrates' Court, drew attention to the fact that the remote witness facility at that court is physically isolated from the rest of the court and from court security, and as a result can be an unsafe place for applicants. Clearly, this is not acceptable and undermines the very function of such facilities. In expanding the availability and use of remote witness facilities, safety must be a priority.³⁶³

Recommendation 71

The Victorian Government amend section 69 of the *Family Violence Protection Act 2008 (Vic)* and section 363 of the *Criminal Procedure Act 2009 (Vic)* [within three years] to provide that the court must permit a family violence victim to give evidence from a place other than the courtroom by means of remote technology that enables communication with the courtroom, unless the victim wishes to give evidence from the courtroom.

Recommendation 72

The Victorian Government consider legislative amendments to permit the use of video- and audio-recorded evidence in family violence-related criminal proceedings involving either adults or children [within 12 months].

Making application forms simple and information accessible

People who make a personal application for an FVIO must complete an information form. The form is long and detailed. Any effort to simplify it must take account of the need for courts to have a thorough understanding of the nature of the violence that is the subject of the proceedings. A lack of detail at the outset can lead to adjournments to seek further and better particulars or the imposition of inappropriate or incomplete orders that put the applicant at greater risk, impose unsuitable restrictions on the respondent or lead to applications to revoke or vary orders. The registrar (and others, such as Court Network staff) can assist in ensuring the applicant understands the form. Nonetheless, the information form and associated documentation should be expressed in plain, accessible language and be supplemented by explanations.

The Commission notes that in its response to Judge Gray's investigation into the death of Luke Batty, the Magistrates' Court committed to reviewing its 'Information for application for an intervention order' form to simplify it.³⁶⁴ We welcome the review.

In view of the risks and trauma that might accompany visiting the court in person to complete an FVIO form, the Neighbourhood Justice Centre's efforts to provide an online alternative to a paper form are laudable, as is the Victorian Government's commitment to expanding use of the online form to high-volume magistrates' court venues. In the Commission's view, use of the online form should be an option for applicants statewide.³⁶⁵

The Commission acknowledges the Magistrates' Court of Victoria and Victoria Legal Aid's initiative in developing a new website to provide information to applicants and respondents about family violence and FVIO procedures.³⁶⁶ Information of this kind, available in advance of the application and/or hearing process, will increase the confidence and wellbeing of victims and, potentially, improve the quality of individually initiated applications and evidence. The Commission recommends that the Magistrates' Court and Victoria Legal Aid seek to make the information on this website (including the instructional videos) available to as many litigants and in as many formats, as possible. In particular, it suggests that applicants and respondents who arrive at court should be offered the opportunity to view instructional materials in an audiovisual format. It further recommends that the information be made available in easy English and multiple languages, including AUSLAN, according to the needs of the local population. The Commission also encourages the court to ensure that legal and other service providers are aware of the website's existence and can refer people to it. We also suggest that multimedia information be made available in court waiting areas.

In our view, the expansion of access to specialist family violence registrars will provide crucial assistance to applicants in the initial application process. That said, it is important that, where possible, applicants also be referred to legal services that may be able to provide more specific assistance to them in completing the FVIO1 form.

A specific suggestion regarding the form, raised in the submission of the Commission for Children and Young People, is that it be revised to include a mandatory section explaining the family violence that any children have witnessed and the impact on them (at present it has a 'tick box' to confirm whether a child has been exposed to violence). In Chapter 10, we recommend a rebuttable presumption that children be added to FVIOs. Allowing the applicant to describe the extent of a child's exposure to violence on the form in greater detail may help to focus the court and the applicant on the involvement of the child.³⁶⁷

Recommendation 73

The Magistrates' Court of Victoria (and the Children's Court of Victoria) produce multimedia information about the family violence intervention order process that can not only be viewed online but can also be shown in court waiting areas to complement the development of 'plain language' family violence intervention order forms and simplified order conditions [within 12 months].

Recommendation 74

The Magistrates' Court of Victoria roll out an online application form (based on the Neighbourhood Justice Centre's online application form) for all applicants for a family violence intervention order across Victoria [within two years].

Engaging with perpetrators

The Commission heard that respondents often fail to attend FVIO proceedings. Where the court accepts that violence has occurred, this deprives the court of the opportunity to use its authority to impress on the respondent that what he has done is unacceptable and may have serious legal consequences. Respondents are also more likely to abide by orders if they have the order explained to them and understand what it prevents them from doing. If they do not attend court they may not appreciate that a breach is a criminal offence. Respondent workers can encourage perpetrators to participate in a behaviour change or other programs or to seek help for other problems that may have contributed to their use of violence.

Encouraging perpetrators to attend court is difficult. There are means by which courts can compel the attendance of perpetrators. Section 50 of the Family Violence Protection Act permits magistrates and registrars to issue warrants for a respondent's arrest on various grounds, including to ensure that the respondent attends court in relation to FVIOs.³⁶⁸ In final hearings, a subpoena to attend court to give evidence can be issued to the respondent.³⁶⁹ It goes without saying that the courts should use these provisions where appropriate. The current situation, whereby the respondent's absence is commonplace, should be viewed by police and courts alike as undesirable.

In some circumstances respondents might appear remotely. Any deployment of remote facilities for respondents must seek to preserve the 'encounter' between the court and the respondent. This could be achieved, for example, by ensuring that the respondent can see and speak to the magistrate directly from the remote location.

Preventing abuse of proceedings

Cross applications

Delays caused by respondents, including delays that arise from abuse of process, are a serious concern. Baseless cross-applications are a prominent example of such abuses. Some submissions recommended that leave should be required to file a cross application.³⁷⁰

A legislative or regulatory response to abuse of proceedings could, however, have unintended consequences. There might be cases in which cross-applications are appropriate. In some cases the primary aggressor—perhaps for tactical reasons, to discourage the victim or to exculpate himself—will apply for an FVIO before the victim, which means the victim's application will be treated as a cross-application. Further, requiring leave to cross-apply could increase delays, unjustly penalise the victim and place them at heightened risk.

Reliance on discretion is preferable. Judicial registrars and magistrates (when adequately trained in the nature and dynamics of family violence) are aware of the potential for abuses of process and are generally skilled at detecting such abuses. The existing scheme provides for them, and practitioners representing applicants and respondents, to limit such abuses.³⁷¹ For example, although the court may grant an order by consent without satisfying itself that violence has occurred or is likely to continue, it may refuse to grant such an order if it considers the order is likely to pose a risk to a party or child of an affected family member or respondent, and it may conduct a hearing into the particulars of an application. These discretionary powers can, and should, be used to detect abuses of process.

Further, making false or misleading statements in court or by affidavit can constitute perjury, contempt of court or a related offence, or may result in a person being deemed a vexatious litigant.³⁷²

For their part, legal practitioners should also be capable of properly discerning whether a proceeding or application in connection with which they are providing advice or advocacy is improperly based. They are officers of the court, and required both by procedural³⁷³ and professional conduct rules to act accordingly.³⁷⁴

If vexatious proceedings or applications are not being detected, this could mean that the judiciary, court staff and legal practitioners are not sufficiently resourced to detect them. The Commission's expectation is that the recommendations it makes in relation to managing demand will augment the capacity of the judiciary, court staff and legal practitioners to detect vexatious proceedings and that these measures will be more effective than incorporating a further layer of procedure.

In addition, court staff have a role to play in shielding applicants from delays or vexatious proceedings initiated by respondents. For example, if police have not been able to serve a respondent or if for other reasons relating to the respondent a scheduled mention will need to be adjourned, registry staff should seek to contact the applicant in advance of the mention and tell them they do not need to attend court. If staff are not taking these and similar measures in all cases, this could reflect the fact that they are over-burdened or under-resourced.

Appeals without merit

The Commission notes the County Court of Victoria's recommendation that the County Court be empowered to strike out an FVIO appeal at the pre-appeal mention if the appellant fails to appear on more than one occasion without reason.³⁷⁵ Subject to the relevant procedural safeguards, it is appropriate that an appellant's repeated failure to appear should enliven a discretion to strike out the proceeding. There could, of course, be circumstances in which the appellant's absence is explicable, but there will be others in which the respondent has lodged an appeal merely to protract the proceedings, without having a real prospect of success.

The Commission notes that the County Court has case-management powers under its own rules which may already enable it to dispose of an improperly brought appeal before the appeal hearing. In any event, the Commission's concern is that these powers are fully and properly understood and used. To the extent that devising clearer legislative provisions will promote certainty and confidence that County Court judges can strike out an appeal at the pre-appeal mention where the appellant is not present, we support this course, and make recommendations accordingly.

Recommendation 75

The Victorian Government legislate to permit the County Court of Victoria to strike out an appeal in circumstances where the appellant does not appear at a pre-appeal mention, is served with notice that the appeal will be struck out if the appellant does not attend the next mention date, and the appellant does not attend the next mention date [within 12 months].

Family violence safety notices

There is a growing body of research that supports the view that the likelihood of altering a perpetrator's behaviour increases when the response to perpetration is prompt.³⁷⁶ The increased efficiency with which police and courts now respond to family violence is hard-won progress. Many submissions and witnesses praised the improvements in efficiency in recent years and decades in the legal response to family violence.³⁷⁷

The Commission notes, however, that police-initiated FVIO applications that are brought to court very quickly can have a detrimental effect on both the capacity of victims to decide what they want to do and the accountability of perpetrators. The speed at which matters unfold can mean that someone is compelled within hours to begin to contemplate their future and their legal options and within only days, give evidence in a public courtroom, be asked deeply personal questions, and make decisions that will affect their life and their family's life potentially significantly and permanently. Equally, the benefits of a prompt response can be diminished if a perpetrator's first appearance in court is insubstantial, because, for example, there has not been adequate time to prepare a matter.

In practical terms, if a victim does not consent to a police-initiated FVIO application, police will only be able to apply for a limited FVIO—that is, one in which the FVIO conditions might not include more than prohibiting the perpetrator from committing family violence or causing another person to engage in family violence and, where applicable, revoking, suspending or cancelling the perpetrator's weapons approval or exemption or firearms authority.³⁷⁸ Conditions barring the perpetrator from visiting specific places (including the applicant's residence), approaching or contacting affected family members, or using or removing property cannot be made without the victim's consent. As a result, if police are not able to involve the victim in the application process or persuade them of its necessity, a suitable comprehensive order might not be possible and the victim might be placed at further risk.

It follows that ongoing improvements in efficiency must be balanced by providing commensurate supports to family violence victims, to ensure that they are informed participants in the legal process and that they understand the consequences of decisions they are asked to make. Some of these matters are discussed in Chapter 14 but, to the extent that they apply to police-initiated applications, the Commission's recommendations are aimed at ensuring that police applications are fully investigated and the parties properly informed before the application is considered, so that the first encounter with the court is as meaningful and productive as possible.

In part because of the issues relating to preparation and excessive speed, and the increased duties that we seek to impose on police (see below) to improve the quality of their applications, we are recommending an increase in the period during which family violence safety notices may operate prior to the first mention in the Magistrates' Court. At present, the first mention in relation to an application made by family violence safety notice must be within five working days of the notice being served. We recommend an increase to 14 days (including non-working days).

The Commission envisages that this extra time will be effectively used by police to ensure that the circumstances of the parties, and the status of parallel proceedings, are fully understood; and that, for their part, victims understand the nature of the process in which police are asking them to engage. This should mean that there are fewer adjournments due to relevant matters not being known, fewer requests for 'further and better particulars'; and that the initial mention in court is substantial, purposeful and effective. It should maximise the opportunity for the court to engage with the perpetrator and reduce the number of occasions that the victim will need to return to court to tell her story. We also envisage that the enhanced intake model recommended in Chapter 13 will ensure that both applicants and respondents have the opportunity to consult with specialist service providers, and have any immediate needs assessed, and if possible addressed, prior to the first hearing.

The Commission appreciates that, in certain circumstances, the period prior to the first mention has in the past been a period of risk to the victim, because the perpetrator may have had restrictions placed on his freedom of movement or association, and may not be prepared to comply with those restrictions. In our view, the need to ensure the safety of victims at high risk of harm must be carefully balanced against the risk of harm to the victim that protracted or poorly prepared FVIO proceedings currently entail.

The Commission anticipates that police will exercise judgment in discerning those matters which, the 14-day maximum period notwithstanding, should be brought to court very quickly, because of complexities or acute risks. In particular, we note section 31(3)(a) of the Family Violence Protection Act requires notices including an exclusion condition to be brought to a mention as soon as practicable. We further anticipate that, during the term of the safety notice, police will remain in contact with the victim and perpetrator and ensure that the terms of the notice are not contravened. In ordinary circumstances, it should not be acceptable for a police application to proceed to court without having properly consulted with the victim. Indeed, police should ensure that victims and perpetrators are aware of their rights and responsibilities, and given appropriate referrals to specialist family violence services and legal services, at the earliest possible opportunity. In particular, we note the availability of VLA's Legal Help service. Victims and perpetrators should be referred to this service when a notice or application is issued. We also anticipate that the improved intake process for referrals from police to specialist services, outlined in Chapter 13, will mean that services who receive referrals from Victoria Police are able to make contact with parties more efficiently and reliably.

Finally, we recommend that the increase from five to 14 days be subject to evaluation after a period of two years, with an emphasis on evaluating any unintended or adverse consequences including increased risk.³⁷⁹ This evaluation could be done by the independent Family Violence Agency, which the Commission has recommended be established.

Recommendation 76

The Victorian Government amend section 31 of the *Family Violence Protection Act 2008 (Vic)* to stipulate that the first mention date for a family violence safety notice must be no later than 14 days after the notice, or form of notice, is served [within 12 months].

Orders

Consent orders

A great many FVIOs are made by consent, a process by which the parties agree on orders that are then formalised by a magistrate. Agreeing on consent orders, including through facilitated dispute-resolution processes like mediation, may be a difficult process for victims of family violence.³⁸⁰ If the victim is not legally represented, the negotiation process can provide an opportunity for a violent partner to continue to frighten and dominate the victim.³⁸¹ On the other hand, a structured and transparent process for agreeing to consent orders could offer some women the chance of obtaining orders quickly and moving on with their lives.³⁸²

Consent orders can also have implications for the accountability of perpetrators and the safety of victims. When an order is made by consent without admissions the court may express no view about the respondent's conduct or culpability, and the respondent will not be compelled to admit any wrongdoing. This may mean that victims do not feel that justice has been done or that the harm they have experienced has been acknowledged.

The Commission notes that the negotiation process involved in arriving at an order by consent may be opaque and variable depending on the situation, the parties and the presence of legal representatives. If there is a history of family violence between the parties, with everything that can entail—including an imbalance of power, fear, vulnerability, and the possibility of manipulation and coercion—it is extremely important that the negotiation process is properly managed. If the parties are not (or not adequately) legally represented, there is no guarantee that this will occur, and the result can be incomplete or inappropriate orders, whether on a primary application, a variation, extension or withdrawal, or a cross-application.

There is however little doubt, particularly in courts with exceptionally long lists, that a busy magistrate may intervene sparingly, and rely on legal practitioners having responsibly canvassed the issues and arrived at a suitable and fair arrangement. If legal services are equally strained this assumption is not safe. If a magistrate displays reluctance to delve into something, the parties might be discouraged from bringing persisting queries or concerns to the magistrate's attention.

In view of the prevalence of consent orders, and their lack of transparency, the possibility of introducing a more structured and legally supported approach to negotiating consent orders should be explored. The Commission recommends below that the Department of Justice and Regulation investigate how to improve the negotiation process associated with consent orders.

Appropriate orders

The Commission emphasises the importance of a consistent level of understanding (of the legislative scheme, and of family violence) in making orders. We make recommendations relating to judicial education in Chapter 40. The Judicial College of Victoria should play a central role in this process. It should be noted that aside from developing the family violence bench book, the JCV has published a series of ‘checklists’ for judicial officers on FVIOs—in particular, on *ex parte* interim hearings, mention dates, final hearings, mandatory considerations and variations, revocations and extensions.³⁸³ We support this work, recommend the material to magistrates and the wider Victorian judiciary, and encourage the JCV to continue to update and add to these resources.

The Commission also accepts that there may be a tendency to view the list of FVIO conditions provided in the Family Violence Protection Act as exhaustive, and to issue orders for a standard period (usually 12 months). We note that in Dr Gelb’s report to the Commission, she records that ‘[w]hile occasionally [non-standard] conditions were attached to address specific circumstances of a family, these were uncommon’.³⁸⁴ In its 2015 report on sentencing for contravention of family violence intervention orders and safety notices, the Sentencing Advisory Council reports that almost four in five final orders made in the Magistrates’ Court from 2009–10 to 2014–15 were issued for between 12 and 24 months, and the median duration was 12 months. The Sentencing Advisory Council refers to the suggestion in its 2009 report that ‘the court may need to impose FVIOs with durations of more than 12 months in the first instance, given that the risk of further violence may not always abate over the first year’.³⁸⁵

Here as in other areas, the Commission’s view is that improved training coupled with demand management will give judicial decision-makers, and the legal and court professionals assisting them, the opportunity and confidence to more frequently devise orders which properly respond to the circumstances of a particular matter.

In addition, judicial officers need to have confidence in the organisations and institutions responsible for monitoring and administering orders—in particular, Corrections Victoria, the organisations delivering men’s behaviour change programs, and Victoria Police. It is possible that in some cases, judges are not making orders of certain kinds, or lawyers are not proposing them on their clients’ behalf, because they lack that confidence—because they know that certain kinds of orders, for instance due to demand or resourcing constraints that apply either across Victoria or in particular areas, are unlikely to be enforceable. As noted elsewhere in this report, the system’s parts are, in this sense, interdependent: best practice is most likely to occur when an institution, organisation or professional has confidence that the other parts of the system will also operate effectively.

Recommendation 77

The Department of Justice and Regulation convene a committee, including representatives of the Magistrates’ Court, Victoria Legal Aid and Women’s Legal Service Victoria, to investigate how family violence intervention orders by consent are currently negotiated and develop a safe, supported negotiation process for victims [within three years].

Permanent orders

As noted, some support was expressed for the introduction of permanent FVIOs. In the Commission’s view, however, the indefinite imposition of orders would be excessive in some circumstances, and it should not be incumbent on the respondent to demonstrate in such cases that this is so. The duration of an FVIO, as with its conditions, should reflect the needs and concerns that arise from particular cases and in particular the safety of the person protected by the order. The Commission does not recommend a move to permanent orders.

Self-executing orders

An amendment to the Family Violence Protection Act providing for self-executing FVIOs is due to come into force on 1 July 2016. It will enable a finalisation condition to be attached to interim orders (which are often made without the respondent present) in a range of cases, so that no subsequent hearings need occur.³⁸⁶

The Commission considers that the accountability and compliance of the perpetrator and the safety of the victim are best assured if the parties have been adequately assisted by legal and other services at the court, have had the opportunity to express their viewpoint, and have had the terms and implications of the order fully explained to them by the magistrate and their legal representatives. Without this, there might be increased breaches or contests that offset the gains in efficiency the amendment seeks to achieve.

The amendment makes the person subject to the order responsible for independently challenging the order, rather than the justice system being responsible for ensuring that the person has afforded, understands and has the capacity to exercise that right. Although a respondent has the opportunity to challenge an interim order before it is finalised, there is a concerning possibility that some respondents, perhaps a substantial number of them, will not understand that opportunity, how to exercise it or the consequences of failing to do so. Apart from being unfamiliar with the law and legal processes, some respondents might, for instance, not be fully literate (at all or in English) or might suffer from cognitive impairment or other disability.

The Commission accepts that the court must be satisfied that the respondent is likely to understand the written explanation of the interim order if a finalisation condition is to be included, but this is often a difficult judgment for a magistrate to make, particularly on the basis of limited information.

A self-executing order is not consistent with the objective of 'keeping the perpetrator in view', and maximising the role of the justice system as an agent of intervention and accountability. Just as it deprives some perpetrators of the opportunity to exercise their rights, a self-executing order also allows perpetrators of family violence to remain hidden from view—to be the passive and distant recipient of an order rather than being a focus of the corrective force and authority of the justice system.

For these reasons, the Commission's view is that self-executing orders should not come into effect in Victoria.

If the Victorian Government is not minded to accept this recommendation, we urge an extension of the period before which the amendments come into effect, to allow courts and service providers to prepare their staff for the procedural changes.

Recommendation 78

The Victorian Government repeal the unproclaimed provisions of the *Family Violence Protection Amendment Act 2014* (Vic) providing for interim family violence intervention orders with an automatic finalisation condition (self-executing orders) [within 12 months].

Linking the Magistrates' Court with other services

In seeking to improve its response to family violence, the Magistrates' Court of Victoria and the higher courts should seek opportunities to work with the broader family violence system. A 'siloed' response is a risk for all organisations and institutions in responding to family violence. The fundamental independence of courts exacerbates that risk. Courts must be independent, but they need not be isolated, and should seek to take advantage—and find ways for court users to take advantage—of the practices, programs and expertise in the specialist family violence system.

In Chapter 13, we make recommendations to develop Support and Safety Hubs for the intake and referral of victims and perpetrators of family violence. We also make recommendations for improved governance, information sharing and a collective and coordinated response to risk assessment and management (see Chapters 6, 7 and 38). Courts can, and in our view should, make an important contribution to those developments.

Courts, like other service providers, should also ensure that they make the best use of the hubs. Applicant and respondent support workers and other court-based service providers should be made aware of the hubs and encouraged to make referrals to them where appropriate.

Magistrates' courts already participate in numerous ongoing groups and committees: we note for example the participation of the Magistrates' Court in Court User Group meetings, as well as the Violence Against Women and Children Forum, the Department of Justice Family Violence Steering Committee, the Family Violence Stakeholders Reference Group, the Family Violence Statewide Advisory Committee, the Indigenous Family Violence Regional Action Groups and the Systemic Review of Family Violence Deaths reference group.³⁸⁷ In its submission to us, the Magistrates' Court of Victoria drew attention to the Walk In Her Shoes tours at Melbourne, Ballarat, Frankston and Sunshine Courts, which provide government and non-government agencies and final-year tertiary students with an introduction to the process of applying for an intervention order.³⁸⁸ The court was also involved in the Family Violence Integration Project, a partnership involving a range of services and institutions, including Victoria Legal Aid, Victoria Police, Ringwood Magistrates' Court, Eastern Domestic Violence Service and Court Network.

As Leading Senior Constable Fiona Calkin, the Family Violence Court Liaison Officer of Victoria Police explained in her statement, the project had quarterly meetings to discuss processes in relation to intervention order applications, safety and referral pathways and safety issues at Magistrates' Courts.³⁸⁹ Through the project, pre-court meetings were held on family violence sitting days involving court, police and specialist family violence services staff. Part of the project's work was the development of an intervention order referral guide for use by people who come into contact with affected family members and respondents, such as police to refer them to appropriate services.

These initiatives provide a setting for consultation, learning and feedback, and the development of shared practices, systems and goals.

We further note the recent establishment of Court Services Victoria,³⁹⁰ which could provide a framework for developing, implementing and reviewing standards and practices relating to family violence.

In short, we hope, and are confident, that the courts will continue to be invaluable participants in the integrated response to family violence.

Endnotes

- 1 See also Chapter 5, which provides a more comprehensive account of systems, including the justice system, which interact with family violence.
- 2 *Family Violence Protection Act 2008* (Vic) s 42.
- 3 This is the number of courts at date of writing and according to the submission of the Magistrates' Court of Victoria and Children's Court of Victoria: Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 1. Note that we use the term 'venue' to refer to particular Magistrates' Court locations (eg Melbourne, Ballarat).
- 4 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 12.
- 5 *Family Violence Protection Act 2008* (Vic) ss 42, 146. See also, Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 3.
- 6 *Family Violence Protection Act 2008* (Vic) s 123; *Sentencing Act 1991* (Vic) s 112.
- 7 *Justice Legislation Amendment (Family Violence and Other Matters) Act 2012* (Vic); *Family Violence Protection Act 2008* (Vic) ss 37A, 123A, 125A.
- 8 *Family Violence Protection Act 2008* (Vic), ss 37A, 123A, 125A.
- 9 *Magistrates' Court Act 1989* (Vic) s 25; *County Court Act 1958* (Vic) s 36A; *Children, Youth and Families Act 2005* (Vic) s 516; *Criminal Procedure Act 2010* (Vic) ss 28–9, sch 2; *Supreme Court Act 1986* (Vic) s 17. See also Court Services Victoria, Submission 646, 4.
- 10 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 3.
- 11 *Victims of Crime Assistance Act 1996* (Vic) s 19.
- 12 *Ibid* s 25.
- 13 VCAT has no inherent jurisdiction; jurisdiction is conferred on it by enabling enactments: *Victorian Civil and Administrative Tribunal Act 1998* (Vic) ss 3, 40–4. See generally Victorian Civil and Administrative Tribunal, Submission 164.
- 14 Victorian Civil and Administrative Tribunal, Submission 164, 5.
- 15 It may hear monetary claims for up to \$100,000: *Magistrates' Court Act 1989* (Vic) ss 3, 100. Claims for less than \$10,000 are, subject to some exceptions, referred to arbitration unless the Court decides otherwise. That decision will depend on factors such as the complexity and subject of the dispute and the parties' circumstances. Potentially, a history of family violence could be a relevant consideration. See *Magistrates' Court Act 1989* (Vic) s 102.
- 16 *Magistrates' Court Act 1989* (Vic) ss 4M–4O. See also Statement of Walker, 3 August 2015, 2–3.
- 17 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 2.
- 18 Crime Statistics Agency, 'An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14' (January 2016) 41, provided to the Commission by the Crime Statistics Agency, 8 January 2016.
- 19 *Family Violence Protection Act 2008* (Vic) ss 74, 80–3.
- 20 *Ibid* s 81.
- 21 *Ibid* s 123.
- 22 *Ibid* s 45.
- 23 Crime Statistics Agency, above n 18, 43.
- 24 *Family Violence Protection Act 2008* (Vic) s 75.
- 25 *Ibid* s 53.
- 26 *Ibid* s 54.
- 27 *Ibid* s 60.
- 28 *Ibid* ss 61, 74.
- 29 *Ibid* s 74(1).
- 30 *Ibid* ss 74(2), 74(3), 78.
- 31 *Ibid* s 97.
- 32 *Ibid* s 99(b).
- 33 *Ibid* s 108.
- 34 *Ibid* s 24.
- 35 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 10.
- 36 *Ibid* 11.
- 37 *Ibid* 10–11.
- 38 *Magistrates' Court Act 1989* (Vic) s 4H; *Family Violence Protection Act 2008* (Vic) Part 5. See also *ibid* 11.
- 39 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 10.
- 40 Magistrates' Court of Victoria, *Heidelberg Magistrates' Court* (17 July 2015) <<https://www.magistratescourt.vic.gov.au/court/heidelberg-magistrates-court>>.
- 41 *Family Violence Protection Act 2008* (Vic) s 126(b); State of Victoria, *Victorian Government Gazette*, No G41, 10 October 2013, 2511.
- 42 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 11.
- 43 *Ibid* 47.
- 44 State of Victoria, Submission 717, 37.
- 45 Letter from Peter Lauritsen, Chief Magistrate of the Magistrates' Court Victoria to Judge Hinchey, Victorian State Coroner, 22 December 2015 <<http://www.coronerscourt.vic.gov.au/home/coroners+written+findings/response+--+inquest+into+the+death+of+luke+geoffrey+batty>>.
- 46 Court Network, Submission 927, 7–8. The stated number of courts serviced by Court Network is correct as at the date of this submission.
- 47 CISP is offered at Latrobe Valley, Sunshine and Melbourne Magistrates' Courts, and CREDIT Bail at Ballarat, Broadmeadows, Dandenong, Frankston, Geelong, Heidelberg, Moorabbin and Ringwood Magistrates' Courts. See Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 13–14.
- 48 See, eg, Berry Street, Submission 834, 66; InTouch Multicultural Centre Against Family Violence, Submission 612, 23–4.
- 49 *Family Violence Protection Act 2008* (Vic) ss 146(1), (2).
- 50 *Ibid* s 42; *Magistrates' Court Act 1989* (Vic) ss 3, 4H, 4I.
- 51 *Family Violence Protection Act 2008* (Vic) s 42; *Magistrates' Court Act 1989* (Vic) s 3. See also Victorian Law Reform Commission, *Review of Family Violence Laws: Report* (December 2006) 252–4, [8.4]–[8.13].
- 52 *Family Violence Protection Act 2008* (Vic) ss 114–15.
- 53 *Ibid* s 45.
- 54 'Form FVIO1'. See Magistrates' Court of Victoria, *Application for a Family Violence Intervention Order FVIO1* (2 August 2012) <<https://www.magistratescourt.vic.gov.au/forms/application-family-violence-intervention-order-fvio1>>.
- 55 Statement of 'Smith', 4 August 2015, 2 [13]–3 [21]. Community consultation, Werribee 1, 11 May 2015; Hume Riverina Community Legal Service, Submission 650, 4.
- 56 Mallee Family Violence Executive, Submission 617, 2.
- 57 Statement of Heenan, 3 August 2015, 8 [35].
- 58 *Ibid*.
- 59 Federation of Community Legal Centres, Submission 958, 34.

60 Law Institute of Victoria, Submission 832, 12–13.

61 Special Minister of State, Gavin Jennings, 'Better Protection for Family Violence Victims in our Courts' (Media Release, 2 December 2015) <<http://www.premier.vic.gov.au/better-protection-for-family-violence-victims-in-our-courts/>>.

62 Statement of Walker, 3 August 2015, 7–8 [26]–[29].

63 Magistrates' Court of Victoria, *Family Violence* (2016) <<https://familyviolence.courts.vic.gov.au>>.

64 *Family Violence Protection Act 2008* (Vic) ss 53–4.

65 Eastern Domestic Violence Service Inc, Submission 619, 19–20. Family Law Section—Law Council of Australia, Submission 863, 2.

66 Family Law Section—Law Council of Australia, Submission 863, 2.

67 See, eg, WAYSS Limited, Submission 542, 34; Eastern Domestic Violence Service Inc, Submission 619, 19–20.

68 Family Law Section—Law Council of Australia, Submission 863, 3.

69 Community consultation, Geelong 1, 28 April 2015.

70 Department of Human Services, 'Family Violence Risk Assessment and Risk Management: Framework and Practice Guides 1-3 (Edition 2)' (April 2012) 28, 68.

71 Family Law Section—Law Council of Australia, Submission 863, 3.

72 *Ibid.*

73 Eastern Domestic Violence Service Inc, Submission 619, 20.

74 *Family Violence Protection Act 2008* (Vic) ss 59, 61.

75 Magistrates' Court of Victoria, above n 63.

76 *Family Violence Protection Act 2008* (Vic) ss 48–50, 54, 57. The registrar or magistrate can also issue a warrant for the respondent's arrest if they believe the applicant's safety or property is at risk, or a child is at risk, or the respondent does not attend court at the mention date.

77 Victoria Police, Submission 923, 24; Transcript of Rudd, 4 August 2015, 1813 [10]–1814 [17]; Darebin Community Legal Centre, Submission 931, 10.

78 See, eg, Darebin Community Legal Centre, Submission 931, 10.

79 Coroners Court of Victoria, 'Finding into Death with Inquest: Luke Geoffrey Batty' (28 September 2015) 4, 108. The Commission notes recent IT improvements under way in relation to service: Magistrates' Court of Victoria, 'Family Violence Response: 2014' (1 January 2014), 6, produced by the Magistrates' Court of Victoria in response to the Commission's request for information dated 5 June 2015.

80 *Family Violence Protection Act 2008* (Vic) s 78. See also Victoria Legal Aid, Submission 919, 59.

81 Statement of Cooney, 30 July 2015, 14–15 [72]–[76].

82 *Ibid* 14 [72].

83 *Ibid* 15 [75].

84 Family Law Section—Law Council of Australia, Submission 863, 3.

85 Magistrates' Court of Victoria, 'Resource and Costing Model: Final Report' (2014), 79, produced by the Magistrates' Court of Victoria in response to the Commission's request for information dated 5 June 2015.

86 *Ibid.*

87 Magistrates' Court of Victoria, 'Magistrates' Court of Victoria Family Violence Operating Procedures' (1 August 2014), 98, produced by the Magistrates' Court of Victoria in response to the Commission's request for information dated 5 June 2015.

88 *Ibid* 49.

89 Court Network, Submission 927, 20.

90 Broadmeadows Community Legal Service, Submission 791, 2–5; Footscray Community Legal Centre, Submission 472, 9; Community West-Brimbank Melton Community Legal Centre, Submission 387, 5.

91 See, eg, Peninsula Community Legal Centre, Submission 447, 12; Community West-Brimbank Melton Community Legal Centre, Submission 387, 5; Broadmeadows Community Legal Service, Submission 791, 2–5; Central Highlands Community Legal Centre Inc, Submission 463, 5; Footscray Community Legal Centre, Submission 472, 5; Gippsland Community Legal Service, Submission 443, 10; Inner Melbourne Community Legal, Submission 506, 20; Confidential, Submission 468, 1; Community consultation, Geelong 2, 28 April 2015.

92 Jane Wangmann, "She Said..." "He Said...": Cross Applications in NSW Apprehended Domestic Violence Order Proceedings' (PhD Thesis, University of Sydney, 2009). See also Heather Douglas and Robin Fitzgerald, 'Legal Processes and Gendered Violence: Cross-Applications for Domestic Violence Protection Orders' (2013) 36(1) *University of New South Wales Law Journal* 56; Professor Belinda Fehlberg—Melbourne Law School, Submission 921, 167; Statement of Douglas, 20 July 2015, 3 [18].

93 Community consultation, Melbourne, 21 May 2015.

94 Women's Legal Service Victoria—01, Submission 940, 47–8; see also Anonymous, Submission 414, 9–10.

95 Transcript of Broughton, 6 August 2015, 2172 [28]–2173 [6].

96 Women's Legal Service Victoria—01, Submission 940, 47–8.

97 *Ibid* 11, 48; Broadmeadows Community Legal Service, Submission 791, 10.

98 Footscray Community Legal Centre, Submission 472, 8–9.

99 Law Institute of Victoria, Submission 832, 12–13.

100 County Court of Victoria, Submission 835, 1–2.

101 *Ibid* 7.

102 Transcript of Toohey, 4 August 2015, 1865 [20]–[24]. See also Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 14–15.

103 Karen Gelb, 'Understanding Family Violence Court Proceedings: The Impact of Family Violence on the Magistrates' Court of Victoria' (Karen Gelb Consulting, November 2015) 65.

104 *Ibid* vii.

105 Transcript of Toohey, 4 August 2015, 1864 [30]–1867 [5].

106 Civil liability must be established on the balance of probabilities, and criminal guilt beyond reasonable doubt.

107 For instance, if there are inconsistencies between her evidence at trial and in the FVIO proceedings.

108 Statement of Rudd, 27 July 2015, 8 [44].

109 *Criminal Procedure Act 2009* (Vic) s 7.

110 Transcript of Broughton, 5 August 2015, 1946 [2]. Deputy Chief Magistrate Broughton's evidence concerned summary offences and indictable offences triable summarily.

111 To define the issues in contention, and allow the accused, and the court, to consider the prosecution case. See *Criminal Procedure Act 2009* (Vic) s 96.

112 Coroners Court of Victoria, above n 79, 31 [166].

113 *Residential Tenancies Act 1997* (Vic) s 233A; see also Victorian Civil and Administrative Tribunal, Submission 164, 1–3.

114 *Victims of Crime Assistance Act 1996* (Vic) s 41; see also Springvale Monash Legal Service, Submission 807, 3.

115 See Victoria Legal Aid, Submission 919, 20.

116 See, eg, Anonymous, Submission 739, 2; Anonymous, Submission 782, 4; Mental Health Legal Centre Inc; Inside Access; Centre for Innovative Justice, Submission 648, 19; Sustainability Australia, Submission 845, 7–8; Darebin Community Legal Centre, Submission 931, 1; Family Law Section—Law Council of Australia, Submission 863, 3.

- 117 See Magistrates' Court of Victoria, 'Fast Tracking of the Hearing and Determination of Criminal Offences Arising out of Family Violence Incidents', (Practice Direction No 10 of 2014, 25 November 2014); Magistrates' Court of Victoria, 'Expansion of the Fast Tracking Listing Process to the Court at Broadmeadows and Shepparton' (Practice Direction 8 of 2015, 31 July 2015); Magistrates' Court of Victoria, 'Expansion of the Fast Tracking Listing Process to the Court at Ballarat and Ringwood' (Practice Direction No 8 of 2015, 18 September 2015). See also, Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 15.
- 118 Magistrates' Court of Victoria, Fast Tracking of the Hearing and Determination of Criminal Offences Arising out of Family Violence Incidents, above n 117.
- 119 Coroners Court of Victoria, above n 79, 102–3; Peninsula Community Legal Centre, Submission 447, 21.
- 120 See, eg, Community consultation, Melbourne, 6 May 2015; Peninsula Community Legal Centre, Submission 447, 22; Gippsland Integrated Family Violence Service Reform Steering Committee, Submission 691, 9.
- 121 Magistrates' Court of Victoria, above n 87, 49.
- 122 Crime Statistics Agency, above n 18, 43.
- 123 Transcript of Goodmark, 6 August 2015, 2057 [5]–2058 [26].
- 124 Ibid 2060 [4]–[7]. See also, 2059 [11]–2060 [4].
- 125 Women's Legal Service Victoria—01, Submission 940, 33.
- 126 Gelb, above n 103, 62.
- 127 Ibid 65.
- 128 Statement of Walker, 31 July 2015, 10 [49] (citations omitted).
- 129 See, eg, Footscray Community Legal Centre, Submission 472, 7–8.
- 130 Victoria Legal Aid, Submission 919, 12–13. See also Statement of Smith, 4 August 2015, 3 [17]–[21].
- 131 Carolyn Neilson and Bonnie Renou, 'Will Somebody Listen to Me? Insight, Actions and Hope for Women Experiencing Family Violence in Regional Victoria: Summary Report' (Loddon Campaspe Community Legal Centre, April 2015).
- 132 Ibid 17.
- 133 Department of Justice, 'Information and Support Needs of Victims and Witnesses in the Magistrates' Court of Victoria' (2013) 12; see also Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 29.
- 134 Statement of Heenan, 3 August 2015, 7–8 [32], [34].
- 135 Court Network, Submission 927, 14–15. Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 50.
- 136 Federation of Community Legal Centres, Submission 958, 27.
- 137 Court Network, Submission 927, 14–15; Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 50.
- 138 Transcript of Casey, 4 August 2015, 1761 [30]–1762 [7].
- 139 See, eg, Community consultation, Geelong 1, 28 April 2015 and Community consultation, Bendigo 2, 5 May 2015.
- 140 See also, Victorian Law Reform Commission, above n 51, 220.
- 141 See also *ibid* 222.
- 142 See also *ibid* 220.
- 143 Court Services Victoria, Submission 646, 10; Court Network, Submission 927, 14–15.
- 144 Statement of Heenan, 3 August 2015, 7 [32]; Court Services Victoria, Submission 646, 10; Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, xiii, 49.
- 145 Court Network, Submission 927, 15.
- 146 Federation of Community Legal Centres, Submission 958, 27.
- 147 Anonymous, Submission 623, 4. See also Catholic Social Services Victoria, Submission 911, 10.
- 148 Court Network, Submission 927, 13.
- 149 Central Goldfields Shire Council, Submission 498, 5.
- 150 Court Services Victoria, Submission 646, 9–11.
- 151 *Ibid* 11. See also Catholic Social Services Victoria, Submission 911, 10.
- 152 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, v, vii.
- 153 *Ibid* vii.
- 154 *Ibid* 12.
- 155 *Ibid*.
- 156 *Ibid*.
- 157 Court Services Victoria, Submission 646, 11; Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 50. See also Correspondence from the Magistrates' Court of Victoria to the Royal Commission into Family Violence, 10 February 2016.
- 158 Statement of Newman, 28 July 2015, 15 [81].
- 159 See, eg, Community consultation, Echuca 1, 7 May 2015; Community consultation, Melbourne, 30 April 2015; Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, xii–xiv.
- 160 B Turner, Submission 9, 7.
- 161 See, eg, Judicial College of Victoria, Submission 536, 8; Federation of Community Legal Centres, Submission 958, 28; Footscray Community Legal Centre, Submission 472, 10–11.
- 162 Judicial College of Victoria, Submission 536, 8.
- 163 See, eg, Community consultation, Melbourne, 30 April 2015; Dr Renata Alexander, Submission 166, 2.
- 164 Judicial College of Victoria, Submission 536, 7; see also Community consultation, Melbourne, 30 April 2015.
- 165 See, eg, Centre For Rural Regional Law and Justice—Deakin University, Submission 511, 8; Dr Renata Alexander, Submission 166, 2.
- 166 Community consultation, Whittlesea, 29 April 2015.
- 167 Anonymous, Submission 263, 2; Anonymous, Submission 281, 3.
- 168 See also *Criminal Procedure Act 2009* (Vic) s 359.
- 169 Magistrates' Court of Victorian and Children's Court of Victoria, Submission 978, 15.
- 170 *Ibid* 12, 54. Attorney General, The Hon Martin Pakula MP, 'New Magistrates' Court Technology To Protect Victims of Crime' (Media Release, 1 May 2015) < <http://www.premier.vic.gov.au/new-magistrates-court-technology-to-protect-victims-of-crime/>>.
- 171 Amanda George and Bridget Harris, 'Landscapes of Violence: Women Surviving Family Violence in Regional and Rural Victoria' (Deakin University, Centre for Regional Law and Justice, 2014) 107.
- 172 *Ibid*.
- 173 *Ibid* 108.
- 174 Magistrates' Court of Victoria, 'Complaints Policy' (2015) 1. <<https://www.magistratescourt.vic.gov.au/sites/default/files/Default/150709%20MCV%20Complaint%20Policy%202015.pdf>>.
- 175 *Judicial Commission of Victoria Bill 2015* (Vic) cl 5–8, 128–130.
- 176 Gelb, above n 103, 75.
- 177 Transcript of Newman, 4 August 2015, 1751 [30]–1752 [21].
- 178 Coroners Court of Victoria, above n 79, 99 [551].

179 Transcript of Sinclair, 4 August 2015, 1774 [7]–[24].

180 *Family Violence Protection Act 2008* (Vic) ss 74 and 76.

181 *Ibid* s 78.

182 *Ibid* s 78(5).

183 Magistrates' Court of Victoria, 'Q24 25 & 26 Consent Without Admission Orders MCV & CCV', Tab 1: Court Location, produced by the Magistrates' Court of Victoria in response to the Commission's request for information dated 5 June 2015.

184 Transcript of Sinclair, 4 August 2015, 1774 [9]–[11].

185 Transcript of Rudd, 4 August 2015, 1802 [30]–1803 [1].

186 Transcript of Sinclair, 4 August 2015, 1774 [9]–[11]. See also Transcript of Cooney, 4 August 2015, 1797 [16]–[18]; Transcript of Casey, 4 August 2015, 1775 [28]–[29].

187 Gelb, above n 103, 62, 68.

188 *Ibid* 68.

189 Wangmann, above n 92, 102–3.

190 Transcript of Sinclair, 4 August 2015, 1775 [3]–[6].

191 Transcript of Casey, 4 August 2015, 1777 [14]–[21].

192 *Ibid* 1778 [11]–[17].

193 Transcript of Sinclair, 4 August 2015, 1777 [23]–1778 [10].

194 Statement of 'Jones', 7 August 2015, 12 [48].

195 *Personal Safety Intervention Orders Act 2010* (Vic).

196 *Ibid* s 26.

197 See, eg, *Personal Safety Intervention Orders Act 2010* (Vic) ss 28–9 (mediation assessment), s 31 (termination of mediation if process becomes unsuitable), s 34 (guidelines for suitability of mediation process).

198 Melissa C Tyler and Jackie Bornstein, 'Court Referral to ADR: Lessons from an Intervention Order Mediation Pilot' (2006) 16(1) *Journal of Judicial Administration* 48, 59–60.

199 *Domestic Violence and Protection Orders Act 2008* (ACT) s 25.

200 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) 1062.

201 *Ibid* 1063.

202 *Domestic Violence Act 1995* (NZ) s 45(2). A Protection Order, the New Zealand equivalent of an FVIO, remains in force until it is discharged by the court, see s 47.

203 Safe Steps Family Violence Response Centre, Submission 942, 30.

204 *Family Violence Protection Act Amendment Act 2014* (Vic) s 8.

205 Note that finalisation conditions will not be included if the court is satisfied of various particular circumstances, including for example, the respondent has a cognitive impairment, is a child or possesses a firearm, there are potentially inconsistent child protection or family law orders in place, the affected family member does not consent, etc. See Department of Justice and Regulation, *Family Violence Protection Amendment Act 2014* (22 June 2015) <<http://www.justice.vic.gov.au/home/justice+system/laws+and+regulation/criminal+law/family+violence+protection+amendment+act+2014>>.

206 *Domestic Violence Act 1995* (NZ) ss 76–7.

207 See, eg, Women's Legal Service Victoria—01, Submission 940, 29, 30.

208 See, eg, *ibid* 41, 42.

209 The Act requires that the court explain a final order when it is made, orally and in writing, including the purpose, terms and effect of the order; the order's effects with respect to children; the consequences of contravention and the fact that the order is an order of the court and the protected person cannot give permission to contravene it: *Family Violence Protection Act 2008* (Vic) s 96. Equivalent provisions also exist for safety notices and interim orders: *Family Violence Protection Act 2008* (Vic) ss 35, 57.

210 Transcript of Newman, 4 August 2015, 1728 [3]–[17], 1752 [12]–[17].

211 Court Network, Submission 927, 18.

212 *Ibid* 15 (emphasis in original).

213 CREATE Foundation, 'Children and Young People in Care Consultation for the Victorian Law Reform Commission' (Victorian Law Reform Commission, March 2010) 5.

214 *Ibid* 9.

215 *Ibid* 12.

216 Statement of Walker, 3 August 2015, 9 [36].

217 CREATE Foundation, above n 213, 5.

218 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 50.

219 *Ibid* 49–51; Court Network, Submission 927, 15.

220 Crime Statistics Agency, above n 18, 14.

221 InTouch Multicultural Centre Against Family Violence, Submission 612, 38–9.

222 See, eg, *Ibid* 36–9.

223 Anonymous, Submission 70, 1.

224 George and Harris, above n 171, 84. See also Centre For Rural and Regional Law and Justice—Deakin University, Submission 511, 17.

225 *Ibid* 84. See also Centre For Rural and Regional Law and Justice—Deakin University, Submission 511, 17.

226 Women with Disabilities Victoria, Submission 924, 22.

227 Women with Disabilities Victoria, 'Magistrates' Court Disability Access Survey Report' (2015) 6–12.

228 Victorian Equal Opportunity and Human Rights Commission, 'Annual Report 2014–15', 28.

229 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 59; Transcript of Braybrook, 20 July 2015, 801 [4]–[6].

230 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 61.

231 See, eg, Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 22–4.

232 Koori Caucus, Submission 946, 20. Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 12.

233 See, eg, Gay and Lesbian Health Victoria; Australian Research Centre in Sex, Health and Society—La Trobe University, Submission 821, 18–19; Victorian Gay and Lesbian Rights Lobby, Submission 684, 4–6.

234 Centre for Innovative Justice, 'Opportunities for Early Intervention: Bringing Perpetrators of Family Violence into View' (RMIT University, March 2015) 6.

235 *Ibid*, 60.

236 *Ibid*, 61.

237 *Ibid*, 60.

238 Statement of Davies, 29 July 2015, 2–3 [13]–[17]; Statement of Newman, 28 July 2015, 14 [76]–[77]; Statement of Field, 31 July 2015, 5 [19].

239 Statement of Davies, 29 July 2015, 2–3 [13]–[17].

240 Victoria Legal Aid, Submission 919, 28.

241 Centre for Innovative Justice, above n 234, 58.

242 Statement of Fatouros, 6 August 2015, 7 [30].

243 Gelb, above n 103, 37 (citations omitted).

244 Victoria Legal Aid, Submission 919, 58.

245 Victoria Legal Aid, 'Response to the Royal Commission into Family Violence Notice to Produce' (2015), 17, produced by Victoria Legal Aid in response to the Commission's Notice to produce dated 5 June 2015.

246 *Ibid* 51.

247 Victoria Legal Aid, Submission 919, 13.

248 *Ibid*.

249 *Ibid*; Federation of Community Legal Centres, Submission 958, 14.

250 Law Institute of Victoria, Submission 832, 12–13; Victoria Legal Aid, Submission 919, 67–8; Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 60; Safe Steps Family Violence Response Centre, Submission 942, 32.

251 Victorian Law Reform Commission, above n 51, 185.

252 Loddon Campaspe Community Legal Centre, Submission 236, 73.

253 *Ibid*.

254 George and Harris, above n 171, 113.

255 Statement of Cooney, 30 July 2015, 8–9 [35]–[42].

256 Statement of Atmore, 3 August 2015, 5 [27].

257 *Ibid* 7 [33].

258 *Ibid*.

259 Gelb, above n 103, 17.

260 Community consultation, Werribee 1, 11 May 2015; Eastern Community Legal Centre, Submission 582, 9.

261 George and Harris, above n 171, 113–14.

262 Statement of 'Jones', 7 August 2015, 11 [44].

263 *Ibid* [50].

264 George and Harris, above n 171, 115.

265 Transcript of Fatouros, 6 August 2015, 2101 [4]–[13].

266 *Ibid* [14]–[25].

267 *Ibid* [29]–2102 [9].

268 *Evidence Act 1958* (Vic) s 41.

269 *Ibid*.

270 *Family Violence Protection Act 2008* (Vic) s 70. Consent may be either personal or, if the person has a guardian, through the guardian. If the person has a cognitive impairment, the court must also be satisfied that they understand the nature and consequences of consenting and are competent to give evidence.

271 *Family Violence Protection Act 2008* (Vic) ss 71–2.

272 Community consultation, Werribee 1, 11 May 2015; Judith Grayley—Member for Narre Warren South, Submission 736, 2–3.

273 For example, contested hearings can be funded in this way: Victoria Legal Aid, Submission 919, 59.

274 *Ibid*; Statement of Sinclair, 3 August 2015, 4 [24]–5 [27].

275 Victoria Legal Aid, 'Family Violence Demand: Proposal to Increase Service Delivery' (13 May 2015), 5, produced by Victoria Legal Aid in response to the Commission's notice to produce dated 5 June 2015.

276 Statement of Sinclair, 3 August 2015, 5 [26], [28], 9 [46].

277 Federation of Community Legal Centres, Submission 958, 20–5.

278 Statement of 'Jones', 7 August 2015, 7.

279 Victorian Law Reform Commission, Review of Family Violence Laws, above n 51, 184.

280 Crime Statistics Agency, above n 18, 41, 45–6.

281 Derived from data provided by Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, Appendix 2. These figures do not include interim orders.

282 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, Appendix 2.

283 *Magistrates' Court (Judicial Registrars) Rules 2015* (Vic) Part 2.

284 *Ibid* r 15.

285 *Ibid* r 12.

286 See, eg, Federation of Community Legal Centres, Submission 958, 19.

287 Victoria Legal Aid, Submission 919, 21.

288 Gelb, above n 103, 40–41.

289 *Ibid* 41.

290 Transcript of Sinclair, 4 August 2015, 1784 [28]–1785 [14].

291 Transcript of Casey, 4 August 2015, 1785 [16]–[24], 1785 [31]–1786 [3].

292 Australian Women Against Violence Alliance, Submission 838, 22.

293 *Ibid*. The Commission also notes that some of the Commonwealth Government's \$100 million family violence package announced in 2015 has been allocated to legal services: Prime Minister of Australia, The Hon. Malcolm Turnbull MP, 'Women's Safety Package to #StoptheViolence' (Media Release, 24 September 2015).

294 *Ibid*.

295 Australian Women Against Violence Alliance, Submission 838, 22–3 (citations omitted).

296 State of Victoria, '2015–16 Budget Paper No 3: Service Delivery' (Department of Treasury and Finance, 2015) 5.

297 Crime Statistics Agency, above n 18, 92.

298 Many women reported requiring services at court: see, eg, Community consultation, Melbourne 2, 14 May 2015; Anonymous, Submission 165, 3; Anonymous, Submission 766, 7; Community consultation, Melbourne, 6 May 2015; Anonymous, Submission 439, 5.

299 Court Network, Submission 927, 13.

300 Community consultation, Shepparton 1, 18 May 2015.

301 Eastern Domestic Violence Service Inc, Submission 619, 13.

302 Elizabeth Hoffman House Aboriginal Women's Services, Berry Street, WRISC Family Violence Service and InTouch. These programs are funded through one element of the Transition Support (homelessness) funding: Department of Health and Human Services, 'Response to Notice to Produce' (18 January 2016), 1, produced by the State of Victoria in response to the Commission's Notice to Produce dated 20 August 2015.

303 For example, Eastern Domestic Violence Service Inc, Submission 619, 15. Assistance with court processes is one of the range of supports which may be provided as part of the outreach role: Department of Health and Human Services, produced by the State of Victoria in response to the Commission's Notice to Produce dated 20 August 2015.

304 Court Network, '2013–14 Annual Report' (2014) 1.

305 Court Network, Submission 927, 12.

306 Court Network, above n 304, 13.

307 Court Network, Submission 927, 12.

308 Women's Health In the North, Submission 637, 16; Women's Health Goulburn North East, 367, 5; Berry Street, Submission 834, 44; Women's Legal Service Victoria—01, Submission 940, 62–3.

309 Berry Street, Submission 834, 44.

310 Court Network, 'Proposal for Enhanced Court Network Service at Sunshine Magistrates' Court' (27 July 2015), 4, provided by Court Network to the Commission, 12 October 2015.

311 Eastern Domestic Violence Service Inc, Submission 619, 5.

312 See, eg, Court Services Victoria, Submission 646, 16; Transcript of Hawkins, 4 August 2015, 1851 [17]–1852 [7]; Transcript of Field, 4 August 2015, 1741 [21]–[23]; Community consultation, Geelong 2, 28 April 2015. See also, Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 53.

313 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 53.

314 Transcript of Broughton, 5 August 2015, 1951 [13]–[27].

315 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 53.

316 Ibid 52–3.

317 See, eg, Magistrates' Court of Victoria, above n 87, 30–1.

318 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 14.

319 Expert roundtable, Melbourne, 23 September 2015.

320 Magistrates' Court of Victoria, 'Family Violence Operating Procedures: Family Violence Programs and Initiatives Unit—Version 2.0' (August 2014), 31, produced by the Magistrates' Court of Victoria in response to Commission's request for information dated 5 June 2015.

321 Ibid 32.

322 Statement of Sinclair, 3 August 2015, 11 [54]–[56].

323 Statement of Newman, 28 July 2015, 13 [74].

324 Centre for Innovative Justice, above n 234, 60 (citations omitted). The Commission also notes the triage processes at the Neighbourhood Justice Centre: see Statement of Walker, 3 August 2015, 3–4 [10]–[13].

325 Coroners Court of Victoria, above n 79, 110.

326 Court Network, above n 310, 4.

327 Community consultation, Geelong 2, 28 April 2015.

328 Statement of Field, 31 July 2015, 10 [42].

329 *Magistrates' Court Act 1989* (Vic) s 18.

330 Magistrates' Court of Victoria, above n 320, 110 [11.1.3].

331 *Family Violence Protection Act 2008* (Vic) ss 166, 169.

332 Magistrates' Court of Victoria, above n 320, 112 [11.2.2].

333 Ibid. We note, however, that the privacy policy on the Magistrates' Court website contemplates access to the court file by non-parties. The policy states that 'Access to court files will not be provided in any circumstances unless so ordered by a magistrate. A party seeking access to information or documentation held on a court file must file a formal application with the registrar at the proper venue of the Court. A magistrate in open court determines this application.' See Magistrates' Court of Victoria, *Privacy* (8 April 2015) <<https://www.magistratescourt.vic.gov.au/privacy>>. Further, we note Practice Direction 7 of 2013 which deals with applications for media access to materials: see Magistrates' Court of Victoria, *Media Access to Information* (25 September 2015) <<https://www.magistratescourt.vic.gov.au/publication/media-access-information>>.

334 *Children, Youth and Families Act 2005* (Vic) s 534. See also *Children, Youth and Families Act 2005* (Vic) s 537.

335 Children's Court of Victoria, *Privacy* (18 December 2015) <<http://www.childrenscourt.vic.gov.au/privacy>>.

336 For an argument in support of specialisation in dealing with sexual offence cases see Centre for Innovative Justice, above n 234.

337 Ibid.

338 Women's Legal Service Victoria—01, Submission 940, 10.

339 Coroners Court of Victoria, above n 79, 5.

340 Ibid, 5; Peninsula Community Legal Centre, Submission 447, 21.

341 State of Victoria, Submission 717, 15.

342 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 64.

343 Ibid 50.

344 Letter from The Hon Daniel Andrews, Premier of Victoria to Judge Gray, State Coroner <http://www.coronerscourt.vic.gov.au/resources/68cf6ac7-e998-468d-a4c4-5ae4b7461378/20140855+response+premier+of+vicoria_luke+batty.pdf>.

345 *Magistrates' Court Act 1989* (Vic) s 40.

346 Court Services Victoria, Submission 646, 16.

347 For discussion of the use of new technology and information sharing in the US court system, see generally Statement of Antoine, 12 August 2015.

348 See, eg, Department of the Attorney General (WA), *Integrated Courts Management System* (9 November 2015) <http://www.ar.dotag.wa.gov.au/l/integrated_courts_management_system.aspx?uid=6226-8680-5176-0707>; Service New South Wales, *NSW Supreme, District & Local Courts Online Registry* <<https://www.service.nsw.gov.au/transaction/nsw-supreme-district-local-courts-online-registry>>; ACT Government, *ACT Courts a Step Closer to More Efficient, Paperless System* (10 December 2014) <http://www.cmd.act.gov.au/open_government/inform/act_government_media_releases/corb/2014/act-courts-a-step-closer-to-more-efficient,-paperless-system>.

349 Statement of Walker, 3 August 2015, 10.

350 Victorian Auditor-General's Office, 'Connecting Courts—The Integrated Courts Management System' (June 2009).

351 Letter from The Hon Daniel Andrews MP, Premier of Victoria, above n 344. See also Statement of De Cicco, 7 August 2015, 16–18 [48]–[57].

352 Magistrates' Court of Victoria, above n 87.

353 Magistrates' Court of Victoria, 'Capping of Family Violence Intervention Order Lists at Magistrates' Court of Victoria sitting at Broadmeadows' (Practice Direction No 9 of 2015, 2015).

354 Ibid.

355 Victoria Legal Aid, above n 275, 3–4.

356 Department of Justice and Regulation, 'The Access to Justice Review' (22 October 2015) <<http://www.vic.gov.au/news/the-access-to-justice-review.html>>.

357 We note that the 2015–16 Budget allocated an additional \$3.3 million for legal assistance in 2015–16 for one year. State of Victoria, above n 296, 5.

358 InTouch Multicultural Centre Against Family Violence, Submission 612, 38–9.

359 *Criminal Procedure Act 2009* (Vic) ss 367–8.

360 See also our recommendations with respect to 'body worn cameras' in Chapter 15.

361 Magistrates' Court of Victorian and Children's Court of Victoria, Submission 978, 15.

- 362 George and Harris, above n 171, 62.
- 363 Statement of Field, 31 July 2015, 8 [31].
- 364 Letter from Peter Lauritsen, Chief Magistrate of the Magistrates' Court Victoria, above n 45.
- 365 Transcript of Walker, 4 August 2015, 1838 [10]–1840 [13], Statement of Walker, 3 August 2015, 7–8 [26]–[31]. See, eg, Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 15–16. We also note the form has been positively reviewed: see, eg, McAuley Community Services for Women, Submission 480, 14–15.
- 366 Magistrates' Court of Victoria, above n 63.
- 367 Magistrates' Court of Victoria, *Application for a family violence intervention order FVIO1* (2 August 2012) <<https://www.magistratescourt.vic.gov.au/forms/application-family-violence-intervention-order-fvio1>>. See also Commission for Children and Young People, Submission 790, 17.
- 368 *Family Violence Protection Act 2008* (Vic) s 50.
- 369 *Magistrates' Court (Family Violence Protection) Rules 2008* (Vic) s 7.01.
- 370 Women's Legal Service—01, Submission 940, 11, 48; Statement of Douglas, 20 July 2015, 3–4 [18]; Broadmeadows Community Legal Service, Submission 791, 10.
- 371 See, eg, *Vexatious Proceedings Act 2014* (Vic).
- 372 See, eg, *Crimes Act 1958* (Vic) s 314, *Ibid* s 3.
- 373 *Civil Procedure Act 2010* (Vic) s 42, *Magistrates' Court General Civil Procedure Rules 2010* (Vic) 4.10; *Supreme Court (General Civil Procedure) Rules 2015* (Vic) 4.10 which require a proper basis certification to be filed by a legal practitioner in civil proceedings.
- 374 *Legal Profession Uniform Law Application Act 2014*, s 25.
- 375 County Court of Victoria, Submission 835, 7 [16.5].
- 376 See Beau Kilmer et al, 'Efficacy of Frequent Monitoring with Swift, Certain, and Modest Sanctions for Violations: Insights from South Dakota's 24/7 Sobriety Project' (2013) 103(1) *American Journal of Public Health* e37, 1; Steven Alm, 'A New Continuum for Court Supervision' (2012) 91 *Oregon Law Review* 1181, 1184; Statement of Miller, 15 July 2015, 16 [72]–[73]; Statement of Freiberg, 30 July 2015, 6 [34]–[35]; Angela Hawken and Mark Kleiman, 'Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE' (National Institute of Justice, 2 December 2009) 4.
- 377 See, eg, Transcript of McCormack and Tucker, 3 August 2015, 1547 [9]–1548 [25].
- 378 *Family Violence Protection Act* (Vic) s 75, 81(2)(a), (f)–(h).
- 379 For more information on the nature of police processes see Chapter 14.
- 380 Australian Law Reform Commission and New South Wales Law Reform Commission, above n 200, 14, 991.
- 381 Rachael Field, 'Using the Feminist Critique of Mediation to Explore "the Good, the Bad and the Ugly" Implications for Women of the Introduction of Mandatory Family Dispute Resolution in Australia' (2006) 20 *Australian Journal of Family Law* 45, 75–6.
- 382 For parallel arguments in relation to mediation in family law, see *ibid* 50; Australian Law Reform Commission and New South Wales Law Reform Commission, above n 200, 14, 991.
- 383 See Judicial College of Victoria, *Family Violence Resources* (11 November 2014) <<http://www.judicialcollege.vic.edu.au/publications/family-violence-resources>>. See also Statement of Hyman, 5 August 2015, 8 [41]–[42].
- 384 Gelb, above n 103, 75.
- 385 Sentencing Advisory Council, 'Sentencing for Contravention of Family Violence Intervention Orders and Safety Notices: Second Monitoring Report' (December 2015) 15 [2.45]–[2.49].
- 386 *Family Violence Protection Amendment Act 2014* (Vic).
- 387 See generally Statement of Wilson, 12 October 2015, 3–5 [12]–[14].
- 388 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 32.
- 389 Statement of Calkin, 24 July 2015, 56 [11].
- 390 *Court Services Victoria Act 2014* (Vic).

17 Offences and sentencing

Introduction

This chapter explores the prosecution and sentencing of offences that take place in the context of family violence.

Responses to family violence in Victoria have been marked by a tendency to dismiss, trivialise and misunderstand family violence. In the criminal justice system, this view has sometimes been manifested in a reluctance to charge or prosecute family violence-related offences, and the imposition of inadequate or inconsistent sentences. Aside from putting women and children at risk in particular cases, these attitudes and practices, particularly when publicised, can reinforce community attitudes which trivialise violence against women. Fortunately, there are some indications that attitudes and practices are improving. The purpose of this chapter is to consider how best to encourage that trend.

The first section of this chapter provides an overview of the context and current practice for the sentencing of family violence-related offences. This section also includes discussion of 'defensive homicide' and defences that may apply where a victim who has experienced family violence commits homicide in response to that violence. It explores features of criminal proceedings that are of particular relevance to family violence-related offending, including bail, pre-sentence reports and victim impact statements.

The second section of this chapter outlines the various issues that were raised in evidence before the Commission. The Commission heard concerns about the way in which the criminal law deals with women who commit homicide in response to family violence. Submissions also highlighted gaps in data for family violence-related offending and made suggestions for improving bail, different approaches to sentencing and potential changes to offences and sentencing laws.

Many submissions received by the Commission commented on sentencing practices. A range of submissions considered that sentences for family violence offenders were inadequate or inconsistent. Several favoured greater reliance on longer custodial sentences. Other submissions did not consider such sentences to be a desirable or effective means of protecting the community or punishing, deterring or rehabilitating offenders.

The Commission is of the view that changes to sentencing provisions and the creation of new offences can often have more of a symbolic than practical effect. Whatever laws we have will only be as effective as those who enforce, prosecute and apply them. Improving these practices, through education, training and embedding best practice and family violence specialisation in the courts, is likely to be more effective than simply creating new offences or changing sentencing laws. The Commission readily accepts that there will be cases where a substantial term of imprisonment is necessary and appropriate. Nonetheless, evidence on the limited effectiveness of imprisonment as a means of deterring offenders, rehabilitating offenders and reducing crime highlights the complexity of these issues.

The Commission believes that while the introduction of new offences or new sentencing powers is not necessary, there is scope to improve current practices and processes. In the final section of this chapter, after considering current practice and the issues raised by stakeholders, the Commission makes a number of recommendations.

The Commission's recommendations include ensuring that offences committed in the context of family violence are appropriately 'flagged', amending current law and practice in family violence-related bail matters and commissioning research into family violence-related sentencing practices. Finally, the Commission recommends that the Director of Public Prosecutions consider identifying a suitable appeal case for the Court of Appeal for the issue of a guideline judgment on sentencing for family violence offences.

Some of the issues raised with the Commission relate to wider questions about the experience and needs of victims in the criminal justice system. At the time of this report, the Victorian Law Reform Commission was preparing a report on the role of victims in the criminal trial process. The VLRC's consultation paper makes specific reference to victims of family violence.¹ It also raises more general questions which are relevant to victims of family violence involved in criminal proceedings. The Commission proposes that several of the issues raised in relation to victims of crime should be dealt with as part of that broader inquiry.

Context and current practice

This section outlines the context and current practice for the sentencing of family violence-related offences. It sets out the offences that a perpetrator of family violence may be charged with, sentencing options that may apply and the purposes and principles of sentencing. It also details what is known about current charging, prosecution and sentencing practices.

This section then explores certain aspects of criminal proceedings that are relevant to offences that occur in the context of family violence. It considers family violence-related defences, particularly as they relate to women who commit homicide in response to family violence. This section also discusses features of the trial and sentencing process relevant to family violence offences, namely bail, victim impact statements, pre-sentence reports and parole.

Relevant offences

Family violence offences fall into two main categories. First, there are family violence intervention order (FVIO) and family violence safety notice (FVSN) contravention offences and secondly, there are crimes committed in a family violence context.

Family violence intervention orders and safety notices

The *Family Violence Protection Act 2008* (Vic) contains several distinct offences for FVIO and FVSN contraventions. These offences occur when someone breaches the conditions of an FVIO or an FVSN.

First, there are basic summary offences² for contravening an FVIO or FVSN, punishable by up to two years' imprisonment and/or a fine.³ In addition, there are indictable offences triable summarily for contraventions with intent to cause (or knowledge that the contravention will cause) harm (including mental harm) or fear for safety; and an indictable offence for persistent contravention of an FVIO or FVSN where three contraventions (in relation to the same order, notice and/or protected person) occur within 28 days, and on each occasion the contravener knew, or should have known, that they were in breach of the order or notice. These indictable offences are punishable by up to five years' imprisonment and/or a fine.⁴

Whether a person's conduct contravenes an FVIO or FVSN will depend on the conditions of the order or notice. When making an FVIO, a court can impose any conditions that appear necessary or desirable in the circumstances.⁵ These may include (but are not limited to) conditions such as prohibiting the commission of family violence, prohibiting the respondent from approaching or contacting the protected person and revoking, suspending or cancelling the respondent's firearms authority.⁶ Family violence safety notices may include all but firearms revocation, suspension and cancellation conditions.⁷ There are additional offences under the Family Violence Protection Act which attract a fine, such as failing to attend counselling and certifying a false document.⁸

Family violence-related crimes

A range of crimes against the person, as well as property and dishonesty offences, may be committed in the context of family violence.

Crimes against the person may include physical and sexual offences such as rape, incest and indecent assault, common and aggravated assault, intentionally or recklessly causing serious injury, and homicide offences; as well as offences such as threatening to kill or cause serious injury, kidnapping and stalking.⁹ Property and dishonesty offences include theft, burglary and aggravated burglary, destruction of property and threatening to destroy property.¹⁰

Matters of substantial gravity or complexity are commonly heard in the County Court, and the most serious and complex offences (including murder and related offences) are heard in the Supreme Court.¹¹ Less serious offences are typically heard in the Magistrates' Court. The decision to try an indictable offence summarily (that is, in the Magistrates' Court) can only be made if the accused consents, and the court considers it appropriate in the circumstances (which may include the nature of the offence, the adequacy of available sentences, whether there is a co-accused and any other relevant matters).¹²

Sentencing options

When a person commits an offence involving family violence, a court has a number of sentencing options.¹³ A court can also impose orders in addition to the sentence (ancillary orders). Sentencing options and orders in addition to the sentence are described briefly below.

The *Sentencing Act 1991* (Vic) arranges the different sentencing options hierarchically, so that a more serious sentencing option may not be imposed unless the purpose of the sentence cannot be achieved by a less serious option.¹⁴ Custodial sentences must be imposed for certain offences, including manslaughter in circumstances of gross violence, and causing serious injury in circumstances of gross violence.¹⁵

Custodial sentences

Family violence-related offences and FVIO/FVSN contravention offences may attract a term of imprisonment. There are also specific custodial sentences for particular matters, such as drug treatment orders imposed by the Drug Court, residential treatment orders for people with intellectual disabilities found guilty of certain offences, secure treatment orders for people with mental health disabilities, and youth justice and youth residential centre orders.¹⁶

'Baseline sentences' have recently been introduced in Victoria. Baseline sentences are specified prison sentences that the Victorian Parliament intends as the median sentence for seven nominated offences, including murder. Victorian courts must sentence a charge of a baseline offence in accordance with that intention if the offence is committed on or after 2 November 2014. The scheme still allows a court the discretion to impose a sentence higher or lower than the baseline sentence for a charge that is either more serious or less serious than the charge that receives the median sentence.¹⁷

The Court of Appeal found in *DPP v Walters*¹⁸ that the baseline sentencing provisions in the Sentencing Act were 'incapable of being given any practical operation'. On 24 November 2015 the Sentencing Advisory Council received a request from the Attorney-General to provide advice on sentencing guidance in Victoria. The Sentencing Advisory Council is due to report to the Attorney-General no later than 15 April 2016.¹⁹

Community correction orders

In 2012, community correction orders were introduced, replacing a variety of non-custodial sentences such as home detention and suspended sentences. The CCO is a broad, flexible order which allows an offender to remain in the community subject to certain conditions, such as orders requiring the offender to:

- ▷ reside at or be excluded from particular places or areas
- ▷ refrain from contacting or associating with certain persons or classes of persons
- ▷ undergo drug, alcohol or mental health treatment
- ▷ adhere to a curfew or electronic monitoring (though an electronic monitoring condition cannot be made in the Magistrates' Court)
- ▷ be supervised, monitored or managed by Corrections Victoria and/or
- ▷ be subject to ongoing judicial monitoring, including by requiring them to reappear before the court at a specified date or dates to enable the court to review their compliance with the order.²⁰

An offender who breaches a condition of a CCO may be resentenced for the original offence (including for a term of imprisonment) and may face up to three months' additional imprisonment for the breach.²¹

Sometimes a CCO will be imposed in combination with a custodial sentence and/or a fine. A CCO in the County or Supreme Courts may be imposed for up to two years, or the maximum term of imprisonment for the offence, whichever is greater. In the Magistrates' Court, a CCO may be imposed for up to two years for a single offence, four years for two offences, and five years for three or more offences.²²

Fines

A court may also impose a fine, either on its own or in combination with another kind of sentence. Provisions potentially relevant to family violence matters include section 52 of the Sentencing Act, which requires a court considering a fine to take into account the financial circumstances of the offender and the burden that paying the fine would impose; and section 54, which allows a court fixing the amount of a fine to consider (among other things) any loss, damage to or destruction of property suffered as a result of the offence. The imposition of fines is discussed further below.

Dismissal, discharge and adjourned undertaking

At the lowest level of the sentencing hierarchy are orders dismissing, discharging or releasing on adjournment. The Sentencing Act enables the court to release an offender convicted of an offence, with or without recording a conviction, on the basis of conditions. The standard conditions are that the offender undertake to attend the court if or when required, and be of good behaviour during the term of the adjournment (up to five years). The court has discretion to impose other special conditions, including that the offender complete programs relevant to the offending.²³

Orders in addition to sentence

A sentencing court may make additional (or ancillary) orders when it imposes a sentence. Some additional orders which may be relevant to family violence matters include compensation and restitution orders, by which the offender is ordered to compensate the victim for lost or stolen property, and/or injuries or expenses that arose from the offending;²⁴ and orders that a sex offender be registered, which entails mandatory reporting obligations and other restrictions.

Purposes and principles of sentencing

Sentencing of adult offenders in Victoria is underpinned by basic principles and considerations. These are relevant to understanding the different sentencing options that may apply to family violence offences, as well as weighing proposals for reform.²⁵

General principles and purposes of sentencing

In Victoria, the purposes of sentencing are enshrined in section 5 of the Sentencing Act, which stipulates that sentences may only be imposed in order to:

- ▷ punish the offender (to an extent, and in a manner, which is just in the circumstances)
- ▷ deter the offender or others from committing the same or similar offences
- ▷ establish the conditions to facilitate rehabilitation
- ▷ denounce the offending conduct
- ▷ protect the community from the offender
- ▷ achieve a combination of two or more of those purposes.²⁶

As well as the purposes of sentencing, section 5 sets out the considerations the court must take into account in sentencing. These include:

- ▷ the maximum penalty for the offence, and current sentencing practices
- ▷ the nature and gravity of the offence
- ▷ the offender's culpability, degree of responsibility and character history
- ▷ the impact of the offence on the victim, the victim's personal circumstances, and any injury, loss or damage directly resulting from the offence
- ▷ the presence of any aggravating or mitigating factor concerning the offender, or of any other relevant circumstances.²⁷

Other considerations may also be taken into account, including the personal circumstances of the offender which may make prison more burdensome, or which may alter the weight given to the purposes of sentencing (for example, a relevant intellectual disability or mental health illness),²⁸ or matters arising from the proceeding (including, for example, a guilty plea showing remorse).

General principles of sentencing have also developed through legislation and the common law and include:²⁹

- ▷ parsimony: the sentence must not be more severe than is required to serve its purposes
- ▷ proportionality: the punishment must reflect the gravity of the offending
- ▷ parity: ordinarily, similar sentences should be imposed for similar offending in similar circumstances.

There are also additional sentencing principles that apply to people who have been convicted for serious sexual or violent offending.³⁰

The purposes, principles and considerations that apply to the sentencing of young offenders are quite different. Rehabilitation is the paramount consideration, and relevant considerations include the need to strengthen and preserve a child's relationship with their family and the desirability of the child's living at home and continuing their education, training or employment.³¹ Issues specific to young people who use family violence are considered in Chapter 23.

Principles specific to sentencing family violence offenders

The Supreme Court of Victoria's submission to the Commission highlighted a number of Victorian cases which are said to establish principles for sentencing family violence offenders. In particular, a number of Court of Appeal judgments have emphasised:

- ▷ the importance of deterrence and denunciation, particularly in light of the unique context of family violence³²
- ▷ the significant and broad-reaching effects of family violence, which 'are not confined to physical injury' but extend to 'long-lasting psychological trauma', which may impact on the victim's finances and job status³³
- ▷ the importance of effectively enforcing intervention orders³⁴
- ▷ that any claim that intimate partner violence is a less serious form of violence (including the assertion that the victim's level of fear was less than it would have been had the attacker been a stranger) must be rejected.³⁵

The Commission was also provided with the reasons of Maxwell P, Priest JA and Beale AJA in the Court of Appeal decision *Uzun v The Queen*.³⁶ In that case, the applicant, at the time subject to an FVIO, forced entry into his wife's home; threatened her and one of their children with weapons; and ultimately led police on a car chase before his vehicle collided with another car. He was convicted of multiple offences and sentenced to 10 years' imprisonment with an eight-year non-parole period.

The applicant sought leave to appeal against his conviction and sentence. His counsel emphasised that the offending did not cause physical injuries, took place over a short time and that he still had his family's support. In refusing leave to appeal, the court noted the applicant's extensive criminal history (most of which involved family violence against his wife and children) and the need to deter the applicant. Priest JA quoted with approval a passage in *Marrah v The Queen*,³⁷ which includes the following:

The gravity of the offending was aggravated by the fact that the applicant was at the time the subject of an intervention order, which he flagrantly disregarded. Offending of this nature is too often perpetrated by men whose response to difficulties in a relationship is one of possessive, violent rage. It goes without saying that such a response, to what is a common human situation, is utterly unacceptable. The sentences must convey the unmistakable message that male partners have no right to subject their female partners to threats of violence. The sentences must be of such an order as to strongly denounce violence within a domestic relationship.³⁸

Charging and prosecution of family violence-related offences

The Sentencing Advisory Council reported that from 2009–10 to 2014–15, the percentage of police-recorded family violence incidents where charges were laid increased, from 22.3 per cent ($n=7944$) in 2009–10 to 38.2 per cent ($n=27,058$) in 2014–15.³⁹ Assistant Commissioner, Dean McWhirter, Family Violence Command, Victoria Police, told the Commission that over a third of charges for crimes against the person in 2013–14 arose from family violence incidents.⁴⁰ Police practices are considered further in Chapter 14.

The Commission also heard from the Director of Public Prosecutions, Mr John Champion SC, as to the Victorian Office of Public Prosecutions' practice of recording family violence-related matters on its case-management system.⁴¹ Mr Champion was able to confirm in his statement, for example, that over the last three reporting years, approximately 1200 matters (or 'between 400 and 500' matters each year) prosecuted by the Victorian Public Prosecution Service were nominated as 'family violence matters' by the solicitor with conduct of the file. The offences involved 'were a mixture of homicides, assaults and sexual offences, as well as substantive breaches of intervention orders'.⁴² The 2014–15 Annual Report from the OPP noted that 16 per cent ($n=421$) of 2619 matters prosecuted by the DPP in 2014–15 involved family violence.⁴³

In terms of prosecutions for contravention offences specifically, the 2015 Sentencing Advisory Council report indicates that the number of sentenced contravention charges (including contravention intending to cause harm or fear for safety) increased from 3850 in 2009–10 to 8787 in 2014–15. As a proportion of FVIOs, the contravention rate increased from one contravention per 4.6 FVIOs to one contravention per 3.1 FVIOs. Charges for persistent contravention (which came into effect in April 2013) increased from 22 in 2012–13 to 1239 in 2014–15.⁴⁴

Current sentencing practices

Sentencing for intervention order and safety notice contraventions

The Sentencing Advisory Council has, through an initial report in 2009, and subsequent monitoring reports in 2013 and 2015, monitored sentencing practices for FVIO and FVSN contraventions.⁴⁵

The 2013 report considered sentences in the Magistrates' Court within two reference periods: July 2004 to June 2007 and July 2009 to June 2012. It did not consider practices in relation to the new offences introduced to the Family Violence Protection Act in 2012 (sections 37A, 123A and 125A).

For FVIO contraventions, and comparing the two reference periods, the report found a shift away from financial penalties towards sentences 'with greater potential for some form of intervention in the lives of offenders', and added that 'this appears to have resulted from a change in sentencing practices, rather than a change in the nature of the contravention behaviour', and to be an FVIO-specific trend, rather than a court-wide sentencing trend. The use of community orders increased by 9.1 per cent and, while the use of custodial sentences remained stable, the average length of sentences increased from 2 to 2.9 months.⁴⁶

The 2015 report was published in December last year. This again covered two reference periods: July 2009 to June 2012, and July 2012 to June 2015. Key findings included increases in the use of custodial sentences for FVIO and FVSN contraventions (of 4.1 and 1.8 per cent respectively); increases in the use of community sentences, including CCOs (of 5.1 and 10.2 per cent respectively); and decreases in the use of low-end orders, including adjourned undertakings (of 3.7 and 2.4 per cent respectively).⁴⁷

Use of the new contravention offences (persistent contravention/contravention intending to cause harm or fear for safety) which began operating in 2013 has steadily increased, and aggravated contravention offences are more likely than non-aggravated contraventions to attract imprisonment or a CCO, and less likely to receive a fine or low-end order, reflecting 'the added criminality encompassed by those charges'.⁴⁸ Contraventions which were sentenced alongside ('co-sentenced' with) another criminal offence were more likely to receive a sentence of imprisonment or a CCO.

In these respects the trend towards higher end sentencing which the Sentencing Advisory Council observed in 2013 has continued. Nonetheless, the report indicates some continued use of low-end orders.

For example, in cases of contraventions of FVIOs where there was no other offence charged (contravention-only cases), fines and low-end orders were the most frequently used sentence types 'by a very substantial margin': in 2014–15, 78.4 per cent of contravention-only cases received a fine or low-end order.⁴⁹ The use of fines in FVIO contraventions increased by 3.7 per cent between the two reference periods.

Some 66.4 per cent of FVIO contraventions intending to cause harm or fear for safety were sentenced by either fine (36.5 per cent) or low-end order (29.9 per cent) if there was no co-sentenced criminal offence. A majority (61.9 per cent) of persistent breach offences received a fine (39.1 per cent) or low-end order (22.8 per cent).⁵⁰

The Sentencing Advisory Council is in the final stages of a report on prior and subsequent offending of offenders sentenced for contravening family violence orders. This is likely to further illuminate sentencing trends for contravention offences, prior offending patterns, re-offending patterns and factors associated with re-offending.⁵¹

The Commission also acknowledges the Crime Statistics Agency's work, commissioned by us on the characteristics of perpetrators of family violence who have repeated contacts with police. These findings are considered in Chapters 15 and 18.

Sentencing for general criminal offences

Sentencing trends for general criminal offences (like physical and sexual assault, burglary, property damage) are less clear. This is largely because it is difficult to determine when these general criminal offences are related to family violence.

Although the monitoring reports can identify cases involving both a contravention charge and a general criminal offence charge, they cannot confirm whether the general charge relates to the same event as the contravention, or even to family violence.

More broadly, this means that the Sentencing Advisory Council is not able to compare, on a large scale, sentencing trends for non-contravention offences in a family violence context with trends for the same offences outside family violence. Asked about the viability of such a comparison, Emeritus Professor Arie Freiberg AM, Chair of the Sentencing Advisory Council, described it as 'impossible', because it would require manual analysis of a large volume of individual cases. He continued:

... we don't have a mechanism in Victoria of taking an offence such as infliction of injury, serious injury, and identifying whether that's a family violence offence or not. Unless you went through all of those cases—and we don't have the capacity; I don't think anyone has done that ...⁵²

In some other states, differences in the way offences are classified and recorded have made that comparison easier. A 2015 Tasmanian study of convictions from 2004–05 to 2013–14 found that, for example, for the charge of common assault, the proportion of custodial sentences in family violence matters was higher (12.8 per cent) than in non-family violence matters (8.4 per cent), and the use of fines in family violence matters was lower (22.4 per cent against 32.5 per cent).⁵³

In contrast, a study conducted by Dr Christine Bond, co-authored by Dr Samantha Jeffries, looked at a population of cases sentenced in the New South Wales lower courts, and found that 'when sentenced under statistically similar circumstances domestic violence offenders are less likely to be sentenced to prison', and 'of those imprisoned, domestic violence offenders received significantly shorter sentence terms' (on average, 21 days less).⁵⁴ Dr Bond concluded that these findings suggest that 'crimes committed within intimate or familial relationships are treated more leniently'.⁵⁵ However, another NSW study published in 2015 by the NSW Bureau of Crime Statistics and Research, looking at prison penalties or serious assaults, concluded that 'there is no evidence that serious non-domestic assault matters are dealt with more harshly than serious domestic assault matters'.⁵⁶ In fact, the report found that Indigenous offenders found guilty of serious family violence-related assault are more likely to be sentenced to prison than other violent offenders.⁵⁷

Recent practices have sought to better identify the relationship between a criminal offence and family violence in Victoria. For example, there is now a mandatory field on Courtlink (the Magistrates' Court's case-management system) to indicate when a criminal matter is family violence-related.⁵⁸ There is also some auto-population of data between LEAP and Courtlink.⁵⁹

However, because there are several intermediate steps between charging and sentencing—for example, the matter may be transferred to the Office of Public Prosecutions; charges may be dropped, combined or upgraded on the basis of analysis, investigation or other practical considerations; and the matter may be transferred from the Magistrates' Court to the higher courts—it is likely to be difficult to marry charged offences with subsequent sentences for those offences.

Deficiencies in current data-collection and research practices, including those relating to perpetrators, are also explored in Chapter 39.

Family violence-related defences

Other parts of this chapter focus on the offences and sentencing options that apply to perpetrators of family violence. This section looks at family violence-related defences which attempt to take into account the experiences of victims of family violence victims who commit homicide.⁶⁰ This section outlines the ways in which these defences operate.

Defensive homicide

In 2005, the Victorian Parliament amended the *Crimes Act 1958* (Vic) to include the new offence of 'defensive homicide'. The amendment was a response to a Victorian Law Reform Commission report.⁶¹ The offence of defensive homicide was made out if a person believed that their actions (resulting in the victim's death) were necessary to defend themselves, but could not demonstrate reasonable grounds for that belief (and so fell short of self-defence).⁶²

Defensive homicide was intended to apply in situations where a killing occurred in the context of family violence, and the accused (a victim of family violence) genuinely believed that their actions had been necessary, even though that belief was not objectively reasonable. However, the overwhelming majority of defensive homicide convictions between 2005 and 2014 were against men, many of whom did not have a family relationship with their victim. To that extent, defensive homicide operated in an unintended manner.⁶³ The offence has now been abolished by the *Crimes Amendment (Abolition of Defensive Homicide) Act 2014* (Vic). This Act also enacted the self-defence and duress provisions, as well as the jury directions provisions discussed next.⁶⁴

Self-defence and duress

A person accused of an offence may claim (among other things) that they acted in self-defence or under duress. Once these defences are raised, it is for the prosecution to disprove them beyond reasonable doubt. If they cannot do so, the defendant is entitled to be acquitted.

The self-defence provisions provide that a person is not guilty of an offence if they believed that their actions were necessary in self-defence, and if that conduct was a reasonable response to the circumstances as the defendant perceived them.⁶⁵

The duress provisions provide that a person is not guilty of an offence if they reasonably believed that a threat of harm was made that would have been carried out unless the offence was committed; and carrying out the offence was the only reasonable way to avoid the threatened harm; and the conduct was a reasonable response to the threat.⁶⁶

In both cases, special provisions can apply if there is a context of family violence. If self-defence is raised in circumstances of family violence, a person may believe their conduct is necessary, and the conduct may be a reasonable response, even if they are responding to harm that is not immediate, and even if their response involves the use of force in excess of the force involved in the harm or threatened harm.⁶⁷

Family violence evidence provisions

In the case of self-defence, evidence of family violence may be relevant in determining whether the accused believed their conduct was necessary and whether their conduct was a reasonable response.

If duress is raised in the context of family violence, evidence of family violence may be relevant to determining whether a person acted under duress.⁶⁸

In both cases, section 322J of the Crimes Act provides that evidence of family violence regarding a person may include:

- ▷ evidence as to the history of the relationship between that person and a family member, the cumulative effect (including psychological effect) of the violence on the person subject to it, and social, cultural or economic impacts on the victim of family violence
- ▷ general evidence about the nature and dynamics of relationships affected by family violence, and the psychological effect and social, cultural or economic impacts of violence on people who are, or have been, in relationships affected by family violence.⁶⁹

Jury directions on family violence

An integral role for judges in jury trials is to provide directions to the jury to assist them in properly determining whether the accused is guilty or not. Judges are often assisted by the prosecutor and defence counsel in determining when and how to direct the jury. The *Jury Directions Act 2015* (Vic) was enacted to assist judges and practitioners in performing this function. It contains provisions specific to trials where self-defence or duress are raised in circumstances of family violence.

The Act provides for the trial judge to direct the jury on matters of family violence if the defendant or their barrister requests it (or, if the defendant is unrepresented, the court considers it necessary). The direction may include, for example, explaining that:

- ▷ family violence is not limited to physical abuse
- ▷ family violence may be constituted by a single act, or a pattern of behaviour 'which can amount to abuse even though some or all of those acts may, when viewed in isolation, appear to be minor or trivial'
- ▷ 'people may react differently to family violence', and it is not uncommon for people who have been subjected to family violence to 'stay with an abusive partner after the onset of family violence', to leave and then return to the abusive partner, or to refrain from reporting the violence
- ▷ a person's reaction to family violence may be influenced by the violence itself, and/or by personal, cultural, social and economic factors
- ▷ evidence that the accused assaulted the victim on a previous occasion does not, as a matter of law, mean that they could not have been acting under duress or in self-defence in relation to the charged offence.⁷⁰

Features of the trial and sentencing process

This section outlines various features of the trial and sentencing process that are relevant to the prosecution and sentencing of family violence offences: bail, victim impact statements, pre-sentence reports and parole.

Bail

A person who is charged with a criminal offence and held in custody may apply for bail.⁷¹ Conditions may be imposed on the accused for the duration of the bail period. For minor offences, police will usually serve an accused with a summons to appear in court at a given date. Bail is only relevant where a person is taken into custody pending the determination of proceedings against them.⁷²

Bail conditions can include requirements that an accused report to police, adhere to a curfew, refrain from contacting witnesses, reside at a nominated address, and participate in specified rehabilitation or treatment programs.⁷³

There is a general presumption that an accused person should be granted bail. This is subject to statutory exceptions for particular offences or circumstances. Bail may also be refused where there is an 'unacceptable risk' that the person will fail to surrender themselves into custody, commit an offence while on bail, endanger the safety or welfare of members of the public, interfere with witnesses or otherwise obstruct the course of justice.⁷⁴ These same 'unacceptable risk' considerations govern decisions about bail conditions.

In some cases, the presumption of bail does not apply to FVIO/FVSN contraventions. This means that it is for the accused to show why their detention in custody is not justified. This is the case where a bail applicant has been charged with contravening an FVIO/FVSN and:

- ▷ within the last 10 years, has been convicted or found guilty of an offence which involved the accused using or threatening to use violence, or
- ▷ on a separate occasion, the accused used or threatened to use violence against the person who is the subject of the order, whether or not a conviction, finding of guilt, or criminal charge resulted from that use or threatened use.⁷⁵

Where bail is refused, the accused will be remanded in custody. Some programs and services available to family violence perpetrators in remand are discussed on Chapter 18.

Victim impact statements

Sentencing courts must take into account the impact of the crime on the victim, and the victim's personal circumstances. A victim may make a victim impact statement, either by statutory declaration alone or accompanied by oral evidence. The statement may be made on a victim's behalf if they are considered unable to make it themselves, either because they are under 18 or for any other reason.⁷⁶

Victim impact statements usually describe the effect the offence has had on the victim's life, including any injury, loss or damage suffered by the victim as a direct result of the offence, and may include photographs, drawings, poems or other material. They may be accompanied by a medical report made and signed by a medical expert which attests to the medical impacts of the offending.⁷⁷

The statement may be read aloud during the sentencing process, and alternative arrangements (including the use of screens or broadcasting from a remote location) may be made both for that purpose, and if the victim is examined/cross-examined.⁷⁸

As well as helping judges to understand the gravity and impacts of the offence, a victim impact statement may have a therapeutic purpose, allowing a victim to tell their story, including in the presence of the perpetrator.

The role of victims in family violence proceedings and principles of restorative justice are considered further in Chapter 22.

Pre-sentence reports

If a court finds a person guilty of an offence it may, before imposing a sentence, order a pre-sentence report.⁷⁹ When considering imposing a community correction order, the court must (unless the only condition on the CCO is an unpaid community work condition of less than 300 hours) order a pre-sentence report in order to establish the person's suitability for the order, establish that any necessary facilities exist, and obtain advice about the most appropriate conditions to attach. These reports can incorporate observations about risks of family violence.⁸⁰ Drug and alcohol assessment reports may also be ordered prior to making a CCO if a court is satisfied that an offender had a drug and/or alcohol dependency that contributed to their criminal behaviour.⁸¹ When determining whether to impose an electronic monitoring condition, the court must have regard to a pre-sentence report. The joint submission from the Centre for Forensic Behavioural Science, Swinburne University of Technology and the Victorian Institute of Forensic Mental Health (Forensicare) explained that when individuals appear at court for family violence-related offences, and the offender's psychiatric or psychological health and wellbeing is in issue, judges can seek a specialist forensic mental health assessment from Forensicare to assist in sentencing. According to the submission, such requests are routine for a variety of offences, but Forensicare data suggest this service is under-used in family violence-related matters.⁸²

Parole

Parole is the conditional release of a person from prison while they remain under sentence. Decisions whether or not to grant parole are made by the Adult Parole Board. If the sentence is longer than a year, courts may fix a non-parole period (and if longer than two years, usually will do so, except in specific circumstances), after which the offender will be eligible to be considered for release on parole. Parolees must comply with standard supervision and reporting obligations and travel and residence restrictions. Further conditions may also be fixed in relation to drug and alcohol testing, treatment for medical issues, curfews and other restrictions on liberty.⁸³

Challenges and opportunities

This section sets out the main issues that were raised with the Commission in relation to the prosecution and sentencing of family violence—related offences. It begins by discussing particular issues that were raised with the Commission in relation to the family violence—related defences, including jury directions and the repeal of defensive homicide.

Many submissions expressed views on the adequacy, consistency and efficacy of current sentencing practice. This section sets out those views and also outlines suggestions for reform that were raised in evidence before the Commission, including suggestions to improve current law and practice in bail matters, different approaches to sentencing and potential changes to offences and sentencing laws.

Issues with family violence—related defences

The Commission heard some concerns about how the law takes into account the experience of women who commit homicide in response to family violence.

Some of these issues raised are outlined in a 2013 report and subsequent research co-produced by the Domestic Violence Resource Centre Victoria and Monash University.⁸⁴ The report (and DVRCV's submission to the Commission, which discusses it) identifies a number of practical issues. While several relate specifically to homicide trials, they are of general relevance.

Family violence evidence provisions

DVRCV expressed concern about the under-use of the family violence evidence provisions, in particular those set out in section 322J of the Crimes Act. These provisions are outlined above. DVRCV considers there is a disparity between the use of the provisions and the number of women who claim that they killed their partners in response to family violence.⁸⁵ It also queries whether the provisions could be used by prosecutors to provide context where the defendant has a history of perpetrating family violence (rather than just by the defendant where they claim the victim had such a history).⁸⁶

DVRCV suggested that more training is needed to ensure legal professionals make good use of these provisions. They also recommended that section 322J be amended to align more closely with the definition of family violence in the Family Violence Protection Act, including the content from the preamble to that Act relating to the gendered nature of family violence; and that it include a reference to evidence-based risk factors that may indicate an increased risk of the victim being killed or seriously injured.⁸⁷

DVRCV also noted that the Victorian Law Reform Commission, in recommending the family violence provisions, envisaged that a range of experts could be called on to give evidence of family violence—not just psychiatrists and psychologists but 'counsellors, social workers, family violence workers and people who have a specific understanding of particular cultural communities'. However, the DVRCV/Monash University research indicated that this breadth of expertise has not been harnessed: 'there is little indication that a broad range of experts with specific family violence training are being called upon by counsel'. As a result, DVRCV recommended the establishment and funding of an expert panel who can be drawn on by counsel to provide evidence in homicide plea hearings and trials.⁸⁸

Jury directions on family violence

A similar point is raised in relation to the jury direction provisions on family violence—namely, that they are not fully used, in part because of a lack of understanding on the part of legal professionals of family violence or its potential relevance. DVRCV suggests amending the provisions on jury directions to mandate that the jury direction be given if relevant to the facts in issue, rather than on application by the defence.⁸⁹

Repeal of defensive homicide

DVRCV also noted that, notwithstanding the grounds for its repeal (described above), the repeal of defensive homicide means that there is now no middle option for victims who kill their partners in circumstances where a context of family violence exists, and may not have a clear claim to self-defence:

We remain concerned that currently, without this partial defence, a woman who kills an abusive partner faces the ‘all or nothing’ choice in risking a murder conviction if she tries to argue ... self-defence. A guilty plea to manslaughter may not be accepted ... where there is evidence of an intention to kill.

...

Until there is a better understanding of the complexities of family violence ... there remains a need for a partial defence that women defendants can raise as an alternative to the full defence of self-defence.⁹⁰

In light of these concerns, DVRCV recommended a Victorian Law Reform Commission review of defences to homicide relevant to family violence victims, including considering reintroducing a partial defence.⁹¹

Charging and prosecution practices

A discrete issue described by the DVRCV/Monash University report was ‘overcharging’. This occurs where prosecutors charge a woman with murder, but accept a guilty plea for manslaughter or (prior to its repeal) defensive homicide. DVRCV suggested that:

... when women are facing a murder charge, they are under pressure to plead guilty to lesser offences rather than risking a murder conviction ... This means that in cases where there may be good grounds on which to argue self-defence, [defences] are not being adequately tested at trial.⁹²

DVRCV proposed that this issue could be resolved by consultation between police and prosecutors about the appropriate charge. DVRCV noted that the 2010 Australian Law Reform Commission and NSW Law Reform Commission report *Family Violence: A National Legal Response* identified charging practices as an issue warranting review by the states, and suggested that enhancing prosecutorial guidelines in Victoria may help prosecutors determine the appropriate charge.⁹³

DVRCV suggested the establishment of a specialist domestic homicide list for courts and a specialist ‘domestic homicide’ unit within the Office of Public Prosecutions. This was based on its view that family violence is a factor in many homicides in Victoria, and that the distinctive features of family violence, including its gendered nature, must be understood by prosecutors and judicial officers.

Bail

A number of submissions raised issues in relation to the use of bail in family violence-related proceedings. The use of bail in these proceedings involves some unique characteristics. In its 2010 review of Australia’s family violence laws, the ALRC noted that crimes related to family violence are unlike many other crimes:

Where a crime is committed in the context of family violence, the accused will know the victim; he or she might often want to return to the victim; the victim and the accused may have had children together; and/or the victim and the accused might live in the same home.⁹⁴

All of these factors suggest that a person who has committed a crime in the context of family violence might, if granted bail, be more likely to see the victim and so endanger them, than a person accused of a crime against a stranger. The Australian Law Reform Commission therefore considered that when granting bail in matters concerning family violence, 'judicial officers must be alert to the importance of providing for the safety of victims and related children.'⁹⁵

Bail was a prominent focus of the former State Coroner Judge Ian Gray's findings following the inquest into the death of Luke Batty. Judge Gray stressed the value of mutually reinforcing bail conditions and FVIOs, and the importance of prosecutors and judges having a comprehensive grasp of matters relevant to bail, particularly as to whether there is an 'unacceptable risk' in granting bail.⁹⁶

Ultimately, the inquest findings recommended that consideration be given to amending the *Bail Act 1977 (Vic)* to provide that where an accused person is in custody for failing to answer bail, a subsequent application for bail should be refused unless the accused person satisfies the court that the failure to answer bail was due to circumstances beyond their control.⁹⁷ This requirement existed in the former section 4(2)(c) of the *Bail Act* as it appeared prior to amendments to the Act in 2004. The provision was repealed following concerns raised by the VLRC that it had a disproportionate and punitive effect on Aboriginal and Torres Strait Islander peoples who had been charged with criminal offences.⁹⁸

Judge Gray also noted a procedural 'loophole'—a bench warrant issued for the arrest of Luke Batty's father had had the effect of nullifying his bail (and any conditions attached). He called for this loophole to be rectified as a matter of urgency.⁹⁹

The Commission heard from other stakeholders about a range of possibilities for improving the use and usefulness of bail in family violence proceedings. These include:

- ▷ widening the presumption against bail
- ▷ improving practices for family violence risk assessments to be provided to magistrates hearing bail applications
- ▷ improving the correlation of bail conditions and FVIOs, including by permitting magistrates hearing bail applications to make FVIOs
- ▷ strengthening practices to ensure that victims of alleged family violence are informed about bail decisions relevant to their safety.

Each of these is discussed in the next section.

Widening the presumption against bail

As noted, the presumption of bail for an individual accused of contravening an FVIO or an FVSN is removed in certain circumstances. A bail applicant who is charged with a family violence contravention and who has a relevant history of violence must 'show cause' as to why bail should be granted.¹⁰⁰ In its submission to the Commission, Victoria Police argued that these provisions should be widened to include all accused who are alleged to have committed any offence within a family violence context.¹⁰¹

Expanding these provisions to include all accused who are alleged to have committed any offence within a family violence context (e.g. assault, threats to kill) would require perpetrators to establish why they should be granted bail, rather than placing the onus on police to prove why they should not. This change would recognise the seriousness of family violence offending and make it easier for police and courts to hold perpetrators to account, either by imposing stricter bail conditions or remanding them in custody pending their court hearing if they failed to show cause as to why they should be released.¹⁰²

The Bail Amendment Bill 2015 (Vic) is relevant to this issue. At the time of writing, this Bill is awaiting Royal Assent. The Bill would compel bail applicants in respect of certain charges (including potentially relevant offences such as manslaughter, rape, child sex offences, intentionally causing serious injury, abduction, kidnapping, threats to kill and gross violence offences) to show cause as to why they should be granted bail (contrary to the presumption of bail) if they have been convicted of failing to appear on bail in the preceding five years. The Bill also doubles the maximum penalty for failing to appear on bail from 12 to 24 months.

Family violence risk assessment reports

A number of stakeholders, including the Centre for Innovative Justice, the Men's Referral Service and No To Violence, drew the Commission's attention to favourable aspects of bail programs and practices in other states.¹⁰³ For example, in Western Australia, magistrates can request a risk assessment report if they have concerns about the potential dangers posed by a bail applicant.

This process was explained by the Law Reform Commission of Western Australia in a recent report:

These reports are usually prepared by the Family Violence Service of the Department of the Attorney General following a request from the court when a participant in the Family Violence Court program seeks a variation of ... bail conditions ... the reports usually include information in relation to current protective bail conditions; input from the victim; a criminal history and court history check through the court database; history of violence; restraining orders issued against the accused; summary of the statement of material facts in relation to the current offences; information from the Western Australian Police in relation to prior Domestic Violence Incident Reports (DVIRs); information from the Department for Child Protection and Family Support in relation to the parties; risk assessment score and associated comments; information from the Department of Corrective Services; and a recommendation from the Family Violence Service in relation to the proposed variation of protective bail conditions.¹⁰⁴

The LRCWA noted that due to resourcing constraints, these reports usually take between one and three weeks to prepare, and only a limited number of reports (usually one or two) can be sought each week. However, the LRCWA noted the very positive comments from Western Australian stakeholders about the reports. Magistrates consulted by the LRCWA explained that the information contained in these reports is invaluable and the assessments appear to be widely supported by magistrates and many lawyers. The LRCWA concluded that the approach undertaken in relation to bail risk assessment reports is vital in terms of enhancing decision-making and maximising victim safety.

In cases where an accused seeks a relaxation of protective bail conditions in order to enable contact to occur between the accused and the victim, it is necessary for the court to properly assess the risk to the safety of the victim. In the past, such a decision would ordinarily have been made only after hearing from the accused and the prosecutor. A bail risk assessment report includes relevant information from a range of agencies and also a professional assessment of the risk to the victim.¹⁰⁵ The LRCWA observed that some caution was expressed by defence lawyers about the use of these reports, given that some of the information in the reports may not be appropriate in subsequent proceedings before the same judicial officer, including sentencing proceedings. For example, information from police about 'domestic violence incident reports' may not culminate in charges. However, the LRCWA was of the view that judicial officers were not precluded by the *Bail Act 1982 (WA)* from taking into account the material in the risk assessment reports, and could disregard irrelevant matters in subsequent proceedings.¹⁰⁶

In considering whether the Western Australian Bail Act should be specifically amended to provide for the ability to request a bail risk assessment report, the LRCWA noted that the Act already provides that a court considering bail may receive and take into account such information as it thinks fit, whether or not that information would normally be admissible in court. It also noted that the Act permitted deferral of a bail determination to obtain more information. Accordingly, the Act as it stood clearly permitted risk assessment reports. Nonetheless, stakeholders suggested to the LRCWA that legislation should recognise the practice of requesting risk assessment reports to encourage their expanded use. The LRCWA recommended that the Act be amended to expressly enable bail to be deferred for the purpose of consideration of what conditions should be imposed to protect a victim of a family violence-related offence.

It is likely that the Victorian Bail Act could, without change, accommodate the practice of seeking and providing risk assessment reports. This is because the bail decision maker¹⁰⁷ may have regard to wide-ranging matters in determining bail applications or variations. In bail applications, the court may have regard to 'all matters appearing to be relevant'.¹⁰⁸ In variation applications, the bail decision maker may have regard to 'all the circumstances'.¹⁰⁹ In both cases, the Bail Act sets out the same (non-exhaustive) examples of matters that may be relevant. These include the nature and seriousness of the offence and the strength of evidence against the accused; the character, criminal history, associations, home environment and background of the accused; and the attitude of the victim to the accused being granted bail.¹¹⁰ In working this out, the bail decision maker may inform itself by a wide range of means. Section 8 stipulates that the court may make such inquiries of, and concerning, the accused as it considers desirable, and may take into account any evidence which it considers creditable and trustworthy in the circumstances.¹¹¹

The Centre for Innovative Justice reported that the Gold Coast Integrated Response, a multi-agency joint undertaking led by Domestic Violence Prevention Centre Gold Coast Inc, is considering establishing a bail risk assessment report practice.¹¹²

In the findings following the inquest into the death of Luke Batty, Judge Gray stressed the need to improve processes for providing relevant information to magistrates in family violence matters. In that case, Gregory Anderson, Luke's father, was bailed after a period in remand. On this issue of bail, Judge Gray made the following remarks:

Mr Anderson's bail was not opposed by the police prosecutor on 11 June 2013 and the Magistrate was not told any details of his bail history or the nature of his charges. It appears this resulted from a combination of factors, which included the unavailability of the primary informants, a lack of knowledge on the part of the prosecutors of the significant evidence previously given by Ms Batty, and the pressures of a busy list.

...

While this bail hearing ... cannot be seen as connected to Luke's death, it did provide an example of the system failing to respond to Mr Anderson in a way that might have brought home to him the seriousness of the charges he was facing. It also meant that there was a lost opportunity to, as part of the bail process ... consider the imposition of conditions that might have encouraged, or compelled better behaviour from Mr Anderson and which may have allowed him to be assessed by a psychiatric nurse. Bail hearings are important aspects of the criminal justice system. Prosecutorial rigour is necessary and is expected by the courts ... In the setting of family violence the protective aspect of bail, and the potential of bail to control behaviour through the use of conditions can promote public safety.¹¹³

Given the above, Judge Gray considered that police prosecutors should have access to all of the matters—both civil and criminal—related to the application, and the relevant L17s, and that there should be clear policy on supplying relevant information to the magistrate.

Bail conditions and family violence intervention order conditions

The Commission heard about the need to avoid inconsistency between bail conditions and the conditions attached to FVIOs. The 2010 ALRC report on family violence laws stressed the need for consistency between these orders. The ALRC stated that:

Where they are inconsistent and victims and accused persons do not understand how they work and interact, then conditions can be inadvertently breached and ambiguities can be deliberately exploited. This can compromise the safety of victims. This may also have serious consequences for accused persons—breaching a protection order is a criminal offence; breaching a bail condition might bring the accused back before court, where the accused may be refused bail and incarcerated.¹¹⁴

This concern was also identified in Judge Gray's findings following the inquest into the death of Luke Batty. Judge Gray stressed the value of bail in holding perpetrators to account and strengthening victim safety in family violence matters. He referred to the evidence of First Constable Paul Topham of Victoria Police, and suggested that in certain cases, bail conditions usefully augment the capacity of FVIOs to keep the perpetrator in view of the justice system:

FC Topham reasoned that strict bail conditions could provide Ms [Rosie] Batty and Luke greater safety pending the variation of the FVIO. FC Topham also reasoned that a breach of bail conditions gave a police officer the power to bring Mr Anderson back before a magistrate, whereas a breach of FVIO triggered an interview with police and a possible summary offence charge. FC Topham's evidence was that if Mr Anderson breached bail and was brought before a magistrate on every occasion, this was a better tool than the accumulation of summary charges for breach of the FVIO ...

I fully agree with his proposition. Holding family violence offenders to account in court after breaches of bail is a far better way to promote the safety of the victim than is serving summons for breaches over time.¹¹⁵

Judge Gray's findings stress the importance of FVIO conditions which mirror (in strength and scope) bail conditions, so that there is ongoing protection if bail conditions expire or vary, or circumstances otherwise change (for example, if criminal proceedings resolve in an acquittal, but the victim—particularly if they have given evidence—feels they require continuing protection).¹¹⁶

To that end, Judge Gray suggested that bail and FVIO conditions should be mutually reinforcing, such that 'intervention order conditions are aligned with bail conditions to the greatest possible extent'. When either bail or FVIO conditions are varied, it is suggested that prosecutors apply for mutually consistent variations 'to ensure an outcome of parallel bail order and intervention order conditions'.¹¹⁷

Deputy Chief Magistrate Broughton, in evidence before the Commission, reiterated that bail and FVIO conditions should be mutually reinforcing. She also raised the concern that conditions are not always consistent. Deputy Chief Magistrate Broughton noted that bail and FVIO proceedings arising from the same course of events may be heard in different court venues. This, coupled with delays in bringing criminal proceedings and shortcomings in the court database which make it difficult to determine the existence and status of parallel proceedings, may mean that either set of proceedings may be determined in isolation, or on the basis of incomplete information.¹¹⁸

Matters heard summarily are usually prosecuted by Victoria Police, while more serious offences may be committed for trial in the higher courts, and are prosecuted by the Office of Public Prosecutions. Deputy Chief Magistrate Broughton points out that because it is concerned with criminal proceedings, the OPP has limited capacity or expertise in managing the relationship between these and civil proceedings—leading to further risk of inconsistency between bail and FVIO conditions.¹¹⁹

The 2010 ALRC report considered several means to address inconsistent conditions. The report argues that specialist courts, which consider related civil and criminal proceedings concurrently, are well placed to ensure consistency. It further suggests that state and territory legislation require judicial officers to consider, when determining bail applications in circumstances of family violence, whether their purposes are best served by imposing bail conditions to protect the alleged victim; by an FVIO; or both.¹²⁰ More widely, it recommended that state and territory family violence legislation should include an express provision conferring on courts a power to make an intervention order on their own initiative at any stage of a criminal proceeding (subject to the proviso that any such order made prior to a plea of guilt should be interim until there is a plea of guilt).

The Commission sought comment from the Victorian Department of Justice and Regulation as to which of the ALRC's recommendations had since been implemented (or were otherwise reflected in Victorian law). The Department confirmed that these recommendations had not been implemented. In the case of the bail recommendation, they stated it was not consistent with government policy at the time.¹²¹ However, the Department referred the Commission to the Office of Public Prosecutions' policy on family violence prosecutions, which provides that:¹²²

When preparing a bail application, solicitors should discuss with the police informant whether—if the application for bail is successful—an application for an intervention order should be sought by police on behalf of the victim, or by the victim themselves. Intervention orders can provide additional protection for victims from the accused or others connected with the accused.

...

The prosecutor should also inform the court during the sentencing process if an accused has a history of breaching intervention orders relating to the particular victim.

At the conclusion of a prosecution, the OPP solicitor should discuss with the police informant whether an application for an intervention order should be made, or an extension sought to an existing order. Once the protections provided by bail are removed, an intervention order may be needed to ensure the safety of the victim.¹²³

The policy goes on to note that in these cases, prosecutors should encourage police to make that application; and that it may be appropriate to consider applying for an intervention order even in matters where the accused is sentenced to serve an immediate term of imprisonment, to prevent the accused from perpetrating violence while in prison or after their release. The Commission notes that bail proceedings are commonly managed by police, and the Victoria Police Code of Practice for the Investigation of Family Violence recognises that bail conditions should seek to protect affected family members.

Keeping victims informed about bail proceedings

The Family Violence Protection Act provides that where a respondent to an application for a family violence order is arrested under warrant, the affected family member must be notified of the outcome of the application for bail and if bail is granted, advised of any conditions imposed on the respondent that are intended to protect the affected family member (and given a copy of the bail undertaking).¹²⁴ Similarly, the *Victims Charter Act 2006* (Vic) provides that on request by a victim, a prosecuting agency must inform the victim of the outcome of any bail application; and if bail is granted, of any conditions intended to protect the victim.¹²⁵ Some concerns have been raised that prosecutors and police do not always inform victims when bail decisions affecting their safety are made. Matters of Victoria Police compliance with their professional Code of Practice and statutory obligations are considered in Chapter 14.

Bailing to specific address and/or service

In Tasmania, individuals charged with a family violence offence can be bailed to the Defendant Health Liaison Service.¹²⁶ A condition of bail is that the defendant make and attend an appointment with the service, and thereafter the DHLS acts as a case coordinator, assessing the defendant's needs and referring them to appropriate services.¹²⁷ Some of these functions in Victoria are performed by the Courts Integrated Services Program (CISP).

The Magistrates' Court of Victoria and Children's Court of Victoria submission to the Commission suggested that the Family Violence Protection Act be amended to specifically allow for respondents to be bailed to a relevant court support service such as CISP.¹²⁸

More generally, the Centre for Innovative Justice, echoing a point the former State Coroner Judge Gray heard in the inquest into the death of Luke Batty, noted that 'it is common for people to be bailed to a non-specific address, such as a geographical area'.¹²⁹

Exclusion of evidence at trial

DVRCV expressed concerns about the exclusion or under-use of evidence of some features of the relationship history between the defendant and the victim, where that history involved family violence. In some cases, a court may decide to exclude such evidence—that is, evidence about conduct or events other than those to which the criminal charges relate—because of the risk that the jury’s decision will be unduly influenced by that history. Similar evidence is also excluded in other criminal trials: for example, if someone is on trial for assault, evidence about their criminal history may not go before the jury, to avoid the risk that a juror might reason that the defendant is ‘the kind of person’ who would commit the charged offence, rather than deciding whether they are guilty or not guilty of that charge based on the evidence. In a family violence matter, there could be cases where past violence of a different kind, or violence against other family members or non-family members, is excluded.

The exclusion of evidence at trial may be particularly difficult for victims, and families and friends of victims. Issues relating to the exclusion of evidence involve broader questions about the way in which trials are conducted and have implications beyond family violence cases. These issues are complex and the Commission decided it went beyond the scope of this review.¹³⁰

The tension between the strictures of the justice system and the desire for the parties to convey their experience and be heard is considered in Chapters 16 and 18.

Views on current sentencing practices

Adequacy and consistency of current sentencing practices

Many submissions received by the Commission commented on sentencing practices. A range of submissions considered that sentences for family violence offences were inadequate or inconsistent. Some suggested that sentences failed to reflect the seriousness of offending; some that they failed to deter specific offenders, or family violence generally, or keep the community safe; and others that they were inconsistent with each other, or with sentences for the same offences committed in a non-family violence context. In particular, some women noted that they remained vulnerable to violence despite the imposition of sentences:

Survivors like me and my children have been deprived of our basic human rights as a direct result of a recidivist abuser not being adequately or appropriately controlled through the justice system. Orthodox criminal sanctions such as gaol, fines and/or parole etc. have of course their place but they do not necessarily guarantee changed behaviours concerning family violence recidivism. And they are no use to my children and me if we are injured or killed. Even after intervention by the justice system, there is no justice for us, if there is nothing effective in place to stop or inhibit my estranged partner from re-offending ... [M]y estranged partner continued to stalk and terrify us despite ... [having served a] gaol sentence and being on probation at the time of re-offending ...¹³¹

...

There should be longer sentences for perpetrators. I was abused by my stepfather in every way imaginable. It didn’t stop until I got a boyfriend. He [stepfather] got two and a half years in jail. I had an argument with my boyfriend. He couldn’t figure out what was wrong with me. My step-dad grabbed me and put me in the car and belted my head into the window as we drove along. He would interfere with my life. Every chance he got he would rape me. And he only got two and a half years. He said it was a taught behaviour ... Sentences should be longer. He should be on a register like paedophiles. People reckon he has changed, but every time I go round there he’s always drinking, talking about doing this, this, and this. It took me 20 years to be diagnosed with depression. My step-mum noticed him looking at my girls the same way he looked at me. There’s no way he’s changed.¹³²

In view of the above, several submissions favoured greater reliance on prison sentences instead of non-custodial options, and a general move towards harsher, 'zero tolerance' approaches. One Victorian Member of Parliament noted:

The community believes that FV perpetrators are often treated very leniently. Often they tell me that it feels like those breaking [FVIOs] are simply given a 'slap on the wrist'. Further, instead of offenders being imprisoned they receive a community service order; which often leads to offenders re-offending. Lawyers often suggest their client attend behavioural change courses, which are not mandatory and have a low success rate. A firm message and action to the community needs to be sent out that violent behaviour will attract prison time.¹³³

In its submission, the Police Association Victoria expressed frustration with the frequent use of lower-end sentencing options:

With respect to sentencing offenders on family violence related charges, many members suggested that Magistrates were all too often lenient. This is particularly the case with leniency shown to breaches of intervention orders. The over-reliance on fines and relatively brief custodial sentences imposed by Magistrates is a source of great frustration ... recent reforms encouraging members to apply for orders on a victim's behalf and adherence to pro-arrest approach[es] can only be as strong as the response these actions meet in the courts. It is the experience and perception of members that the courts do not currently reflect the seriousness with which family violence is treated by police.¹³⁴

The use of fines for aggravated contravention offences was described by Sentencing Advisory Council stakeholders as 'striking' and 'concerning'. The Sentencing Advisory Council reiterated its earlier caution in its 2009 report against the use of fines in the context of FVIO and FVSN contraventions, concluding that fines for FVIO contravention were generally unable to fulfil the purposes of community protection and rehabilitation. It further observed that fines may compound the harm experienced by the victim. Where the offender and victim are in a relationship of financial interdependence, a fine is likely to punish the victim as well as the offender by withdrawing resources from the family as a whole.¹³⁵

The Sentencing Advisory Council report went on to hypothesise that one explanation for the prevalence of fines, at least for non-aggravated contraventions, is that breaches have been treated more seriously by police: there has been a decline in the notion of a 'technical breach', and possibly a corresponding increase in the number of 'relatively less serious contravention offences coming before the courts'.¹³⁶

As part of its work, the Sentencing Advisory Council has produced *Guiding Principles for Sentencing Contraventions of Family Violence Intervention Orders* (2009). The principles are a response to concerns from stakeholders that sentences rarely reflected the seriousness of the offence. In relation to fines, the guidelines suggest:

The court should consider whether a fine will negatively impact on the victim, for example if imposing a fine may affect the offender's ability to pay child support payments or provide other financial support that the offender would normally provide to the household.¹³⁷

Some submissions did not consider longer custodial sentences a desirable or effective means of ensuring safety, accountability or behavioural change, or felt there was insufficient evidence about the consistency between sentencing practices in family violence and non-family violence criminal matters. For example, in its submission, Loddon Campaspe Community Legal Centre referred to its survey of 190 women seeking intervention orders against their violent partners at Bendigo, Echuca, Maryborough, Kyneton and Swan Hill Magistrates' Courts. Twenty-seven of these women participated in in-depth interviews with LCCCLC. This passage summarises a common view among interviewees of perpetrator accountability:¹³⁸

A small number of women would have advocated punishment by imprisonment for their respective offenders. They felt that it was the only way of bringing safety to their lives because their offenders were not capable of rehabilitation.

Many women, however, did not wish offenders to be punished by imprisonment. They wanted a broad integrated response to family violence that sees a shifting of focus from women to offenders. They recommended that this response include early offender intervention, the offenders to hear and understand the impacts their violence has had on the women and their children and acknowledge the harm they have caused. It also includes facilitating offender engagement with relevant men's behaviour change programs and long-term monitoring and mentoring that addresses individual offender needs not to reoffend.

The women's greatest priority was feeling heard, and wanting the behaviour to stop.

Similarly, Jesuit Social Services proposed that prison should only be used as a last resort to respond to serious recidivist behaviour as it is unlikely to have any impact on reducing violent offending, and in fact can often make matters worse. JSS also told the Commission that research shows that prison cultures only reinforce male aggression and gendered attitudes and do little to reduce the continuing risk that men who use violence present to their families or the community.¹³⁹ JSS further commented that numerous studies also indicate that imprisonment can increase the risk of further violence once they are released.

The submission from No To Violence and Men's Referral Service noted the limits and potential risks of punitive, incarceration-based strategies. The Commission heard that incarceration for short or long-term periods is the only option, in some situations, to provide safety for a man's family due to the substantial risk posed by a particular perpetrator. However, the submission indicated that there is no evidence that incarcerating offenders for lengthy periods of time works in itself to produce behaviour change or to lower risk after the perpetrator's release back into the community. No To Violence and Men's Referral Service further told the Commission that 'tough on crime' and other punitive policies carry a range of other disadvantages:

They sweep marginalised communities due to Indigeneity, ethnicity, poverty, cognitive impairment or other factors into highly disproportionate incarceration rates compared to more privileged groups, accentuating cycles of entrenched disadvantage correlated with family violence and other interpersonal crime. Incarceration is incredibly expensive—the costs of running a men's behaviour change program for 100 men in an urban setting for a year is less than the annual cost of incarcerating three offenders.¹⁴⁰

Victoria Legal Aid likewise cautioned against a 'tougher' approach to family violence offending which limits judicial discretion, suggesting this may deepen inconsistencies with sentencing of non-family violence offenders. VLA noted that there will of course be cases where a prison sentence will be a necessary and proportionate response. In others, VLA considered that referral to a support service may be a more suitable and effective response, perhaps under a community correction order.¹⁴¹

VLA's submission goes on to note that a lack of data makes it difficult to fully resolve disputes about whether current sentencing practices for family violence offences are adequate, or consistent with comparable non-family violence offences.¹⁴²

The efficacy of different approaches to sentencing

The Commission was presented with recent research on imprisonment, particularly in Victoria, to assist its understanding of the utility and desirability of more and longer custodial sentences.

For example, in 2011, the Sentencing Advisory Council produced a report on the value of imprisonment as a means of achieving specific and general deterrence. The following year, it reported on the value of imprisonment as a means of achieving community protection.

The 2011 report, which surveyed a range of studies, concluded that while imprisonment does have a small effect on general deterrence, increases in the severity of penalties, such as increasing the length of imprisonment, do not produce a corresponding increase in the general deterrent effect.¹⁴³

In terms of specifically deterring an offender, the report indicated that imprisonment has, at best, no effect on the rate of re-offending and is often criminogenic, resulting in a greater rate of recidivism by imprisoned offenders compared with offenders who received a different sentence.¹⁴⁴

The report suggests that this may be explained by prison being a 'learning environment' for crime, and an environment where criminal identity is reinforced, social ties that encourage lawful behaviour are diminished or severed, and the specific needs of some offenders (including treatment for substance abuse and mental health issues) are not reliably met. The report also found that harsher conditions inside prison do not enhance the deterrent effect.

Conversely, the report notes that a consistent finding in deterrence research is that increases in the certainty of apprehension and punishment demonstrate a significant deterrent effect.¹⁴⁵

The 2012 Sentencing Advisory Council report on the value of imprisonment and community protection indicated that while prison obviously inhibits an offender's capacity to continue to offend while in prison, the long-term effects of imprisonment are less clear. In particular, the benefits of more indiscriminate approaches to imprisonment (such as might result from mandatory minimum sentencing) may be outweighed by the costs, and by the criminogenic impacts of prison. The report noted that while more selective approaches—which identify frequent offenders at risk of re-offending—show more promise in terms of crime reduction, identifying this cohort is difficult.¹⁴⁶

These studies were not specific to family violence offenders. In terms of findings specific to family violence, a recent comprehensive study of sentencing of family violence offenders conducted by the Tasmanian Sentencing Advisory Council observed that 'the data does not provide a basis for claiming that harsher penalties would reduce recidivism rates', and concluded that the imposition of sanctions alone is not bringing about a change in offender behaviour. This suggests that a greater investment in rehabilitative interventions and the adoption of a more therapeutic approach to sentencing should be considered.¹⁴⁷

The Commission was also informed about the disproportionate impact of imprisonment on particular population groups and communities. For example, some submissions referred to the over-representation of Aboriginal and Torres Strait Islander peoples in the prison system.¹⁴⁸ A study conducted by Corrections Victoria in 2011 found that a disproportionately large number of prisoners in Victoria—42 per cent of men and 33 per cent of women—suffered from an acquired brain injury.¹⁴⁹ Most recently, in a 2015 report, Jesuit Social Services noted that the Victorian prison population is disproportionately composed of people from a small subset of disadvantaged postcodes.¹⁵⁰

The use of provocation in sentencing

A further issue that was raised in relation to current sentencing practice relates to judges accepting arguments about the provocation of the defendant, where the defendant is a man who killed his partner, as a mitigating factor in sentencing.¹⁵¹

Provocation, which provided a partial defence to murder in circumstances where the victim was said to have provoked the offender, was abolished in Victoria in 2005.¹⁵² At the time, then Attorney-General the Hon. Rob Hulls stated that provocation law 'was developed from times past when it was acceptable, especially for men, to have a violent response to an alleged breach of a person's honour' and that the defence 'promotes a culture of blaming the victim and has no place in a modern society'.¹⁵³

However, the defendant's state of mind in this regard may still be relevant in fixing their sentence following a conviction for murder. The DVRCV/Monash University research indicates that there are a number of cases where such arguments—which may be linked, for example, to depressive disorders or other states of mind brought on by separation or the end of a relationship—are accepted. They support the Sentencing Advisory Council's suggestion in a 2009 report that principles should be developed around provocation as a mitigating factor in sentencing.

Potential changes to offences and sentencing laws

Some submissions acknowledged problems with the consistency of charging, prosecution and sentencing practices and suggested that they might be improved by changes to offences and sentencing laws. Suggested options for reform include the creation of new criminal offences, stipulating higher maximum penalties for existing offences (aggravated offences), designating existing offences as family violence offences and amending the new contravention offences (sections 37A, 123A and 125A of the Family Violence Protection Act). The Commission also heard about the option of mandating family violence as a consideration in sentencing and mandatory sentencing generally. Finally, the option of amending the existing bail provisions was also raised for the Commission's consideration. Each of these issues is discussed below.

New offences

Some submissions proposed a new criminal offence (or multiple new offences) for family violence. The form of any new offence could vary, from wide offences of committing a range of forms of family violence (which may overlap with existing criminal offences), to an offence which criminalises a specific form or forms of family violence not currently covered by the criminal law.

There are examples of such offences interstate and overseas. For instance, in Tasmania, sections 8 and 9 of the *Family Violence Act 2004* (Tas) criminalise economic and emotional abuse. Both offences are punishable by fine or up to two years' imprisonment. In Victoria, emotional and economic abuse are included in the definition of family violence in section 5 of the Family Violence Protection Act but neither corresponds directly with a criminal offence.

When these offences were introduced the Tasmanian Attorney-General stressed that:

... family violence does not always take on an overtly physical form and ... it can involve a range of behaviours aimed at isolating the victim and undermining their capacity to take action.¹⁵⁴

The creation of these offences was intended to reflect 'a more holistic view of the nature of family violence' and to 'offer [the Tasmanian] community the best possible protection against its many forms'.¹⁵⁵

In the United Kingdom, the *Serious Crime Act 2015* (UK) creates the offence of 'coercive or controlling behaviour in an intimate or familial relationship'.¹⁵⁶ The offence is constituted by the perpetrator 'repeatedly or continuously' engaging in behaviour which has a 'serious effect' on the victim, meaning that it caused the victim to fear violence will be used against them 'on at least two occasions', or caused serious alarm or distress which had 'a substantial adverse effect on the victim's day to day activities'. The victim and the perpetrator must (at the time of the offending) be in an intimate personal relationship, or be living together and family members, or living together and previously in an intimate personal relationship. The circumstances must be such that the perpetrator knew or ought to have known of the 'serious effect'.

The UK Home Office explained in a Statutory Guidance Framework for police and criminal justice agencies that the offence closes a gap in the law around patterns of controlling or coercive behaviour that occurs during a relationship. According to the UK Home Office, the offence 'sends a clear message that this form of domestic abuse can constitute a serious offence ... and will provide better protection to victims experiencing repeated or continuous abuse'.¹⁵⁷

Ms Marisa De Cicco, Deputy Secretary, Criminal Justice Division, Department of Justice and Regulation, raised the possibility of a broad, stand-alone offence of 'causing injury through family violence', based on existing offences of intentionally or recklessly causing injury, without necessarily endorsing this approach. She emphasised the potential educative or awareness-raising benefits of such an offence, explaining that while the offence would not criminalise anything new, it might encourage police, prosecutors and judicial officers to treat conduct causing mental harm in the same way as conduct causing a physical injury is treated.¹⁵⁸

The Commission heard differing views on the viability of a new offence. Professor Heather Douglas from the University of Queensland expressed 'significant concerns' about introducing a UK-type offence in Australia, due in part to the likely uncertainty about what constitutes coercive and controlling behaviour, the possibility of capturing conduct that does not occur in an intimate relationship, and the possibility that forms of family violence which cannot be characterised as coercive and controlling behaviour may be treated less seriously.¹⁵⁹ However, Professor Douglas did propose an offence of cruelty, being the infliction of pain or suffering (physical or psychological, and temporary or permanent) by an act or series of acts, with a higher maximum penalty if the cruelty occurs in the context of a domestic relationship.¹⁶⁰

Professor Douglas also suggested that consideration be given to introducing a specific offence of strangulation. This was based on her research indicating that strangulation in intimate partnerships was often a precursor to 'serious abuse and death' but, in Queensland at least, was not treated differently or more seriously by police and courts than other less serious allegations such as assault.¹⁶¹

Family violence may—more often than some other forms of violence—be constituted by a complex pattern of behaviour, rather than a particular episode. 'Course of conduct'-type offences (like Professor Douglas' proposed cruelty offence, and the new UK offence) seek to encompass this pattern of behaviour, rather than isolating particular acts or episodes. Offences of this kind exist elsewhere in the criminal law; for example, section 47A of the Crimes Act criminalises persistent sexual abuse of a child, including where the distinct acts constituting the pattern of abuse are different in nature and criminalised by different provisions. This provision reflects the fact that the persistence of the offending is relevant to the nature of the offending, and the offender's culpability.

Professor Freiberg was circumspect about the introduction of a new offence. He expressed concern that the offences proposed by Professor Douglas may be 'very difficult to prove'. More generally, Professor Freiberg noted that the Sentencing Advisory Council's research indicated that since the introduction of the Tasmanian offence of economic and emotional abuse in 2004, there had been 'no prosecutions or convictions for economic abuse and ... eight prosecutions for emotional abuse'.¹⁶²

The Australian Law Reform Commission noted in its 2010 Consultation Paper, *Family Violence—Improving Legal Frameworks*, that policing an offence such as economic or emotional abuse is 'fraught with difficulties' and 'each element of such offences has to be proved beyond reasonable doubt and there may be significant evidentiary challenges to meet this standard'.¹⁶³ In its final report, ALRC also questioned whether an economic abuse offence was necessary given the scope of existing laws, for example, those relating to fraud, undue influence and causing financial disadvantage.¹⁶⁴ The same may be true of at least some forms of emotional abuse, given that the Crimes Act defines 'injury' to include temporary or permanent harm to mental health (although this does not include 'an emotional reaction such as distress, grief, fear or anger unless it results in psychological harm').¹⁶⁵ Therefore, offences of 'causing injury' may cover conduct causing harm to mental health.

Ms Helen Fatouros, Director of Criminal Law Services at Victoria Legal Aid, was similarly cautious about new offences. She noted that 'we have such a broad suite of criminal offences', both at state and Commonwealth level, covering 'everything from verbal and electronic threats all the way through to murder'; and to introduce new offences without a 'proper evidence base ... and very careful policy process' would risk fragmenting and limiting the criminal law's capacity to hold perpetrators to account. Ms Fatouros cited defensive homicide—the history of which is outlined above—as an example of a well-intentioned offence which had some concerning implications.¹⁶⁶

The Special Taskforce on Domestic and Family Violence in Queensland considered a new general family violence offence in its report *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland*. In declining to recommend a new offence, the taskforce noted that the difficulties with prosecuting domestic and family violence offences relate more to problems with evidence gathering, witness cooperation, police practice and court process. The taskforce further noted that it is these elements which have undermined the effective use of the existing Criminal Code provisions and that simply creating a dedicated offence of domestic and family violence would not alleviate these barriers.¹⁶⁷ However, the taskforce did recommend an offence of strangulation.

This follows similar conclusions of the ALRC in their 2010 review of family violence laws. Submissions to the ALRC suggested that the suite of offences at that time failed to ‘recognise the pattern-based nature of family violence and its full impact on victims’; submissions also highlighted the potential educative function of a family violence offence which emphasised the seriousness and diversity of this kind of offending—educating not just the community but lawmakers, police and members of the judiciary.¹⁶⁸ However, the ALRC was persuaded that there were considerable difficulties with the introduction of a distinct, overarching family violence offence, not least the practical and legal difficulties involved in particularising the conduct which such an offence might cover.

In its 2010 report, the ALRC noted that many difficulties reported by stakeholders, which had led to support for a new offence, could be addressed within existing legal frameworks. It explained that while new offences may be one means of achieving this outcome, new offences are justified only where it can be established that the behaviour sought to be addressed cannot be adequately dealt with under the existing legislative framework.¹⁶⁹

The ALRC noted that while an umbrella offence of causing family violence might help facilitate understanding of the dynamics of family violence, there is insufficient evidence to conclude that improvements cannot be realised within existing frameworks, or that an umbrella offence would necessarily achieve the desired outcomes. The ALRC considered that a preferable approach would be for state and territory governments to examine the operation of, and consider making improvements to, existing responses before contemplating an umbrella offence.¹⁷⁰

Aggravated offences

An alternative to creating new offences is stipulating a higher maximum penalty for existing offences when they are committed in the context of family violence.

There are examples of this approach in existing Victorian law. For example, the Crimes Act includes higher maximum sentences for the offence of ‘sexual penetration of a child under 16’ where that child is under 12, or is between 12 and 16 years but under the care, supervision or authority of the offender. The Act also includes ‘aggravated burglary’, which is a burglary committed where the offender is carrying a weapon, firearm or explosive (or imitation firearm or explosive) or where a person is present at the time of the burglary, and the offender knew of or was reckless as to their presence.¹⁷¹ Section 24 of the *Summary Offences Act 1966* (Vic) creates the offence of aggravated assault, where an assault is committed against a woman, or a male child under 14. The Victims of Crime Commissioner suggested that family violence be added as an aggravating circumstance for the purposes of this provision.¹⁷²

There are aggravated offences relevant to family violence in South Australia and Western Australia. The Western Australian *Criminal Code Act Compilation Act 1913* (WA) includes higher penalties for a range of physical, sexual, property and dishonesty offences committed in ‘circumstances of aggravation’, which include where the offender is in a family or domestic relationship with the victim; a child was present when the offence was committed; the conduct constituted a breach of an order under the *Restraining Orders Act 1997*; or the victim is over 60 years. Similarly, South Australia’s *Criminal Law Consolidation Act 1935* (SA) defines an aggravated offence as an offence committed in certain circumstances, which include where the victim was a spouse, former spouse, domestic partner or former domestic partner of the offender; or a child of, or who resides with, the offender or their spouse, former spouse, partner or domestic partner.¹⁷³

The ALRC notes that a defined family relationship between victim and offender should not be the sole basis for aggravating an offence. According to the ALRC, this elevates, by definition, the status of an offence committed against family members over those committed against strangers, without principled justification. The ALRC considers that it further creates the unacceptable risk that persons may be charged with aggravated offences in circumstances where it may not always be just and appropriate to do so: for example, where an alleged offender has a mental illness, is a child with substance abuse issues, or is a victim of family violence who uses defensive force. While prosecutorial discretion may reduce the likelihood of prosecutions for aggravated offences in such circumstances, the ALRC considered that it is undesirable to leave open this possibility, given the gravity of potential consequences of the accused:

... the concept of family violence itself necessitates some form of proof of the underlying dynamics of power and control in the relationship. The mere existence of a family relationship between parties is inconclusive of this matter.¹⁷⁴

On this basis, the ALRC—while acknowledging the educative and denunciatory functions of aggravated offences for family violence—was opposed to them. The Special Taskforce on Domestic and Family Violence in Queensland recommended that family violence be added as a circumstance of aggravation for all criminal offences, but did not prescribe a specific formulation for aggravating circumstances.¹⁷⁵

Designated offences

The Commission also heard about the option of designating or ‘flagging’ existing offences as family violence offences. This option is distinct from creating new or aggravated offences. It does not alter the substance of the offence or the sentencing options open to the court.

This approach has been adopted in other jurisdictions. For example, Tasmania’s Family Violence Act defines family violence, and stipulates that a ‘family violence offence’ is any offence the commission of which constitutes family violence. This includes existing offences such as assault, sexual assault, threats, abduction and stalking.¹⁷⁶

Similarly, New South Wales’ *Crimes (Domestic and Personal Violence) Act 2007* defines a domestic violence offence as a ‘personal violence offence’ (which is defined by reference to existing offences in the *Crimes Act 1900* (NSW)) committed against a person with whom the offender has, or has had, a domestic relationship (which may include their husband or wife, de facto partner, intimate partner, co-resident, relative or kin). The Act also provides for recording and classification practices to reflect this definition.¹⁷⁷

The ACT’s *Domestic Violence and Protection Orders Act 2008* (ACT) also defines ‘domestic violence offence’ by reference to existing offences in the *Crimes Act 1900* (ACT) and offences in other acts.¹⁷⁸

These provisions have the effect of ‘flagging’ these offences in the systems used across the legal and law enforcement systems—police, courts, corrections, and the Department of Justice.

Professor Freiberg told the Commission that this has allowed the Sentencing Advisory Council to conduct an analysis of the difference between Tasmanian sentencing practices for the offence of assaults in a family violence context and in a non-family violence context.

As noted, the Tasmanian study did not support the view that sentencing for family violence–related offences was more lenient, while two different NSW studies (albeit of different aspects of family violence offending) came to different conclusions about sentencing practices in that state. It is notable that the authors of the 2015 NSW Bureau of Crime Statistics and Research report state that:

There has been a lack of research on sentencing practices for domestic violence matters in Australia. This stems largely from the fact that, historically, researchers have been unable to reliably distinguish between domestic violence and non-domestic violence offences of the same type using court administrative data. However, since March 2008, NSW Courts have been directed to record an offence as domestic violence if it [sic] is satisfied that the offence occurred within a domestic relationship (see section 12 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW)). This has resulted in a large number of personal offences (e.g. assault, sexual assault) now being identified as domestic violence related offences. This legislation has also served to broaden the definition of domestic violence to include stalking and intimidation offences ... and also other acts which traditionally have not been classified as violent such as malicious damage to property, trespass and offensive behaviour offences.¹⁷⁹

The authors note that their research project ‘capitalised’ on these legislative changes.

As noted above, Professor Freiberg described these kinds of comparisons between family violence and non-family violence sentencing practices as ‘impossible’ in Victoria, given the need to manually extract relevant case information to identify a relationship with family violence.

Persistent contravention offence

It is an offence in Victoria to persistently contravene a family violence intervention order or a safety notice. ‘Persistent contravention’ requires that three contraventions of the order occur within 28 days.¹⁸⁰ The Explanatory Memorandum for this provision explains that ‘the gravamen of this offence is the persistent nature of the contraventions over a short period of time that demonstrates a disregard for the law.’¹⁸¹

The Commission heard from Ms De Cicco that 28 days was selected as an appropriate time period, and that this was determined through discussion with police. Ms De Cicco stated that what was sought to be captured were persistent breaches that seemed to be emerging almost immediately after the intervention orders were made.¹⁸²

Two distinct issues arise in relation to the persistent contravention offence. The first issue relates to the time period in which contraventions of family violence orders tends to take place.

Research by the Crimes Statistics Agency on recidivist perpetrators of family violence undertaken for this Commission found that for perpetrators who had more than one family violence incident, the median number of days between the initial incident and the second incident was 275; for those who had a third incident, the median number of days between the second and third incidents was 156; and for those who had a fourth incident, the median number of days between the third and fourth incident was 109.¹⁸³

The CSA research suggests that there will be a cohort of offenders who repeatedly contravene an FVIO, but whose contraventions do not occur within the 28-day period specified by the persistent breach offence.

The second issue in relation to the persistent contravention offence was brought to the Commission’s attention by Deputy Chief Magistrate Felicity Broughton. Under section 113 of the Sentencing Act, the maximum term of imprisonment which can be imposed for a single indictable offence tried summarily is two years. In respect of several offences committed at the same time, the maximum cumulative term is five years (section 113B).

Deputy Chief Magistrate Broughton noted that this could have the unusual consequence that while the Magistrates' Court could impose a sentence of five years for three individual contravention charges, it can only impose a sentence of two years for a single charge of persistent contravention (even though the conduct involved may be identical). She described this as an 'anomaly'.¹⁸⁴ The vast majority of contravention charges (approximately 96 per cent) are sentenced in the Magistrates' Court.¹⁸⁵ At the same time, as noted above, a number of factors (including the seriousness of the offence) are relevant in deciding whether to try an indictable offence summarily, or in the higher courts. A single charge (albeit encompassing three contraventions) may be serious enough to warrant a sentence greater than two years, and therefore be appropriate for determination in the higher courts.

Mandatory consideration in sentencing

The Commission also heard about the option of amending sentencing provisions to stipulate that a context of family violence is a mandatory consideration in sentencing.

As discussed above, the Sentencing Act sets out a range of considerations to which the court must have regard in sentencing an offender. These mandatory considerations include the presence of aggravating factors: that is, factors which are said to bring the offence into a higher category of seriousness and warrant the imposition of a higher sentence. The court must be satisfied beyond reasonable doubt of the facts going to an aggravating factor.¹⁸⁶

However, the Sentencing Act does not specify aggravating factors. Indeed, there is no complete list of factors (in statute or common law) which count as aggravating factors. A non-exhaustive range of factors is well established at common law and includes the victim's age or vulnerability; the prevalence of an offence; repeat offending; the fact that the offence involved a breach of trust; and the fact that the offence constituted a breach of a court order (including an intervention order).¹⁸⁷ In some jurisdictions, specific aggravating factors are enshrined in legislation. For example, section 21A of the *Crimes (Sentencing Procedure) Act 1999* (NSW) provides a list of aggravating circumstances which includes offences committed in the presence of children or the victim's home, or offences constituting an abuse of trust or authority in relation to the victim. This list operates in addition to established common law principles.¹⁸⁸

An alternative to specifying aggravating factors would be to make a context of family violence (or specific aspects of family violence) a mandatory consideration in its own right in sentencing. Ms De Cicco notes in her statement to the Commission that this approach was taken in 2009 when section 5(2)(daaa) was inserted into the Sentencing Act. That provision specifies that the court must take into account whether the offence was motivated by hatred or prejudice against a group of people with common characteristics with which the victim was associated. Where an offence is motivated by hate or prejudice against a particular group, this motivation is taken into account as an aggravating circumstance at the sentencing. Ms De Cicco further observed that explicit recognition by way of a legislative requirement that courts take into account whether an offence was committed in a family violence context would promote the practice of taking this matter into account.¹⁸⁹ Section 5(2)(daaa) of the Sentencing Act appears to have had limited use.¹⁹⁰ Notably, the effect of the High Court decision in *R v De Simoni*¹⁹¹ is that an accused who is convicted of a basic offence cannot be sentenced on the basis of aggravating circumstances which would have warranted a conviction for a more serious offence, where the person was not convicted of that more serious offence. This may create practical difficulties in improving sentences which take account of all the circumstances in which a crime is committed.

Mandatory sentencing

In its submission to the Commission, the Victorian Coalition reiterated former Victorian Attorney-General The Hon. Robert Clark's proposal to introduce a minimum four-year prison sentence for offenders who seriously injured their victims where the facts from which this offence arose also constituted a breach of an intervention order protecting the victim.¹⁹²

Victoria Police's submission called for a specific variation on the above, namely, the introduction of 'scalable sentencing' to respond to repeated FVIO contraventions. Victoria Police explained that it may be viable to remove some sentencing options where contravention offences continue unabated. According to Victoria Police, this would enable a 'tightening of the net' where the behaviour does not fall within the range of the existing indictable offence of persistent contravention, reflecting the need to escalate the response if offending continues or escalates, rather than continuing to issue the same sanction in response to repeated behaviour. For example, the option of a financial penalty in sentencing could be removed. Victoria Police considers that, importantly, rather than prescribing a sentencing regime which would limit judicial flexibility, this option would see some lower-level sanctions fall away if offending continues.¹⁹³

The Commission also heard about a related proposal (known as 'Rekiah's law'). Rekiah O'Donnell was shot and killed by her boyfriend, Nelson Lai. Mr Lai admitted that he had a history of verbally abusing, threatening and physically assaulting Ms O'Donnell, and being controlling, jealous and suspicious of her. He denied that he intended to kill Ms O'Donnell. He was found not guilty of murder but guilty of manslaughter. Jesse O'Donnell, Ms O'Donnell's brother, has proposed an amendment to the criminal law with the effect that any person who kills another person with a firearm, unless in self-defence, must be found guilty of murder.¹⁹⁴

A swift and certain approach to sentencing

The Commission heard from a number of stakeholders and witnesses about new approaches to sentencing criminal offenders, and new ways to use existing sentencing options that could apply to family violence offences.

There was discussion in submissions and at hearings about the potential benefits of more 'swift and certain' approaches to sentencing criminal offenders. This section discusses what is meant by a 'swift and certain' approach. It then briefly considers some ways in which 'swift and certain justice' may be achieved in Victoria, including pro-arrest policies, electronic monitoring devices, the potential use of community correction orders and the 'fast-tracking' model.

What is meant by a 'swift and certain' approach?

A 'swift and certain' approach to justice is based on the idea that certainty of apprehension, and swift, relatively modest punishment, are more effective deterrents than the remote and uncertain prospect of a more severe punishment.¹⁹⁵ Typically, the principles of a swift and certain approach include:

- ▷ a clearly defined 'behavioural contract'—i.e. rules, clearly understandable to an offender, setting out the conditions of compliance and the consequences of non-compliance, so that they perceive punishment as certain
- ▷ consistent application of the above rules
- ▷ swift delivery of the consequences of non-compliance
- ▷ parsimonious use of punishment—the least amount of punishment necessary to bring about the desired behaviour change.¹⁹⁶

In many cases, swift and certain initiatives also involve ongoing contact with the same judicial decision maker.¹⁹⁷ They may also involve a 'tiered' approach whereby sanctions imposed are tailored to the history, behaviour or characteristics of the offender.¹⁹⁸

These principles, properly applied, are said to enhance the perpetrator's perception of the certainty, legitimacy and fairness of punishment, and maximise behaviour change while minimising the negative impacts of more severe punishment.

The Commission received evidence from Judge Eugene Hyman, an academic and former judge of the Superior Court of California who stated:

In my view it's extremely, extremely important in domestic violence cases... that the consequences to the extent that there are consequences need to be imposed as quickly as possible, one, for safety reasons, to communicate how important this is, and, two, because if it's not imposed then this allows the offender potentially to perpetrate additional violations on the theory that it's not serious, that the court isn't taking it seriously, probation isn't taking it seriously and then the perpetrator is able to say to the victim, 'See, you made a complaint and nothing happened' ...¹⁹⁹

In recent years, the idea of swift and certain justice has gained traction, particularly in the United States and to an extent in the United Kingdom, as a basis for designing sentencing regimes and perpetrator programs. Professor Freiberg noted in his statement that some 160 perpetrator programs across 21 American states operate in adherence to the swift and certain approach.²⁰⁰ Examples include the South Dakota 24/7 Sobriety Project,²⁰¹ the Hope Opportunity Probation with Enforcement (HOPE) Program²⁰² and the Domestic Violence Swift and Sure Sanctions program in Michigan.²⁰³

Research suggests that results from these programs have been promising in terms of compliance and reduced recidivism.²⁰⁴ There is growing support for applying the principles of swift and certain justice in Australia, including in relation to family violence perpetrators.²⁰⁵ Professor Freiberg, in his witness statement and in evidence before the Commission, urged 'serious consideration' of how this approach could be implemented in family violence matters.²⁰⁶ In evidence, he emphasised that 'prison is not a long-term answer for anything', and expressed doubts about the 'transformative elements of prison'.²⁰⁷ However, Professor Freiberg distinguished the use of longer-term prison sentences for more serious offending from the role of prison in a swift and certain approach, which is primarily to provide a 'short but unpleasant reminder that the particular action has had a consequence'.²⁰⁸ He notes that what is missing in the Victorian system:

... is not so much the applicability of those prison sentences for serious offences, but ... the ability to provide short, certain, unpleasant sanctions, even if it is in a holding cell ... it might be for a day, it might be two days ... it's the reminder that certain actions will have swift and certain consequences.²⁰⁹

Legal and practical impediments

Professor Freiberg noted a 'depressing' lack of swiftness or certainty in the current operation of sentencing for family violence offenders in Victoria. In evidence, he commented on delays in the court which may diminish the effectiveness of the eventual sentence, even if that sentence is quite stern:

When you get to court, there's no certainty that you will be convicted. There is no certainty about the punishment that you will get, the sanction imposed. So here you have an enormous length of time, and who knows what's happened in the meantime in terms of the behaviour of the offender. That's the worst possible outcome.

So we would then rely on imposing a severe sanction when it finally gets to court to make the point that, 'This behaviour is unacceptable; this behaviour is not to be tolerated; that you are not to repeat this behaviour', and let that be a message out there to all the people who have read 2,000 pages of your transcript to say, 'Yes, I get that message from the courts about what will happen to me.' It's a lifetime, 21 months; six months is a lifetime in a case and in an individual's life. So the answer is let's not try and ramp up the severity of the sanction to make up for the tragic failures of our system to be able to process people quickly.²¹⁰

In his witness statement, Professor Freiberg gave the further example of an allegation of an FVIO contravention, which may result in the offender being arrested and brought before a court, often before being released on bail until the charges are heard. Subsequent delays in the Magistrates' Court often mean that 'charges may not be determined for a considerable period of time', such that 'in practice ... there is no immediate substantive sanction'.²¹¹

At both roundtable discussions and hearings, consideration was given to whether Victoria's current suite of sentencing options should be applied in a manner which more closely reflected a swift and certain approach without a change in the law.

According to Professor Freiberg, there are some legal and practical barriers which inhibit the uptake of a swift and certain approach. First, it is not clear how an immediate, short prison sentence could be imposed in many cases, under existing laws. Professor Freiberg noted that until a person is sentenced, a court has no power to impose an immediate jail term. An offender may have their bail revoked, but this is not a sentencing power. Professor Freiberg commented that there is a need to consider whether and how courts should have the power to take an offender into custody as soon as practicable once the offender commits, or is found guilty of, a breach offence so that the sanction for breach is swift and certain.²¹²

Secondly, Professor Freiberg observed that there are practical difficulties in sentencing more offenders to short periods of imprisonment. He noted that Victoria's prisons are operating at capacity and under considerable strain. Immediate jail terms also place immense pressure on the courts, Victoria Legal Aid and police in terms of time, money and resources.²¹³

Professor Freiberg concluded that the issue of the availability of prison beds, the absence of an appropriate sentencing power and the due process implications of subjecting an offender to incarceration without a court order must first be addressed.²¹⁴

'Pro-arrest' policies

Professor Freiberg suggested that 'pro-arrest' policies, whereby breaches were dealt with by exercise of the police's holding or remand powers, may align with a swift and certain approach, although he opposed a policy of mandatory arrest 'on the grounds that [he] oppose[s] any mandatory system which doesn't allow for sufficient discretion to treat the cases individually'.²¹⁵ Concerns about pro-arrest policies—in particular around the identification of a primary aggressor, and as part of broader concerns about the capacity of victims to make their own choices—are considered in Chapters 14 and 16.

Electronic-monitoring devices

Professor Freiberg also addressed the potential of electronic monitoring technology to provide certainty of detection of offending, and thereby deterrence:

Electronic monitoring bracelets, telemetric devices, Safety Cards, they are all built on that swiftness of detection or certainty of detection. I think that's what we ought to explore ...

To the extent that ... [such devices produce] some action from the supervising authority, whether it is police or Corrections, they are very effective ... [T]he evidence is very strong [that] certainty of detection does change people's behaviour ... I would certainly explore those possibilities rather than doubling the maximum penalty and waiting 18 months.²¹⁶

Assistant Commissioner Craig Howard, who is responsible for electronic monitoring services at Corrections Victoria, provided the Commission with a description of GPS technology (and similar technologies) for criminal offenders.²¹⁷ Mr Howard noted, for example, that serious sex offenders subject to supervision orders have used GPS bracelets.²¹⁸ The bracelet transmits their location back to an electronic monitoring centre via the mobile telephone network. Asked about the potential use of GPS technology for family violence offenders, Mr Howard noted that 'the technology will tell you potentially where you are, it won't tell us what you are doing', and that there may be some use for the technology if, as a condition of an order, offenders are excluded from a particular area.²¹⁹ Mr Howard also pointed out that the Magistrates' Court cannot, when imposing a community correction order, make an electronic monitoring condition.²²⁰

The Commission is aware of the use of GPS monitoring technology in overseas jurisdictions. A 2012 study examined the use of GPS technology in three sites in the United States.²²¹ The study indicated some short and long-term effects on re-arrest rates. The authors do note that the random assignment of individuals to GPS and non-GPS groups was not possible, so instead GPS and non-GPS groups were selected using relevant controls to make them 'as equivalent as possible on factors known to influence the outcomes'.²²² The report also concedes that as an outcome measure, 're-arrest may ... be problematic', as it does not capture incidents that are not detected or reported: 'a particularly common problem in domestic violence cases'.²²³

The Commission notes that electronic monitoring and surveillance of offenders is only one element of an overall case-management approach that is employed for offenders. Corrections Victoria manages offenders using a holistic case-management approach which involves a range of options (including, in appropriate cases, the use of electronic monitoring) to ensure offenders remain accountable and engaged:

[C]ase management, if you like, is the framework and vehicle which our staff use to engage with the offender so they will fulfil those conditions of the order and acquit their responsibilities back to the court.²²⁴

In relation to offenders subject to community correction orders, Corrections Victoria Commissioner Jan Shuard told the Commission that:

Corrections utilises risk assessment tools to assess an individual's risk of general re-offending and to identify criminogenic needs to be addressed throughout the case management process. Our aim is to have offenders embrace strategies to reduce their risk of re-offending and to be guided towards successful completion of their order.²²⁵

Devices for use by victims of family violence are considered in Chapter 9.

Use of community correction orders

The Commission also heard about the potential of CCOs, alone or in combination with other sentencing options. For example, a CCO can include a condition that the offender will be monitored by the court.²²⁶ As part of this condition, the court can stipulate a time or times at which the offender must reappear for their compliance to be reviewed.²²⁷ The court may also stipulate information, reports or tests to be provided for the review, and may require or invite submissions from Corrections Victoria, prosecutors or other relevant parties. If the offender fails to appear, a warrant for their arrest may be issued.²²⁸ To the extent that these conditions promote certainty that contravention will be detected, they are consistent with a swift and certain approach.

In addition, the CCO can be used in combination with a term of imprisonment.²²⁹ The 2015 Sentencing Advisory Council monitoring report referred to above indicated increasing use of sentences of this kind. If judicial monitoring is used, this allows offenders to be monitored beyond their custodial sentence (and any parole period).²³⁰

As noted in the outline of sentencing options above, the CCO may include other conditions relevant to enhancing perpetrator accountability and victim safety, including conditions such as: excluding the offender from certain places or classes of places; imposing a curfew; prohibiting the offender from contacting certain persons; requiring the offender to participate in rehabilitation and treatment programs, be supervised and monitored by Corrections Victoria or electronically monitored (though only the County and Supreme Courts can make an electronic monitoring condition), including to ensure that they do not go to a particular place, or that they abide by a curfew.²³¹

In *Boulton v The Queen*,²³² the Court of Appeal issued a guideline judgment on the use of CCOs. A guideline judgment is a means for the Court to provide comprehensive guidance to sentencing courts on a particular area of sentencing law, with a view to promoting a consistent approach and public confidence in the criminal justice system.²³³ The Court in *Boulton* referred to CCOs as a 'radical new sentencing option, with the potential to transform sentencing in this State', and remarked that:

... the advent of the CCO calls for a re-consideration of traditional conceptions of imprisonment as the only appropriate punishment for serious offences. This in turn will require a recognition both of the limitations of imprisonment and of the unique advantages which the CCO offers.

...

... The sentencing court can now choose a sentencing disposition which enables all of the purposes of punishment to be served simultaneously, in a coherent and balanced way, in preference to an option (imprisonment) which is skewed towards retribution and deterrence.²³⁴

The CCO provisions could be used in a variety of ways to effect swift and certain sanctions for offending, including in family violence matters. For example, in some cases an offender may be placed on a CCO with a judicial monitoring condition and other appropriate (e.g. supervision and treatment) conditions. If the CCO is breached, they may be given a short sentence of imprisonment and then placed back on a CCO.²³⁵

Fast-tracking model

The Commission was also made aware of the potential of the fast-tracking model which has been implemented at a selection of Magistrates' Court venues in Victoria for criminal charges in family violence cases.²³⁶ The model, described in Chapter 16, provides for the accelerated listing and finalisation of charges relating to family violence. The Chief Magistrate has issued practice directions in respect of certain Magistrates' Court venues, which sets time limits for the listing and finalisation of these charges. Meeting those limits has required the cooperation of Victoria Police, which prosecutes the criminal charges.

The practice directions make clear that the model has been devised in response to 'the rate of recidivism for crimes of violence against intimate partners [being] much greater than crimes of violence against strangers ... usually the violence increases, in number and intensity'.²³⁷ In evidence, Deputy Chief Magistrate Broughton described fast-tracking as a 'great model' which is 'having fantastic results'.²³⁸ She noted that at Dandenong Magistrates' Court, one of the sites where the model was first rolled out, there had been a reduction in scheduled contest hearings over 12 months, from approximately 200 to approximately 38.²³⁹

Assistant Commissioner Luke Cornelius of Victoria Police also spoke to the benefits of the fast-tracking model. Assistant Commissioner Cornelius asserted that reducing delays in listing and finalising matters has also reduced the rate at which prosecutions are withdrawn due to the non-cooperation of witnesses (typically women and children affected by the charged violence). He reported a 58 per cent reduction in the proportion of withdrawals of prosecutions in his region over 12 months.²⁴⁰ As Deputy Chief Magistrate Broughton explained:

Even with family violence matters, if you can get your complainant there to give your evidence, often the accused will plead guilty on the day ... getting people there and imposing the authority of the court and system does really deliver value ...²⁴¹

Support for this approach was not unqualified. Ms Melinda Walker, a criminal law specialist with substantial professional experience in family violence who has herself survived family violence, expressed concerns that fast-tracking, and the more active, 'pro-arrest' approach of police which has been a corollary of this approach in some parts of Victoria, may compromise the legal rights of defendants in some instances:

There's been certainly a reaction by police to make application for more remands than ordinarily ... [and] a lot more people who are being remanded for family violence matters ... if someone is in remand there's more urgency to resolving their case. So particularly if there is only a preliminary brief in existence and very little evidence in existence at that time, certainly that person may concede a guilty plea really without any sufficient evidence if the outcome is to be their release.

...

[This is] not desirable in terms of the administration of justice or even natural justice. I don't necessarily disagree with the fast-tracking ... However, it has to be across the board. There has to be sufficient evidence in order to be able to advise your client appropriately.²⁴²

The fast-tracking model is further described in Chapter 16.

Use of judicial monitoring for family violence intervention orders

Judicial monitoring techniques can also be employed in intervention order proceedings—for example, the respondent may be required to come before the court after a specified period, to confirm that they have not breached the intervention order, that there is no need to vary its conditions or that they have complied with conditions requiring them to attend behaviour change or other programs. To the extent that these techniques reinforce the respondent's certainty that any contravention of the order will be detected, they are consistent with a swift and certain approach. Such techniques may be effective in relation to high-risk or recidivist offenders.²⁴³

Guideline judgments

Professor Freiberg proposed the use of a guideline judgment as a means of improving the consistency and quality of sentencing practices for both contravention offences, and general criminal offences involving family violence. He noted that a guideline judgment has the potential to be a 'method of guidance that does not unduly restrict judicial discretion'.²⁴⁴ The potential purposes of guideline judgments may vary but as noted, they include promoting consistency in sentencing and confidence in the criminal justice system. When issuing a guideline judgment, a court may consider, for example, the weight given to different sentencing purposes, and the criteria by which a sentencing court may determine the gravity of an offence.²⁴⁵

On hearing and considering an appeal against sentence, the Court of Appeal may give a guideline judgment. The Court of Appeal can issue a guideline judgment on its own motion or on application by a party to proceedings.²⁴⁶ A relevant matter would need to come before the Court of Appeal on appeal before the Court could issue a guideline judgment.

Publicising sentencing decisions

The value of publicising court judgments was recently highlighted by the Court of Appeal in *Uzun v The Queen* where Maxwell P, President of the Court of Appeal, remarked:

Priest JA has referred to the importance of general deterrence and this Court's repeated statements that sentences imposed for family violence should be set at a level which will send a message to those—predominantly men—who might violently offend against domestic partners or former partners or family members.²⁴⁷

Plainly enough, the sentences which the courts impose will not serve that purpose unless the sentences and the reasons for them are properly publicised.

...

In view of the community concern about domestic violence and the importance of deterring it, those considerations are particularly pertinent in this area.

In the case of *DPP v Russell* (which was not related to family violence) Maxwell P also remarked on the importance of the government communicating the deterrent message:

... it is the responsibility of government to ensure public safety. And government must therefore take responsibility for communicating the deterrent message to those who need to hear it. That requires sustained effort and the commitment of substantial resources. Without that, the community will simply not derive the benefit—in greater public safety—which should flow from the painstaking work of sentencing judges and magistrates in this State. Self-evidently, if the message is not getting through no change in sentencing law can make the difference.²⁴⁸

The way forward

The prosecution and sentencing of family violence offences present particular challenges. There are many reasons for this. Family violence is often hidden, so that few people other than the perpetrator and victim can directly attest to the violence. The ability or willingness of victims to give evidence may be hindered by trauma, shame, intimidation or a desire to maintain the relationship with the perpetrator, or for her children to have a relationship with their father. Family violence may also be constituted by a complex pattern of behaviour, not all of it criminalised or admissible as evidence.

Professor Douglas, whose evidence to the Commission is referred to above, has written extensively on the continuing challenges faced by the criminal justice system in responding to family violence. In a recent article, she describes the tension between the FVIO regime and the criminal law:

... problems associated with prosecuting domestic violence offences have been known about for some time. The perceived limitations of the criminal law were one reason why civil protection orders were introduced throughout Australia and other parts of the world during the 1980s. Civil protection orders are a much more accessible legal response for victims than the criminal justice process. A person who is experiencing domestic violence can obtain a civil protection order without assistance from police or prosecution services, the burden of proving the need for a protection order is much lower, the victim generally controls the process, civil protection orders can cover a wide range of behaviours outside the boundaries of traditional criminal law categories and breach offences exist as an incentive for the perpetrator to abide by the conditions of the protection order. While civil protection orders were originally expected to operate alongside criminal justice responses, protection orders have become the most common response to domestic violence throughout Australia, the United States of America and the United Kingdom. The focus on protection orders has led to claims that domestic violence has, in a practical sense, been decriminalised ... a focus on obtaining a protection order ... instead of prosecuting a substantive offence may give very little indication of the behaviour underlying the breach; it may lead to inappropriate or very low penalties being applied; and a breach offence can only be charged where there is a protection order already in place.²⁴⁹

Many of the issues raised with the Commission can be understood as expressing the concern, conveyed by Professor Douglas, that family violence has in some sense been 'decriminalised'. More specifically, the concern is that perpetrators are not charged or prosecuted for offences, and if they are, the sentences imposed are inadequate, and out of step with offences committed outside the context of family violence.

Family violence crimes are particularly insidious. Those who perpetrate them often exploit the trust, loyalty and vulnerability of their victims, which can make those victims less willing or able to report the perpetrator's crimes. Correspondingly, victims of these crimes often feel that they have been betrayed, abandoned or perhaps even blamed by the criminal justice system and those who enforce and apply it. The concerns that were raised with us reflect that experience.

In the Commission's view, these are legitimate concerns which deserve a considered and effective response. Changes to the law must be avoided which, while superficially or symbolically attractive, do not actually advance the safety of victims and the community, or the accountability of perpetrators. In addition, in the absence of comprehensive sentencing data, we do not have a clear sense of whether sentences for family violence offences are more or less severe than sentences imposed in other cases. Before contemplating new laws, we must ensure that they are necessary, and that we are making the best use of the laws already in place.

The Commission's response to proposed legislative changes is informed by this view. So too is our response to calls for harsher custodial sentences for family violence offenders. The Commission recognises that there will be cases where a long custodial sentence is the only appropriate sentencing option. However, the evidence the Commission heard on the limits of imprisonment highlights the complexity of these issues. Equally, evidence indicating that imprisonment has a disproportionate impact on particular—often vulnerable or disadvantaged—groups and communities strengthens the Commission's view that we should be circumspect in focusing on custodial sanctions above others. The Commission also acknowledges that there are many cases where it is difficult to obtain a conviction.

In some respects, a better measure of success may be the rate at which family violence offences are being prosecuted. If it is evident that prosecutors are showing an increasing willingness to prosecute offences, this would be not only encouraging, it would be relevant to gauging whether traditional views which tended to dismiss and trivialise family violence are diminishing, at least among those enforcing and prosecuting the law.

We are encouraged by the results of the 2015 Sentencing Advisory Council Monitoring Report to the extent that they show some improvement in the prosecution of general and aggravated contravention offences, and by the evidence of Victoria Police and the OPP about charging and prosecution practices. Unfortunately, our understanding of how charged offences (other than contravention offences) are subsequently sentenced is incomplete. Given that general criminal offences are not described in a way which identifies whether they occurred in the context of family violence, it is difficult to evaluate sentencing practices for family violence offences. In particular, Professor Freiberg's evidence emphasised the difficulties in comparing sentencing practices for offences committed in a family violence context with the same offences committed outside that context.

At present, the absence of comprehensive sentencing comparisons in Victoria makes it difficult to determine whether and to what extent current sentencing practices are deficient or inconsistent with wider sentencing practices. More specifically, it is difficult to identify trends in relation to particular offences or particular courts. Bodies engaged in appraising sentencing practices in Victoria, including this Commission, are hindered in their capacity to diagnose problems with sentencing practices and make evidence-based recommendations for change. As Victoria Legal Aid notes, while Sentencing Advisory Council data and recent Court of Appeal judgments suggest a positive shift in the judicial approach to family violence, comprehensive data is not available to advance evidence-based consideration of recent sentencing trends. Victoria Legal Aid further considered that any adjustments to the current laws relating to offences and sentences should be supported by a strong evidence base. At this time, VLA did not consider there is sufficient data to support change.²⁵⁰

The Commission agrees with this view. While it may be that developments in practice (like the addition of a mandatory family violence field in Courtlink, and improved links between police and court databases) assist in addressing this gap in our knowledge, it is likely that problems will persist. It may be more desirable to rely on a solution which is embedded and permanent. Accordingly, we consider the potential of 'designated' or 'flagged' offences to address this problem below.

The absence of comprehensive comparisons does not mean that nothing can be said about current sentencing practices. For instance, the Commission appreciates the concerns of the Sentencing Advisory Council and its stakeholders about the substantial use of fines, even in relation to aggravated contravention offences. The imposition of fines in cases of breaches intending to cause the victim fear or harm will often be out of step with community expectations. Further, fines may adversely affect women and children who are victims of family violence.

Though low-end sentencing options are not always inappropriate, their persistence might suggest that the robust approach of the Court of Appeal to family violence offending is not mirrored in some decisions in the Magistrates' Court. The Commission makes recommendations on addressing these issues below.

Issues with family violence-related defences

The Commission accepts the validity of the concerns raised by Domestic Violence Resource Centre Victoria and others in relation to issues such as charging practices and the under-use of the family violence provisions in the Jury Directions Act and the Crimes Act.

In our view, under-use of the legislative provisions relating to family violence is unlikely to be cured by amending these provisions, for example, to compel judges to direct juries on family violence if relevant to matters in issue, or amending s 322J of the Crimes Act to align with the Family Violence Protection Act. A better way of ensuring that these provisions become part of the 'tool kit' of judicial officers and legal practitioners is through the improvement of training and education among legal practitioners and the judiciary.

In relation to DVRCV's suggestion that a specialist court list and specialist OPP unit is advisable for family violence homicides, the Commission certainly agrees that the nature and dynamics of family violence must be properly understood by judicial officers and legal representatives. But in our view this needs to occur across the legal workforce. The prevalence of homicides (particularly with women as victims) which involve family violence means that it is difficult, and may not be desirable, to restrict these matters to a specialist unit or list. Understanding family violence should be regarded as core business of courts and legal practitioners, including those involved in homicide trials.

The Commission makes recommendations about the improvement of training and education of legal services and judicial officers in Chapter 40. While many family violence matters may commence as FVIO proceedings in the Magistrates' Court, it is crucial that training extends to the higher courts—not just because they will hear the more serious offences relating to family violence, but because they will hear some appeals from the Magistrates' Court (including in relation to breaches of FVIOs). It is important that the legal practitioners and judicial officers involved in these appeals are equally familiar with the nature and dynamics of family violence, or they may not appreciate the conduct of proceedings, or decision, made at first instance.

In relation to DVRCV's suggestion that a panel of experts be available to provide evidence on family violence, the Commission notes that it is a matter for the prosecution and defence whether to call expert evidence. More broadly, the Commission notes our comments in Chapter 39 about the potential value of the Melbourne Research Alliance to end violence against women and their children. Part of the mission of the alliance is to encourage public and interdisciplinary understanding of family violence issues. The Commission encourages the Judicial College of Victoria, the Law Institute of Victoria and others delivering training and continuing education to professionals to engage members of the alliance and like groups in their training of legal professionals and judicial officers. The OPP and VLA may wish to consider identifying relevant experts who might be available to give evidence on family violence.

Abolition of defensive homicide and new self-defence and duress provisions

The DVRCV also considered that the repeal of defensive homicide means that there is now no middle option for victims who kill their partners in circumstances where a context of family violence exists. In light of these concerns the DVRCV recommended a review of defences to homicide. The new self-defence and duress provisions introduced into the Crimes Act by the *Crimes Amendment (Abolition of Defensive Homicide) Act 2014* (Vic) are intended to provide specifically for circumstances of family violence. The Commission considers that it may be worthwhile reviewing the effect of these new laws, together with the effect of the abolition of defensive homicide, with an emphasis on how the law is being applied in practice. The new laws would need to operate for some time before a review could be meaningful.

The Commission also notes that the combination of baseline sentences and the abolition of defensive homicide could mean that a woman who unreasonably believed she was defending herself would receive a long sentence for murder.

Bail

The Commission agrees that there are opportunities to improve the consistency between FVIO and bail conditions and the information provided to bail decision makers.

In the Commission's view, recommendations further limiting the presumption in favour of bail are not necessary. The presumption of bail is an expression of the presumption of innocence: the bail applicant has not been convicted, and the purpose of bail is not to punish them. The exceptions currently in place reflect the distinctive considerations that may apply (in particular, a heightened risk to alleged victims) in cases of family violence, as expressed in the excerpt from the 2010 Australian Law Reform Commission report.²⁵¹

Further, the Commission has some specific concerns about the recommendation in Judge Gray's findings (following the Luke Batty inquest) that consideration be given to re-enacting the former section 4(2)(c) of the Bail Act. As discussed, the former section 4(2)(c) provided that where an accused person is in custody for having failed to answer bail, a subsequent application for bail should be refused unless the accused person satisfies the court that the failure to answer bail was due to circumstances beyond their control. This provision was repealed following concerns raised by the Victorian Law Reform Commission that it had a disproportionate and punitive effect on Aboriginal and Torres Strait Islander people who had been charged with criminal offences.²⁵²

The Commission notes that some proposals for expanding the presumption against bail may, in any event, be overtaken by the Bail Amendment Bill 2015 (Vic), which at the time of writing is awaiting Royal Assent.

The Commission wholly agrees with Judge Gray's motive in exploring the suggestion that bail decisions accurately reflect and respond to the risk involved in a particular situation, and the history and circumstances of the parties.

To that end, the 'loophole' referred to by Judge Gray, which meant that bail (and attached conditions) was cancelled by the issuing of a bench warrant, must be rectified. Bail conditions must continue to operate until the warrant is executed and the person is brought before the court.

The Commission also recommends that, whether by amending the Bail Act or other means, bail decision-makers be required to consider whether there is a family violence safety notice or intervention order in place, and if so, ensure that bail conditions are compatible with the intervention order or safety notice conditions, unless to do so would pose a risk to the victim and/or protected person. In matters relating to family violence, decision-makers should be required to consider more broadly whether a risk of family violence exists which could be managed by appropriate bail conditions, a family violence intervention order, or both.

The Commission notes that the Victorian Government may also wish to consider similar requirements in sentencing proceedings.

In any matter before the court where there is a risk of family violence, it is incumbent on prosecutors to be aware of that risk, and to provide the court with relevant information. We make recommendations to encourage the seeking and provision of relevant information in such matters.

These recommendations are intended to ensure that family violence–related matters are raised in all appropriate cases, and to consolidate best practice in this regard.

We also recommend an ‘avoidance of doubt’ provision be added to section 4(2) of the Bail Act, to explain that an unacceptable risk of committing an offence or endangering the safety or welfare of the public can include an unacceptable risk of perpetrating family violence whilst on bail. However, this should only include a risk of perpetrating family violence where this constitutes a criminal offence (which would include a contravention of an existing FVIO or bail condition).

The Commission also considered the ALRC’s suggestions, which the Department of Justice and Regulation indicated had not been adopted, that judicial officers be given the ability to make family violence intervention orders at any stage during a criminal proceeding.

We are pleased to note that the OPP’s policy on family violence prosecutions indicates that they are clearly aware of the issues that prompted the ALRC’s recommendations, and instruct their prosecutors accordingly.

Requiring the OPP to encourage police to make an application, or to encourage the victim to apply, is obviously a less direct and perhaps less reliable route to an intervention order being made than providing for the court, by its own motion, to make an intervention order (either in a bail hearing or otherwise during criminal proceedings). This is also true for bail proceedings conducted by police—while police should be cognisant of any need to apply for an FVIO, enabling courts to make an intervention order provides an additional mechanism for the protection of family violence victims.

The Commission acknowledges the potential complexities in courts having an ‘own motion’ power to grant intervention orders. In particular, it is essential that this does not compromise the choices of victims of family violence, and that they and those subject to family violence intervention orders have the opportunity to participate in the making of any final orders. Accordingly, the Commission supports giving the court the authority to make interim intervention orders only, at any point in criminal proceedings. This will ensure that any immediate risk can be managed, but the matter can return to court to be resolved. We make recommendations to that effect.

Recommendation 79

The Victorian Government legislate to empower courts to make interim family violence intervention orders on their own motion at any point during criminal processes—including bail proceedings and sentencing [within 12 months].

Finally, the Commission considered the suggestions that if granted bail, perpetrators of family violence should be bailed to a specific address; and the Family Violence Protection Act should expressly provide for them to be bailed to a relevant court support program, such as the Court Integrated Services Program.

It is already within the power of magistrates to bail to a specific address, and to grant bail on the condition that the bail applicant attend CISP. Indeed, the Bail Act expressly provides that the conditions of bail may include ‘residing at a particular address’ and ‘attendance and participation in a bail support service’.²⁵³ We trust that the government’s planned expansion of CISP, and improved training for those in the justice system on the nature and dynamics of family violence will lead to such orders being made where appropriate.

Recommendation 80

The Victorian Government [within 12 months] take the following action:

- ▷ encourage bail decision makers to seek, and prosecutors to provide, information on relevant risks of family violence in relation to a bail application
- ▷ whether by amendment to the *Bail Act 1977* (Vic) or by other means, provide that before setting or amending bail conditions, a bail decision maker must take into account:
 - ▷ whether there is a family violence safety notice or family violence intervention order in place. If so, the decision maker should ensure that the bail conditions are compatible with the notice or order conditions, unless to do so would pose a risk to the victim and/or protected person
 - ▷ in matters relating to family violence, whether there is a risk of family violence that could be managed by appropriate bail conditions or a family violence intervention order, or both
- ▷ add an avoidance of doubt provision in section 4 of the *Bail Act* to state that an unacceptable risk of committing an offence or endangering the safety or welfare of the public may include an unacceptable risk of perpetrating family violence whilst on bail
- ▷ enact legislation to ensure that, if a warrant for the arrest of an accused is issued, bail conditions continue to operate until the arrest warrant is executed and the person is brought before the court.

Parole

As with bail decision-makers, parole decision-makers must be cognisant of family violence issues. It is unnecessary to describe the current processes by which family violence risks are taken into account.

Our expectation is that our recommendations for ‘flagging’ family violence offences (recommendation 81) will help to simplify and improve the process by which Community Correctional Services and the Parole Board can identify family violence offenders and apply these measures. We also note that these assessments and associated instructions and policies should be required to comply with the revised CRAF (see Chapter 6).

New offences

The Commission is not satisfied that new offences specific to family violence—either criminalising family violence generally, or specific forms of family violence—are presently necessary or appropriate to keep victims safe and hold perpetrators to account.

There are many existing offences which may apply to perpetrators of family violence. These include threats to kill, inflicting serious injury, committing a sexual offence, destroying or damaging property, blackmail and aggravated burglary. If these offences are not being applied properly to family violence, this may reflect the approach, attitude or expertise of those applying or prosecuting these offences. Simply changing the laws by carving out a specific response for family violence is not likely to address those underlying deficiencies.

The Commission accepts the concerns raised by Ms Fatouros, Professor Freiberg, the ALRC and others about the potential ineffectiveness and adverse consequences of legislative change.

It is essential to the fair and equal operation of the criminal law that all parties, including the accused, understand precisely what the elements of the offence are—that is, what acts and states of mind the prosecution must prove beyond reasonable doubt for the accused to be found guilty—and what conduct of the accused is said to meet those elements. There is a risk that a new offence criminalising family violence will be interpreted to include conduct which is difficult to prove to a criminal standard, or conduct which may not warrant criminalisation. There is also a related risk that prosecutors would not make sufficient or consistent use of any new offences.

Aggravated offences

The Commission does not support changing the law to provide a higher maximum penalty for existing offences when they are committed in the context of family violence.

The Commission shares the views of the ALRC on this point. While acknowledging the educative and symbolic functions of aggravated offences, it is not clear that a familial context, on its own, will always be a sufficient basis to expose an accused to a higher penalty—just as it is not clear that an offence committed outside a familial context is always, or usually, less serious, and so warrants a lesser penalty.

The Commission notes that the dynamics which may make an offence committed in the context of family violence more egregious, such as the abuse of power, trust, vulnerability and the exploitation by the perpetrator of the victim's reluctance to report them to the authorities, may also all exist outside a familial context, and can be taken into account under existing sentencing principles.

Designated offences

As noted above, because general criminal offences (such as grievous bodily harm, burglary, and rape) are not described in law in a way which identifies whether they occurred in the context of family violence, it is difficult to evaluate sentencing practices for family violence offences.

This gap in sentencing data also means there is a risk that those involved in administering prison, parole, bail and post-release programs will be unaware of an offender's family violence history. This could lead to inappropriate conditions being imposed or risks not being properly evaluated. For example, Corrections Victoria may be unaware of the family violence-related nature of a person's offending, and so fail to offer appropriate programs in prison and post-release.

In addition, those individuals and bodies who need to be informed of a person's criminal history—whether for the purposes of treatment or evaluating their suitability for certain kinds of employment—may be disadvantaged if the family violence-related nature of the offending is not apparent from a person's criminal record.

Accordingly, the Commission considers that the introduction of a family violence 'designation' or 'flagging' for existing offences could be a positive and useful development. This could be done by appropriate amendment to the Family Violence Protection Act and criminal procedure rules, to ensure that the link between an offence and a context of family violence is noted in the way an offence is described, including on an individual's criminal record.

The Commission's intention in making this recommendation is not that crimes committed in the context of family violence should be separated or necessarily subject to different principles from offences committed outside that context. Rather, the Commission's intention is to make it easier to see when an offence occurred within a family violence context, in order to assess both the way perpetrators are sentenced, and the way they are dealt with after sentencing.

Recommendation 81

The Victorian Government ensure that offences committed in the context of family violence are appropriately 'flagged' [within two years]—for example, by:

- ▷ enhancing current links between Victoria Police's, courts' and Corrections Victoria's databases
- ▷ amending the *Family Violence Protection Act 2008 (Vic)* to deem criminal offences committed in the context of family violence to be 'family violence offences' for the purposes of being recorded in relevant databases.

Persistent contravention offence

The offence of persistent contravention requires that three contraventions of a family violence intervention order or safety notice occur within 28 days. This provision seeks to capture the persistent nature of the contraventions over a short period of time that demonstrate a disregard for the law and for the safety and wellbeing of the victim.

As this offence has only been operating since April 2013, the Commission is not prepared to recommend an amendment at this stage. However, the research presented to the Commission from the Crime Statistics Agency on recidivist perpetrators of family violence indicates that there will be a cohort of offenders who repeatedly deliberately contravene an FVIO, but whose contraventions do not occur within the 28-day period. To the extent that at least some of these contraventions show a serious disregard for the law or for the victim's safety, they should arguably be subject to the persistent contravention offence. The Commission therefore recommends that the Victorian Government review the offence, with a view to possibly extending the 28-day period. Any decision to that end should be informed by consultations with relevant stakeholders, and based on a clear understanding of how the existing offence is used and the consequences (both in practice and legal principle) of applying the offence to a larger, more varied cohort of perpetrators.

The Commission also notes the anomaly identified by Deputy Chief Magistrate Broughton in evidence. The maximum term of imprisonment which can be imposed for a single indictable offence tried summarily is two years, and in respect of several offences committed at the same time, five years. This could have the unusual consequence that a single charge for a persistent breach would only attract a two-year sentence, while three individual contravention charges could attract a sentence of five years (even though the conduct involved may be identical).

Addressing this issue is a complex proposition. It may be that if a single charge (albeit encompassing three contraventions) is sufficiently serious to warrant a sentence greater than two years, it should be tried in the higher courts. In practice, it may be uncommon for three serious contraventions to occur without there being distinct criminal conduct which is also charged and co-sentenced (such that a five-year maximum would be open to the magistrate). In any event, there are good reasons why the length of a sentence that may be imposed in a summary hearing is limited—not least because a defendant exposed to a higher sentence should generally have the benefit of a jury trial. For present purposes, the Commission would encourage the Victorian Government to consider this issue.

Recommendation 82

The Victorian Government review section 125A of the *Family Violence Protection Act 2008 (Vic)* to determine whether the 28-day period within which contravention relating to the same person must occur to establish this offence should be extended [within 12 months].

Sentencing provisions

The Commission does not support the addition of family violence as a mandatory consideration or aggravating factor in sentencing. Further, the Commission does not consider family violence offences to be suitable for mandatory minimum sentences, baseline sentences or 'serious offender' provisions and does not support the introduction of 'Rekiah's law'.

The addition of family violence as a factor that must be considered by a sentencing court is not likely to substantively improve the sentencing process. It is already consistent with existing law for a court, in appropriate circumstances, to take into account the fact that a particular victim was in a position of vulnerability; that the offence involved a breach of trust; that the perpetrator had offended in the past; and that the relevant offending is prevalent in society. These factors may be relevant in many family violence cases.

Similarly, given that aggravating factors in sentencing are established primarily at common law in Victoria, it is not appropriate or necessary to amend legislation to stipulate that family violence is a specific aggravating factor in sentencing. Clearly, there will be many cases where a context of family violence will make an offence more serious. There will also be cases where it will warrant a more serious or punitive sentence. The Court of Appeal decisions referred to above illustrate that both aggravating and mitigating factors may extend to a context of family violence where appropriate.²⁵⁴

The endless variety of circumstances that may arise makes it difficult to predict how one feature of a case will interact with all the others. Stipulating that courts must, owing to one particular variable and regardless of all other variables, treat a case in a particular way tends to undermine the court's ability to impose an appropriately tailored sentence. There will be circumstances where exposing a person to a higher sentence solely because of a circumstance of family violence will not be appropriate. There might, for example, be a situation where the offender had previously been subjected to violence by the person who was the victim of the offence; there might also be acute psychiatric or psychological factors which should be dealt with to prevent that person from re-offending, and which are better dealt with through a community correction order than a prison sentence.

Encouraging best practice

The Commission was presented with a number of recommendations for change which focused on encouraging best practice and using existing laws more effectively, rather than legislative change.

Encouraging a swift and certain approach to justice

The Commission believes there is proven value in a swift and certain approach to justice, and substantial room to improve Victorian sentencing practices to reflect this approach.

The Commission accepts that there are some significant obstacles to the adoption of swift and certain approaches in Victoria. Many of the most prominent examples of swift and certain justice programs operate in the United States. In many cases these programs are facilitated by settings which differ from Victoria: for example, sentencing powers which enable an immediate prison sentence to commence on breach of probation. Given the complex matters of practice and principle raised—and ramifications which are likely to extend beyond family violence—these settings should not be altered without substantial research and consultation.

At the same time, the Commission considers that there is considerable potential to adopt swift and certain practices under existing laws. The Commission endorses the view of the Court of Appeal in *Boulton v The Queen* that the CCO represents a sentencing disposition which, in suitable cases, can coherently balance all of the purposes of punishment. CCO conditions can provide continuing contact with the court and the same judicial officer, as well as compelling the perpetrator to engage with the causes of their offending. CCO conditions can also offer greater certainty that any contravention of the CCO, or further criminal conduct, will be detected and conditions can be made consistent with any FVIO conditions in place. For these reasons, the CCO may well be a sound vehicle for holding the perpetrator to account, reducing the likelihood of further offending, keeping the victim and the community safe, and providing both victims and perpetrators with a sense of procedural fairness. In addition, the Commission notes that the CCO can be imposed alongside other sentencing options, producing a mutually reinforcing effect.

Deferring the sentencing of a perpetrator to allow them to demonstrate a capacity to avoid re-offending, and to undertake programs addressing issues related to their offending, can also be a valuable mechanism in appropriate cases.

The Commission further accepts that the fast-tracking model enhances the immediacy and certainty of punishment. In the Commission's view, its expansion to other court regions should be seriously considered. In due course, expanding its scope might also be explored: we note, for example, that it may not apply in relation to a breach of a CCO, although the circumstances may involve family violence.²⁵⁵

Pro-arrest approaches may also play a role. However, as noted in Chapter 14, such approaches can give rise to difficulties, particularly in respecting the choices of the victim and identifying the primary aggressor.

In relation to the use of electronic monitoring and surveillance technology, the Commission does not at this stage propose an amendment to the current laws on the use of this technology. The Commission considers, however, that further consideration should be given to the use of such technology for monitoring family violence offenders as part of an overall case-management approach (including considering costs and the adequacy of the current technology). We note that while GPS monitoring is part of the management of some offenders, it is not a substitute for a nuanced and comprehensive risk management strategy. Risk assessment and management is considered further at Chapter 6.

More generally, the Commission notes that in some of its manifestations, the swift and certain approach is concerned almost entirely with deterring offenders and consequently protecting the community. This is a laudable objective but is not, on its own, a complete response to offenders. We also need to address the other purposes of sentencing—denunciation, punishment, and rehabilitation—and beyond these, we should seek to address the root causes of offending, both in particular cases and at a societal level, and to assist victims of family violence in all aspects of their recovery. These matters are further explored in Chapters 18, 20 and 36.

Although the viability of a swift and certain justice approach in Victoria and Australia has been the subject of some academic work and discussion, in the Commission's view, it would be worthwhile advancing this discussion and considering the practical viability and means of implementing swift and certain approaches in Victoria—whether through changes to the law, or changes to practice under existing laws (or both).²⁵⁶ A review of this kind could be undertaken by the Victorian Sentencing Advisory Council, and its findings considered by the Victorian Government. We note that the review could consider not only criminal techniques and sanctions, but, for example, the use of judicial monitoring and similar measures in FVIOs, to the extent that this might lead to fewer contraventions of such orders.

In the interim, the Victorian Government should also consider more immediate and discrete ways to remove barriers to a swift and certain approach. A specific example is raised by the Magistrates' and Children's Courts in their submission. The submission notes that the *Magistrates' Court Act 1989 (Vic)* only provides power to issue a remand warrant when a person has been charged with an offence or is a witness, or as authorised by any other Act. On their interpretation, this may mean there is no power to issue a warrant to remand in custody a respondent to an FVIO who has been arrested under the application and warrant process. As a result 'a risk exists that a respondent may be remanded which could well constitute a false imprisonment'.²⁵⁷

Recommendation 83

The Sentencing Advisory Council report on the desirability of and methods for accommodating 'swift and certain justice' approaches to family violence offenders within Victoria's sentencing regime [within 12 months].

A guideline judgment

Professor Freiberg suggested a guideline judgment on sentencing for family violence offences as a means of improving the consistency and quality of sentencing practices for both contravention offences, and general criminal offences involving family violence. A guideline judgment has the potential to grapple with the practical and conceptual nuances of the sentencing process. It may therefore have greater prospects of influencing what judges and magistrates do than other approaches to reform.²⁵⁸

As described in Chapter 16, the great majority of family violence matters are heard in the Magistrates' Court (including some 96 per cent of contravention charges). For contravention and other family violence-related offences to be the subject of a guideline judgment, a matter would have to come before the Court of Appeal. Nonetheless, in the Commission's view this course warrants serious consideration—both because of the potential need for sentencing practices to more uniformly reflect recent learnings and best practice in family violence jurisprudence, and because a guideline judgment has the capacity to effect change without placing undue limits on judicial discretion. The Commission suggests that the Director of Public Prosecutions take steps to identify a suitable case for the issue of a guideline judgment on sentencing for family violence offences.

In the interim, we suggest that all Victorian courts have regard to the concerns expressed by the Sentencing Advisory Council, to their Guiding Principles for Sentencing Contraventions of Family Violence Intervention Orders (2009), and to the Judicial College of Victoria's Family Violence Bench Book.

Recommendation 84

The Director of Public Prosecutions consider identifying a suitable case in which to seek a guideline judgement from the Court of Appeal on sentencing for family violence offences [within two years].

Publicising sentencing decisions

The Commission agrees that publicising the court's sentencing reasons more widely and regularly is an important part of influencing the practices and attitudes of people in the justice system, and in the wider community. On this point, the Commission endorses the comments of Justice Maxwell, President of the Court of Appeal, in *Uzun v The Queen*,²⁵⁹ referred to above.

A stronger focus on family violence matters in the media has helped to highlight the nature and gravity of this type of offending. Comprehensive media coverage is likely to have a greater influence on public awareness than any other single avenue. However, the Commission encourages the Victorian Government to investigate other, more targeted mechanisms—for example, via court websites, the Law Institute of Victoria, the Victorian Bar Council and the Judicial College of Victoria—to ensure significant sentencing reasons are published regularly.

Victims of crime reference

The Victorian Law Reform Commission is currently preparing a wide-ranging report into the role of victims in criminal proceedings.

Some of the concerns and suggestions for reform raised with us deal with broad or complex issues of evidence and procedure. In our view, these issues may be best dealt with by the VLRC as part of its ongoing work. For example, the Magistrates' Court and Children's Courts of Victoria suggested that a statutory scheme for hearings in criminal trial proceedings where the complainant is a child or is cognitively impaired should be extended to summary contested hearings in the Magistrates' and Children's Courts.

In addition, Deputy Chief Magistrate Broughton noted in her evidence that whereas in proceedings for contravention of a family violence intervention order leave under the Family Violence Protection Act must be sought for a child to give evidence, leave under the Act is not required for that child to give evidence in proceedings relating to a general criminal offence—unlawful assault, or criminal damage, for example—even where that offence may be associated with family violence, and even involves the same behaviour that constituted the contravention.

These issues are part of a broader discussion about the procedural and evidentiary rules which apply to children, people with cognitive impairments, and complainants in sex offence cases. In our view, it would be appropriate for the VLRC to consider these issues as part of its work.

A discrete issue concerns improvement of assistance provided to victims in preparing victim impact statements, and the use of victim impact statements in a wider range of matters. We anticipate the VLRC will provide guidance on these issues. We have also recommended improvements in the provision of duty lawyer services and pre-hearing support for parties involved in both civil and criminal proceedings in Chapter 16.

Endnotes

- 1 Victorian Law Reform Commission, 'The Role of Victims of Crime in the Criminal Trial Process', Consultation Paper (July 2015) 3.
- 2 As noted in Chapter 16, criminal offences in Victoria are classified as indictable or summary offences. Certain indictable offences may be tried summarily (usually in the Magistrates' Court of Victoria). Others must be tried by jury in the higher courts. See *Criminal Procedure Act 2009* (Vic) ss 27–30; *Sentencing Act 1991* (Vic) s 112; *Crimes Act 1958* (Vic) s 2B.
- 3 *Family Violence Protection Act 2008* (Vic) ss 37, 123. The fine is 240 penalty units; at the date of writing, a penalty unit is \$151.67: *Monetary Units Act 2004* (Vic) s 5; Victoria, Special Gazette, No S86, 17 April 2015.
- 4 *Family Violence Protection Act 2008* (Vic) ss 37A, 123A, 125A. The fine is 600 penalty units. Notably, s 125A(5) specifies that a person convicted or acquitted of this offence shall not be subsequently prosecuted for a contravention offence in respect of the same circumstances or period.
- 5 *Ibid* s 81(1).
- 6 *Ibid* s 81(2).
- 7 Note that police may in any event order an FVIO/FVSN respondent to surrender a weapon, firearms authority or ammunition, and failing to comply is punishable by fine: *ibid* ss 28, 158, 163.
- 8 *Ibid* ss 129–30, 153. Only certain courts may order counselling or a counselling eligibility assessment.
- 9 *Crimes Act 1958* (Vic); *Summary Offences Act 1996* (Vic).
- 10 *Ibid*.
- 11 *Criminal Procedure Act 2009* (Vic) ss 29, 160(2); *Sentencing Act 1991* (Vic) ss 112, 113B.
- 12 *Criminal Procedure Act 2009* (Vic) s 29(1).
- 13 *Sentencing Act 1991* (Vic) s 7.
- 14 A custodial sentence (imprisonment or similar) cannot be imposed unless a drug treatment order or community correction order (CCO) is unfit to achieve the sentencing purpose(s), nor a drug treatment order unless a CCO cannot achieve the sentencing purpose(s), nor a CCO unless a fine cannot achieve the sentencing purpose(s), nor a fine if dismissal, discharge or adjournment will serve the purpose(s): *ibid* ss 5, 7.
- 15 *Ibid* ss 9B, 10.
- 16 See *ibid* ss 32, 82AA, pt 3 div 2 sub-div 1C, pt 5 divs 1–2.
- 17 *Ibid* s 5A.
- 18 *DPP v Walters* [2015] VSCA 303, 2 [9].
- 19 See Sentencing Advisory Council, *Sentencing Guidance Reference* (14 January 2016) <<https://www.sentencingcouncil.vic.gov.au/projects/sentencing-guidance-reference>>.
- 20 *Sentencing Act 1991* (Vic) ss 47–48Q. For a discussion of the operation and effects of the CCO, see Joe Clare and Sarah Krasnostein, 'Community Correction Orders in the Higher Courts: Imposition, Duration and Conditions' (Victorian Sentencing Advisory Council, October 2014); Geoff Fisher and Stephen Farrow, 'Community Correction Orders: Monitoring Report' (Victorian Sentencing Advisory Council, February 2014); Geoff Fisher, 'Community Correction Orders: Second Monitoring Report—Pre-Guideline Judgment' (Victorian Sentencing Advisory Council, September 2015).
- 21 *Sentencing Act 1991* (Vic) ss 43–4, 83AD, 83AS.
- 22 *Ibid* s 38(1).
- 23 *Ibid* ss 7(g), (i), 70, 72, 74–9.
- 24 Proceedings on an application for compensation or restitution may involve either party giving evidence, calling witnesses and, if evidence is given, being cross-examined or re-examined: *ibid* pt 4 divs 1–2. 'Injury' can include actual bodily harm as well as grief, distress, trauma, mental illness or exacerbation of a mental illness, and pregnancy: *ibid* s 85A.
- 25 For detailed information on sentencing in Victoria, see Sentencing Advisory Council, *Sentencing Law in Victoria* (13 June 2014) <<http://www.sentencingcouncil.vic.gov.au/about-sentencing/sentencing-law-victoria>>.
- 26 *Sentencing Act 1991* (Vic) s 5(1).
- 27 *Ibid* s 5(2). This is not the full list of considerations.
- 28 See, eg, *R v Verdins* (2007) 16 VR 269.
- 29 The 'common law' is that part of the law which is established over time by judicial decisions, principles and customs, rather than enacted through legislation.
- 30 See Judicial College of Victoria, *Victorian Sentencing Manual*, Victorian Sentencing Principles 6 <<http://www.judicialcollege.vic.edu.au/eManuals/VSM/index.htm#13888.htm>>; *Interpretation of Legislation Act 1984* (Vic) s 51; *Azzopardi v The Queen* (2011) 35 VR 43 372; *R v Franklin* [2009] VSCA 77; *Pearce v The Queen* (1998) 194 CLR 610; *R v Storey* [1998] 1 VR 359; *Veen v The Queen* [No 2] (1988) 164 CLR 465; *Lowe v The Queen* (1984) 154 CLR 606; *Postiglione v The Queen* (1997) 189 CLR 295; *R v Taudevin* [1996] 2 VR 402. See *Sentencing Act 1991* (Vic) ss 1, 5, pt 2A.
- 31 *Children, Youth and Families Act 2005* (Vic) s 362. For a detailed discussion of the sentencing of children, see Hilary Little and Tal Karp, 'Sentencing Children and Young People in Victoria' (Victorian Sentencing Advisory Council, April 2012).
- 32 *Pasinis v The Queen* [2014] VSCA 97, 6 [53].
- 33 *Ibid* 6–7 [54].
- 34 *R v Cotham* [1998] VSCA 111, 3 [14].
- 35 *Filiz v The Queen* [2014] VSCA 212; *R v Goodall* [2000] VSCA 106.
- 36 [2015] VSCA 292.
- 37 [2014] VSCA 119.
- 38 *Marrah v The Queen* [2014] VSCA 119, 10 [25]; *Uzun v the Queen* [2015] VSCA 292, 8–12 [30]–[43].
- 39 Dennis Byles and Anusha Kenny, 'Sentencing for Contravention of Family Violence Intervention Orders and Safety Notices: Second Monitoring Report' (Victorian Sentencing Advisory Council, December 2015) 7.
- 40 Statement of McWhirter, 27 July 2015, 4 [17].
- 41 Statement of Champion, 11 August 2015, 3 [20]–[25].
- 42 *Ibid* 3 [23].
- 43 Director of Public Prosecutions and Office of Public Prosecutions, Annual Report 2014–15 (2015) 10.
- 44 Byles and Kenny, above n 39, 20.
- 45 Emma O'Neill and Donald Ritchie, 'Family Violence Intervention Orders and Safety Notices: Sentencing for Contravention—Monitoring Report' (Victorian Sentencing Advisory Council, September 2013); *ibid*.
- 46 O'Neill and Ritchie, above n 45, 31–3.
- 47 Byles and Kenny, above n 39, xii.
- 48 *Ibid* 36.
- 49 *Ibid* xii, 42.
- 50 *Ibid* xii.
- 51 See Sentencing Advisory Council, *Reoffending Following Sentencing for Contravening a Family Violence Intervention Order or Safety Notice* (14 January 2016) <<https://www.sentencingcouncil.vic.gov.au/projects/reoffending-following-sentencing-contravening-family-violence-order>>.

52 Transcript of Freiberg, 6 August 2015, 2129 [26]–[31].

53 Helen Cockburn, 'Sentencing of Adult Family Violence Offenders' (Final Report No 5, Tasmanian Sentencing Advisory Council, October 2015) 32.

54 Statement of Bond, 4 August 2015, 6 [24]–[25].

55 *Ibid* 6 [25].

56 Neil Donnelly and Suzanne Poynton 'Prison penalties for serious domestic and non-domestic assault' (Bureau Brief No 110, NSW Bureau of Crime Statistics and Research, October 2015) 1.

57 *Ibid* 1, 6.

58 Magistrates' Court of Victoria, 'Royal Commission into Family Violence—Request for data and information' (30 June 2015), produced in response to the Commission's request for information dated 5 June 2015.

59 See, eg, Magistrates' Court of Victoria and Children's Court of Victoria, 'Information Request Response' (30 June 2015), 4, produced in response to the Commission's request for information dated 5 June 2015.

60 See, eg, *DPP v Bracken* [2014] VSC 94. The relevant rulings are concerned with previous section 9AH of the *Crimes Act 1958* (Vic), which is replicated in part by current section 322J of the *Crimes Act 1958* (Vic).

61 Victorian Law Reform Commission, 'Defences to Homicide: Final Report' (2005) 105.

62 *Ibid*.

63 For a comprehensive examination of the Victorian experience of homicide law reform, see Kate Fitz-Gibbon and Arie Freiberg (eds), *Homicide Law Reform in Victoria: Retrospect and Prospects* (Federation Press, 2015).

64 Victoria, Parliamentary Debates, Legislative Assembly, 3 September 2014, 3135 (Martin Pakula).

65 Note that the circumstances in which a person may have acted in self-defence include the defence of themselves or another person, the protection of property, or the prevention or termination of the unlawful deprivation of the liberty of themselves or another person. However, if invoking the defence against a murder charge, they must have believed on reasonable grounds that their actions were necessary to defend themselves or another against death or really serious injury: *Crimes Act 1958* (Vic) s 322K.

66 As with self-defence, a person can only claim duress in defence against a murder charge if threatened with death or really serious injury: *ibid* s 322O.

67 *Ibid* s 322M.

68 *Ibid* s 322P.

69 *Ibid* s 322J.

70 *Jury Directions Act 2015* (Vic) ss 58–60.

71 Bail is the conditional release of an accused person from custody on the basis of the accused undertaking to appear in court at a late date: *Bail Act 1977* (Vic).

72 *Ibid* s 5.

73 *Ibid* s 5(2A).

74 *Ibid* s 4.

75 Subject to the court being satisfied that these 'show cause' circumstances apply: *ibid* s 4(4)(ba). In most cases, whether bail is justified will depend on the same kinds of considerations as govern the 'unacceptable risk' assessment: *Re Asmar* [2005] VSC 487; *R v Paterson* (2006) 163 A Crim R 122.

76 *Sentencing Act 1991* (Vic) s 8K.

77 *Ibid* ss 8L–8M.

78 *Ibid* ss 8K–8S. In some cases it is not read aloud, but is still taken into consideration by the sentencing judge.

79 *Ibid* s 8A(1).

80 *Ibid* s 8A(2), (3). See also statement of Reaper, 17 July 2015, Attachment 2.

81 *Sentencing Act 1991* (Vic) s 8E.

82 *Ibid* ss 48LA. See also Centre for Forensic Behavioural Science—Swinburne University; Victorian Institute of Forensic Mental Health (Forensicare), Submission 649, 10.

83 *Corrections Act 1986* (Vic) pt 8 div 5.

84 Debbie Kirkwood and Mandy McKenzie, 'Justice or Judgement? The Impact of the Victorian Homicide Law Reforms on Responses to Women Who Kill Intimate Partners' (Discussion Paper No 9, Domestic Violence Resource Centre Victoria, 2013).

85 Domestic Violence Resource Centre Victoria, Submission 945, 67–8.

86 *Ibid* 68.

87 *Ibid*.

88 *Ibid*.

89 *Ibid* 71–2.

90 *Ibid* 69.

91 *Ibid* 8.

92 *Ibid* 70.

93 Domestic Violence Resource Centre Victoria, Submission 945, 70–1. See also, Legislative Council Select Committee on the Partial Defence of Provocation, Parliament of New South Wales, 'The Partial Defence of Provocation' (2013) 166.

94 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, Commonwealth of Australia, 2010) 419 [10.31].

95 *Ibid*.

96 Coroners Court of Victoria, 'Finding into Death with Inquest: Luke Geoffrey Batty' (28 September 2015) 30 [156]–[159].

97 *Ibid* 107 [11].

98 Victorian Law Reform Commission, 'Failure to Appear in Court in Response to Bail: Final Report' (June 2002) 19–23.

99 Coroners Court of Victoria, above n 96, 41 [218], 96 [530]–[533].

100 *Bail Act 1977* (Vic) s 4(4).

101 Victoria Police, Submission 923, 13.

102 *Ibid*.

103 Centre for Innovative Justice—01, Submission 93, 55; No To Violence; Men's Referral Service, Submission 944, 56, 71.

104 Law Reform Commission of Western Australia, 'Enhancing Family and Domestic Violence Laws: Final Report' (Project No 104, June 2014) 136.

105 *Ibid* 137.

106 *Ibid* 136 n 16.

107 Note we use the term 'bail decision-maker' because this may include a court, bail justice, police officer or others empowered to determine bail.

108 *Bail Act 1977* (Vic) s 4.

109 *Ibid* s 18AD.

110 *Ibid* ss 4, 18AD.

111 *Ibid* s 8. Note, however, that the accused may not be cross-examined, nor an enquiry made of the accused, as to the charged offences and that the *Evidence Act 2008* (Vic) applies with respect to privilege.

- 112 Centre for Innovative Justice—01, Submission 93, 55.
- 113 Coroners Court of Victoria, above n 96, 101 [571], 101–2 [574].
- 114 See also Australian Law Reform Commission and New South Wales Law Reform Commission, above n 94, 422 [10.47].
- 115 Coroners Court of Victoria, above n 96, 30 [158]–[159].
- 116 *Ibid* 31 [162].
- 117 *Ibid*.
- 118 Transcript of Broughton, 6 August 2015, 2151–3 [21]–[18].
- 119 *Ibid* 2160 [13]–[20].
- 120 Australian Law Reform Commission and NSW Law Reform Commission, above n 94, 422 [10.50], 424–5 [10.61]–[10.62].
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18 Perpetrators

Introduction

This chapter focuses on perpetrators of family violence. Evidence shows that most perpetrators of family violence are men. As a result, most perpetrator policies and interventions have focused on adult men in the context of sexual violence or intimate partner violence against women. The perpetration of family violence in other relationships (for example, adolescents who use family violence and elder abuse) is discussed in more detail in dedicated chapters elsewhere in this report. However, this chapter canvasses the lack of programs available to address violence that occurs in other contexts, and the specific circumstances associated with women who have used violence.

The purpose of this chapter is to consider many of the issues that underpin the way we conceptualise perpetrators and how we try to change their behaviour. We unpack the various notions associated with the 'perpetrator accountability'. These range from the view that genuine accountability can be found only in collective condemnation in the courtroom or the prison cell; to the idea that guiding perpetrators to confront their own behaviour and attitudes, and take responsibility for them at a personal level, is more likely to stop offending behaviour in the future.

The chapter also reflects the spectrum of views on the best way to effect behavioural change in men. The Commission heard some contend that the priority for any intervention should be addressing entrenched views held by perpetrators arising from gender inequality at a societal level, while others considered it more effective to design interventions based on a broader range of risk factors and circumstances of individual men. This flows into differences of opinion on the weight to be applied to particular causative factors of family violence in designing an effective system-wide response. However, the Commission heard of an increasing interest in blended programmatic approaches.

We present the limited information available about perpetrators, noting that there is no stereotypical profile of a perpetrator. However, we do explore individual risk factors for perpetrators, in particular mental illness and drug and alcohol abuse, noting the evidence that suggests that these risk factors can be associated with the incidence and severity of violence for some, but not all, people. We also explore the available trend data on repeat family violence offenders, partly as recidivism is an indicator of failed intervention, but also due to the disproportionate amount of harm some recidivist offenders can cause. There is a scarcity of research and data on perpetrators which demonstrates the need for further work in this area.

The second section of this chapter discusses some of the challenges and opportunities relevant to responding to perpetrators of family violence. As men's behaviour change programs (MBCPs) are currently the main programmatic intervention to address men's violence against women, this chapter examines the referral pathways, design and effectiveness of MBCPs in both community and correctional settings. It also examines the way in which fatherhood can act as a motivator for perpetrators, and explores programs designed to help fathers gain insight into the impact of their violence on their children to promote positive change. We describe the few tailored interventions available, revealing service gaps for particular groups, such as Aboriginal and Torres Strait Islander men, men from culturally and linguistically diverse communities, men with disabilities and perpetrators with mental illness or substance abuse issues.

We then explore the contested effectiveness of MBCPs, noting the limited evaluation done in this area. While the Commission heard some positive examples of change from those who participated, we also heard of men who demonstrated little to no behaviour change—although concurrent programs designed to support partners received a more positive endorsement.

This chapter also highlights the way in which perpetrator programs remain dislocated from other related services such as those that address mental illness and drug and alcohol misuse. The Commission was painted a picture of a service system under increasing pressure, with dramatically increasing demand for perpetrator programs driven by proactive policing and an increased awareness and understanding of family violence within the community. We heard of lengthy waiting lists and MBCP programs closing their books due to an inability to keep up. We were told of how a lack of timely intervention misses opportunities for change at best, and vindicates perpetrators at worst.

The Commission also heard that regulatory measures to reduce alcohol use, and expanding court-mandated family violence drug and alcohol programs for perpetrators, should be explored as ways to decrease the prevalence and severity of family violence in local communities.

Our way forward involves placing perpetrators in full view. While support services must prioritise the needs of victims of family violence, existing interventions largely leave women to carry the burden of managing the risk associated with the conduct of perpetrators.

There is currently an insufficient breadth and diversity of perpetrator interventions in Victoria. More work is needed to develop a suite of interventions and programs that are implemented according to the latest knowledge and evidence about their efficacy in managing risk, achieving behaviour and attitude change, reducing re-offending and meeting the needs of victims. They must also be subject to an effective compliance and oversight scheme. We recommend the creation of a response to perpetration that links all the parts of the government, justice and social services sectors, to overcome the existing fragmented and episodic response to perpetrators, and create a mutually reinforcing web of accountability.

Discussion of perpetrators elsewhere in this report

Issues relating to perpetrators are discussed throughout the entire report. This section signposts the other chapters in which perpetrators are discussed.

In Chapter 36, we consider initiatives aimed at preventing family violence (particularly men's violence against women) by engaging young boys and men to address outdated perceptions that are associated with masculinity, gender stereotypes and interpersonal relationships and to address social norms and practices supportive of violence against women. In Chapters 29 and 37, we explore efforts to support individuals and communities to be confident in 'calling out' violent and abusive behaviour and attitudes.

Chapter 19 highlights the opportunity that new parenthood presents for health professionals to provide information, develop the skills of fathers and provide alternative notions of masculinity. Improved training for health services including hospitals and general practitioners is explored to enable the health sector to identify and refer perpetrators to suitable services. In that chapter we also consider the extent to which family violence is understood and addressed by the mental health, drug and alcohol sectors.

Chapter 10 also canvasses how positive parenting and healthy relationships with children can act as an incentive for men to address their use of violence, and outlines a number of programs that are targeted at fathers.

The report examines how family violence risks are identified, assessed and acted upon in Chapter 6. This chapter describes the current state of perpetrator risk assessment and management and the way in which inconsistent responses to managing family violence poses a risk that perpetrators will fall out of view and not be held to account.

In Chapters 14, 15 and 16, we consider what happens to perpetrators when they come into contact with the justice system. Chapter 14 describes the role that policing plays in detecting family violence and effectively responding to it. Specifically, it describes police's front-line responsibilities to issue family violence safety notices, apply for family violence intervention orders, investigate and prosecute family violence offences (particularly the enforcement of breaches of orders) and refer perpetrators to MBCPs. Chapter 15 describes the role police have in monitoring particularly high-risk offenders (through the Risk Assessment and Management Panels and other local initiatives) and the ways in which some police divisions are experimenting with pro-arrest policies geared towards securing arrests and remanding offenders.

Chapter 16 details how the conduct of perpetrators is addressed through the courts. In the civil law context, this section describes the effectiveness of family violence intervention orders and the role of legal advice and respondent workers. It also documents the way in which perpetrators can abuse the court process by failing to attend when required, by making unfounded intervention order applications, using delaying tactics or by confronting or intimidating victims at court hearings. The importance of ensuring that perpetrators' interactions with magistrates are meaningful and trigger genuine reflection is emphasised. In the criminal law context, this chapter considers offences for breaches of family violence intervention orders and general offences committed in the context of family violence (such as assaults or threats to kill). It also describes the role that the courts play in monitoring offenders and holding perpetrators to account for failure to comply with orders.

Flowing from this is Chapter 17, which covers criminal offences and sentencing practices for family violence perpetrators. It describes the various sanctions to which perpetrators may be subject, including custodial sentences, community correction orders, fines and adjourned undertakings. This chapter includes analysis of prosecution rates and other sentencing data and examines criticisms that perpetrators are sentenced too leniently and inconsistently. It describes the challenges arising from delays in imposing sanctions and interesting overseas developments for ensuring principles of swift and certain justice are applied to keep perpetrators accountable.

In Chapter 22, we consider the use of restorative justice processes as an option for victims who want to confront the perpetrator directly about their abuse and the harm it has caused. These processes have been described as promoting greater accountability and insight on the part of perpetrators.

In Chapter 13, the Commission provides an overview of the multiple pathways to access perpetrator interventions and examines the interface between these interventions and specialist family violence services for women and children. The Commission heard that specialist family violence services and responses to male perpetrators are not well integrated. In Chapter 13, the Commission recommends area-based integrated intake points for services for women and children and perpetrator programs to improve efficiency, enhance consistency of information, and increase the visibility of the perpetrator by always including perpetrator risk in each step of the intake and assessment process. We call these Support and Safety Hubs.

Chapter 9 considers the conditions necessary for women to stay at home in safety, in particular how technological security devices need to be reinforced with a strong justice response to monitor perpetrators. We also discuss options to facilitate access to housing in circumstances where perpetrators are excluded from the home.

In Chapter 11, we consider how perpetrators can become invisible within the child protection context, with undue focus placed on mothers to take protective steps to ensure the safety of children, rather than Child Protection focusing on the risks an offending father poses to his family.

In Volume V, we examine the different contexts in which family violence can be perpetrated and some of the specific issues that arise in relation to perpetrators in those contexts. In Chapters 23, 27 and 30 we consider adolescents who use family violence, adult children who use violence against older family members and violence in same-sex relationships. In Chapters 26 and 28 we consider issues relevant to perpetrators of family violence in Aboriginal and Torres Strait Islander and culturally and linguistically diverse communities.

In Chapter 39, we explore empirical deficiencies that limit our understanding of perpetrators. A lack of robust data sets and difficulties in meaningfully evaluating perpetrator interventions have led to a paucity of evidence to guide our collective response to family violence.

Context and current practice

Bringing the perpetrator into view

Historically, public policy responses to family violence have largely focused on addressing the needs of victims, particularly through the establishment and ongoing provision of women's support services.¹ With competing demands on an overburdened family violence system, the allocation of resources to perpetrators of family violence can be controversial² as it can be argued that perpetrator intervention programs divert resources from victims' services and detract from accountability through the criminal justice system.³

However, perpetrator accountability has become a fundamental element of Victorian family violence policies and has been reflected in legislation,⁴ reports,⁵ family violence frameworks,⁶ action plans⁷ and funding commitments.⁸

At a federal level, perpetrator accountability and the importance of men's behaviour change is embedded in the Commonwealth Government's Plan to Reduce Violence Against Women and their Children (the National Plan), released in 2010.⁹ Funding was provided for Australia's National Research Organisation for Women's Safety (ANROWS) to conduct research into MBCPs and to develop national outcome standards for program providers.¹⁰ ANROWS has established a Perpetrator Interventions Research Stream to focus on research priorities including system response effectiveness, models to address diversity of perpetrators and interventions for Aboriginal and Torres Strait Islander peoples.¹¹

The Commonwealth and state and territory governments have acknowledged the importance of setting standards at a national level in order to achieve consistency in perpetrator responses, and have committed to the recently introduced National Outcome Standards for Perpetrator Interventions (NOSPI), which establish a nationally consistent approach to holding perpetrators of domestic, family and sexual violence to account.¹²

While there has been a shift towards placing perpetrator conduct into view, the case for greater engagement with perpetrators was made by the former Victorian State Coroner Judge Ian Gray in the inquest into the death of Luke Batty, finding: 'This case has dramatically highlighted the need for an emphasis on perpetrator accountability'.¹³ Judge Gray commented on the need to address family violence at its source:

The fact is that the perpetrator ultimately controls the risks of family violence. Therefore, it is critical that perpetrators become engaged, or are forced to engage, with the family violence system and the criminal justice system at every possible opportunity to ensure they are not only held to account for their behaviour but also to ensure they receive appropriate treatment, counselling and management to assist them to change that behaviour.¹⁴

The Commission also heard that measures targeted at holding perpetrators to account and reducing the use and severity of violence make an important contribution to the overall objective of keeping victims safe, with a facilitator of an MBCP telling the Commission during a site visit that participants in such programs are an important resource in keeping women safe in existing and future relationships.¹⁵ The Centre for Innovative Justice also argues that unless there is meaningful engagement with perpetrators, family violence will continue to manifest as an 'ongoing drain on our economic and social wellbeing'.¹⁶

... while victims of family violence must remain our priority, these victims will also remain at risk unless we step back and widen our gaze.

In other words, until we adjust the lens and bring those who use violence and coercion more clearly into view – until we intervene at the source of the problem – the cycle of this violence will simply roll on.¹⁷

We also heard that many women want a broad integrated response to family violence that sees a shifting of focus from victims to offenders.¹⁸ The need to move towards a greater emphasis on perpetrator accountability was conveyed in submissions to the Commission:

Interventions must focus on placing the responsibility for change on the perpetrator not the women and children. Users of violence should be removed from the home (when safe to do so) and great focus needs to be placed on holding men accountable for breaches. This might be through the use of CCTV and GPS locaters. We must know that women and children are at greatest risk when they leave the violent relationship so we must provide appropriate support and safety measures.¹⁹

Perpetrators need to be stood in the witness box to explain what they have done, and they need to take full responsibility for their actions and punished appropriately, not the victims pleading for understanding and having to relive every detail in the public and try to prove our story while the perpetrator sits back and just denies all or blames us for causing it.²⁰

What we know about perpetrators

It is commonly stated that there is no stereotypical perpetrator of family violence. Former Victorian Chief Commissioner of Police and Chair of the Council of Australian Government's Advisory Panel on Reducing Violence against Women and their Children, Mr Ken Lay APM, has stated:

Violence against women is not limited to any suburb, or to the poor, or to any fixed, imagined type of person you have in your head.²¹

Overcoming misinformation and stereotypes associated with family violence has been a key aim for a number of organisations that promote awareness of family violence, with many highlighting its universal nature in factsheets and publications, for example:

Most abusers would appear to be respectable men who are very much in control. They are represented in all occupations and social classes.²²

People of any class, culture, religion, sexual orientation, marital status and age can be victims or perpetrators of domestic violence.²³

Although evidence shows that the majority of perpetrators of family violence are male, a recent Australian literature review on domestic violence perpetrators found that currently little is known about the other demographic and individual characteristics of perpetrators of family violence:

While there is a breadth of data on victims of crime, particularly as it relates to sexual assault and domestic violence, there is a critical need for similar investment in data collection on the demographic characteristics of domestic violence and sexual assault perpetrators.²⁴

The lack of robust data sets to accurately map the profile of individual perpetrators and track them through the justice and social services system is discussed in more detail in Chapter 39.

While there is relatively scant information on the perpetrator profile in Victoria, it is accepted within international literature that gender inequality is the key driver of violence against women at a societal level.²⁵ The Shared Framework for the Primary Prevention of Violence Against Women and Their Children in Australia produced by Our Watch, ANROWS and VicHealth (Victoria Health Promotion Foundation) draws on the position of UN Women and states that the common denominator among perpetrators of intimate partner violence is that they hold attitudes sympathetic to, and supportive of, gender inequality:

When societies, institutions, communities or individuals support or condone violence against women, levels of such violence are higher. Men who hold such beliefs are more likely to perpetrate violence against women, and both women and men who hold such beliefs are less likely to take action to support victims and hold perpetrators to account.²⁶

As highlighted above, dominant social norms supporting rigid roles and stereotypes or condoning or excusing violence against women can inform gender-based risk factors at the individual level, by men adopting a masculine orientation and sense of entitlement, believing in rigid and unequal gender roles and forming negative peer associations with other men.²⁷

In addition to these gendered factors, there may be other factors that act to reinforce the gendered drivers of violence against women at both a societal and individual level. This can include the condoning of violence in general, experience of and exposure to violence, the weakening of pro-social behaviour (through harmful use of alcohol) and socio-economic inequality or discrimination more generally.²⁸

Demographic snapshot of respondents and family violence recidivists

To assist the Commission, the Victorian Crime Statistics Agency (CSA) was commissioned to update the Victorian Family Violence Database and make findings from data collected between 2009–10 and 2013–14.

This data provides a snapshot of perpetrator risk factors and demographics, as recorded by police who attended family violence incidents:

- ▷ 78 per cent of respondents to family violence intervention orders in the Magistrates' Court of Victoria over the five years from 2009–10 to 2013–14 were men.²⁹
- ▷ Of the 23,388 male respondents in the Magistrates' Court in 2013–14, 73 per cent were between 20 and 44 years of age, with the largest age group being those between 30 and 34 years of age.³⁰
- ▷ In 2013–14, police recorded that 19 per cent of incidents involved perpetrators who were definitely affected by alcohol and 16 per cent of incidents involved perpetrators who were possibly affected by alcohol.³¹
- ▷ In the same time-frame, police recorded that nine per cent of incidents involved perpetrators who were definitely drug-affected and 21 per cent of incidents involved perpetrators who were possibly drug-affected.³²
- ▷ In 2013–14, the mental health of the perpetrator was recorded as a factor by police in 20 per cent of incidents.³³
- ▷ In 2013–14, 13 per cent of incidents involved perpetrators who were unemployed.³⁴

The CSA also provided analysis regarding recidivist perpetrators gathered from Victoria Police data. Overall, a total of 197,822 unique perpetrators were recorded for at least one family violence incident between 2004 and 2014.³⁵ The CSA developed a recidivism model based on a subset of 30,695 perpetrators who were recorded for at least one incident in 2010–11, to enable the model to take into account their historical and recidivist family violence behaviour between 2004 and 2014. The final model only included 17,792 perpetrators, due to some required data fields on the L17 form (which police complete for family violence incidents) being missing.³⁶ As part of this analysis, the CSA identified the following trends:

- ▷ Perpetrators recorded for a recidivism incident are more likely to be male than female and males were 1.53 times more likely to be recorded for a recidivism incident than females.
- ▷ The likelihood of being recorded for a recidivism incident decreases slightly as the age of the perpetrator increases.
- ▷ Perpetrators whose index incident³⁷ is against a current or former partner are more likely to be recorded for a recidivism incident than those who are violent against another type of family member.
- ▷ The presence of children at the index incident was associated with a higher likelihood of recidivism.
- ▷ Perpetrators were slightly less likely to be recorded for a recidivism incident where recorded criminal offences arose from the index incident.
- ▷ A prior recorded offence for a breach of a family violence order placed a person at a higher likelihood of being recorded for a recidivism incident.
- ▷ Recidivist perpetrators were more likely to have the following risk factors recorded by police at the time of their index incident: perpetrator unemployed, perpetrator depression/mental health issue, and/or perpetrator drug use possible or definite.³⁸

The data also suggested that a relatively small number of repeat family violence offenders account for a disproportionate number of family violence incidents recorded by Victoria Police. The 63 per cent ($n=125,044$) of alleged perpetrators who were recorded for only one family violence incident between 2004–05 and 2013–14 accounted for 31 per cent of all family violence incidents, whereas the worst recidivists (recorded for five or more incidents and representing only nine per cent, or 16,914, of all unique perpetrators) accounted for 34 per cent ($n=136,349$) of incidents.³⁹ It should be noted that recidivist data does not necessarily pinpoint the highest risk offenders. There are a number of factors that may affect how recidivist offenders are identified, including the ability to recognise and report abuse to police (by the victim or others), the visibility of the perpetrator's conduct and the responsiveness of police. Ms Helen Fatouros, Director, Criminal Law Services, Victoria Legal Aid, described high-risk perpetrators broadly falling into two categories:

... the recidivist offender who continues to offend and breach orders and has a significant history of police interaction; and the first time offender who has had minor or no interaction with police, but who goes on to kill or seriously injure their intimate partner or other family member. It is important to remember that high-risk offenders are the minority in the context of family violence offenders.⁴⁰

The CSA noted that:

Statistical analysis to determine whether these perpetrators are significantly different from other perpetrators recorded for family violence could provide useful insights for targeting family violence policy and practice. It could also be instructive to analyse in detail the characteristics and family violence histories of those who perpetrate very serious family violence incidents.⁴¹

The CSA also made a number of other suggestions for further research in this area by, for example, incorporating Corrections Victoria and courts data to improve statistical modelling, and conducting analysis of the relationships between the perpetrator's family violence incidents and other recorded offences.⁴²

Demographic snapshot of people charged with breaching intervention orders who receive legal aid

Victoria Legal Aid collects certain demographic data about its clients, including those who are charged with contravening (breaching) family violence intervention orders. The following statistics examine the demographic characteristics of VLA clients who were charged with breaching FVIOs between 2008 and 2015 and are based on data on a total of 15,522 clients (10,990 who received legal advice and/or a duty lawyer service, and 4532 who received one or more grants of aid).

It should be noted that VLA targets its services to the most vulnerable people and this will affect the overall demographic sample of offenders it assists.⁴³ It is therefore not possible to extrapolate this data to all perpetrators of family violence.

VLA's research found that clients who had breached an FVIO were overwhelmingly male (approximately 85 per cent) and most likely to be aged between 25–44 years of age. The research found that these clients may have mental illness or a disability (although many clients may not disclose this) and that Aboriginal and Torres Strait Islander people were over-represented.⁴⁴

Further analysis was done on clients who received multiple grants of aid, that is for legal representation, for breaches of FVIOs, which revealed that they were more likely to be male, between 25–44 years of age, have a criminal history, be unemployed and report a disability (most likely an acquired brain injury or psychiatric disability).⁴⁵

Perpetrators, alcohol and drugs and mental health

The above-mentioned data suggests that for the majority of perpetrators, risk factors associated with substance abuse and mental illness are not present. However, these risk factors are still notable in the context of family violence offending and in the case of mental health issues and drug use, for recidivist offending.

These particular risk factors were also raised extensively in consultations and submissions to the Commission, which is why they are explored in more detail in this chapter, noting that as described above, there are other personal risk factors for perpetrators that reinforce the gendered drivers of family violence, such as exposure to violence or socio-economic inequality.⁴⁶

Perpetrators and drug and alcohol use

As his addiction to Ice continued over more than five years his behaviour became more dangerous. As he lost his own dignity more and more from his drug abuse, the abuse he subjected the children and [me] to, became worse.⁴⁷

Drug or alcohol use is not the primary cause of family violence. As White Ribbon states in its publication about myths and misconceptions relevant to family violence:

Almost even numbers of sober and drunken people are violent. Where studies do show more drinkers are violent to their partners, the studies are not able to explain why many drunken men (80% of heavy and binge drinkers) did not abuse their wives.⁴⁸

However, the 2013 National Community Attitudes towards Violence Against Women Survey revealed that some in the community believed that alcohol and drug use could excuse or minimise family violence. It revealed that:

- ▷ Nine per cent of those surveyed believed that partner violence can be excused if the perpetrator is heavily affected by alcohol and 19 per cent believed that the woman bears some responsibility if she is raped while affected by alcohol or drugs. Eleven per cent also believed that family violence can be excused if the victim is heavily affected by alcohol.⁴⁹
- ▷ Young people (aged 16–24 years) are more likely than respondents aged 35–64 years to believe that violence could be excused if the perpetrator of rape is heavily affected by alcohol or drugs (10 per cent versus seven per cent) and one in 10 young people agree that family violence can be excused if the offender is affected by alcohol.⁵⁰
- ▷ Young men were more likely to 'blame the victim', with 22 per cent agreeing that women often say 'no' when they mean 'yes', while 21 per cent agree that if a woman is raped while affected by alcohol or drugs, she is at least partly responsible.⁵¹

The Commission also heard about the perspective of victims from researchers exploring the links between alcohol and drug use and family violence. Ms Ingrid Wilson, a PhD Candidate at La Trobe University, told the Commission:

I asked the women that question [Can alcohol be an excuse?] and they basically said, 'No, he doesn't blame his behaviour on being drunk. He blames me'. So they are the ones who caused him to behave in certain ways, which speaks to obviously the underlying attitudes towards women there. But certainly the women themselves ... 'blame the alcohol' more in terms of the fact that they feel more fearful and more under threat when he's been drinking.⁵²

She also described the difficulty some women had in dealing with an alcohol-affected perpetrator and how this increased their fear:

... with the things that women I have interviewed have told me and certainly I explore with them about behaviours, 'Does he do the same behaviours when he is not drunk versus when he is?' Some women will say, 'He does, but it's not as severe. I don't feel as afraid. When we are having arguments, if he is drunk I have to shut down.' You can't engage with someone who has been drinking, whereas when they are having conflict when he's not drinking at least the woman has a voice and is able to at least have some kind of negotiation capacity there. So it just seems to me that from my understanding that alcohol certainly – it makes things worse and women certainly feel more unsafe.⁵³

Professor of Social Work at the University of Melbourne, Professor Cathy Humphreys, told the Commission that a combination of drug and alcohol issues and violence-supportive attitudes can exacerbate the severity of physical violence and the psychological harm that occurs.⁵⁴ Professor Humphreys has also described the way in which perpetrators can misuse alcohol to justify offending:

... it is not the chemically induced disinhibiting effects of alcohol which are key, but rather the belief that it is disinhibiting and, hence, in many cultures, it allows an individual (particularly men) 'time out' from the normal rules of social responsibility. It thus serves as an excuse for what is normally seen to be unacceptable behaviour, as an external agent (drugs or alcohol) can be blamed, particularly when, within the culture, the substance is perceived to cause the aggression. In this process, perpetrators who wish to be violent can get themselves drunk in order to be violent.⁵⁵

The World Health Organization has noted that harmful use of alcohol and drugs is a commonly cited risk factor for experiencing and perpetrating intimate partner violence and sexual violence.⁵⁶ It is recognised as an individual risk factor in the Family Violence Risk Assessment and Risk Management Framework (also known as the Common Risk Assessment Framework or the CRAF) as it may influence the incidence and severity of violence.⁵⁷ While alcohol use is neither necessary nor sufficient for abuse to occur, data suggests that the overall level and severity of partner violence could be reduced if the rates of binge drinking were lowered.⁵⁸ The Commission also heard from the Chief Executive Officer of the Victorian Aboriginal Community Controlled Health Organisation, Ms Jill Gallagher AO, who said that:

Substance abuse and mental issues seem to go hand in hand. Reducing drugs and alcohol in our community would reduce a lot of problems around family violence.⁵⁹

However, WHO cautions that evidence for a causal association between harmful use of alcohol and violence is weak.⁶⁰ Associate Professor Peter Miller, Principal Research Fellow, School of Psychology, Deakin University, told the Commission that:

... a large body of evidence now exists to suggest that we have reached the point where we should conclude that heavy drinking is a contributing cause of violence. However, important caveats exist. The presence of alcohol is not the only or even the primary determinant of whether violence will occur and alcohol's influence on individuals is not uniform. Instead, alcohol contributes to violence in some people under some circumstances.⁶¹

The Foundation for Alcohol Research and Education, noting the complex interplay between alcohol misuse and family violence, states:

Alcohol is a contributing factor to FDV [family and domestic violence], increasing both the likelihood of violence occurring and the severity of harms. Alcohol misuse can cause or exacerbate relationship stressors thereby increasing the probability of violence. Alcohol use can be both a consequence to and precursor of relationship stress and violence. Alcohol use also affects cognitive functioning and physical functioning affecting the likelihood of perpetration, and making those who are impacted by FDV more vulnerable. Some perpetrators of violence may try to blame the misuse of alcohol and/or drugs or use intoxication as an excuse. This is not the case. Alcohol use and intoxication are never an excuse for violence.⁶²

Research shows that the effect of alcohol on the prevalence of family violence is higher in Aboriginal and Torres Strait Islander communities. From 1 July 1989 to 30 June 2012, seventy per cent of Indigenous homicides were recorded as involving alcohol use by both victims and offenders, as were 43 per cent of homicides involving at least one Indigenous person. In comparison, 22 per cent of non-Indigenous homicides were characterised by alcohol use by both victims and offenders. During this period alcohol use prior to the homicide incident was indicated for Indigenous victims (69 per cent) and offenders (72 per cent) far more frequently than for non-Indigenous victims (27 per cent) and offenders (31 per cent).⁶³

Victoria Police collects information about the presence of drugs and alcohol as part of its risk assessment when it attends family violence incidents, recording the presence as either 'definite' or 'possible' on the L17. As with the police incident data on mental illness below, the reliability of this data depends on the ability of police to identify the alleged perpetrator's use of drugs and alcohol.⁶⁴

Victoria Police data in relation to drug and alcohol presentations at family violence call outs over the five years from 2009–10 to 2013–14 shows that there has been growth in definite and possible drug use by alleged perpetrators recorded by police at family violence incidents over the five year period. These risk factors have risen by four and five per cent respectively.⁶⁵ Over the same period, the proportion of alleged perpetrators recorded as definitely alcohol-affected fell from 26 to 19 per cent.⁶⁶ The proportion of affected family members recorded as definitely affected by alcohol fell by six per cent.⁶⁷

Perpetrators and mental health

It is important to emphasise that the vast majority of people who have a mental illness are not violent:

Having a mental illness does not mean someone will be violent. People being treated for a mental illness are no more violent or dangerous than the general population. If anything, they are more likely to be the victims of violence, especially self-harm. A small sub-group of people with a mental illness may be more violent than the general population. These are likely to be people who have a history of violent behaviour, who abuse drugs or alcohol and who are not receiving treatment or taking medication as prescribed. Mental illness is associated with only a minuscule proportion of the violence which occurs in society.⁶⁸

However, the Commission heard from victims, and service providers who assist them, regarding their experience of the connection between mental health and the use of violence. Safe Steps advised the Commission that 31 per cent of their family violence clients identified that the perpetrator demonstrated depression or mental health issues.⁶⁹ Some victims told the Commission that where the perpetrator had mental health issues, there was a greater risk that they would use violence:

Needless to say this ongoing very odd and ugly controlling behaviour continues to escalate which makes me feel in fear of the safety of my daughter. An undiagnosed mental health illness is a constant risk for our safety but what can be done? ... What can I do to protect my daughter from this man who was once charming but is now paranoid and controlling? My mental health has suffered, my daughter has a high level of anxiety and the family violence just rolls on.⁷⁰

Another victim told the Commission:

I understand that in these situations the police give priority to the safety of women and children, and that is the correct thing to do. My plea is that more attention also be given to the mental health of the perpetrators. My partner was not a bad person ... He was ill and needed psychiatric care. For me, the legacy of domestic violence is magnified by his suicide ... the only opportunity to ever get help for him would have been through the intervention of the police.⁷¹

The Chief Psychiatrist, Department of Health and Human Services, Dr Mark Oakley Browne, told the Commission that on a population level, mental health problems are a small contributor to violence more generally, with other factors such as gender, a prior history of violence (including being exposed to violence as a child), age and use of substances being more powerful predictors of violence.⁷²

However, the Commission notes that the association between mental illness and family violence was reflected in the following:

- ▷ Victorian L17 data illustrates that perpetrator mental health issues have been identified in an increasing proportion of family violence incidents over the past five years where police have been called. In 2013–14, mental health issues were present in one in five incidents attended by police.⁷³ It should be noted that this data has some limitations because of the limited capacity of police members to identify mental health issues, as well as respondents' varying levels of awareness of their own mental health issues.
- ▷ The Commission was told that a high percentage of Victorian forensic patients (who are people with serious mental illness who have offended or are at a high risk of offending) perpetrate family violence, and that other factors such as 'age, minority status, unemployment, the pressures of parenting, homelessness and the availability (or lack) of support services ... influence when and how family violence might occur'.⁷⁴
- ▷ The CRAF states that murder-suicide outcomes in family violence have been associated with perpetrator depression and other mental health problems.⁷⁵

While there have been some other studies exploring the link between mental illness and family violence,⁷⁶ the Commission was told that there is a need for further research into links between antisocial personality disorders (such as psychopathic, narcissitic and borderline personality disorders) and the perpetration of family violence.⁷⁷

Meaning of perpetrator accountability

The term 'perpetrator accountability' is one of the most oft-used words in family & domestic violence policy circles in Australia.⁷⁸

While achieving perpetrator accountability is a frequently cited goal, this phrase often means different things to different people. A common conceptualisation involves keeping the perpetrator in view and responding appropriately and consistently to their conduct. This can be achieved in a number of ways: through rigorous risk assessment and management, attitudinal and behaviour change interventions or through restrictive and punitive justice system interventions and community condemnation. At a more personal level, it can also be achieved by a perpetrator gaining insight into their conduct and acknowledging its impact on their family.

The wishes of victims of family violence are important in considering how best to hold perpetrators to account. Ms Joanna Fletcher, Chief Executive Officer of Women's Legal Service Victoria, has said that 'slogans and hard justice won't fix the complexity of family violence but listening to the women experiencing it is a good start'.⁷⁹

Victims of family violence have expressed various views on what perpetrator accountability means to them. Among other things, the Commission heard that a key priority for women is to be heard and for the violence to stop:

The women's greatest priority was feeling heard, and wanting behaviour to stop. One woman gave a vivid account of such a turning point; "On that day when you had to stand up and the lady judge said ... she kind of quoted some of his messages or the themes behind his messages and the amount of texts and she said that that is a form of harassment. Do you understand that? When he had to say 'yes' it hit him." From then, she saw a shift in his behaviour because, in her view, the offender had to hear and acknowledge the harm that had been caused.⁸⁰

Accountability has differing meanings for each person, and will require a range of responses. Women most often tell safe steps that they want the violence to stop, not that they want the perpetrator punished. Women may also have particular objectives to hold perpetrators accountable e.g. ensuring their children maintain a relationship with their father while they remain safe.⁸¹

In 2015, the Loddon Campaspe Community Legal Centre released a report outlining women's experiences of the justice system response to family violence.⁸² Women described the importance of the perpetrator acknowledging and apologising for the harm he had caused, and changing his behaviour:

I need him to say I'm sorry. He needs to say it to the kids as well. He never said I'm sorry to any of us, never, and I've asked for him to apologise and he won't.⁸³

Victims also thought it was important for the community and justice system to monitor the perpetrator's behaviour and hold him accountable.⁸⁴ The women in the research raised the need for improved multi-agency systemic integration in the justice response, family violence prevention and offender accountability programs, including men's behaviour change programs.⁸⁵

According to the LCCLC report, a small number of women supported punishment through imprisonment, as they felt offenders who had harmed them were not capable of rehabilitation and it was the only way of bringing safety to their lives.⁸⁶

The Commission also received a submission indicating that some women wanted to be heard in a less adversarial context through the use of restorative processes, which they believed would potentially initiate a better process of offender acknowledgement and offender behaviour change.⁸⁷ We discuss restorative justice options in Chapter 22.

The importance of restoration for victims was also evidenced in a US study conducted with 18 women and four men who had been victims of violent crime, some of whom had been victims of family violence. The focus for these victims was on the harm engendered by the crime and making things as right as possible for the future, rather than violations of the law and avenging the past.⁸⁸ While they wished to see the offenders exposed and disgraced, the basis of this desire was to obtain vindication from the community, rather than for the perpetrator to be punished.⁸⁹ In general, their safety and the safety of others was their main priority.⁹⁰

Some people consider that perpetrator accountability means a predominantly 'tough on crime' criminal justice response that places responsibility with police to apprehend offenders and the courts to punish offenders through the sentencing regime.⁹¹ One submission told the Commission:

Until a good hard look is taken at the continually weak, inadequate and easy option sentencing of our Magistrates for family violence perpetrators, there will continue to be a distinct lack of deterrent for the perpetrators of such crimes. Affording 1st and 2nd time FV offenders weak dispositions, often without conviction does not send a strong message around specific and general deterrence. To only look at the response of service providers and police, in my opinion, addresses only half the issue. Until our judicial officers are made more accountable for their soft touch, easy option treatment of these criminals, the cycle will continue.⁹²

These views are explored in more depth in Chapter 17.

For some, perpetrator accountability requires invoking more than the criminal justice system. Mr Lay has noted the limitations of a justice-only approach to perpetrators, stating that there needs to be a far greater focus on preventative measures, 'rather than trying to arrest our way out of it'.⁹³ According to its submission to the Commission, Victoria Police considers that perpetrator accountability systems need to recognise the power and gender inequality that underpins family violence, refrain from victim blaming, prevent family violence from re-occurring and escalating, and ensure that justice responses are swift, proportionate, flexible and safety focused.⁹⁴

The Centre for Innovative Justice also notes that:

A 'lock 'em up and throw away the key' approach may seem like accountability but, ultimately, abdicates our collective responsibility to address the violence. It also abdicates our responsibility to acknowledge that family violence is not something committed by an aberrant fraction of the population who can be pushed conveniently out of sight, but by a wide range of individuals ...⁹⁵

The Centre for Innovative Justice has also commented that the 'the revolving door and criminogenic nature of imprisonment is viewed by many as likely to make tendencies towards violence worse,' and that prisons are not places where men learn to respect women.⁹⁶ The Law Institute of Victoria submitted that, while it is important to hold perpetrators to account, a punitive focus can be dangerous and counter-productive.⁹⁷ Ms Joanna Fletcher explains that, according to the Sentencing Advisory Council, the cumulative re-offending rate is likely to be higher when the sentence is imprisonment, and states:

The single most consistent theme in what women say they want is simple: they want the violence to stop. Prison may offer a brief hiatus from the violence but it doesn't stop it.⁹⁸

This was echoed during the Commission's hearings, where one victim of family violence told us:

He told me he loved prison and met similar minded men and had a great time. So it's obvious that it didn't change his behaviour at all because he kept breaching the order. As soon as he gets out of prison, he's back to it. When you think about how our lives – we are living in a virtual prison and he is free to breach the order as much as he wants and he said, "I will keep coming to the house because I can," and that's the way he thinks, and he can. Nothing stops him.⁹⁹

In its submission to the Commission, the Victorian Government stated that perpetrator accountability strategies are those that seek to hold perpetrators to account for their behaviour and prevent re-offending, including through the implementation of legal justice system responses, as well as behavioural change counselling or other initiatives.¹⁰⁰ Ms Marisa De Cicco, Deputy Secretary, Criminal Justice Division, Department of Justice and Regulation, emphasised that while the criminal justice system can hold perpetrators to account publicly and recognise the harm done to victims, criminal law responses are just one part of what needs to be an integrated and holistic response to family violence.¹⁰¹

The National Plan to Address Violence against Women and their Children 2010–2022 also states that focusing on punitive measures alone risks diverting attention from creating accountability for the true causal factors that drive offending behaviour and, therefore, will not bring about men's behavioural change.¹⁰²

Web of accountability

A more collective and collaborative approach known as the 'web of accountability' has been advocated by academics, No To Violence and the Centre for Innovative Justice. No To Violence and the Men's Referral Service argue that: 'perpetrator accountability systems are strongest when formal and informal accountability processes work together to form a web of accountability around the man'.¹⁰³ As they note:

Family violence will not end until friends, family members and community support networks and structures develop the skills to both support and advocate for victims, and scaffold/ support perpetrators towards journeys of accountability and nonviolence.¹⁰⁴

No To Violence and Men's Referral Service describe the potential components of the web of accountability around a man as including attempts to hold him accountable through formal criminal justice, civil justice and child protection systems, the actions of non-mandated service systems that attempt to engage him through proactive, assertive outreach, and informal attempts by women and the community to hold him accountable.¹⁰⁵ They submit that perpetrator accountability requires family violence service systems to be accountable to each other, women and children, and to have defined and transparent roles and responsibilities.¹⁰⁶ However, they submit that while service systems can punish perpetrators, and attempt to mandate, scaffold and hold men in intervention contexts that might lead to them behaving in ways that are more accountable, they cannot force accountability given that:

Genuine accountability requires the operationalisation of what accountability means for that specific perpetrator, based ... on what those affected by his violence need to see change about his specific patterns of coercive control.¹⁰⁷

The Centre for Innovative Justice has also called for an integrated approach and for the system to work together, to keep perpetrators in full view:

... perpetrator accountability is about all parts of the system working together. It is not about excluding, or excusing, violent and controlling men. It is not simply about locking people up, and certainly not about letting them off the hook.

First and foremost, accountability means making victims of family violence safe. It means keeping the perpetrator firmly in view, not isolating him or propelling him from scrutiny. It means leveraging the authority of the justice system and whatever stake in conformity the perpetrator has to ensure that he complies with the law. It means measuring the right things. It means keeping not only the violence and its user visible but also the system's response. It means every part of the system bearing responsibility and the victim setting the pace. Just as importantly, it means coming to terms with the fact that family violence is core business in the legal system and has to be treated – and funded – as such.

At its simplest, perpetrator accountability is about widening our gaze to include individuals who use family violence – bringing them squarely into the spotlight; making them responsible for their own behaviour, certainly; but all of us [are] accountable for how the community steps up to meet it.¹⁰⁸

The National Outcome Standards for Perpetrator Interventions are premised on the notion that to achieve the best results, the various parts of the perpetrator accountability system need to work together, including the police, courts, corrections, perpetrators and offender programs.¹⁰⁹ We heard that the current environment is problematic, as it allows perpetrators to effectively opt out of the system.¹¹⁰ In its submission, Good Shepherd Australia New Zealand emphasised that perpetrator accountability needs to be grounded in the service system's efforts to work towards the safety and wellbeing of women and children. It noted that the current service system rarely engages men and does not have the capacity to provide men with a long-term strategy to stop the violence.¹¹¹

Commentators also suggest that a combined response would help to reduce the burden placed on victims of family violence. The Centre for Innovative Justice has emphasised the importance of placing this burden squarely on the system, noting that a combined justice and community response approach that 'is more powerful than the man's power in the relationship' is required to address family violence.¹¹² No To Violence noted that while women and children, and the services that support them, perform a central role in this web, it is not the responsibility of women and children to hold men accountable. Accountability is strongest when women's existing efforts to hold men accountable are supported by formal accountability measures.¹¹³

Different approaches to changing perpetrators' behaviour

This section explores the most common approaches to changing perpetrators' behaviour and breaking the cycle of family violence. The Duluth model, a gender-driven psychoeducational approach, has been the dominant model for informing behaviour change initiatives in the community by facilitating men's awareness and understanding of the gendered nature of their conduct and its harmful impact. The model relies on being part of a broader coordinated justice and service system approach and is premised on the view that family/domestic violence is a result of 'socio-political factors, such as entrenched gender inequality and patriarchal ideology'.¹¹⁴

In contrast, matched interventions such as the Risk Needs Responsivity model, tend to view family violence offending as a manifestation of 'personal dysfunction'¹¹⁵ and seek to identify and address specific criminogenic risk factors that contribute to, or exacerbate, offending. These are risk factors relating to the offender's psychological, social and emotional functioning that are linked to the continuation of their criminal behaviour. Examples include substance abuse and unemployment.¹¹⁶ These interventions have been the primary vehicle for behaviour change for a range of offending in the criminal justice setting. These models are discussed in more detail below.

The strengths and applicability of these distinct models to respond to perpetrators has, at times, been a matter of contention between experts in the family violence field.

The conceptualisation of domestic and sexual violence as behaviour caused by psychological dysfunction or other individual or socio-demographic characteristics, for example, removes the responsibility of violence from the perpetrator, and tends to support a psychotherapeutic approach to intervention. Understanding domestic and sexual violence as the result of social constructions about masculinity, gender identities and power relations, on the other hand, supports a gendered and educational approach to intervention, and points to the need to address social structures that reinforce men's violence against women.¹¹⁷

This tension has flowed more broadly into public discourse, with some media commentators encouraging this Commission to grapple with the tension found in this spectrum of views.¹¹⁸ Commentators have debated the extent to which gender and other factors should be addressed in interventions to address family violence and highlighted concerns that attributing violent behaviour to a perpetrator's use of alcohol or mental illness, may act to excuse, justify and normalise family violence. A media commentator described this as reflecting 'a very old and very common anxiety—that the attempt to explain violence leads inexorably to its exculpation'.¹¹⁹

While these two approaches are distinct and point to limitations in the other, the Commission learnt that ultimately, there is broad agreement on the desirability of combining the best aspects of both interventions. This is discussed further in the following section.

Duluth model of behaviour change

Addressing gender inequality to reduce family violence is at the heart of the psycho-educational Duluth model, described as ‘the most enduring and prominent model of perpetrator intervention in existence today’.¹²⁰ It emerged in the 1980s in a small community in Minnesota in the United States and has been highly influential in the development of MBCPs in Victoria. The model informs programs that are typically delivered in group settings ‘where vignettes, discussions and role playing are utilised to generate dialogue and encourage critical thinking about power relationships that underpin men’s violent and dominant behaviour’.¹²¹

The application of this model in Victorian programs was described to the Commission as follows:

... the psycho-educational approach is a combination of looking at his beliefs and attitudes which is related to his use of violence and his offending; a series of topics that helps him to realise that his violence is about power and control and that he is sabotaging what he wants for his life by trying to dominate; helping him to realise where he gets that from in our society.¹²²

Proponents of gender-based interventions generally acknowledge that the life experiences of perpetrators (such as childhood exposure to violence or substance misuse) have been shown to increase the likelihood of violence against women; however, they argue these factors only come into play when a perpetrator has low support for gender equality and adheres to rigid gender roles and stereotypes.¹²³ In this context, UN Women acknowledged that other risk factors are influential, but ‘need to be addressed as they intersect or interact with unequal gender relations’.¹²⁴

In explaining gender inequality as the foundation of violence against women, many point out that perpetrators have diverse backgrounds and experiences (for example, different levels of education, employment status, and mental health status), such that not one of those characteristics can explain the coercive and controlling behaviour that constitutes family violence:

Historically, many attempts to understand violence against women have sought simplistic or single-factor causes for individual men’s violence. Such explanations point to the psychology or mental health of the perpetrator, his life experiences (such as childhood exposure to violence), behaviour (such as alcohol use) or personal circumstances (such as unemployment). While such individual level factors may well be relevant, we need to explain why most men to whom they apply are not violent, and why other men not exposed to any of these factors are violent. We also need to explain why such factors seem relevant in some cases, contexts or countries, but not others.¹²⁵

The vast majority of violent men are not suffering from mental illness and could not be described as psychopaths.¹²⁶

It has also been noted that some risk factors, such as poverty, affect both men and women, yet the prevalence of violence remains gendered.¹²⁷

There has also been caution around acknowledging individual risk factors in offending behaviour, as it may be seen as minimising or excusing offending. A literature review on this issue noted:

The conceptualisation of domestic and sexual violence as behaviour caused by psychological dysfunction or other individual or socio-demographic characteristics, for example, removes the responsibility of violence from the perpetrator ...¹²⁸

The Duluth model (and in turn, the Victorian programs that it informs) has been criticised as representing a ‘one-size-fits-all’ approach that fails to recognise the complexities of family violence offending¹²⁹ or the broad range of circumstances in which it can manifest.¹³⁰

In addition, some considered that these programs are only suitable for men who have 'for want of a better term, a general pro-social demeanour' and are therefore amenable to change in a relatively short period of time.¹³¹ The Commission heard that the Duluth model can have limitations in facilitating meaningful behavioural change as it requires men to accept the reality of gender inequality in order to be effective.

One of the problems is when you intervene with attitudes and beliefs that support family violence with people that don't subscribe to those attitudes or beliefs or don't feel they need to, so they often resist intervention, they don't see intervention as relevant to their needs, and the task of the facilitator of the program is to persuade them that they hold these beliefs that they don't recognise in themselves.¹³²

No To Violence also acknowledged that MBCPs cannot be the sole community-based intervention to address men's offending, noting that many men are not suited to a group engagement environment and individual one-on-one counselling is often required.¹³³

Risk Needs Responsivity model

In its joint submission to the Commission, the Centre for Forensic Behavioural Science and Forensicare contended that existing family violence policy is influenced by 'the predominance in both academic and social service settings of explanatory theories that singularly attribute male perpetration of family violence against women and children to a gendered sense of entitlement, power and control'.¹³⁴ They argue this approach does not account for the role of individual psychosocial factors such as mental health, substance misuse, personality, neurobiology, emotion, stress, and dysfunctional relationships, nor does it account for violence used by women or violence in LGBTI relationships.¹³⁵

The Commission was pointed to some evidence of the applicability of some general correctional programs to the family violence context, given that many perpetrators of family violence have other criminal convictions.¹³⁶ Some cited the need for greater reliance on the evidence base for broader criminal offending to make interventions more sophisticated, noting that a purely psycho-social model is at odds with the way other types of criminal behaviours are addressed.

In most other areas of offender rehabilitation, psychological theories of offending, offender typologies, risk assessment protocols, and best-practice intervention pathways are well-established in the international literature and integrated into the Victorian criminal justice system ...

By contrast, there is almost no reference to the principles of evidence-based practice in offender assessment and rehabilitation in the international literature or practice settings for family violence ...¹³⁷

This was highlighted in a recent literature review, which contrasted the different approaches adopted for sex offender programs, which 'adopt a cognitive behavioural approach and have rigorous assessment and screening tools to determine a perpetrator's risk and motivation'.¹³⁸ The review highlighted that there is greater debate in the family violence sector on best approaches to perpetrator programs, compared to the sexual assault field.¹³⁹

The Risk Needs Responsivity approach was held up as a more sophisticated alternative to addressing family violence,¹⁴⁰ noting the success of programs using the model in reducing recidivism in sexual offenders.¹⁴¹

In broad terms, the Risk Needs Responsivity model can be described as:

- ▷ ensuring that the intensity of intervention is matched to the complexity and risk of an individual (risk)
- ▷ addressing the specific factors that contribute to offending behaviour (needs)
- ▷ matching the treatment to the individual's needs (responsivity).¹⁴²

A literature review described it in the following way:

The *risk* principle refers to the match between the intensity of treatment to the risk level of the offender, and points to the use of valid assessment tools. Based on the *need* principle, effective ... treatment programs should address offender's psychological, social and emotional functioning linked to the development and continuation of criminal behaviour (i.e. criminogenic needs such as attitudes supportive of crime, delinquent peers, substance abuse, unemployment). The *responsivity* principle postulates that effective treatment should be cognitive behavioural in nature (general responsivity) and tailored to the learning style, cognitive capabilities, motivations, personality and cultural background of the offender (specific responsivity).¹⁴³

Some witnesses drew the Commission's attention to the growing use of RNR programs to inform the development of custodial programs for family offenders:

There has been a lot of work done, for example, in Corrections Victoria recently developing intensive family violence programs and moderate family violence programs based on those principles. I think that's very, very positive because experience from overseas shows that they can be highly effective.¹⁴⁴

Other commentators endorse the Good Lives Model, initially developed for the treatment of sex offenders; a strengths-based approach to offender rehabilitation which focuses on individuals' strengths and goals rather than primarily on their deficits.¹⁴⁵ It has been suggested that, together with gender-based approaches, it might be an appropriate framework for use in the context of family violence perpetrator programs.¹⁴⁶ It has been noted that the GLM is often perceived as an enhancement to (rather than distinct from) Risk Needs Responsivity—with Risk Needs Responsivity reducing and managing risk and the GLM informing positive goal-setting.¹⁴⁷

In addition, some commentators consider that categorising family violence offenders by personality characteristics alongside the type, frequency and severity of their violence would be beneficial as it could help ensure perpetrators are matched to treatment services that target their underlying behaviour.¹⁴⁸ The Commission was told that further work needs to be done before such categories can be used in practice-based decision-making processes.¹⁴⁹

A combined approach to intervention

Despite the perception that these different viewpoints are in opposition, there has been recognition of the value of combining approaches that address gender attitudes with those that address personal factors that contribute to, or exacerbate, family violence offending.

... it is reasonable to suggest that expertise and understanding have developed sufficiently for a more flexible approach to be taken – for a gendered analysis of family violence to remain central, but supported by measures which increase the capacity of perpetrators to engage with a program, comply with orders, and to assume responsibility for their violence in some way.¹⁵⁰

Professor Andrew Day, registered psychologist and Professor of Psychology at Deakin University also highlighted the need to recognise societal factors (including cultural norms) in addressing offending:

I would say, yes, family violence is a socially and culturally constructed problem, and we need to attend to that during the intervention. So it's very important that we don't just pathologise the problem within the individual and our treatment approaches, but we contextualise it within the family, social and community environments in which they grew up and in which violence occurs.¹⁵¹

This recognition is informing the collective thinking on how to design MBCPs. It has been observed that the Risk Needs Responsivity model could, for example, be applied to the Duluth model to better target interventions.¹⁵² As noted by Hall McMaster and Associates who designed the 'Changeabout' program for Corrections Victoria 'in reality, these two major approaches have been blended to varying degrees and so, in the practice of FV [family violence] intervention, there is often no clear distinction between the models'.¹⁵³

Professor Day confirmed this for the Commission:

Debates about program design and content are often characterised in terms of the differences that exist between sociological (including feminist) and psychological explanations of family violence. However, in practice many contemporary programs draw on elements of both of these theories, reflecting a common view about the nature of the problem as generated within a context of gender relations, socialisation and learning, and an orientation to intervention that focuses on changing behaviour and ways of thinking about interpersonal relationships.¹⁵⁴

This position was also echoed by Mr Rodney Vlasis, registered psychologist and Manager of the Men's Referral Service:

We can have a feminist approach, but still apply RNR principles and we believe that programs need the capacity, not to have a different type of program, but to overlay what they are already doing ... with a capacity to be able to have an individualised tailored approach and to address some of these other issues, but that doesn't necessarily mean abandoning a gendered based approach to the work. They can act together in a really comprehensive, integrated approach.¹⁵⁵

Indeed, the family violence sector relies on risk assessment tools (for example, through the CRAF) that direct attention to a perpetrator's individual characteristics to help inform an assessment of whether a victim is at an increased risk of being killed or almost killed. This relies on consideration of individual indicators including drug or alcohol misuse, unemployment, prior threats of suicide or recent separation. Other factors such as use of or access to weapons, attempts to choke the victim, stalking, sexual assault, threats to harm or kill children and escalation of violence are other indicators for lethality.¹⁵⁶

The Commission heard that proponents of the adoption of the Risk Needs Responsivity model to address family violence acknowledge the significance of gender and its central role in furthering understanding and awareness of family violence:

The reality is, if it were not for this gender perspective of family violence, the sector would not be where it is today. We must not lose any ground that has been gained; however, we suffer from not being up to date and considering the broader array of family violence ... While there are some men for whom outdated gender attitudes are the sole cause of their violence, it is simply not the case for many.¹⁵⁷

A multi-level approach that focuses both on interventions at the program level and the broader societal level to address socio-structural factors, such as gender power relations, is more likely to result in longer term outcomes.¹⁵⁸ In addition, interventions that incorporate individual factors as well as psychosocial factors such as poverty, support, housing, social norms, and cultural participation 'tend to fare better in terms of effectiveness and efficacy than interventions that use only one of these approaches'.¹⁵⁹

A recent literature review concluded that there are relatively few programs adopting a 'purely psycho-educational or CBT-based perpetrator intervention', noting:

Indeed, many or even most applications of CBT in the family/domestic violence perpetrator intervention field occur within some sort of gender-based power and control framework that, while is not exactly a Duluth approach ... perceives family/domestic violence as a social rather than purely psychotherapeutic phenomena.¹⁶⁰

Interestingly, despite the heavily contested theoretical underpinnings of these two traditions, the efficacy of both in regards to intimate partner violence perpetrators appears to be broadly similar. According to Banks, Kini and Babcock: 'the empirical research finds that both models have an almost equal, small impact on stopping subsequent intimate partner violence'.¹⁶¹ Hall McMaster and Associates were more positive about prospects for success.

Although FV is a major social problem, there have been few rigorous outcome evaluations undertaken. What has emerged, suggests that FV programs – whether based on the Duluth or CBT model (or some combination of these) – have a small, positive impact on reoffending. There seems to be no solid evidence to date which would provide confidence that either model should be favoured over the other. However, the research evidence does provide optimism that FV programs can work where men complete the full intervention.¹⁶²

Despite this, MBCPs have been justified on the basis that some intervention is better than none:

The rationale for intervening with known perpetrators is based on the understanding that repeat offending is relatively common and that interventions that are even modestly successful in preventing further violence will, therefore, make a significant contribution.

There is also evidence that alternatives, such as imprisonment, do little to deter criminal behaviour; that longer sentences are not associated with reduced offending; and, more generally, that punishment-based responses are an ineffective way of changing behaviour (unless some very specific conditions are in place).

It follows that policies and programs that focus on addressing the causes of family violence in known perpetrators and equipping them with the motivation, problem awareness, and skills that are needed for them to act in ways that do not involve violence will have a much greater chance of success.¹⁶³

Men's behaviour change programs

Developing responses to perpetrators of family violence beyond criminal sanctions is a recent and underdeveloped policy area. For the most part, it has been limited to men's behaviour change programs, which began in the 1980s based on international models and have developed in an ad hoc way since that time.¹⁶⁴ As noted above, most MBCPs in Victoria draw heavily on the Duluth model and are typically 12-week group-based programs,¹⁶⁵ which focus on the perpetrator recognising their violence and developing strategies to stop.

MBCPs are sometimes confused with anger management courses. It is broadly accepted that anger is not generally the primary cause of men's family violence offending and is regarded as 'ineffective and unsuitable' as a sole intervention.¹⁶⁶ Ms De Cicco made the distinction between the two:

Unlike anger management programs MBCPs address the underlying causes of family violence by looking at control and power more broadly than just their manifestation in anger-related behaviours.¹⁶⁷

MBCPs are also different from couples therapy, family therapy or court-ordered relationship counselling provided through family and relationship services.¹⁶⁸

While the overarching goal of MBCPs is to effect long-term behaviour change, No To Violence highlights that it also has broader benefits—including risk management—by ensuring the family remains in the view of service providers. These benefits are described as follows:

Contributions to ongoing risk assessment and risk management, monitoring, partner support and advocacy, consideration of children's needs, and strengthening the capacity of perpetrator interventions and accountability processes initiated by other systems agencies all make investments in these programs worthwhile.¹⁶⁹

Minimum standards for men's behavioural change programs

No To Violence is the Victorian peak body working with men to end their violence and abuse against family members in Victoria. No To Violence has set minimum standards, as well as good practice guidelines for use by providers of MBCPs.¹⁷⁰ No To Violence also published a manual in 2005 which is intended to provide guidance and support for providers of MBCPs.¹⁷¹ While MBCPs are not subject to formal accreditation, providers receiving state government funding must be members of No To Violence and comply with the minimum standards.¹⁷² The Commission understands that most, but not all, MBCPs receive funding from DHHS.¹⁷³

The minimum standards cover a range of matters including operational requirements (include staff roles and qualifications), eligibility criteria, information sharing, program duration and processes for engaging with families and other service providers.

The minimum standards state that MBCPs need to be co-facilitated by at least two professionals and No To Violence requires that there be one male and one female co-facilitator, unless there are exceptional circumstances.¹⁷⁴

The minimum standards set out core messages that participating men must understand and accept and also a set of skills that men must develop if they are to change their behaviour.¹⁷⁵ The skills that men should acquire throughout an MBCP include the ability to recognise the effects of their behaviour, be open to feedback from women and children, respond to strong emotions appropriately and prioritise positive personal relationships that support their choice to not engage in violent or controlling behaviour.

There is no requirement in the No To Violence minimum standards for the provision of individual sessions in addition to group-work. However, the manual recognises that individual sessions can complement group work: 'individual counselling needs to be available for men, and ... they should be encouraged to use it when they need to'.¹⁷⁶

Pathways into men's behaviour change programs

Referral for voluntary participation can be through self-referral by men, their family members or friends independently approaching a provider directly, or through the Men's Referral Service (MRS) described below.

One man who gave evidence to the Commission approached a program at the encouragement of his partner. He noted:

Before I started [the MBCP], I had decided I was going to do something about myself and my behaviour. I didn't want to lose everything I had. I went in there the first day with the intention of being honest and open with what my experiences were and what I saw myself as being.¹⁷⁷

Third parties, such as police, Child Protection or health services can also refer offenders to programs. For example, Victoria Police is required to complete a Family Violence Risk Assessment and Management Report (commonly referred to as an 'L17 referral') in response to all reports of family violence or inter-familial sexual offences.¹⁷⁸ In 2013–14, Victoria Police made 43,578 formal L17 referrals involving perpetrators.¹⁷⁹ In addition, it made 9031 informal referrals, where perpetrators were provided with information and recommended to make contact with a program themselves.¹⁸⁰

As a result of the increasing difficulties faced by agencies that fund MBCPs face in dealing with the volume of police referrals, the then Department of Human Services provided funding for the Enhanced Services Intake (ESI) initiative. Built on the existing intake services for MBCPs, the initiative was designed to increase the number of men engaging with MBCPs. The Men's Referral Service (After Hours) provides an ESI response to weekend L17 referrals. The Commission heard that this service responds to over 13,000 police reports annually from across Victoria and that telephone referral workers 'cold call' men assessed by police to be perpetrators of family violence.¹⁸¹ Under the auspices of No To Violence, MRS (After Hours) also offers information and advice to men who are excluded from the family home on the basis that this may engage men in considering changing their behaviour and contribute to increased rates of court attendance.¹⁸²

Perpetrators may also be mandated to participate in MBCPs as part of a court order. This can happen in the following ways:

- ▷ In four magistrates' courts in Victoria, magistrates may compel attendance at an MBCP through what is known as a counselling order, when making a civil family violence intervention order.¹⁸³
- ▷ Other magistrates' courts without this power also make referrals to an MBCP—some informally, by encouraging men to attend and others as a condition of a family violence intervention order.¹⁸⁴
- ▷ In criminal matters, perpetrators may be required to attend as a condition of a community correction order when they have been found guilty of a criminal offence relating to a family violence incident.¹⁸⁵
- ▷ Participation in an MBCP may be a condition of parole.¹⁸⁶

The Family Violence Court Intervention Program operates alongside the Family Violence Court Division in the Magistrates' Courts sitting at Ballarat and Heidelberg, and was established to support the counselling orders scheme and to ensure that men are directed to undertake an MBCP, as well as to provide support programs and services for affected family members.¹⁸⁷ At the Magistrates' Courts sitting at Frankston and Moorabbin, men can be directed to attend an eligibility assessment interview through the Family Violence Counselling Orders Program. If the respondent is assessed as eligible, these courts will make a counselling order. The FVCOP was established to support the expansion of mandated MBCPs.¹⁸⁸ Respondent support workers are assigned to these courts.¹⁸⁹ As outlined in Table 18.1, their role includes overseeing mandated MBCPs.¹⁹⁰

As noted above, Corrections Victoria also intends to offer MBCPs for both sentenced and remanded prisoners in custody.¹⁹¹

An overview of the ways in which a person can be mandated to participate in programs, and the related sanctions and oversight in place to enforce that participation, is provided in Table 18.1.

Table 18.1 Court powers to order attendance at men’s behaviour change programs

| Mechanism | Availability | Sanction | Oversight |
|------------------------------------|--|--|---|
| Family violence intervention order | <p>The Magistrates’ Court of Victoria (MCV) does not have an express universal power to compel a respondent in an intervention order proceeding to attend an MBCP.</p> <p>Under the <i>Family Violence Protection Act 2008</i> (Vic) (FVPA), the MCV can make a Family Violence Intervention Order (FVIO). The court can include in an FVIO any condition that appears necessary or desirable in the circumstances.¹⁹²</p> <p>On this basis, the MCV does make FVIO orders that include a condition that a perpetrator contact, or even attend, an MBCP.</p> | <p>If a respondent contravenes an FVIO, they are liable to Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.¹⁹³</p> <p>There are also penalties for persistent contraventions of an FVIO, for which a respondent is liable to Level 6 imprisonment (5 years maximum) or a level 6 fine (600 penalty units maximum) or both.¹⁹⁴</p> | <p>Subject to the terms of the particular FVIO, it is likely that judicial oversight of compliance with any such condition will only arise if:</p> <ul style="list-style-type: none"> ▷ there is enforcement action for contravention of the order; and/or ▷ a relevant party (including the respondent) applies to vary or revoke the FVIO.¹⁹⁵ |
| Counselling order | <p>Under Part 5 of the FVPA, the Family Violence Court Division of the MCV and the MCV sitting at Frankston and Moorabbin have the power to make counselling orders, requiring respondents who lived in certain catchment areas at the time the family violence was perpetrated¹⁹⁶ to attend counselling to increase their accountability for the use of violence and encourage change to their behaviour.¹⁹⁷ In these circumstances, the MCV can compel a respondent to attend an MBCP.</p> <p>In general, before making a counselling order, the court must order:</p> <ul style="list-style-type: none"> (i) a report from a person approved by the Secretary of the Department of Justice and Regulation as to whether the respondent is eligible to attend counselling (Report Writer); and (ii) the respondent to attend an interview with the Report Writer.¹⁹⁸ <p>The report must assess the respondent as eligible to attend counselling unless the respondent does not have the ability or capacity to participate in counselling, for example, because of any alcohol or drug problems, disabilities or language skills.¹⁹⁹</p> <p>Once such a report is received, the court must convene a hearing to determine whether to make a Counselling Order.</p> | <p>If the respondent fails to attend an interview with the Report Writer, they are guilty of an offence and liable to a penalty (not exceeding 10 penalty units).²⁰⁰</p> <p>If the court makes a Counselling Order and the respondent fails to attend counselling, again they are guilty of an offence and liable to a penalty (not exceeding 10 penalty units).²⁰¹ However, the respondent is only liable to be prosecuted once for the offence of failing to attend the counselling (regardless of how many sessions they fail to attend).²⁰²</p> | <p>Where a respondent fails to attend an interview with the Report Writer or fails to attend counselling, the Report Writer or provider of the counselling may give the court a certificate that sets out the details of the respondent’s failure to attend.²⁰³ This may result in a police investigation.</p> <p>The FVCIP and the FVCOP both have mechanisms in place to monitor and follow up with men who fail to attend a required step of an MBCP. If the respondent does not provide a reasonable excuse for non-attendance, the respondent support worker will complete a certificate of non-attendance and this will be reported to the police. The court will not make any further attempts to follow up with or contact the respondent.²⁰⁴</p> <p>Respondent support workers are also notified when the respondent has completed the program.²⁰⁵</p> <p>Again, subject to the terms of the particular Counselling Order, it is likely that judicial oversight of compliance with any such order will arise if:</p> <ul style="list-style-type: none"> ▷ there is enforcement action for failure to comply with the order; and/or ▷ a relevant party (including the respondent) applies to vary or revoke the order.²⁰⁶ |

| Mechanism | Availability | Sanction | Oversight |
|----------------------------|---|--|--|
| Community Correction Order | <p>Under Part 3A of the <i>Sentencing Act 1991</i> (Vic), a court may make a community correction order (CCO) if an offender has been convicted of an offence punishable by more than 5 penalty units, has received a pre-sentence report (if required) and the offender consents to the order.²⁰⁷</p> <p>The MCV may make a CCO for a period of up to 2 years (for 1 offence), 4 years (for 2 offences) or 5 years (for 3 or more offences). The County and Supreme Courts also have powers to make a CCO for the maximum term of imprisonment for the offence or two years, whichever is greater.²⁰⁸</p> <p>A court may also determine that one or more conditions must be met within an intensive compliance period.²⁰⁹</p> <p>A CCO may include a treatment and rehabilitation condition requiring the offender to undergo the specified treatment and rehabilitation, which includes a program that addresses factors related to the offending behaviour.²¹⁰ In this way, the court can compel the offender to attend an MBCP.</p> | <p>If an offender contravenes a CCO without a reasonable excuse, they are liable to 3 months imprisonment.²¹¹</p> | <p>A CCO condition might expressly provide for judicial monitoring, requiring the court to review the compliance of the offender during the course of the order.²¹² Such a condition might require the offender to re-appear before the court at specified times as well as provide certain information during the course of the review.²¹³ Where the offender re-appears for such review, the court may vary or cancel the condition, as well as give further directions for future reviews.²¹⁴</p> <p>If the offender fails to re-appear for such review, the court may issue a warrant to arrest the offender.²¹⁵</p> <p>A CCO condition might also expressly provide for the offender to be supervised, monitored and managed by the Secretary to the Department of Justice and Regulation, to ensure the offender complies with the CCO.²¹⁶</p> <p>As with an FVIO or a Counselling order, a relevant person (including the offender)²¹⁷ may also apply to vary or otherwise deal with a CCO, with the court making such a decision on the basis of its assessment of the extent to which the offender has complied with the CCO.²¹⁸</p> |

Existing men's behaviour change programs

As at July 2015, there were 35 MBCPs in Victoria, provided by approximately 28 organisations.²¹⁹ Program providers are community based organisations which may be local health services, family services, counselling and other agencies.²²⁰

Perpetrators are required to participate in an interview conducted by an appropriately qualified men's family violence worker to assess their eligibility for an MBCP.²²¹ The standards state that 'any potential barriers to the man's participation are ... assessed and managed appropriately'.²²² In the context of court-mandated MBCPs, a respondent is generally considered to be eligible unless they do not have the ability to participate due to factors including: language skills, disabilities, severe psychiatric or psychological conditions or alcohol and drug problems.²²³

Accommodating perpetrators with other complex issues in mainstream MBCPs may lead to some men not identifying with their fellow participants. As one partner of a perpetrator told the Commission:

My partner participated in an MBCP but he was in there with men who were alcoholic, homeless – he compared himself to them and saw himself as not needing the program as much as they did.²²⁴

No To Violence told the Commission that men with mental health concerns or drug and alcohol problems will not be automatically screened out, as these matters can be addressed in parallel, unless it precludes participation in the program.²²⁵ However, the Melbourne Research Alliance to end violence against women and their children told the Commission that it understood that 'several MBC [programs] in Victoria initially refer men to a substance use program before they are eligible for working in a group with other men on their DFV [domestic and family violence issues]', highlighting that this approach has not been evaluated.²²⁶ This approach 'arises from a pragmatic stance that men need to be beyond chaotic substance use before they can actively engage with their other problematic issues'.²²⁷

No To Violence estimates that 10 to 15 per cent of men are screened out in the eligibility assessment process.²²⁸ Under the practice guidelines, MBCP staff are required to identify and explore other options for ineligible men, such as counselling. Staff should also request permission to contact the man's partner and children to check on their safety.²²⁹

Once assessed as eligible, in order to be assessed as suitable to participate in an MBCP, the perpetrator must agree to:

- ▷ staff having regular contact with any women and children who might be affected by their violent and controlling behaviour
- ▷ abide by the law, including all the requirements of any legal orders in force
- ▷ the policies on limited confidentiality and responding to criminal acts or breaches of court orders
- ▷ give up their access to guns and other weapons
- ▷ an ongoing evaluation and monitoring of their progress in changing their violent behaviour and attitudes.²³⁰

The average group size is 12 men, although some providers take larger numbers due to demand.²³¹ Some providers run 'mixed' groups with men who are voluntary participants in the same program as men who are mandated to attend (for example, as a condition of a community correction order),²³² on the basis that it can often have a positive impact on those attending involuntarily.²³³ However, one man who had attended a program gave the Commission a contrary view:

If men are there because they are forced to be there, I'm not sure how they can confront the issues and start dealing with them and making changes. I was motivated compared with most men and I noted a big difference between my experience and those of men who were there involuntarily. A lot of them seemed to view themselves as victims. I think one key thing was that in order to change they needed to see themselves for who they truly are—the perpetrator, not the victim.²³⁴

Some providers offer fixed programs (with the same cohort of men participating from beginning to end), while others have a rolling or continuous entry where men can enter at any point and leave at different times to help reduce the waiting time for a place.²³⁵ The Commission was advised that rolling programs allowed for greater engagement between participants, with more experienced participants challenging newcomers' beliefs and prejudices, creating positive peer-group pressure.²³⁶

Online program delivery

The delivery of online resources for perpetrators is a recent and developing area both in Australia and internationally. In what is reported to be a world first,²³⁷ there have been three trials held in Victoria by Violence Free Families in 2014 and 2015.²³⁸ These trials have a similar curriculum to that of face-to-face programs and are guided by two trained facilitators with 12 participants. They run for two hours, every week, over 14 weeks.²³⁹

Those who support online delivery methods told the Commission that using technology to run programs can help overcome barriers some men encounter in accessing face-to-face MBCPs due to a lack of programs, conflicting work commitments or privacy concerns (particularly in rural and regional areas).²⁴⁰

Violence Free Families referred in its submission to an evaluation conducted by the University of Melbourne which found that there was no higher risk to victim safety when a program was delivered online, as opposed to face-to-face, and that partners expressed satisfaction with the course and felt that participants had changed.²⁴¹

No To Violence raised concerns about online delivery replacing face-to-face programs, warning that additional risk assessment and safety planning would be required.²⁴² No To Violence also noted that online delivery did not meet its minimum standards or similar standards set by overseas bodies.²⁴³ However, No To Violence supports online methods of engagement supplementing face-to-face modes of delivery, for example as an initial engagement and holding environment while men wait for a face-to-face intervention, or to provide a second weekly 'check-in' session.²⁴⁴

Men's behaviour change programs in the correctional system

While there is a range of programs available for violent offenders in prisons and on community-based orders, it is only relatively recently that family violence-specific programs have been designed in Victoria. The Corrections Victoria Strategic Plan 2015–2018 lists addressing family violence through the implementation of family violence programs for prisoners and offenders and early identification of offenders at risk of committing family violence as part of its strategic priority to reduce re-offending.²⁴⁵

Custodial programs

For prisoners, Corrections Victoria uses a pathways approach with differentiated responses based on offending and risk profiles. An assessment of the offender is 'undertaken to identify the risks of violent offending and subsequent treatment needs'.²⁴⁶ Those who are identified as having committed a family violence-related offence and are eligible for an offender behaviour program, undertake the Spousal Assault Risk Assessment psychometric tool, which is administered by a Corrections Victoria clinician (also discussed in Chapter 6).²⁴⁷

Corrections Victoria has announced that it is introducing a number of initiatives across the correctional system in 2015–16 that are aimed at addressing family violence. In addition to improving the way perpetrators of family violence are identified, Corrections Victoria is prioritising the delivery of targeted family violence programs and services to perpetrators. This includes by implementing a new family violence service delivery model and treatment pathway for prisoners and offenders; expanding the cultural wraparound services to better support Aboriginal perpetrators of family violence who engage in mainstream programs; implementing an Aboriginal-specific family violence program; and reviewing existing parenting programs in male prisons to include a family violence component.²⁴⁸

Mr Andrew Reaper, Deputy Commissioner, Offender Management in Corrections Victoria described the proposed rollout of perpetrator interventions in the custodial environment and how different models were used to target offenders of varying risk levels. Mr Reaper noted that MBCPs would be offered to low-risk offenders, noting that the psycho-educational model was best suited to this cohort.²⁴⁹ Moderate and high-risk offenders would be offered the Changeabout program, which was designed on Risk Needs Responsivity principles described above.²⁵⁰

Changeabout is a family violence offence-specific program for offenders where an assessment demonstrates that clinical intervention is required. It addresses criminogenic needs (that is, risk factors linked to recidivism). It deals with family violence in a broader context (beyond just intimate partner violence) and runs for 88 hours. Mr Reaper gave evidence that this is an appropriate 'dosage' for offence-specific intervention.²⁵¹

Developed in New Zealand, the program contains six modules: orientation, beliefs and attitudes that support abuse, managing emotions, relationship skills, alcohol, drugs and family violence, and impact on others.²⁵² It uses a 'cognitive behavioural therapy and social learning approach which accommodates learning styles and capabilities of participants (the 'responsivity' principle)'.²⁵³

The Family Violence program, an offence-related program which also targets a range of criminogenic factors associated with family violence, is available for moderate and high-risk prisoners (and community based offenders). It targets prisoners and offenders who consent to participate and runs for 57.5 hours.²⁵⁴

Offenders who also display treatment needs in relation to generally violent behaviour can be recommended for a Violence Intervention Program.²⁵⁵ This can be recommended as an alternative to, or in conjunction with, family violence specific treatment.²⁵⁶ There are also a number of sexual offence treatment programs.²⁵⁷

Community corrections staff are required to undertake a number of training programs, including training on the CRAF. This training is designed to assist staff to identify risk factors associated with family violence, as well as respond appropriately.²⁵⁸ In addition to CRAF training, in 2015 Corrections Victoria engaged Kildonan UnitingCare to deliver statewide training to community corrections staff on managing perpetrators of family violence on community-based orders.²⁵⁹ This training is mandatory and is intended to provide case managers and supervisors with strategies and tools to engage effectively with offenders who are perpetrators of family violence.²⁶⁰

Programs for men on community-based orders

Corrections Victoria utilises community-based MBCPs for male family violence offenders on community correction orders where the order contains a condition that permits or requires a program to be provided. For general offences, treatment and rehabilitation conditions are generally not recommended where risk of re-offending is assessed as low. However, family violence offences are treated differently and Corrections Victoria will recommend a 'treatment and rehabilitation' condition irrespective of the offender's general risk of reoffending.²⁶¹

Aboriginal-specific family violence correctional programs

The Dardi Munwurro Strong Spirit program is available to people on community correction orders and those serving custodial sentences. It is a culturally specific MBCP with a focus on family violence, cultural identity, leadership and the role of an Aboriginal man in the family setting. The six day program runs over three weeks.²⁶² The Commission understands that Corrections Victoria does not provide any other culturally specific programs that address perpetration of family violence.²⁶³

Mr Andrew Reaper noted that:

It's rare that we have ever run a program specific to Aboriginal prisoners, just in terms of the number of people who have been assessed and ready to run that program over time. As a result, over a number of years we have developed our cultural guidelines and cultural wraparound model where we have been able to train and support our clinicians to offer culturally appropriate and specific support to the Aboriginal prisoners through those more clinical based programs.²⁶⁴

Data provided to the Commission on participation in non-family violence-specific violent offender programs in Victorian prisons between April 2011 and June 2015 indicates that in most programs, one or two Indigenous prisoners participate. Some program groups have no Indigenous participants. In the examined period, 57 groups ran in the moderate and high Violence Intervention Program strand described below. Of the 486 participants, 52 were Indigenous.²⁶⁵

Specialist forensic drug and alcohol and mental health programs

Forensicare's prison services include reception screening by senior psychiatric nurses for all male prisoners entering the Victorian prison service and the provision of visiting psychiatric services throughout the public prison system.²⁶⁶ There are a variety of clinical programs for those on community correction orders, including the Problem Behaviour Program, which assesses and treats offenders whose behaviours pose a high risk to the community.²⁶⁷

While not family violence-specific, this program provides individual, specialist, intensive psychological and psychiatric assessment and treatment. It is targeted at offenders who have been sentenced for crimes such as adult sexual assault and rape, serious physical violence, stalking and threats to kill, all of which may occur in a family violence context.²⁶⁸ Thirty-six per cent of 100 randomly sampled PBP participants in 2014–15 had used family violence and 61 per cent had engaged in intimate partner violence or stalking.²⁶⁹

In addition, Caraniche provides forensic drug, alcohol, violence prevention and rehabilitation services within adult prisons, juvenile justice and the community corrections system.²⁷⁰ It reported that the majority of clients who reported being a perpetrator of family violence were also involved in other forms of violence and 'therefore in many cases family violence needs to be addressed alongside other forms rather than in isolation'.²⁷¹

Other types of interventions

The Men's Case Management initiative

The Department of Health and Human Services, through the National Partnership Agreement on Homelessness,²⁷² has funded the Men's Case Management initiative to respond to the risk posed by men with complex and high-level needs who have used violence.²⁷³ This initiative recognises that men who are excluded from the family home following the use of violence may need assistance to find suitable and stable accommodation.²⁷⁴

This initiative has been somewhat controversial, with some stakeholders raising concerns about allocating funding to assist violent men.²⁷⁵ However, proponents of Men's Case Management services note that the safety of women and children is the highest consideration for this initiative,²⁷⁶ as MCM seeks to assist men to take responsibility for their use of violence and mitigate the risk of re-offending.²⁷⁷ It is also a condition of men receiving case management services that women and children are contacted and offered support to contribute to ongoing risk assessment and management, although the extent to which this occurs varies in practice.²⁷⁸ The importance of providing this type of support to men was echoed in submissions received by the Commission, which called for case management for men in the homelessness system as a means of reducing the pressure on a woman to reunite with the perpetrator of family violence because he 'has nowhere to go'.²⁷⁹ The provision of accommodation for perpetrators is discussed further in Chapter 9.

MCM is provided through nine agencies, including through five Aboriginal services.²⁸⁰ The Department of Health and Human Services provided \$0.5m in funding to the mainstream agencies and \$0.6m in funding to the Aboriginal agencies for 2014–15.²⁸¹

One of the aims of MCM is the identification of individual needs and the facilitation of appropriate referrals, including to MBCPs and for mental health and drug and alcohol services.²⁸² Mainstream agencies are able to provide some of these complementary services.²⁸³ The program also provides assistance at court.²⁸⁴ MCM services provided by Aboriginal agencies utilise a 'case coordinator' who takes referrals from, and makes referrals to, relevant services.²⁸⁵

An evaluation of the MCM initiative in 2011 noted that the success of the initiative was difficult to measure. Challenges included the lack of development of a culturally appropriate response for men from culturally and linguistically diverse backgrounds, difficulties engaging with men with complex needs, and varying approaches by agencies to implementing the women's contact role.²⁸⁶ Among other things, it was recommended that both formal and informal pathways into MCM services be developed and strengthened, and that women's contact work be implemented with greater consistency.²⁸⁷

Counselling and referral services

There are two main telephone counselling, information and advice services for men who are using violence or abuse in their relationships: MensLine Australia and Men's Referral Service (MRS). Both services offer advice to the men themselves, and also for anyone who is concerned about a man who is using violence.

MensLine was launched in 2001 as an initiative of the Commonwealth Department of Social Services.²⁸⁸ Among other things, it provides telephone and online counselling, advice and referrals to men throughout Australia in relation to the use of family violence.²⁸⁹ It also provides support for men in rural and regional areas, including through its video counselling service.²⁹⁰ In 2015, the Commonwealth Government announced that it would contribute \$2 million in additional funding to MensLine for tools and resources to support perpetrators to not re-offend, as part of its \$100 million package of measures to provide a safety net for women and children at high risk of experiencing violence.²⁹¹

MRS is an Australia-wide service that focuses specifically on men who use family violence. The service is operated by No To Violence and is supported by the Victorian and New South Wales Governments.²⁹² It engages with over 5000 perpetrators a year in Victoria and New South Wales.²⁹³ MRS also provides support to family and friends who are experiencing family violence, as well as to professionals who wish to support a male, female or client using or experiencing family violence, and women seeking information about male family violence.²⁹⁴

Court Integrated Services Program

The Court Integrated Services Program is a case-management program that runs for up to four months and currently operates in three magistrates' courts across Victoria.²⁹⁵ Services are also provided to Koori clients through the Koori Liaison Officer Program, which operates as part of CISP.²⁹⁶ In 2014, the Victorian Government committed \$9.55 million over four years to expand CISP to additional court locations, with an emphasis on family violence perpetrators.²⁹⁷

The program provides access to services and support to applicants, respondents and accused, where an accused is on summons, bail or remand pending a bail hearing,²⁹⁸ although case management is currently only provided to those charged with criminal offences, including breaches of family violence intervention orders.²⁹⁹ CISP is a distinct program that runs separately to the Family Violence Court Division.³⁰⁰

CISP aims to use therapeutic intervention to provide short-term assistance with health and social needs prior to sentencing, as well as to mitigate risk and reduce re-offending.³⁰¹ The program focuses on the issues underpinning the offending, and promotes behaviour change and compliance with orders.³⁰²

An accused can be referred to CISP by the police, legal representatives, magistrates, court staff, support services, family or friends. An accused can also self-refer to CISP.³⁰³ A magistrate determines eligibility for CISP based on an assessment conducted by CISP staff that evaluates the risk and causes of offending.³⁰⁴ To be eligible for the program, there must be a likelihood of re-offending and the accused must have at least one of the following:

- ▷ a physical or mental disability or illness
- ▷ drug and alcohol dependency and misuse issues
- ▷ inadequate social, family and economic support that contributes to the frequency or severity of their offending.³⁰⁵

The services provided by CISP can include assessing and referring an accused for treatment (including to MBCPs and psychologists); case management; brokering treatment for access to drug and alcohol, mental health, housing and acquired brain injury-related needs; referral to outreach services; and providing progress reports to the court.³⁰⁶ A key focus of CISP is holding perpetrators to account, as they are required to attend weekly meetings with court case managers and their attendance at appointments with treatment providers is monitored. They are also required to appear before a magistrate on a regular basis.³⁰⁷ CISP case managers can also liaise with Victoria Police prosecutors, informants and statutory agencies such as Child Protection to manage risks.³⁰⁸

While CISP is not directed specifically at family violence, it is increasingly being used by people presenting with family violence issues.³⁰⁹ In evidence, we heard from Mr Glenn Rutter, Manager, Court Support and Diversion Services, and Ms Joanne de Lacy, Team Leader, CISP, both from the Magistrates' Court of Victoria. They told us that as at 30 April 2015 19 per cent of all CISP assessments involved family violence, including as a result of breach of family violence intervention order offences.³¹⁰

In evidence, Mr Rutter and Ms de Lacy described how CISP reduced re-offending and stated that, according to an independent evaluation conducted in 2009, 50.5 per cent of CISP participants incurred no further criminal charges.³¹¹ They attributed the reduction in offending to the focus on the underpinning issues and the role that CISP plays in linking the participants to a range of different support services.³¹² As a result, they acknowledged that CISP may not be effective for perpetrators of family violence who do not have these underlying issues but rather use violence because of their attitudes towards women.³¹³

Perpetrator programs for fathers

The Commission heard how fathering can be a powerful internal motivator for perpetrators.³¹⁴ Dr Katreena Scott, Associate Professor and Canada Research Chair, Department of Applied Psychology and Human Development, University of Toronto, described how this motivation can be tapped in perpetrator programs:

... I find that fathering is a very strong motivator overall, so it tends to be easier for a system to engage men in the project of becoming better fathers than it might be to becoming better partners.³¹⁵

While MBCPs seek to challenge men to think about the impact of their behaviour on their children,³¹⁶ research led by the University of Melbourne and Professor Humphreys states that MBCPs only minimally address the issues of fathering for men who use violence,³¹⁷ and that program providers should ensure that they are up-to-date with new developments regarding the use of fathering modules during or following MBCPs.³¹⁸

Dr Scott told the Commission that it is inappropriate to focus on a mother's capacity to protect rather than the need for a father to change, particularly given that family courts often make orders for children to have ongoing contact with fathers, and that, as a result, fathers need to be engaged in order to reduce the harm caused to their children.³¹⁹

In its submission to the Commission, Anglicare Victoria also acknowledged the importance of men understanding that children are deeply affected by their violence and that this can be a real motivator for behavioural change.³²⁰ This was also echoed by Mr Vlasis, who described this understanding as 'unlocking a motivation to change' in some men.³²¹ Using fathering as an incentive for men to change their behaviour was also referred to during our expert roundtables, where we heard:

... in terms of a man's internal motivators towards change ... playing the parent is a huge part of their self identity and they want to be good parents most of the time.³²²

It was also explained that the focus on fathering must be balanced with the shame that fathers feel about the damage they have caused their children and that programs should address how men deal with the consequences of this violence for their children.³²³

In Chapter 10, the Commission explores various programs directed at fathers that are designed to develop parenting skills and educate fathers on the ways in which family violence can affect children. While most fatherhood programs have a prevention focus, some are available to men who have used violence, such as the Caring Dads Program and the Dads Putting Kids First (DPKF) program. These programs are described below.

Anglicare Victoria developed the DPKF program for men who have completed MBCPs.³²⁴ The pilot program ran for 10 weeks with two-hour weekly sessions covering parent-child relationships, co-parenting relationships, cumulative harm, the neurobiology of trauma, having conversations about family violence with children, the development of resilience in children, and how men identify as fathers. An evaluation of the 12 month pilot indicated that it increased fathers' understanding of the harm inflicted on children by, and the likely impact of, their behaviour.³²⁵ Following completion, fathers reported feeling better equipped with practical parenting strategies.³²⁶

Unlike the DPKF program, the Caring Dads program is a stand-alone program and does not require perpetrators to have first completed an intimate partner violence program.³²⁷ It is available to fathers who have physically abused, emotionally abused or neglected their children, or exposed their children to domestic violence, and those who are considered to pose a high-risk for these behaviours.³²⁸ The program runs for 17 weeks and includes 15 group sessions, two individual sessions and an intake interview.³²⁹ Amongst other things, it focuses on parenting education, cognitive behavioural therapy, planning for the future and outreach to mothers.³³⁰

In addition, Family Violence Court Intervention Program service providers run groups about parenting without violence. An evaluation of this and other programs reports that some men who completed the program noted the positive effects that it had on their parenting, and that this was an effective motivator for men.³³¹ Experts have noted that a specialised approach that addresses the complexities of the effects of violence in the family structure is required for addressing parenting as part of programs for men who use violence.³³²

Programs for women who have used violence

It is important to note that women who use violence in their family relationships often do so in self-defence or retaliation against violence that is perpetrated against them, as a result of abuse they have experienced in the past and/or as a consequence of a range of complex criminogenic factors.

Research suggests that there is a higher correlation between violent behaviour and certain risk factors for women than men.³³³ The risk factors include substance abuse,³³⁴ mental health issues, post-traumatic stress disorder, personality disorders and a history of physical, sexual or psychological abuse.³³⁵

I did find that with the drugs, I ended up being a bit violent with the guy I'm with now ... I never thought I would see the day when I would be like that. Drugs didn't help ... I found myself doing what had been done to me.³³⁶

In Chapter 34, the Commission discusses the impact of family violence victimisation on subsequent offending behaviour by some women.

The Commission heard from a number of people that there is a need for particular programs and services to assist women who have used violence.³³⁷ Some submissions noted that all current behaviour change programs are targeted towards men.³³⁸ No To Violence submitted that it would be inappropriate and ineffective to model programs for women on MBCPs, and that programs instead need to draw on evidence about the links between violence by women and past victimisation.³³⁹ The One in Three Campaign submitted that perpetrator programs should be available to men and women, and where appropriate in mixed groups.³⁴⁰ This campaign rejects the current model of behaviour change group work in Australia, considering its basis to be 'about blaming and shaming men, more than giving them the insights and support to help them stop their abusive behaviour'.³⁴¹

Data from the Personal Safety Survey conducted by the Australian Bureau of Statistics indicates that one in 19 adult men have experienced violence from a current or former partner since the age of 15.³⁴² However, a paper published by the Australian Domestic & Family Violence Clearing House notes:

... [b]oth men and women perpetrate a range of different forms of aggression in relationships but may have different motivations, including self-defence. Both men and women can experience violence by an intimate partner but their experience of this is likely to be different in terms of the forms of violence experienced, its severity and impact. The severity of physical injury and levels of coercion from all forms of violence in relationships appear to be greater for women than for men.³⁴³

Some commentators consider the complex issue of how and why women use violence needs to be considered, and it has been suggested that different interventions are required if only a small minority of women are motivated to use violence for similar reasons to men.³⁴⁴ It has been contended that it is particularly necessary to consider how women come to use violence in intimate partner relationships and untangle the situations where she is responding to her partner's violence, that is, where he is the primary aggressor.³⁴⁵

Further discussion of the identification of primary aggressors can be found in Chapter 14.

Internationally, a range of interventions for women who use violence have been developed. No To Violence explained that:

Proactive arrest policies are resulting in an increasing number of women arrested for family violence offences. Research in the US, New Zealand and Australia demonstrate that the majority of these women are victims of their male (ex) partner's primary aggression or use of coercive controlling tactics.³⁴⁶

In this context, attempting to establish behaviour change programs for women aggressors modelled on programs for men are inappropriate and counter-productive. In recognition of this, to work with female offenders convicted of family violence crimes, a series of intervention programs for women using force have been developed in the US. These draw upon research evidence demonstrating that most participants are likely to be victims of substantial family violence and coercive control from their male intimate partner, and are designed to explore their use of force within the context of this victimisation.³⁴⁷

Based on the US experience, four principles emerge:

- ▷ Traditional perpetrator programs designed to counter male violence are ill-suited to respond to women who use violence, the majority of whom do not do so for the purpose of intimidation or control.³⁴⁸
- ▷ Intervention programs designed for women who have used violence should address a broad range of circumstances including persistent victimisation, the imperative of self-defence and the motivation of retaliation.³⁴⁹
- ▷ Programs should also consider the consequences that may result from refraining from the use of violence such as injury, shame of feeling dominated and the reactions of other people.³⁵⁰
- ▷ Intervention programs should avoid a one-size-fits-all approach, acknowledge intra-group differences and be tailored to the unique and complex circumstances that exist in each case.³⁵¹

Some examples of programs developed in the US for women who have used violence include:

- ▷ the Women Who Resort to Violence Program, which is designed for women who have used violence in retaliation or self-defence. The program uses cognitive behavioural techniques and aims to empower women, teach skills, circulate knowledge and change attitudes through lectures, discussions and homework.³⁵² The program educates participants about issues relating to domestic violence such as power and control, risk factors, children's issues, substance abuse, healthy and unhealthy relationships and differences between male and female perpetrators. The program also teaches about safety planning and anger management techniques.³⁵³
- ▷ the Beyond Violence Intervention, which is a 20-session program for women prisoners which aims to prevent them committing further violence. The program is based on the premise that early and ongoing experiences of trauma affect subsequent decision-making processes and may lead to mental health conditions, anger issues and drug and alcohol dependency.³⁵⁴ The curriculum focuses on these issues, as well as gender 'socialisation' and victimisation and utilises a range of strategies including cognitive behavioural restructuring, mindfulness, role-playing, trauma trigger detection and psycho-education.³⁵⁵

In November 2015, the Turnbull Government announced that it will provide \$1.4m for a project grant for the 'Aboriginal and non-Aboriginal women perpetrators of violence: a trial of prison-based intervention (Beyond Violence)', which is being administered by the University of New South Wales.³⁵⁶ The study will implement and evaluate the Beyond Violence program among women prisoners with histories of violence, and targets mental health, substance use and violence.³⁵⁷ This study is a collaboration between Australian and United States researchers, including those involved in the Beyond Violence Intervention in the United States. It is being run on the premise that there is a gap in programs designed specifically for women and that there are important distinctions between female and male violent offenders that are important for their rehabilitation.³⁵⁸ This is the first study of its kind in Australia.³⁵⁹

In Victoria, all prisoners and community-based offenders who are classified as serious violent offenders are directed into the serious violent offender pathway for screening. For female offenders, the Historical Clinical Risk 20 (HCR-20) tool is then used to assess the risk for violence.³⁶⁰ Female offenders who are assessed as moderate or high-risk of re-offending for violence can be referred into two programs to address issues associated with violent offending: *See Change for Women* and *Making Choices Program for Women*.³⁶¹

The *See Change for Women* Program specifically targets violent behaviour and a range of factors associated with violent offending and is available to both prisoners and community-based offenders.³⁶² *Making Choices for Women* is a holistic program available to prisoners that targets a range of criminogenic needs related to general re-offending, part of which includes violence propensity and anger dysfunction.³⁶³

Challenges and opportunities

The following section outlines a number of challenges associated with MBCPs and highlights a number of opportunities for change.

The Commission heard there are a number of practical limitations around existing structure and design of MBCPs, including in relation to program duration. In addition, inconsistencies in the application of No To Violence's minimum standards has led to variations in course content, the use of contact workers, course activities, and program duration. This lack of consistency in service delivery can also be attributed to an inadequate compliance framework.

Another issue associated with MBCPs is the lack of individual engagement with perpetrators. The Commission heard there is insufficient breadth and diversity in interventions, with programs not catering for perpetrators from diverse communities or for those with complex needs relating to, for example, serious mental illness or substance misuse.

There is also a need to build on the existing knowledge and evaluation base of MBCPs to determine their effectiveness.

The use of family violence intervention order conditions and counselling orders to expand the capacity of magistrates to mandate perpetrators' engagement with various services is also considered, as well as the use of other court mechanisms that can be used for intervention.

The section also highlights issues associated with convoluted and inequitable pathways into programs, and briefly discusses funding and demand pressures, as well as workforce issues associated with MBCPs. Proposals to restrict the supply of alcohol in order to address alcohol-related family violence are also considered.

Limitations of the structure and oversight of existing men's behaviour change programs

As outlined earlier in this chapter, there is a spectrum of views—which is increasingly narrowing as the need to draw on successful aspects of a range of interventions is recognised—on the underlying methodology that should underpin MBCPs to make them more successful. However, the Commission also heard that the existing structure and design of MBCPs have a number of practical limitations that was undermining their effectiveness. Stakeholders also raised concerns with the compliance framework and cited the need for more rigorous evaluation of MBCP effectiveness. These issues are discussed further below.

Effectiveness of MBCPs

Research into whether MBCPs are effective in reducing family violence is complex and controversial. A recent literature review conceded that 'it is still unclear as to what specific factors trigger men to change their behaviour'.³⁶⁴ This same review found that:

... research indicates that the process of change is complex and that perpetrators have to negotiate individual (psychological aspects and issues regarding anger and stress management), interpersonal relations and wider external factors (ie employment status and other economic pressures) in order to initiate behaviour change.³⁶⁵

One of the key challenges is around the ethical issues associated with evaluation methodology. For example, there are risks associated with one group of perpetrators and their families receiving support through an MBCP and another group being excluded and possibly placed at risk for the sake of the study.³⁶⁶ In addition, there is a lack of consensus on the threshold issue of what constitutes 'success' and what outcomes are necessary for a program to be considered effective.³⁶⁷ For example, an MBCP may be 'effective' notwithstanding a failure to change a man's behaviour if it links his partner to support services, emboldens her to leave a dangerous relationship, or provides a degree of oversight and supervision of the family during the duration of the program.³⁶⁸

Other limitations on evaluations of MBCPs include: small sample sizes, reliance on interviews with men self-evaluating whether their behaviour had changed, difficulty in being able to follow-up with new partners to assess ongoing behaviour and in-house evaluations by staff with a bias towards success.³⁶⁹

As a result, robust empirical evidence about best practice is difficult to achieve. Locally, there have been few evaluations of Australian programs, with most of what we know about the effectiveness of programs drawn from international research.³⁷⁰

The Commission was told that although there were some promising results from well-designed program evaluations, overall 'the evidence relating to the overall effectiveness of perpetrator behaviour change programs is both weak and unconvincing'.³⁷¹ Professor Day told the Commission:

Let me say that men's behaviour change programs can have a significant profound impact on the lives of some participants. I don't believe that there's enough evidence to conclude that they are effective in changing the behaviour of most of the people who go through the programs.³⁷²

Professor Jim Ogloff AM, Professor, Forensic Behavioural Science and Director, Centre for Forensic Behavioural Science, Swinburne University of Technology, described the international evidence on the effectiveness of programs as 'mixed':

It is a hotly contested, highly controversial field. There are some studies which show success, some studies that don't show success, and people have been critical again, not so much about the focus of the program, but about the fact that you are asking to do too much with too little. Again, I think if we just step back logically and think, as I mentioned, that we are looking at people whose behaviour is entrenched sometimes over a lifetime.³⁷³

A key evaluation of MBCPs, Project Mirabal in the United Kingdom, shifted the focus from men to women and looked at whether women—both partners and ex-partners—felt safer as a result of their partner or former partner having attended an MBCP. Eleven program providers participated in the study, with variations in funding sources, the type of organisation and in how well integrated the men's program was with other services.³⁷⁴ Women were interviewed on five occasions at different points throughout the program over a period of fifteen months.³⁷⁵ The findings were based on how women felt at the beginning of the program compared to how they felt at the end.³⁷⁶

Notwithstanding methodological limitations of the study, including the lack of a randomised control group, the study has been praised for its female-centred approach.³⁷⁷

Six measures were tested and the findings included:

- ▷ Some improvement in respectful communication between the perpetrator and partner or ex-partner³⁷⁸
- ▷ Some reduction in controlling behaviour by perpetrators such as preventing contact with friends and family³⁷⁹
- ▷ A decline in the use of physical and sexual violence by perpetrators and an increase in feeling safer; however, women still reported levels of abuse and of feeling unsafe³⁸⁰
- ▷ Some improvement in fathering by perpetrators³⁸¹
- ▷ Better self-awareness on the part of men as a result of participating in a program³⁸²
- ▷ Minimal improvement in children's behaviour, for example, mothers reported feeling their children appeared less anxious at the end of the program.³⁸³

Chief Executive Officer of the Men's Referral Service and No To Violence, Ms Jacqui Watt, agreed there is a need to build on the existing knowledge and evaluation base for MBCPs.³⁸⁴ ANROWS has identified the evaluation of MBCPs (including the need for the development of best practice evaluation principles) as an area for further research.³⁸⁵

Personal experiences of men's behaviour change programs

The Commission heard mixed experiences of MBCPs. One man who attended a program told the Commission:

The MBC programs helped me to reflect on my behaviour and showed me how damaging that kind of behaviour was. The MBC programs made me realise I'm not the only person in the world with this problem. I was educated about the typical cycle of violence. This was mind blowing.³⁸⁶

We also did role playing. I put myself in my wife's position, which was a real eye-opener. I understood what she was going through, to a degree. I felt much more compassion for my wife after that.³⁸⁷

Another man we had consulted who had attended an MBCP told us:

A couple of things I took out of the programs that were really great—all of these programs talk about cycle of violence, start session with where are you on a cycle of violence, and a couple of times I questioned it: why do you have to be on the cycle of violence? And I got to the point of understanding, and after a while we did start talking about how you get off it, the cycle is dependent on having these power games, always coming from a place of selfish and egotistical, and from a place of not really, always wanting to get something for yourself, and in that place, whereas to get off the cycle you must empathise with another person, must be compassionate, must walk in other person's shoes. And I thought that was positive.³⁸⁸

In personal submissions and in community consultations, the Commission heard from women who had partners or former partners attend MBCPs. Many of them were doubtful about whether the program had made a difference for them or their partners.

He used to gloat about 'gaming' the MBCP and talking about the 'tips and tricks' exchanged between participants of the program.³⁸⁹

... all the MBCP did was give him enough information to know how to not get [caught] doing and saying the wrong things, all they have to do is nod and agree for a few hours and they get a certificate.³⁹⁰

My partner has done an MBCP. They don't work. He's done one every time he goes to jail.³⁹¹

One woman talked in her submission about how her husband's participation in a program helped reduce physical, but not other forms of abuse.³⁹²

Victoria Legal Aid told the Commission that, anecdotally, its clients 'have indicated that they have found participation in behaviour change programs beneficial, particularly where they were seeking to maintain a family relationship'.³⁹³

Program duration

The No To Violence minimum standards stipulate that there should be a minimum of 12 two-hour sessions to be spaced no more than fortnightly. Contact hours do not include time spent on initial assessment or follow-up processes.³⁹⁴ However, there is considerable variation in course content, course activities and duration among different MBCP providers.³⁹⁵

In evidence, the Commission heard from Mr Vlasis that there are usually between 12 and 24 sessions per program,³⁹⁶ and that most of No To Violence's member provider programs are between 12 to 18 sessions.³⁹⁷ A 12 session program would generally run over three months. There are a few programs that have a second stage and, therefore, run for a longer duration.³⁹⁸

A number of providers told the Commission that the current program duration was too short. In its submission, Bethany Community Care noted it could take months to engage with men and their partner or ex-partner and that by the time this happened, the program was close to ending.³⁹⁹ No To Violence cited a growing international consensus that the minimum intervention length needs to be six months and 50–60 hours of intervention (approximately double the duration currently funded by the Department of Health and Human Services).⁴⁰⁰ In evidence, Mr Vlasis also noted that many program providers would like to work with men for longer periods but do not have sufficient resources,⁴⁰¹ and stated that longer programs are required to address the complex work involved in MBCPs.⁴⁰² Professor Ogloff stated it was unrealistic to expect MBCPs that run for 12 to 18 sessions to produce long-term change, including in circumstances where behaviour has been entrenched over a lifetime.⁴⁰³ A 2013 study of perpetrator programs in the United States, where men were largely mandated to attend as part of sentencing for a criminal offence, found programs ran for between 26 and 52 weeks.⁴⁰⁴

In the United Kingdom, Project Mirabal, the 2015 evaluation of domestic violence perpetrator programs, concluded that it is the duration and depth of programs which makes it possible to go beyond simple behaviour disruption to deeper changes which make a difference in the lives of women and children.⁴⁰⁵

Access to partner contact workers

As noted earlier in this chapter, men who participate in an MBCP must agree to their partner or ex-partner being contacted and informed of their attendance and progress.⁴⁰⁶ Contact should first occur during a man's intake assessment or, if this is not possible, before a man attends his first group session.⁴⁰⁷ If women and children wish to have ongoing contact, the minimum standards provide for contact every three to four weeks throughout the program and for contact to be made when the man leaves the program. However, an arrangement for contact can be made at the discretion of the woman and the worker.⁴⁰⁸

The role of a contact worker is to provide support to a perpetrator's partner or ex-partner and children. There are two main objectives of the role of a contact worker: ensuring the safety and wellbeing of women and children; and providing information and resources to help partners and former partners make decisions about the relationship.⁴⁰⁹ It also has a strong risk management function:

A benefit of MBCPs for women is that they are provided with space and time to assess their safety needs and develop a safety plan, they are linked into relevant support and advocacy services, and they receive ongoing risk assessment and risk management.⁴¹⁰

In programs where partner contact was offered, women found it to be highly valuable, especially in terms of helping them to assess their safety levels. This positive opinion was unchanged regardless of whether women reported a change in the participant or not-validation and confirmation of the participant's wrongdoing was of great value.⁴¹¹ The Commission heard that the view of a third party who worked with the perpetrator was influential.⁴¹² One woman told the Commission that she felt greatly supported when her partner's contact worker helped to ensure a safety plan was in place, as the perpetrator was still a risk to her and her family.⁴¹³

For many women still in a relationship with their partner, partner contact may facilitate a 'reality check' for women to learn whether their partner had actually attended sessions and the degree of progress they were making. This assisted with decision-making about the future of the relationship.⁴¹⁴ Partner contact has been confirmed as an important component to men's programs in international research, on the basis that it ensures women are properly apprised of prospects of change, are alerted to the potential for a perpetrator to use his participation in a program to manipulate her and that they have access to appropriate support and referrals.⁴¹⁵

Despite the requirement for this element of MBCPs to be offered to women, the Commission heard that not all program providers were able to fulfil this role in practice.⁴¹⁶ In particular, according to a study of fifteen women whose partners attended an MBCP, women in rural and regional Victoria experienced a lower level of service from partner contact workers. The study found there were a number of service gaps which impacted on the safety of women—specifically, on their knowledge and access to support and on their capacity to make informed choices.⁴¹⁷ The study indicated that the extent to which partner contact was practised also depended on resources, the capacity or availability of other services within the region, worker skill and style and the prioritising of worker time. This was despite the fact that all four programs in the study were government funded and subject to No To Violence standards.⁴¹⁸

No To Violence has indicated that current funding levels have not kept pace with ‘industry expectations concerning the purpose, modality and longevity of partner contact/support components’, which have grown considerably in the last decade.⁴¹⁹

Individual engagement

In addition, some stakeholders raised concerns about the lack of individualised engagement with perpetrators. As MBCPs are essentially group-based counselling sessions, most men (that is, men who are attending in a voluntary capacity) only have a single one-on-one session with a facilitator to assess their eligibility to join a program.

Individual attention or case management is generally reserved for those who:

- ▷ are ineligible for MBCPs and referred to specialist mental health or drug and alcohol services, or
- ▷ are mandated under a court order to attend an MBCP (as funding for these providers extends to up to three individual sessions to help address those men who are resistant to attend group work and to get them ‘group-ready’).⁴²⁰

The Commission was told that a significant issue for MBCP providers is a lack of one-on-one engagement and follow-up support for perpetrators, noting that the current unit cost of funding provided by the Department of Health and Human Services ‘provided little room for an individualised approach’.⁴²¹ No To Violence highlighted that this meant this type of engagement with men often falls to generic counselling services, which lack specialist training, partner contact and links to family violence risk management processes—leading to potential unintended collusion with violent men.⁴²² The Centre for Innovative Justice has noted that MBCPs listed the opportunity to support group-based programs with individualised case management as one of their top three priorities.⁴²³

Bethany Community Support told the Commission that program completion by voluntary participants was more likely if the scope of the service (and related funding) was flexible and able to be expanded to allow for individualised interventions.⁴²⁴ Kildonan UnitingCare also called for greater capacity to deliver individual counselling sessions to complement group work.⁴²⁵

The Commission heard that some individualised intervention was considered important for increasing the safety of women and children by keeping men more engaged in the overall program.⁴²⁶

Individual engagement was also raised in the context of perpetrators with complex needs. This is discussed further below.

Compliance framework

The Commission heard that the current compliance framework for providers is not actively monitored by either No To Violence or government funders and does not promote consistency of service delivery between providers.⁴²⁷ There is no formal registration or accreditation process.⁴²⁸ This is a problem acknowledged across the men’s behaviour change sector.

For example, Bethany Community Support expressed concern that the lack of an effective compliance framework posed a risk because of the differing levels of accountability which applied in different programs.⁴²⁹ No To Violence in its submission said that under current arrangements, the community was left to take it on good faith that they could trust all existing programs all of the time to meet or exceed relevant minimum standards.⁴³⁰

There was broad consensus from providers and support from the peak body for the introduction of a national accreditation system, noting that more rigorous systems were in place in New Zealand, the United Kingdom and the United States.⁴³¹

Mr Vlasis stated that there have been significant developments in the sector in the last decade (since the standards were set) and that existing requirements may be constraining program effectiveness.⁴³² No To Violence recommended a fresh set of standards and quality controls.⁴³³

Insufficient breadth and diversity of interventions

Barriers for perpetrators from diverse communities

While there may be common risk factors for family violence, perpetrators are not a homogenous group. Rather, they reflect the diversity of our community. This includes perpetrators who are older, who are Aboriginal or Torres Strait Islander, perpetrators from culturally and linguistically diverse communities, those from regional, rural or remote communities, and those who have disabilities. There are also unique factors present in cases where women use violence, when adolescents use family violence and in LGBTI communities.

The Commission was told that behaviour change programs and other perpetrator interventions must address the needs of these diverse groups⁴³⁴ and be developed in consultation with them.⁴³⁵

While there are a small number of existing programs targeted at men from culturally and linguistically diverse backgrounds, the providers of these programs report that finding qualified staff is a barrier to offering the service.⁴³⁶ They also report that compliance with the current minimum standards can make the program unsuitable for men whose language, culture, religion and sexuality is not acknowledged in the current course content.⁴³⁷

A lack of understanding of the nature of family violence within these diverse communities may mean that perpetrators are discouraged from voluntarily seeking help and providers are not able to respond effectively when they do. When perpetrators are referred to a provider, they may find that the programs are not easily accessible (for example, because of language or mobility barriers) or are not relevant (for example, because of differences in cultural background, sexuality or based on their relationship type).

Although these themes resonated for all of these diverse groups, the Commission was told that each diverse population also experiences additional barriers, specific to their needs and experiences, when accessing perpetrator programs.

Aboriginal and Torres Strait Islander men

Submissions noted the current paucity of culturally safe, holistic and therapeutic interventions for Aboriginal and Torres Strait Islander men and the inappropriateness of general behaviour change programs for this community. The Victorian Aboriginal Community Services Association Ltd (VACSAL) reported that 'discussions with our family violence staff found that nine out of 10 Aboriginal men using existing behavioural change programs delivered by non-Aboriginal services [say they] do not work for Aboriginal men'.⁴³⁸

The Commission heard about the importance of culturally appropriate, Aboriginal community controlled family violence service delivery, which recognises the impact of personal histories of trauma and abuse and promotes pride in, and connection to, culture.⁴³⁹ The Commission was told that there is a strong preference for time out and healing centres for Aboriginal men, rather than MBCPs. A number of these are outlined in Chapter 26.

Submissions reiterated the importance of a whole-of-family approach to healing trauma.⁴⁴⁰ This approach is consistent with the Victorian *Indigenous Family Violence 10 Year Plan, Strong Culture, Strong Peoples and Strong Families: Towards a safer future for Indigenous families and communities*, launched in 2008. However, the Commission heard that culturally appropriate practice is also required in mainstream men's behaviour change programs to better meet the needs of Aboriginal men who choose to use these programs.⁴⁴¹

A key theme emerging on this issue was the need to fund support organisations to adequately meet current and future demand for programs for Aboriginal and Torres Strait Islander men. This includes investing in a strengthened Aboriginal workforce to design and deliver programs through Aboriginal community controlled organisations.⁴⁴²

The Commission was told that further research needs to be undertaken into the impact of MBCPs and to determine whether programs for Aboriginal and Torres Strait Islander men are based on culturally-sound approaches.⁴⁴³ Documenting effective therapeutic and holistic healing approaches, including those being implemented in healing services and time out services, will help the continued improvement of programs. The Commission notes the strong preference for Aboriginal community controlled organisation providers.

Culturally and linguistically diverse communities

The Commission heard that access to meaningful behaviour change programs is a significant issue for men from culturally and linguistically diverse communities. If a program is only being run in English without an interpreter or bilingual facilitator, those with limited English skills will be unable to participate in any meaningful way, if at all.

Data on the CALD status of participants in MBCPs is unreliable, as the country of birth of 77 per cent of men accessing an MBCP could not be ascertained. Just three per cent ($n=562$) identified that they were born in a country other than Australia.⁴⁴⁴

Beyond language issues, there is also the question of culturally appropriate practice, acknowledging that Anglo-Australian culture has its own set of norms. While there are some programs that are culturally specific,⁴⁴⁵ these are very small in number. We heard that the majority of programs do not take into account the cultural norms, beliefs and identity of men from CALD backgrounds and are therefore less effective in bringing about behaviour change.⁴⁴⁶

The Commission understands that of 35 current MBCPs, two are in languages other than English with a further program in development. These are:

- ▷ Arabic language Men's Family Violence Group (Whittlesea CALD Communities Family Violence Project, InTouch, Kildonan UnitingCare)⁴⁴⁷
- ▷ Vietnamese MBCP (Relationships Australia, Kildonan UnitingCare, InTouch, DHHS, Neighbourhood Justice Centre, Djerriwarrah Health Services)⁴⁴⁸
- ▷ South Asian men's group (Kildonan UnitingCare)⁴⁴⁹

Like other MBCPs, these specialised initiatives cover large geographic areas and have extensive waiting lists. For example, the Kildonan South Asian program runs in Heidelberg; however, participants travel from Broadmeadows, Sunshine and Werribee to attend, waiting on average for two to three months to participate.⁴⁵⁰ Several current providers submitted that there was a need for additional investment for facilitators from culturally diverse backgrounds.⁴⁵¹

Lesbian, gay, bisexual, transgender and intersex people

As noted in Chapter 30, the family violence system has evolved primarily to respond to male violence against women, usually in intimate partner relationships. Whilst this reflects the gendered nature of the majority of family violence incidents, family violence also affects members of the lesbian, gay, bisexual, transgender and intersex communities.⁴⁵²

Currently in Victoria, there is one program specifically for same-sex attracted and bisexual men, which is run by the Victorian AIDS Council.⁴⁵³ While this program had not previously been supported by government funding, the Victorian Government has recently allocated funding of \$145,000 for the Victorian AIDS Council's Gay Men's Health Centre.⁴⁵⁴

There are no specific programs available for lesbians, transgender or intersex people. While there are no formal eligibility barriers for gay, bisexual, transgender or intersex participants preventing participation in mainstream programs, some content may not be applicable or relevant. In addition, safety may be an issue if other group members are homophobic, transphobic or ignorant of the issues affecting people in LGBTI communities. This can limit options for lesbian, gay, bisexual, transgender and intersex people who wish to address their violent behaviour.

A study conducted by No To Violence in April 2015 found that most MBCP providers considered male same-sex intimate partner violence to be significantly under-reported and that these men often faced barriers to seeking help. In addition, this study found that generalist services may not treat same-sex violence in the same way or may minimise violence between two men, compared to a man and a woman.⁴⁵⁵

No To Violence and Safe Steps Family Violence Response Centre set out the challenge in their joint submission to the Commission:

Creating an LGBTIQ inclusive approach in the family violence and related sectors has implications for many current models, frameworks, the way they are funded, as well as the staffing of services that implement them. This will require a resourced and integrated approach that provides support to all stakeholders.⁴⁵⁶

Small changes were identified that might make services more welcoming and inclusive, such as having a statement on the website that the organisation 'welcomes all gender diverse people and sexual orientations'. Improvements to intake forms so as not to be gender specific by having an alternative for people who are not a fixed binary and removing the requirement for a title were also suggested.⁴⁵⁷

Organisational review of policies and procedures together with the updating of forms and social media tools to ensure that respectful language is used in these forums is a very important starting point. What constitutes respectful language includes ensuring that gender neutral language is used in intake and assessment processes and that clients should always be addressed in all ways by their preferred name and pronoun.⁴⁵⁸

Rural, regional and remote communities

The Commission heard that few behaviour change and other relevant programs exist in rural, regional and remote communities, if at all.⁴⁵⁹ It was also reported that there were lengthy waiting lists to attend programs in some areas and in these circumstances, occasionally non-specialised counsellors may be a fall-back option to provide interventions for perpetrators.⁴⁶⁰

People with disabilities

People with intellectual disabilities or acquired brain injuries, which restrict their capacity to learn in a group setting, are currently screened out of behaviour change programs.⁴⁶¹

The Commission understands that the No To Violence standards are silent on the making of reasonable adjustments, as required under the *Equal Opportunity Act 2010* (Vic), to allow people with disabilities to participate in behaviour change programs. Reasonable adjustments could include the use of Auslan interpreting, Easy English materials or additional supports for men with an intellectual disability or other cognitive impairment.

Perpetrator programs may also only be available at centres with no, or limited, accessibility aides (for example, wheelchair accessibility) or other special needs supports.⁴⁶² Perpetrator accommodation may also be restricted where the client has a disability.⁴⁶³

Older people

The dynamics of elder abuse by family members may involve not only gendered, but also ageist attitudes, and behaviours may require a different approach to changing behaviour compared with heterosexual intimate partner family violence.

Although older men can access mainstream MBCPs, they may also face a range of difficulties, such as where they are suffering from their own health issues (for example, dementia). Where these conditions have cognitive and other behavioural aspects that preclude meaningful participation in MBCPs, these men may not be able to access any appropriate programs.

Adolescents who use violence

The Commission considers programs for adolescents who use family violence in Chapter 23.

Programs do not adequately deal with perpetrators who have complex needs

To increase the efficacy of family violence perpetrator interventions, a review and overhaul of the current system is required. Intervention programs need to be responsive to the complex needs of the wide variety of family violence offenders. In particular, we must improve provision of specialist interventions to those with complex and serious mental, personality, and substance use disorders. There is a clear need for better integration and communication between mental health services, drug and alcohol services, and offence-specific program providers. Reflecting the principles of evidence-based offender treatment, program referral should be based on a comprehensive, integrated and systematised assessment process, with consistent program delivery and integrity across sites, and pathways for perpetrators not catered for in existing programs (e.g., youth, female perpetrators, GLBTI perpetrators).⁴⁶⁴

There may be a range of factors that make existing MBCPs unsuitable for particular groups. In addition, a perpetrator may have individual risk factors that contribute to, or exacerbate, their family violence offending, and may impact on how effective programmatic interventions are in changing their behaviour. The Commission was told that a service response for perpetrators should address behaviour change, mental health issues and difficult living and life circumstances,⁴⁶⁵ and that service models should take into account that men with complex needs are less likely to voluntarily engage with family violence services and will not often follow up on referrals.⁴⁶⁶

A service provider, Caraniche, told the Commission:

Drug and alcohol and mental health treatment alone will not reduce family violence but should be assessed and addressed as a key risk factor in family violence treatment for perpetrators.⁴⁶⁷

This section discusses the risk factors most commonly put to the Commission when describing perpetrators with complex needs: mental illness and drug and alcohol abuse. The Commission heard broad agreement about the need to do more to engage perpetrators who present with these issues. Stakeholders told the Commission that the mental health and drug and alcohol sectors remain disconnected from family violence services, with a number outlining suggested improvements, including improving program integration. Regulatory measures targeting alcohol abuse were also suggested. These are discussed below.

MBCPs are considered ineffective for men with significant criminogenic factors

Forensic experts told the Commission that in their view MBCPs are not suitable for perpetrators with significant criminogenic risk factors, including substance abuse problems. The Centre for Forensic Behavioural Science and Forensicare noted that a high percentage of Forensicare patients (who by definition have a serious mental illness that caused their offending), engage in family violence. These agencies submitted that:

Both correctional and NGO programs are ill equipped to treat those very high-risk, high-need offenders with serious mental health and personality problems, and participants are typically excluded from existing groups on these grounds ... Such offenders typically have difficulty engaging in treatment and require considerable pre-group efforts at building internal motivation and treatment readiness, yet both correctional and MBC programs do not have the required resources to deal adequately with complex responsivity issues. For those who do receive a variety of segregated services to meet multiple needs (i.e., offending, substance abuse, and mental health), there is no formal process for collaboration in risk management planning between the standard offender programs and specialist services.⁴⁶⁸

The Centre for Forensic Behavioural Science and Forensicare also submitted that:

... a significant proportion of people who perpetrate family violence have multifaceted needs that are implicated in their violent behaviour. For these individuals, a brief family violence intervention focussing predominantly on gender-related attitudes and accountability – which is the type of service offered by men's change programs – is most unlikely on its own to produce longer term change in behaviour. Rather, intensive intervention programs which target the panoply of relevant risk factors are required to address cases of complex family violence ... both gender-related attitudes and beliefs and broader criminogenic needs must be dealt with ...⁴⁶⁹

Women's Legal Service Victoria suggested that a 'more therapeutic intervention may be required for perpetrators that present with complex and intersectional issues including mental health and drug and alcohol abuse'.⁴⁷⁰

The Commission was also told that existing standards for facilitators were inadequate for this specific cohort. Professor Ogloff gave evidence that the experience of facilitators and level of qualification required were not sufficient for them to identify and accommodate complex issues such as mental health concerns in the cohort of men who attend for an intake assessment.⁴⁷¹ No To Violence told the Commission that this was a question of resourcing:

Program providers want to address alcohol and other drugs, work with other agencies towards mental health issues, and develop individualised plans to coincide with the group process. But, unfortunately, the resources aren't there to have that individualised tailored approach which many of our member agencies would like to have.⁴⁷²

Addressing drug and alcohol problems within or alongside MBCPs

As outlined above, attitudes to alcohol and drug misuse can adversely affect help-seeking behaviour and perpetrator responsibility.

The Commission heard from a number of stakeholders that addressing drug and alcohol problems was an important part of supporting meaningful behaviour change in men.

In light of this, many highlighted the need for MBCPs to increase focus on the management of alcohol and substance abuse. Professor Day stated:

... the link between alcohol use and family violence is increasingly being recognised, suggesting that activities to both monitor and manage alcohol use might be usefully included in behaviour change programs.⁴⁷³

Professor Humphreys told the Commission that the association between alcohol and drug use is a complex issue 'but it's one where I don't know that we have necessarily addressed the complexities of that issue well within the family violence field'.⁴⁷⁴

Some stakeholders raised proposals about how to better integrate drug and alcohol treatment with family violence interventions, citing problems with having two different interventions running concurrently. The Commission heard from Dr Caroline Easton, Professor of Forensic Psychology, College of Health Sciences and Technology, Rochester Institute of Technology, about the efficacy of combined alcohol and drug and men's behaviour change programs conducted in the United States:

We found in the randomised trials that were funded by the National Institute of Health here in the United States that we were able to get good treatment outcomes, we were able to see that we could significantly decrease their addiction and aggressive behaviours compared to an equally intensive evidence based addiction treatment. So we used an integrative approach that targeted both the addiction and the aggressive behaviours compared to a control condition that was excellent but that would just target only their substance use ... in two randomised control trials we found that we had excellent treatment outcomes.⁴⁷⁵

Representatives of the drug and alcohol sector agreed they should be more focused on addressing family violence, as they are in a unique position to work with men:

Men do not typically go to child and family services; they do not voluntarily engage in family violence sectors, and they will often not follow up on referrals, so we have been wanting to use our unique opportunity in many ways ... Odyssey House has always strived to work with men, not only in relation to their addictions, but also as partners and as fathers. Many of our clients have children and again there is a great opportunity to talk to them about their fathering role, because they typically do not access other sectors to do that.⁴⁷⁶

The Commission did hear some examples of MBCPs being integrated with drug and alcohol interventions. In Victoria, for example, the MonashLink Community Health Service has an alcohol and drug practitioner working specifically with family violence victims and perpetrators within the service.⁴⁷⁷

In Western Australia, Communicare was funded for a three-year pilot program that combined an MBCP with a drug and alcohol intervention. Groups to support cessation of drug and alcohol consumption ran parallel to the MBCPs, with each man allocated a drug and alcohol worker. The experience from this group was that it was more effective to train men's behaviour change workers in addiction work compared to training drug and alcohol workers on addressing family violence, as the latter found it much more difficult to engage men on the issues of accountability and responsibility.⁴⁷⁸

However in broad terms, the Commission heard that the lack of structured connection between the two sectors is undermining effectiveness:

One of the barriers to responding to family violence in AOD and mental health settings may be a limited understanding of the interconnection between the two issues among workers and limited organisational capacity to build workforce understanding and clinical skill. There is room to increase the understanding of workers in both sectors about the role of the other, through targeted training and workforce development.⁴⁷⁹

Dislocation of MBCPs from the broader service system is discussed further below.

Opportunities for expanded justice system interventions

The Commission also heard proposals to expand justice system interventions as opportunities to maximise the participation of perpetrators in programs to address the factors influencing their violent behaviour.

Intervention order conditions and counselling orders

In some of the submissions received by the Commission, interest was expressed in expanding the capacity of magistrates to mandate drug and alcohol program attendance or mental health treatment orders as a condition of a family violence intervention order. A member of the public made the case in favour of this approach in the following terms:

Early intervention and access to support services is essential in changing violent behaviour. The underlying issues that lead to family violence such as drug abuse and mental health issues need to be addressed and dealt with at the same time as the civil IVO and criminal charges are pursued. More investigation needs to be done into the possibility of making it a condition of an IVO or CCO that attendance and completion of anger management, drug rehabilitation etc be completed.⁴⁸⁰

In its submission to the Commission, Victoria Police proposed empowering magistrates' courts to have greater scope to tailor conditions in family violence intervention orders to the individual perpetrator:

For example, if a perpetrator presents with a drug and alcohol issue, this should be reflected in the conditions so it can be addressed as a priority alongside family violence. Attaching program completion requirements (similar to a Community Corrections Order) to intervention order conditions would provide an additional layer of accountability while also aiming to address underlying factors contributing to the dynamic.⁴⁸¹

Judge Gray, in the inquest into the death of Luke Batty, recommended that the system include the capacity to mandate perpetrators' timely access to, and participation in, MBCPs.⁴⁸² The recommendation stated that family violence intervention orders:

... are far more likely to be ultimately successful if magistrates are in a position to make orders which combine protective elements, and ... engage applicants and respondents with services (including the compulsory attendance by perpetrators men's behaviour change program) and ... if necessary, with mental health treatment providers.⁴⁸³

The Victorian Government has agreed to implement this recommendation, noting that the Department of Justice and Regulation is conducting an evaluation of the Family Violence Court Division of the Magistrates' Court.⁴⁸⁴

In broad terms, there is limited scope to order a person to undertake treatment or programs under a family violence intervention order.⁴⁸⁵ Coercive and invasive measures are generally reserved for situations where a person has been found guilty of a criminal offence, rather than flowing from civil orders, where the standard of proof has a lower threshold. Some stakeholders expressed reservations to the Commission about the expansion of compulsory assessment and treatment conditions in the civil context, noting this may create a counterproductive 'quasi-criminal justice framework'.⁴⁸⁶

Currently, the Family Violence Court Division of the Magistrates' Court (Ballarat and Heidelberg) and the Magistrates' Courts sitting at Frankston and Moorabbin have the power under Part 5 of the *Family Violence Protection Act 2008* (Vic) to make a counselling order, requiring a respondent to attend counselling.⁴⁸⁷ In order to make a counselling order, the respondent must first attend an assessment and then a hearing is held to determine if a counselling order should be made.⁴⁸⁸

The Family Violence Protection Act provides that the purpose of Part 5 is, among other things, to require a respondent to attend counselling for the purposes of:

- ▷ increasing the respondent's accountability for the violence the respondent has used against a family member; and
- ▷ encouraging the respondent to change the respondent's behaviour.⁴⁸⁹

The Family Violence Protection Act does not define the meaning of 'counselling', but does provide that the Secretary of the Department of Justice and Regulation may approve counselling that the Secretary considers appropriate to address family violence, to be provided by particular persons or bodies for the purposes of a counselling order.⁴⁹⁰

The Secretary has approved counselling for men who have used violence against their female spouses or domestic partners or women with whom they have had an intimate personal relationship. This counselling is to be up to a total of 50 hours and must comprise an initial entry interview and MBCP counselling.⁴⁹¹ It may also include, as required, an intensive response program of individual or group counselling for men assessed as unmotivated or resistant to behavioural change, and individual counselling to address particular issues.⁴⁹²

The Secretary has approved Child and Family Services Inc (Ballarat), Kildonan UnitingCare (Heidelberg), Inner South Community Health (Moorabbin), Peninsula Health in the Frankston and Mornington Peninsula areas and Relationships Australia Victoria in the Cranbourne area (Frankston) to provide services to men on counselling orders.⁴⁹³

As outlined in Table 18.1, respondent support workers at the Family Violence Court Division are, together with the MBCP provider, involved in overseeing the process by which respondents are mandated to attend MBCPs, including in circumstances where respondents fail to attend the eligibility assessment and/or the MBCP.⁴⁹⁴ In addition, the Family Violence Counselling Orders Program Operating Guidelines require that respondent support workers and family violence registrars keep track of the number of counselling orders made, the number of referrals made to MBCP providers, and details about these respondents.⁴⁹⁵ They must also record details of the number of non-compliance certificates issued and the number of respondents who failed to attend an MBCP.⁴⁹⁶

Despite programs being mandated, an evaluation of the Family Violence Court Intervention Program indicated there are concerns about inconsistencies in the application of breaches and the low penalties associated with non-compliance with counselling orders.⁴⁹⁷ The evaluation stated that the program's mandate is undermined if the message delivered to those who do not comply is that there are no consequences.⁴⁹⁸ It also noted that court monitoring can have significant impacts on attendance rates and emphasised the need for meaningful data and active and regular program monitoring and management. The report called for coordinated monitoring by courts, police and service providers, and a system in which respondents who do not attend programs are cross-checked against certificates of non-attendance, and breaches investigated.⁴⁹⁹ It also recommended that breaching processes and contract oversight be improved as a matter of urgency and that counselling orders be made conditions of family violence intervention orders so that harsher penalties can apply for non-compliance.⁵⁰⁰

These concerns were echoed in submissions received by the Commission. The Commission heard that low perpetrator accountability can be attributed, in part, to the minimal consequences associated with breaches of orders,⁵⁰¹ as well as the lack of follow-up from magistrates and coordination between MBCPs, magistrates and police.⁵⁰² The Commission received submissions that perpetrators would be made more accountable if there were tougher laws around mandating MBCPs and consequences for breaches of court orders,⁵⁰³ as well as judicial monitoring of respondents' attendance at MBCPs.⁵⁰⁴ The Commission also heard there was a need for improved reporting mechanisms and information-sharing protocols.⁵⁰⁵

Court Integrated Services Program

A number of stakeholders called for the expansion of CISP to be available in the civil context. For example, the Magistrates' Court and Children's Court submitted that the expansion of CISP should be considered so that it can be applied in all family violence cases.⁵⁰⁶ This view was also espoused by Deputy Chief Magistrate and Joint Supervising Family Violence Magistrate, Felicity Broughton, who told the Commission that CISP is an important part of the suite of services to support the family violence jurisdiction and accused, and ultimately keep victims safe.⁵⁰⁷ Deputy Chief Magistrate Broughton said:

We have certainly had some evidence already of the success of CISP. We see it as an adjunct to our family violence court division model where we have obviously the applicant support worker, the respondent support worker and a family violence registrar. So we have a range of expertise within the court to, I suppose, support the proper understanding and information that we can get to ensure in that circumstance, for instance, if we do bail someone, that it will be safe to do so.⁵⁰⁸

Magistrate Kate Hawkins, Joint Supervising Family Violence Magistrate, of the Magistrates' Court of Victoria also told the Commission of the role that CISP could play in the civil sphere in intervening early with families:

... [T]here's a real role for CISP there to be able to broker and engage him – and often it's her – in some form of drug and alcohol counselling, some form of gambling counselling, usually it's about addiction, so that we are intervening early before it even reaches the criminal justice system. I would much prefer ... to enable a really positive outcome from that court intervention without it going on to the ramifications of criminal charges to the family. That's what a lot of people are really asking for.⁵⁰⁹

In evidence, Mr Rutter and Ms de Lacy described how the scope of the CISP model could be expanded to engage respondents to intervention orders of family violence but stated that the very large number of family violence intervention orders made in Victoria is a logistical hurdle.⁵¹⁰ We also heard from Ms Melinda Walker, an accredited specialist in criminal law, who told us that CISP is 'absolutely stretched' and is not always able to facilitate satisfactory outcomes.⁵¹¹ She thought that CISP would not be able to incorporate a family violence program due to inadequate resourcing and suggested that all courts should be able to require participation in MBCPs at the first point of contact.⁵¹²

Judge Gray, in the inquest into the death of Luke Batty, recommended that the Victorian Government expand access to the Family Violence Court Division across the state; that CISP be made available at court locations where there is a Family Violence Court Division; and that family violence-trained CISP case managers be present at all courts.⁵¹³ The Victorian Government has agreed to implement this recommendation.⁵¹⁴

Judicial monitoring

The value of 'swift and certain' approaches to justice was raised during the course of the Commission's hearings. A swift and certain approach to justice is premised on the idea that offenders are more likely to be deterred from offending in circumstances where there is certainty of being apprehended and swift, relatively modest punishment, rather than being faced with a remote and uncertain prospect of a more severe punishment.⁵¹⁵ We heard in evidence that this operates as a reminder for perpetrators that there are definite consequences for their actions.⁵¹⁶ This approach is discussed in detail in Chapter 17.

A related issue is the role of judicial monitoring. The Centre for Innovative Justice report acknowledges the value of ongoing judicial monitoring of family violence perpetrators, noting that many judicial officers understand the impact that leveraging their authority can have on perpetrators.⁵¹⁷ It points to the impact of constant court monitoring of offenders in specialist drug courts, stating that this ensures the offender is motivated to continue with the relevant treatment and understands the seriousness of the orders.⁵¹⁸ In addition, it calls on jurisdictions to explore opportunities for courts to increase ongoing monitoring of perpetrators and measures to hold them to account, including by bringing the perpetrator back before the same judge and employing swift and certain sanctions where offenders have failed to comply with orders.⁵¹⁹

Offenders can be subject to ongoing judicial monitoring through conditions imposed as part of CCOs, including conditions that stipulate times at which the offender must reappear for review of their compliance.⁵²⁰ The Commission understands that from July 2014 to May 2015, 16.2 per cent of registered supervised CCOs contained a judicial monitoring condition.⁵²¹ The Commission was told that judicial monitoring poses a resourcing issue.⁵²²

The Commission also heard of mandatory sobriety interventions in the United States which adopt a swift and certain approach to compliance with court orders. Examples cited were the South Dakota 24/7 Sobriety Program, and the Hawaii HOPE program, which reduced drug and alcohol misuse and had associated benefits in reducing other offending behaviour (including family violence).⁵²³

Fragmented system and service response

Notwithstanding an increasing policy focus on perpetrators, according to one commentator, 'a significant gap exists in our collective response'.⁵²⁴ No To Violence told the Commission that the inability to track perpetrator interactions with the family violence system created opportunities for men to opt out and be 'lost' to the system.⁵²⁵ This can occur at a number of contact points, from the police referral through to the contact made by an MBCP. This makes it difficult for organisations and the sector to hold men accountable for their actions, making the system feel 'optional' to perpetrators.⁵²⁶

Judge Eugene Hyman, a retired Judge of the Superior Court of California, told the Commission:

In order for restraining orders and protection orders to be effective, they need to be enforced and their need to be real consequences when there is a breach. There needs to be consistency in approach by judges, police officers and prosecutors. Effective monitoring and enforcement of these orders requires each part of the system to be committed and working together. For instance, police officers are unlikely to put effort into investigating breaches of restraining orders if they think the matter will likely be dropped further up the line.⁵²⁷

ANROWS has identified that a key area for future research will be a thorough analysis and evaluation of the effectiveness of systems linkages, in particular:

... linkages between perpetrator interventions including other prevention, intervention and tertiary responses (such as criminal, civil, child protection and family law proceedings); and collaborative efforts to effectively stop violence or enable a perpetrator to engage with behaviour change (for example, housing, employment or financial services; services addressing matters such as health, mental health, drug and alcohol; and case management).⁵²⁸

Pathways into programs are convoluted and inequitable

It is estimated that a majority of referrals to MBCPs come via third parties including police, Child Protection and health services.⁵²⁹ To improve the management of these referrals, in 2009, the then Department of Human Services developed a service intake model and practice guide for MBCP providers to 'streamline intake work in ways that ensure timely and proactive engagement of men, and enhanced assessment and referral processes' noting that 'timely and appropriate responses to men who use violence and controlling behaviour are seen as a key component of an integrated family violence system'.⁵³⁰

The model requires an MCBP provider to respond to an active referral as soon as practicable, or at the latest, within three to five working days. If the man is willing to engage, an appointment for assessment should be made within a further ten working days.⁵³¹ These time frames are similar to those prescribed in the No To Violence minimum standards, which sets a response time of a week, but preferably within 48 hours.⁵³²

No To Violence told the Commission that the current referral process was too fragmented, and recommended the development of a single statewide entry point with a centralised database.⁵³³ It argued this would ensure a more sophisticated intake process and would improve the ability to track men through the system. We discuss this in Chapter 13.

Ensuring clear referral pathways for those referred by the courts was also identified as an important issue. As noted above, currently four magistrates' courts are empowered to make counselling orders for eligible men in particular catchment areas. The Commission was advised that courts with specialist family violence services (Frankston, Melbourne, Werribee and Sunshine) had established relationships with voluntary MBCPs,⁵³⁴ as did courts that ran the CISP and the CREDIT/Bail support program—a case-management service for accused persons on bail or summons.⁵³⁵

An evaluation of Ballarat and Heidelberg Magistrates' Courts found referral pathways into MBCPs were convoluted, time consuming and confusing, and that responsibilities are delegated to court, staff, magistrates, respondent support workers and service providers.⁵³⁶ Service providers also identified deficiencies with the process of referring men to MBCPs, including that in certain circumstances, men may be inappropriately included in, or excluded from, the program, because there is no therapeutic assessment process. In addition, service providers noted that the time from the commencement of assessment to the entry into the Family Violence Court Intervention Program can be drawn out, increasing the likelihood that men will disengage. It was recommended that the assessment and referral process be streamlined, and that the assessment interview take place before the family violence intervention order application so that the results are available for the magistrate to consider during the application.⁵³⁷

The Commission's proposals in relation to intake processes for all family violence services are set out in Chapter 13.

Funding and demand pressures

Funding for MBCPs comes from a range of sources: the Department of Health and Human Services funds voluntary MBCPs, the Magistrates' Court of Victoria funds court mandated MBCPs, and the Department of Justice and Regulation funds MBCPs in the correctional setting.⁵³⁸

Funding for MBCPs

DHHS is the major provider of funding for MBCPs which is one element of the men's family violence allocation, and includes funding for the Men's Referral Service and the Enhanced Services Intake. DHHS advised that in 2013–14, \$4.9 million was allocated for men's family violence services, comprising:

- ▷ \$3.8 million for MBCPs and the ESI⁵³⁹
- ▷ \$0.9 million for Men's Referral Services
- ▷ \$0.2 million for adolescent family violence, although this was funded separately from 2014–15.⁵⁴⁰

Men's family violence funding remained relatively constant until 2013–14 at which time there was a 16 per cent funding increase.⁵⁴¹ This was followed by a further increase as the overall funding grew to \$5.64 million in 2014–15.

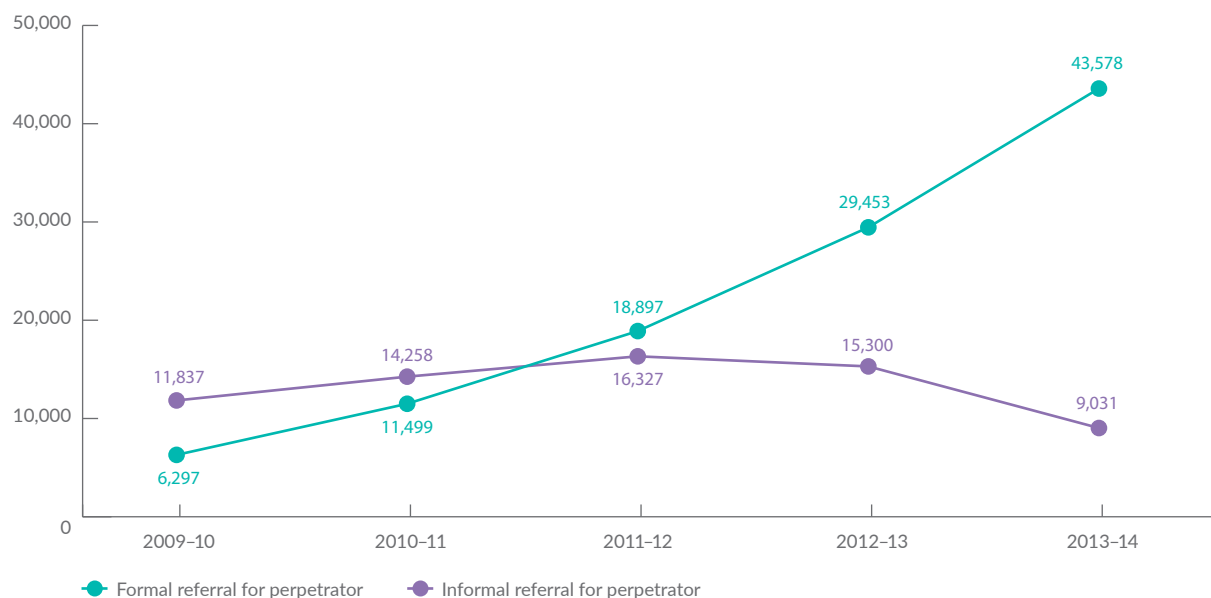
In 2015–16, the Victorian Government allocated an additional \$1 million in funding to men’s family violence services, some of which will be used to provide an additional 300 voluntary places for MBCPs; in addition, \$0.5 million was allocated for extra court-mandated MBCPs. An additional \$2 million over two years has also been allocated to Corrections Victoria to ‘expand their services to provide 64 men’s behaviour change programs and assessment screenings for up to 516 offenders on mandated community correction orders.’⁵⁴² The Commission was told that Corrections Victoria has used this funding to contract the delivery of MBCPs for offenders both in the community and in prisons.⁵⁴³

While this additional funding is time-limited, the Commission notes the Victorian Government has indicated that ‘the 2016–17 budget will respond to the recommendations of this Commission.’⁵⁴⁴

Demand for voluntary MBCPs

The Commission received evidence of a significant increase in demand for MBCPs from Victoria Police, courts and others. Victoria Police has driven an almost seven-fold increase in formal referrals for perpetrators to services,⁵⁴⁵ which has been attributed to a cultural change of improved responsiveness to family violence incidents.⁵⁴⁶ There is evidence that Victoria Police is increasingly making formal referrals rather relying on perpetrators to make contact with providers themselves. This is reflected in Figure 18.1.

Figure 18.1 Total referrals for perpetrators made by Victoria Police, 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), Table 16: Total referrals made following a family incident—Victoria Police, July 2009 to June 2014, 40, provided to the Commission by the Crime Statistics Agency, 8 January 2016.

Capacity for court-ordered MBCPs

As discussed earlier in this chapter, the magistrates’ courts can refer men to MBCPs through counselling orders in some court locations, conditions on family violence intervention orders, conditions on community correction orders and informal referrals. It is not known how many of these referrals are made in total.

In 2014–15, 249 orders were made by magistrates’ courts where referral to a voluntary MBCP was included.⁵⁴⁷

In 2013, No To Violence reported that magistrates’ courts were referring approximately 900 to 1000 men per year to the Men’s Referral Service (some of whom may not have been referred to a voluntary MBCP) and hundreds more to local or regional programs.⁵⁴⁸ These referrals form part of the demand for voluntary MBCP places funded by DHHS.⁵⁴⁹ There is no data about the proportion of these referrals that resulted in men being assessed as eligible for an MBCP placement.

In relation to mandated MBCPs, the Magistrates’ Court of Victoria advised the Commission that there were 329 places for mandated MBCP referrals in 2014–15, including 109 introduced for orders made at Frankston and Moorabbin Magistrates’ Courts.⁵⁵⁰

Table 18.2 shows that between 2010–11 and 2013–14, the number of MBCP places for orders issued by Heidelberg and Ballarat courts remained the same (220), however the number of orders issued increased from 116 (in 2010–11) to 278 (in 2013–14). The Commission notes that while funding for 109 places was provided in 2014–15 to meet demand from orders issued at the Frankston and Moorabbin Magistrates' Courts, 109 orders had already been made by May 2015.⁵⁵¹

Table 18.2 Number of counselling orders compared to number of funded places in mandated MBCPs

| | 2010–11 | | 2011–12 | | 2012–13 | | 2013–14 | |
|--------------|------------|---------------|------------|---------------|------------|---------------|------------|---------------|
| | Orders | Funded places | Orders | Funded places | Orders | Funded places | Orders | Funded places |
| Heidelberg | 48 | 120 | 95 | 120 | 59 | 120 | 171 | 120 |
| Ballarat | 68 | 100 | 101 | 100 | 91 | 100 | 107 | 100 |
| Total | 116 | 220 | 196 | 220 | 150 | 220 | 278 | 220 |

Source: Based on Magistrates' Court of Victoria, 'MCV_MBCP places' provided by the Magistrates' Court of Victoria in response to the Commission's request for information dated 5 June 2015; Magistrates' Court of Victoria, 'Q27 Counselling orders made', provided by the Magistrates' Court of Victoria in response to the Commission's request for information dated 5 June 2015.

Adequacy of funding to meet demand

Without comprehensive data about referral outcomes to demonstrate the number of eligible men requesting placement in an MBCP, it is difficult to ascertain the adequacy of funded capacity to meet demand. Nonetheless, the evidence and submissions demonstrate a system under significant pressure.

Between 2009–10 and 2013–14 the number of police formal (L17) referrals for perpetrators grew by 592 per cent⁵⁵² and the number of clients accessing voluntary men's behaviour change programs grew by 447 per cent.⁵⁵³

No To Violence estimated that of the 13,000 police referrals on average each year to both the weekday and weekend service, fewer than half of these men are actually contacted by an intake worker.⁵⁵⁴ MBCP provider and intake service, Child and Family Services Ballarat, told the Commission that of the 700 police referrals it received each year it had contact with around 350 men.⁵⁵⁵

The Commission heard that as at March 2015, approximately 1000 men were waiting to participate in programs. Of these, approximately 300 had been assessed as suitable for participation but were in a position of waiting for 'a period of a few weeks to unfortunately up to several months to be able to start the program proper'.⁵⁵⁶ Extensive waiting lists can deter third parties from referring to agencies, with the Men's Referral Service and No To Violence joint submission noting:

When large program providers close their books or have a wait time of several months before they can respond to new referrals, family violence systems agencies – particularly Magistrates and child protection practitioners – temporarily stop referring to them.⁵⁵⁷

Despite the fact that some offenders are compelled to participate in MBCPs as a condition of their community correction order, the Commission heard evidence that there was 'significant and regular feedback' from the court that these offenders were unable to get into programs due to lack of available places, leading to a significant waiting list.⁵⁵⁸ It was also noted that those who were voluntarily seeking programs were particularly affected by waiting lists, as places were often prioritised for court-mandated participants, creating a missed opportunity to engage with men who were actively seeking help and expressing a willingness to change.⁵⁵⁹

The No To Violence and Men's Referral Service submission described the impact of waiting lists as follows:

Significant wait times result in men losing motivation and opting out of the service system, defeating the purpose for referring these men to a men's behaviour change program in the first instance. Men's internal motivations to participate in a service are very fickle, and can easily evaporate with an extended wait. Furthermore, men who are mandated or strongly encouraged by a statutory authority to attend a program are given contradictory messages about the unacceptability of their behaviour when they need to wait many months to commence the program they are referred to.⁵⁶⁰

Workforce issues

The qualifications and experience required for the positions of facilitators, supervisors and contact workers are set out in the No To Violence minimum standards.⁵⁶¹ There are three levels of facilitators, with the junior level requiring a person to have observed 10 sessions of group work, through to senior positions requiring two three years' experience providing group therapy, or counselling and formal qualifications. Facilitators and contact workers must attend at least four professional development activities a year and at least two of these must be seminars or forums run by No To Violence.⁵⁶²

Formal qualifications are only required for level 3 facilitators, supervisors and those staff who conduct an assessment of men seeking to enter a program. Either a four-year degree in a relevant discipline (for example, social work, psychology, community welfare) or a Graduate Certificate of Social Science (Male Family Violence—Group Facilitation) is required; however, other qualifications and experience may be deemed by the No To Violence Management Committee to be equivalent and sufficient.⁵⁶³

The Graduate Certificate of Social Science (Male Family Violence) is exclusively offered by the Swinburne University of Technology⁵⁶⁴ at the University's Melbourne CBD campus: making 'completion challenging and onerous for regional service providers and staff'.⁵⁶⁵ The information and application pack for 2016 indicates that staff members employed by community agencies funded by DHHS to provide men's family violence services may be eligible for a funded place in the course.⁵⁶⁶

On 24 February 2016 the Victorian Government announced \$100,000 in funding to support professional training for MBCP facilitators.⁵⁶⁷

Providers also noted a lack of resources available to train existing workers to more senior levels. This was particularly the case in regional and rural areas with providers citing the need to travel to Melbourne for training adding costs and lost time.⁵⁶⁸

There is further discussion of industry planning and workforce issues in Chapter 40, including for people working in perpetrator programs.

Regulatory measures to reduce alcohol supply

A number of submissions, and evidence heard by the Commission, highlighted the relationship between alcohol-related harms, including the perpetration of family violence, and the supply of alcohol.

Associate Professor Miller, told the Commission that evidence from a Victorian context shows a steady increase in family violence rates associated with increases in the number and density of liquor licences, especially in relation to packaged liquor outlets:

Similarly, the rate of ambulance attendances at domestic violence cases is significantly and consistently related to liquor outlet density. The strongest evidence, based on the best data, comes from Western Australia and the work by Tanya Chikritzhs and colleagues, who have reported that the number of off-site outlets predicts total assaults and domestic violence cases in the community. For every 10,000 additional litres of pure alcohol sold by an off-site outlet, the risk of violence on residential premises increased by 26%.⁵⁶⁹

In evidence, Associate Professor Miller provided an overview of Dr Michael Livingston's longitudinal analysis of the relationship between alcohol outlet density and domestic violence.⁵⁷⁰ The study, which looked at data for postcodes within Melbourne for the years 1996 to 2005, found a positive association between the level of family violence incidents where police were called, and the number of liquor venues and licences in various Melbourne suburbs.⁵⁷¹ Victoria Police submitted that while packaged liquor outlets comprise about 10 per cent of the total number of licensed premises, they supply about 75 to 78 per cent of alcohol consumed in the community.⁵⁷² Research published in 2015 also highlights that outlets in disadvantaged areas sell cheaper alcohol, so harm associated with alcohol use, which may include family violence, disproportionately affects disadvantaged people.⁵⁷³

Associate Professor Miller recommended to the Commission that a series of measures, including putting a freeze on the number of packaged liquor outlets, reducing the length of drinking sessions and the level of alcohol consumed (through measures like pub trading hours and price increases), and increasing the cost of alcohol could reduce levels of family violence.⁵⁷⁴

The National Alliance for Action on Alcohol also advocated for tighter regulation of alcohol supply, submitting that '[r]estricting the physical availability of alcohol should be a central component of an overall strategy to reduce alcohol-related FDV [family and domestic violence]'.⁵⁷⁵ The Foundation for Alcohol Research and Education (FARE) submitted that:

Decreasing the availability of alcohol in communities reduces and sustains the reduction in alcohol harms over time. This effect can extend to reductions in the incidence of family violence and child maltreatment. Governments can reduce the availability of alcohol through tighter outlet density controls and interventions and reduced trading hours for all licence types.⁵⁷⁶

Other submissions recommended similar measures including freezes on the granting of new licences, limiting off-licence trading hours, and banning alcohol advertising and promotions.⁵⁷⁷ Associate Professor Miller raised with the Commission the potential of increasing the price of alcohol as a means of reducing family violence:

The introduction of a 10% increase in average minimum price for alcohol has been associated with a reduction of 10.4% of all assaults (similar rates for family violence and all other forms) in British Columbia, Canada. Limiting alcohol sales through evidence-based public health measures will reduce the incidence of family violence significantly, most likely by 10–20%, within a short timeframe.⁵⁷⁸

Associate Professor Miller also suggested to the Commission that 'dry zones' are worth considering in Victoria. There are legislative provisions in both Western Australia and the Northern Territory that make specific premises, including individual houses, dry zones.⁵⁷⁹

An individual can go to the Liquor Licensing Board and ask for their house to be designated a dry zone, so that alcohol is not allowed on that premises, you are not allowed to enter those premises if you are affected by alcohol. This has been used widely in response to certain domestic violence cases. In fact, in the Northern Territory they almost treat it as a default mechanism when somebody is indicated as both family violence and alcohol—when alcohol is mentioned in those cases that is almost their default. This is anecdote from the police responsible up there, but certainly that is a pretty standard response.⁵⁸⁰

Organisations working on the prevention of violence against women also recognise the need to address alcohol supply in the context of broader primary prevention strategies. The shared framework for the primary prevention of violence against women (endorsed by Our Watch, ANROWS and VicHealth) includes the improvement of the regulation of alcohol as a key action to address violence against women, based on population-level research which suggests the density of packaged liquor premises is associated with increases in family violence.⁵⁸¹

The framework reports that regulatory initiatives to reduce the density of alcohol outlets (through taxation, rationing and regulating trading hours) are considered to be effective, although 'optimally should be implemented alongside other interventions addressing normative support for violence against women'.⁵⁸²

The framework recommends addressing the intersection between social norms relating to alcohol and gender by ensuring that violence against women is captured in policy debates when considering the 'promotion and physical and economic availability of alcohol'.⁵⁸³ It also recommends challenging:

... drinking cultures that emphasise male conquest[s] and aggression, and social norms and attitudes that position men's drinking as an excuse for violence, or women's drinking as a form of victim-blaming.⁵⁸⁴

Ms Cate Carr, Executive Director, Office of Liquor, Gaming and Racing, Department of Justice and Regulation, provided a statement and gave evidence about the role of state government entities in the regulation of liquor.⁵⁸⁵ While the Victorian Commission for Gaming and Liquor Regulation is responsible for the licensing of venues that sell liquor, and for monitoring their compliance with licence requirements, the Department of Justice and Regulation is responsible for providing policy advice to the Minister for Consumer Affairs, Gaming and Liquor Regulation.⁵⁸⁶ This includes responsibility for the operation of the *Liquor Control Reform Act 1998* (Vic). The objects of the Liquor Control Reform Act seek, among other things, to achieve a balance between facilitating diversity in the range of licensed venues in the community, and minimising alcohol-related harms.⁵⁸⁷

In her statement, Ms Carr said the Victorian Government has decided to conduct a major review of the Liquor Control Reform Act to assess the current balance between culture and the need to reduce alcohol-related harm, particularly street violence and family violence.⁵⁸⁸ The review will be conducted with the input of the Liquor Control Advisory Council and a number of working groups of that Council including the Targeted Harm Reduction Strategies Working Group.⁵⁸⁹ As part of the review, the Working Group has been asked to advise on what alcohol-related harm reduction strategies could be trialled in Victoria and to identify trial areas based on risks of alcohol-related family violence harms.⁵⁹⁰

The way forward

While promoting the safety and welfare of victims of family violence should remain paramount, it is clear that the scourge of family violence will not be addressed without a sustained focus on keeping perpetrators accountable. This focus needs to occur across all measures to address family violence: primary prevention, risk assessment and management, incident response, judicial decision-making and oversight and programmatic interventions. It is only through all aspects of the system acting together in a mutually reinforcing way that we will be effective in ensuring perpetrators do not engage in abusive and violent behaviour.

Existing loopholes that implicitly condone the actions of perpetrators by allowing them to feel vindicated or victimised by the system, or that place the burden of risk management on victims, need to be closed. At present, perpetrators may engage with a range of services and agencies that seek to address the factors that give rise to their abusive conduct. In our view this currently occurs without adequate analysis of what strategies are effective in holding perpetrators to account, and in what circumstances. It also occurs in a disjointed and uncoordinated way, creating unnecessary siloes between services, and the risk that opportunities to engage effectively with perpetrators, or to manage the risks they present, will be missed. Our approach to perpetrators needs to move from one that involves a fragmented and episodic interaction with services and instead ensures engagement with perpetrators in more consistent and constructive ways.

Having a clear line of sight on perpetrators requires us to know what we are looking at. At the moment, we have a very limited understanding of perpetrators as a cohort. While some analysis conducted for the Commission provided some insight into the demographic trends for perpetrators and recidivists, more sophisticated mapping is required to inform our service response.

For some perpetrators, the prospect of wholesale behaviour change is unrealistic. Many will continue to present an unacceptable risk to their victims. These high-risk and recidivist offenders require coordinated and robust attention from police, courts and corrections agencies.

However, for others, gaining insight and awareness about their conduct and the impact it is having on their families, particularly their children, may help them to change their behaviour. For some, this will involve stopping their use of violence altogether; for others it may result in less frequent or serious offending. We cannot surrender to the notion that perpetrators will not change or accept that marginal improvement is better than none, without fully exploring and exhausting ideas that can make a genuine difference in the lives of women and children subjected to violence. However, we also need to ensure the system is realistic in acknowledging that changing entrenched beliefs or patterns of behaviour, which have been reinforced over a lifetime, may not be achievable for some.

The most common programmatic intervention for perpetrators is a referral to a men's behaviour change program. We do not know whether and to what extent existing programs are successful in changing an individual's behaviour and attitudes or in keeping victims safe. What we do know is that the current arrangements for men's behaviour change programs in Victoria are inadequate: there are insufficient programs to cater to all men who are referred to them; there is little or no follow-up to monitor someone's completion of a program; there is inadequate oversight of the quality of programs and providers or for assessing the appropriateness of the methodologies used; and existing programs do not cater for different cohorts of perpetrators, and are not designed to respond to those perpetrators with significant criminogenic factors such as serious mental illness or substance abuse. The system therefore imposes an unfair burden on MBCP providers to achieve outcomes that they are neither equipped nor supported to achieve.

We know that addressing gender attitudes must be at the core of most perpetrator interventions. We also know that at an individual level, factors such as exposure to childhood violence, mental illness and drug and alcohol misuse can fuel or exacerbate family violence. This fact does not in any way minimise or excuse the offending, but does need to inform the intervention for that particular perpetrator and the factors for which they need to take responsibility. It is clear that a 'one-size-fits-all' approach to dealing with perpetrators is failing victims by not recognising the unique and personal dynamics of their families.

Collective responsibility for perpetrators

The Commission agrees that improving perpetrator interventions should go beyond the mere joining-up of services. What is also required is a sense of collective responsibility across all relevant government departments and agencies, not just specialist services. Our approach must incorporate streamlined and comprehensive risk assessment and management practices, and intake and referral processes. The Commission's proposals in these areas are set out elsewhere in this report.

While government and non-government organisations working to address family violence strive to achieve perpetrator accountability, it is not clear that they are in fact working to a common objective or according to a common set of principles. It is important that they do.

In the Commission's view, the concept of perpetrator accountability entails:

- ▷ understanding and responding to the needs and experiences of victims, and their views about the outcomes they are seeking to achieve
- ▷ prioritising women and children's safety through effective and ongoing risk assessment and management mechanisms
- ▷ promoting the taking of responsibility by perpetrators for their actions
- ▷ providing a suite of options to assist perpetrators to gain insight and awareness about their actions, and to change their behaviour, with such options tailored to the risk profile of the perpetrator
- ▷ having a strong set of laws and legal processes that incorporate clear consequences for abusive and violent behaviour and failure to comply with court orders and sanctions
- ▷ fostering collective responsibility among government and non-government agencies, the community and individuals for denouncing perpetrators' use of violence and expecting and supporting them to cease being violent.

In order to achieve perpetrator accountability, the system must therefore comprise the following elements:

- ▷ a defined set of roles and responsibilities for all government and non-government agencies and service providers that have contact with perpetrators of family violence
- ▷ a consistent approach to perpetrator risk assessment and management (such as through the revised CRAF proposed by the Commission in Chapter 6) applied across all sectors and service providers working with perpetrators of family violence that informs the best response, intervention, or mix of interventions for an individual perpetrator
- ▷ a suite of interventions necessary to respond to the risks posed by and diverse needs of all perpetrators of all forms of family violence, including justice-system responses and community-based responses
- ▷ interventions and programs that are implemented according to the latest knowledge and evidence about their efficacy in managing risk, achieving behaviour and attitude change, addressing criminogenic factors, reducing re-offending and meeting the needs of victims, and which are subject to an effective compliance and oversight scheme
- ▷ an intake and referral mechanism that ensures there is timely access to perpetrator interventions, and has adequate oversight to ensure perpetrators do not disappear from view
- ▷ calculation of current and future demand for all perpetrator interventions, to ensure that agencies, services and programs are sufficiently funded to meet demand
- ▷ a program of data collection, and evaluation of perpetrator interventions and programs to determine whether they are effective, recognising that such evaluations must incorporate the victim's assessment of the outcomes for her safety.

Recommendation 85

The Victorian Government [within 12 months]:

- ▷ map the roles and responsibilities of all government and non-government agencies and service providers that have contact with perpetrators of family violence
- ▷ confirm the principles that should inform the programs, services and initiatives required to respond to perpetrators of family violence who pose a high, medium and low risk to victims.

Improving and expanding current interventions

Making sure interventions work

Changing the entrenched views and behaviours of perpetrators represents one of the key opportunities to stop the continuation or escalation of family violence.

Despite some evaluations that suggest that MBCPs lead to some improved outcomes, their true effectiveness remains contested and relatively unknown. While we heard some positive stories about MBCPs, in particular about the role they can play in risk management, we were concerned to hear that a number of victims reported that MBCPs made little difference in preventing re-offending. We were particularly concerned to hear stories of controlling or manipulative behaviours being refined or reinforced for perpetrators through contact with other program participants.

The Commission believes we need to invest more time, money and effort in investigating which interventions are effective in achieving behaviour change, acknowledging that there is no 'one-size-fits-all' approach. This involves developing a more sophisticated understanding of the types of perpetrator interventions required to respond to the different risk profiles of family violence perpetrators, and the diversity of people who use family violence. This knowledge can then be applied by courts and service providers to ensure people are matched to the right form of intervention.

It also involves broadening our horizon beyond existing MBCPs to consider other clinical models that have been proven to be effective for general criminal offending but are largely untested in the family violence context, such as cognitive behaviour therapy and strength-based programs. Having a loving relationship with children is an important motivator for perpetrators and this can be leveraged in programmatic interventions, such as programs for fathers who perpetrate family violence.

The research to be undertaken as part of ANROWS' Perpetrator Interventions Research Stream will contribute significantly to our understanding of these issues.

In the meantime, we need to draw on our existing knowledge base, to the extent possible, in designing perpetrator interventions. This means drawing on, and combining, the strongest elements of both the existing gender-based approaches and the more general criminological approaches, providing a suite of options to cater to the different types of family violence and different contexts in which family violence can occur.

It is also critical that all programs and interventions funded by the Victorian Government are subject to ongoing review, analysis and evaluation to ensure they are contributing to the objectives of victim safety and perpetrator accountability.

Broadening the range of interventions

We know that generalist MBCPs do not work for everyone. Some stakeholders described an inflexible, outdated, 'one-size-fits-all' programmatic response that is not keeping pace with international best practice and growing demand. The Commission also heard of the dislocation of MBCPs from allied services—including drug, alcohol and mental health services—that work with perpetrators. The existing MBCP model is group-based and is not designed or resourced to work with participants individually.

For those perpetrators who are screened out as ineligible to participate in a men's behaviour change program due to the complexity of their needs, there is little else available to specifically address their family violence offending.

Specific groups (such as Aboriginal and Torres Strait Islander peoples or people from CALD communities) may find generalist programs alienating or irrelevant to their personal circumstances and benefit from culturally sensitive programs that reflect the dynamics and realities of their respective communities. There are also very few programs that specifically address non-intimate partner violence, for example elder abuse by adult children. Programs for women who have used violence must address the circumstances which have given rise to the offending, notably past and current family violence victimisation.

Effort and investment needs to be applied to remedying existing gaps in our programmatic response in the short term; however, this should occur alongside dedicated funding for evaluation to inform ongoing refinement to how programs are designed and delivered over the long term.

As discussed earlier in this chapter, the Commission heard that different disciplines and conceptual understandings of family violence have hindered a truly effective and integrated approach to reducing violence against women. There is certainly evidence that this has contributed to a fragmented and siloed approach to perpetrator programs in Victoria.

Proponents of different views acknowledge that more needs to be done to provide a suite of programs and interventions that target an individual perpetrator's particular risks and needs, and that there is potential in drawing on the strength of each approach to develop interventions that more effectively address the risk profiles of perpetrators. The Commission was encouraged by the level of willingness and commitment by those working in a number of disciplines and sectors to work more effectively with perpetrators of family violence. Those working in men's behaviour change programs recognise the need for their programs to be supported and supplemented by other approaches. Those working in the area of offender management generally acknowledge that more needs to be done to understand the particular nature and dynamics of family violence, and for offender programs to be adapted to respond to family violence. There is a general acknowledgement that responses to perpetrators need to include interventions that address individual factors such as alcohol and drug misuse and mental illness, where these are contributing to risk. Certainly, these were the types of interventions victims of family violence told us were sorely needed.

To the extent that disagreements about how best to respond to perpetrators persist, this may reflect fragmentation among services and organisations, and limited means to advance discussion through testing what works and why. There must therefore be a greater focus on ensuring that opportunities and resources exist to allow those working in this field to communicate, cooperate and share ideas; to design, develop and test new approaches; and to attract and retain the best expertise. Working towards these goals is the best way to ensure that an approach to perpetrators is evidence based, advanced and cohesive.

Closer working arrangements between men's behaviour change programs, and forensic, mental health and drug and alcohol services, is needed so that programs have the best prospects for success. At a very basic level MBCP providers need to better understand substance misuse and mental illness, and drug and alcohol and mental health practitioners need to better understand family violence. We are also seeing positive developments in shared programming across drug and alcohol services and men's behaviour change programs in the UK and Western Australia. These are models that we can, and should, build on in Victoria.

Men's behaviour change programs should be sufficiently resourced to allow for implementation of individual-based tailored interventions for men with a diverse range of needs.

Building the capacity of workers across the mainstream service system to work with men who use violence should also inform the workforce development strategy recommended in Chapter 40.

The Commission proposes that the development of future perpetrator accountability measures be informed by input from experts who have different experience and perspectives on responding to perpetrators of family violence. To this end we propose that the Victorian Government convene an expert advisory committee to assist it to articulate the spectrum of interventions that will be required to ensure that we have the best chance of intervening effectively to hold perpetrators to account. This process should be informed by the research being conducted as part of ANROWS' Perpetrator Interventions Research Stream.

The Victorian Government should draw on advice from this committee to trial and evaluate additional interventions for perpetrators, with a specific focus on individual case management; programs for perpetrators from diverse communities and for those with complex needs; programs that focus on assisting perpetrators to understand the effects of violence on their children and partners; and practice models that build coordinated interventions, include cross-sector workforce development between the men's behaviour change, mental health, drug and alcohol and forensic sectors.

Recommendation 86

The Victorian Government convene a committee of experts on perpetrator interventions and behaviour change programs [within 12 months] to advise the government on the spectrum of programs, services and initiatives that should be available in Victoria—in the justice system and in the community—to respond to all perpetrators across varying forms and risk levels of family violence. The committee should consider men’s behaviour change programs, clinical models such as cognitive behaviour therapy, strengths-based programs and fathering-specific models, online programs, and services for perpetrators from diverse communities. The expert advisory committee should consist of members with expertise in a variety of disciplines and practice approaches and with experience in working directly with perpetrators and victims of family violence, including those from diverse communities.

Recommendation 87

The Victorian Government, subject to advice from the recommended expert advisory committee and relevant ANROWS (Australia’s National Organisation for Women’s Safety) research, trial and evaluate interventions for perpetrators [within three years] that:

- ▷ provide individual case management where required
- ▷ deliver programs to perpetrators from diverse communities and to those with complex needs
- ▷ focus on helping perpetrators understand the effects of violence on their children and to become better fathers
- ▷ adopt practice models that build coordinated interventions, including cross-sector workforce development between the men’s behaviour change, mental health, drug and alcohol and forensic sectors.

Recommendation 88

The Victorian Government provide dedicated funding for future perpetrator programs. These should include evaluation studies to establish longer term effectiveness and assist in improving program design in the long term [within three years].

Court-related interventions

The courts have particular scope to influence the types of programs and services available to perpetrators. In the criminal jurisdiction, courts have broad scope to compel offenders to participate in relevant programs.

As outlined in Chapter 17, the Commission sees considerable merit in swift and certain approaches to justice as a means of effecting greater compliance with court orders, sentences and participation in mandated programs. The Commission acknowledges there are complexities in applying methods that are in use in the US given legal and procedural differences. We recommend therefore that the Sentencing Advisory Council investigate options for incorporating such an approach to family violence offenders within Victoria’s sentencing regime, including through the use of judicial monitoring techniques.

In the civil context, magistrates' courts currently have very limited powers to direct perpetrators to engage with programs or services that may reduce their offending and assist them to gain insight into the impact of their violence. Only some magistrates' courts are empowered to make counselling orders for assessment and attendance at MBCPs, creating 'postcode justice' and inconsistency in the way perpetrators are managed. Family violence is experienced statewide; therefore, we consider that magistrates in all headquarter courts should be able to make counselling orders. In Chapter 16, the Commission recommends that all headquarter magistrates' courts in Victoria be empowered to mandate attendance in perpetrator programs. The implementation of this recommendation will require a significantly expanded range of approved program providers.

In this context, the Commission recommends that the Secretary of the Department of Justice and Regulation broaden the range of approved services that a perpetrator may be required to engage with pursuant to a counselling order. Services with expertise in the interplay between family violence and drug and alcohol misuse or mental illness may be beneficial for some perpetrators. Similarly programs that focus on fathering are likely to be beneficial for some perpetrators. We consider that mandating attendance at an expanded range of programs is likely to be possible within the existing legislative framework, provided the purpose of the counselling remains within the scope of the statutory objectives of Part 5 of the Family Violence Protection Act.

The Commission is concerned that greater use of counselling orders by the courts be matched by processes to monitor a perpetrator's attendance at, and completion of, relevant programs. While respondent support workers, together with MBCP providers, are required to monitor the attendance of respondents at MBCPs, the Commission notes the concerns raised about inconsistencies in the application of breaches, the minimal consequences associated with non-compliance and the lack of follow-up from magistrates and coordination between MBCPs, magistrates and police. Without robust reporting mechanisms, the value and potential of mandating attendance at perpetrator programs is diminished. The Commission therefore proposes that the Magistrates' Court work with the providers of MBCPs and the Victorian Government to develop an efficient process to monitor attendance at, and outcomes of, mandated programs, and in particular that this include feedback from victims through partner contact arrangements. While it may be desirable for some perpetrators to be brought back before a magistrate as part of the monitoring and reporting processes, in other cases it may be sufficient for court staff to undertake these functions.

In relation to calls for CISP to be more widely available in family violence matters, the Commission notes that the government has indicated it will implement Judge Gray's recommendation in the inquest into the death of Luke Batty that access to the Family Violence Court Division be expanded across Victoria and that CISP be made available at court locations where there is a Family Violence Court Division, along with family violence-trained CISP case managers. It is important that as CISP builds its family violence capacity, it coordinates its work with the broader network of providers of services and programs to perpetrators of family violence.

Recommendation 89

The Secretary of the Department of Justice and Regulation approve a broader range of service providers to provide counselling services to perpetrators who are subject to a counselling order issued by the Magistrates' Court of Victoria under section 130 of the *Family Violence Protection Act 2008* (Vic). Such service providers should have expertise in the interplay between family violence and drug and alcohol misuse or mental illness, provided the purpose of the counselling remains within the scope of the statutory objectives of Part 5 of the Act [within three years].

Recommendation 90

The Victorian Government, working with the courts and providers of men's behaviour change programs, establish an improved process for monitoring the attendance of perpetrators who are ordered to participate in behaviour change programs and the outcomes of their participation in those programs [within 12 months].

Quality of service

MBCPs are run by a range of different providers in many different settings with varying resources. As a result, the course content, activities and duration are often varied. While providers of MBCPs are required to comply with the No To Violence minimum standards in order to receive government funding, it is important that any intervention with violent men is delivered in accordance with the most recent knowledge about what constitutes best practice. The Commission heard in evidence that the minimum standards, which were published 10 years ago, set the bar too low in terms of program provision. We are concerned that the current standards that apply to the delivery of MBCPs in Victoria are inconsistent with the evidence about best practice. In particular, we are concerned that the minimum standards be revised to address the following issues:

- ▷ While the minimum standards currently provide for contact with women and children, these requirements should be strengthened to ensure that this happens in practice, in light of evidence that suggests that women consider this service extremely valuable, especially in terms of helping them to assess their safety levels
- ▷ While the minimum standards currently impose a minimum duration of 12 two-hour long sessions, there is growing international consensus that programs need to be run for a longer period in order for there to be effective intervention.
- ▷ Minimum standards should provide adequate safeguards to deal with perpetrators' varied responses to treatment and should be used in conjunction with individualised engagement with perpetrators.
- ▷ The current 'one-size-fits-all' approach to MBCPs renders them inappropriate for certain population groups, including CALD communities, Aboriginal and Torres Strait Islander communities, gay, bisexual, transgender and intersex men, and people with disabilities. In terms of providing adequate programs for men with disabilities, the minimum standards should be updated to clarify the obligations imposed under the Equal Opportunity Act.
- ▷ There is a need for suitably qualified facilitators of MBCPs.

We recommend that the Victorian Government review the current minimum standards in consultation with No To Violence and service providers to ensure that they are updated and appropriately address current gaps in the implementation of MBCPs. This process should be completed within 18 months.

In Recommendation 140, the Commission recommends that the minimum standards be reviewed and updated to specify providers' obligation to develop suitable services for diverse communities.

The Commission also considers that there should be an accreditation scheme for providers of MBCPs to ensure consistency of service delivery and that the providers have the skills and capacity to deliver programs in accordance with the minimum standards.

The Commission's recommendation to review and update the minimum standards for MBCPs will result in significant changes to program design and delivery. In turn, the qualifications of supervisors, facilitators and contact workers in MBCPs may need to be revised.

The industry plan we recommend in Chapter 40 should address both anticipated levels of demand for places in MBCPs and the attributes and skillset required of the workforce to deliver a redesigned program, in particular to attract and retain staff, avoid ‘burnout’ and ensure sustainability of the workforce. In this context, the Commission believes that it would be desirable for there to be greater opportunities for people to undertake specialist training to facilitate behaviour change programs, including by expanding the number of course providers and courses available, and the capacity to deliver training to people based in regional Victoria.

Ensuring the development of a family violence workforce that understands that family violence can manifest differently in different communities and that knows how to respond accordingly, is skilled in working with different cohorts, and is diverse, is a central feature of the Commission’s recommendations for industry planning. This is described in Chapter 40.

Recommendation 91

The Victorian Government, in consultation with No To Violence [within 12 months]:

- ▷ review and update the Men’s Behaviour Change Programs Minimum Standards to reflect research findings, national and international best practice, and the central importance of partner contact work
- ▷ develop a compliance framework, incorporating an accreditation process, for providers of men’s behaviour change programs.

Ensuring adequate investment in perpetrator interventions

Accurately measuring demand for MBCPs is difficult at present, as the funding and oversight arrangements are complex and varied, and make disaggregation of particular indicators and costs challenging.

There are a number of indicators suggesting pressure on the system—dramatic increases in formal referrals to services and lengthy waiting lists—is occurring alongside modest increases in investment. These indicators are not able to identify the potential demand for places in MBCPs by men who have not been referred by the police, courts or other service providers, but for whom participation in a program may be valuable.

Adequate investment in perpetrator interventions is critical for ensuring that opportunities for perpetrators to address their violent behaviour are seized in a timely way. Encouraging or requiring perpetrators to participate in programs that are, in reality, unavailable compromises efforts to achieve accountability.

The Commission has recommended that the Victorian Government investigate and fund a broader suite of perpetrator interventions than is currently available. This will involve resourcing new programs. In the meantime, it is essential that the existing MBCPs have the capacity to provide services to perpetrators who are referred for participation in both mandated and voluntary programs.

Recommendation 92

The Victorian Government ensure that, pending the implementation of an expanded range of perpetrator interventions, funding for men’s behaviour change programs is sufficient to meet demand from those required to attend under a counselling order issued under Part 5 of the *Family Violence Protection Act 2008* (Vic), and those who volunteer to attend such programs [within 12 months].

Regulating the supply of alcohol

Although alcohol use is associated with a relatively small proportion of family incidents, it is widely regarded as increasing the severity and incidence of family violence. Acknowledging that alcohol consumption plays a part in family violence does not excuse violent behaviour. On the contrary, the Commission considers that more extensive engagement with all of the risk factors that contribute to family violence is required to appropriately respond to violence, to support victims, and to hold perpetrators to account.

The findings of the 2013 National Community Attitudes Towards Violence Against Women Survey about intimate partner violence and sexual assault being excused due to alcohol show how much work needs to be done in this area. In particular, there is a need for a sophisticated understanding of the relationship between drug and alcohol misuse and family violence, which recognises the risks posed by drug and alcohol misuse without seeing it as mitigating perpetrator accountability. Fostering that understanding will likely involve public education campaigns, and targeted programs in schools or sporting clubs that are tailored to particular communities.

The Commission considers that greater attention should be paid to the relationship between alcohol supply and family violence in light of the evidence showing that alcohol misuse increases the severity and frequency of family violence, and that many in the community continue to believe that excess alcohol consumption excuses the use of family violence.

The Commission's primary focus in relation to the links between alcohol misuse and family violence has been on improving the availability of services for victims and perpetrators affected by family violence who have alcohol-related issues.

In relation to the supply and regulation of alcohol at a statewide or community level, the Commission considers these are properly considered in the context of the detailed review of the Liquor Control Reform Act being undertaken by the Victorian Government and in consultation with relevant experts. We note Ms Carr's evidence that the review will investigate measures relevant to family violence. This should be specified as a priority in the terms of reference for the review. In conducting the review, the Victorian Government should ensure that it undertakes comprehensive consultation with experts on family violence as well as experts on alcohol harm minimisation. The review should also explore initiatives that challenge the perpetuation of attitudes that tend to excuse family violence when alcohol is involved.

Recommendation 93

The Victorian Government ensure that the terms of reference of the current review of the *Liquor Control Reform Act 1998* (Vic) consider family violence and alcohol-related harms. The review should involve consultation with people who have expertise in the inter-relationship between family violence and alcohol use.

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476 Statement of Gruenert, 8 July 2015, 4 [25]–5 [26].

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588 Statement of Carr, 13 July 2015, 13 [46].

589 Ibid 13 [47]–[48].

590 Ibid Attachment 11.

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. |
| Crimonogenic | 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. |

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| 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). |

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| 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 (Vic)</i> . 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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Volume IV

Report and recommendations

March 2016

Royal Commission into Family Violence

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The Hon. Marcia Neave AO – Commissioner
Patricia Faulkner AO – Deputy Commissioner
Tony Nicholson – Deputy Commissioner

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Contents

| | |
|---|-----|
| 19 The role of the health system | 1 |
| 20 Recovery: health and wellbeing | 65 |
| 21 Financial security | 93 |
| 22 Restorative justice for victims of family violence | 135 |
| 23 Adolescents who use family violence | 149 |
| 24 Family violence and the family law system | 181 |
| 25 Review of family violence-related deaths | 227 |
| Glossary | 241 |

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.

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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>>.
- 3 Women's Health Australia, 'The Australian Longitudinal Study on Women's Health: Partner Violence and the Health of Australian Women' (2005) 1.
- 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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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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- 21 Anonymous, Submission 726, 2.
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- 28 Australian Law Reform Commission, above n 26, 288.
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- 31 Camilleri, Corrie and Moore, above n 11, 13; Anonymous, Submission 218, 3; WIRE Women's Information, Submission 574, 10; Anonymous, Submission 627, 3; Women's Health Goulburn North East, Submission 367, 2.
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- 152 Infringements Working Group, Submission 799, 9.
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- 159 *Infringements Act 2006* (Vic) s 22, 65–66.
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- 166 Statement of De Cicco, 7 August 2015, 13 [37.1].
- 167 *Ibid* 14 [38].
- 168 *Ibid* 14 [39].
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181 *Family Violence Protection Act 2008* (Vic) ss 81(2)(c), 86. Section 4 of the *Family Violence Protection Act 2008* (Vic) defines ‘property’, in relation to a family member, to include: (a) property of the family member; and (b) property that is situated in premises in which the family member lives or works whether or not it is the family member’s property; and (c) property that is being used by the family member whether or not it is the family member’s property.

182 Women’s Health Goulburn North East, Submission 367, 2.

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208 *Family Violence Protection Act 2008* (Vic) s 262; *Residential Tenancies Act 1997* (Vic) s 233A.

209 *Residential Tenancies Act 1997* (Vic) s 233A.

210 See, eg, Victorian Civil and Administrative Tribunal, Submission 164, 3; Justice Connect, Submission 889, 27–29; Transcript of Adams, 21 July 2015, 1005 [26]; Statement of Adams and Russo, 15 July 2015, 6 [34]; Statement of Spinney, 20 July 2015, 9 [39.2].

211 Victorian Civil and Administrative Tribunal, Submission 164, 3.

212 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 4 of Magistrates’ Court data. Note, however, that this figure does not specify how many of these intervention orders included conditions excluding respondents from a rental property.

213 Justice Connect, Submission 889, 27–29.

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216 Judicial College of Victoria, Submission 536, 10.

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218 In relation to Queensland, see *Residential Tenancies and Rooming Accommodation Act 2008* (QLD) s 245. In relation to South Australia, see *Residential Tenancies Act 1995* (SA) s 89A.

219 Confidential, Submission 575, 2.

220 Justice Connect, Submission 889, 22.

221 *Ibid*.

222 *Ibid* 23. There is some limited ability under Part IVAA of the *Wrongs Act 1958* (Vic) to apportion liability for claims between ‘concurrent wrongdoers’: *Ibid* 23; *Wrongs Act 1958* (Vic), Part IVAA. However, there are a number of issues with using this mechanism to assist victims of family violence against whom a compensation claim has been made: *Ibid* 23.

223 Tenants Union of Victoria, Submission 767, 2–3.

224 *Residential Tenancies Act 1997* (Vic) s 234.

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227 *Residential Tenancies Act 1997* (Vic) Part 10A (see, in particular, s 439E).

228 Justice Connect, Submission 889, 25.

229 See, eg, *Ibid* 25–27; Tenants Union of Victoria, Submission 767, 6; Safe Steps Family Violence Response Centre, Submission 942, 50; Quantum Support Services Inc, Submission 371, 4. See also, Statement of Adams and Russo, 15 July 2015, 12–13 [58].

230 Justice Connect, Submission 889, 25. As noted elsewhere in this report, victims of family violence may be forced to urgently leave their home, move to refuge accommodation and may then be unable to disclose their new address. Prior to listing personal information on the database, a landlord or database operator must provide the tenant with 14 days’ notice in order for them to object to the information being listed if it is inaccurate, incomplete or ambiguous. When a victim has had to flee her home and cannot be located, she will not have the opportunity to object to a listing and may not find out about it until she applies for a rental property: Justice Connect, Submission 889, 26. Once the person does become aware of the listing, it can be difficult to apply to have it removed or amended: Justice Connect, Submission 889, 26.

231 Justice Connect, Submission 889, 27; Tenants Union of Victoria, Submission 767, 6–7; Safe Steps Family Violence Response Centre, Submission 942, 50.

- 232 *Residential Tenancies Act 1997 (Vic)* s 64.
- 233 Tenants Union of Victoria, Submission 767, 7–8.
- 234 *Ibid.*
- 235 *Residential Tenancies Act 1997 (Vic)* ss 219, 235.
- 236 Tenants Union of Victoria, Submission 767, 3.
- 237 *Residential Tenancies Act 1997 (Vic)* s 230.
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- 239 *Residential Tenancies Act 1997 (Vic)* s 210.
- 240 *Residential Tenancies Act 2010 (NSW)* s 101.
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- 245 Statement of Bignold, 13 July 2015, 7–8 [34].
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- 266 WIRE Information Service, Submission 574, 12–13.
- 267 Casey North Community Information & Support Service, Submission 163, 1–2.
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- 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].
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- 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.
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- 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]
- 297 297 *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

- 1 See, eg, Statement of 'Smith', 4 August 2015.
- 2 See, eg, Community consultation, Melbourne 2, 14 May 2015; Community consultation, Melbourne, 21 May 2015; Crystal Bruton, Submission 137, 1–2; Sally Ruth, Submission 888, 2; Benalla Family Violence Prevention Network, Submission 131, 3.
- 3 See, eg, Statement of 'Jones', 13 July 2015; Statement of 'Jones', 7 August 2015; Safe Steps Family Violence Response Centre, Submission 942, 17.
- 4 Victim restoration roundtable discussion, Melbourne, 25 September 2015.
- 5 Isla Evans, 'Battle Scars: Long-Term Effects of Prior Domestic Violence' (Monash University, Centre for Women's Studies and Gender Research, February 2007) 7.
- 6 Ibid.
- 7 Leigh Goodmark, *A Troubled Marriage: Domestic Violence and the Legal System* (New York University, 2012) 82–83, 96.
- 8 Sarah Curtis-Fawley and Kathleen Daly, 'Gendered Violence and Restorative Justice: The Views of Victim Advocates' (2005) 11(5) *Violence Against Women* 603, 609 (8).
- 9 Carolyn Neilson and Bonnie Renou, 'Will Somebody Listen to Me? Insights, Actions and Hope for Women Experiencing Family Violence in Regional Victoria' (Loddon Campaspe Community Legal Centre, April 2015) 9–10; See also, Statement of Goodmark, 30 July 2015, 9 [41]–[42]; Transcript of Goodmark, 6 August 2015, 2076 [11]–[22].
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- 11 Judith L Herman, 'Justice from the Victim's Perspective' (2005) 11(5) *Violence Against Women* 571, 585.
- 12 Ibid 593.
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- 18 Loddon Campaspe Community Legal Centre, Submission 236, 5 [17].
- 19 Howard Zehr, *The Little Book of Restorative Justice* (Good Books, 2002) 37.
- 20 Tony F Marshall, 'The Evolution of Restorative Justice (1996) 4(4) *European Journal on Criminal Policy and Research* 21, 37.
- 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, NSWLRC 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.
- 32 See, eg, Federation of Community Legal Centres, Submission 958, 40; Loddon Campaspe Community Legal Centre, Submission 236, 5; Centre Against Violence, Submission 760, 5; Goulburn Valley Community Legal Centre, Submission 495, 4; Women's Legal Service Victoria—01, Submission 940, 10; Centre for Innovative Justice—01, Submission 93, 78; Human Rights Law Centre, Submission 928, 9.
- 33 Women's Legal Service Victoria—01, Submission 940, 43.
- 34 State of Victoria, Submission 717, 52.
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- 38 See, eg, Centre Against Violence, Submission 760, 5; Centre for Innovative Justice—01, Submission 93, 77.
- 39 Statement of Goodmark, 30 July 2015, 3–4 [20].
- 40 Ibid 9 [42].
- 41 Goodmark, above n 7, 82–83, 96.
- 42 Ibid 105.
- 43 Transcript of Goodmark, 6 August 2015, 2075 [7]–[9].
- 44 Ibid 2075 [10]–[16].
- 45 InTouch Multicultural Centre Against Family Violence, Submission 612, 41.
- 46 Neilson and Renou, above n 9, 121.
- 47 Federation of Community Legal Centres, Submission 958, 40; Centre for Innovative Justice—01, Submission 93, 77.
- 48 Statement of 'Jones', 13 July 2015, 17 [87].
- 49 Federation of Community Legal Centres, Submission 958, 40; Centre for Innovative Justice—01, Submission 93, 77.
- 50 Community consultation, Melbourne, 21 May 2015, 7.
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- 52 Victorian Equal Opportunity and Human Rights Commission, above n 35, 329.
- 53 Centre Against Violence, Submission 760, 6; State of Victoria, Submission 717, 52.

- 54 Victim restoration roundtable, Melbourne, 25 September 2015.
- 55 Centre for Innovative Justice—01, Submission 93, 77. See also, Transcript of Goodmark, 6 August 2015, 2075 [27]–2076 [6].
- 56 Victorian Association for Restorative Justice, Submission 839, 1.
- 57 Ibid 2; Victim restoration roundtable, Melbourne, 25 September 2015.
- 58 Centre for Innovative Justice—01, Submission 93, 77.
- 59 Victim restoration roundtable, Melbourne, 25 September 2015.
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- 61 Blagg, Bluett and Williams, above n 60, 16, 26.
- 62 Women's Legal Service Victoria—01, Submission 940, 43.
- 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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- 71 Andrew Fulkerson, 'The Use of Victim Impact Panels in Domestic Violence Cases: A Restorative Justice Approach' (2001) 4(3/4) *Contemporary Justice Review* 355, 365–367.
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- 82 *Ibid.*
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- 87 Katinka Lunnemann and Annemieke Wolthuis, 'Restorative Justice in Cases of Domestic Violence: Best Practice Examples Between Increasing Mutual Understanding and Awareness of Specific Protection Needs—Victim Offender Mediation: Needs of Victims and Offenders of Intimate Partner Violence' ((JUST/2013/JPEN/AG/4587) 2nd Comparative Report, European Forum for Restorative Justice, October 2015).
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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

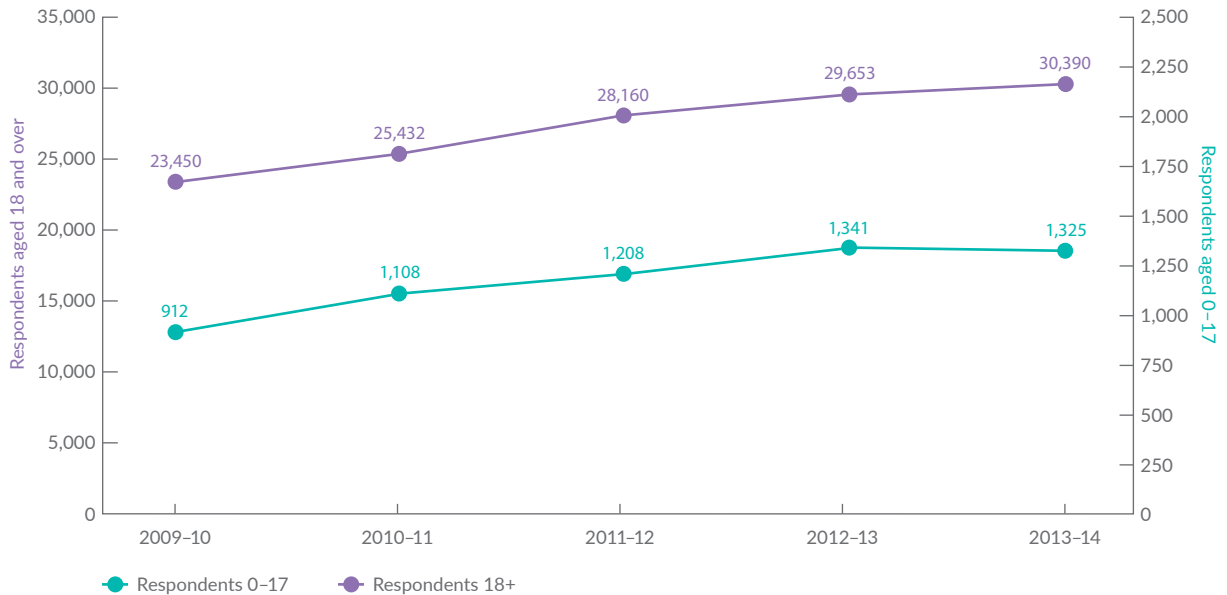
There are various limitations around data that need to be acknowledged. In addition to the general limitations of family violence data discussed in Chapters 3 and 39 of this report, there are also the following limitations:

- ▷ 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 to 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.
- 30 Ibid 4.
- 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.
- 33 Youth Affairs Council of Victoria Inc, Submission 938, 11.
- 34 Leanne Sinclair, 'Adolescent Violence in the Home: Implications for Practice' (Speech delivered at the Launch of The Last Resort: Pathways to Justice Research Report, Website and Animation, Melbourne, 11 February 2014).
- 35 Daly and Wade, above n 23, 4.
- 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.
- 37 Centre for Innovative Justice, above n 23, 30.
- 38 Victoria Legal Aid, Submission 919, 37.
- 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.

- 44 Howard, above n 24, 4. See also, Jo Howard and Naomi Rottem, 'It All Starts at Home: Male Adolescent Violence Towards Mothers' (Inner South Community Health Service and Child Abuse Research Australia, August 2008) 64.
- 45 Community consultation, Shepparton 1, 18 May 2015.
- 46 Community consultation, Werribee 1, 11 May 2015.
- 47 Statement of Feinberg, 9 July 2015, 2 [9].
- 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.
- 52 Centre for Multicultural Youth, Submission 452, 3.
- 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.
- 54 Russell, Miller and Boyd, above n 53, 12.
- 55 Ibid 14.
- 56 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 64.
- 57 Department of Human Services, 'Evaluation of the Sexually Abusive Behaviours Treatment Services: Final Report' (April 2013) 4, 6, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.
- 58 Department of Justice and Regulation, above n 27, 15, citing Jo Howard et al, above n 32, 187.
- 59 Kathleen Daly and Heather Nancarrow, 'Restorative Justice and Youth Violence Towards Parents' in James Ptacek (ed), *Restorative Justice and Violence Against Women* (Oxford University Press, 2009) 9.
- 60 Department of Justice and Regulation, above n 27, 15.
- 61 Howard and Abbott, above n 25, 11.
- 62 Department of Justice and Regulation, above n 27, 16.
- 63 Horsburgh, above n 36, 16.
- 64 Youth Affairs Council of Victoria Inc, Submission 938, 11.
- 65 Howard and Abbott, above n 25, 30–1.
- 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.
- 69 See Howard and Abbott, above n 25, 11 (in relation to Conduct Disorder, Attention Deficit Hyperactivity Disorder and Oppositional Defiance Disorder). See also Victorian Equal Opportunity and Human Rights Commission, 'Desperate Measures: The Relinquishment of Children with Disability into State Care in Victoria' (May 2012) 28 (in relation to Autism Spectrum Disorder).
- 70 Victorian Equal Opportunity and Human Rights Commission, above n 69, 41–2.
- 71 Ibid 68.
- 72 Ibid 28 citing National Disability Services Victoria, Submission to Victorian Equal Opportunity and Human Rights Commission (2011) 2.
- 73 Victorian Equal Opportunity and Human Rights Commission, above n 69, 51.
- 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.
- 81 Community consultation, Ravenhall, 11 May 2015.
- 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.
- 87 Daly and Wade, above n 23, 2.
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- 89 Youth Affairs Council of Victoria Inc, Submission 938, 10.
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- 92 Bobic, above n 91, 10–11; Ashleigh Haw, 'Parenting over Violence: Understanding and Empowering Mothers Affected by Adolescent Violence in the Home' (The Patricia Giles Centre, 2010) 8.
- 93 See, eg, the Youth Affairs Council of Victoria Inc, Submission 938, 11 which described adolescent violence in the home as 'complex and little-understood'. See also Victorian Council of Social Service, Submission 467, 59; Kildonan UnitingCare, Submission 770, 9, 24.
- 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.
- 103 Kildonan UnitingCare, Submission 770, 9.

- 104 Statement of Feinberg, 9 July 2015, 2 [9].
- 105 Pratt, Miller and Boyd, above n 53, 13.
- 106 Community consultation, Melbourne, 21 May 2015.
- 107 Victoria Police, 'Code of Practice for the Investigation of Family Violence—Edition 3' (2014) 10.
- 108 Ibid 9–10.
- 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.
- 130 *Family Violence Protection Act 2008* (Vic) s 83. If the young person who is a respondent to a family violence intervention order is aged over 16 years 11 months and under 18, the Youth Justice Service will manage the request for an assessment report unless the young person is a current Child Protection client: Department of Health and Human Services, 'Youth Justice Community Practice Manual,' 1, provided by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015. See also Department of Health and Human Services, 'Family Violence Intervention Orders and Personal Safety Intervention Orders: Child Respondent Exclusion Condition—Advice Number 1578' (1 December 2013), 2, provided by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.
- 131 *Family Violence Protection Act 2008* (Vic) ss 146(1)–(2). A child respondent is a person aged under 18 years: *Family Violence Protection Act 2008* (Vic) s 4.
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- 133 *Children, Youth and Families Act 2005* (Vic) s 362.
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- 139 Victoria Legal Aid, Submission 919, 41.
- 140 Eleni Martakis, 'Appropriate Legal Interventions for Children and Young People in Victoria: Research Brief' (Victoria Legal Aid, 2015) 3.
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- 149 Children's Court of Victoria, above n 145.
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- 151 Children's Court of Victoria, above n 148.
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- 161 Ibid.
- 162 Department of Health and Human Services, 'Adolescent Family Violence Services 31265', 2, provided by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.

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167 Kildonan UnitingCare, Submission 770, 24.

168 Department of Health and Human Services, above n 159, 9.

169 Ibid 43–44.

170 Time for Youth, Submission 698.

171 Ibid.

172 Statement of Brandenburg, 21 July 2015, 14 [64].

173 Department of Health and Human Services, above n 159, 72–4.

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217 See Chapter 26 for further discussion.

218 Statement of Brandenburg, 21 July 2015, 14 [65]; Centre for Innovative Justice, above n 23, 79.

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- 238 Magistrates’ Court of Victoria and Children’s Court of Victoria, ‘160122 Children’s Court FV Data’ (27 February 2016), Tab 2, Court Breakdown: FV Original Applications Only, Children’s Court Only, Tab 3, Child Respondents: Melbourne Children’s Court, FV Only, provided to the Commission by the Magistrates’ Court of Victoria.
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- 250 250 Magistrates’ Court of Victoria, above n 245.
- 251 251 Centre for Innovative Justice, above n 23, 79.
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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 amendments³³

- ▷ 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

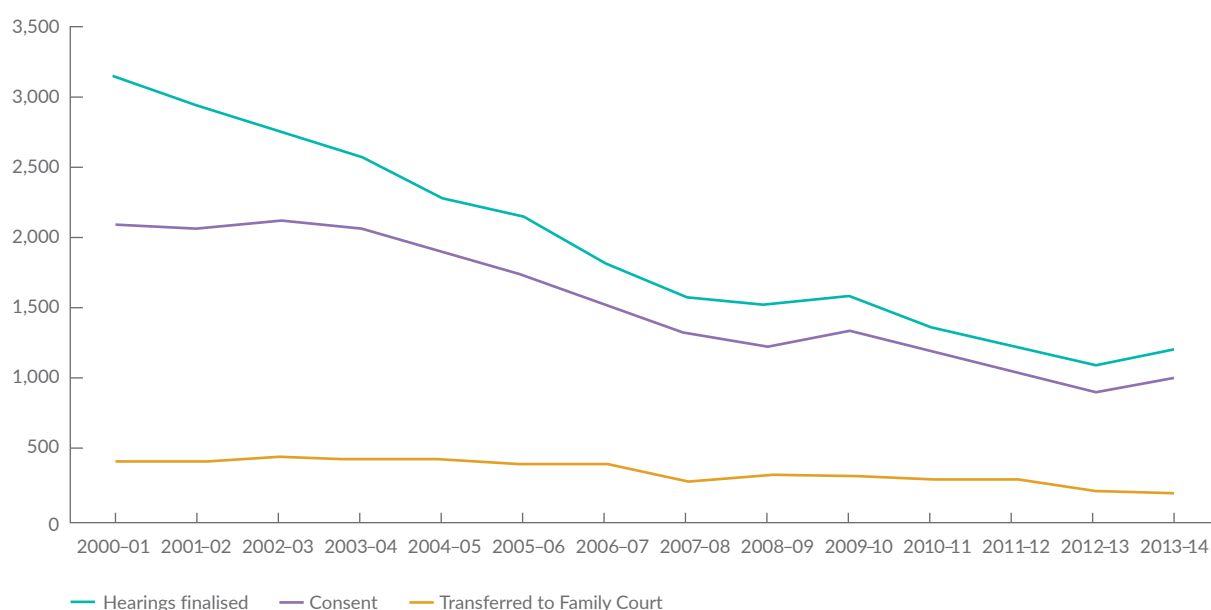
Victorian courts and the family law system

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 Leeanne 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.
- 33 For a useful overview see Rae Kaspiew, 'Family Violence and Family Law Parenting Matters: the 2012 Family Law Reforms' (2012) 11(1) *CDFVRe@der* 3, 3.
- 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)(ii).
- 38 *Ibid* ss 60CF(1), 60CH(1).
- 39 *Ibid* s 69ZQ.
- 40 *Ibid* s 60CG.
- 41 *Ibid* s 67ZBB.
- 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.

69 Sara Peel and Rosalind Croucher, ‘Mind(ing) the Gap: Law Reform Recommendations Responding to Child Protection in a Federal System’ (2011) 89 *Family Matters* 21, 28.

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.

104 *Family Violence Protection Act 2008* (Vic) ss 146–9.

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).
- 176 Family law and Victorian family violence system roundtable discussion, Melbourne, 21 September 2015.
- 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].
- 194 *Ibid* 3 [12].
- 195 Statement of 'Jones', 7 August 2015, 3 [15].
- 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, above 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, above n 10, 163–4 (citations omitted).
- 223 These are discussed in the next section.
- 224 Kaspiew et al, above 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, above 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, above 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 1, 28.
- 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.

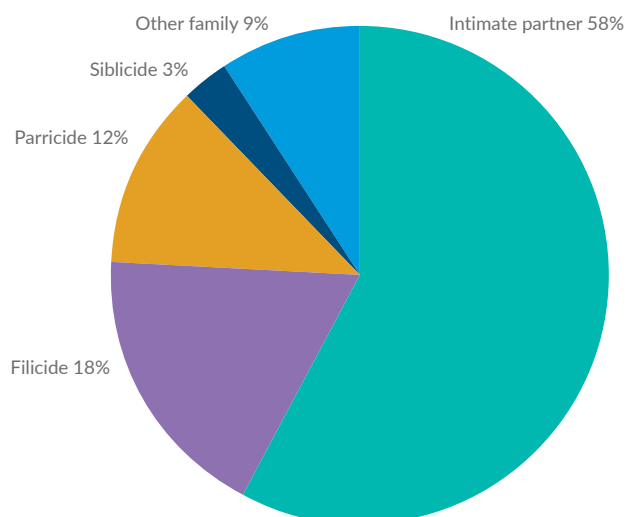
Table 25.1 Homicide: relationship to perpetrator, by jurisdiction, 2010–12 (percentages)

| 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 | | Siblicide | | 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.
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- 18 Ibid 2, 5, 7.
- 19 Ibid 2, 3.
- 20 Ibid.
- 21 Ibid 5.
- 22 Ibid.
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- 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.
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- 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.
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- 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.
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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).
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84 *Ibid*.
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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.
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110 *Ibid* 9.
111 *Ibid* 9, 20.
112 *Ibid* 20.
113 Transcript of Boland, 14 October 2015, 3687 [1]–[7].
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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. |
| Crimonogenic | 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. |

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| 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). |

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| 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 (Vic)</i> . 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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Report and recommendations

March 2016

Royal Commission into Family Violence

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The Hon. Marcia Neave AO – Commissioner
Patricia Faulkner AO – Deputy Commissioner
Tony Nicholson – Deputy Commissioner

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Contents

| | |
|---|-----|
| Family violence and diversity | 1 |
| 26 Aboriginal and Torres Strait Islander peoples | 7 |
| 27 Older people | 67 |
| 28 Culturally and linguistically diverse communities | 99 |
| 29 Faith communities | 131 |
| 30 Lesbian, gay, bisexual, transgender and intersex communities | 141 |
| 31 People with disabilities | 167 |
| 32 Male victims | 205 |
| 33 Rural, regional and remote communities | 215 |
| 34 Women in prison | 237 |
| 35 Women working in the sex industry | 251 |
| Glossary | 259 |

Family violence and diversity

Introduction

The Royal Commission's terms of reference require it to consider the needs and experiences of people affected by family violence, having particular regard to, among others:

- ▷ children
- ▷ seniors
- ▷ Aboriginal and Torres Strait Islander peoples
- ▷ people within culturally and linguistically diverse communities
- ▷ lesbian, gay, bisexual, transgender and intersex people
- ▷ people living in rural, regional and remote communities
- ▷ people with a disability.¹

The Commission welcomed the opportunity to explore the experiences and needs of people in these communities. The terms of reference did not refer to male victims of family violence. Nor did they refer to women in prison or women working in the sex industry, both of which may have been victims of family violence. Nevertheless the Commission considered it important to take into account their experiences and needs as well.

The Commission's approach

The Commission received many written submissions that dealt with the particular experiences and needs of people in these diverse communities. It also conducted a number of community consultations designed to explore these experiences and needs. These included consultations with:

- ▷ children and youth workers
- ▷ older women
- ▷ Aboriginal women and workers in their communities
- ▷ women from culturally and linguistically diverse backgrounds
- ▷ faith leaders, Muslim women and community leaders
- ▷ lesbian, gay, bisexual, transgender and intersex people, and workers in these communities
- ▷ women with disabilities
- ▷ male victims of family violence
- ▷ women in custody at the Dame Phyllis Frost Centre
- ▷ women who are or have previously worked in the sex industry.

Consultations were also held throughout regional and rural Victoria—in Bairnsdale, Benalla, Bendigo, Colac, Echuca, Geelong, Horsham, Maryborough, Mildura, Morwell, Sale, Shepparton, Traralgon and Warrnambool.

The Commission concluded that for people in some of these groups, family violence is less visible and less well understood than family violence in other parts of the Australian community.

While there can be similar dynamics to family violence across all communities, people from these diverse communities can also experience family violence differently.

In addition, some people in these diverse communities face barriers to reporting family violence and in finding appropriate help and support. A comprehensive family violence policy must address these barriers.

Of course many factors combine to create an individual's identity and experience, with a combination of different factors sometimes being described as 'intersectionality'. The Commission is conscious of this complexity and the importance of avoiding categorising people by simply referring to one aspect of their identity.

The entirety of the Commission's report is relevant to people from these diverse communities, and their experiences and needs are discussed across many chapters.

The following chapters seek to give specific consideration to the different experiences of people within these communities, and explore their distinct needs. The experiences and needs of children are discussed in Chapter 10. In doing so we recognise that the significance of the multiple and intersecting barriers many victims face cannot be adequately captured in these summaries.

The Commission hopes that its recommendations will result in better services for all people who experience family violence, regardless of their background, identity or membership of a particular community.

The Commission's recommendations

The Commission's main objectives in the chapters that follow are to:

- ▷ build and ensure accessible, inclusive and non-discriminatory service delivery
- ▷ expand understandings of the different forms and complexity of family violence across a range of communities
- ▷ foster a recognition that family violence is a human rights issue and that responses to it must also be consistent with human rights.

The *Charter of Human Rights and Responsibilities Act 2006* (Vic) protects certain human rights, including:

- ▷ the right to recognition and equality before the law, encompassing the right to equal and effective protection against discrimination. It also specifically protects cultural rights, including those of Aboriginal and Torres Strait Islander peoples²
- ▷ the right to freedom of expression, including the right to seek, receive and impart information and ideas in various formats (for example, orally, in writing or in other selected mediums).³ This would include accessible formats, such as AUSLAN (Australian sign language) and Braille, as well as in relevant languages.

The *Equal Opportunity Act 2010* (Vic) also creates legal obligations not to engage in discrimination and requires reasonable and proportionate measures to eliminate discrimination.⁴

In other parts of this report, we make recommendations that are relevant to these objectives. In Chapter 40, the Commission recommends the development of an industry plan for family violence prevention and response, covering all government and non-government agencies and services which are responsible for preventing and responding to family violence. This plan will require agencies and service providers to engage in learning and development to achieve inclusive and non-discriminatory practices. Agencies and service providers should also improve the diversity of their own workforces. This could be done by employing workers with diverse backgrounds and experiences, in both leadership and frontline positions.

General recommendations

The Commission makes recommendations below that are relevant to all of the people considered in the following chapters and which seek to achieve these objectives.

The Commission recommends that the Department of Health and Human Services review and update standards for specialist family violence services (including men's behaviour change programs). The updated standards should be developed in consultation with relevant communities. In particular, these standards should:

- ▷ specify a requirement to deliver services that are culturally safe for Aboriginal and Torres Strait Islander peoples
- ▷ deal with culturally appropriate practice for working with children and young people, older Victorians, people with disabilities, and people from culturally and linguistically diverse communities, faith communities, and lesbian, gay, bisexual, transgender and intersex communities
- ▷ specify an obligation to make reasonable adjustments for people with disabilities
- ▷ recognise the flexibility required in delivering services in rural, regional and remote communities.

The Commission also recommends that the Victorian Equal Opportunity and Human Rights Commission issue a guideline under section 148 of the Equal Opportunity Act to guide service providers in meeting their obligations to act inclusively and avoid discrimination.

Finally, the Commission recommends that any family violence community awareness and prevention programs and activities are inclusive of the diversity of the Victorian community and that the proposed Victorian Family Violence Index measures (as far as possible) the extent and response to family violence within these diverse communities.

Aboriginal and Torres Strait Islander communities

Aboriginal and Torres Strait Islander peoples should have the opportunity to participate in family violence prevention and response initiatives through Aboriginal controlled organisations. If people from these communities seek services through non-Aboriginal controlled organisations, such organisations should be capable of providing culturally safe services.

In Chapter 26 the Commission recommends that adequate resources be made available to enable Aboriginal controlled organisations to support family violence prevention and response initiatives and to enable mainstream family violence organisations to provide culturally safe services.

The Commission further recommends that current Indigenous family violence governance structures continue.

Older people, people with disabilities and people from culturally and linguistically diverse and lesbian, gay, bisexual, transgender and intersex communities

In the case of older Victorians, people from culturally and linguistically diverse communities and people with disabilities, Seniors Rights Victoria, InTouch Multicultural Centre Against Family Violence and Women with Disabilities Victoria are specialist organisations that have relevant expertise in best practice responses to family violence within these communities. As recommended below, the Victorian Government should further fund these organisations to provide expert advice and training to all family violence service providers.

At present, there is no statewide organisation in Victoria that is solely focused on family violence within lesbian, gay, bisexual, transgender and intersex communities. In Chapter 30, the Commission recommends that the Victorian Government should fund the development of resources and programs to support family violence and LGBTI service providers in responding to the needs of people in these communities.

Recommendations

The Commission makes the following recommendations, which apply to people in all of the communities identified above.

Recommendation 139

The Victorian Government fund Seniors Rights Victoria, InTouch Multicultural Centre Against Family Violence and Women with Disabilities Victoria [within 12 months] to:

- ▷ provide training to equip specialist family violence service providers and providers of universal services to recognise and provide appropriate services to older Victorians, people from culturally and linguistically diverse communities and people with disabilities who experience family violence
- ▷ build partnerships with and provide advice to specialist family violence service providers and providers of universal services to enable them to respond effectively to the needs of people in these communities.

Recommendation 140

The Department of Health and Human Services review and update standards for family violence service providers (including men's behaviour change programs) [within two years]. The standards should specify providers' obligation to develop suitable services for diverse communities, consistent with their obligation to provide non-discriminatory services under the *Charter of Human Rights and Responsibilities Act 2006* (Vic) and the *Equal Opportunity Act 2010* (Vic).

Recommendation 141

The Victorian Equal Opportunity and Human Rights Commission issue a guideline under section 148 of the *Equal Opportunity Act 2010* (Vic) to guide service providers in meeting their obligation to act inclusively and avoid discrimination when delivering services to all people who are affected by family violence. The guideline should apply to family violence service providers (including men's behaviour change programs), as well as to universal and mainstream organisations [within 12 months].

Recommendation 142

The Victorian Government ensure that family violence community awareness and prevention programs and activities use language, imagery and messaging that reflect the diversity of the Victorian community [within two years]. Prevention work should be developed in consultation with relevant communities and be evaluated in order to refine future practice. Inclusiveness of diversity should also be an important consideration for corporate and philanthropic funders of such programs and activities.

Recommendation 143

The Victorian Government ensure that the proposed Victorian Family Violence Index measures, as far as possible, the extent of and response to family violence in different communities.

Endnotes

- 1 Royal Commission into Family Violence, *Letters Patent—Terms of Reference* (22 February 2015) 3 <<http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/UploadedDocs/Terms-of-Reference.pdf>>.
- 2 *Charter of Human Rights and Responsibilities Act 2006* (Vic) ss 8, 19.
- 3 *Ibid* s 15.
- 4 *Equal Opportunity Act 2010* (Vic) s 15.

26 Aboriginal and Torres Strait Islander peoples

Introduction

The Commission's terms of reference directed consideration to the needs and experiences of particular groups of people affected by family violence, including Aboriginal and Torres Strait Islander peoples.

Aboriginal and Torres Strait Islander peoples, especially women and children, are disproportionately affected by family violence. Not only are they more likely to be affected by family violence, they also face unique barriers to obtaining assistance—whether from a mainstream or culturally appropriate service. It is clear that the injustices experienced by Aboriginal and Torres Strait Islander peoples, including the dispossession of their land and traditional culture, and the grief and trauma associated with policies leading to the wrongful removal of children from their families, have had a profound impact on these communities.

In the first section of this chapter we discuss the prevalence and incidence of family violence within Aboriginal and Torres Strait Islander communities and the policy and service responses developed to address the unacceptable over-representation of Aboriginal and Torres Strait Islander peoples living with family violence. This includes community-based education and prevention initiatives, through to justice system responses. We also describe some of the devastating impacts that family violence has on women and children and the over-representation of children in out-of-home care.

The second section of this chapter explores the key challenges and opportunities relating to the experience of family violence in Aboriginal and Torres Strait Islander communities. We learn of some of the unique barriers experienced by Aboriginal people in accessing services and seeking help. The Commission heard of the understandable apprehension and reluctance many Aboriginal people have in seeking assistance from government agencies (particularly Child Protection) and the racism and lack of understanding some people experience when doing so.

The importance of Aboriginal community controlled organisations, and tailored justice system responses and perpetrator interventions that recognise the history and culture of Aboriginal people, was strongly emphasised. Stakeholders also emphasised the need for early intervention and prevention initiatives (particularly those targeting children and young people), and the necessity for greater investment in long-term service delivery and evaluations of Aboriginal family violence programs and support services.

Finally, the Commission discusses the way forward in addressing the overwhelming impact of family violence on Aboriginal and Torres Strait Islander peoples. The Commission's view builds on the comprehensive and considered report of the Indigenous Family Violence Task Force in 2003 and the Indigenous Family Violence 10 year plan *Strong Culture, Strong Peoples, Strong Families* (the 10 year plan),¹ both of which we support. It is disappointing that the evidence before the Commission revealed that the efforts applied to reducing the unacceptable levels of family violence and its devastating impacts in Aboriginal communities have not been realised over a decade later, despite these influential policy pronouncements. Recognising this, the Commission makes a number of recommendations for additional investment in targeted prevention and early intervention initiatives for Aboriginal communities, as well as culturally sensitive services to respond to Indigenous families in crisis.

The Commission is grateful for the assistance received from representatives of Aboriginal and Torres Strait Islander organisations, who have extensive experience in working within Indigenous communities to prevent and respond to family violence. We are also particularly indebted to the Aboriginal victims of family violence who shared their stories with us.

The information provided to the Commission relates mainly to family violence in Victorian Aboriginal communities. For this reason we usually refer to Aboriginal peoples and communities rather than to Aboriginal and Torres Strait Islander peoples. This also reflects the language of the majority of the submissions made to the Commission. In doing so we do not intend to exclude Torres Strait Islanders from our deliberations and recommendations.

Acknowledgements

The Commission recognises that Aboriginal and Torres Strait Islander peoples have one of the oldest continuing living cultures on earth, and a unique status as Australia's First Peoples.

The Commission also recognises the ongoing impact of colonisation, dispossession and discrimination on Aboriginal and Torres Strait Islander peoples, and understands that the high rates of family violence within Aboriginal communities and the reluctance to report family violence reflect this traumatic history.

In preparing this part of the report the Commission has benefited from the comprehensive work performed by the Victorian Indigenous Family Violence Task Force in 2003. Their report was a landmark in Victorian Aboriginal policy, vividly describing the scale and impact of family violence in Aboriginal communities and establishing sound principles for prevention and response based on community ownership and action.² The Commission has drawn on the findings and principles contained in that report, and in the subsequent 10 year plan, to distil the key issues and inform our recommendations.

The Commission was also assisted by the many suggestions made to the Commission by Victorian elders based on their practical experience and knowledge of what works in their communities. Consultation with Aboriginal organisations; members of the Indigenous Family Violence Partnership Forum; members of various Indigenous Family Violence Regional Action Groups; and participation at the Aboriginal Justice Forum was also invaluable.

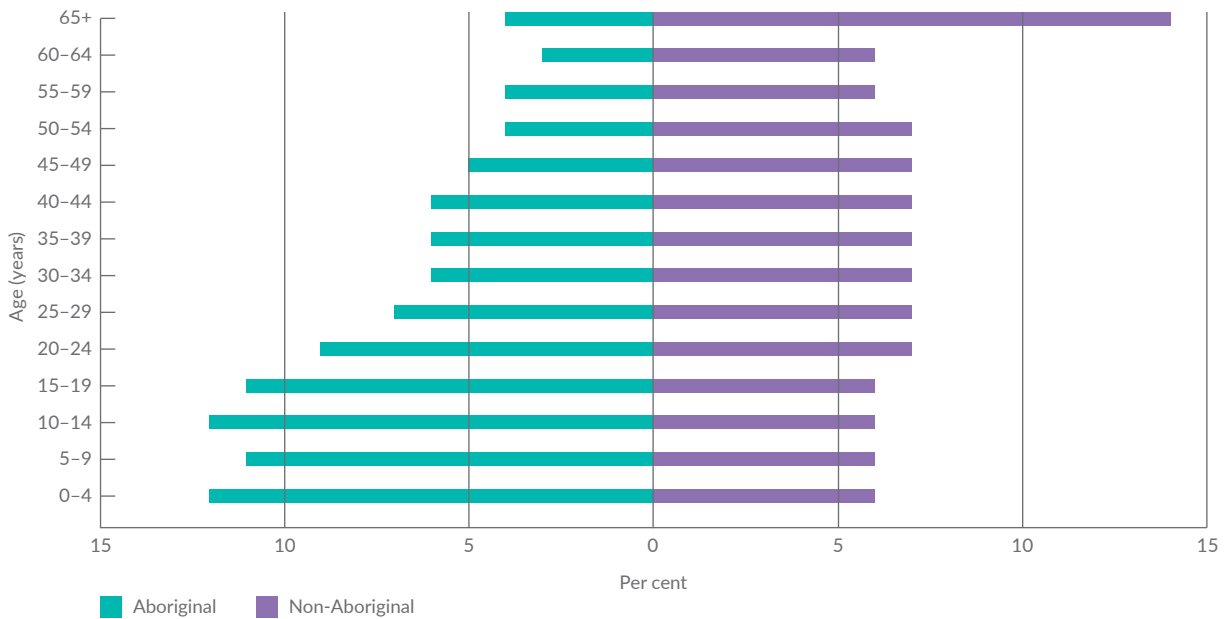
Context and current policy

Aboriginal and Torres Strait Islander peoples in Victoria

The 2011 census recorded 37,991 Aboriginal and Torres Strait Islander people living in Victoria: 0.7 per cent of the population.³ Fifty-five per cent were under the age of 25 years, and the median age was 22 years (compared to 37 years for non-Indigenous Victorians).⁴ Victoria's Aboriginal and Torres Strait Islander population is not only young but is growing fast: based on annual growth rates it is estimated that there will be over 80,000 Aboriginal and Torres Strait Islander people in Victoria by 2021.⁵ Figure 26.1 illustrates the age distribution of Aboriginal and non-Aboriginal populations in Victoria.

The Victorian Aboriginal and Torres Strait Islander population is also highly urbanised, with almost half living in Melbourne (47.4 per cent).⁶ These are important factors when considering the impact of family violence on communities, and in planning for prevention and response.

Figure 26.1 Aboriginal and non-Aboriginal people, by age group: Victoria, 2011



Source: Australian Bureau of Statistics Census of Population and Housing 2011, cited in Department of Planning and Community Development, 'Victorian Aboriginal Affairs Framework 2013-2018. Building for the Future: A Plan for 'Closing the Gap' in Victoria by 2031' (2012).

Family violence in Victorian Aboriginal communities

Aboriginal communities' definitions of the 'nature and forms of family violence are broader and more encompassing than those used in the mainstream'.⁷ The use of the term 'family violence' (rather than 'domestic violence') in the *Family Violence Protection Act 2008 (Vic)* reflects this, and includes violence within kinship networks and against extended family members, not just those living together.⁸ The definition of 'family member' specifically includes a person who, under Aboriginal or Torres Strait Islander tradition or contemporary social practice, is the person's relative.⁹

The Commission has also been informed by the definition of family violence offered by the Indigenous Family Violence Task Force (and incorporated into the 10 year plan). In that wide-reaching definition family violence is:

An issue focused around a wide range of physical, emotional, sexual, social, spiritual, cultural, psychological and economic abuses that occur within families, intimate relationships, extended families, kinship networks and communities. It extends to one on one fighting, abuse of Aboriginal community workers as well as self-harm, injury and suicide.¹⁰

For example, an individual can be both a perpetrator and a victim of family violence and the violence may take place in public and can involve a number of people.¹¹ There may be physical violence towards victims who report family violence.¹² Intergenerational violence and abuse involving violence against Elders has also been identified as an emerging issue, as has use of violence by young people (including Aboriginal young women) against older women and grandparents.¹³

Context of family violence in Victorian Aboriginal communities

One of the 11 guiding principles set out in the Victorian Indigenous Family Violence Task Force report is the recognition that ‘from an Indigenous perspective the causes of family violence are located in the history and impacts of white settlement and the structural violence of race relations since then’.¹⁴ This is consistent with the material presented to this Commission in consultations, submissions and evidence,¹⁵ which highlights the importance of understanding family violence in Victorian Aboriginal communities within the context of:

- ▷ dispossession of land and traditional culture
- ▷ breakdown of community kinship systems and Aboriginal lore
- ▷ racism and vilification
- ▷ economic exclusion and entrenched poverty
- ▷ alcohol and drug abuse
- ▷ the effects of institutionalism and child removal policies
- ▷ inherited grief and trauma
- ▷ the loss of traditional Aboriginal male roles, female roles and status.¹⁶

As noted by the Victorian Aboriginal Legal Service in its submission:

Family violence within Indigenous communities is complex because Indigenous communities, family structures and the issues faced are complex. With a history of colonisation, dispossession, break down of cultural practices and language and denial of expressions of identity, this means that the traditional factors that feature in a person’s resilience (identity, family supports, kinship) are absent. The ‘normalising’ behaviours that are set out in Western nuclear families with traditional roles of a male and female parent does not apply neatly to Aboriginal families, where the importance of uncles, aunties and cousins (related by blood or not) are held paramount. There are often specific expectations of what relations are required to do for each other which clash with non-Aboriginal organisations and their method of service delivery.¹⁷

It is also important to recognise that a higher proportion of Aboriginal people in Victoria ‘have been directly affected by the Stolen Generations than in any other state or territory’:¹⁸

Aboriginal communities carry great trauma experiences that are transferred from one generation to the next. When the cumulative trauma of intergenerational poverty and marginalisation by society are untreated, other complexities such as drug and alcohol abuse and the violence experienced by the community escalate. These issues create particular challenges for addressing family violence in Aboriginal communities ...¹⁹

Overwhelmingly, the evidence to the Commission was that these traumatic experiences have contributed to the prevalence of family violence in Aboriginal and Torres Strait Islander communities:

There are multiple complex and diverse factors contributing to the high levels and severity of family violence in Aboriginal and Torres Strait Islander communities. It must be clearly understood that the causes do not derive from Aboriginal culture. Family violence is not part of Aboriginal culture. However, the disadvantage, dispossession and attempted destruction of Aboriginal cultures since colonisation have meant that family violence has proliferated in Aboriginal communities.²⁰

Prevalence and incidence

Family violence may not have been part of our traditional culture, but it is certainly part of our current culture. A very negative part, but still part. I say this based on the currency, regularity and commonality of practices across the state and across communities.²¹

The available data shows that Aboriginal peoples—women and children in particular—experience family violence at significantly higher levels than other Victorians.

Police reports

Before discussing Victoria Police family violence incident data it is important to note that information on Indigenous status is not considered sufficiently reliable for general use because of the significant proportion of records where the Indigenous status is recorded as 'unknown'. It is important to be aware that low reliability in the recording of Indigenous status can mean that changes from year to year in the number of Indigenous people affected by family violence may be related to a change in the quality of recording of Indigenous status. With this in mind, the data shows that:

- ▷ Using Victoria Police data, the Department of Justice and Regulation reports that between 2008–09 and 2013–14 the number of police family violence incidents relating to those identifying as Aboriginal doubled from 1064 to 2135, an increase of 100.6 per cent, compared to a 53.6 per cent increase in non-Aboriginal family violence incident reports.²²
- ▷ The number of family violence incidents where children were recorded as present is also increasing. Out of the 2135 family incident reports made by Aboriginal people in 2013–14, around a third ($n=704$) had children recorded as present. The number of family violence incidents at which at least one child was recorded as present increased approximately 66 per cent between July 2008 and June 2014, from 424 to 704.²³
- ▷ The number of family violence-related assaults involving an Aboriginal or Torres Strait Islander person as the offender increased by 243 per cent in the same period.²⁴

While the rate of growth in family violence reports has increased for both Indigenous and non-Indigenous Victorians, the increase is much higher within Aboriginal and Torres Strait Islander communities. It is the Victorian Government's view that while this 'indicates further prevention and early intervention work needs to be done, it also reflects growing awareness and confidence in reporting of family violence by the community'.²⁵

Over-representation of Aboriginal and Torres Strait Islander people in family violence

Given that the Aboriginal and Torres Strait Islander population accounts for less than one per cent of the Victorian population, comparison of absolute numbers of family violence incidents with incidents involving non-Indigenous Victorians provides 'little insight into the relative magnitude of the problem'.²⁶ Prevalence data is more useful because it shows the extent of over-representation.

In 2006–07, there were 19 reported Aboriginal family members affected in family violence incidents for every 1000 of the Aboriginal and Torres Strait Islander population in Victoria. This increased to 43 per 1000 in 2013–14, compared to an increase from three to six per 1000 for non-Aboriginal Victorians. This means that an Aboriginal person was 7.3 times more likely than a non-Aboriginal person to be an affected family member in a family violence incident.²⁷

Figure 26.2 Family violence incidents per 1000 population: Indigenous and non-Indigenous affected family members, 2006–07 to 2013–14



Source: Crime Statistics Agency, 'Affected Family Members in FDV incidents by Indigenous status by year'; Australian Bureau of Statistics, 'Estimates and Projections, Aboriginal and Torres Strait Islander Australians, 2001 to 2006' (Catalogue No 3238.0, 'Australian Bureau of Statistics', April 2014); Australian Bureau of Statistics, 'Australian Demographic Statistics' (Catalogue No 3101.1, Australian Bureau of Statistics, June 2015) cited in Department of Premier and Cabinet, 'Mid-term evaluation of the Indigenous Family Violence 10 Year Plan' (September 2015), 33, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.

There is a similar over-representation in involvement as either an affected family member (victim) or other party (perpetrator): 91.4 Aboriginal persons per 1000 population, compared to 11.4 per 1000 non-Aboriginal population in 2013–14.²⁸ Thus, in that year, an Aboriginal person in Victoria was eight times more likely to be involved as either a victim or perpetrator in a reported family violence incident than a non-Indigenous person.

Impacts of family violence on women and children

The effects of family violence in Aboriginal communities are far reaching.

The Commission heard that family violence is a leading contributor to Aboriginal child removal, homelessness, poverty, poor physical and mental health, drug and alcohol misuse and incarceration.²⁹ These issues were extensively canvassed in the report of the Indigenous Family Violence Task Force and are reflected in the 10 year plan.³⁰

Aboriginal women and children are the primary victims

The evidence presented to the Commission was that Aboriginal women and children are the primary victims of family violence in Aboriginal communities.³¹ The Aboriginal Family Violence Prevention and Legal Service Victoria is the only service set up to exclusively represent Aboriginal and Torres Strait Islander victims in Victoria. Its Chief Executive Officer, Ms Antoinette Braybrook, gave evidence that while that service is not gender exclusive, 93 per cent of its clients are women:³²

While men can certainly be victims and their needs must not be overlooked, women and children represent the vast majority of victims/survivors within Aboriginal communities. It is vital that Aboriginal communities acknowledge this fact and ensure that sufficient resources are obtained and made available to keep women and children safe, and that Aboriginal communities support women in their decisions to leave a violent relationship, and to create safe but separated families, rather than bear the burden associated with keeping a violent family relationship together.³³

It has been estimated that Victorian Aboriginal women are 45 times more likely to suffer family violence than non-Aboriginal women.³⁴ Nationally they are 35 times more likely to be hospitalised than non-Indigenous women due to family violence-related assaults. Indigenous males are 22 times more likely than non-Indigenous males to be hospitalised as a result of family violence-related assaults.³⁵

Australian Indigenous respondents in the International Violence Against Women Survey reported three times as many incidents of sexual violence in the previous 12 months compared to non-Indigenous women.³⁶

A recent study also found that, where violence occurs, Aboriginal children are much more likely to have witnessed physical violence against their mother or stepmother than non-Aboriginal children (42 per cent in that study compared to 23 per cent of all children).³⁷

It was submitted that where violence occurs Aboriginal women are 25 times more likely to be killed or injured because of family violence than non-Aboriginal women.³⁸

The Commission also heard that perpetrators of violence against Aboriginal women are both Aboriginal and non-Aboriginal men, for example the Aboriginal Family Violence Prevention and Legal Service Victoria reported that it:

... routinely sees Aboriginal clients, mostly women, who experience family violence at the hands of men from a range of different backgrounds and cultures, Aboriginal and non-Aboriginal. The only certainty in the existing data is that Aboriginal women are at disproportionately higher risk of family violence.³⁹

Children and out-of-home care

The impact of family violence on Aboriginal children is profound, with a clear connection between the high rates of family violence and the high numbers of Aboriginal children in out-of-home care. There is a much higher rate of removal of Aboriginal children from their families than of other Australian children. Productivity Commission data reveals that in 2014–15, there were 81.4 per 1000 Aboriginal and Torres Strait Islander children subject to care and protection orders, compared to 6.6 per 1000 for non-Indigenous children.⁴⁰

According to the Victorian Commissioner for Aboriginal Children and Young People, Mr Andrew Jackomos, Aboriginal children now represent one in six Victorian children or young people being placed in care.⁴¹ The Victorian Aboriginal Child Care Agency submitted to the Commission that family violence is 'one of the predominant contributing factors driving child protection intervention and the removal of children from family'.⁴²

We discuss child removal in further detail below as this was a major issue identified in evidence before the Commission.

The link between exposure to family violence and the high incarceration rates of Aboriginal women is also becoming increasingly clear. A study of female prisoners examining drug use and offending found that of the 470 female prisoners surveyed, 87 per cent were victims of sexual, physical or emotional abuse, with most having suffered abuse in multiple forms.⁴³ A NSW study found that 69 per cent of Aboriginal women prisoners surveyed reported they were abused as children, and 73 per cent reported they were abused as adults, 42 per cent of whom experienced sexual assault. It also found that at least 80 per cent of the female prisoners surveyed said their victimisation was an indirect cause of their offending.⁴⁴ The Aboriginal Family Violence Prevention and Legal Service Victoria identified similar levels of victimisation through its experience of working with Aboriginal and Torres Strait Islander women prisoners in Victoria.⁴⁵ We discuss the link between family violence victimisation and imprisonment in more detail in Chapter 34.

Aboriginal and Torres Strait Islander family violence policy in Victoria

In response to the unique historical context in which family violence occurs, the Indigenous community has called for a holistic approach to family violence that addresses the legacy of the past and seeks to heal individuals, families and communities. There is a shared recognition between the Victorian Government and the Indigenous community that solutions to family violence lie within Indigenous communities themselves and that Indigenous people must lead the strategy which will prevent and eliminate family violence in the Indigenous community.⁴⁶

A considerable amount of work has already been done in Victoria, both by Aboriginal and Torres Strait Islander community leaders and the Victorian Government, to address family violence. In 2001, under the *Framework for the Development of the Victorian Indigenous Family Violence Strategy: a partnership approach between the Indigenous community and Government*, the Victorian Government appointed the Indigenous Family Violence Task Force.⁴⁷ The task force was chaired by Noongar woman Ms Daphne Yarram and included key Indigenous leaders. Its role was:

- ▷ to engage Indigenous communities throughout the state in the development of 'community-led' strategies for addressing Indigenous family violence issues
- ▷ to provide a final report to the Victorian Government making recommendations in relation to a culturally appropriate statewide strategy for addressing family violence issues in an integrated and holistic manner.⁴⁸

Indigenous Family Violence Task Force Report

The task force delivered its final report to the Victorian Government in 2003.⁴⁹ At the start of its report the task force acknowledged the challenge presented to it in breaking the 'silence of acceptance' about family violence in Aboriginal communities. The report sets out in detail the scale, nature and dynamics of family violence in Aboriginal communities in Victoria. It makes 28 recommendations, affirming the need to build on the strengths of Aboriginal communities and to encompass Aboriginal concepts of social, emotional, cultural and spiritual wellbeing. The Victorian Government was seen to have a role in developing an integrated policy framework to support a holistic, community-driven response. Ownership of the process and outcomes by Indigenous communities was considered essential. As stated in the report:

The work of the Task Force was not about directly addressing family violence with individuals and families but about facilitating a process whereby communities begin to take ownership of the issue of family violence through the establishment of Regional IFV Action Groups.⁵⁰

As a result of the work of the task force, in 2005 the Victorian Government established the Indigenous Family Violence Partnership Forum which is informed by the work of the Indigenous Family Violence Regional Action Groups: see the box that follows.

Governance of the Indigenous Family Violence Strategy

The Indigenous Family Violence Partnership Forum meets twice a year to oversee the coordination and implementation of the Indigenous Family Violence Strategy, including the 10 year plan. The forum is made up the Indigenous Family Violence Regional Action Group (IFVRAG) coordinators, along with chief executive officers or chairpersons of key Aboriginal organisations and senior representatives from Victorian government departments.

The regional IFVRAGs are the first contact point for community members, providing ‘an opportunity for individuals, families and groups in communities to receive the support they need to come together, discuss and develop solutions for family violence.’⁵¹ There are 11 IFVRAGs across the state. Membership includes Elders, individual community members and local Aboriginal organisations and service providers. The IFVRAGs lead community efforts to address family violence, developing regional plans based on consultation within their local community about how best to reduce, prevent and respond to Aboriginal family violence.⁵²

There are 10.5 IFVRAG coordinators employed by the Department of Health and Human Services and one statewide coordinator employed to support each of the regional coordinators.⁵³ Each IFVRAG also has an Aboriginal Chairperson.

Departmental responsibility for the 10 year plan is shared between the Department of Premier and Cabinet which has oversight of the plan, and the Department of Health and Human Services which has core responsibility for implementation.⁵⁴

A major outcome of the forum is the 10 year plan discussed below.

The 10 year plan

In 2008, the Indigenous Family Violence 10 year plan *Strong Culture, Strong Peoples, Strong Families* was signed by Aboriginal and Torres Strait Islander leaders, key Victorian Aboriginal agencies and government departments including five Ministers and the Deputy Premier. It ‘explicitly frames the understanding and response to family violence through an Aboriginal lens ... by acknowledging the influence of dispossession on Aboriginal people that occurred from European colonisation, and its inter-generational impacts.’⁵⁵

The 10 year plan contains nine guiding principles, reproduced in the box on the next page.⁵⁶

Guiding principles of the Strong Culture, Strong Peoples, Strong Families 10 year plan

To guide all elements of the plan towards the vision, the Indigenous Family Violence Partnership Forum established nine principles for developing and implementing policies and programs:

1. **Family violence is not part of Indigenous culture.** As stated in our Vision: 'Families are our heart and soul. They generate dreams and values, ideals and visions for our children.' Family violence is a crime and is unacceptable within the Indigenous community. Safety and security for victims of violence is our number one priority.
2. **Complex nature of family violence within Indigenous communities.** In an Indigenous community context, family violence includes a wide range of physical, emotional, sexual, social, spiritual, cultural and economic abuses that can occur within families, extended families, kinship networks and communities.
3. **Indigenous culture.** Indigenous Victorians are the First Peoples of our state. We recognise the uniqueness and diversity of Indigenous culture, society and history in Victoria and promote reconciliation that gives proper recognition and respect to the Indigenous people of Victoria. We acknowledge Elders as the keepers of this rich history and we value, respect and protect them. The Indigenous community and the Victorian Government agencies work together in a respectful manner to effectively develop integrated and culturally competent responses to family violence in Indigenous communities that incorporate Indigenous history, values and parenting experience.
4. **Partnership, transparency and accountability.** Honesty, mutual respect, trust, accountability, transparency in decision making and shared recognition of each partner's role and responsibilities enables the partnership between the Victorian Government and Indigenous community. To maximise the effectiveness of all service provider and partnership arrangements, members of the Partnership Forum actively promote transparency and accountability in all work on Indigenous family violence.
5. **Adequate resources.** The provision of adequate funding and resources is an essential element in the prevention and elimination of family violence in the Indigenous community. We ensure these resources achieve long term, sustainable improvements in the Indigenous community and Victorian Government practice.
6. **Empowering Indigenous communities.** In recognition of the principle of Indigenous self management and self-determination, we recognise, advocate and promote the need for Indigenous people to lead the process at all levels.
7. **Local solutions to local problems.** We recognise the requirement to support, empower and enable communities to develop solutions to prevent, reduce and respond to family violence in Indigenous communities through the core leadership of the Indigenous Family Violence Regional Action Groups and the Partnership Forum.
8. **Holistic healing approach to family violence in Indigenous communities.** We appreciate the importance of a holistic healing approach to family violence in Indigenous communities based around family and Indigenous community strengthening, collaborative approaches, appropriate resources and flexible program and service delivery arrangements.
9. **Early intervention, prevention and education.** Indigenous community and Victorian Government responses to family violence in the Indigenous community are based on our support for early intervention, prevention and education.

The objectives of the 10 year plan were shaped by the Indigenous Family Violence Partnership Forum. These eight objectives are:

1. Cultural safety: make Victoria a safer place for all Indigenous Victorians.
2. Healthy families: support strong, robust and healthy families that provide a safe nurturing environment.
3. Education, awareness, prevention: intervene early to improve education, awareness and prevention of family violence.
4. Safety for victims: increase the safety of Indigenous families and individuals, especially women and children.
5. Accountability: Increase the accountability and personal responsibility of perpetrators of family violence within Indigenous communities.
6. Healing: increase opportunities for healing for victims and perpetrators.
7. Service capability: increase the cultural competency and capacity of the service system to improve responses to Indigenous family violence.
8. Research and evaluation: Improve the effectiveness and efficiency of responses to Indigenous family violence through ongoing research and evaluation.⁵⁷

The plan then sets out a series of 17 key strategies and 45 actions against each of these objectives.

The *Victorian Aboriginal Affairs Framework 2013–2018* contains a commitment to the 10 year plan and to focus efforts on reducing Aboriginal family violence.⁵⁸ Other important policy documents include the Aboriginal Justice Agreement, now in its third phase, with its associated governance structure through the Aboriginal Justice Forum.⁵⁹

Evaluation of progress under the 10 year plan

The recent mid-term evaluation of the 10 year plan is generally positive, finding that '[t]he 10 Year Plan's objectives continue to be relevant in the current policy context' and that:

The community led, family centred holistic approach integral to the 10 Year Plan ... is an example of leading practice in reducing family violence. Such practice should inform broader system reforms.⁶⁰

Among the achievements of the 10 year plan, the evaluation finds that the 11 IFVRAGs have been effective in breaking down the 'shame factor' in discussing family violence in Aboriginal and Torres Strait Islander communities.⁶¹ The Community Initiatives Fund has assisted IFVRAGs to initiate small-scale family violence projects and establish partnerships within local communities which has raised awareness about family violence.

Since 2006–07, reporting of Aboriginal family violence incidents has increased at a higher rate than reporting in non-Aboriginal communities. The evaluation suggests that this may reflect the greater awareness of family violence in Aboriginal communities as a result of the work of the IFVRAGs, and/or greater confidence in reporting to police.⁶² It also notes that the growth in reporting is likely to continue to increase, and that an explicit commitment from the Victorian Government, along with increased resourcing, is required to ensure the sector is able to respond.⁶³

Other achievements of the 10 year plan include the development of a draft Aboriginal contextualised Family Violence Risk Assessment and Risk Management Framework (also known as the Common Risk Assessment Framework or the CRAF) discussed further in Chapter 6, continuation of the four healing services and four time out services,⁶⁴ and Koori Family Violence Police Protocols which have been piloted in three sites.⁶⁵ Cultural competency guidelines for family violence services have also been developed.⁶⁶

Resourcing of the plan was identified as an area of concern, with the evaluation noting that:

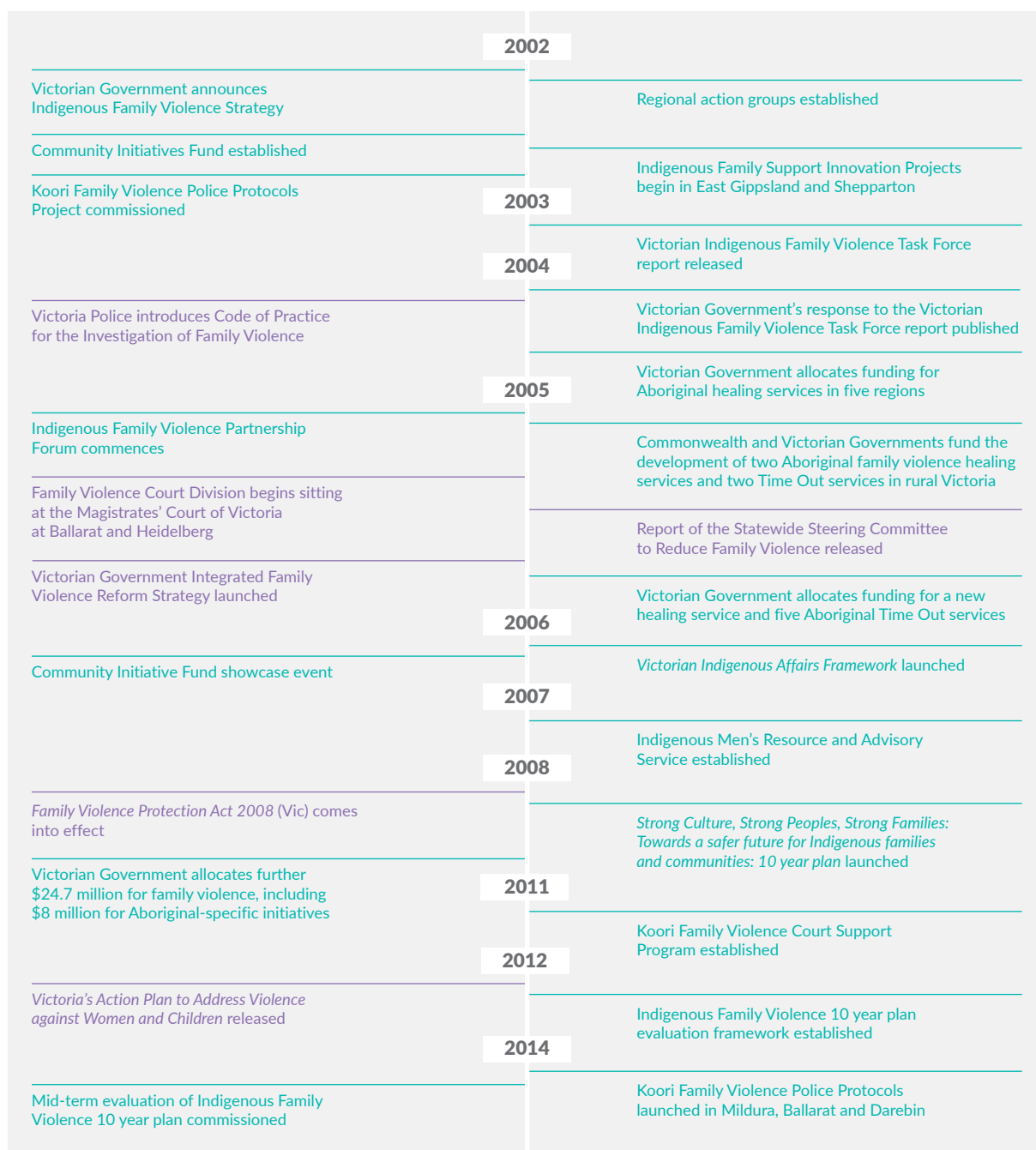
The implementation and oversight function has been significantly disadvantaged by a lack of allocated resources in comparison to other strategies resulting in limited capacity to leverage broader activities and influence better outcomes on behalf of the Victorian Aboriginal community.⁶⁷

Governance is also an area requiring some attention, with the evaluation reporting that additional oversight is required by government and more resources are required to support the Victorian Government Secretariat.

The evaluation makes four recommendations, with subsets under each main recommendation. The four recommendations are:

- ▷ the Victorian Government commit to providing high level oversight of the implementation of the 10 year plan objectives and reporting on achievements annually to the Family Violence Cabinet Committee
- ▷ invest in the implementation, monitoring and oversight of the 10 year plan
- ▷ improve data collection and analysis mechanisms to drive system responses to Aboriginal family violence
- ▷ invest in the community-led approach to Aboriginal family violence.⁶⁸

Figure 26.3 Family violence policy reform in Victoria: Aboriginal-specific and general, 2002 to 2014



■ Aboriginal-specific ■ General

Source: Based on Department of Premier and Cabinet, 'Mid-term Evaluation of the Indigenous Family Violence 10 Year Plan' (September 2015), 3, produced by the State of Victoria in response to the Commission's notice to produce dated 5 June 2015.

Community education, prevention and early intervention

Family and Community is the cornerstone of Aboriginal people's way of life. Community education is the key to raising awareness of Family Violence and the impact it has on our families and community. We believe it is imperative to build a positive vision in Aboriginal communities, based on strong family values and cultural practices and to use holistic approaches to address family violence.⁶⁹

The 2003 report of the Indigenous Family Violence Task Force begins with an acknowledgment of the challenge in speaking up, and breaking the 'silence of acceptance' about family violence in Aboriginal communities. Twelve years later, the mid-term evaluation of the 10 year plan identified the reduction of stigma through education and prevention programs as one of its key achievements.⁷⁰

According to the evaluation, the education, awareness and prevention projects supported by the Community Initiative Fund and the Community Prevention Initiative Fund and administered by the IFVRAGs have been 'very effective at a local level to create awareness and understanding of family violence'.⁷¹

All partners identified that this was the strongest achievement since the commencement of the 10 year plan. The 10 year plan, and the work of agency stakeholders and Aboriginal communities, was seen as reducing the 'shame factor' associated with Aboriginal family violence.⁷²

As the evaluation states, '[a] growth in awareness and concern about Aboriginal family violence is a critical foundation for change'.⁷³

Also under the 10 year plan, an Indigenous-specific prevention framework was developed and released in 2012.⁷⁴ The *Indigenous Family Violence Primary Prevention Framework* identified the features of best practice in primary prevention in Indigenous communities: see the box that follows.

Best practice in primary prevention activities in Indigenous communities

The activities must:

- ▷ be led by Aboriginal communities
- ▷ include a whole of community approach and community strengthening
- ▷ be grounded in cultural respect and cultural strengthening
- ▷ promote non-violent social norms and strengthen protective factors in communities
- ▷ improve access to resources and systems of support
- ▷ include time lines, accountability and evaluation.⁷⁵

Examples of successful education, prevention and early intervention initiatives

The Commission was presented with information about numerous education, prevention and early intervention programs. Ms Jill Gallagher AO, Chief Executive Officer, Victorian Aboriginal Community Controlled Health Organisation, echoed the sentiments of many when she stated:

These preventative and early intervention programs are actually the most important part, if we truly want to get violence out of our community, keep families together and give kids the best start in life that we can.⁷⁶

This section discusses the evaluation findings of some of the more successful programs. They are grouped together as they have common aims, and the delineation between education, prevention and early intervention is not strongly made by services or communities.

Aboriginal Family Violence and Prevention Legal Service Victoria's Early Intervention Prevention Program

Many people cited the 'Sisters Day Out', 'DillyBag' and 'DillyBag: The Journey' programs run by FVPLS Victoria as part of its Early Intervention Prevention Program as good examples of effective prevention and early intervention programs for women.⁷⁷ The Commission understands that these programs have reached over 6500 Aboriginal women since 2007.⁷⁸

The Sisters Day Out is a one-day workshop for Aboriginal women to participate in a range of activities including beauty therapies, relaxation therapies, exercise activities and an information session about family violence prevention, presented by FVPLS Victoria.⁷⁹ The workshop is attended by a range of local service providers with the purpose of informally interacting and sharing information relating to family violence in a culturally welcoming and safe environment.⁸⁰ FVPLS Victoria lawyers and a counsellor are also in attendance to provide advice and support to participants.⁸¹ The 100th Sisters Day Out was held in February 2016.

The Dilly Bag program is an intensive workshop delivering personal development and group activities to Aboriginal women that emphasise self-nurturing and healing from trauma, promote cultural identification, and assist women to strengthen their resolve and resilience.⁸² The workshops are also intended to help reduce Aboriginal women's vulnerability to family violence, and enhance their capacity to take on a leadership role in their community regarding family violence prevention.⁸³ Dilly Bag is a one day program and Dilly Bag: The Journey is an extended program where participants stay together over three days at a private and culturally appropriate location.⁸⁴

These three programs were evaluated in 2014. The evaluation reported that the programs had significant beneficial impacts on participants' immediate wellbeing and access to services,⁸⁵ and important medium and long-term impacts, including that 'participants feel motivated and empowered to make real and significant changes to their lives'.⁸⁶

A further interim evaluation of these programs as a component of Koori Community Safety Projects by the Australian Institute of Criminology (discussed below) found that they demonstrated leading practice in design of Aboriginal family violence prevention programs such as cultural grounding, and inclusive community approaches.⁸⁷ For example, participant feedback from Sisters Day Out showed 'more than one-third of participants said the most valuable thing about the event was learning more about family violence services'.⁸⁸ Participants also reported 'increased awareness of the causes and impacts of family and community violence, and improved knowledge of legal assistance services'.⁸⁹ Dilly Bag participants reported that participation 'would help them make strong choices in their lives'.⁹⁰

These programs have always been reliant on one-off funding. At the time of making its submission to this Commission in June 2015, FVPLS Victoria had not secured funding to staff these programs beyond 30 June 2015. In December 2015, the Victorian Government announced a funding contribution of \$50,000 which the Commission understands is non-recurrent funding.⁹¹

Koori Community Safety Grants

In 2013 the Victorian Government granted \$2.4 million for four three-year projects in Koori communities (the Koori Community Safety Grants). This was part of an overall allocation of \$7.2 million under the *Reducing Violence against Women and their Children* grants program.⁹² The grantees were the:

- ▷ Lakes Entrance Aboriginal Health Association—Strong Men, Strong Communities
- ▷ Mallee District Aboriginal Services—Family and Community Violence Prevention Project
- ▷ Rumbalara Aboriginal Cooperative—Aboriginal Family Harmony Project
- ▷ Victorian Aboriginal Health Service—Strong Relationships, Strong Community.

The Australian Institute of Criminology has reviewed progress to date on these four projects. There were a number of activities within each project, which included Dilly Bag programs, Sisters Day Out workshops, Dardi Munwurro youth camps, men's groups, harmony days and mediation training.⁹³ The evaluation (which is interim), highlighted that the projects demonstrated a number of elements of best practice.⁹⁴ The projects included close liaison and culturally appropriate engagement with Koori communities and their leaders, leading to keen community support and higher than expected levels of attendance at community events.⁹⁵

Mallee District Aboriginal Services' Community Safety Project TV advertisements

As part of the Family and Community Violence Prevention Project, a series of six television advertisements were developed and designed by community members from Mildura, Robinvale and Swan Hill. NBS Productions filmed and produced the commercials at locations across Mildura, Swan Hill, Mungo and Robinvale using local community members as actors and production assistants.⁹⁶

The commercials were developed as part of Mallee District Aboriginal Services' Community Safety Project, and funded by a Koori Community Safety Grant.⁹⁷

They can be viewed at <http://www.mdas.org.au/familyviolence>

Healing programs

In its 2003 report the Indigenous Family Violence Task Force called for holistic family healing centres 'to strengthen and heal individuals, families and communities affected by family violence'.⁹⁸ It was envisaged that these centres would work with victims and families by providing a range of services, including referral to time out services for men.⁹⁹

The Task Force also presented a strategy developed from Men's Forums, which called for Men's Resource Centres with crisis response teams, family violence intervention officers, time out centres, and integrated service provision. It also called for research into the causes of family violence, with a focus on causes and prevention strategies specific to Indigenous men.¹⁰⁰

Healing for both victims and perpetrators is one of the eight objectives of the 10 year plan.¹⁰¹ The focus in the plan on healing for all family members derives from the understanding that Indigenous male perpetrators have experienced inequity, violence and transgenerational trauma that contribute to the current levels of Indigenous family violence.¹⁰²

Submissions to this Commission reiterated the importance of the principle of healing in working with perpetrators, as well as the importance of a whole-of-family approach to healing trauma.¹⁰³ Examples of integrated services for the whole family, including the male perpetrator, were also identified by witnesses as approaches that require further investment.¹⁰⁴

The complexity that arises where perpetrators may themselves have been victims as children was described, where 'people with incredibly complex histories who now exhibit a behaviour that needs to be addressed'.¹⁰⁵ A number of submissions noted that despite some investment there remained a paucity of culturally safe, holistic and therapeutic interventions for Aboriginal men¹⁰⁶ and the inappropriateness of mainstream behaviour change programs for this community:

The foundation of our work is community and culture. The Aboriginal men we work with often feel disconnected from themselves and from their community and culture. It is critical that there are culturally appropriate programs for Aboriginal men as the vast majority don't want to access mainstream services.¹⁰⁷

A number of submissions to the Commission stated a preference for healing and time out approaches.¹⁰⁸ Common themes underlying the healing approach included:

- ▷ the importance of pride in, and connection to, culture as protective factors¹⁰⁹
- ▷ a recognition of the impacts of grief, trauma and dispossession¹¹⁰
- ▷ the importance of involving the whole family¹¹¹
- ▷ a focus on respect for self and respect for family¹¹²
- ▷ an approach that deals with multiple complex issues, which can include entrenched poverty, drug and alcohol use and homelessness in addition to use of violence¹¹³
- ▷ an emphasis on increasing strength and resilience to deal with conflict
- ▷ a capacity to be flexible and responsive.¹¹⁴

The Commission heard evidence about a number of healing and time out programs that are running in various parts of Victoria. The Indigenous Men's Resource and Advisory Service stated that:

We provide a positive environment for Aboriginal men who want to learn how to actively show respect for the interests of women and children ... A culturally strong Aboriginal family exists when men are living fulfilling lives and are responsible for their actions as father and-or husbands [this] will nurture the success and wellbeing for the whole family.¹¹⁵

Other examples described in submissions and evidence included: Dardi Munwurro 'Strong Spirit' Building Strong Communities Program; Boorndawan Willam Aboriginal Healing Service; Wiimpatja Healing Centre; Victorian Aboriginal Health Service counselling (family violence groups and men's camps and the Minajalku Healing Centre); Yoowinna Wurnalung Healing Service (including a time out service); Aboriginal Centre for Males and Indigenous Men's Case Management Support Programs. This list is not exhaustive as there are a number of time out, healing services and family violence men's group provided by other organisations.¹¹⁶

In Victoria, there are only a few evaluations available examining Indigenous specific healing programs.¹¹⁷ This reflects both the small number of programs and their recent emergence in a field which itself is only about ten years old.¹¹⁸ However, despite limited published research, within the literature there is a growing body of evidence that 'healing centres and the practice of "healing" can be a sustainable vehicle to engaging Aboriginal men in behavioural change and taking greater accountability for their actions'.¹¹⁹

Issues regarding the cultural appropriateness of mainstream men's behaviour change programs are further discussed in Chapter 18.

The justice response

There are a range of justice system policies, support services and interventions that have been specifically designed to recognise and support Aboriginal people in the justice system.

Koori Family Violence Police Protocols

The Koori Family Violence Police Protocols are agreements between local Aboriginal communities and Victoria Police that document how local police must respond to family violence incidents. Their purpose is to strengthen the police response in the short-term, and to reduce the number of family violence incidents in Aboriginal communities in the longer term.¹²⁰

The protocols guide police to determine whether the affected family member(s) or perpetrator identify as Aboriginal and, if so, to offer them the choice of referral to Aboriginal services or non-Aboriginal services. The protocols specify that police members should receive cultural awareness training delivered by members of the local Aboriginal community and that local communities, police and support services should develop and sustain strong local partnerships.¹²¹

Reflections on the protocols highlight that they have two main functions: most obviously they set out and explain the importance of the actions expected of police at the scene of family violence in the Aboriginal community. They also outline what needs to happen to make it normal for all front-line police to ask about Aboriginal identity in a culturally sensitive way and to respond appropriately to the answer. In other words, the protocols commit local police, local Aboriginal communities, and family violence networks and services to mutual engagement, steps towards better understanding, and strong, multifaceted working partnerships.¹²²

Aboriginal legal services

In Victoria, the major provider of legal services to Aboriginal victims of family violence is the Aboriginal Family Violence Prevention and Legal Service Victoria (FVPLS Victoria). In 2013–14 this organisation worked with approximately 4000 people, providing legal advice, casework and representation to more than 500 clients (involving more than 800 children) and provided community legal education, early intervention and prevention activities to around 1700 community members and over 1000 mainstream services staff.¹²³ Its systemic policy and law reform work is supported through philanthropic funding.¹²⁴

The Victorian Aboriginal Legal Service provides legal advice, assistance and representation in the areas of criminal, civil and family law. It also undertakes community legal education, law reform and policy work.¹²⁵

The vast majority of VALS' work (95 per cent in 2012–13) is in criminal law.¹²⁶ Every time an Aboriginal person is taken into custody by Victoria Police, VALS must be notified. Client services are available 24 hours a day seven days a week.¹²⁷

VALS assists those who have been accused of family violence in criminal and/or civil proceedings, and can also assist victims. However, if a person comes to VALS and the other party is currently or has previously been assisted by VALS, they will be referred to another legal service (such as Victoria Legal Aid, community legal centres or FVPLS Victoria).¹²⁸

Koori Family Violence and Victims Support Program

The Koori Family Violence and Victims Support Program (formerly the Koori Family Violence Court Support Program) began as a 12-month pilot program in July 2011 at the Melbourne Magistrates' Court. The program employed a Program Manager, Aboriginal Men's Family Violence Support Worker and Aboriginal Women's Family Violence Support Worker to provide support and information about the court process and available family violence services. The program accepted referrals from court registry staff and magistrates, other court programs, Victoria Police, and external agencies.¹²⁹

When the pilot was evaluated in 2012 it was found to have generally positive results although its client service function had only been operating for approximately nine months at the time. Clients reported an improved court experience and court staff reported that clients were more receptive to court orders and accepting of referrals to service providers. Service providers reported an enhanced ability to make timely referrals and progress cases. Increased cultural awareness among court staff was also reported.¹³⁰

The main challenges identified in the evaluation related to retention of staff, the complexity associated with staff seeking to manage their dual role as both court staff and community members and the impact of uncertainty about ongoing program funding on client engagement.¹³¹

Court-based programs

Submissions described one-off court-based initiatives that included Aboriginal-specific components. One example was the Family Violence Integration Project at Ringwood Magistrates' Court, which was funded by the Legal Services Board between 2011 and 2015. Boorndawan Willam Aboriginal Healing Service joined the partnership and arranged for a Koori Support Worker to provide culturally-specific advice, make referrals and conduct risk assessments for members of the Aboriginal community.¹³² The evaluation of the project found that the initiative strengthened pathways for referrals across and between agencies for Aboriginal clients. Additionally, Boorndawan Willam successfully advised member agencies on culturally safe and respectful policies and practices, through information sessions and workshops.¹³³

Eastern Community Legal Centre, which auspiced this project, stated that the pilot was 'critical in identifying and providing a holistic response to Aboriginal victims and perpetrators of family violence'.¹³⁴

Challenges and opportunities

This section describes the key issues raised in evidence and in submissions. The staggering over-representation of Aboriginal children in out-of-home care, and the correlation between child removal and family violence, were put to the Commission as matters of urgent concern. Prevention and early intervention initiatives, particularly those targeting children and young people, were identified priorities.

The Commission heard of the barriers Aboriginal and Torres Strait Islander people experience in accessing services (particularly safe accommodation) and the role that Aboriginal controlled organisations play in providing culturally sensitive services to their communities. However, the importance of mainstream organisations providing a culturally safe environment for Aboriginal people to access help was also emphasised.

The Commission heard the frustrations of Aboriginal service providers regarding the difficulties experienced in securing stable funding, which creates inefficiencies and limits the ability to consolidate successful interventions. While the existing data reveals a dramatic over-representation of Aboriginal and Torres Strait Islander people in the family violence system, limited and inconsistent data collection means that this proportion may be even greater.

Family violence and child removal

... to Victoria's shame we have the highest overrepresentation of Aboriginal children in out-of-home care; not the numbers, but the overrepresentations. So 14 per cent of Aboriginal children are in the child protection system. That's far too many. We are struggling in Victoria.¹³⁵

The link between family violence and child removal was consistently identified in submissions, consultations and evidence as an area where urgent attention is required.¹³⁶ The Victorian Aboriginal Childcare Agency submitted that family violence is 'one of the predominant contributing factors driving child protection intervention and the removal of children from family'.¹³⁷

Commissioner Jackomos is currently investigating the circumstances of Victorian Aboriginal children in care through the Taskforce 1000 inquiry.¹³⁸ This has found a strong correlation between family violence and entry into out-of-home care:

Specific data on the drivers has been collected by the DHHS, but at this stage has not been made publically available. As an illustrative figure, approximately 80 per cent of children reviewed have experienced family violence, and this is often co-existing with other key factors such as alcohol and drug misuse, parental mental illness and neglect. In the cases reviewed by Taskforce 1000 to date, the majority of cases involve male perpetrated violence against women and children. Taskforce 1000 data also identifies family violence as a key reason why children cannot be reunified with their parents.¹³⁹

From June 2013 to June 2014 there was a 42 per cent increase in the number of Victorian Aboriginal children in out-of-home care, which was the highest increase in an Australian state or territory for that period.¹⁴⁰ Commissioner Jackomos gave evidence that:

Aboriginal children and young people are significantly over-represented in Victoria's statutory child protection system and are around seven to eight times more likely to be the subject of a report to the DHHS than non-Aboriginal children. Aboriginal children now represent one in six Victorian children or young people being placed in care. Aboriginal children are ten times more likely to have an out of home care experience. I anticipate that without serious resources and effort being put into strengthening families and addressing the key drivers, 1500 Victorian Aboriginal children will be in State care by the end of 2015.¹⁴¹

Funding data provided by the Victorian Government shows that in 2013–14 around \$280,000 was allocated for Aboriginal-specific Integrated Family Services, which represents approximately 0.3 per cent of total funding for that program across Victoria.¹⁴² These services work with vulnerable children and young people and those families including those at risk of becoming involved with Child Protection.¹⁴³

The Commission also notes that while overall rates of entry of Victorian Aboriginal children into out-of-home care have been increasing year by year, the figures vary considerably between regions with some regions (Outer Gippsland, Mallee and Goulburn) experiencing substantial declines between the periods 2000–03 to 2009–12.¹⁴⁴ It was submitted that this may be due to the influence of established Aboriginal community controlled organisations in those regions.¹⁴⁵

Other areas, such as Inner Gippsland, had rates of out-of-home placements for Aboriginal children that were much higher than the national average (55 per 1000); or even the Victorian average (62.5 per 1000) sitting at the highest Victorian rate of 116 per 1000.¹⁴⁶ Of the children in out-of-home care in this region, 86 per cent had been exposed to family violence.¹⁴⁷ The lack of adequate services (including strong Aboriginal community controlled organisations) in the Latrobe Valley, an area of such great need, was cited as a concern by multiple witnesses. Ms Jacquelyn Turfrey, Director of the Koori Justice Unit, Department of Justice and Regulation described the challenges for this region:

What we have noticed there from service mapping is that there's a big hole in service delivery across the board, including in family violence. What that creates then is there's no services to refer people to. So you end up getting courts tied up, police tied up; they just can't deal with their population in the way that you can when you have a good service provider. There is no strong Aboriginal community controlled organisation in the Latrobe Valley. The ones that service that area are outside.¹⁴⁸

Deep concern was expressed by witnesses that without appropriate culturally sensitive and trauma-informed support for children in out-of-home care, the high rate of child removal will contribute to the next wave of family violence. Commissioner Jackomos gave evidence that:

... the current group of Koori children in the care of the State are potentially our next cohort of family [violence] offenders and victims, if we don't provide timely and appropriate counselling and support, if we don't provide them warm and loving homes in the interim whilst we work with their families for early reunification or, where that is not possible, to provide them with stability, preferably within the family network. We need to be working with our children so that they know what is a healthy, responsible and respected relationship. We need to be working with our young boys so that they are [respectful] of women, their mothers, their sisters and their partners.¹⁴⁹

Commissioner Jackomos called for a dedicated strategy addressing the impact of family violence on Aboriginal children, to complement and support the 10 year plan.¹⁵⁰ He proposed:

... the development of a state-wide strategic response to improving the lives of vulnerable Aboriginal babies, children and young people with child protection, youth justice and child homelessness as well as children's trauma and mental health at its core ... The strategic response should be an initiative agreed between the broad Aboriginal community and government, with governance arrangements on par with the Aboriginal Justice Agreement. The response at a minimum should include; principles, protocols, targets and measureable outcomes monitored through a partnership forum.¹⁵¹

Victorian Aboriginal Child Forum

In August 2015 participants at the Aboriginal Children's Summit, convened by Victorian Children and Families' Minister The Hon. Jenny Mikakos and co-chaired by Adjunct Professor Muriel Bamblett AM, Chief Executive Officer of Victorian Aboriginal Child Care Agency, resolved to establish the Victorian Aboriginal Child Forum to address the over-representation of Aboriginal children in out-of-home care. The forum provides ongoing policy direction and monitoring of outcomes for Aboriginal children in out-of-home care. It is based on a partnership between community and government and will meet quarterly. The terms of reference do not refer specifically to family violence but include:

- ▷ strengthening families' and communities' capacity to care for children to reduce the rates of entry into out-of-home care
- ▷ ensuring that every Aboriginal child and family, regardless of where they live in Victoria, has full access to a continuum of prevention, early intervention and placement services delivered through the Aboriginal community controlled organisation sector
- ▷ building the life skills and cultural identity of Aboriginal children in care.¹⁵²

Fear of child protection authorities

The Commission heard that these high rates of child removal and child protection intervention deter some Aboriginal women from disclosing family violence or seeking assistance:¹⁵³

... I think we cannot underestimate the fear of Aboriginal communities, particularly members of our communities who live in poverty and disadvantage, their absolute paralysing fear of the government intervening and taking their children. This is just huge. Our people will not report when they should report.¹⁵⁴

In particular there is a general 'mistrust in mainstream services because our women, our people see that they are the very organisations that take your children away'.¹⁵⁵

The Commission heard that Aboriginal women's overwhelming fear of having their children removed was not sufficiently understood by child protection workers, who it was submitted 'adopted punitive and victim-blaming responses towards Indigenous women experiencing family violence'.¹⁵⁶

What we see within the child protection system is there is a victim blaming mentality. We also see a competing interest where child protection workers are telling our women to leave, otherwise they risk losing their children, and community and family are asking our women to stay and do whatever it takes to make that work.¹⁵⁷

FVPLS Victoria stated that a 'fundamental attitudinal shift is required within the Department [of Health and Human Services] to reform the way the system responds to Aboriginal victims-survivors of family violence.'¹⁵⁸ Specifically, it stated that 'workforce development must include wide-spread, compulsory training for all child protection workers in order to improve cultural respect and awareness along with family violence sensitivity training'.¹⁵⁹

FVPLS Victoria also suggested implementing a Child Protection Notification Referral System for Aboriginal families whereby the primary parent is immediately referred to FVPLS Victoria or another appropriate legal provider.¹⁶⁰ We discuss this further in Chapter 11.

Disconnection from culture

In a related issue, the Commission heard from a number of organisations that there is a widespread failure to abide by statutory obligations towards Aboriginal children in out-of-home care, leading to children becoming disconnected from their community and culture.¹⁶¹

Section 176 of the *Children, Youth and Families Act 2005* (Vic) requires the Secretary of the Department of Health and Human Services to prepare a cultural plan for each Aboriginal child placed in out-of-home care under a guardianship to Secretary order or long-term guardianship to Secretary order. Legislative amendments to this section, due to commence on 1 March 2016, will broaden this requirement to all Aboriginal children in out-of-home care.¹⁶² The cultural plan must set out how the child will retain connection to their community and culture.¹⁶³ A joint submission to the Victorian Government from Aboriginal community controlled organisations, mainstream providers and the Centre for Excellence in Child and Family Welfare Inc. claimed that these statutory requirements were routinely not met.¹⁶⁴ It cites a 2013 audit showing that of those Aboriginal children to whom the statutory obligation applied only eight per cent ($n=15$) had a completed cultural support plan.¹⁶⁵

The Victorian Aboriginal Child Care Agency submitted:

For Aboriginal children placed in out of home care due to family violence this all too often results in removal from kinship groups, community, culture and land; these are factors that contribute to resilience and healing. Aboriginal children are also removed younger and for longer periods of time than non-Aboriginal children exacerbating loss and disconnection ... Given the high prevalence of children and young people in OOHC having experienced family violence, the State, as their parent, has a responsibility to implement strategies to support young people to recover from their experiences and to make healthier choices for themselves so as to reduce the incidence of violence and break the intergenerational patterns.¹⁶⁶

The Commission also heard that there were many instances where Aboriginal children were not identified as such (and therefore, a cultural plan was not considered). The failure to identify Aboriginal children can occur because child protection workers fail to ask (or ask in an inappropriate manner or without providing adequate context for the question), or women are reluctant to disclose due to prior experiences with Child Protection.¹⁶⁷ The Commission notes that one of the priority issues for the newly formed Victorian Aboriginal Child Forum is to develop a comprehensive outcomes framework that is inclusive of cultural needs and rights of Aboriginal children and young people in out-of-home care, and to monitor accountability of outcomes.¹⁶⁸

Aboriginal people are less likely to access support services

The Commission heard that there are a number of reasons why many Aboriginal people who experience family violence do not access support services. These include the fear of the consequences of reporting, lack of access to support services and discrimination and racism.

Reluctance to report

It can take someone, a victim or a perpetrator, a very long time to ask for help to deal with their experience of family violence. When that courage is found, the responses from service providers needs to be immediate, supportive, and above all, culturally appropriate to the needs of the individual, and their family.¹⁶⁹

Some national studies indicate that as much as 90 per cent of family violence against Aboriginal and Torres Strait Islander people goes unreported.¹⁷⁰ The Victorian Government submission noted that Aboriginal people are less likely to report family violence than non-Aboriginal people for a range of reasons including 'fear about the consequences of disclosure, distrust of government agencies and service providers, historical and cultural factors and a lack of access to support services'.¹⁷¹ As noted previously, the Commission heard that the fear of having children taken away is a huge impediment to reporting.

This issue was well described by the Indigenous Family Violence Task Force in its report where it identified that:

... the community needs to be able to trust somebody to tell their "secrets" to. The community has identified that there is no safe way to disclose, so communities are fearful of the consequences and what the impact will be on people the disclosure is about. There is also concern about the current level of support available to individuals who do disclose and the guarantee of their safety. Those individuals that do disclose are also burdened with the concern that 'will they be blamed for family breakdown or will they be believed'.¹⁷²

In relation to women's fears that they will be blamed for family breakdown, Ms Braybrook, from FVPLS Victoria, gave evidence that the multiple obligations women have within communities can prevent them from reporting family violence:

... because of this model of community and family, keeping community together, keeping family together, that does place enormous pressure on the women that are experiencing the violence and they are less likely to disclose and they are essentially silenced because of that.¹⁷³

The Commission heard that reconciling these obligations may be enormously challenging given the many issues victims face, including fear of homelessness, fear of child removal, loss of relationship and the physical and psychological trauma of the violence itself:

Given the relationship between Aboriginal people and authority organisations such as the police or government welfare departments, it is understandable that Aboriginal people are wary of making reports that, whilst may have the immediate impact of safety, have the longer term of impact of breaking up a family, putting children into out of home care, sending someone into custody, becoming homeless or other impacts.¹⁷⁴

Access

The Commission heard that in some rural areas women cannot find either a mainstream or community-controlled service nearby. A participant in a community consultation reflected on meeting a woman in a workshop who had disclosed family violence and left the perpetrator, but she had to travel 200 kilometres to find help.¹⁷⁵

Other practical barriers include the requirement that people attend a service, rather than services being delivered in the home when transport barriers limit access.¹⁷⁶ This was said to be exacerbated in rural areas where lack of public transport meant people cannot get into town to see a service.¹⁷⁷ Delays in getting an appointment can also lead to the moment of intervention or support being lost. The Victorian Aboriginal Legal Service reflected:

Immediate and prompt responses are more likely to be successful when dealing with victims of family violence. Aboriginal clients are less likely to engage with services if they do not receive a quick response. They are more inclined to let the matter go thinking that it is going to take considerable time to get an appointment.¹⁷⁸

Discrimination and racism

Evidence was given that when Aboriginal people do access mainstream services, they can be met with a number of impediments including actual and perceived discrimination by service providers; language and cultural barriers; lack of trust in services and organisations; and lack of awareness of and engagement with local Aboriginal communities.¹⁷⁹

The Commission was informed that this can range from:

... anything from overt racism and being made to feel uncomfortable going to mainstream organisations, to simply feeling that, whilst good intentioned, non-Aboriginal service providers do not understand the cultural and social factors that impact upon and have very specific outcomes for Aboriginal people. This feeling is multiplied when interacting with complex systems in criminal, civil and family law.¹⁸⁰

The importance of ensuring that mainstream organisations provide culturally safe services is discussed in more detail below.

The Commission heard that mainstream services sometimes assume that if a victim is an Aboriginal person they should use a community-specific service,¹⁸¹ even though this may amount to discrimination under Victorian law:¹⁸²

If you are a First Nations people, you are treated completely separately to any other cohort in government systems and processes, and I don't know why. But when people try and access a service, they can get blocked quite easily and then they will feel rejected and they won't try and reengage again. So we have to send our staff with people to mainstream appointments to make sure, if there is a blocker, we help that person work out their service delivery.¹⁸³

The Commission was also asked to consider racism as a barrier to accessing mainstream services. For example, a 2012 survey of 755 Aboriginal Victorians found that 18 per cent witnessed racism against other Aboriginal Victorians almost every day.¹⁸⁴ Twenty six per cent witnessed racism at least once a week, and 97 per cent had experienced racism in the previous 12 months.¹⁸⁵ Sixty-two per cent of participants reported that they sometimes, often or very often avoided situations because of racism, while another 17 per cent avoided such situations on occasion.¹⁸⁶

Funding

Current investment

As noted in Chapter 41, the Victorian Government has been unable to provide the Commission with an overall estimate of the cost of family violence across its programs, including universal services such as health. However, the Victorian Government submission advised that \$80.6 million was budgeted for 2014–15 for expenditure on programs and services addressing family violence.¹⁸⁷

Separately, the Victorian Government advised that in relation to family violence involving Aboriginal people, 'approximately \$10 million was spent directly on Aboriginal family violence in 2014–15. Of this 25 per cent was for prevention through broader programs and 75 per cent on responses to family violence'.¹⁸⁸ It noted however that the majority of services accessed by Aboriginal people are available to all Victorians and that the direct cost of family violence-specific programs and services is an estimate, as it is difficult to isolate 'family violence' programs from broader programs.¹⁸⁹

Funding for Aboriginal services in the 2015–16 Victorian Budget included \$1.3 million for projects that improve Victoria's immediate response to Aboriginal family violence, particularly in high risk communities, including targeted statewide and regional education and awareness campaigns. A further \$0.6 million was provided to Aboriginal support services and \$1.8 million was allocated to help Aboriginal community controlled organisations to respond to the findings of Taskforce 1000, including addressing some complex safety and wellbeing issues identified by the Taskforce. All funding was for 2015–16 only. The budget also announced that existing programs assisting vulnerable Aboriginal families will be reviewed in consultation with Aboriginal organisations and Aboriginal communities, to maximise placement prevention and reunification efforts.¹⁹⁰

The Commission was told that an additional \$2.54 million was sourced from the National Partnership Agreement on Homelessness which expires on 30 June 2017. This includes funding for Aboriginal legal support, Indigenous men's case management and intensive case management for women and children.¹⁹¹

Funding is distributed across a large number of providers.¹⁹²

As noted in Chapter 41, the overall amount of funding provided by the Victorian Government to address family violence is difficult to quantify. This is also the case in relation to Aboriginal family violence: see the box on this page. However, the Commission heard from key agencies and a number of witnesses that current funding levels for the main elements of Aboriginal family violence prevention and response are inadequate, and that the gap is widening as both population size and the rate of reporting increase.¹⁹³ The mid-term evaluation of the 10 year plan found that lack of resources had hampered the implementation and oversight of the plan, and recommended that funding be increased to improve governance and oversight, and support the Partnership Forum.¹⁹⁴ In addition, concerns were expressed in evidence about the short-term nature of funding and the lack of provision for evaluation of programs.

Short-term funding

The Commission heard that funding for family violence is often one-off or short-term which does not allow for sustained approaches. A heavy emphasis on pilots was a common concern:

The problem is there's a lot of great pilots that happen across the State ... The problem is the lack of access to ongoing funding to deliver these programs on a much broader scale, such as the ad that was done by MDAS was done on the smell of an oily rag and with the assistance from the broadcasters who I think gave them free airtime, it was voluntary.¹⁹⁵

They are fantastic. But you need for them to be delivered across the state and preferably with local players.¹⁹⁶

Short-term funding has been described as disdainful to clients and as a disincentive for people in need of assistance to use services because of lack of continuity.¹⁹⁷ Adjunct Professor Bamblett, described it as follows:

I think it's short-term funding for communities to do very small things without visioning, and I think that we need to start to look at what are the bigger issues. I get concerned that that small bucket of money is seen by government as addressing the issue of Aboriginal family violence.¹⁹⁸

In the absence of recurrent funding we were told that organisations use one-off grant money, then re-apply for funds year after year, or seek other sources:

So, we do talk about tiny little pieces of money. We do spend an enormous amount of time justifying why we should get that funding and then evaluating the output of that funding. Even when those two things work exceptionally well, as they do with the Sisters Day Out, the program itself still won't get picked up by government as core business to be funded permanently as they would with any other program.¹⁹⁹

In some cases the stated purpose of funding is to trial new approaches. The Community Initiatives Fund is an example of this, under which IFVRAGs are allocated \$59,000 per annum to initiate small-scale projects.²⁰⁰ The majority of these have focused on cultural strengthening and building awareness of family violence.²⁰¹ While it is important to have dedicated funds for innovation, there was frustration that these activities cannot be repeated, even when they are effective.²⁰² This limitation was also noted in the mid-term evaluation of the 10 year plan, where short-term funding was found to have 'limited the scope of innovation and weakened the reach and spread of promising initiatives.'²⁰³ The evaluation proposed a review of the CIF guidelines and additional resources both for the CIF and for a new stream of funding to enable longer term projects and the continuation of successful programs piloted under the CIF.²⁰⁴

In some cases, three year funding has been provided for prevention projects. These Koori Community Safety Grant Projects are discussed earlier in this chapter.

Insufficient funding for evaluation

An associated concern was that small amounts of funding on a one-off basis does not allow for evaluation of initiatives over time.

Broadly there is a lack of formal evaluation evidence on primary prevention programs targeted towards Aboriginal and Torres Strait Islander communities. The Australian Institute of Family Studies reports that the diversity of programs delivered, combined with the limited evidence base, makes it challenging to clearly articulate effective practice.²⁰⁵ Australia's National Research Organisation for Women's Safety (ANROWS) makes a similar finding in a 2016 state of knowledge review which posits that:

Information sharing about positive progress made in Indigenous communities should be encouraged through the appropriate resourcing of program evaluation. Policies and interventions, as well as evidence building on the effectiveness of those approaches, need to involve Indigenous perspectives. In a time when evidence-based practice is necessary for funding, governments also need to be open-minded to evaluative approaches that include Indigenous viewpoints and the inappropriateness of randomised control trials for small scale culturally sensitive programs.²⁰⁶

In relation to service delivery to Aboriginal peoples generally, in 2014 the Victorian Auditor-General reported that there is 'significant scope' for departments to improve monitoring, evaluation and reporting of outcomes of Aboriginal service delivery strategies and programs. He found that save for the (then) Department of Health 'there is little evidence that departments undertake robust evaluations to assess the achievement of outcomes for Aboriginal Victorians'.²⁰⁷

It was also noted in submissions to this Commission that the absence of funding for research and evaluation means that organisations are being required to bear the financial burden for these activities.²⁰⁸ This is particularly onerous for smaller organisations.²⁰⁹

The Commission notes that the cultural safety of practices used by consultants engaged in consultations with Aboriginal communities in relation to family violence (which might include evaluation) have previously been identified as an area for improvement and guidelines have been issued.²¹⁰

Inadequate data collection by mainstream agencies and departments

Another criticism frequently expressed was that while some progress has been made, collection of data about Aboriginal family violence by agencies is generally poor. This was an issue that was identified as a priority by the Indigenous Family Violence Task Force which recommended in 2003 that:

Government should consider the strategic advantages that can be achieved by putting in place integrated processes and mechanisms for gathering, compiling and distributing data and other useful information. This would create a common platform on which Departmental staff, Indigenous organisations and Regional Indigenous Family Violence Action Groups can make decisions about Indigenous family violence matters.²¹¹

Some 12 years later poor data collection was a strong theme in submissions to this Commission.²¹² Adjunct Professor Bamblett recounted her experience:

I go to family violence forums and there's no data. DHS has no obligation to report on data, how many families are presenting with family violence, and we don't have a from-to. So how are you going to reduce family violence when you haven't got measurable targets?²¹³ ... So how do you actually address violence when you don't know what the data is saying?²¹⁴

Others also noted the importance of specific attention on data collection and reporting of the disability status of Aboriginal clients using the family violence sector, as well as data on Aboriginal children affected by family violence.²¹⁵

Problems with the collection of data regarding Indigenous status were also noted in evidence by Ms Fiona Dowsley, Chief Statistician at the Crime Statistics Agency, who reported that Aboriginal identification is 'quite often of reasonably poor quality'.²¹⁶ This is despite such information being highly desirable for policy making and to operations. The CSA further reports '... [T]here is significant room to improve the quality of Aboriginal and Torres Strait Islander data before coverage will be sufficient to enable robust statistical and research use across datasets'.²¹⁷

The Australian Bureau of Statistics recommends that a person's Aboriginal and Torres Strait Islander status be sought each time they come into contact with a service provider (as their understanding of it, or their willingness to report it, may change), and that they be asked to specify whether they are Aboriginal, Torres Strait Islander, both Aboriginal and Torres Strait Islander or neither Aboriginal nor Torres Strait Islander.²¹⁸ However the CSA observed that these standards have not been uniformly adopted by agencies, departments and service providers. They were particularly concerned that a person's identification as an Aboriginal and/or Torres Strait Islander person should be confirmed by that person and not simply assumed by others.²¹⁹

The mid-term evaluation of the 10 year plan also noted problems with data collection and recording of Indigenous status. Improving data collection and analysis was one of the four recommendations made in the evaluation, including that '[a]ll agencies and departments with implementation responsibilities develop a strategy to reduce the number and percentage of cases where Aboriginality is recorded as unknown or not stated'.²²⁰

At a national level, the Australian Bureau of Statistics' Personal Safety Survey which is the most comprehensive quantitative study of interpersonal violence in Australia, with over 17,000 women and men completing the 2012 survey, does not currently collect demographic information regarding Aboriginal and Torres Strait Islander peoples.²²¹ This limitation is discussed further in Chapter 39.

Choice of organisation

Aboriginal community controlled organisations

The Commission consistently heard that most Aboriginal people have a strong preference for receiving services from Aboriginal community controlled organisations because, among other things, they are much more likely to deliver services in a culturally appropriate way.²²²

The Victorian Aboriginal Child Care Agency submitted:

Our practice approaches incorporate understandings of the impact of past policies on families today, understand how intergenerational trauma and racism must be addressed as part of effective responses. We know that providing Aboriginal services for the Aboriginal community is what works.²²³

A 2015 Australian Institute of Families review of the literature identified the following common factors for successful community-managed programs:

- ▷ community has ownership of and control over decision-making
- ▷ culture is central to the program, including an understanding of local context, history and community leaders
- ▷ local Indigenous staff work on the program or in the organisation
- ▷ good corporate governance exists
- ▷ Indigenous staff are working on programs and existing capacity is harnessed
- ▷ trusting relationships with partners are established²²⁴
- ▷ there is flexibility in time lines.²²⁵

There was a very strong call for investment in Aboriginal services to address prevention of family violence, early intervention strategies and responses to violence. Aboriginal community controlled services were seen to be consistent with the policy intent behind the 10 year plan. It was argued that these services are well connected to communities, and are better able to engage community members and to understand and respond to trauma.²²⁶

People also spoke of the value of integrated, one-stop services where the various needs of families can be met.²²⁷ This reflects the principle of healing for the whole family as well as an attempt to make services as easy to access and flexible as possible.

Ms Gallagher reiterated the value of one-stop shops for meeting primary health care and other needs, stating:

A client can come in and speak to the GP, the financial advisor and the housing officer all in one visit. I can see no better way of making sure that the Aboriginal community has access to, and actually uses, these kinds of critical services. If services are provided at multiple different locations, it is highly likely that the client will only access the service that they need immediately and will not seek out other services or will be lost between services.²²⁸

One-stop services were also called for to reduce fragmentation between different systems—for example drug and alcohol, family support and family violence:²²⁹

What we do know, talking more general, is that where we have strong Aboriginal community controlled organisations delivering one door programs is where we have the strongest outcomes.²³⁰

There was, however, some caution expressed about the one-stop shop approach that provides services to the whole family being the only service model. In her evidence Ms Braybrook outlines three reasons why women may not feel comfortable accessing Aboriginal-controlled services that work with both victims and perpetrators:

- ▷ lack of confidence that the service will support them to leave the perpetrator
- ▷ concerns about privacy and relationships between workers and the community, and resulting pressure to remain within the family unit
- ▷ lack of trust in a service that also works with perpetrators.²³¹

Ms Braybrook stressed the importance of specialist Aboriginal women's family violence services that women can access safely and privately, and provide support to women, 'to ensure that they don't continue to be silenced and that they are kept safe.'²³²

Accessing mainstream services

While the clear message was that most Aboriginal people prefer to use services established by and for their own community, the Commission heard that this was not always the case:

Whilst we believe that a holistic approach to Aboriginal and Torres Strait Islander client's issue based needs are the way forward. [O]ur research found that one of the primary reasons given for choosing to not use an Indigenous service was explained in the context of the interconnectedness of our families and communities confidentiality cannot be assured when using Indigenous services and this can compromise the safety of victims.²³³

It was acknowledged that not all Aboriginal people wish to use an Aboriginal-specific service for a range of reasons including privacy and confidentiality, or to minimise the 'shame' of disclosure.²³⁴ Some women may feel that by reporting family violence to a community controlled organisation, they may experience community pressure to not report the violence in order to avoid criminalising the perpetrator, or be otherwise pressured to stay in the relationship.²³⁵ These issues are not unique to Aboriginal communities, however for some women these are a deterrent to using an Aboriginal-specific service.

Cultural safety within mainstream services

What is cultural safety?

A culturally safe environment is one where services are provided in manner that is respectful of a person's culture and beliefs, and that is free from discrimination.²³⁶

To ensure that an environment is culturally safe, mainstream service providers and governments are required to analyse their organisational culture and ensure that it does not have a negative impact on the cultural rights of Indigenous communities. This right is supported by Victorian, national and international legal instruments which uphold the rights of Indigenous people.²³⁷

Cultural safety has a very practical application when it comes to mainstream services delivering programs because 'understanding, working with and providing services to Aboriginal people requires ongoing communication and a willingness to work in different ways'.²³⁸

The Commission received submissions about the importance of ensuring that mainstream services provide culturally appropriate and safe services to those Aboriginal people who choose to access them. As noted by Ms Angela Singh, Executive Director, Office of Aboriginal Affairs Victoria:

We absolutely see the need for our Aboriginal organisations to be at the forefront in terms of delivering services because they are culturally appropriate, but we also acknowledge that where services are delivered by mainstream organisations they absolutely need to be culturally safe and culturally respectful ... So one of the things that we encourage mainstream services to do is to try to be culturally inclusive and culturally respectful of Aboriginal people, and that way when an Aboriginal person walks through the door they feel supported, they feel their needs are being identified and they feel that their needs can be addressed over the longterm.²³⁹

All DHHS funded organisations are required to be accredited against service standards which include requirements to improve cultural competence.²⁴⁰

However, an important distinction between cultural safety and cultural competency or awareness was highlighted in evidence. The Victorian Aboriginal Legal Service explained that 'while cultural awareness is not a new concept, cultural safety is not as widely known. It refers to an environment in which people feel safe and respected for who they are and what they need, and where their cultural identity is unchallenged'.²⁴¹

There was clear frustration expressed in submissions that cultural competency was seen by many mainstream organisations as the required standard that service providers should be striving for, and that more is required:

Note that we do not use the term 'cultural competency'. This is because the term represents the idea that there is an endpoint of competency and the perception that if you've done training once, you don't need to do it again. The same as professional training for lawyers or health practitioners is accepted as ongoing, so too is cultural awareness.²⁴²

We are forever talking about cultural awareness training to build trust for women in the services – particularly the police – it is not there at all. These need to be ongoing things, not just one off – need to work with judiciary, so they are more culturally aware.²⁴³

There was also a warning that care must be taken to avoid the risk of token or ineffective 'add-on' attempts to cater for Aboriginal clients: 'cultural safety cannot be achieved by simply employing a handful of Aboriginal staff', with concern expressed that Aboriginal staff can become over-burdened by expectations to 'represent 'Aboriginality' within the organisation, service Aboriginal clients and continually educate non-Aboriginal colleagues about cultural matters'.²⁴⁴

The Commission also heard that there is often a 'dichotomy of inaction or overreaction' to reports of violence involving Aboriginal people:

Whether it's a lack of follow up shown when reporting an instance of family violence, or a heavy handed response from a government agency when a family seeks help, Aboriginal people find they are either facing a lack of support in the most serious of cases, but excessive interventions in other situations.²⁴⁵

It was noted that Aboriginal community controlled organisations are already working cooperatively with mainstream organisations to assist them to improve and that this is done on top of already significant demands.²⁴⁶ The Commission heard that there is little capacity for Aboriginal organisations to provide secondary consultations to mainstream services due to the high demand for their core services, and that developing and maintaining partnerships is demanding and time consuming.²⁴⁷

One option discussed was for Aboriginal family violence services to be given additional funding to provide secondary consultations, in the way that the Victorian Aboriginal Child Care Agency currently does through its Lakidjeka Aboriginal Child Specialist Advice and Support Service (ACSASS). This service provides culturally appropriate advice and consultation on decisions that determine the future of at-risk Aboriginal children.²⁴⁸

Strengthening culture in the early years

Early intervention initiatives

Focusing on families and particularly on children in their first five years of life was highlighted as key to preventing family violence. The Commission heard in evidence that there are approximately 800 Aboriginal children born in Victoria each year and that an 'intensive response'¹²⁴⁹ is necessary to ensure they have every opportunity to develop in a positive, nurturing and respectful environment, free from family violence:²⁵⁰ '[There's] no hope unless we can maintain who we are. What is right for our children and our people.'²⁵¹

The Commission heard that a much more focused effort on programs for families with young children is required; programs that do not stigmatise but rather support and strengthen their sense of culture.²⁵² This is consistent with Victorian government policy which recognises how important being strong in culture is for Aboriginal people's wellbeing.²⁵³ This is particularly so for young people.²⁵⁴

For example, Mallee District Aboriginal Services, a one-stop shop Aboriginal service in Mildura, made a conscious decision to invest in services focused on the first five years of life:

We consider that investing in children is key to interrupting and reversing the intergenerational nature of family violence as well as a whole range of other areas of health in which Indigenous people experience considerable and disproportionate disadvantage.²⁵⁵

There was a strong preference for investment in young families and families in general, 'to build their capacity to be good parents prior to even considering removal.'²⁵⁶ Existing examples, such as the Bumps to Babes and Beyond program in Mildura, were cited as positive models.²⁵⁷

Bumps to Babes and Beyond

The Bumps to Babes and Beyond program delivers a range of services to young expectant mothers from one central location. Services include family violence advocacy, accommodation, health, prenatal help and antismoking programs.²⁵⁸ Consistency is an important part of the program, with the same staff member working with the mother from the time she first registers with the co-op until her child is a few years old.²⁵⁹

Other programs that have an intensive focus on infants and young children, such as Cradle to Kinder and Stronger Families, were described as working well but are not available in all areas. Adjunct Professor Bamblett gave evidence that there are 'only two Aboriginal Cradle to Kinders that are funded in Victoria.'²⁶⁰ She also identified that while some Aboriginal-specific Child FIRST components have been developed, these are not offered consistently across the state.²⁶¹

Aboriginal Cradle to Kinder

Cradle to Kinder is a targeted antenatal and postnatal support service that provides intensive and long term parenting support to vulnerable mothers. The target groups for the Aboriginal Cradle to Kinder program are young pregnant Aboriginal women or women under 25 pregnant with an Aboriginal child.²⁶²

The rationale for focusing on younger mothers is 'intervening earlier in the life of the mother/parents provides an opportunity to break the intergenerational cycle of disadvantage before behaviours become entrenched'.

The program provides support to families from before birth up until the child reaches the age of four.²⁶³

Across the whole Cradle to Kinder program it is estimated that 65 per cent of women are currently or have recently experienced family violence.²⁶⁴

Cradle to Kinder, including Aboriginal Cradle to Kinder is currently being evaluated by the Australian Institute of Family Studies.²⁶⁵

Young people

The Koorie Youth Council noted that strategies and services aimed at preventing Aboriginal family violence should not focus exclusively on infants and small children, but should also examine the needs of young people within the community.²⁶⁶ Overall, the importance of young people being targeted in prevention and early intervention strategies was a key priority in submissions, not least because roughly one in three Aboriginal Victorians is under 15 years of age.²⁶⁷ The 2013 National Community Attitudes Survey also provides evidence of the need to target early adulthood as a life stage involving particular vulnerability to violence for both young men and women.²⁶⁸ Ms Gallagher stated:

... we need to run programs in our local schools that teach our young men and young women about what respectful relationships are. Already, as teenagers, we see that our young men are displaying behaviours that are disrespectful and we are seeing our young women accepting that behaviour, they think that it's normal but [it] is not part of Aboriginal culture.²⁶⁹

The Koorie Youth Council stressed that to be effective, strategies and services must be culturally relevant, taking into account the role that Koorie young people have within their families and communities.²⁷⁰ It is important that Aboriginal young people lead the design of these prevention strategies, as well as strategies for responding to violence when it occurs. The Koorie Youth Council submitted that Aboriginal young people:

... need to be able to access 'youth friendly'-developmentally appropriate and accessible information about family violence and how to get support if they are experiencing family violence. When young people are experiencing family violence, the support services that they come into contact with (either as individuals or accompanying a parent) need to be well equipped to engage them in ways that are age-appropriate and address their specific needs. Any strategies, services or other responses to family violence, need to respect young people - as both holders of rights and as actively engaged in the development of solutions or mapping of pathways that impact upon them.²⁷¹

In consultations and submissions there was a strong theme that 'sporting and cultural events and programs are critical to build strong communities, culture and families, and prevent domestic and family violence, but there is little funding for these events'.²⁷²

The value of sport as an activity which can influence young people's attitudes was also identified in research commissioned by the Commonwealth Government to inform a national primary prevention campaign to reduce violence against women. That research found that community leaders have influence over all younger Australians, but are particularly important for Aboriginal young people. Similarly, while sport, sporting coaches and sports people are important influencers generally for 10–14 year olds, they have a particularly strong impact on Aboriginal young people.²⁷³

Sporting initiatives

The North-West IFVRAG in partnership with the Victorian Aboriginal Community Services Association Ltd and the Fitzroy Stars Football, Netball Club developed a project targeted at Aboriginal young people and their families living in the north-west metro region. The project supported five netball teams and four football teams from the north west metropolitan region to attend the VACSAL statewide junior football/netball carnival held in Shepparton on the 2nd and 3rd of October 2013.²⁷⁴

North-West IFVRAG was responsible for the delivery of the family violence/strengthening family messages throughout the duration of the project. The overwhelming participation in the event enabled sport to be used as a platform to deliver proactive family violence messages supporting cultural safety, positive parenting practices and strong families as the foundation for stronger communities.²⁷⁵

The Northern Metropolitan IFVRAG submission reported that while there was no formal evaluation or survey undertaken, the value of the project was 'clearly evident' through anecdotal evidence of community cohesion that had an emphasis on cultural safety; encouraging positive parenting practices through involvement from parents in their children's sporting activities and positive comments and praise given to the organisers regarding the success of the project in effectively supporting the engagement of Aboriginal young people and their families in family strengthening activities.²⁷⁶

Responses to family violence

Gender and family violence

The Commission heard a range of views regarding the primacy of gender in family violence in Aboriginal communities.

Throughout the literature the centrality of family and community is stressed. This 'fundamentally alters the desired approaches to caring for women who have been victims of violence and working with men who have been perpetrators'.²⁷⁷ Many submissions placed primacy on keeping the family together, stating that 'a holistic approach to families is required, including the perpetrators—a gendered approach to domestic and family violence doesn't suit the Aboriginal community'.²⁷⁸ A participant in a community consultation stated 'Our men need to be strong, we need to give power back to the men so they can make the decisions for their family. Men are no longer man of the house. The men have fallen away and the women have taken over'.²⁷⁹

The Northern Metropolitan Region Indigenous Family Violence Action Group submitted:

Our belief is the mainstream heavily gendered power and privilege approach does not fit for Aboriginal perpetrators of Family Violence and therefore it is no surprise that programs through this lens do not result in any change in those perpetrating Family Violence.²⁸⁰

The Victorian Aboriginal Community Services Association Ltd submission states that the safety of children and women is paramount and in its view 'isolating them from the perpetrators appears to have limited results'.²⁸¹ Other providers told us:

We provide a positive environment for Aboriginal men who want to learn how to actively show respect for the interests of women and children ... A culturally strong Aboriginal family exists when men are living fulfilling lives and are responsible for their actions as father and-or husbands [this] will nurture the success and wellbeing for the whole family.²⁸²

However, others told the Commission that family violence in Aboriginal communities is gendered, just as it is in non-Aboriginal communities, and that taking a gender neutral focus on the family and on the community's voice may overlook the 'lived experiences of women and children as the primary victims/survivors of male perpetrated violence' and lead to a silencing of women.²⁸³ Ms Braybrook stated in her evidence:

Our organisation [FVPLS Victoria] strongly believes that we must have a gendered response to family violence. We must acknowledge this in our community if we have any chance of moving forward ... We see firsthand the systemic and racial discrimination and violence, the social disadvantage and gender inequity that our women experience every day in their life.²⁸⁴

She went on to say: 'There is a call in our community to keep family violence gender neutral, but we do not support that. I believe that the response has to be first and foremost the safety of Aboriginal women and children'.²⁸⁵ Commissioner Jackomos stated 'I want to have it acknowledged, that by the evidence, Aboriginal children and their mothers, along with Aboriginal women, are the primary victims of family violence in our community'.²⁸⁶ He further cautioned that:

... there is a falsehood in our culture that the black man has fallen from the top of the patriarchal tree and he needs to be re-installed before we can find balance in our community. I'm not in favour of initiatives or programs that promote a renaissance of young warriors and male alter egos. However, I am in favour of growing young and [respectful] men who are good boyfriends, good partners, good fathers and good grandfathers.²⁸⁷

The justice system

Insufficient funding of legal services

Concerns about the impact of insufficient or restrictive funding were raised by the two primary legal services representing victims and perpetrators of family violence: the Aboriginal Family Violence Prevention and Legal Service Victoria and the Victorian Aboriginal Legal Service.

VALS notes in its submission that 'there is significant under funding for legal services which address both the immediate and flow on legal impacts of family violence'.²⁸⁸ It was particularly concerned that respondents have proper legal advice in order to understand their responsibilities under a family violence intervention order so that the victim is not put at further risk. It submitted that respondents often do not fully understand such orders.²⁸⁹

FVPLS Victoria stated that despite being the only specialist service for Aboriginal victims of family violence in the state, it has only one child protection lawyer (who experienced a 66 per cent increase in her caseload in the twelve months between 2013 and 2014) and two family violence lawyers for the whole of Melbourne.²⁹⁰ The service is unable to extend its services to all parts of Victoria including major regional centres where rates of violence in Aboriginal communities are high; for example Shepparton, Echuca, Bendigo, Swan Hill, or are confined only to outreach services (such as in the case of Morwell in the Latrobe Valley).²⁹¹

As a result, it was submitted, the service is unable to meet the growing demand, and 'many civil legal issues (such as family law and family violence matters) go unresolved and can escalate'.²⁹² A recent legal needs survey of Aboriginal women conducted by FVPLS Victoria found that almost half (46 per cent) of the participants had experienced a family violence-related legal issue in the previous 12 months. More than half of these women (53 per cent) had received no legal assistance for that issue.²⁹³

Victoria Police

As described above, the Koori Family Violence Police Protocols were developed under the 10 year plan and were piloted in Mildura, Ballarat and Darebin between 2011-13. The Commission heard that the protocols had led to improvements including better communication between police and Aboriginal people and improved understanding and awareness by police of culturally appropriate services.²⁹⁴ However there was also frustration expressed that the protocols were not always followed by police,²⁹⁵ and that they have only been trialled in three of the six sites identified in 2008.²⁹⁶ This was seen as a lost opportunity for improving responses to family violence and to community/police relationships generally.²⁹⁷

The 2015 evaluation of the protocols found that all three pilot regions faced barriers in putting the protocols into place, including police members failing to identify the Aboriginal status of affected family members and perpetrators when attending family violence incidents.²⁹⁸ Additionally, the evaluation highlighted concerns about the availability and capacity of local Elders, specialist external trainers and Victoria Police Aboriginal Liaison Officers to deliver initial, regular and follow up training, and noted that the steering committees had not been sustained at the local level.²⁹⁹

The short to medium-term outcomes had been met, however, with police being more aware of Aboriginal culture and community, and having improved relationships with agencies. The evaluation also found that L17s are, with some variation across sites, reaching Aboriginal organisations, which indicates police are understanding and implementing processes under the protocols.³⁰⁰

An important issue raised in the evaluation was the resource implications for Aboriginal organisations who were receiving more L17 referrals due to increased reporting levels.³⁰¹

Overall, the evaluation reported that 'protocols were still a necessary tool for improving and sustaining the relationship between the police and Aboriginal communities and an essential complement to standard practice guidelines'.³⁰²

Despite some positive developments arising from the Koori Family Violence Police Protocols, the Commission heard about numerous ongoing challenges in the relationship between Aboriginal and Torres Strait Islander peoples and Victoria Police. Examples were provided of police minimising violence, blaming the victim, and failing to issue family violence safety notices:

... one in particular stands out to me where a woman went to report the violence again and the police officer said to her, 'He's just whacked you in the head this time. It's getting better. Last time it was worse'.³⁰³

There's not enough support from police – they respond to women but are very judgemental. Their attitude is that 'every Aboriginal woman is a victim', 'it's normal', 'this has happened all your life – deal with it'.³⁰⁴

The Commission heard that poor treatment by police may be further exacerbated for those women who have become offenders in the criminal justice system as an indirect result of family violence. By way of example, Flat Out Inc submitted that:

At times, police have failed in their responsibility to investigate family violence reports and take appropriate steps to ensure the ongoing safety of these women because they view them as criminals rather than victims. In several case studies, women have been arrested for outstanding warrants when police have been called to respond to family violence. In many of these cases, police have taken no action in relation to the family violence that has clearly occurred.³⁰⁵

Some reported that the police take too long to respond to calls, and then fail to conduct themselves appropriately once they do attend.³⁰⁶ Others said that in some cases 'police are reluctant to step in because they are trying to be culturally sensitive'.³⁰⁷ There was concern that where protocols do exist they are not consistently followed. A community consultation in Mildura noted:

The police don't always follow the Koori Police protocol/code of conduct—they often speak to the respondent and ignore the applicant on the call out. The Koori Police protocol was launched in 2007 but is still not fully operational in 2015.³⁰⁸

Further concerns related to the operation of the L17 system, under which police make referrals to specialist family violence services, men's behaviour change providers, Child Protection or Child FIRST.³⁰⁹ These are primarily mainstream/non-Aboriginal services, however a number of Aboriginal specific services, including men's services, are referral points for L17s. The Commission understands the process for these services receiving L17 referrals 'is working well in some places however work is still needed around getting police to question on Aboriginality'. It has also been reported that 'in places where cultural awareness training for police had been conducted there was an increase in L17 referrals to these services.'³¹⁰ The suggestion was also made that family violence L17s from police should always be referred directly to Aboriginal services for Aboriginal people.³¹¹

There was a particular criticism expressed about the large number of 'unknowns' in police data, and concern that police were not asking people if they identified as Aboriginal or Torres Strait Islander. This was a significant concern in a number of submissions because if the question does not get asked, then culturally appropriate practice cannot follow:³¹²

Because the question has not been asked or it has not been asked in an appropriate manner we are having children spend much longer in outofhome care because we are missing opportunities for reunification. It also misses out us tapping those children into valuable culturally rich programs and culturally rich counselling programs for our children. So having children being identified through L17s and having child protection asking the question in a Koori friendly manner and explaining why they are asking will ensure that, one, our children hopefully won't go on to be further victims and offenders of family violence because we have tapped them into culturally rich programs right from the start.³¹³

Police practices in relation to Aboriginal people and family violence are also discussed in Chapter 14.

Court programs and Aboriginal liaison workers

In its 2003 report, the Indigenous Family Violence Task Force noted substantial barriers for women dealing with the family law system, as well as poor experiences when seeking intervention orders in state courts. These concerns included:

- ▷ inadequate security for victims attending court, 'who may be harassed by the perpetrator and his supports'
- ▷ lack of confidential space at the registrar counter when making an application
- ▷ lack of confidentiality of the court hearing as a disincentive to taking legal action.³¹⁴

As a result, the Task Force recommended research into the feasibility of establishing an Indigenous Family Violence Court to 'provide a culturally safe and secure environment'.³¹⁵ This is discussed further below.

The Task Force further reported concerns about the absence of support and information regarding intervention orders, inconsistencies in police and court responses to intervention order applications and enforcement, and the impact on victims of needing to re-apply for a full order after an interim order and to re-tell their story. Community members participating in the Task Force process suggested that there be a Koori support worker at court to explain the court processes to Aboriginal people.³¹⁶

A number of submissions to this Commission similarly described the value of having Aboriginal liaison officers at court to assist people to understand the family violence intervention order process. The importance of understanding the details, conditions and the effect of orders was stressed by the Victorian Aboriginal Legal Service:

Where we find breaches of IVOs, more often than not it is because people didn't truly understand the nature of the IVO that was served against them ... So, having somebody who can explain that to somebody at the point they get the order served on them is really useful.³¹⁷

Various submissions described the value of the Koori Family Violence and Victims Support program at the Melbourne Magistrates' Court.³¹⁸ The program was initially piloted in 2011 and positively evaluated in 2012.³¹⁹ In May 2013 program operations were suspended due to positions becoming vacant. Further funds were made available to re-establish the program, and services recommenced in December 2013. The program was revised to also include Koori VOCAT (Victims of Crime Assistance Tribunal) and became known as the Koori Family Violence and Victims Support Program.³²⁰

The program supported 196 Aboriginal clients at the Melbourne, Heidelberg, Ringwood and Sunshine Magistrates' Courts and the Neighbourhood Justice Centre between December 2013 and May 2015.³²¹

The Commission was advised that funding for the program ceased on 30 June 2015.

The need for specialist family violence courts

There were a number of suggestions made to the Commission about the benefits of specialist courts for family violence matters involving Aboriginal people. Some Aboriginal organisations submitted that community-based courts with enhanced cultural awareness and responsiveness to the nuances of Aboriginal family violence may be more effective at keeping victims safe.³²² For instance, orders endorsed by respected Elders may encourage perpetrators to take them more seriously and provide victims with the confidence to take orders out when necessary.³²³ Some suggested the creation of specialist Aboriginal family violence courts (based on the Koori Courts model) with jurisdiction to deal with both civil and criminal family violence matters.³²⁴ Alternatively, it was suggested to the Commission that the existing jurisdiction of the Koori Courts be extended to hear breaches of FVIOs.³²⁵

The Commission understands that in 2014 the Aboriginal Justice Forum requested that the Victorian Government investigate whether such breaches should be heard by the Magistrates' and County Koori Courts and whether sexual offences should be heard in the Children's Koori Court.³²⁶ Over 300 consultations were undertaken and after analysis, it was recommended to the Courts Koori Reference Group that the jurisdiction of the Magistrates' and County Koori Courts be expanded to include breaches of FVIOs, but that sexual offences not be included. A proposed model to extend the jurisdiction to breaches of orders has been developed which includes legislative reform, organisational operation of the Koori Courts, working with community agencies and forums, and strengthening the Koori community.³²⁷ The Commission understands the Aboriginal Justice Forum will consider this proposal in April 2016.³²⁸

The Koori Court

The Koori Court is a division of the Magistrates' Court. It sentences Aboriginal and Torres Strait Islander defendants in all criminal matters other than those involving sexual offences or family violence. The aim of the Koori Court is to have more community involvement in sentencing, reduce recidivism and breaches of orders, and provide more culturally appropriate sentences.³²⁹ Defendants can choose whether to have their cases heard by the Koori Court.

The Koori Court was piloted in 2002 and now operates from Bairnsdale, Broadmeadows, Latrobe Valley, Mildura, Shepparton, Swan Hill and Warrnambool Magistrates' Courts. The Children's Koori Court was established in 2005 and the County Koori Court in 2008, based on the original Koori Court model.³³⁰ The Children's Koori Courts are located in Melbourne and Mildura, and the Koori County Court sits in the Melbourne County Court and in Gippsland at the Morwell Law Courts and Bairnsdale Law Courts.

Under the model, the court set up is less formal. The Magistrate sits at a large table with all other participants in the case, not at the bench. The defendant sits with his or her family at the table, not in the dock; and participants are encouraged to talk in 'plain' English rather than using technical legal language. Koori Elders or Respected Persons, the Koori Court Officer, Koori defendants and their families can contribute during the court hearing. This helps to reduce perceptions of cultural alienation and to ensure sentencing orders are appropriate to the cultural needs of Koori offenders. It also allows issues relating to their offending behaviour to be addressed.

The objectives of the Koori Court are to:

- ▷ increase Koori ownership of the administration of the law
- ▷ increase positive participation by Koori offenders
- ▷ increase the accountability of the Koori offenders, families, and community
- ▷ encourage defendants to appear in Court
- ▷ reduce the amount of breached court orders
- ▷ deter offenders from re-offending
- ▷ increase community awareness about community codes of conduct and standards of behaviour
- ▷ explore sentencing alternatives prior to imprisonment.³³¹

Family violence, homelessness and affordable housing

Family violence is a major cause of homelessness in Australia. Recent analysis by the Australian Institute of Health and Welfare of specialist homelessness service data over the three years to 30 June 2014 found that, across Australia, more than a third of all adults and children seeking assistance from homelessness services did so due to family violence.³³²

The Australian Institute of Health and Welfare found that, 'Indigenous domestic and family violence clients were more likely than non-Indigenous clients to be female (74 per cent) and live in a sole parent household (41 per cent)'. They were also more likely to be children than non-Indigenous clients, with 38 per cent being under the age of 15 (compared with 31 per cent for non-Indigenous clients).³³³

In 2013–14 approximately 10 per cent of female clients of specialist homelessness services in Victoria were Aboriginal or Torres Strait Islander, although Aboriginal and Torres Strait Islander people make up less than one per cent of the Victorian population.³³⁴ Again, this is almost certainly an under-estimation, as Indigenous status may not always be recorded.

The Commission heard that there is also a shortage of affordable housing, with Victoria experiencing long public housing waiting lists and an inflated private rental market.³³⁵

I would like to state clearly that the housing shortage in Mildura is ridiculous ... we have had to resort to putting people in tents. MDAS currently pays \$300-400 per week for a tent site in local campgrounds. This situation is untenable, and more must be done to secure appropriate housing, especially for people fleeing family violence.³³⁶

As well as being an important issue for women and children, lack of appropriate housing can result in perpetrators staying in the family home. This is discussed later in this section.

Accommodation for women and children

The evidence before the Commission was that housing unavailability and the prospect of homelessness acts as a 'dangerous deterrent' to leaving violent relationships.³³⁷ Women may be more vulnerable to entering into or staying in relationships in order to keep a roof over their heads. It can also drive women back to a relationship when crisis accommodation is unsuitable, not available, unsupported or denied.³³⁸

Aboriginal Housing Victoria reported that:

... there may be as many as 10 to 30 percent of approximately 300 applicants who are on our priority waiting list who have identified that family violence is a direct or indirect cause of their current unsafe or insecure housing. However, with over 1100 clients on our waiting list, and an annual turnover of approximately 150 tenancies, and with no transitional housing, it is not possible for AHV to accommodate all applicants at risk of harm from family violence. There is no doubt that there are many Aboriginal people who are exposed to violence that AHV cannot accommodate. These victims may be in refuges, sleeping on couches, sleeping rough or remaining in volatile circumstances where they are at risk of harm. If they are fortunate they will be able to find safe and secure housing from other transitional housing providers ...

The situation is no better where it is our tenants that are experiencing family violence. With little turnover in tenancies, many ultimately may have no choice but to abandon their quest for tenancy with us in order to find safety ... Based on reports from Housing Officers it is estimated that approximately ten percent of our tenancies at some point in time involve severe family violence and that there are many more tenancies where there is some indications of family violence ... AHV's Housing Officers observe that many victims of family violence are survivors. They themselves have previously been victims and/or are merely surviving the violence without being able to move ahead. Some flee the violence to refuges or to other family members. Many stay, endure and survive.³³⁹

The Commission heard that for Aboriginal and Torres Strait Islander women and children, homelessness arising from family violence may be particularly devastating as it can also lead to dissociation from community, kin and a disconnection to country if a woman has to leave her local area. Despite this, 'culturally safe, Aboriginal and Torres Strait Islander specific crisis housing is very rare'.³⁴⁰

In Victoria there are 31 refuge sites made up of 54 individual properties.³⁴¹ Three of these refuges are specifically for Aboriginal women and their children.³⁴²

Aboriginal-specific women's refuges in Victoria

Elizabeth Morgan House Aboriginal Women's Service is located in metropolitan Melbourne. Central to its work is 'the provision of support and advocacy for the empowerment of Aboriginal women. Along with providing safe and secure accommodation, support and counselling services to Aboriginal women and children experiencing family violence, this organisation undertakes advocacy and advisory work to other service providers, organisations and government.'³⁴³

Using National Partnership Agreement on Homelessness funding two new crisis accommodation and support services were established in recent years.

Orana Gunyah in Morwell started delivering services in January 2014. Run by the Victorian Aboriginal Child Care Agency, 'Gunyah is a best-practice model where women and children can stay and be connected into a range of services during their stay.'³⁴⁴

The Mildura facility, **Meminar Ngangg Gimba**, (meaning 'a group of women dwell here') was opened in September 2012 and forms part of a range of services delivered to Aboriginal families by Mallee District Aboriginal Services. It is a cluster style facility where women, children and sometimes other members of a woman's family, for example a mother or a sister, can be accommodated as a family unit. There is no limit to the length of time women and their children can stay at Meminar Ngangg Gimba. Services, such as health, housing and Centrelink, are provided on site and women and children are able to maintain relationships with external support organisations and caseworkers. The Commission visited Meminar as part of its community site visits.

Meminar Ngangg Gimba employs male staff. The Commission heard this was a deliberate choice; as Aunty Janine Wilson, family violence advocate at Mallee District Aboriginal Services explained:

When we first suggested this to DHS, they cringed. They said we couldn't do it, but we wanted to take this approach for important reasons. Firstly, we wanted to show women in crisis that there are men, both Indigenous and non-Indigenous, out there who don't condone violence in any way, shape or form. Secondly, we wanted them to be positive role models for children at Meminar Ngangg Gimba, because often the only male role model in the children's lives is the one hurting their mum. Having male staff builds trust and a sense of safety across the whole community. We have never regretted this decision.³⁴⁵

The Commission heard evidence in community consultations that the approach at Meminar Ngangg Gimba had been successful, but was unable to cope with demand:

One positive thing is Meminar. But it's overflowing at the moment. It takes women from all over Australia. Women are being turned away and sent to Mallee Housing now because Meminar is too full.³⁴⁶

Currently if there is no Aboriginal service available and mainstream refuges or other crisis accommodation options are full or otherwise inaccessible, Aboriginal women and their children will most likely be accommodated in hotels or caravans. These options may not be available for safety reasons, or due to discriminatory treatment. In a community consultation in Mildura it was noted that:

The use of hotels is a very vexed issue. Lots of motels and caravans won't accept Aboriginal clients. There's only one motel that does, and sometimes victims and perpetrators both get placed there.³⁴⁷

It was also submitted that homelessness associated with family violence has an additional layer of complexity because both can be catalysts for child protection intervention.³⁴⁸ Further, the Commission heard that 'through Taskforce 1000 we know that homelessness of mothers is preventing children returning home'.³⁴⁹ Finally, family violence was identified as a significant cause of Aboriginal women coming into contact with the criminal justice system, and lack of post-release accommodation and support for women who have experienced family violence was identified as a factor driving women back to violent relationships.³⁵⁰

Accommodation for perpetrators

There was consensus that there is a need to increase efforts to keep women safely at home. Some submissions also raised the issue of accommodation for the perpetrator, pointing out that if there is nowhere for the perpetrator to go this increases the pressure on the victim to let him remain in the home, which may compromise her safety.³⁵¹

Allowing the perpetrator to stay in the home also influences decisions about child protection. Commissioner Jackomos reported that '... 52 per cent of the children can't be returned home because the current perpetrator of family violence is still in the family home'.³⁵²

Ms Annette Vickery, Deputy Chief Executive Officer of the Victorian Aboriginal Legal Service, stated in evidence:

I believe a victim of family violence should be able to stay in their home and be safe. If that were the case, and we agree that that's the program response that's required, then the perpetrator of family violence needs to live somewhere where they can maintain contact with their children in a safe and secure way but also where they can have supported accommodation so that they can continue with employment or education or whatever else they have going on in their life in order to continue to contribute to their family's wellbeing. That's a really complex program build, but that would be the sort of thing that would be required.³⁵³

On the ground however, services reported major barriers to securing accommodation for perpetrators:

I had a client who wanted to offend to go back inside so he would have accommodation. He had an IO [intervention order] so he couldn't go to one part of town.³⁵⁴

The Commission heard that around 11 per cent of clients of specialist homelessness services are Aboriginal men,³⁵⁵ but that many more are reliant on motels and rooming houses. These were described as inadequate for a number of reasons; for example, if the perpetrator is trying to maintain contact with children and a rooming house is a dangerous place, or if drugs and alcohol are present and this increases the risk of family violence.

Some other services will put men in motels. But we find that that's a little bit too risky for us because there's not really any supports around that, and he may well decide that he wants to go home, which would then breach the order which then causes a whole other heap of issues. So we actually have people who volunteer their houses and will give us a room, a spare bedroom in their house, where people can go and stay ... We call it the adult foster care support system ... It would be lovely if it was funded. It's not. It is done on goodwill at the moment.³⁵⁶

One suggestion offered by the Victorian Aboriginal Community Services Association Ltd was that time out programs be given an accommodation component by converting transitional housing stock to crisis accommodation for use as a time out facility.³⁵⁷ It argued that this would provide Aboriginal 'men with meaningful time out whilst the family can be maintained and supported in their family home'.³⁵⁸

Lack of accommodation for men leaving prison was highlighted as another gap. A community consultation noted the importance of post-prison programs for men on release that synchronise with women's programs so that a whole of family approach is adopted:

Accommodation should be provided for the men after they get out of prison. The mother needs help too, help raising the kids. She calls up the bloke and asks him to come back and help.³⁵⁹

Accommodation options for those affected by drugs or alcohol

The limited availability of culturally appropriate residential rehabilitation for Aboriginal and Torres Strait Islander people (both victims and perpetrators) who are affected by drugs or alcohol was identified as a 'big challenge in addressing family violence'.³⁶⁰ Ms Turfrey stated in evidence: 'we need more options around the state because of the lack of those [detox] facilities that puts a lot of pressure on the family violence space'.³⁶¹

The Commission heard evidence about some small scale examples of such facilities for women funded through phase three of the Aboriginal Justice Agreement. For example, Odyssey House Victoria was initially funded by the Department of Justice in a one-year pilot to provide diversion and alternative initiatives to imprisonment. The pilot provided four residential treatment beds targeted to Aboriginal women (and their children) who are referred from the Victorian justice system, with priority given to women who are at risk of incarceration. This includes women on remand, on community-based orders, completing the program prior to sentencing or as a transition option post-release from prison including on parole.³⁶² The Commission heard that:

There is already quite a good setup. Odyssey House is drug and alcohol rehabilitation, but they have a suite of about six units which looks a lot like Meminar, in that families can actually live together while they are receiving therapeutic intervention in the family situation. Then there's a community meeting room as well so that families can interact with each other. The joy I think of these particular setups is that children still get to play together. They still get to have something of a normal childhood, which is really where we are aiming our program and service delivery, or at least we would hope that we are.³⁶³

It was announced at the 40th Aboriginal Justice Forum that this program had been provided additional funding to continue and provide additional beds.³⁶⁴

The way forward

The Commission recognises that family violence has far reaching, multiple and multi-generational effects on Aboriginal and Torres Strait Islander peoples in Victoria. It contributes to and is caused by individual, familial and community trauma and contributes to homelessness and physical and mental illness. Aboriginal women and children are the primary victims of family violence.

None of this is new. Aboriginal and Torres Strait Islander peoples in Victoria have been dealing with these issues for many years and the solutions have been articulated clearly and consistently through many inquiries and reports, most notably the report of the Indigenous Family Violence Task Force in 2003 and the subsequent 10 year plan. The Commission supports those findings and the recommendations and actions contained in those documents.

Given the depth of its analysis and scale of participation of Aboriginal and Torres Strait Islander peoples in its development, the Indigenous Family Violence Task Force report and the principles contained in it continue to be enormously influential in driving policy and practice. It is therefore sobering to reflect on the evidence provided to this Royal Commission some 12 years later.

At the time the Task Force delivered its final report to the Victorian Government in 2003 it estimated that one in three Indigenous people were the victim, had a relative who was the victim or witnessed an act of violence on a daily basis.³⁶⁵ Today the numbers remain just as shocking, with Aboriginal Victorians nearly eight times more likely to be involved in a police family violence incident than non-Aboriginal Victorians.³⁶⁶

Further, while it is clear that progress has been made, particularly in relation to increasing awareness and reducing stigma in relation to family violence, the foundational issues identified by the Task Force remain. In particular the need for greater provision of culturally safe and comprehensive options for women, more responsive and respectful police and justice system practice, provision of healing-based options for perpetrators and an end to the trajectory of Aboriginal children and young people into out-of-home care.

Below we describe actions the Commission considers are necessary to make progress on these fundamental issues. In doing so we recognise that many of these are contained in the 10 year plan.

Our intention is not to repeat that work but to bring some of the key issues into sharper focus for government and for the non-Aboriginal community in Victoria.

The Commission also notes the findings of the mid-term evaluation of the 10 year plan and considers that the recommendations of that evaluation should be implemented.

We recognise that in attempting to address family violence within Aboriginal and Torres Strait Islander communities, it is crucial to understand family violence as emerging within the context of deep intergenerational trauma as a result of colonisation, dispossession and the destructive impact of policies and practices such as the forced removal of children. There is no doubt that for Aboriginal and Torres Strait Islander peoples, culture is the foundation upon which everything else is built and that strong cultural identity and connection is key to better outcomes. We have made our recommendations based on this understanding, informed by the following conclusions:

- ▷ Family violence has a disproportionate impact upon Aboriginal communities, in particular Aboriginal women and children.
- ▷ Family violence is driving the over-representation of Aboriginal children in child protection.
- ▷ Prevention and early intervention initiatives need sustained resourcing.
- ▷ Under-investment is jeopardising safety when women and children return to the perpetrator because of lack of suitable crisis and long term accommodation.
- ▷ Cultural safety is the foundation for an effective response.
- ▷ While progress has been made the justice response needs concerted effort.
- ▷ Lack of data and culturally appropriate evaluation is hampering effort.

Recommendation 144

The Victorian Government implement the recommendations of the mid-term evaluation of the Indigenous Family Violence Ten Year Plan [within two years].

Removal of children due to family violence

There is compelling evidence that family violence is one of the predominant drivers of over-representation of Aboriginal children in the Victorian child protection system. This causes harm and also leaves Aboriginal women with a 'paralysing fear' of reporting family violence out of concern that their children will be removed.³⁶⁷

This was the strongest theme from Aboriginal people participating in this Commission. Of particular note was the evidence provided by Commissioner Jackomos arising from the Taskforce 1000 inquiry. This found that eight out of 10 Aboriginal children whose cases had been reviewed had experienced family violence.³⁶⁸

The rate of Aboriginal child removal in Victoria is now higher than at any time since white settlement.³⁶⁹ This is unacceptable. It is also preventable.

It is clear that there are greater opportunities for both government and community to work with young families and families in general, 'to build their capacity to be good parents prior to even considering removal'.³⁷⁰ The emphasis must be on stopping the trajectory into child protection. This is the case across the community but particularly for Aboriginal communities given the devastating legacy of the Stolen Generations policies and the impact on Aboriginal children of being disconnected from family and culture.

Connection to culture is critical for Aboriginal children's emotional, physical and spiritual wellbeing. We share the concerns expressed by many who contributed to this Royal Commission that 'unless children and young people are able to heal from their own experiences of trauma, many will go on to recreate these conditions and the cycle of intergenerational trauma will continue'.³⁷¹

The Commission accepts the evidence that where there are strong Aboriginal families with strong networks and a strong cultural base, children thrive.³⁷² This provides lessons for how to address the over-representation of Aboriginal children living with family violence.

The Commission also found that while overall rates of entry into Child Protection have been increasing year by year, there are regional variations in those patterns. In some areas there has been a reduction in the prevalence rate. We consider that an important step forward is to review actions taken in those local areas to contribute to our knowledge of what helps to reduce the number of children taken into care.³⁷³

Investing in children and families

The future picture of family violence in Victorian Aboriginal communities is dependent on urgent action being taken now to ensure that Aboriginal children and young people grow up in strong families and communities free from violence. Accordingly we consider that a significant focus is required, particularly in the child's early years, to reduce the risk of family violence and turn the current trajectory into Child Protection around. This is a sound investment, with good examples of family programs already operating that could be expanded and adapted to local communities.

Examples include the Bumps to Babes and Beyond program and the Aboriginal Cradle to Kinder program, both of which work with young Aboriginal mothers and provide long term support across the child's early years.³⁷⁴ Currently these types of programs that do have an intensive focus are only available in some areas. These types of programs should be scaled up and adapted to other local areas. Similarly, expanding Aboriginal-specific Child FIRST components to more locations would reflect needs in these communities and also enhance the cultural responsiveness of Child FIRST.³⁷⁵

The intensive, early years approach being taken by Mallee District Aboriginal Services through its one-stop shop model is also worthy of expansion based on local needs and preferences.

We also note the evidence of the Commissioner Jackomos that:

Given the prevalence and consequences of family violence in Aboriginal communities spending on Aboriginal family violence is minimal. There is value in locally led initiatives however a gap still remains in investment in whole of state strategic responses to what has become an entrenched issue. There needs to be a targeted response to children as victims of family violence, not just bystanders or witnesses.³⁷⁶

We consider there is value in the Commissioner's proposal that the Victorian Government, working in partnership with Aboriginal communities, develop, implement and resource a statewide strategic response addressing the impact of family violence on Aboriginal children to complement and support the 10 year plan.³⁷⁷ We consider the establishment of the Aboriginal Child Forum as an important first step in that process and warmly welcome its establishment.³⁷⁸

Meeting obligations to children and young people in out-of-home care

The Commission reflected on the scale and impact of family violence and child removal practices and the trauma this is causing communities. In doing so we recognise that Aboriginal children entering out-of-home care as a result of family violence can suffer trauma as a result of cultural loss.

We are therefore disturbed to hear evidence that the current statutory obligation to prepare a cultural plan for Aboriginal children under a guardianship to Secretary order or long-term guardianship to Secretary order is routinely not met.³⁷⁹ In addition to this being potentially unlawful under the Children, Youth and Families Act, failing to prepare a cultural plan as required might also be unlawful under the *Charter of Human Rights and Responsibilities Act 2006* (Vic) if such failure were found to constitute the denial of Aboriginal persons' distinct cultural rights to enjoy their identity and culture and maintain their kinship ties.³⁸⁰ The Commission expects that the new amendments, which will require all Aboriginal children in out-of-home care to have a cultural plan, will prompt greater compliance with, and commitment to, this important statutory requirement.

We encourage the Secretary of the Department of Health and Human Services to take urgent action to remedy this shortfall, noting the commitment made by the Victorian Government at the Aboriginal Children's Summit in August 2015 to ensure compliance with the Children, Youth and Families Act as it relates to Aboriginal children and young people and to make recommendations to strengthen the Act.³⁸¹

Recommendation 145

The Victorian Government [within two years]:

- ▷ continue to work in partnership with Aboriginal communities to develop a statewide strategic response to improving the lives of vulnerable Aboriginal children and young people
- ▷ increase investment in programs that provide 'wrap-around' support to parents and children, especially in the first five years of life, so that the trajectory into child protection for these vulnerable families is interrupted and reversed
- ▷ expand the Aboriginal component of Child FIRST to reduce the high rates of removal of Aboriginal children and provide consistency across Victoria
- ▷ examine factors that influenced the decline in admissions into out-of-home care in Outer Gippsland, Mallee, Goulburn and North Eastern Melbourne so that lessons can be learnt and applied to future policy and practice.

Sustained and increased investment

Long standing under-investment, combined with increasing demand for services due to population growth and increased levels of reporting, means that Aboriginal organisations and communities are struggling to deliver their own solutions.

Currently the capacity of Aboriginal communities and organisations to take preventative action and to respond to need is hampered because of a lack of sustained resourcing for actions that have been shown to work. Positive initiatives that work in one area are not available in other places. This relates to the nature and uncertainty of funding which the Commission considers to be problematic in the whole area of family violence. Such uncertainty undermines the potential that can be gained by working in a sustained way on what are very complex issues. It is also inefficient, contributes to loss of staff and expertise, and increases the risk that clients will disengage with the services and supports that can assist because of lack of certainty.

In examining government funding data it is apparent that there is a pattern of relatively small allocations of funding spread widely across a number of organisations. This occurs both in short-term and ongoing funding streams.³⁸² This may reflect responsiveness on a geographic basis, the emergence of particular projects over time, a high degree of fragmentation or potentially all three.

Currently however, under-investment is jeopardising safety. There is a significant resource gap between demand for, and supply of, key family violence services, particularly at a time of crisis. Overall a far greater investment is required for culturally appropriate responses to family violence as foreshadowed in the Indigenous Family Violence Task Force report and the 10 year plan.

The Commission is concerned that the current shortage of services is leading to poor outcomes including entrenched homelessness, with victims and perpetrators returning to the family home when it is not safe to do so. We found through our site visits and observations that where examples of best practice in accommodation and support exist, such as cluster-style refuge accommodation for women and children escaping violence, these are small scale and heavily over-subscribed. We also found increasing demand for men to access culturally appropriate, long term healing support.

Disturbingly, legal services for victims are not funded to provide assistance in areas where there are large Aboriginal communities, and are stretched across metropolitan Melbourne with few resources and significant gaps in areas of high need, such as the Latrobe Valley. Unsurprisingly this leaves victims without advice which in turn may jeopardise their safety. Clearly we are failing these women and children.

Similarly, without timely and effective legal advice perpetrators may not fully understand the nature of orders, be fully engaged with the court process or take action to stop their use of violence, including through time out and healing programs.

Given the disproportionate effect of family violence upon Aboriginal and Torres Strait Islander women it is vital that investment decisions and the models of services available reflect their needs. Specialist services for Aboriginal and Torres Strait Islander women must be provided as well as one-stop-shop models that work with the whole family.

As the rate of family violence reporting in Aboriginal communities increases it can only be expected that this resource gap is likely to grow. We make recommendations regarding immediate priorities below, based on our findings.

In doing so it should be noted that we have recommended that all funding decisions in the medium-term regarding family violence should be determined through accurate demand forecasting so as to ensure a better fit between need and delivery. We have recommended that this demand forecasting be completed within two years. This is discussed in Chapter 41.

Consistent with the recommendations of the mid-term evaluation of the 10 year plan we also recommend that major elements of the response to Aboriginal family violence (healing and time out services) should be evaluated so that learnings can inform future investment.³⁸³

Recommendation 146

The Victorian Government give priority to providing adequate funding to Aboriginal community controlled organisations [within 12 months] for:

- ▷ culturally appropriate family violence services for Aboriginal women and children
- ▷ family centred services and programs—including programs that focus on cultural strengthening—therapeutic child-centred programs, and one-door integrated services where family members can obtain a range of supports
- ▷ culturally appropriate legal services for victims and perpetrators, to meet the increased demand for services and the need for statewide coverage
- ▷ crisis accommodation and support options for Aboriginal women and children based on core and cluster-style and best practice models with access to longer term housing
- ▷ culturally appropriate services for Aboriginal men who perpetrate family violence—including access to suitable accommodation
- ▷ early intervention and prevention actions in Aboriginal communities—including whole-of-community activities and targeted programs.

Recommendation 147

The Victorian Government, on the basis of the advice of the Indigenous Family Violence Partnership Forum, give priority to major service models for evaluation using culturally appropriate outcome measures, methodologies and providers [within three years]. The Victorian Government should also ensure that all Aboriginal family violence interventions are evaluated in a culturally appropriate manner and that this is adequately resourced to ensure that Aboriginal service providers have the capacity to support such an evaluation [within 12 months].

Prevention and early intervention

The Commission is concerned that many positive prevention initiatives are not funded to scale, or are reliant on one-off or short-term funding. This diverts organisational effort into chasing what are relatively small amounts of funding compared to the costs of family violence to government overall. It also dilutes trust in the stated commitment the Victorian Government has made to working with Aboriginal communities to end family violence.

Various examples were provided in evidence. The most frequently mentioned were Sisters Day Out, Dilly Bag and Dilly Bag the Journey. The Commission observed a Dilly Bag session while conducting this inquiry and witnessed first-hand the value of this program. We note previous evaluations that have found positive results. It is of great concern that programs that clearly support women are left to such uncertainty.

The Commission is of the view that these sorts of programs show the way that family violence early intervention can be creative, non-judgemental and effective. These are the ways of working that we need to see more of, not less.

As a priority the Victorian Government should ensure that early intervention and prevention programs that have the confidence of the community and have been positively evaluated receive ongoing funding so that this work can be undertaken with certainty and scaled up to the level required.

We also note that while the Community Investment Fund currently provides funding of \$59,000 per year to each Indigenous Family Violence Regional Action Group (IFVRAG) and these groups have been creative in using those funds for whole-of-community prevention activities, feedback from the IFVRAGs and in the mid-term evaluation of the 10 year plan indicates that this model has some flaws. The most significant is the requirement that these funds be used for a new activity each year. The mid-term evaluation recommended that the Community Investment Fund guidelines should be reviewed to ensure alignment with the priorities of the 10 year plan; that the Community Investment Fund funding allocation be increased and that an additional stream of ongoing funding be established to support longer term investment in Aboriginal family violence responses including the continuation of projects that have been tested through the Community Investment Fund grant funding process. The Commission supports these recommendations.³⁸⁴

The Commission also notes that it is important that we, as a community, do not forget the children who have already been removed from their parents and placed in out-of-home care. We have a collective responsibility to ensure that their out-of-home care experience does not cause them further harm, including cultural harm, or contribute to their possible trajectory into the youth justice or adult justice systems as perpetrators of family violence. Out-of-home care also provides an important intervention opportunity to address the trauma that those children may have previously experienced. The Commission supports the work of Taskforce 1000 and the efforts of the Commissioner for Aboriginal Children and Young People in addressing the inadequacies of the current out-of-home care system. The broader need for improved services addressing the trauma of children who have experienced family violence is considered in Chapter 10.

Cultural safety

The Commission supports the directions contained in the 10 year plan and agrees that efforts to prevent and respond to family violence in Aboriginal communities are best led by Aboriginal people. We consider that Aboriginal leadership in program planning, design and implementation is a critical factor for success.

The Commission also considers that current governance structures through the Indigenous Family Violence Partnership Forum and Indigenous Family Violence Regional Action Groups should continue and be strengthened in line with the recommendations contained in the mid-term evaluation of the 10 year plan.

The Commission finds that there are distinct barriers to Aboriginal and Torres Strait Islander community members reporting family violence. These include actual and perceived discrimination by service providers; language and cultural barriers; lack of trust in services and organisations; and low levels of engagement by mainstream agencies with local communities leading to lack of awareness of services by Aboriginal people. Day-to-day racism, experienced across all areas of life, contributes to mistrust in mainstream organisations.

It is clear the majority of Aboriginal people prefer to use an Aboriginal organisation as these are more likely to provide a culturally safe service. Providing Aboriginal services for the Aboriginal community is what works.³⁶⁵ Accordingly, Aboriginal community controlled organisations should have primacy in response and prevention. As stated above, to respond to the scale of need, more investment will be required.

Some Aboriginal people may prefer not to use an Aboriginal organisation. The Commission believes that the minimum standard across the entire family violence system should be that culturally appropriate services are easy to access and people have a choice of provider. This means that mainstream services must ensure that all Aboriginal clients are provided with the option of having an Aboriginal service provider and facilitating referrals accordingly, and if not, that they deliver a culturally safe service to the person themselves.

Cultural safety means that Aboriginal clients, employees and stakeholders are treated with dignity and respect and that their culture is valued and understood by mainstream organisations. It not only includes cultural safety for service users, but also for Aboriginal employees and in relationships with Aboriginal organisations. This is not always the case at present.

Creating a responsive service requires upholding and securing the cultural rights of Aboriginal people, protected through the Charter of Human Rights and Responsibilities, in a practical way. This requires systematically prioritising cultural values in policy, processes and the way programs are delivered as well as how staff interact with Aboriginal clients. Changing this requires a concerted commitment by each organisation in the areas of governance, policy, workforce, service delivery, practice and relationships with community.

To do this well, the Commission found that strong relationships need to be forged with Aboriginal providers, and time, effort and resources need to be dedicated to these relationships. We found that Aboriginal community controlled organisations are already doing this work on top of their funded role through secondary consultation and other support. The Commission considers that this work needs to be recognised by government and resourced effectively. This is a sound investment towards building a culturally appropriate mainstream service response that is not reliant on individual relationships to guide mainstream practitioners, but has this function built in.

Recommendation 148

The Victorian Government ensure that funding agreements for mainstream family violence organisations incorporate a requirement for services to undertake cultural safety reviews and action plans in all areas of operations, governance, workforce and relationships with community. Investment in Aboriginal service providers will be necessary to support this [within 12 months].

Effect of the Commission's other recommendations for mainstream family violence response

In Chapter 13 we recommend establishing 'Support and Safety Hubs' in the 17 local Department of Health and Human Services areas by 1 July 2018. These will be a new, area-based, entry point into family violence services and Integrated Family Services, consolidating the current L17 police referral points for victims, perpetrators and the Child FIRST intake points.

To be established by 1 July 2018, these hubs will provide:

- ▷ a single intake for specialist family violence services (for women and children and also perpetrator interventions) and Integrated Family Services. Intake includes triage, risk assessment and needs assessment
- ▷ case coordination for the women, children and perpetrator until each is placed into appropriate services (including booking and warm referral).

Each will have resources to access secondary consultation from Aboriginal community controlled organisations.

The Commission is mindful that Koori Family Violence Police Protocols need to be considered and honoured. Accordingly Support and Safety Hubs will need to make arrangements with local Aboriginal organisations to ensure where a person wishes to receive a service from an Aboriginal community controlled organisation, this occurs quickly and safely. Where a person does not, culturally safe services must be offered by the hub. This will require all Support and Safety Hubs to have in place:

- ▷ agreements with relevant local Aboriginal organisations to facilitate their involvement in intake and assessment, either as part of the centre intake team/joint triage or through consultation and warm referral
- ▷ secondary consultation arrangements with relevant Aboriginal organisations. We have recommended that this be built into the funding model in recognition that such work by Aboriginal organisations should be recognised and resourced
- ▷ the capacity to deliver a culturally safe service if the person does not wish to engage with an Aboriginal-specific agency.

In other parts of this report, the Commission also makes recommendations to improve the accessibility of specialist family violence services (for women and children and also perpetrator interventions) and other agencies, and to support organisations with the workforce learning and development required to achieve inclusion. Central to this is the provision of culturally safe services to Aboriginal and Torres Strait Islander people who wish to use mainstream services.

Police and courts response

The Commission heard some disturbing evidence of poor attitudes and treatment by individual police. Such practices are contrary to the Victoria Police Code of Conduct on the Investigation of Family Violence, contradict the leadership shown elsewhere in the organisation and may amount to unlawful discrimination. They have no place in modern policing.

Where Koori Family Violence Police Protocols have been implemented these are beginning to make a difference to police practice.³⁸⁶ The Commission is persuaded by the findings of a recent evaluation that these protocols are worthy of further support, and consideration should be given to enacting protocols in all police areas. In the meantime, we encourage the roll out of protocols in the remaining identified sites. In doing so, the recommendations of the evaluation to share the learnings from the pilots across the state and to effectively resource cultural awareness and ongoing development for police members should be implemented. It is unreasonable to expect local Elders and community members to provide this cultural education without adequate resources to meet the needs of Victoria Police in a sustainable way.

We also consider that the Koori Family Violence and Victims Support Program has the potential to make a 'significant contribution toward the long term goal of improved Koori community confidence in the courts and justice system'.³⁸⁷ Based on the pilot evaluation of the program and recognising the specific barriers that Aboriginal people face engaging with the magistrates' courts, the Commission is of the view that this program should be resumed at the Melbourne Magistrates' Court. In order for this to occur funding issues need to be resolved.

As discussed in Chapter 16 applicant support workers and respondent support workers are now being rolled out to all headquarter magistrates' courts. We do not consider however, that this results in duplication for the following reasons. First, Melbourne Magistrates' Court is a high volume court. Having a specialist resource reflects this volume as well as the complexities of the issues to which workers need to respond. Secondly, a key finding of the pilot evaluation was that the Koori support workers did much more than work directly with clients. Crucially they built cultural awareness and confidence across the court, particularly with registry staff. This is of great value. Finally, Aboriginal people need a choice between an Aboriginal-specific and mainstream provider. This element of choice is as important in our courts as anywhere else in the family violence system.

In regard to the proposal to extend the jurisdiction of the Koori Court to hear breaches of FVIO matters, we note that this has recently been investigated by government, and that this review included a consultation process with over 300 people. We understand that a recommendation to extend the Koori Court's jurisdiction will soon be considered by the Aboriginal Justice Forum. Subject to that forum approving the proposal and to any safeguards the Aboriginal Justice Forum considers necessary to protect the safety and wellbeing of Aboriginal women and children who are victims of family violence, the Commission supports this proposal.

Recommendation 149

The Melbourne Magistrates' Court resume the Koori Family Violence and Victims Support Program [within 12 months].

Recommendation 150

The Victorian Government, subject to the approval of the Aboriginal Justice Forum and inclusion of any necessary safeguards, extend the jurisdiction of the Koori Magistrates and County Courts to include offences where it is alleged that the defendant has contravened a family violence intervention order [within 12 months].

Recommendation 151

The Victorian Government ensure that Koori Family Violence Police Protocols are implemented in the remaining identified sites, with adequate resources and support provided to Elders and other community members providing cultural education to police in all sites (including those where protocols currently operate) [within two years].

Better data collection

The Commission is concerned that there has been limited investment in evaluations of major elements of our current response to family violence in Aboriginal communities. For example healing services and time out services have not been evaluated although they form an important part of the community response.³⁸⁸ In other cases programs have been evaluated with positive results but have not attracted ongoing investment.

Limited research and data on interventions—successful or otherwise—impedes effective and meaningful work. Evaluation of key programs and approaches needs to be undertaken as a priority to inform future investment decisions.

Research and evaluation comes at a cost and agencies, particularly small organisations, need to be resourced for this to occur. This should be built into funding for programs.

The Commission is of the firm view that evaluation methodologies need to be designed in true partnership with Aboriginal communities at all stages—including setting terms of reference, designing the evaluation framework and reviewing findings.

The Commission also finds that collection of data on Indigenous status is lacking in key areas, particularly in relation to police L17 reports. This is of significant concern as it has a direct flow-on effect to service provision: if a police member does not ask the question then this important information will not be included in the formal referral to a specialist family violence service, or to Child FIRST and/or Child Protection when children are present. This means that existing mechanisms to notify Aboriginal community organisations cannot be deployed, for example in locations where Koori Family Violence Police Protocols operate, or where joint triage of Child FIRST/Child Protection L17s is undertaken in partnership with the Victorian Aboriginal Child Care Agency, which currently occurs in the northern metropolitan region.

Measurement of outcomes for Aboriginal peoples in relation to family violence interventions and related human services also appears to be lacking. This information gap is working against effective service planning and weakens the capacity of local communities to develop solutions. The Commission is concerned that this chokes innovation and undermines shared effort between government and communities.³⁸⁹

Issues relating to data collection, including measures to improve the recording of Indigenous status across departments and agencies are discussed further in Chapter 39. We make a number of recommendations to improve statewide family violence data collection and research, including performance indicators on the collection of demographic information, in particular Indigenous status, for use across Victorian Government agencies. We also note the importance of national surveys including the ABS Personal Safety Survey and encourage the inclusion of demographic information and data capture in that instrument to support prevention and response policy and planning.

We also recommend that the proposed Victorian Government Family Violence Index includes measures that reflect family violence in different communities, including measures around Aboriginal experience of family violence.

In addition to those recommendations, we reiterate here that Victoria Police, the Department of Health and Human Services, the Department of Justice and Regulation, the Department of Education and Training and others should improve the collection of Indigenous specific data relating to family violence, including its impact on Child Protection, so that this can be shared with communities, organisations and governance forums to inform local, regional and statewide responses.

Recommendation 152

Victoria Police, the Department of Health and Human Services, the Department of Justice and Regulation and the Department of Education and Training improve the collection of Indigenous-specific data relating to family violence so that this can be shared with communities, organisations and governance forums to inform local, regional and state-wide responses [within 12 months].

Endnotes

- 1 Aboriginal Affairs Victoria, 'Strong Culture, Strong Peoples, Strong Families: Towards a Safer Future for Indigenous Families and Communities—10 Year Plan' (Department of Planning and Community Development, October 2008).
- 2 Victorian Indigenous Family Violence Task Force, 'Victorian Indigenous Family Violence Task Force: Final Report' (Department for Victorian Communities, December 2003).
- 3 Australian Bureau of Statistics, 'Census of Population and Housing – Counts of Aboriginal and Torres Strait Islander Australians, 2011' (Catalogue No 2075.0, Australian Bureau of Statistics, June 2012).
- 4 Department of Planning and Community Development, 'Victorian Aboriginal Affairs Framework 2013–2018—Building for the Future: A Plan for "Closing the Gap" in Victoria by 2031' (2012) 8, citing Australian Bureau of Statistics, above n 3.
- 5 Ibid.
- 6 The proportion of Aboriginal and Torres Strait Islander Victorians living in the rest of the state is 51.8 per cent, and those with no usual address is 0.7 per cent (out of the total Aboriginal population of 37,990 persons). The proportion of non-Aboriginal Victorians living in Greater Melbourne is 74.8 per cent, in the rest of the state is 25.1 per cent, and those with no usual address is 0.1 per cent (out of total non-Aboriginal population of 5,069,155). This excludes 246,895 people whose Indigenous status was not stated. Australian Bureau of Statistics, above n 3.
- 7 Aboriginal Affairs Victoria, above n 1, 11.
- 8 Department of Human Services, *What is Family Violence?* (13 January 2015) <<http://www.dhs.vic.gov.au/for-individuals/children,-families-and-young-people/family-violence/what-is-family-violence>>.
- 9 *Family Violence Protection Act 2008 (Vic)* ss 8, 10.
- 10 Victorian Indigenous Family Violence Task Force, above n 2, 123.
- 11 Janet Phillips and Penny Vandebroek, 'Domestic, Family and Sexual Violence in Australia: An Overview of the Issues' (Research Paper Series 2014–15, Parliament of Australia, Department of Parliamentary Services, 14 October 2014) 9.
- 12 Community consultation, Melbourne 1, 14 May 2015.
- 13 Koori Caucus, Submission 946, 7. In relation to Aboriginal girls, see Department of Health and Human Services 'Addressing Violence against Women and Their Children: Action Plan Consultation Framework—Status Update—Indigenous Family Violence Partnership Forum' (May 2012), 4, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.
- 14 Victorian Indigenous Family Violence Task Force, above n 2, 6.
- 15 See, eg, Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 24; Victorian Aboriginal Child Care Agency, Submission 947, 9; Victorian Aboriginal Community Services Association Limited, Submission 837, 5; Victorian Aboriginal Legal Service, Submission 826, 3; Northern Metropolitan Region Indigenous Family Violence Action Group, Submission 934, 4.
- 16 Victorian Indigenous Family Violence Task Force, above n 2, 6.
- 17 Victorian Aboriginal Legal Service, Submission 826, 3.
- 18 Department of Planning and Community Development, above n 4, 7.
- 19 Commission for Children and Young People, Submission 790, 20.
- 20 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 22.
- 21 Transcript of Jackomos, 14 July 2015, 169 [19]–[24].
- 22 Department of Justice and Regulation, 'Aboriginal Justice Forum Agenda Paper: How Does the Justice System Respond to Aboriginal Family Violence?' (23–24 April 2015), 3, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.
- 23 Ibid.
- 24 Ibid 5.
- 25 Department of Premier and Cabinet, 'Mid-term evaluation of the Indigenous Family Violence 10 Year Plan' (September 2015), iii, produced by the State of Victoria in response to the Commission's Notice to produce dated 5 June 2015.
- 26 Ibid 32.
- 27 Even if all affected family members of 'unknown' Indigenous status were non-Aboriginal, an Aboriginal person was still four times more likely than a non-Aboriginal person to be reported as an affected family member in relation to a family incident in 2013–14: Department of Premier and Cabinet, above n 25, 32.
- 28 Department of Premier and Cabinet, above n 25, 36.
- 29 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 15.
- 30 Aboriginal Affairs Victoria, above n 1, 12; Victorian Indigenous Family Violence Task Force, above n 2, 147–192.
- 31 Statement of Jackomos, 9 July 2015, 12 [56].
- 32 Transcript of Braybrook, 20 July 2015, 743 [18]–[20].
- 33 Statement of Braybrook, 16 July 2015, 2 [10].
- 34 Department of Human Services, 'Working with Families where an Adult is Violent: Best Interests Case Practice Model' (2014) 7. See also Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 13.
- 35 Fadwa Al-Yaman, Mieke Van Doeland and Michelle Wallis, 'Family Violence Among Aboriginal and Torres Strait Islander Peoples' (Cat No IHW 17, Australian Institute of Health and Welfare, November 2006) 71. Victorian Emergency Department Admissions data shows that the proportion of patients that presented with an injury deemed to be either 'Child neglect, maltreatment by parent, guardian' or 'Maltreatment, assault by domestic partner' that were recorded as Indigenous in each of the years from July 2010 to June 2014 remained stable at approximately five per cent: Crime Statistics Agency, 'An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14' (January 2016), 82, 84, provided to the Commission by the Crime Statistics Agency, 8 January 2016.
- 36 Melanie Heenan, 'International Violence Against Women Study: Findings from the Australian Component' (Australian Institute of Family Studies (Cth), Australian Centre for the Study of Sexual Assault, Newsletter No 6, April 2005) 2. This data may include sexual assault outside of family violence, however as noted in Chapter 12, familial sexual assault is recognised as family violence. The survey was conducted in 2002–03.
- 37 Kelly Richards, 'Children's Exposure to Domestic Violence in Australia' (Trends & Issues in Crime and Criminal Justice No 419, Australian Institute of Criminology, June 2011) 2, citing Michael Flood and Lara Fergus, 'An Assault on our Future: The Impact of Violence on Young People and Their Relationships' (White Ribbon Foundation, 2008).
- 38 Victorian Aboriginal Child Care Agency, Submission 947, 8.
- 39 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 22.
- 40 Steering Committee for the Review of Government Service Provision, 'Report on Government Services 2016' (Productivity Commission (Cth), 2016) Table 15A.8, 2.
- 41 Statement of Jackomos, 9 July 2015, 4 [21].
- 42 Victorian Aboriginal Child Care Agency, Submission 947, 10.
- 43 Indigenous women comprised 27 per cent of the offenders interviewed in the study: Holly Johnson, 'Drugs and Crime: A Study of Incarcerated Female Offenders' (Research and Public Policy Series No 63, Australian Institute of Criminology (Cth), 2004) xiv, 19.
- 44 New South Wales Aboriginal Justice Advisory Council, 'Holistic Community Justice: A Proposed Response to Aboriginal Family Violence' (2001) 7.

45 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 19.

46 Aboriginal Affairs Victoria, above n 1, 10.

47 The Victorian Indigenous Family Violence Task Force held its inaugural meeting in October 2001 and was formally launched by the Minister for Aboriginal Affairs and Minister for Community Services at a meeting held at Parliament House in May 2002: Victorian Indigenous Family Violence Task Force, above n 2, 23.

48 Ibid 23.

49 Ibid.

50 Ibid.

51 Northern Metropolitan Region Indigenous Family Violence Action Group, Submission 934, 6.

52 Department of Premier and Cabinet, above n 25, 6.

53 Northern Metropolitan Region Indigenous Family Violence Action Group, Submission 934, 7.

54 Department of Premier and Cabinet, above n 25, 4.

55 Ibid 2.

56 Aboriginal Affairs Victoria, above n 1, 8–9.

57 Ibid 32.

58 See, eg, Department of Planning and Community Development, above n 4, 32.

59 See, eg, Koori Justice Unit, 'Victorian Aboriginal Justice Agreement Phase 3 (AJA3): A Partnership between the Victorian Government and the Koori Community' (2013), 9, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.

60 Department of Premier and Cabinet, above n 25, iii.

61 Ibid iv.

62 Ibid iii.

63 Ibid iii.

64 Healing Services in Outer Gippsland, Loddon, North East Melbourne and Outer Eastern Melbourne. Time Out services in Outer Gippsland, Mallee, North East Melbourne and Goulburn areas. Men's Family Violence Group programs are also located in Inner Gippsland, Mallee and North East Melbourne. Department of Health and Human Services, 'DHHS Response in Relation to Part A: Items 2(a)(iii) and 2(a)(iii)', produced by the State of Victoria in response to the Commission's Notice to Produce dated 20 August 2015.

65 This involved 'the development of training materials to better equip professionals and practitioners to identify risk factors associated with family violence and respond appropriately to Aboriginal people experiencing family violence. The materials were piloted in Dandenong, Geelong and Mildura throughout 2013–14': Koori Caucus, Submission 946, 12, 19.

66 Department of Premier and Cabinet, above n 25, iii–iv.

67 Ibid iv.

68 Ibid v–viii.

69 Northern Metropolitan Indigenous Family Violence Regional Action Group, Submission 934, 11.

70 Department of Premier and Cabinet, above n 25, 24.

71 Ibid 71.

72 Ibid 24.

73 Ibid 73.

74 Department of Human Services, 'Indigenous Family Violence Primary Prevention Framework' (June 2012). In June 2015 it was noted 'It is now timely that in 2015 a review and update is undertaken on the framework to test: whether the framework has met the original aims and objectives in supporting primary prevention; capacity building, effective and sustainable activities; and assess its usefulness in understanding primary prevention': Department of Premier and Cabinet, '24th Indigenous Family Violence Partnership Forum: Projects Report' (June 2015), 1342, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.

75 Department of Premier and Cabinet, above n 74, 11.

76 Statement of Gallagher, 10 August 2015, 7 [33].

77 See, eg, Transcript of Jackomos, 14 July 2015, 8 [38]; Statement of Turfrey, 16 July 2015, 16 [63]–[65].

78 Information about these programs is contained in Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 12, 35–36.

79 Aboriginal Family Violence Prevention and Legal Service Victoria, Prevention and Education (2016) <<http://www.fvpls.org/Prevention-and-Education.php>>.

80 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 35.

81 Ibid.

82 Ibid 36.

83 Aboriginal Family Violence Prevention and Legal Service Victoria, above n 79.

84 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 36.

85 Ibid 12.

86 Aboriginal Family Violence Prevention and Legal Service Victoria, 'Evaluation Report of the Aboriginal Family Violence Prevention and Legal Service Victoria's Early Intervention and Prevention Program' (July 2014) 24. Evaluations conducted for the (then) Department of Justice reported similar results: see Department of Justice and Regulation, above n 22, 15.

87 Department of Justice and Regulation, 'Reducing Violence Against Women and their Children, Victorian Grants Program: Review of Progress and Interim Evaluation Reports' (2014), 14–15, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.

88 Ibid 15.

89 Ibid.

90 Ibid.

91 Fiona Richardson, 'Victoria Against Violence Campaign Spreads Across the State' (Media Release, 1 December 2015).

92 The grant recipients were: Lakes Entrance Aboriginal Health Association—Strong Men, Strong Communities; Mallee District Aboriginal Services—Family and Community Violence Prevention Project; Rumbalara Aboriginal Corporative—Aboriginal Family Harmony Project; Victorian Aboriginal Health Service—Strong Relationships, Strong Community: Department of Justice and Regulation, above n 87, 3.

93 Department of Justice and Regulation, above n 87, 13–14.

94 Ibid 14–15.

95 Ibid.

96 A review of documentation from the Victorian Government indicates that public awareness campaigns were developed in relation to sexual assault in other regions in partnerships between Victoria Police and Indigenous Family Violence Regional Action Groups and Regional Aboriginal Justice Advisory Committees. These were completed in 2012. Victoria Police, 'TV Campaign to show no room for violence' (23 May 2012), produced in response to the Commission's Notice to Produce dated 5 June 2015. See also Department of Premier and Cabinet, 'Interim Implementation Plan Snapshot for the Indigenous Family Violence Strategy' (27 April 2012), 7, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.

97 MDAS: Mallee District Aboriginal Services, *Ending Family Violence* (2013) <<http://www.mdas.org.au/familyviolence>>.

- 98 Victorian Indigenous Family Violence Task Force, above n 2, 153, 176.
- 99 Ibid.
- 100 The Task Force recommended the establishment of Time Out Centres in communities 'to provide Indigenous males and others with a place to go to calm down so that they do not commit a violent act against another person': *ibid*.
- 101 'We appreciate the importance of a holistic healing approach to family violence in Indigenous communities based around family and Indigenous community strengthening, collaborative approaches, appropriate resources and flexible program and service delivery arrangements': Aboriginal Affairs Victoria, above n 1, 9, 45.
- 102 Aboriginal Affairs Victoria, above n 1, 12; Victorian Indigenous Family Violence Task Force, above n 2, 81, 145.
- 103 See, eg, Koori Caucus, Submission 946, 27; Indigenous Men's Resource and Advisory Service, Submission 771, 11; Victorian Aboriginal Child Care Agency, Submission 947, 3-4; Victorian Aboriginal Community Services Association Limited, Submission 837, 3.
- 104 Transcript of Bamblett, 20 July 2015, 799 [6]-800 [1]; Community consultation, Mildura, 2 July 2015; Statement of Kirby, 10 August 2015, 11 [47].
- 105 Transcript of Vickery, 20 July 2015, 814 [17]-[19].
- 106 Victorian Aboriginal Community Services Association Limited, Submission 837, 3, 5-6. See also Victorian Aboriginal Legal Service, Submission 826, 11-12.
- 107 Statement of Byrne and Brown, 22 July 2015, 4 [19].
- 108 See, eg, Koori Caucus, Submission 946, 27; Victorian Aboriginal Community Services Association Limited, Submission 837, 6-7.
- 109 Indigenous Men's Resource and Advisory Service, Submission 771, 2.
- 110 Indigenous Men's Resource and Advisory Service, Submission 771, 11; Victorian Aboriginal Community Services Association Limited, Submission 837, 3.
- 111 Koori Caucus, Submission 946, 13.
- 112 Statement of Byrne and Brown, 22 July 2015, 4 [20].
- 113 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 11-12; Koori Caucus, Submission 946, 16.
- 114 See, eg, Statement of Byrne and Brown, 22 July 2015, 4 [20].
- 115 Indigenous Resource and Men's Advisory Service, Submission 771, 14. The Commission acknowledges that the Indigenous Men's Resource and Advisory Service and the Aboriginal Centre for Males are programs of the Victorian Aboriginal Community Services Association Ltd: Victorian Aboriginal Community Services Association Ltd, *Aboriginal Centre for Males Referral Service* (2014) <<http://www.vacsal.org.au/programs/aboriginal-centre-for-males-referral-service.aspx>>; Aboriginal Community Services Association Ltd, IMRAS (2014) <<http://www.vacsal.org.au/programs/indigenous-mens-resource-advisory-service.aspx>>.
- 116 Department of Premier and Cabinet, 'Royal Commission into Family Violence: Request for Information on Aboriginal Specific Program Funding' (18 August 2015), produced in response to the Commission's Notice to Produce dated 14 August 2015 (as varied on 20 August and 20 October 2015). See also Boorndawan Willam Aboriginal Healing Service, *Home* (2013) <<http://www.bwahs.org.au/>>; Miajalku Healing Centre, <<https://www.facebook.com/pages/Minajalku-Healing-Centre/444824155547532>>; Gippsland Lakes Community Health, *Yoowinna Wurnalong Healing Service* (2014) <<http://glch.org.au/aboriginal-services/yoowinna-wurnalong-healing-service/>>. See also Aboriginal Fathers Group at Minajalku: Children's Protection Society, Submission 505, 7.
- 117 The Dardi Munwurro Strong Spirit program is also delivered on behalf of Corrections Victoria to those on community correction orders and in prison. In 2010 the Koori Justice Unit funded the implementation of three program sessions run across Victoria over a period of 12 months. Each consisted of an initial one-day community introduction and engagement session, a three day live-in workshop, four half-day post workshops and four half-day monthly follow up sessions. An independent evaluation using a Most Significant Change methodology was commissioned to review the use of this program by Corrections Victoria in 2012. This included interviews with program participants to capture their personal stories of change and drawing themes from this data. The evaluation though small in scale identified positive results. Department of Justice and Regulation, 'Dardi Munwurro Most Significant Change Report' (2012), 13, produced in response to the Commission's Notice to Produce dated 5 June 2015.
- 118 A paper prepared for the Indigenous Family Violence Partnership Forum in 2014 described the key successes of Healing and Time Out Services as including partnership development with a range of services including health, mainstream family violence services and police; individual support and group work contributing to better outcomes for individuals and families and community strengthening; contributing to the development of regional prevention of violence against women action plans. Key challenges identified were the need for education about Aboriginal family violence with the broader service system; capacity take referrals after hours and accreditation processes and the impact on smaller organisations. Department of Premier and Cabinet, '23rd Indigenous Family Violence Partnership Forum: Time Out and Healing Services' (October 2014), produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.
- 119 Melbourne Research Alliance to end violence against women and their children (Prof Cathy Humphreys et al)-01, Submission 840, Briefing Paper 2, 8-9.
- 120 Victoria Police, 'Evaluation of the Koori Family Violence Police Protocols: Ballarat, Darebin and Mildura' (Clear Horizon Consulting) (2015), 1, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.
- 121 Ibid.
- 122 Ibid.
- 123 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 11.
- 124 They are also members of the Indigenous Family Violence Partnership Forum, Aboriginal Justice Forum and other state forums. In addition they host the National Secretariat of the National Family Violence Prevention Legal Services Forum and have special consultative status to the United Nations Economic and Social Council: Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 11.
- 125 Victorian Aboriginal Legal Service, 'VALS Annual Report 2012-2013' (December 2013) 3, 6.
- 126 In 2012-13 of 11,616 clients, 10,992 related to criminal matters: *ibid* 10.
- 127 Ibid 3.
- 128 Victorian Aboriginal Legal Service, Submission 826, 1.
- 129 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 12, 27.
- 130 Department of Justice and Regulation, 'Evaluation of the Koori Family Violence Court Support Program Pilot: Final Report' (Clear Horizon Consulting) (18 June 2012), 18-24, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.
- 131 Ibid 28.
- 132 Eastern Community Legal Centre, Submission 582, Attachment 1, 17.
- 133 Ibid.
- 134 Ibid 11.
- 135 Transcript of Bamblett, 20 July 2015, 781 [29]-782 [3].
- 136 See, eg, Victorian Aboriginal Child Care Agency, Submission 947, 10; Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 18; Victorian Aboriginal Legal Service, Submission 826, 3; Transcript of Vickery, 20 July 2015, 803 [8]-[14].
- 137 Victorian Aboriginal Child Care Agency, Submission 947, 10.

- 138 Taskforce 1000 is a project between the Department of Health and Human Services and the Commission for Children and Young People. It commenced in 2014 and involves reviewing the current circumstances of the approximately 1000 Aboriginal children and young people in out-of-home care: Department of Human Services, *Taskforce 1000* (14 September 2015) <<http://www.dhs.vic.gov.au/about-the-department/plans,-programs-and-projects/projects-and-initiatives/children,-youth-and-family-services/taskforce-1000>>. A review of the Taskforce 1000 process found that it is 'successfully enabling immediate improvements for Aboriginal children and young people in care': Department of Health and Human Services, 'Review of Taskforce 1000 Process: Prepared for the Department of Health and Human Services' (KPMG) (26 February 2015), 5, produced by the State of Victoria in response to Commission's Notice to Produce 5 June 2015.
- 139 Statement of Jackomos, 9 July 2015, 5 [23]. Commissioner Jackomos subsequently advised the Commission this figure may be closer to 90 per cent.
- 140 Based on figures for the number of Aboriginal and Torres Strait Islanders in care at 30 June 2013 and 30 June 2014: Productivity Commission (Cth), 'Report on Government Services 2015' (2015) Chapter 15: Child Protection Services, Table 15A.18.
- 141 Statement of Jackomos, 9 July 2015, 4 [21].
- 142 Department of Health and Human Services, 'Royal Commission into Family Violence SAMS data request (2009–2014)' (1 July 2015), Tab 31245, Tab 31246, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.
- 143 Victorian Auditor-General's Office, 'Early Intervention Services for Vulnerable Children and Families' (May 2015) 8.
- 144 Victorian Aboriginal Community Controlled Organisations and Community Service Organisations, 'Koorie Kids—Growing Strong in Their Culture: Five Year Plan for Aboriginal Children in Out of Home Care—Joint Submission from Victorian Aboriginal Community Controlled Organisations and Community Service Organisations' (November 2013) 15.
- 145 Ibid.
- 146 Statement of Jackomos, 9 July 2015, 4 [22].
- 147 Department of Health and Human Services, 'Taskforce 1000: Inner Gippsland Area Report' (May 2015), 10, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.
- 148 Transcript of Turfrey, 20 July 2015, 885 [10]–[19].
- 149 Transcript of Jackomos, 14 July 2015, 171 [31]–172 [13].
- 150 'So my suggestion is that the Victorian Government needs to work with the local community, Aboriginal community, they need to work with agencies, statewide agencies such as VALS and VACCA and Aboriginal family violence, and local communities to develop a strategy as a highest priority of this government to address women being sexually abused and children in record numbers. Sadly, that's not on this government's agenda at the moment': Transcript of Jackomos, 20 July 2015, 804 [26]–805 [2]. See also Statement of Jackomos, 9 July 2015, 10 [47].
- 151 Andrew Jackomos, 'Open Letter in Response to 2015 Report on Government Services' (3 February 2015).
- 152 Victorian Aboriginal Children's Forum, 'Aboriginal Children's Summit: Communiqué' (August 2015) <<http://www.ccyp.vic.gov.au/downloads/aboriginal-childrens-forum-2015-communication.pdf>>. The Commission also notes that a number of programs have operated to support Aboriginal families in contact with the child protection system where removal may be imminent and/or to facilitate return home. Programs identified in documentation provided by the Victoria Government include Aboriginal Family Preservation and Restoration programs and Stronger Families services (including Aboriginal Stronger Families). See Department of Premier and Cabinet, '23rd Indigenous Family Violence Partnership Forum, Progress Updates against 10 Year Plan' (October 2014), 3, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.
- 153 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 17. See also Victorian Aboriginal Legal Service, Submission 826, 12.
- 154 Transcript of Vickery, 20 July 2015, 803 [10]–[15].
- 155 Transcript of Braybrook, 20 July 2015, 801 [1]–[3]. See also Statement of Gallagher, 10 August 2015, 7 [35].
- 156 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 53.
- 157 Transcript of Braybrook, 20 July 2015, 783 [8]–[14].
- 158 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 54.
- 159 Ibid.
- 160 Victorian Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 7.
- 161 Ibid 53; Koorie Youth Council, Submission 906, 12; Youth Affairs Council of Victoria Inc, Submission 938, 18.
- 162 *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014* (Vic) s 98.
- 163 *Children, Youth and Families Act 2005* (Vic) s 176(2).
- 164 Victorian Aboriginal Community Controlled Organisations and Community Service Organisations, above n 144, 3.
- 165 'An audit completed in August 2013 of 194 Aboriginal children in out-of-home care and subject to cultural support planning legislative requirements found that only 15 children (eight per cent) had a completed Cultural Support Plan. The data shows growing numbers of Aboriginal children in care, Aboriginal children staying in care longer and a failure to meet basic legislative and practice requirements. In blunt terms, the current approach to the protection of Aboriginal children in Victoria is failing': ibid.
- 166 Victorian Aboriginal Child Care Agency, Submission 947, 10–11.
- 167 Transcript of Jackomos, 14 July 2015, 175 [14]–[20].
- 168 See Victorian Aboriginal Children's Forum, above n 152.
- 169 Victorian Aboriginal Legal Service, Submission 826, 5.
- 170 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 13; Matthew Willis, 'Non-disclosure of Violence in Australian Indigenous Communities' (Trends & Issues in Crime and Criminal Justice No 405, Australian Institute of Criminology, January 2011) 1.
- 171 State of Victoria, Submission 717, 14.
- 172 Victorian Indigenous Family Violence Task Force, above n 2, 142.
- 173 Transcript of Braybrook, 20 July 2015, 754 [20]–[24].
- 174 Victorian Aboriginal Legal Service, Submission 826, 3.
- 175 Community consultation, Bairnsdale, 28 May 2015.
- 176 Ibid.
- 177 Ibid.
- 178 Victorian Aboriginal Legal Service, Submission 826, 6.
- 179 'Many Indigenous women do not access mainstream domestic violence services because they do not feel comfortable with the organisation itself and don't feel that the staff understand their culture, values and needs': Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 25. See also Victorian Aboriginal Legal Service, Submission 826, 4–6; Victorian Auditor-General's Office, 'Accessibility of Mainstream Services for Aboriginal Victorians' (May 2014) 2.
- 180 Victorian Aboriginal Legal Service, Submission 826, 5.
- 181 Department of Premier and Cabinet, '23rd Indigenous Family Violence Partnership Forum: Social Housing Presentation' (October 2014), 18, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.

182 Victorian Equal Opportunity and Human Rights Commission, 'Guideline for General Practices: Complying with the Equal Opportunity Act 2010 When Providing Services' (January 2014) 18, 22.

183 Transcript of Vickery, 20 July 2015, 763 [26]-764 [3].

184 VicHealth, 'Mental Health Impacts of Racial Discrimination in Victorian Aboriginal Communities: Experiences of Racism Survey—A Summary' (November 2012) 5.

185 Ibid 1, 5.

186 Ibid 6.

187 State of Victoria, Submission 717, Attachment 2, 3.

188 Department of Premier and Cabinet, above n 116, 1.

189 'The definition of Aboriginal family violence and nature of Aboriginal services increases this difficulty as, by their very nature, Aboriginal services seek to respond to clients in a holistic manner and are hence multifaceted': *ibid*.

190 Victorian Government, '2015-16 Budget Paper No 3: Service Delivery' (Department of Treasury and Finance, 2015) 10.

191 Department of Premier and Cabinet, above n 116, 2.

192 State of Victoria, Submission 717, Attachment 2, 12.

193 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 28-32; Victorian Aboriginal Child Care Agency, Submission 947, 22-3; Northern Metropolitan Region Indigenous Family Violence Action Group, Submission 934, 14. See also Victorian Aboriginal Community Services Association Limited, Submission 837, 5; Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 32-3.

194 Department of Premier and Cabinet, above n 25, iv.

195 A participant in a community consultation reported that '[t]here was a series of six TV ads on local TV in Mildura. They used local people in Mildura, Robinvale, got the attention of those communities because people knew someone on TV. They were run during primetime. They were about elder abuse, younger relationships, early indicators, cyber abuse. They were funded by the Koori Justice Unit as a community safety grant. Makes the community proud. Like anti-smoking ads. There should be more ads on TV for community, posters': Community consultation, Melbourne 1, 14 May 2015.

196 Transcript of Jackomos, 20 July 2015, 756 [3]-[4], [12]-[19].

197 Department of Justice and Regulation, above n 130, 28.

198 Transcript of Bamblett, 20 July 2015, 769 [26]-[31].

199 Transcript of Vickery, 20 July 2015, 761 [25]-762 [1].

200 A total of \$650,000 is available under the fund. Thirty-nine projects were funded across the state in 2013-14. Guidelines for the program are published by the Department of Health and Human Services in each annual funding round. Department of Premier and Cabinet, '22nd Indigenous Family Violence Partnership Forum: Community Initiative Fund (CIF) 2014-15' (May 2014), produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.

201 Department of Premier and Cabinet, above n 25, iv.

202 'What the partnership forum has told us very clearly is that there are very good initiatives that are supported through the community initiative fund that if they want to be repeated have nowhere to go': Transcript of Singh, 20 July 2015, 864 [9]-[17].

203 Department of Premier and Cabinet, above n 25, iv.

204 Department of Premier and Cabinet, above n 25, vii.

205 Sarah Tayton et al, 'Groups and Communities at Risk of Domestic and Family Violence' (Australian Institute of Family Studies, 2014) 47.

206 Anna Olsen and Ray Lovett, 'Existing Knowledge, Practice and Responses to Violence Against Women in Australian Indigenous Communities' (Landscapes: State of Knowledge No 2, Australian National Research Organisation for Women's Safety, January 2016) 3.

207 Victorian Auditor-General, above n 179, x.

208 This criticism also applied in the case of funding for non-Aboriginal organisations.

209 National Aboriginal and Torres Strait Islander Women's Alliance, Submission 912, 6.

210 The 'Aboriginal Family Violence: Consultant's Guideline' was developed 'in response to concerns raised by Indigenous Family Violence Regional Action Group and Indigenous Family Violence Coordinators regarding the manner in which consultants are engaging with Aboriginal people around policy and programs relating to Aboriginal family violence': Victorian Government, 'Aboriginal Family Violence: Consultants' Guidelines' (May 2015) 2.

211 Victorian Indigenous Family Violence Task Force, above n 2, 237.

212 See eg, National Aboriginal and Torres Strait Islander Women's Alliance, Submission 912, 6; Victorian Aboriginal Legal Service, Submission 826, 7; Northern Metropolitan Region Indigenous Family Violence Action Group, Submission 934, 5; Koorie Youth Council, Submission 906, 5-6; Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 6; Victorian Aboriginal Child Care Agency, Submission 947, 29.

213 Transcript of Bamblett, 20 July 2015, 771 [19]-[23].

214 Ibid 771 [28]-[29].

215 Koori Women Mean Business, Submission 873, 3.

216 Transcript of Dowsley, 14 October 2015, 3582 [8]-[9].

217 Crime Statistics Agency, above n 35, 144.

218 Ibid.

219 Ibid.

220 Department of Premier and Cabinet, above n 25, vii.

221 Peta Cox, 'Violence Against Women in Australia: Additional Analysis of the Australian Bureau of Statistics' Personal Safety Survey, 2012' (Horizons: Research Paper No 01, Australia's National Research Organisation for Women's Safety, October 2015) 2, 4.

222 Victorian Aboriginal Legal Service, Submission 826, 5; Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 24-5; Victorian Aboriginal Child Care Agency, Submission 947, 28; Victorian Aboriginal Community Services Association Limited, Submission 837, 4, 6; Northern Metropolitan Region Indigenous Family Violence Action Group, Submission 934, 12.

223 Victorian Aboriginal Child Care Agency, Submission 947, 20.

224 For example between Indigenous and non-Indigenous organisations: Sam Morley, 'What Works in Effective Indigenous Community-Managed Programs and Organisations' (Paper No 32, Australian Institute of Family Studies, May 2015) 7.

225 Ibid 2.

226 Victorian Aboriginal Child Care Agency, Submission 947, 20.

227 Community consultation, Mildura, 2 July 2015.

228 Statement of Gallagher, 10 August 2015, 4 [22].

229 See eg, Transcript of Bamblett, 20 July 2015, 827 [27]-828 [2]; Statement of Kirby, 10 August 2015, 2 [14].

230 Transcript of Jackomos, 20 July 2015, 780 [12]-[15].

231 Statement of Braybrook, 16 July 2015, 4 [17]. See also Transcript of Braybrook, 20 July 2015, 833 [20]-[23].

232 Transcript of Braybrook, 20 July 2015, 833 [20]-[30].

233 Koori Women Mean Business, Submission 873, 4.

234 Community Consultation, Mildura, 2 July 2015.

235 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 23.

- 236 See also National Aboriginal Community Controlled Health Organisation, 'Creating the NACCHO Cultural Safety Training Standards and Assessment Process: A Background Paper' (May 2011) 10–12.
- 237 Aboriginal Affairs Victoria, above n 1, 11.
- 238 Victorian Aboriginal Legal Service, Submission 826, 6.
- 239 Transcript of Singh, 20 July 2015, 857 [23]–[28], 858 [12]–[18].
- 240 In 2015 the Department of Human Services developed an addendum to the DHHS Standards evidence guide that 'is culturally informed, includes practice advice and examples to support improved service delivery to Aboriginal people': Department of Premier and Cabinet, '24th Indigenous Family Violence Partnership Forum: 10 Year Plan Departmental Progress Report' (June 2015), produced in response to the Commission's Notice to Produce dated 5 June 2015, 10. A copy of the guide can be found at Department of Health and Human Services, *Human Services Standards Evidence Guide and Resource Tool* (4 March 2016) <<http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/policies,-guidelines-and-legislation/human-services-standards-evidence-guide-and-resource-tool>>.
- 241 Victorian Aboriginal Legal Service, Submission 826, 5–6.
- 242 Ibid 6.
- 243 Community consultation, Melbourne, 19 May 2015.
- 244 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 26.
- 245 Victorian Aboriginal Legal Service, Submission 826, 4.
- 246 Department of Premier and Cabinet, above n 240, 2. See also Statement of Allen, 13 July 2015, Attachment 24, 20–1. The progress report on the 10 Year Plan to the 24th Indigenous Partnership Forum also notes that 'Indigenous Men's Resource and Advisory Service provides consultation to other organisations to provide more culturally sensitive and responsive information, advice and support to Indigenous workers. This helps to ensure organisations are up to date and linked with culturally appropriate referral options for Aboriginal perpetrators': Department of Premier and Cabinet, above n 240, 10.
- 247 Koori Women Mean Business, Submission 873, 4.
- 248 Victorian Aboriginal Child Care Agency, Submission 947, 4.
- 249 Transcript of Bamblett, 20 July 2015, 781 [16]–[20].
- 250 Ibid 781 [16]–[20]; Northern Metropolitan Region Indigenous Family Violence Action Group, Submission 934, 5.
- 251 Community consultation, Melbourne 1, 14 May 2015.
- 252 Transcript of Bamblett, 20 July 2015, 781 [16]–[20]; Northern Metropolitan Region Indigenous Family Violence Action Group, Submission 934, 3.
- 253 For example, in regards to early childhood services Aboriginal Best Start projects (in six sites) 'have been established to make sure that local Aboriginal communities and organisations are given every possible opportunity to influence outcomes for their children and families. These projects are designed to empower communities and families and develop broad cross-sectoral partnerships across all early years services to improve outcomes for Aboriginal children and their families': Department of Education and Training, *Aboriginal Best Start* (18 October 2015) <<http://www.education.vic.gov.au/about/programs/aboriginal/Pages/aboriginalbeststart.aspx>>.
- 254 'Being strong in culture builds the resilience, skills, participation and wellbeing of Aboriginal people, and is especially vital to young people, who make up a significant and growing part of the Aboriginal community': Department of Planning and Community Development, above n 4, 13.
- 255 Statement of Kirby, 10 August 2015, 3 [20].
- 256 Transcript of Jackomos, 20 July 2015, 830 [1]–[5].
- 257 Statement of Gallagher, 10 August 2015, 6 [31]. Ms Gallagher also noted 'lost opportunities', citing Bubup Wilam (meaning 'the children's place') creche and kindergarten, funded by the Commonwealth, was able to provide child care but due to funding limitations was not able to provide 'family violence screening and intensive case management: at 7–8 [36]. The National Partnership Agreement on Indigenous Early Childhood Development funded two Victorian Aboriginal Child and Family Centres one in Bairnsdale (Dala Yooro) and one in Whittlesea (Bubup Wilam). The agreement expired on 30 June 2014: Council of Australian Governments, 'National Partnership Agreement between the Commonwealth of Australia and the State and Territory Governments regarding Indigenous Early Childhood Development'; IECD, 'Evaluation of the National Partnership Agreement on Indigenous Early Childhood Development: Final Report' (July 2014) 62, 64; Department of Health (Cth), *National Partnership Agreement on Indigenous Early Childhood Development* (19 December 2014) <http://www.health.gov.au/internet/main/publishing.nsf/Content/oatsih-npa_iecd>.
- 258 Transcript of Jackomos, 20 July 2015, 779 [26]–780 [7].
- 259 Ibid 780 [7]–[11].
- 260 Transcript of Bamblett, 20 July 2015, 781 [2]–[9].
- 261 Ibid 830 [25]–831 [5].
- 262 See also Department of Health and Human Services, 'Victorian Cradle to Kinder and Aboriginal Cradle to Kinder: Practice Guide' (October 2013).
- 263 Statement of Allen, 13 July 2015, 34 [174]–[179].
- 264 Ibid 35 [182].
- 265 See Australian Institute of Family Studies (Cth), *Cradle to Kinder Program Evaluation* (2016) <<https://aifs.gov.au/projects/cradle-kinder-program-evaluation>>.
- 266 Koorie Youth Council, Submission 906, 3.
- 267 That is, 35.2 per cent: Australian Bureau of Statistics, 'Census of Population and Housing—Counts of Aboriginal and Torres Strait Islander Australians' (Catalogue No 2075.0, Australian Bureau of Statistics, 2011).
- 268 VicHealth, 'Australians' Attitudes to Violence Against Women: Findings from the 2013 National Community Attitudes Towards Violence Against Women Survey' (September 2014) 90.
- 269 Statement of Gallagher, 10 August 2015, 7 [34].
- 270 Who is considered a 'young person' within Aboriginal communities may not always reflect the clear delineation between 'adolescents' and 'adults' accepted in mainstream western cultural frameworks: Koorie Youth Council, Submission 906, 4–5.
- 271 Koorie Youth Council, Submission 906, 7.
- 272 Community consultation, Melbourne 1, 14 May 2015. See also Northern Metropolitan Region Indigenous Family Violence Action Group, Submission 934, 9–10.
- 273 TNS Australia, 'Reducing Violence Against Women and Their Children: Research Informing the Development of a National Campaign' (Commonwealth of Australia, Department of Social Services, November 2015) 16–17.
- 274 Northern Metropolitan Region Indigenous Family Violence Action Group, Submission 934, 9.
- 275 Ibid 9–10.
- 276 Ibid 10.
- 277 Olsen and Lovett, above n 206, 4.
- 278 Community consultation, Melbourne 1, 14 May 2015. See also Northern Metropolitan Region Indigenous Family Violence Action Group, Submission 934, 7, 12–14.
- 279 Community consultation, Mildura, 2 July 2015.
- 280 Northern Metropolitan Region Indigenous Family Violence Action Group, Submission 934, 4.
- 281 Victorian Aboriginal Community Services Association Limited, Submission 837, 3.

- 282 Indigenous Men's Resource and Advisory Service, Submission 771, 14.
- 283 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 22.
- 284 Transcript of Braybrook, 20 July 2015, 744 [1]–[12].
- 285 Ibid 744 [19]–[22].
- 286 Statement of Jackomos, 9 July 2015, 12 [56].
- 287 Transcript of Jackomos, 14 July 2015, 172 [16]–[24].
- 288 Victorian Aboriginal Legal Service, Submission 826, 7.
- 289 Ibid 6.
- 290 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 30–1, 44.
- 291 Ibid 14, 32. For more detail about the history of funding, see *ibid* 28–31.
- 292 Ibid 24.
- 293 Ibid 24.
- 294 Northern Metropolitan Region Indigenous Family Violence Action Group, Submission 934, 13. See also Victoria Police, above n 120, 1–2.
- 295 'The police don't always follow the Koori police protocol—code of conduct—they often speak to the respondent and ignore the applicant on the call out': Community consultation, Mildura, 2 July 2015.
- 296 A stakeholder meeting in Bairnsdale to progress the protocols was held in February 2015. Consultation in additional sites (City of Shepparton and Dandenong/City of Casey) also took place in March 2015. Department of Premier and Cabinet, '24th Indigenous Family Violence Partnership Forum: Koori Family Violence Police Protocols' (June 2015), 1382, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.
- 297 'The Koori Police protocol was launched in 2007 but is still not fully operational in 2015': Community consultation, Mildura, 2 July 2015.
- 298 Victoria Police, above n 120, 13–14, 18.
- 299 Ibid 9.
- 300 Ibid 2.
- 301 Ibid 8.
- 302 Ibid 2.
- 303 Transcript of Braybrook, 20 July 2015, 800 [26]–[29].
- 304 Community consultation, Mildura, 2 July 2015.
- 305 Flat Out Inc, Submission 980, 8.
- 306 Community consultation, Mildura, 2 July 2015.
- 307 Ibid.
- 308 Ibid.
- 309 Victoria Police, 'Code of Practice for the Investigation of Family Violence—Edition 3' (2014) 43–8. See Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 52 setting out concerns.
- 310 Other examples included: 'Boorndawan Willam Indigenous Healing Service highlighted the successful trial Eastern Domestic Violence Service is undertaking with police around asking the question of Aboriginality. The EDVOS worker is re-asking the question if missing from the L17 report. This is resulting in an increase in referrals to the Healing Service ... St Kilda Crisis Service has an Aboriginal worker and women are given the option of either an Aboriginal or mainstream service referral. This ensures women are offered a choice and it is the responsibility of the L17 provider to facilitate the referral pathway': Department of Premier and Cabinet, '24th Indigenous Family Violence Partnership Forum: Healing and Time Out Services' (June 2015), produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.
- 311 Northern Metropolitan Region Indigenous Family Violence Action Group, Submission 934, 13.
- 312 Victorian Aboriginal Child Care Agency, Submission 947, 29; Koori Caucus, Submission 946, 8.
- 313 Transcript of Jackomos, 20 July 2015, 798 [11]–[24].
- 314 Victorian Indigenous Family Violence Task Force, above n 2, 150.
- 315 See *ibid* 150, Recommendation 14.
- 316 Ibid 151 citing Elizabeth Hoffman House Inc and Victorian Aboriginal Health Service Mother and Children's Unit, 'Consultation Report on Aboriginal Women & Children's Experiences of Family Violence within Victorian Aboriginal Communities' (29 June 2003).
- 317 Transcript of Vickery, 20 July 2015, 823 [21]–[23], 823 [31]–824 [2].
- 318 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 41; Koori Caucus, Submission 946, 20. This program is distinct from the Court Integrated Services Program which currently operates at Latrobe Valley, Melbourne and Sunshine Magistrates' Courts: Magistrates' Court of Victoria, *Court Integrated Services Program* (CISP) (17 July 2013) <<https://www.magistratescourt.vic.gov.au/jurisdictions/specialist-jurisdictions/court-support-services/court-integrated-services-program-cisp>>.
- 319 Department of Justice and Regulation, above n 130, 18–24.
- 320 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 12.
- 321 Ibid 41.
- 322 Transcript of Vickery, 20 July 2015, 805 [12]–[30]; Aboriginal Housing Victoria, Submission 587, 5.
- 323 Aboriginal Housing Victoria, Submission 587, 5.
- 324 Law Institute of Victoria, Submission 832, 28.
- 325 Transcript of Vickery, 20 July 2015, 805 [12]–[30]; Law Institute of Victoria, Submission 832, 28.
- 326 Department of Premier and Cabinet, '23rd Indigenous Family Violence Partnership Forum: Koori Courts Access and Issues' (October 2014), 2, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.
- 327 Department of Justice and Regulation, 'Jurisdiction Services: Minutes of Meeting—Courts Koori Reference Group' (10 December 2015), provided to the Commission by the Department of Justice and Regulation, 14 January 2016.
- 328 Ibid.
- 329 Department of Justice, 'Koori Court: Information for Legal Representatives' <https://www.magistratescourt.vic.gov.au/sites/default/files/Default/kc_legal%2Bprac%2Bguid.pdf>.
- 330 County Court of Victoria, Court Services Victoria and Victorian Aboriginal Justice Agreement, 'Can My Matter Be Heard in the County Koori Court' <<http://www.countycourt.vic.gov.au/sites/default/files/forms/County%20Koori%20Court%20-%20Can%20my%20matter%20be%20heard%20%28February%202015%29.pdf>>.
- 331 Department of Justice, 'Koori Court: Information for Legal Representatives' <https://www.magistratescourt.vic.gov.au/sites/default/files/Default/kc_legal%2Bprac%2Bguid.pdf>.
- 332 Australian Institute of Health and Welfare (Cth), *Domestic and Family Violence and Homelessness 2011–12 to 2013–14* (2016) <<http://www.aihw.gov.au/homelessness/domestic-violence-and-homelessness>>. See also Australian Institute of Health and Welfare (Cth), 'Over one-third of specialist homelessness clients seek domestic and family violence support' (Media Release, 3 February 2016).
- 333 Australian Institute of Health and Welfare (Cth), *The intersection of domestic violence and homelessness* (2016) <<http://www.aihw.gov.au/homelessness/domestic-violence-and-homelessness/intersection/>>.

- 334 'The proportion of female clients who identified as Indigenous is almost the same as that of male clients, with 10 per cent (n=5940) of female clients and 11 per cent (n=1293) of male clients identifying as Indigenous': Crime Statistics Agency, above n 35, 105; Department of Premier and Cabinet, 'above n 25, 16.
- 335 Council to Homeless Persons et al, Submission 920, 1.
- 336 Statement of Kirby, 10 August 2015, 13 [53].
- 337 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 18.
- 338 Victorian Aboriginal Legal Service, Submission 826, 11; *ibid* 18.
- 339 Aboriginal Housing Victoria, Submission 587, 3–4. In 2014–15 the number of households on the Aboriginal Housing Victoria waiting list was 1143. In the same year 136 allocations were made: Department of Health and Human Services, 'Aboriginal Housing Victoria information' (5 August 2016), 2–3, produced by the State of Victoria in response to the Commission's Notice to Produce dated 14 August 2015 (as varied on 20 August 2015 and 20 October 2015).
- 340 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 18.
- 341 Statement of Rogers, 20 July 2015, 12 [78].
- 342 *Ibid* 25 [152].
- 343 Northern Metropolitan Region Indigenous Family Violence Action Group, Submission 934, 9.
- 344 Victorian Aboriginal Child Care Agency, Submission 947, 27.
- 345 Statement of Wilson, 13 August 2015, 3 [15]. See also Transcript of Wilson, 13 August 2015, 2884 [4]–[11].
- 346 Community consultation, Mildura, 2 July 2015.
- 347 *Ibid*.
- 348 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 18.
- 349 Transcript of Jackomos, 20 July 2015, 792 [12]–[13].
- 350 Victorian Equal Opportunity and Human Rights Commission, 'Unfinished Business: Koori Women and the Justice System' (August 2013) 23, cited in Victorian Aboriginal Legal Service, Submission 826, 11.
- 351 Victorian Aboriginal Legal Service, Submission 826, 11.
- 352 Transcript of Jackomos, 20 July 2015, 796 [25]–[27].
- 353 Transcript of Vickery, 20 July 2015, 796 [9]–[20].
- 354 Community consultation, Melbourne 1, 14 May 2015.
- 355 Crime Statistics Agency, above n 35, 101; Statement of Rogers, 20 July 2015, 27 [167].
- 356 Transcript of Vickery, 20 July 2015, 791 [3]–[11], [19]–[23].
- 357 Victorian Aboriginal Community Services Association Limited, Submission 837, 6; Confidential, Submission 730, 13.
- 358 Victorian Aboriginal Community Services Association Limited, Submission 837, 6. See also Victorian Aboriginal Child Care Agency, Submission 947, 23.
- 359 Community consultation, Bairnsdale, 28 May 2015.
- 360 Transcript of Turfrey, 20 July 2015, 881 [13]–[14].
- 361 *Ibid* 881 [20]–[22].
- 362 Victorian Aboriginal Legal Service, Submission 826, 10.
- 363 Transcript of Vickery, 20 July 2015, 797 [17]–[28].
- 364 Victorian Aboriginal Legal Service, Submission 826, 10.
- 365 Victorian Indigenous Family Violence Task Force, above n 2, 4.
- 366 Department of Premier and Cabinet, above n 25, 36.
- 367 Transcript of Vickery, 20 July 2015, 803 [9]–[15].
- 368 Statement of Jackomos, 9 July 2015, 5 [23]. Commissioner Jackomos subsequently advised the Commission this figure may now be closer to nine out of ten of this group of children.
- 369 Commission for Children and Young People, 'Commission for Children and Young People: Annual Report 2013–2014' (September 2014) 37.
- 370 Transcript of Jackomos, 20 July 2015, 830 [1]–[5].
- 371 Victorian Aboriginal Child Care Agency, Submission 947, 10.
- 372 *Ibid* 7.
- 373 Victorian Aboriginal Community Controlled Organisations and Community Service Organisations, above n 144; Koorie Youth Council, Submission 906, 17.
- 374 The Cradle to Kinder program is currently being evaluated with a report due in early 2016: Statement of Allen, 13 July 2015, 36 [80]–[81].
- 375 The target group for Integrated Family Services—Indigenous is 'vulnerable Aboriginal children and young people and their families who are: likely to experience greater challenges because the child or young person's development has been affected by the experience of risk factors and cumulative harm; at risk of concerns escalating and becoming involved with child protection if problems are not addressed. Integrated Family Services—Indigenous services may be provided by the local Aboriginal community controlled organisation or a mainstream funded community service organisation where an ACCO is not located in the catchment, or by agreement': Department of Health and Human Services, 'Integrated Family Services—Indigenous 31246' (July 2013), 2, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015. Documentation provided by the Victorian Government indicates that the proportion of new referrals to Child FIRST and family support services to Indigenous Integrated Family Services with an Aboriginal status in 2013–2014 was 7.1 per cent (an increase of 0.2 per cent): Department of Premier and Cabinet, above n 240, 4.
- 376 Statement of Jackomos, 9 July 2015, 10 [47].
- 377 Commissioner Jackomos called for 'the development of a statewide strategic response to improving the lives of vulnerable Aboriginal babies, children and young people with child protection, youth justice and child homelessness as well as children's trauma and mental health at its core ... The strategic response should be an initiative agreed between the broad Aboriginal community and government, with governance arrangements on par with the Aboriginal Justice Agreement. The response at a minimum should include; principles, protocols, targets and measureable outcomes monitored through a partnership forum': Jackomos, above n 151.
- 378 Victorian Aboriginal Children's Forum, above n 152.
- 379 *Children, Youth and Families Act 2005* (Vic) s 176.
- 380 Charter of Human Rights and Responsibilities Act 2006 (Vic) s 19(2).
- 381 Victorian Aboriginal Children's Forum, above n 152.
- 382 Department of Premier and Cabinet, above n 116.
- 383 The mid-term evaluation recommended that service fragmentation and consistency of access to culturally responsive programs should be addressed by expanding the following initiatives, informed by program evaluations: healing services (evaluation required); Time Out Services (evaluation required); Koori Family Violence Police Protocols (evaluation completed) and Koori Family Violence Court Support Model) evaluation completed): Department of Premier and Cabinet, above n 25, vii.
- 384 Department of Premier and Cabinet, above n 25, vii.
- 385 Victorian Aboriginal Child Care Agency, Submission 947, 21.
- 386 Victoria Police, above n 120, 1–2.

³⁸⁷ Department of Justice and Regulation, above n 130, 6.

³⁸⁸ The Commission understand that an evaluation of healing and Time Out services was planned to align with the mid-term evaluation of the Indigenous Family Violence Strategy: see Department of Premier and Cabinet, '22nd Indigenous Family Violence Partnership Forum: Healing and Time Out Services Update' (29 April 2014), produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015. However, the evaluation states that these services have not been evaluated: Department of Premier and Cabinet, above n 25, vii.

³⁸⁹ We make recommendations regarding improving data collection, data sharing, research and evaluation in Chapter 39 where we recommend that Victoria Police, Department of Health and Human Services, Department of Justice and Regulation, Department of Education and others should improve the collection of Indigenous specific data relating to family violence so that this can be shared with communities, organisations and governance forums to inform local, regional and statewide responses. We also recommend that the proposed Victorian Government Family Violence Index includes measures that reflect the lived experience of family violence in different communities, including Aboriginal communities.

27 Older people

Introduction

The Commission's terms of reference require it to consider the needs and experiences of people affected by family violence, having particular regard to, among others, older people.

In some ways, family violence experienced by older people is no different to that experienced by younger people. It can be of a physical, sexual, emotional or psychological nature and be committed by an intimate partner or other family member. Like many other forms of family violence, women are over-represented as victims and men as perpetrators.

However, family violence against older people also has some unique characteristics, which warrant particular attention and a tailored response. While women are over-represented as victims in prevalence data, the proportion of older men who experience family violence is higher than for younger men. Older people can also be at particular risk of economic or financial abuse. The perpetrator is often the victim's son or daughter.

In the first part of this chapter, we explore the nature and prevalence of family violence experienced by older people, and existing service responses. The second part of this chapter considers in greater detail some of the specific issues faced by older people who experience family violence. These include barriers to reporting family violence. Older people may be reluctant to take action that may be to the detriment of a close family member, they may not know where to go for help or they may conform to generational expectations that family violence is a private matter. For some older people, reliance on others for care can also make them isolated and at risk of family violence.

In addition to this, there is a significant lack of understanding within the community and by service providers of the nature and dynamics of elder abuse, which can create missed opportunities to intervene and provide support to victims. Most existing family violence services and perpetrator interventions are not geared towards the unique dynamics of elder abuse, or to the needs of certain groups.

In the final part of this chapter, the Commission identifies ways to improve awareness of the responses to family violence perpetrated against older people and proposes improvements to the identification and reporting of family violence for this group. This includes improving education and prevention initiatives, strengthening service responses and improving alternative accommodation options for older people, recognising that aged care facilities are not an appropriate option for many people. Proposals to expand the definition of family violence to more explicitly capture elder abuse and mandatory reporting are also considered.

Our recommendations aim to overcome difficulties that arise in identifying and responding to abuse and to secure the safety and wellbeing of older people who are at risk of, or are experiencing, family violence.

Context and current practice

This section outlines the limited data and information on the prevalence and nature of family violence and elder abuse experienced by older people. It goes on to describe the key service providers that support older people affected by family violence, the framework for reporting and investigating abuse in institutional and non-institutional settings, and the existing justice and health system responses to the specific experiences of older victims of family violence.

When referring to 'older people' the Commission uses the definition most commonly used in developed countries—a person aged 65 years or over.¹ However, some services for older people may start providing support and services to people below this threshold, particularly for Aboriginal and Torres Strait Islander people.²

It is important to understand the difference between family violence and elder abuse. Like family violence,³ elder abuse can be physical, sexual, emotional, psychological, or economic in nature, and can also take the form of neglect.⁴ Elder abuse occurs within a relationship where there is 'an expectation of trust which causes harm or distress to an older person',⁵ but is broader than family violence as it can also occur outside the family context (for example, by a carer or a friend). Where the perpetrator is a family member (or in some circumstances a carer or other person who could reasonably be regarded as being like a family member), the abuse will constitute family violence under the *Family Violence Protection Act 2008 (Vic)*.⁶ The terms elder abuse and family violence are, however, often used interchangeably in policy documents and statistics. We do so when referring to these documents.

Older people in Victoria

In Victoria, approximately 761,580 people are aged 65 years and over, representing 14 per cent of the state population.⁷ Of this group, 45 per cent are male and 55 per cent are female.⁸

The following data is useful to understand the circumstances and needs of older people in addressing family violence:

- ▶ Approximately 56 per cent ($n=461,000$) of Victorians aged 65 years and over have a disability, compared with 13 per cent ($n=653,900$) of those aged under 65 years.⁹ Of the 461,000 older Victorians with a disability, 38 per cent ($n=175,300$) have a profound or severe disability. This includes people who reach very old age.
- ▶ A further 33 per cent ($n=268,200$) of Victorians aged 65 years and over have a long-term health condition, compared with 18 per cent ($n=899,500$) of those aged under 65 years.¹⁰
- ▶ Approximately 46 per cent ($n=381,600$) of Victorians aged 65 years and over need assistance with at least one activity. Approximately six per cent ($n=50,600$) of older Victorians live in cared-accommodation.¹¹
- ▶ Of 37,991 Victorians who identified as Aboriginal or Torres Strait Islander, only four per cent ($n=1,626$) are aged 65 years or over.¹²

The extent and nature of family violence against older people

This section outlines what the Commission heard about the nature and dynamics of family violence perpetrated against older people and how it can differ from family violence against younger people.

Prevalence

The Commission was told that there is very limited evidence on the prevalence of elder abuse in Australia. It has been estimated to affect five to six per cent of older people in Australia, while international studies contain disparate estimates of between one to ten per cent of older people.¹³ There is no prevalence data for Victoria.¹⁴ As with many forms of family violence, some older people do not recognise their experience as constituting elder abuse or family violence and as a result there is considerable under-reporting.¹⁵

Victoria Police incident reporting data shows that in 2013–14, 1359 women and 878 men who were affected family members (that is, victims) in family violence incidents were over the age of 65. This represents 2.8 per cent of all female, and 5.5 per cent of all male, affected family members.¹⁶ By comparison, in the general population as at the last census (2011) 15 per cent ($n=417,033$) of all female Victorians and 13 per cent ($n=344,547$) of all male Victorians were aged 65 years and over. It has been suggested that family violence may be reported at a lower rate by people over 65 years than by younger people. Factors that may contribute to this are discussed further below.

Forms of family violence

In common with people of other age groups, family violence against older people can be physical, psychological, emotional or sexual. Older people can be at particular risk of economic or financial abuse, which is discussed in greater detail in Chapter 21.¹⁷ When older people are reliant on others for care, they can be victims of neglect¹⁸ and can be deprived of the basic necessities of life.¹⁹ All these forms of abuse can constitute family violence under the *Family Violence Protection Act 2008 (Vic)*.

Gender of victims and perpetrators

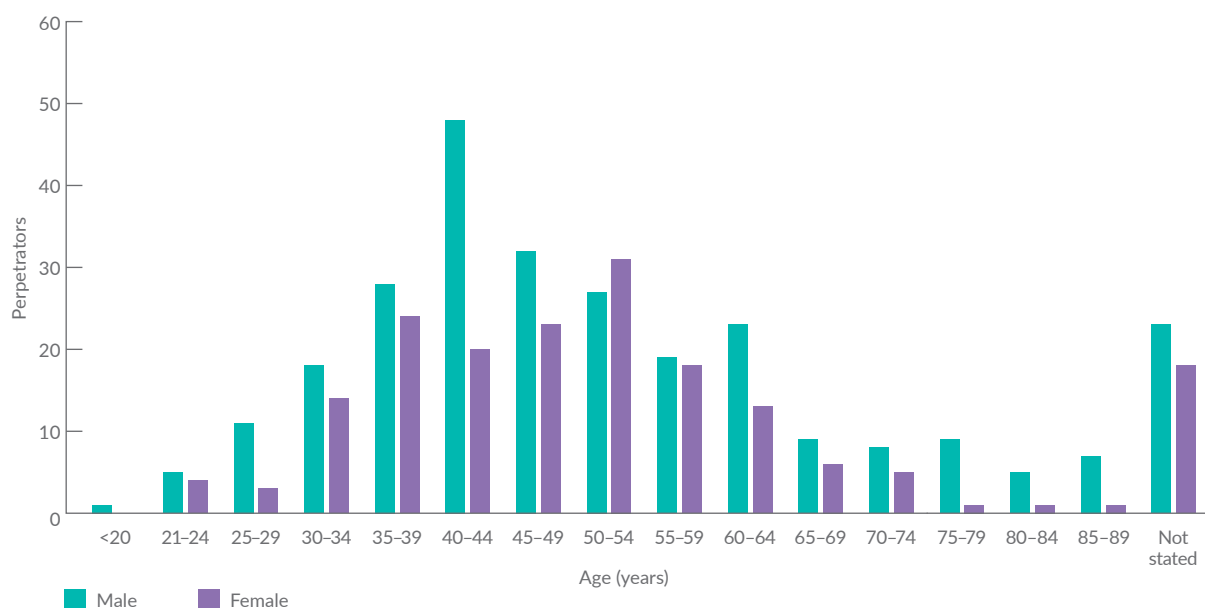
Seniors Rights Victoria data demonstrates that older women are more likely to be victims of family violence than men.²⁰ This is consistent with Victoria Police data which shows that more women than men are victims in the older age brackets, as is the case in all age brackets.²¹

Victoria Police data does, however, show that among people aged 65 and over, a higher proportion of victims are men than the proportion of male victims in the younger population: 39 per cent ($n=878$) compared to 24 per cent ($n=14,735$) in 2013–14.²² This is also consistent with the Seniors Rights Victoria study results discussed in detail below.

The Commission was told that elder abuse can involve stereotypical assumptions that women, particularly older women, are less capable than men. As one person explained, '[s]ome children assume that an older woman, particularly a woman who has not been the family's breadwinner, is unable to manage her own finances after her husband dies'.²³ She concluded that '[m]y brothers' perspectives of power, entitlement and gender roles led them to financially abuse their mother'.²⁴

In relation to perpetrators, Victoria Police data shows that men are the majority of perpetrators in each age bracket.²⁵ Data from a Seniors Rights Victoria study is similar. Seniors Rights Victoria analysed calls made to its helpline for advice by 755 older people over a two-year period (from 2012–2014). These calls covered both elder abuse and family violence. Figure 27.1 sets out information about the age and gender of the alleged perpetrators behind this elder abuse.

Figure 27.1 Elder abuse: age and gender of alleged perpetrator



Source: Profile of elder abuse in Victoria – Summary report.²⁶ Note: this data is based on victims to whom Seniors Rights Victoria provides services, who are people aged 60 years and above (or 45 years and above for Aboriginal and Torres Strait Islander people).

As Figure 27.1 shows, even taking into account that there are more women than men aged 65 years and over, the majority of perpetrators aged 65 years and over were men (38 men to 14 women). However the majority of perpetrators of elder abuse aged 50–54 years were women (31 women to 27 men).

Family violence by adult children

The Commission received evidence that family violence against older people is often perpetrated by someone younger than the victim—most commonly their children.²⁷

My son was a gambler from the age of 17. In 2009, my husband became ill and was placed in high-care, my son took control of every single aspect of my life. He always ran the business books. I never questioned my son, I never doubted him. He brought a friend to our home with a document saying the house was going to be sold and become his property. He stole my car. He also verbally abused me and later physically abused me—he nearly killed me—fractured my ribs, concussion.²⁸

Ms Jenny Blakey, Manager, Seniors Rights Victoria, told the Commission that the ‘defining characteristic’ of family violence against older people is the difference in ages between the victim and perpetrator.²⁹

Seniors Rights Victoria submitted that its study showed that over two-thirds of elder abuse incidents were perpetrated by a son or daughter of the older person.³⁰ Almost 28 per cent of older people reporting abuse stated they lived with their son or daughter, compared to less than seven per cent of older people overall.³¹

The Seniors Rights Victoria study showed that:

- ▷ the majority of elder abuse incidents were reported by people aged 70 to 84
- ▷ the majority of alleged perpetrators were aged 35 to 54 years
- ▷ 92.3 per cent of alleged perpetrators were related to the older person:
 - ▷ 40 per cent were sons and 26.8 per cent were daughters
 - ▷ 4.8 per cent were husbands, 3.3 per cent were wives and 3.1 per cent were de facto partners
 - ▷ 4.4 per cent were grandchildren
 - ▷ 3.3 per cent were sons-in-law and 3.1 per cent were daughters-in-law.³²

A substantial number of perpetrators of all abuse types were described by the older person as having substance misuse, mental health or gambling issues.³³

Unrelated carers or co-residents

Older people may reside in a variety of settings, including living in their own home, living with family members, living in a retirement village or in an aged care facility. In each of these settings, they may receive care from and be exposed to violence perpetrated by family members or non-related carers. If living in a retirement village or an aged care facility, they may also be exposed to violence perpetrated by co-residents. As noted above, the Family Violence Protection Act 2008 (Vic) applies to instances of family violence committed where the victim and perpetrator are considered to be family members, including where family-like relationships exist.³⁴ The relationship dynamics between an older person and non-related carers or co-residents may give rise to a family-like relationship, due to the duration of the relationship, the social and emotional ties between the victim and perpetrator and the levels of dependence.³⁵ Whether such a family-like relationship exists and gives rise to the application of the Act will depend upon the facts of each individual case.³⁶

Ageism as a contributing factor

The Commission heard that ageism—stereotyping or discriminating against a person because of their age—can be an important factor in family violence against older people.

The Eastern Elder Abuse Network submitted:

There is no doubt that ageism is one of the fundamental social determinants of elder abuse. Ageist attitudes and behaviors cause older people to feel less valued, burdensome and intimidated. Ageist attitudes and behaviors also allow the younger person to feel a sense of righteousness, entitlement and/or control in ways which can easily turn into elder abuse.³⁷

Ageism includes a lack of respect for older people or societal attitudes which view older people as incapable or a burden.³⁸ The World Health Organization observes that '[o]lder people are often depicted as being frail, weak and dependent, something that has made them appear less worthy of ... family care than other groups, and has presented them as ready targets for exploitation'.³⁹

The Council on the Ageing points out that '[c]ommon myths about ageing – particularly assumptions around capacity – often ignore the economic and social contribution older people have made and continue to make as workers, as carers and in volunteering'.⁴⁰ Despite this, 'many [older people] encounter embedded and systemic inequalities in a pervasive culture of ageism'.⁴¹ Some feel that '[t]here is ... criticism of older people, as if we are taking something from the community, rather than contributing as we do'.⁴²

Older people can feel that they become 'invisible':

Once a person reaches a point in their life where they are perceived as 'older', they somehow seem to become transparent to younger people, as though they don't exist, don't matter, don't have anything important worth listening to, or it's out of date and irrelevant.⁴³

Most older people become invisible after 60 ...⁴⁴

Adult children may feel a sense of entitlement to their parent's assets.⁴⁵ Another submission explained that:

Financial elder abuse may begin with the best intentions – with a child acting as their mother's financial power of attorney thereby managing her finances. This can quickly progress to a sense of entitlement, particularly when adult children have mortgages or debts ... The children may justify their actions by saying: 'Mum doesn't need money now, and it's going to be mine anyway'.⁴⁶

Referring to family violence against older people in the United States, one researcher questioned the near-invisibility of this type of family violence, asking:

Why has there been no public outrage? Perhaps the twin culprits of ageism and denial are to blame. Perhaps the constellation of phenomena that make up elder abuse ... are so disparate that the problem lacks a coherent public identity. Perhaps, although millions of Americans are grappling with the challenge of protecting themselves, their parents and others, elder abuse remains relegated to a family predicament rather than a national one. Which brings us to this question: How do we as individuals and as a nation measure the value of life in old age? And why have we not done more to protect and defend our most vulnerable elders?⁴⁷

The Commission heard suggestions that the effect of an older person's poor health on family carers may give rise to 'caregiver stress'.⁴⁸ It is sometimes suggested that 'caregiver stress' can be a cause of elder abuse, but research has not found it to be a causative factor:

... an old person's dependency on the carer and resulting stress has not been found to predict the occurrence of elder abuse in most studies to date. Case-comparisons studies have failed to find either higher rates of dependency in the old person or greater carer stress in elder abuse situations.⁴⁹

Impact of family violence on older people

The consequences of family violence for older people can be severe. The Commission was told of the terrible impact that such violence can have:

In the last 18 months [my son] became violent. He sold his house to pay off debts and moved into my place. He had plans to get a power of attorney, telling people that I had dementia. He started becoming aggressive, throwing things at me, throwing me against the glass sliding doors in [the] kitchen, threw things everywhere, and I had to lie to the insurance agency 'because you just don't say anything' ... It became worse, he started getting angry, especially when he found out that I wanted to sell the house to downsize. Said he would do things if I did.⁵⁰

[Her son] dragged her down 3 concrete steps into the garage where he threw her to the floor and proceeded to kick her and hit her with her walking stick. She said she "thought she was going to die". She begged him to stop promising not to call the police. After the assault was over he called the ambulance stating she had fallen. She ... suffered shock, extensive bruising, cuts and grazes. In hospital she remained adamant that the police, social workers and authorities were not to be informed. She said she was afraid of her son's reaction. She also divulged that she had been physically assaulted on many occasion by her son over many years. She said he also stole medications at times and regularly took her pension.⁵¹

The Commission was told by nurses from a Melbourne hospital's emergency department that over the last three years they had seen older people living at home present with a wide range of injuries, including:

Falls—due to pushing and assault by family members—causing fractured bones and exacerbating existing health conditions requiring hospital admissions.

Dog bites—an elderly man was set upon by his son's dog causing multiple bites to his legs.

Punches to the face—elderly wife assaulted by her husband whilst on the toilet.

An elderly woman with a fractured femur [had] been kept two weeks at home bedridden, covered in faeces and urine and been fed Weetabix with whiskey.

73yo lady punched and pinched by her daughter requiring wound dressings and IV antibiotics.

Elderly lady drugged by a "friend" and had her alter her will and bank details whilst influenced by diazepam (police informed with patients consent).

Elderly been 'stood over' for medications and pensions by family members.

Unexplained frequent falls with bruises and cuts—consistent with [being] assaulted.⁵²

Current supports and services for older people

Service providers

Seniors Rights Victoria

Seniors Rights Victoria is the key statewide service that provides 'leadership across Victoria by addressing and responding to older people experiencing abuse, operating under principles of empowerment of older people and recognition of their rights'.⁵³

Seniors Rights Victoria assist people who:

- ▷ are 60 years of age or older (45 years and over for Indigenous clients), or people approaching 60 years of age with age-related disabilities and illnesses
- ▷ are experiencing (or are at risk of experiencing) elder abuse, mistreatment and/or financial exploitation within a relationship of trust
- ▷ have issues relating to ageing
- ▷ have capacity to give legal instruction (capacity is presumed unless demonstrated otherwise).⁵⁴

Seniors Rights Victoria's services include:

- ▷ a helpline
- ▷ specialist legal services
- ▷ short-term support and advocacy for individuals
- ▷ community education.⁵⁵

Seniors Rights Victoria also provides 'leadership on policy, systemic advocacy and law reform and works with other organisations and groups to better identify, address and prevent elder abuse'.⁵⁶

Seniors Rights Victoria is funded by the Department of Health and Human Services, the Commonwealth Attorney-General's Department and Victoria Legal Aid and works in partnership with Justice Connect, Eastern Community Legal Centre and Loddon Campaspe Community Legal Centre.⁵⁷

The Department of Health and Human Services has provided Seniors Rights Victoria with \$0.64 million in 2014–15 to fund its Helpline and pro bono legal services. Seniors Rights Victoria will deliver information to at least 2000 callers over this period and provide over 550 pieces of legal and advocacy advice.⁵⁸

Justice Connect Seniors Law

Justice Connect Seniors Law provides free legal services to older people who are unable to afford it so they can make informed decisions and ensure that their rights are protected. The objective of Seniors Law is to 'improve the ability of older Victorians to age with dignity and respect'.⁵⁹

Justice Connect Seniors Law assist clients with legal issues including guardianship and administration, powers of attorney and arrangements to live with family, including where these arise in the context of elder abuse.

It works closely with the health and community sector, providing free appointments at hospitals and health centres across Melbourne through pro bono lawyers, as well as training on elder abuse and other legal issues to health, community and legal professionals.⁶⁰ Seniors Law also has a project lawyer based at cohealth, a community health organisation, in Footscray.⁶¹

Government initiatives and guidelines

The Victorian Government has sought to address family violence against older people in a number of ways. Following the 2005 *Strengthening Victoria's Response to Elder Abuse: Report of the Elder Abuse Prevention Project* report, the Victorian Government established the Elder Abuse Prevention Advisory Group and developed the *Elder Abuse Prevention Strategy* based on principles that enable and empower older people.⁶²

The Department of Health and Human Services also produced guidelines about elder abuse, such as *With Respect to Age—2009: Victorian Government Practice Guidelines for Health Services and Community Agencies for the Prevention of Elder Abuse*⁶³ and *Elder Abuse Prevention and Response Guidelines for Action 2012–14*,⁶⁴ both of which are available online.

The *With Respect to Age* guidelines recommended that community education programs be developed to raise awareness of elder abuse, delivered on an ongoing basis and conducted sensitively.⁶⁵

The Victorian Government's submission stated that DHHS has allocated funding for the following organisations and programs across the 2014–15 period:

- ▷ Seniors Rights Victoria's elder abuse prevention online professional education training, designed to build the capacity of the Victorian workforce to identify and respond to elder abuse⁶⁶
- ▷ Raising Awareness of Elder Abuse in Culturally and Linguistically Diverse Communities, a program run by the Ethnic Communities Council of Victoria, focusing on elder abuse in six communities.⁶⁷

Existing elder abuse training material has also been adapted to ensure that it is culturally safe for Aboriginal and Torres Strait Islander communities and culturally and linguistically diverse communities. For example, the DHHS elder abuse prevention training manuals have been revised to include 'more culturally specific information relating to Aboriginal communities'.⁶⁸

A range of community education programs and resources have been developed, including elder abuse prevention awareness sessions delivered to over 2300 participants⁶⁹ and professional education and training involving 7000 participants statewide.⁷⁰

Ms Frances Diver, Deputy Secretary of Health Service Performance and Programs at DHHS, gave evidence that the department has released an online version of the elder abuse prevention course which she reported has attracted strong participation from people working in aged care and general practice. The department is also working with the Royal Australian College of General Practitioners to develop training materials on elder abuse.⁷¹

Health care professional education and training is discussed in greater detail in Chapter 19.

Reporting and investigating abuse

Many forms of elder abuse are crimes and require police investigation.⁷² This is true both in institutional settings (for example, aged care facilities and hospitals) and non-institutional settings (for example, an older person's home). The *With Respect to Age* guidelines developed under the Elder Abuse Prevention Strategy apply to institutions and to workers within the home who may suspect or be told of abuse of an older person.

Reporting elder abuse in institutional settings

The *With Respect to Age* guidelines encourages institutions to review or develop elder abuse (including family violence) policies and procedures aligned to the Victorian Government Elder Abuse Prevention Strategy.⁷³

Under the strategy, service response frameworks are to be used by institutions to manage day-to-day care requirements of older people. These frameworks are to contain procedures for identifying, investigating and responding to reports or evidence of elder abuse.⁷⁴

The strategy contemplates that once elder abuse has been identified, an interagency protocol for reporting and investigation in institutional settings is to be followed. The protocol, which is to be adapted to individual providers in their local setting, provides instruction on internal and external reporting and referral requirements, such as to management, police and Seniors Rights Victoria.⁷⁵

The *With Respect to Age* guidelines advise that for reports of elder abuse requiring police investigation, the victim should first be consulted by the institution for consent to report the incident.⁷⁶ Where, however, there is a 'significant risk to the safety of the older person or others', the victim's confidentiality is not unconditional⁷⁷—it may be necessary to report it to police despite the victim's wishes.

Reporting elder abuse in non-institutional settings

An older person may experience family violence in their own home or in another non-institutional setting. They may report the abuse to family, friends or health care professionals such as general practitioners, or these professionals may identify it themselves.

In-home health services, community agencies or other service providers

The *With Respect to Age* guidelines are intended to apply when a worker from a health service, community agency or another relevant service visits the older person's home and suspects or is told of elder abuse.⁷⁸

Those workers may include general practitioners and nurses, aged care assessment teams and community workers and volunteers, such as those providing meals on wheels.⁷⁹ The Commission was told that although home visitors make older people more visible, it was really the 'potential to build trust and relationships through regular contact that offered critical conduits' to eliciting disclosures of abuse. Without this, 'it's unlikely that [the victim will] just blurt out something'.⁸⁰

There was an older woman and her husband accessing ... [home support] services over a period of years. The woman was frail and struggling to care for her husband who had dementia. Her own health issues and carer status meant her social withdrawal and weepiness was put down to stress and ill health by workers who saw her regularly. It was only when a new worker had started ... who probed a little further ... that the wife disclosed that she was being sexually assaulted by her husband. The dementia had rendered her husband incapable of determining her consent or willingness and she was afraid to tell anyone as she felt she needed to protect her husband.⁸¹

Helplines and the community

Victims may also contact helplines such as the Seniors Rights Victoria helpline, or the police.⁸² The Commission heard that often victims are reluctant to report abuse particularly to the police, and reports may instead be made by concerned family, members of the community or health care professionals.⁸³

To encourage reporting by the community, Seniors Rights Victoria suggested that people reporting concerns about elder abuse be treated anonymously.⁸⁴ For example, the New South Wales Elder Abuse Helpline accepts anonymous reports, such as notifications from concerned neighbours and friends, and can then take appropriate steps to ensure that the older person is safe.⁸⁵

Justice system

When family violence is identified, there may be complexities surrounding information and evidence gathering. Substantiating and gathering information may occur over time and involve multiple service providers and resources.⁸⁶ Justice Connect Seniors Law submitted that investigations should always:

... proceed ... very carefully and where possible involve other health care professionals, drawing on their perceptions, judgement and experience ... Health care providers may not have the confidence, compounded by a lack of professional expertise, to take the matter further.⁸⁷

Victoria Police

The Victoria Police Code of Practice for the Investigation of Family Violence currently recognises that abuse of older people is 'insidious and easily concealed'.⁸⁸ The Code of Practice states that Victoria Police will take 'all reports of elder abuse seriously and will investigate all matters and make referrals where required'. Older people with dementia or neurological disease are noted as being particularly at risk of elder abuse. Where evidence is limited, the Code advises police officers to 'continue to search for other indicators to substantiate what has occurred'.⁸⁹ Behaviours that indicate elder abuse are listed as:

- ▷ withdrawal
- ▷ depression
- ▷ other hints of helplessness.

The Code identifies that carers may be considered family members under the Family Violence Protection Act, and that where an accused carer is also a guardian, the police should 'ensure that a reassessment of the guardianship order is facilitated through [the Victorian Civil and Administrative Tribunal]'.⁹⁰

The courts

The Judicial College of Victoria, which has the task of educating Victorian judicial officers, outlined in its submission a family violence core curriculum for judges and magistrates. One of the topics is 'understanding groups with specific needs'.⁹¹

Where elder abuse (including family violence) is considered by the courts, judges have the benefit of a Family Violence Benchbook which explains what elder abuse is and why it often goes unreported. Forms of elder abuse, the range of perpetrators and barriers to reporting are outlined.⁹²

Attention is also given to the issue of 'caregiver stress'. The Benchbook advises that caregiver stress is often mistakenly relied upon by aged care professionals as an excuse for the perpetrator's behaviour, rather than recognising it as a 'choice motivated by issues of power and control'.⁹³

Health service responses

St Vincent's Hospital model

St Vincent's Health Australia told the Commission about its new hospital-wide policy of care and education to respond to elder abuse (including family violence). Ms Meghan O'Brien, social work team leader at St Vincent's Hospital, Melbourne, conducted research into contemporary best practice from other jurisdictions and developed a model for the hospital with the following key features:⁹⁴

- ▷ high-level governance arrangements—a senior Vulnerable Older People Coordination and Response Group reviews all data relating to suspected cases and advises 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
- ▷ tiered education—the framework is underpinned by three levels of competency training for hospital staff
- ▷ data collection and notification—all cases of confirmed, witnessed or suspected elder abuse are notified to the Coordination and Response Group. The data informs performance measurement, service improvement and workforce training.⁹⁵

The Commission heard that the framework has already delivered significant improvements to practice, and could be adapted for use in other hospitals and by other health-care and aged care service providers.⁹⁶

Ms O'Brien also discussed risk assessments and safety planning that respected the wishes of older people who are experiencing family violence:

... we obviously have situations where we have got patients over 65 who are competent and very much their choice, their wish ... is to return to [living at home]. So in some situations discharge may not stop [the family violence], but what we may do is actually just implement a revised care plan based on the risk or what that older person actually wants and what the risk factors are.⁹⁷

Aboriginal community controlled health organisations

Ms Jill Gallagher AO, Chief Executive Officer, Victorian Aboriginal Community Controlled Health Organisation stated that '[t]o me, family violence is a health issue, so in my opinion we should absolutely have services at all of our [Aboriginal community controlled health organisations] that deal with it'.⁹⁸

The Commission heard of compulsory family violence and elder abuse training run by Aboriginal Community Elders Services. Ms Gallagher stated that ACCHO workers:

should be trained and supported to be able to identify and respond to family violence issues. A number of our services have taken the initiative with this, for example, Aboriginal Community Elders Services (ACES) has made it compulsory for their staff to undertake training to address Elder abuse, annually.⁹⁹

Ms Gallagher suggested that '[t]his sort of response to family violence should happen across the board at all services'.¹⁰⁰

Health-Justice Partnerships

Justice Connect Seniors Law's submission advocated the Health-Justice Partnership model of service, which has been used in both the United States and Australia.¹⁰¹ In 2014, the Victorian Legal Services Board provided funding for nine such partnerships, including a three-year partnership involving Justice Connect Seniors Law and cohealth.¹⁰² The stated aims of this were:

- improved collaboration between legal and health professionals and greater internal capacity to identify and respond to elder abuse
- provision of legal assistance with a focus on early intervention
- development of relationships with local communities and an increase in the capacity of those communities to identify and respond to elder abuse through facilitating the development of community-specific screening tools.¹⁰³

Both the St Vincent's Hospital model and Health Justice Partnerships are discussed further in Chapter 19.

Education, training and practice initiatives

The Commission was told of several initiatives which focus on education, training and practice. Some of these initiatives include:

- ▷ A professional training program—developed by Justice Connect Seniors Law, aimed at engaging and educating health and community organisations. The program is delivered in three phases: 'hidden' legal issues for older people, a legal health check and a training package. In 2013–14, the training was delivered to over 500 professionals.¹⁰⁴
- ▷ Training videos—developed by the Eastern Elder Abuse Network one of which has won both international and local awards.¹⁰⁵ The Eastern Elder Abuse Network also established an electronic case-conferencing facility so that members of the network can collaborate and support one another with elder abuse cases.¹⁰⁶
- ▷ An online elder abuse tool kit—developed by Seniors Rights Victoria, which addresses signs of abuse, how to work respectfully with older men and women and when and how to report elder abuse.¹⁰⁷ The Maroondah City Council has also developed an elder abuse tool kit, available for anyone working with older at-risk people which also comes with elder abuse prevention guidelines for staff in aged and disability services to assist with the identification and response to elder abuse.¹⁰⁸
- ▷ A series of short films raising awareness of elder abuse—developed by the Bendigo District Aboriginal Cooperative, funded by Indigenous Family Violence-Community Initiative Fund.¹⁰⁹

In addition, 'Norma's Project' was established in December 2011 as a research study into the sexual assault of older women. The study was conducted by the Australian Research Centre in Sex, Health and Society, La Trobe University, with the final report published in June 2014.

Norma's Project

Norma's Project aims to increase awareness of sexual assault of older women 'within the community and amongst service providers, and to strengthen the community's ability to prevent, respond to and speak out about the sexual assault of older women'.¹¹⁰ Norma's Project produced a research study into the sexual assault of older women in Australia involving surveys and interviews of older women who had experienced sexual assault, their friends, carers and service providers.¹¹¹

The project found that despite a lack of prevalence data, there is sufficient evidence to suggest that women remain vulnerable to sexual assault into old age, with the impacts of sexual assault on older women remaining largely unexplored or documented.¹¹²

A framework for prevention of sexual assault of older women was proposed,¹¹³ involving information, education and training and public policy development. Norma's Project found that education and training strategies should:

- promote sexual rights and access / avenues to support services
- promote gender equality and challenge pervasive ageism
- improve service responses to the needs of older women, particularly those with cognitive impairment.¹¹⁴

The report also recommended effective sector-wide responses, including strategies for aged care, health and welfare services and police and judicial responses.¹¹⁵

The study acknowledged that the *National Plan to Reduce Violence against Women and their Children 2010–2022*¹¹⁶ envisages grants to assist diverse groups, including older women, although it does not expressly refer to their specific needs.¹¹⁷

Challenges and opportunities

This section reviews some challenges many older people face when seeking to report family violence, as well as issues with the current system response. These include a lack of understanding and awareness about family violence and how it affects older people, and inadequacies in the current oversight regime.

Definition of family violence

Some submissions suggested that the definition of family violence in the Family Violence Protection Act should specify that it covers neglect and more subtle forms of financial abuse; for example, refusing to contribute to living expenses when living with an older person.¹¹⁸

Neglect may be active (such as deliberately withholding basic care or necessities) or passive (failing to provide proper care).¹¹⁹ It may be possible to address passive neglect through additional support for both the carer and the older person.¹²⁰

Moreland Community Legal Service offered the following justifications for specifying neglect in the definition of family violence:

... there can be no doubt that there is an expectation that people in a marriage-like relationship have an obligation to care and support each other and so a failure to meet the standard should be properly described as family violence. In a similar way, it could be argued that if adult children live with parents, they thereby assume the obligations of support and care of a close relationship, and that falling short of the standard of support and care should also be defined as family violence.¹²¹

Barriers to older people reporting family violence

Family violence against older people tends to be under-reported.¹²² Some older people may not recognise their experience as family violence and may regard abusive behaviour as a 'normal' part of their intimate partner or family relationships or of ageing.¹²³

In the past, women were not supported to report or leave abusive relationships:

[30 years ago] I don't think many women thought they had much choice ... they spoke to their minister or priest or they spoke to their doctor and none of those professionals had the appropriate response. They gave them advice about how to be a better wife or how to keep the peace ... And they were called things like difficult marriages or demanding husbands. There were all sorts of labels around what were obviously very violent and abusive relationships.¹²⁴

Therefore, older people may not be culturally empowered to report family violence, because:

Societal/cultural and gender conditioning as well as different generational expectations mean that older victims may have a higher tolerance for some abusive behaviours or be less likely to seek help.¹²⁵

Reliance on the abuser can make it difficult for an older person to seek help or leave their home; for example, they may be financially reliant upon the perpetrator or have concerns about who will care for them if they do leave. Other reasons for not reporting included concerns about stigma¹²⁶ and lack of knowledge about the organisations or services available to assist the victim.¹²⁷ A community consultation participant noted:

One of the things with elder abuse is knowledge ... a woman told somebody about what was happening to her. [T]hey told her [it] was called family violence. And she went on to access [relevant] services and they changed her life. She had put up with that abuse for 47 years. Older people don't know about services and they don't label what is happening as family violence.¹²⁸

The Commission was told that older people are often reluctant to report abuse inflicted by an adult child, because they want to preserve family relationships.¹²⁹ Ms Blakey noted a reluctance to become involved in legal processes:

People say, 'I don't want the police involved. I don't want my son and daughter to be charged by the police.' There is a reluctance to engage in legal solutions. There is a sense of protecting and supporting the son or daughter in whatever way they can. So there's a sense, I guess, of ... what we call a protective love as a parent in being very reluctant to then take action against the family member, usually the adult child.¹³⁰

For these reasons, the Eastern Elder Abuse Network submitted that 'a punitive or retaliatory approach is seldom the appropriate response'.¹³¹ Such an approach could cause further anxiety and stress to the older victim.¹³² Instead, 'responses to family violence against older victims should be sensitive to their familial relationships and their choices'.¹³³

The Commission is aware that barriers to reporting could be addressed in a number of ways. Dr John Chesterman, Manager of Policy and Education at the Office of the Public Advocate, recommended the establishment of clear non-police contact points where older people (or members of the community concerned about the wellbeing of at-risk adults) can seek help, without the immediate connection to a criminal justice response.¹³⁴

More broadly, if a range of other options were available to address family violence against older people, they might feel more comfortable seeking help. For example, in Canada members of the Waterloo Region Committee on Elder Abuse (which consists of both government and community partners¹³⁵) designed a dual education and intervention approach, developed with input from older people and based on principles of restorative justice. Restorative justice seeks to 'restore social relationships rather than just to punish offenders', which was seen as important in cases of elder abuse where the victim wanted the abuse to stop, but also wanted to maintain a relationship with, for example, their adult child.¹³⁶

A key element of restorative justice is the involvement of the victim and other members of the community ... Victims, who play a very limited role in the normal court system, are very involved in the restorative justice process. They are able to tell their story and describe the impact that the offense has had upon their lives in an environment where they are supported and protected. The restorative justice process is intended to ensure that the perpetrator is aware of the consequences of his or her actions and has the chance to acknowledge what he or she has done and to have the opportunity to apologize and make a commitment to change. While restitution is often a part of the process, the main purpose is to transform the relationship between the offender and the victim into a healthy and equal one.¹³⁷

Restorative justice is discussed further in Chapter 22.

The Waterloo project evolved to include an Elder Abuse Response Team, or EART, which provides a victim-centred, coordinated community response. The EART comprises health care workers (for example, nurses and home therapists) and justice workers. The team works collaboratively via the Inter-Agency Elder Abuse Working Group, providing 'a forum for information sharing and problem-solving related to suspected and confirmed elder abuse situations'.¹³⁸ The assigned lawyer determines whether restorative justice is appropriate, on a case-by-case basis. The EART became part of the Waterloo Regional Police Service domestic violence unit and is co-located with other relevant agencies such as the Sexual Assault Domestic Violence Treatment Centre.¹³⁹

Lack of understanding and awareness of family violence experienced by older people

The Commission heard that there is a lack of understanding of older people's experiences of family violence among many mainstream service providers and within the community generally.

Various people may be able to refer victims to family violence services, including other family members, general practitioners, social workers, case managers, Centrelink, home and community care workers, police and court staff.¹⁴⁰ However, submissions identified the difficulty on the part of those providing services to older people in knowing how to identify and respond to older people who may be experiencing family violence.¹⁴¹

This lack of understanding limits the ability to identify indicators of family violence, to develop trusting relationships with older victims to encourage disclosures of violence and to provide support to those victims.¹⁴²

The Commission heard that it is necessary to provide mainstream service providers including health and aged care professionals, lawyers and finance professionals with relevant information, including information about sources of support.¹⁴³

Institutions such as aged care facilities and hospitals play ‘an important role in identifying, reporting and preventing elder abuse’.¹⁴⁴ This is especially true of health professionals as they are best placed to identify family violence since most older people trust them.¹⁴⁵ Despite this, the Commission was told that they ‘they often fail to recognise [cases of elder abuse]’, including because of:

- ▷ limited consensus and understanding of what constitutes elder abuse
- ▷ lack of knowledge of reporting or referral frameworks
- ▷ concerns about confidentiality
- ▷ concerns referral may compromise therapeutic relationships
- ▷ consequences for the older person
- ▷ impact of the legal process on the older person
- ▷ reluctance to become involved in legal process
- ▷ outside scope of professional responsibility
- ▷ dissatisfied with authorities response to elder abuse
- ▷ lack of conviction that referral would improve outcomes
- ▷ older person has denied mistreatment
- ▷ abuse only involved subtle signs
- ▷ difficulties in obtaining necessary evidence.¹⁴⁶

The Commission heard examples of such lack of understanding of elder abuse and family violence amongst health care professionals:

A disturbing case in the eastern metropolitan region involved a 78 year old woman experiencing sexual abuse at the hands of her husband who had Alzheimer’s Disease. When encouraged to speak to her GP, he advised her that this was common and that in any case men with this disease who are exhibiting these behaviours usually pass through this stage “in a year or so”. No support or referral was offered.¹⁴⁷

As a result, the Commission was told of the importance of training health care and other professionals specifically about elder abuse to increase detection rates.¹⁴⁸ One researcher found that health care professionals who had received some professional training relating to elder abuse were twice as likely to suspect physical abuse and were more likely to ‘record, report and discuss elder abuse’.¹⁴⁹

Justice Connect Seniors Law told the Commission that health care professionals are more likely to detect elder abuse if they:

- ▷ routinely asked older people about abuse
- ▷ had an elder abuse protocol
- ▷ knew about the relevant law on abuse.¹⁵⁰

Justice Connect Seniors Laws’ submission detailed the professional training programs it delivers to community and health organisations on elder abuse.¹⁵¹

Justice Connect Seniors Law submitted that one opportunity to improve identification of family violence is through a Health-Justice Partnership.¹⁵² Based on the success of the Justice Connect Seniors Law and cohealth partnership and encouraging research from the United States, Justice Connect Seniors Law recommended government funding be provided for the expansion of the Health-Justice Partnership model of service.¹⁵³

The Commission was also told about the importance of improving communication coordination and collaboration between various sectors (such as the aged care, health, family violence, legal and accommodation sectors).¹⁵⁴ Information sharing is discussed further in Chapter 7.

Mandatory reporting

A number of submissions noted the lack of a mandatory requirement or framework to report the abuse of older people.¹⁵⁵ While there are reporting obligations in certain circumstances, these are not universal. For example, under the *Aged Care Act 1997* (Cth), aged care staff members are required to report a 'reportable assault' (which includes unlawful sexual contact and unreasonable use of force).¹⁵⁶ This obligation does not apply to older people who do not live in these facilities.¹⁵⁷

Health care workers who encounter elder abuse can be placed in a difficult situation if the victim says that they do not want to report the abuse. Staff may be faced with deciding whether to breach medical confidentiality and disregard the patient's wishes or report the abuse.¹⁵⁸ The Commission was told there is a lack of guidance about what should be done to protect the patient in these circumstances.¹⁵⁹

The dilemma for nurses and doctors in this case were frustrating. Because [the victim] clearly stated she did not want police or government agencies involved; they were conflicted about reporting this situation. There was no guideline or identified pathway that the staff could follow in order to ensure this event was clearly identified and services required; actioned. This caused confusion and uncertainty. No staff member was identified as who should do what – "is it my responsibility or someone else's". Are we breaking confidentiality, are we allowed to report this? Who do we refer this patient to for follow up?¹⁶⁰

In that case, no report was made and the victim moved to an aged care facility while the perpetrator continued to live in her home. With proper community support, the victim could have remained at home for some years if the perpetrator been reported and removed.¹⁶¹

Knox City Council submitted that a statewide legislative mandatory reporting framework, similar to the child protection reporting system, would enhance the safety of older people experiencing abuse and would provide a better basis for assessing the extent of the problem.¹⁶² Macedon Ranges Shire Council submitted that reports should only be made with the consent of the victim, and that if the victim did not have the capacity to consent, a report should only be made if it was in their best interests.¹⁶³

Other organisations argued against a mandatory reporting requirement, except perhaps where physical or sexual violence is involved, to ensure that the rights and wishes of older people continue to be respected.¹⁶⁴

Seniors Rights Victoria did not support mandatory reporting but acknowledged that there were ways in which the government could better assist older people experiencing family violence, such as by expanding the investigative powers of the Public Advocate in suspected cases of neglect,¹⁶⁵ and recognising scope to explore additional ways in which the government could assist older people. Similarly, the Victorian Government has previously not supported mandatory reporting.¹⁶⁶

Increasing public awareness

Prevention was identified as a key area of focus to reduce elder abuse. Many submissions suggested that education and raising public awareness is crucial to addressing family violence against older people.¹⁶⁷

To address attitudes which may lead to elder abuse, several submissions pointed to school-based early intervention programs, similar to or expanding upon the current Respectful Relationships Education program.¹⁶⁸ One submission stated that '[i]t is vital to implement programs to educate children on the harmful effects of this violence, in both primary and secondary schools around Australia' particularly targeting 'negative attitude[s] toward elders'.¹⁶⁹

Macedon Ranges Shire Council submitted that 'educational "respect" campaigns should begin in primary schools'.¹⁷⁰

Community-wide awareness and education programs like media campaigns were also suggested. The Eastern Elder Abuse Network recommended that such a campaign could be 'aimed at long-term attitudinal changes so that ageism is seen as unacceptable in modern society'.¹⁷¹

It has been suggested that:¹⁷²

Just as addressing gender inequality and ensuring respect for women are central to stopping violence against women, so is overcoming ageism. Promoting the dignity and inherent value of older people is a crucial component of elder abuse prevention.¹⁷³

Norma's Project noted that the *National Plan to Reduce Violence against Women and their Children 2010–2022* focuses on primary prevention, aiming to achieve 'attitudinal and behavioural change', particularly among younger people.¹⁷⁴ While Norma's Project strongly supported primary prevention, it noted that this by itself does not address current abusive behaviours and the experience of victims today, meaning that a 'broader spectrum of actions is required that places greater emphasis on interventions'.¹⁷⁵

Risk assessment issues

The Commission was told that there are risk factors relevant to family violence against older people that are not covered by the Family Violence Risk Assessment and Risk Assessment Framework (known as the Common Risk Assessment Framework or the CRAF).¹⁷⁶ Moreland Community Legal Service noted that some risk factors are relevant to assessing risk to both older and younger cohorts (for example, previous violence) while others, such as 'recent pregnancy' are generally unhelpful to older people.¹⁷⁷

Some risk factors that are more specific to older people include:

- ▷ the recent loss of a spouse¹⁷⁸
- ▷ ongoing or resumed co-habitation with adult children¹⁷⁹
- ▷ diminished capacity from age-related diseases (for example, dementia)¹⁸⁰
- ▷ living alone, social isolation and dependence on others¹⁸¹
- ▷ poverty or, conversely, the accumulation of substantial assets¹⁸²
- ▷ language or financial literacy barriers.¹⁸³

The absence of appropriate risk factors in the CRAF may mean that some instances of family violence against older people are not identified. The value of family violence risk assessment as a lens through which to identify elder abuse was also noted. It was submitted that:

Understanding the power and control issues in regard to [e]lder [a]buse is essential in breaking down the barriers for fearful, isolated victims and to ensure that service system responses recognise these issues when confronted by them. Rather than responding how wonderful to an [elderly person's] statement of "oh I owe him everything", consider why would a person make that statement. For those of us who have worked within a Domestic Violence Framework they signal alarm bells. However for the less skilled or exposed systems such as Aged Care Services they may not recognise triggers, statements or cues of abuse for what they are.¹⁸⁴

Criminal investigations

Dr Chesterman has argued that police should have the expertise to investigate perpetrators of crimes against at-risk adults, including crimes involving financial abuse.¹⁸⁵ Victoria Police's Blue Paper recognises the need for changes to respond to growth in crimes such as fraud.¹⁸⁶

Seniors Rights Victoria identified a promising initiative of the Seattle police department aimed at reducing instances of abuse of older people.¹⁸⁷ The department has two detectives who specialise in identifying and stopping abuse of at-risk adults. Investigations involve meeting victims and obtaining records, and can result in bank accounts being frozen or seized.¹⁸⁸ The department's website provides information on elder abuse, including information on financial exploitation.¹⁸⁹

As discussed, one of the barriers to older victims reporting family violence is their relationship with the perpetrator and a potential desire to preserve family relationships. The Commission was told that older victims generally prefer informal or civil remedies, rather than police investigation and criminal proceedings where family members are concerned.¹⁹⁰ The Victoria Police Code of Practice does not directly address an older victim's possible preference for an alternative, non-criminal response.

Dr Chesterman highlighted one initiative in Nova Scotia, Canada that seeks to achieve a balance between criminal and alternative responses.¹⁹¹ Under this approach, the sheriff must not make or enforce a protection order if the victim has not consented to the order or its enforcement. However, in some cases, this refusal may be overruled. This includes where the victim has been 'unduly pressured' or where there are no less restrictive means of responding to the abuse.¹⁹² Justice Connect Seniors Law submitted that Victoria Police should engage in a similar approach in balancing whether or not to prosecute instances of elder abuse.¹⁹³

Oversight

The Commission heard that the current framework for investigating elder abuse is inadequate. Dr Chesterman observed:

When it comes to the investigation of situations of concern, Victoria's adult protection system has some notable gaps. As mentioned, Victoria's emergency services tend to play a limited role outside of situations where there is a medical emergency or where there is obvious evidence of a crime having been committed. Other agencies do have investigatory powers, but while in combination these can result in significant positive outcomes, many situations of concern do not automatically come within the purview of any particular agency.¹⁹⁴

No single organisation has a general investigative role across the community.¹⁹⁵ The Victorian Ombudsman focuses on 'administrative actions' by public authorities. The Office of the Public Advocate focuses on circumstances where a guardianship or administration order may be appropriate.¹⁹⁶ The Office of the Public Advocate also oversees community visitors who visit:

- ▷ designated mental health services, residential services that provide 24-hour nursing care and other types of residential services (under the *Mental Health Act 2014 (Vic)*)¹⁹⁷
- ▷ registered disability service providers and department-managed disability services where residential services are being provided (under the *Disability Act 2006 (Vic)*).¹⁹⁸

In its 2012 *Guardianship* report, the Victorian Law Reform Commission found that the Office of the Public Advocate does not have a 'comprehensive range of powers to carry out these functions'.¹⁹⁹ Recommendations made by the VLRC, not yet implemented by the Victorian Government, include:

- ▷ that the Office of the Public Advocate should have the function of receiving and investigating complaints and conducting investigations on its own motion in relation to the abuse, neglect or exploitation of people with impaired decision-making ability due to a disability²⁰⁰
- ▷ that guardianship laws should be amended to allow for greater flexibility to accommodate different levels of cognitive ability and decision-making needs—rather than the current regime which contemplates only capacity and incapacity, it proposed that the regime should accommodate a spectrum of cognitive abilities, and allow different models of assistance depending on where the person sits on the spectrum²⁰¹
- ▷ the introduction of 'supporters' and 'co-decision makers' who could be appointed to assist with decision-making, but would not become substitute decision makers
- ▷ investigations should be able to be undertaken in relation to supporters, co-decision makers and substitute decision makers, broadening the range of people over which the Office of the Public Advocate is able to undertake investigations beyond those who are the subject of a guardianship order.

Other initiatives to improve safeguards for people with disabilities (noting that older people are more likely to have a disability than younger people) include:

- ▷ the development of a national framework of quality and safety standards in the disability services sector as part of the National Disability Insurance Scheme, which will include services standards, complaint mechanisms and management of critical incidents²⁰²
- ▷ recent recommendations by the Victorian Ombudsman in relation to oversight of the disability sector, including the creation of an independent oversight body.²⁰³

These are discussed further in Chapter 31. The Victorian Government has said it will consider the Ombudsman's recommendation in the context of the Victorian Parliament Family and Community Development Committee's *Inquiry into Abuse in Disability Services* final report and development of the National Disability Insurance Scheme Quality and Safeguards Framework.²⁰⁴

While these recommendations and initiatives may go some way to assisting older Victorians with disabilities or impaired decision-making capacity, there is still a substantial number of older people who do not fall within these categories and so will not be assisted by the reforms.

Accessing accommodation and services

Barriers to access

A number of submissions referred to specific barriers faced by some groups of older people when trying to access relevant services.²⁰⁵

These include older people from Aboriginal and Torres Strait Islander communities, for whom culturally safe services are important. The Commission heard that barriers for this group include actual and perceived discrimination by service providers; language and cultural barriers; lack of trust in services and organisations; and lack of awareness of and engagement with local Aboriginal communities.²⁰⁶

Older people from culturally and linguistically diverse communities may also find it difficult to gain access to services in a relevant language and/or that are culturally appropriate.²⁰⁷ Older women from CALD communities are at increased risk of elder abuse, especially financial abuse, because of limited English language skills and reliance on family members to help them navigate the service system.²⁰⁸ In some CALD communities, there is a stigma attached to having a parent live in residential care, which may lead to people not disclosing elder abuse.²⁰⁹

The Commission was also told that family violence against older lesbian, gay, bisexual, transgender and intersex victims is likely to be under-reported.²¹⁰ Older lesbian, gay, bisexual and transgender people can be particularly at risk. Many have faced a lifetime of discrimination and feel reluctant to seek help from services for fear of further discrimination.²¹¹

Older people in rural, regional and remote communities also face difficulty in gaining access to services due to isolation and limited access to specialist family violence services, crisis accommodation, legal services and other general services.²¹² In many rural, regional and remote communities the proportion of seniors is increasing as younger people leave to pursue study and employment opportunities elsewhere,²¹³ further compounding their isolation and social exclusion.

Finally, while experiences of older people who acquire a disability can be different from people with disabilities who are ageing, both groups may face some similar barriers in accessing services—such as a lack of wheelchair or mobility aide access.²¹⁴

These experiences are discussed in greater detail in Chapters 26, 28, 30, 31 and 33.

Lack of accommodation for victims and perpetrators

Homelessness and family violence

Family violence can cause homelessness for older victims, particularly older women. A study by the Australian Domestic and Family Violence Clearinghouse and Older Women's Network NSW, which drew on 31 qualitative interviews with women who were homeless and over the age of 45, indicated that most older women who were homeless 'had endured relationships that were abusive and difficult'.²¹⁵ Many disclosed stories of abuse during their lifetime, including by family and partners.²¹⁶ A number were in poor physical health from causes including family violence-related injuries.²¹⁷

Analysis of specialist homelessness service data undertaken by the Australia Institute of Health and Welfare confirms the link between family violence and homelessness of older women. They report that in the period 2010–11 to 2013–14, of 144,710 women accessing specialist homelessness services across Australia that were experiencing family violence, 16 per cent or 23,154 women were aged 45 years and over.²¹⁸ Data for Victoria is consistent with these findings.²¹⁹

Remaining at home

Many older people prefer to remain in their own homes and community.²²⁰ This allows them to remain close to family and friends, upon whom they may be reliant for support. If an older person becomes a victim of family violence in these circumstances, especially if the family member providing the care is the perpetrator, they may not have ready access to alternative accommodation or care. Justice Connect Seniors Law explained that the 'availability of health and community services to support older people to remain in their home without having to rely on the abusive family member is critical'.²²¹

The Victorian Government currently funds a number of services that support older people remaining in their homes, including the home and community care program.²²²

Economic gender inequality

Seniors Rights Victoria observed that victims over 60 years of age were born before 1955, when 'lifestyles and values were different from what they are today'.²²³ Relevantly, gender roles were more firmly entrenched, with 'traditional breadwinner/homemaker stereotype[s]'.²²⁴ Accordingly, there were fewer paid employment opportunities for women, especially once they started a family. Older women live with the consequences of this economic gender inequality.

The gender gap in retirement savings and retirement incomes is a consequence of events across a woman's lifecycle. It stems from deep and systemic gender inequality – ingrained attitudes towards gender roles and caring; women's vulnerability to violence; the gender pay gap; constrained choices and decisions about paid work and care; the impact of divorce; discrimination and harassment. Each of these experiences affects subsequent opportunities and finally leads to women accumulating poverty instead of financial security.²²⁵

Older, single women are one of the most disadvantaged population groups in Australia.²²⁶ Such women can include victims of intimate partner violence who may have left the relationship. It can also include women who have been exposed to the violence of adult children. Many may have limited savings and earning capacity.

Accessing the private rental market

Older victims who seek to leave their home are likely to find that the private rental market is beyond their reach, putting them at risk of homelessness.²²⁷

Older people experience a range of difficulties accessing the rental market, including discrimination and limited means. The Housing for the Aged Action Group identify that:

... in addition to the age related discrimination that is faced by all older people in the private rental market, [older people must also] compete for a limited number of affordable properties with younger people who may have one or two full incomes.²²⁸

The history of economic gender inequality makes this particularly difficult for older women, especially those also fleeing family violence and seeking alternative accommodation.

Crisis accommodation

The Commission was told that there was a need for better crisis accommodation options for both older victims and perpetrators of family violence.²²⁹ Ms Colleen Pearce, the Victorian Public Advocate, as well as Ms Blakey, noted that the current family violence system (including crisis accommodation) was designed for women and children and may not recognise the specific needs of older people; for example, most refuges are not fully accessible to people with mobility difficulties.²³⁰ The Commission was told this was especially true in rural, regional and remote areas.²³¹

Similarly, a need for suitable accommodation for perpetrators was also identified.²³² This includes older perpetrators of intimate partner violence who may have mobility issues as well as younger perpetrators, such as adult children.²³³

The Commission heard that older people may be at risk when an adult child, who has been excluded from their own home, possibly because of intimate partner violence, seeks to return to their parents' home:

Their adult child has gone through some crisis. They have separated from their partner. Maybe there has been family violence within that relationship. Maybe there are alcohol and drug issues or financial problems, they have lost their job, their business has gone broke, and they turn up and they need somewhere to live. So they return home. There is no accommodation for them, and it comes to the family and mum and dad to take them back. For a lot of families that works really well; families manage that. But for some families it's just not appropriate and there is not alternative accommodation for the perpetrator or the person who may become the perpetrator.²³⁴

The Commission was also told about violence experienced by older parents who live with an adult child with a mental illness.²³⁵

Ms Blakey suggested that access to safe crisis housing within more appropriate facilities, such as aged care facilities, would better meet the needs of older victims.²³⁶ However, the Public Advocate noted that not all older people want to end up in an aged care facility, particularly those who are active and competent.²³⁷ As discussed, elder abuse can also occur in aged care facilities, perpetrated either by family members or non-related carers and co-residents.

Lack of support and perpetrator programs

The Eastern Elder Abuse Network have stated that:

The absence of age-specific services for older people experiencing elder abuse means that the abuse will continue to go unnoticed, unreported and unaddressed.²³⁸

It submitted that '[t]his is a significant gap in the government's response to family violence'.²³⁹ No To Violence submitted this also requires appropriate responses from the family violence sector.²⁴⁰

Although older male victims can and do seek help from men's services, these:

... generally concentrate on change-behaviour programs or counseling, which are not relevant to older men who are victims of elder abuse, most of whom are from a culture of "keeping quiet" about their personal problems, particularly outside the family.²⁴¹

The Commission discusses the support services for male victims in Chapter 32.

The Commission was also told there were very few services for perpetrators of family violence against older victims,²⁴² with most programs designed for men committing violence against their intimate partner. As perpetrators are often adult children, programs which are suitable for these perpetrators are needed. Seniors Rights Victoria suggested that because similar themes underlie family violence and elder abuse (such as power and control), behaviour change programs could be developed to assist perpetrators of elder abuse.²⁴³ No To Violence recommended that consultation should occur to develop minimum standards for perpetrator programs to address issues such as elder abuse.²⁴⁴

Seniors Rights Victoria suggested that counselling and behavioural-change programs to address situations of family violence against older people should be made available to the broader community.²⁴⁵

The way forward

It is clear that there is a lack of understanding of older people's experiences of family violence among mainstream service providers and within the community generally. People who work in services who come into contact with older victims of family violence often have difficulty identifying and responding to family violence, particularly when the older person is reluctant to report the violence to police. Older victims can be reluctant to report family violence for a range of reasons. They may want to retain their relationship with the perpetrator, who may be an intimate partner or adult child, or they may fear the loss of a carer, even though they want and need the violence to stop.

The Commission believes that responses to older people who have experienced family violence should be informed by key principles, which recognise the particular experiences and needs of older victims. These key principles are:

- ▷ Public awareness of family violence against older people must increase, so that family and friends can identify abuse and provide support.
- ▷ Older victims should be encouraged to seek help and know where it can be found.
- ▷ All service providers who may come into contact with older victims should be able to identify when family violence is occurring and know what to do in response. Aged care and health care workers should be able to obtain advice and support to resolve the ethical tension between patient/client wishes and protecting their safety.
- ▷ Older victims should be supported to remain in their homes. If they choose to leave, they should be supported to obtain appropriate accommodation.
- ▷ Older victims from Aboriginal or Torres Strait Islander backgrounds should be able to receive culturally safe services.
- ▷ Older victims from particular communities—including culturally and linguistically diverse communities, lesbian, gay, bisexual, transgender communities and people with disabilities—should be able to access services that understand and can respond to their different experiences and needs.
- ▷ When responding to family violence against older people, the response should be sensitive to their choices about family relationships; for example, instead of relying on a criminal justice response, greater support could be given to parents who are carers of adult children with mental health issues.
- ▷ Responses between various sectors (and particularly aged care, health and family violence services) should be coordinated and collaborative.

The Commission's recommended priority areas for action are set out below. These recommendations should be read together with the general recommendations in 'Family violence and diversity', located at the start of this volume of the report.

Education to increase awareness and prevention

The Commission recognises the need to increase public awareness of family violence against older people. This needs to extend to older people themselves to help them find assistance.

One way of increasing awareness would be to include information on elder abuse, family violence and available support services as part of existing information distribution processes; for example, when information is sent out with Victorian Seniors Cards. We recognise that some material on elder abuse (including the recognition that it is a form of family violence) is already included on the Seniors online website. However, some older Australians have limited access to or familiarity with use of online resources. This means that it is important to continue to provide hardcopy information to this community.

There is a need for expansion of existing awareness and preventative strategies. Just as prevention of family violence requires a focus on gender, prevention of family violence against older people also needs to expose and address ageism. For as long as older people are viewed as less capable and dependent, and are not valued for their contribution to our community, this form of abuse will continue. Sometimes it will be disguised as 'caregiver stress' or justified as actions taken in the 'best interest' of the older person.

The Commission recognises that the existing Respectful Relationships Education program in Victorian schools seeks to educate students on gender, violence and respectful relationships to prevent violence against women. There is scope to ensure this program addresses violence against older people (for example, mothers, fathers and grandparents) as well as addressing ageism more generally, as part of preventing family violence.

Recommendation 153

The Victorian Government resource the development and delivery of information on family violence using channels such as seniorsonline, information distributed with Victorian Seniors Cards, Seniors Week and the Seniors Information Centre [within 12 months].

Building the service response

Work already done by the Commonwealth and Victorian Governments and others including Seniors Rights Victoria, Justice Connect Seniors Law, the Royal Australian College of General Practitioners and other service providers, to increase knowledge about elder abuse among service providers, is an important step towards improving the response to family violence directed at older people. The Commission recognises that more needs to be done to ensure that relevant policies are put into practice and that the reach of current programs is extended.

The Victorian Government should continue to develop and implement policies directed at ensuring that people who work with older victims are able to identify elder abuse and know what to do in response. Training on the issue should be made available for:

- ▷ health professionals
- ▷ home and community care workers
- ▷ the aged care workforce, including aged care assessment teams
- ▷ the Office of the Public Advocate's community visitors
- ▷ Victoria Police
- ▷ other service providers
- ▷ banking and financial services staff
- ▷ lawyers
- ▷ counsellors.

Ensuring that the aged care workforce, including Aged Care Assessment Services, receives training in family violence and the Common Risk Assessment Framework would greatly strengthen identification of and response to family violence against older people.

Professionals who work with older people should be supported with guidelines and procedures to resolve ethical dilemmas where elder abuse is identified but the victim does not wish to report it.

It is necessary that people providing aged care services in all settings, including an older person's family home, are equipped to identify and respond to family violence. The Commission notes that a new Community Service Training Package was released in December 2015.²⁴⁶ The training package includes courses on disability, ageing and individual support (for example, Certificate IV in Disability, Certificate IV in Ageing Support and Certificate III in Individual Support). Each of these courses has as an elective unit titled 'respond to suspected abuse'.²⁴⁷ This unit covers a broad range of abuse but could be developed to cover family violence. Alternatively, the relevant courses could be mandated to include a unit or units on family violence. Units on family violence currently exist as either mandatory or elective units in other courses, such as community services, social housing, alcohol and other drugs, mental health and family dispute resolution.²⁴⁸

The Victorian Government should work with the Commonwealth Government to ensure that a unit addressing family violence is made a core, rather than elective unit in these courses. The Victorian Government should also require through its accreditation, contracting and funding arrangements with relevant aged care service providers that all of their workers, both current and future, have undertaken appropriate family violence training. As the Victorian and the Commonwealth Governments have a dual role in relation to different service providers, the Victorian Government should work with the Commonwealth Government to encourage it to adopt a similar approach to its accreditation, contracting and funding arrangements with those aged care service providers for which it has responsibility.

We make recommendations on general and targeted training on family violence against older people as part of an industry plan in Chapter 40.

In order to more accurately identify and manage family violence risks, service providers will need to improve their sharing of information. In Chapter 7, it is envisioned that certain organisations (including those providing services to older people) will be prescribed in order to empower them to share information to manage the risk of family violence. This is also described in Chapter 6. For this to be effective, staff in these organisations will require training on family violence.

In Chapter 6 we recommend a review and development of the Common Risk Assessment Framework, or CRAF. As part of this review, research and consultation should be undertaken to ensure that the CRAF can respond effectively to the risks of family violence against older people. As discussed, prescribed organisations, such as those that provide home and community care programs and aged care assessment services, will need to use this revised CRAF (or a CRAF consistent tool).

The Commission also notes and supports initiatives such as the St Vincent's Hospital model. A model such as this should be adapted for use in other hospitals and other environments, such as aged care facilities.

Recommendation 154

The Victorian Government, through the Council of Australian Governments, encourage the Commonwealth Government [within 12 months] to:

- ▷ ensure that the Human Resource Management Standard in the Community Care Common Standards Guide specifies that workers delivering services must have successfully completed certified training in identifying family violence and responding to it
- ▷ review the existing Community Services Training Package courses relevant to providing ageing support to ensure that each course has a core, rather than elective, unit that adequately covers all manifestations of family violence.

Building the capacity of specialist family violence services

Although better training of service providers will improve their response to family violence against older people, education programs are not a complete solution. There is a need for increased government investment in workforce development and greater support for statewide services that are currently seeking to address these needs, for example, by building the capacity of Seniors Rights Victoria to provide expertise to support other service providers including family violence services. This would facilitate better referrals, mutual learning and ultimately better outcomes for older people who are experiencing family violence. In 'Family violence and diversity', we recommend that Seniors Rights Victoria should be supported with ongoing additional funding, to reflect Victoria's ageing population.

In Chapter 22 we recommend that the Victorian Government develop a restorative justice pilot program for victims of family violence. This may be of particular benefit to older victims of family violence, who wish to preserve their family relationships or avoid a criminal justice response.

In Chapter 32 we discuss male victims, who include older men who are victims of elder abuse. Older male victims should have access to appropriate help and support.

In 'Family violence and diversity', we recommend that the Department of Health and Human Services should review and update standards for family violence (including men's behaviour change programs). In particular, standards should address the behaviour of perpetrators of family violence against older people, including where these perpetrators are older and may be affected by age-related issues. In addressing the behaviour of men and women who abuse an older family member, behaviour change programs should take into account the attitudes and behaviours which contribute to it, including ageism.

Accommodation

There is a need for more accommodation options for older victims of family violence. Crisis accommodation designed for women and children may not be appropriate to meet the needs of older victims. Consideration must be given to the needs of older victims. It cannot be assumed that their needs can simply be met by accommodation in aged care facilities. The preference of many older victims to remain in their homes and community must be respected. With appropriate support they should be empowered to stay at home safely, if they choose.

Meeting the accommodation needs of older women (and some older men) with limited financial resources may be the only effective way of protecting them from violence. For those who choose to leave their homes, an increase in appropriate and affordable housing is needed.

In Chapter 9, we make recommendations to improve crisis accommodation and to address the longer-term housing needs of family violence victims, including a proposal for individual packages of support, encompassing long-term rental subsidies and other supports. This proposal may be particularly appropriate for older women who are economically disadvantaged and currently face the dual barriers of age discrimination and unaffordable rents in the private rental market. Part of our proposal is for support around employment assistance, which will be relevant to older people of working age who again face age discrimination. For those of non-working age, or otherwise are on a low income, the Commission notes that where private rental is not affordable, other housing options, including social housing, will be required.

Strengthening investigation processes

While there are gaps in investigative processes for family violence perpetrated against older people, we do not consider that a mandatory reporting regime is the best way to deal with this problem. Mandatory reporting would impinge upon the autonomy of older people to make decisions about what is in their own best interests and would be inconsistent with the idea that people should have choices about the types of care and services they wish to receive. It may also make victims more reticent to disclose violence. Any mandatory reporting regime would have to be supported by a comprehensive system to investigate and respond to reports.

In relation to abuse in aged care facilities, we note that providers should have mechanisms in place to prevent and identify abuse of residents and take action promptly to address any that occurs. The culture and processes must support identification and reporting of abuse by carers and co-residents. Where a family-like relationship exists, the Family Violence Protection Act may apply. Otherwise, the *Personal Safety Intervention Orders Act 2010* (Vic) and the criminal and civil law are available. In all circumstances, however, the aged care provider remains responsible for the care of the victim and should adopt victim-centred responses.

In Chapter 31, we discuss the Ombudsman's recommendation that an independent oversight body be established. This oversight body would not be relevant to the substantial number of older people who do not have a disability.

To this end, we recommend that Victoria Police should increase its capacity to address family violence against older people. This should encompass strengthening its capacity to respond to allegations of elder abuse, including investigating financial abuse. In order to achieve this increased capability, greater training for police on family violence against older people will be important.

Recommendation 155

Victoria Police, with advice from the Priority Community Division, scope options for a trial of a dedicated family violence and elder abuse response team in one Victoria Police local service area. The team should have the capacity to investigate financial abuse [within 2 years].

Expanding the definition

While neglect can be a form of family violence, we do not consider that the Family Violence Protection Act needs to expressly refer to it. Many forms of neglect, such as withholding an older person's medication or restricting their mobility, would be caught by the current definition of family violence (which includes behaviour that is physically abusive, coercive or in any other way controls or dominates a family member).²⁴⁹ Such behaviour may also be covered by the criminal law; for example, offences of causing injury intentionally or recklessly.²⁵⁰ In our view, making explicit reference to neglect in the Act is not necessary.

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28 Culturally and linguistically diverse communities

Introduction

The Commission's terms of reference require it to consider the needs and experiences of people affected by family violence, having particular regard to, among others, people from culturally and linguistically diverse communities.

Although family violence occurs across all cultural and socio-economic groups, the experience of violence and the service response to it can vary markedly for different ethnic and cultural communities. This chapter provides an overview of the information the Commission received about the experiences of people from culturally and linguistically diverse communities and makes recommendations to improve responses to people affected by family violence in these communities. In doing so we recognise that there is a diversity of communities within the broad umbrella term of 'CALD'. The experiences of CALD children and young people are discussed in Chapter 10.

The literature shows that people from CALD communities are disproportionately affected by family violence and are more likely than people of Anglo-Australian background to face barriers to obtaining help. Evidence before the Commission supports the view that the social and economic marginalisation experienced by many people from CALD backgrounds and especially those who have recently arrived in Australia, adds a further layer of complexity to their experience of family violence.

Faith can also play an important role in the experiences of family violence for some people in CALD communities, and can affect their access to services. The Commission explores the role of faith communities in preventing and responding to family violence in Chapter 29.

Women from CALD backgrounds experience the same forms of family violence as the broader community, namely violence based on domination and control by their intimate partners. Family violence can also manifest differently and can have different effects in specific cultural settings.

The risk of people from CALD backgrounds experiencing family violence can also be exacerbated if they live in rural, regional and remote areas where they are isolated and there is a lack of appropriate support services.

The meaning of 'culturally and linguistically diverse'

The term 'culturally and linguistically diverse', or 'CALD', refers to people from a range of countries and ethnic and cultural groups. It includes people of non-English speaking background as well as people born outside Australia but whose first language is English. For the purposes of this report, CALD refers to 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.

The first section of this chapter explores the prevalence of family violence in CALD communities. This section also considers prevention programs in CALD communities.

The second section of this chapter recounts the experiences of CALD victims, including experiences of social isolation and cultural attitudes that facilitate family violence in their communities. Particular forms of family violence experienced by some CALD women, including forced marriage, female genital mutilation and dowry-related abuse, are considered. The impacts of a lack of knowledge and understanding of the Australian legal and support systems, trauma associated with pre-arrival experiences and immigration status vulnerabilities are explored. Issues with accessing services and interpreters are also considered.

In the final section of this chapter, the Commission recommends that the capacity of universal and specialist services to respond to family violence in CALD communities be improved. This should include ensuring professional and independent interpreting services. The Commission further recommends that there be legislative reform to better recognise the ways in which the current definition of ‘family violence’ encompasses forms of family violence that may be experienced by people from CALD backgrounds.

Context

This section briefly explores Victoria’s cultural diversity and the prevalence of family violence in CALD communities. It then considers current family violence prevention and early intervention programs targeted to CALD communities.

Cultural diversity in Victoria

Victoria has one of the most culturally diverse populations in Australia. The 2011 census found:

- ▷ 26.2 per cent of Victorians were born overseas in one of more than 200 countries—an increase from 23.8 per cent in 2006¹
- ▷ 46.8 per cent of Victorians were either born overseas or had at least one parent born overseas—an increase from 43.6 per cent in 2006²
- ▷ 23.1 per cent of Victorians spoke a language other than English at home—an increase from 20.4 per cent in 2006.³

The table below shows the top 10 languages other than English spoken at home in Victoria.

Table 28.1 Top 10 languages other than English spoken at home: Victoria, 2006 and 2011

| Language | 2006 | | | 2011 | | | Change 2006 to 2011 |
|------------------|---------|-----|---------------|---------|-----|---------------|------------------------|
| | No. | (%) | Australia (%) | No. | (%) | Australia (%) | |
| Italian | 133,328 | 2.7 | 1.6 | 124,857 | 2.3 | 1.4 | -8,471 |
| Greek | 117,871 | 2.4 | 1.3 | 116,825 | 2.2 | 1.2 | -1,046 |
| Mandarin | 64,384 | 1.3 | 1.1 | 103,793 | 1.9 | 1.6 | +39,409 |
| Vietnamese | 72,154 | 1.5 | 1.0 | 86,596 | 1.6 | 1.1 | +14,442 |
| Cantonese | 66,858 | 1.4 | 1.2 | 72,904 | 1.4 | 1.2 | +6,046 |
| Arabic | 55,927 | 1.1 | 1.2 | 68,416 | 1.3 | 1.3 | +12,489 |
| Turkish | 29,748 | 0.6 | 0.3 | 32,849 | 0.6 | 0.3 | +3,101 |
| Hindi | 18,175 | 0.4 | 0.4 | 32,739 | 0.6 | 0.5 | +14,564 |
| Punjabi | 8,212 | 0.2 | 0.1 | 31,052 | 0.6 | 0.3 | +22,840 |
| Filipino/Tagalog | 21,942 | 0.4 | 0.5 | 30,995 | 0.6 | 0.6 | +9,053 |

Note: profile.id uses data collected from the Australian Bureau of Statistics census.
 Source: Victoria: Language Spoken at Home (21 January 2016), profile.id,
<http://profile.id.com.au/australia/language?WebID=110>

Within Victoria and nationally there is considerable diversity between different CALD communities, including the length of time people have been established in Australia, their pre-arrival experiences, and the conditions in their countries of origin.

Categories of immigration entry also vary, along with immigration experiences before permanent settlement, particularly for asylum seekers subject to detention.

Birthplace data also masks important differences within communities, including factors such as social status or background, education level, gender, age, disability, sexuality and faith.⁴

Prevalence of family violence in CALD communities

Evidence regarding the prevalence of family violence in CALD communities is inconclusive.⁵ There is no reliable data available to provide a clear picture of the scale of the problem.⁶ The deficiencies in prevalence and incidence data⁷ (discussed in Chapter 3) are exacerbated in CALD communities. As noted in a recent paper by Australia's National Research Organisations for Women's Safety (ANROWS), 'the available large-scale, population-based data sets rarely enable analysis of the specific [family violence] experiences of immigrant and refugee women as compared to other women in countries of resettlement'.⁸ Furthermore, family violence data is likely to significantly understate the extent of the problem as conceptions of what constitutes family violence differ and language barriers often inhibit communication and disclosure.⁹

On 7 August 2015 the Commonwealth Government announced \$160,000 in funding for a 'diversity data' project to be carried out by ANROWS.¹⁰ The project will examine how CALD women, Aboriginal and Torres Strait Islander women and women with disabilities experience violence and identify options for improving future data collection.¹¹

Survey data

Survey data suggests there is a slightly higher rate of violence in the Australian born population. The 2012 Australian Bureau of Statistics' Personal Safety Survey found that Australian-born women were more likely to report experiencing violence since the age of 15 years than those born overseas.¹² In the Australian component of the 2004 International Violence against Women Survey, women from English-speaking backgrounds reported higher levels of violence compared with women from non-English speaking backgrounds.¹³ It is, however, important to note the limitations of this survey: CALD women might be both less likely to participate in a survey and less likely to openly discuss violence with a survey interviewer.¹⁴

Specialist family violence services data

There is inconsistent data regarding the representation of CALD women in the client group of specialist family violence services in Victoria. This may reflect access barriers as well as limitations of and differences in data sets.

Demographic data from the Integrated Reporting Information System (IRIS) on clients accessing women and children's family violence services in 2013–14 shows that 84 per cent of clients were born in Australia and 13 per cent identified that they were born in another country. In three per cent of cases the client's country of birth could not be ascertained.¹⁵

Individual service data, however, paints a different picture and more closely reflects patterns of settlement on a regional and local basis. For example, Women's Health West Inc. reports that in 2013–14, 47 per cent of women who received case management support identified themselves as coming from a CALD background and 44 per cent of residents in their crisis accommodation service did not speak English as their first language and required an interpreter to communicate.¹⁶

Safe Steps Family Violence Response Centre data

At a statewide service level, Safe Steps data indicates that in 2014:

- ▷ one third of all supported clients were born outside Australia
- ▷ twenty-one per cent identified as culturally and linguistically diverse
- ▷ five per cent required an interpreter.¹⁷

The Safe Steps submission further advised the Commission that in the period January–April 2015 eleven per cent of their clients did not have permanent residency.¹⁸

Statistics collated by the Domestic and Family Violence Crisis Lines of Australia Network captured the number of calls received by the network's member services (including Safe Steps in Victoria) from women without permanent residency. The member services recorded contact from 421 women without permanent residency from October to December 2014; 328 of these cases involved children.¹⁹ The network reported that the patterns of abuse among women without permanent residency were broadly consistent with those among women who do have permanent residency, although instances of economic abuse were proportionally higher, as were death threats.²⁰

Preventing family violence in CALD communities

The need for a focus on preventing family violence was identified in both the *Second Action Plan of the National Plan to Reduce Violence against Women and their Children 2010–2022* and the National Community Attitudes towards Violence Against Women Survey report.

The Commission heard that a 'one-size-fits-all' approach to preventing family violence is not successful for CALD communities. As the Whittlesea Community Futures Partnership submission noted, 'The experience of family violence in CALD communities is complex and requires an appropriate mix of tailored prevention and early intervention strategies to be adopted'.²¹ This includes strengthening the capacity of CALD communities themselves to identify and respond to family violence. For example, a recent paper published by ANROWS highlighted the importance of consulting and involving community elders and leaders in developing culturally appropriate prevention strategies.²²

AMES report

AMES Australia and VicHealth recently published a report focusing on actions to prevent violence against women in CALD communities. Based on national community consultations, the report noted:

This focus is important to ensure the safety and wellbeing of women from CALD backgrounds, to meet policy commitments to multiculturalism, access and equity, gender equality and human rights, and to ensure that the economic and social benefits of migration for all are realised.²³

The report argued that redressing social exclusion, stigma, and racism affecting CALD communities is a crucial foundation for prevention:

These conditions can increase the risk of violence against women in CALD communities by isolating communities, working against acculturation and negatively affecting responses to and by CALD women affected by violence. This in turn undermines the prospects of men being held accountable for violence and therefore of establishing social norms against this behaviour.²⁴

The report found that, although many CALD communities will be effectively reached by initiatives delivered to the population as a whole, the communities and groups most likely to require tailored approaches and needing to be given priority in prevention efforts, are CALD groups with large proportions of recent arrivals, new and emerging communities, and longstanding migrant groups affected by social exclusion.²⁵

The importance of involving CALD men is also noted:

The majority of CALD men do not use violence, and they are important allies and partners in prevention. Engaging non-violent men can help prevent 'backlash' and deal more effectively with it should it arise ... In most forms of [violence against women] the majority of perpetrators are men and certain aspects of masculine roles, identities and peer associations are well established risk factors for this violence. Addressing these by working with CALD men and boys, and the contexts shaping their responses to violence is a critical component of prevention efforts.²⁶

The report concludes that prevention in CALD communities involves a two-pronged approach:

- ... activities tailored to and engaging specific communities and the contexts affecting their practices and norms
- ensuring that approaches designed to reach the general population are relevant to people from CALD backgrounds.²⁷

The report also reviewed projects conducted between 2004 and 2014 with the aim of preventing violence against women. It found few such projects in the years up until 2007. The report stated:

CALD communities responded to campaigns that are run at community levels, developed within a cultural framework they understand, and rather than having a particular focus on violence, are positive about families and the behaviours and conditions likely to support healthy family relationships.²⁸

Prevention initiatives

The Commission was also told about a number of important prevention and early intervention initiatives in CALD communities in Victoria. Some examples are set out in the box below.

Prevention and early intervention initiatives in CALD communities in Victoria

- ▷ The CALD Communities Leading the Way to Respectful Relationships project has sought to raise awareness about gender equality and respectful relationships in Croatian, Indian, Sudanese and Vietnamese communities.²⁹
- ▷ The Whittlesea CALD Communities Family Violence Project has brought together a range of local agencies to design, deliver and evaluate an integrated place-based model for reducing and preventing family violence in Whittlesea's CALD communities.³⁰
- ▷ The Stronger Healthier Indian Families Together, or SHIFT, project, implemented by cohealth in partnership with the Jagriti Forum, works with Indian men and women living in Wyndham and Brimbank.³¹
- ▷ The CALD Community Engagement Project led by Minerva Community Services works to empower the Karen and Karenni communities to deal with family violence from within the community.³²
- ▷ The Living in Harmony project, auspiced by cohealth, provides training to CALD community members living in Collingwood's housing estates so that they can facilitate respectful relationships events in their communities.³³
- ▷ The Health Justice Partnership between InTouch Multicultural Centre Against Family Violence and Dandenong Hospital will see InTouch establish an outreach clinic at Dandenong Hospital and provide hospital staff with training in identifying and helping CALD victims of family violence.³⁴ Chapter 19 discusses health justice partnerships.
- ▷ With funding from the Legal Services Board, Victoria Legal Aid delivered the Settled and Safe community education program, providing training to settlement workers on family violence, plus community education with newly arrived communities.³⁵

Community awareness and information

A number of submissions noted the importance of involving community media, such as local newspapers, radio and television.³⁶ Information about family violence and support services should be delivered by means of community networks, culturally-specific media services, and other familiar sources of information and assistance in CALD communities.³⁷

The vital role that culturally-specific media can play in disseminating family violence information has previously been acknowledged.³⁸ One consultation participant stated:

Use AMES and other English language programs. You have a captive audience. You can talk about family violence laws, child protection laws. We can't let 'I didn't know that was against the law' be an excuse.³⁹

Another matter raised in the community consultations and submissions concerned the provision of information to women before their arrival in Australia. On 7 August 2015 the Australian Government launched a pre-departure information pack for women moving to Australia to be with their partner.⁴⁰ The pack contains information about family violence, sexual assault, forced and early marriage, and family violence associated with partner visas. It also gives women information about their rights under Australian law and provides details of who to contact if a woman needs assistance.⁴¹

Women told the Commission there should be follow-up by case workers as part of settlement programs.⁴² The Commission also heard that the Department of Immigration and Border Protection should offer its front-line officers training in identifying and responding to family violence, so that they can refer women to suitable services.⁴³

Helping victims recover

As discussed in Chapters 20 and 21, because of the serious and long-term effects of family violence, it is important that support is provided to all victims to help them recover after the immediate crisis.

An InTouch initiative offers culturally appropriate group counselling for CALD women. The counselling program is developed in response to the needs of the specific community and is delivered by bilingual workers (with interpreters where necessary) together with partner agencies in the community.⁴⁴

The Commission was advised that InTouch also provides opportunities for CALD women to participate in the community and enjoy time with friends and family in a supportive environment. It recently ran a three-day camp for Turkish women and their children with the aim of offering families who had experienced family violence an 'opportunity to spend an enjoyable and therapeutic time together in a safe and engaging environment'.⁴⁵ It reported that the camp allowed women to re-connect with their children, make friends, realise they 'were not alone' and that the violence was not their fault.⁴⁶

Economic participation through education and employment is also an important part of successful migrant settlement. Helping CALD women move towards economic recovery and preventing the violence from occurring in the first place have both personal and social benefits:

Violence against CALD women undermines their economic and civic participation both within communities and in the wider community. This ultimately compromises the strength of CALD communities, and the broader social and economic benefits of migration for Australia. This is of particular concern given Australia's increasing dependence on women migrants to fill certain skill gaps such as in the caring sector.⁴⁷

Challenges

The Commission received a variety of evidence recounting the specific experience and challenges that CALD victims face. This section explores these issues and challenges.

CALD people's experiences

Although each person has a different experience of family violence, there were consistent themes in the evidence presented to the Commission about the particular challenges CALD victims face.

Social isolation

Isolation from family and community was a common feature of many CALD people's experience. One woman told the Commission, 'I felt that all of Australia belonged to my husband and I didn't belong'.⁴⁸

CALD women might be living far from their family and have limited access to support within the community because they are dependent on their partner for money, transport and language. This is especially the case if a person's partner has been in Australia for some time and so has better English language skills, greater knowledge of culture, and more contacts in the community. As one woman said, 'The men are so clever in making a gap between the girl and the community'.⁴⁹

In many cases men deliberately isolated their partners from contact with their family and friends.⁵⁰ Victims spoke of their partners and extended family denying them access to telephones, the internet, employment opportunities and transport:

I was abused not just by my husband but also by my mother-in-law and sister-in-law and my father-in-law. Initially they stopped me from getting out of the house. I wasn't aware that I could apply for a bank account by myself. He said that because he was a resident and I was a 'visitor' ... I wasn't allowed and I believed him. I wasn't allowed to talk to anyone. He wouldn't let me use the phone and I didn't know what I could do.⁵¹

In particular, some men exerted control over their partners by not allowing them to attend English language classes; in this way the men remain the 'gatekeepers' of all information. Such a situation compounded the victim's isolation and greatly restricted their access to information and support in the community.⁵²

Social isolation—especially lack of access to transport—made it difficult for those seeking to leave an abusive relationship:

One woman called the police and her husband was taken away. After three days where she hadn't been able to take her kids to school, she couldn't do the shopping. She ended up calling up and asking her husband to come home.⁵³

Deciding to leave an abusive relationship also resulted in some people, particularly women, being ostracised by their family and community, exacerbating their distress and leading some to return to violent relationships. After being granted a family violence intervention order designed to exclude her husband from the family home, one woman had the following experience:

X came to Australia ... to live with her new husband. Since coming to Australia she has very rarely left the house. She knows very little English and doesn't know how to drive or use public transport. After the birth of their son, her husband has become increasingly violent towards her. During the most recent incident, her husband punched her repeatedly in the head. A neighbour heard screaming and called the police. They attended and assisted X to take out an intervention order against her husband which excluded him from the property. X presented at [a legal service] seeking assistance to have the order removed. She was worried about having adequate financial support and was struggling to look after her son on her own. Her husband had always driven her to the supermarket, the doctor and other services and she did not know how to get to these services by herself. She felt isolated and alone as neighbours from her community had stopped speaking to her. She said it would just be easier if he could come home, even if it meant that she would be subjected to further violence.⁵⁴

Attitudes to family violence and the role of culture

Factors influencing attitudes to family violence in CALD communities include broader social norms relating to both gender and violence.⁵⁵ The 2013 National Community Attitudes toward Violence Against Women Survey found that people born overseas in non-main English speaking countries are among the groups which have a lower understanding of violence against women and are less likely to reject violence-supportive attitudes.⁵⁶ The survey report noted, 'This is most likely to be due to differences in beliefs and practices regarding violence and relationships between men and women in the countries people come from'.⁵⁷ VicHealth, AMES Australia and Lyn Walker and Associates further stated:

Among respondents from non-English speaking countries, country of birth had a stronger influence on attitudes than factors such as education, employment or living in a disadvantaged area ... These differences were still apparent when other factors such as occupation and education were taken into account. However ... both knowledge and attitudes improved with length of time in Australia.⁵⁸

The Commission notes that culture is 'neither fixed nor an inherent feature of particular individuals or groups. Rather it is shaped and therefore can be changed by social and economic forces'.⁵⁹

Ms Joumanah El Matrah, Executive Director of the Australian Muslim Women's Centre for Human Rights, gave the following evidence:

... men who are violent against their spouses and children ... often themselves use the cultural defence. It's really typical for men who are violent to have excuses for their violence, anything else other than accepting responsibility. So it's really important at that point that people are well versed in exactly what violence is about and that it's not about culture.⁶⁰

One woman commented, 'It was, and still is, unhelpful when people just dismiss [the violence] as "that's just his cultural background". Dad's behaviour was abusive and I believe it needs to be named as so ...'⁶¹

There is also concern that citing 'culture' as a factor in CALD women's experience of family violence can lead to stereotyping and a 'failure to recognise the existence of diversity of views and beliefs about family violence between and within cultures'.⁶²

Cultural attitudes and practices—such as respect for elders and an obligation to assist community members—can also protect against violence.⁶³

While different cultural backgrounds may not be a cause of family violence, it remains relevant to understanding and responding to family violence within CALD communities.⁶⁴

Reluctance to disclose

The Commission notes that people from CALD backgrounds are generally less likely than members of other groups to speak out about family violence.⁶⁵ Among the main reasons for this are the following:

- ▷ language and literacy barriers⁶⁶
- ▷ social isolation and financial dependence resulting from the absence of established social networks, primary carer responsibilities, unemployment and social, emotional and economic control exercised by their spouse or other family members⁶⁷
- ▷ cultural norms relating to gender roles, sexuality, marriage and divorce⁶⁸
- ▷ shame and stigma associated with seeking help outside the family and community—including contacting police and having them attend at home⁶⁹
- ▷ lack of knowledge about the legal services and support available in Australia⁷⁰
- ▷ fear and mistrust of government, the police and the justice system, as a result of experiences in their country of origin or negative past experiences in Australia—including actual or perceived racism⁷¹

- ▷ a perception that mainstream services will not understand their situation and so will fail to respond appropriately⁷²
- ▷ lack of culturally-specific support services including access to and availability of interpreters⁷³
- ▷ fear of cultural, ethnic or religious misrepresentation, leading to negative stereotyping of their community and culture⁷⁴
- ▷ pre-existing trauma⁷⁵
- ▷ immigration status—for example, women who are living in Australia on Contributor Aged Parent visas may fear deportation⁷⁶
- ▷ logistical difficulties associated with finding a path through what is already a complex system—for example, difficulties caused by having no birth certificate or not knowing one's birth date.

Research by InTouch into barriers for CALD women seeking access to support services found a 'tendency to minimise the seriousness of family violence': one participant said she thought yelling and sexual abuse were 'part of being married ... [he] kept telling me I am his property'.⁷⁷

People from a CALD background might not feel empowered to speak out about the abuse they have suffered because there is a perception that family violence is a 'private' matter and should be kept within the home.⁷⁸ One woman told the Commission, 'If there is a big hit or blood this is out of family—you have to call the police. But if it is a small problem it is better to solve it within the family'.⁷⁹

Research indicates that some CALD people may be less inclined to disclose family violence for 'fear of escalating racist responses' to their communities.⁸⁰ The Commission heard that some women felt judged and not listened to when the violence they had experienced was 'blamed' on their culture and that there was a common perception among police, lawyers and judges that family violence was the 'norm' in some cultures when it is not.⁸¹ For example, a recent report from the Department of Social Services noted, 'Some Muslim women do not want to discuss or report family violence or sexual assault in case the issues are framed as specifically Muslim problems and increase prejudice against them'.⁸²

Economic dependence was cited as another reason for failing to speak out: 'If we separate from our husbands, how will we survive financially? We don't have any choice but to stay in silence'.⁸³

A recent paper published by ANROWS reported that CALD women tend to endure family violence for many years. If they eventually seek help this is usually because of the increased severity of the violence, their coping strategies no longer being effective and growing concerns for the welfare of children.⁸⁴

Difficulties with leaving a violent relationship

A number of women told the Commission of the difficulties they experienced when leaving a violent relationship because divorce was not acceptable in their community.⁸⁵

Because in my culture if you are separated from your husband your family members will disown you ... they don't want to help you. They say go back to your husband. So in that case, women just keep themselves quiet.⁸⁶

Women who have been raised in patriarchal societies in which traditional gender roles are upheld can have little autonomy and can be subject to the decision making of their husbands, fathers or other male members of the community. One woman told the Commission:

I've been in an abusive relationship all my life, from childhood. Mine was more culture because I come from Afghanistan and it's normal that men have the power and you should just be quiet.⁸⁷

Shakti Australia noted, 'Asian, African and Middle Eastern cultures are honour-based cultures and as such seeking access to family violence services and leaving marital relationships is seen as bringing shame on the family'.⁸⁸

Ms El Matrah told the Commission:

... some women they do experience a range of restrictions that are tied to their cultural [identity]. One may be a generalised prohibition within their community around not breaking the family apart and the blame that targets women when they try and leave a violent situation. Often their families actively try to restrict them from accessing assistance and help.⁸⁹

During a community consultation the Commission was told that one woman had been married since the age of 14 years, and each of her sexual encounters had amounted to rape. She said she hoped her husband would marry someone else without having to divorce her, so that she could 'avoid the shame and loss of status'.⁹⁰ She added that 'women are going to choose violence every time rather than being shamed by their community'.⁹¹

Some women also experienced difficulty leaving because of attitudes towards divorce in their faith community; this is discussed in Chapter 29.

In addition, the Commission heard that leaving a violent home can be especially difficult for young CALD people because alternative accommodation options such as refuges and foster care might not be culturally appropriate and there might be a lack of culturally competent staff.⁹² The absence of viable alternatives can aggravate the isolation these young people already feel and cause them to return to their violent home.⁹³

Some CALD women might also be fearful of separating from their violent partner if they come from a culture in which the father traditionally takes sole custody of the children after a separation. They might fear that their ex-partner will remove the children from Australia or that a court may order that the children live with their father.⁹⁴

Lack of information

CALD victims often lack knowledge of what constitutes family violence and the support services available for victims. Organisations that provide services for newly arrived communities reported it was not commonly understood that family violence is prohibited in Australia and that such violence includes psychological, sexual and financial abuse as well as physical abuse.⁹⁵

Some CALD women come from countries where family violence is not a crime or where there are weak legal sanctions. Indeed, there remains a perception in some communities that a husband has a 'right' to discipline his wife.

Research with CALD women indicates that the concept of sexual assault within marriage is not widely understood in some communities.⁹⁶ Many CALD women believe it is their duty as wives to engage in sexual intercourse with their partner and are unaware that they can consent to some sexual activities and refuse others.⁹⁷

A lack of understanding about their rights and limited knowledge of the availability of support services and the ability of police and the courts to intervene in family violence matters present barriers to CALD victims seeking safety. In particular, CALD women often do not know who to contact after experiencing family violence, even if they have been living in Australia for many years:⁹⁸

And when [women experiencing family violence] approach the legal system, it is not cultural and they get another knock back and then they go back to their husbands and get more family violence. They don't know anything. Not even to know how to ring 000. The boy is often living here for five years and he knows Australia and the girls don't know anything.⁹⁹

As noted, some husbands can deliberately isolate their wives and contribute to their ignorance about the law: 'He knew too much about the law ... here. I lived in fear because I knew nothing'.¹⁰⁰

Pre-arrival trauma

Pre-migration experiences have [a] big impact on issues around family violence and when they happen once families arrive in Australia.¹⁰¹

Settlement is not a moment in time, or a period in time, it is a life long journey and even if a person has a very smooth migration experience, it is still traumatic.¹⁰²

Among the traumatic pre-arrival experiences of members of CALD communities—especially refugees and asylum seekers—can be the following:

- ▷ exposure to violence and abuses of human rights—including death, torture and sexual violence
- ▷ forced displacement
- ▷ prolonged periods in refugee camps
- ▷ loss and separation from family members
- ▷ deprivation of cultural and religious institutions and practices
- ▷ periods of extreme poverty—including limited access to shelter, food and safe drinking water
- ▷ prolonged uncertainty about the future
- ▷ severe constraints on access to health services, education, employment and income support.¹⁰³

The trauma can be exacerbated by difficulties encountered on arrival in a new country—including adjusting to different values and expectations, financial pressures, lack of social networks and supports, and changes in family dynamics, such as young people shouldering more responsibility and advocating on behalf of their family because they have better English language skills.¹⁰⁴

Pre-arrival experiences can increase the incidence of family violence. Some CALD families come to Australia to escape war and other violence in their home countries.¹⁰⁵ Foundation House's work with refugees led it to submit that 'the psychological effects of experiencing the normalization of violence in countries at war may be contributing factors for intimate partner violence'.¹⁰⁶ Frustration, anxiety and anger arising from traumatic pre-arrival experiences can be directed at family members, including children.¹⁰⁷

These experiences can also prevent victims from reporting the violence to police and gaining access to support services.

Refugees and asylum seekers have often experienced ill-treatment or have been inadequately protected from authorities in their country of origin and so can be apprehensive about reporting matters to the police or seeking assistance from other authorities.¹⁰⁸

Immigration status

Many submissions the Commission received emphasised the particular vulnerability of CALD victims who do not have permanent residency.¹⁰⁹ They can be dependent on their partner for their visa status—for example, women on partner visas or those whose partners are the primary visa holder on working, student or tourist visas.¹¹⁰ Uncertainty about visa status can increase the risk of violence in a number of ways.

People from CALD backgrounds without permanent residency can feel they are unable to leave an abusive relationship because doing so will have consequences for their visa status—for example, possible deportation to their country of origin and loss of their children. Uncertain visa status can be used by abusive partners or other family members to threaten and control women: a considerable power differential arises when a woman's partner has permanent residency and she does not.¹¹¹ A CALD victim can also be threatened by potential withdrawal of sponsorship of their permanent residency application, having their visa cancelled or having other family members deported. Additionally, they can face harm or ostracism from their family and community if they leave their relationship and return to their country of origin.¹¹²

Some women who sponsored their male partners reported that their partners became abusive once they had obtained permanent residence and no longer required sponsorship.¹¹³

The situation is aggravated by the fact that those without permanent residency have limited access to crisis accommodation, Centrelink benefits, and some health and education services.¹¹⁴

Immigration-related policies that restrict eligibility for welfare support create significant barriers for women seeking to leave situations of family violence, as they have few options for supporting themselves and their children, or to pay for legal and other services that may be required.¹¹⁵

The Commission heard that some refuges are unable to support women who do not have permanent residency because of the cost of full support.¹¹⁶ Although it is Victorian Government policy that women who do not have permanent residency status are eligible for refuge, crisis and transitional accommodation, the cost of providing such support to these women presents significant difficulties.¹¹⁷ The Commission understands that funding of refuges covers operational costs and some basics but does not cover food and other consumables.

As Safe Steps explained, it accommodates women without permanent residency and their children for much longer than other clients because of the difficulties they have gaining access to other services.¹¹⁸ The Commission was told that services with the capacity to support women who do not have an income (such as women without permanent residency status) are 'overburdened and cannot meet the level of demand'.¹¹⁹ In many cases, agreeing to accept these clients imposes significant costs on already-stretched support services.¹²⁰

The Commission also heard that some women who seek and gain refuge accommodation can be required for safety reasons to discontinue study and work while at the refuge, which can result in them breaching the requirements of their visa and facing possible deportation.¹²¹

Furthermore, because of the complexities of migration law, women might need intensive specialist support to prepare visa applications, and such support is limited and available only in urban areas, compounding the disadvantage CALD women living in rural and regional areas can experience.¹²²

Another problematic area identified in submissions concerns those people on Contributory Aged Parent visas, which allow older parents to live in Australia for two years if their children are Australian citizens or permanent residents.¹²³ Older parents may be brought to Australia under these visas to look after grandchildren.¹²⁴ Men and women holding this type of visa are ineligible for Centrelink assistance for 10 years after their arrival and can be dependent on abusive family members because they have no alternative source of income.¹²⁵

Family violence exception for visa applicants

Under the *Migration Regulations 1994* (Cth), a woman may be granted permanent residency even if the marriage or de facto relationship on which her immigration status depends has ended, if she can prove that:

- ▷ she and/or a member of her family unit (such as her child) have been victims of family violence¹²⁶
- ▷ she was married to or in a de facto relationship with the perpetrator at the time the violence occurred.¹²⁷

The purpose of these provisions is to ensure that a person does not have to stay in a violent relationship to remain in Australia.¹²⁸

Applicants under this family violence exception must provide evidence to support their claim of violence,¹²⁹ such as an intervention order or criminal conviction or a statutory declaration from the victim or another person on their behalf—for example, a general practitioner, social worker or psychologist.

A review by the Department of Immigration found that the majority of applicants seeking to rely on the exception were in genuine need of assistance.¹³⁰

The family violence exception applies only to specific visa classes; in particular, it does not apply to holders of Prospective Marriage visas. In its report entitled *Family Violence and Commonwealth Laws—improving legal frameworks*, the Australian Law Reform Commission recommended an extension of the family violence exception to account for vulnerability in various visa streams, including Prospective Marriage visa holders and secondary applicants for onshore permanent visas.¹³¹

A woman is also unable to invoke the family violence exception if the violence is perpetrated by a family member other than her partner. The InTouch submission noted that violence committed by members of the extended family is 'particularly prevalent' in CALD communities; it has had clients who are ineligible for permanent residency under this exception because the violence against them was perpetrated by their mother-in-law, father-in-law, sister-in-law or brother-in-law—even in cases where their partner was aware of and facilitated the violence.¹³²

Specific forms of family violence

The Commission heard that women in some CALD communities experience specific forms of family violence, among them '[d]owry-associated violence, forced marriage, honour killings and, female genital mutilation' and dowry-related violence.¹³³ Some CALD women are also more likely than women from non-immigrant backgrounds to experience violence at the hands of members of their husband's extended family.¹³⁴ In some cultural groups, the expectation that a couple will live with the husband's family and that the wife will be subservient to her in-laws, increases exposure to a wider range of familial violence (beyond intimate partner violence).¹³⁵ Gender inequality and the assertion of male privilege in some cultures can also mean that violence is intergenerational, with boys being socialised to act in controlling and coercive ways towards their mothers and sisters: 'My son is in his 20s. He exactly copies his dad—he says to me most of the time 'shut up'—he treats his sister the same as me.'¹³⁶

A particular concern raised in a number of submissions was elder abuse in CALD communities.¹³⁷ Older women from CALD communities may be at increased risk of elder abuse, especially financial abuse, because of a lack of English language skills and consequent reliance on family members to translate documents and help them negotiate their way through the service system.¹³⁸ In some CALD communities, there is particular stigma attached to residential aged care, which may lead to a refusal to disclose family violence.¹³⁹ Family violence against older people is discussed in Chapter 27.

Religious law and practice, such as a refusal to grant a divorce, can also be vehicles for abuse. This is discussed in Chapter 29.

Forced marriage

Forced marriage occurs when a person marries without free and full consent. It can happen both in Australia (including when a person is brought into the country in order to be married) and when a person is taken to an overseas country for the purpose of a forced marriage.¹⁴⁰ Forced marriages can represent an 'intersection between family violence, sexual exploitation and child protection'.¹⁴¹

The Centre for Multicultural Youth described the practice as a 'unique and important' form of family violence for some young CALD women.¹⁴² People also spoke about forced marriage during the Commission's community consultations:

It's so common here among my relatives to not even ask the young people and to go to Afghanistan and get a person to marry them.¹⁴³

Forced marriage is to be distinguished from arranged marriage, in which a marriage is organised by the families, but the individuals concerned have the right to accept or reject the arrangement.¹⁴⁴

Although it has been reported that 42 cases of forced marriage were referred to the Australian Federal Police between March 2013 and May 2015,¹⁴⁵ little is known about the prevalence of this practice in Australia.

The Centre for Multicultural Youth submitted that 'young women are extremely fearful of refusing [to marry] for fear of losing their family's love and support'.¹⁴⁶ It said women involved in forced marriages are at high risk of mental health problems and suicide, as well as family violence perpetrated by fathers, brothers and mothers to force the woman to cooperate with the marriage.¹⁴⁷

The Commission heard that some young women facing forced marriages who turned to the authorities or professionals for help did not receive appropriate assistance because those from whom it was sought lacked knowledge of the law and the support that is available.¹⁴⁸

The InTouch submission reported:

... an increase in human trafficking for sexual and domestic servitude in recent years, especially in regional areas. Typically, a foreign woman enters into what she believes is an arranged marriage with an Australian citizen, but upon arrival is treated as a slave by her husband, and repeatedly subjected to physical, sexual and other forms of abuse.¹⁴⁹

In Australia, human trafficking, slavery and slavery-like offences (including a specific forced marriage offence) are prohibited under Divisions 270 and 271 of the *Criminal Code 1995* (Cth).

A recent report by the Australian Institute of Criminology confirmed that 'marriage and partner migration have been used to facilitate the trafficking of people into Australia', which has resulted not just in labour and sexual exploitation of women but also in exploitation of their 'very personhood'.¹⁵⁰

Female genital mutilation

Female genital mutilation refers to 'all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons'.¹⁵¹ It is sometimes called 'female cutting' or 'female circumcision'.

The practice has been documented in 28 countries in Africa and a few countries in Asia and the Middle East.¹⁵² Migration has led to an increase in the number of women and girls living outside their country of origin who have undergone FGM or are at risk of being subjected to it.¹⁵³ It is known to be harmful and to have both immediate and long-term health impacts.¹⁵⁴

FGM has been illegal in Victoria since 1996.¹⁵⁵ There is no data on its prevalence in the state, although it has been reported that between 600 and 700 women each year seek the assistance of the Royal Women's Hospital de-infibulation clinic because they have been subjected to some form of FGM.¹⁵⁶ Some research suggests a decline in support for, and the relevance of, FGM in migrant and refugee communities who have resettled in Victoria.¹⁵⁷

No FGM Australia told the Commission that the practice is a form of family violence that is culturally motivated and used as a means of controlling women and girls.¹⁵⁸ However, a recent paper published by ANROWS noted that 'while some women who have experienced genital cutting would describe it as a form of family violence many others would not'.¹⁵⁹ Evidence before the Commission suggests that parents are sometimes pressured to subject their daughters to FGM for a variety of reasons, among them to curb a girl's sexual feelings, a belief that a girl will not be able to marry without undergoing FGM, the notion that a girl subjected to the practice will be 'pure' and not bring shame on her family, and a belief that the procedure constitutes an 'initiation' into the community.¹⁶⁰

The need to raise awareness in CALD communities about the negative health and legal consequence of FGM was raised with the Commission. Participants in the Department of Social Services' 'kitchen table conversations' identified the need to raise awareness in CALD communities that FGM is an illegal practice with negative health consequences, including obstetric, gynaecological and mental health problems.¹⁶¹ Similarly, No FGM Australia called for public education, safeguards for children and support for survivors so that the practice is not hidden as a cultural practice and should be taken out from 'behind closed doors within communities'.¹⁶²

Financial abuse

The Commission heard that financial abuse was of particular concern in CALD communities. The social isolation some people from CALD backgrounds experience can create an environment in which financial abuse is more likely to occur and have a disproportionate impact on a woman's ability to support herself.¹⁶³

The Commission was told of instances of men controlling all household finances (including Centrelink payments), not allowing a woman to open a bank account in her own name or use a jointly held account, coercing women into signing loan and other bank documents they do not understand, and forcing a woman to work for other family members without payment. In one case, a woman was forced to deposit all her wages into her husband's bank account, to which she had no access. Her husband decided to leave his job and she became the sole income earner, but he remained in control of her access to her money. He later spent it, despite her efforts to save, so she could retrain as a nurse.¹⁶⁴

Dowry-related violence

'Dowry' refers to money, property or gifts transferred by a woman's family to her husband upon marriage. Sometimes, dowry demands can be for substantial amounts of money which are multiple times the annual income of a bride or the groom's family.¹⁶⁵ The Commission heard that misuse of dowry was a 'substantial problem'¹⁶⁶ and a particular concern in Indian, Pakistani, Sri Lankan and, increasingly, Middle Eastern communities.¹⁶⁷ The Commission also heard that a demand for dowry is unlawful in some of these overseas jurisdictions.¹⁶⁸ Socio-economic status affects the amount of dowry to be paid.

Dowry-related violence commonly involves claims that dowry was not paid and coercive demands for further money or gifts from a woman and her extended family.¹⁶⁹ In some cases a man will use a prospective entitlement to permanent residency in Australia as a bargaining tool to attract a higher dowry price from his future spouse and her family.¹⁷⁰

This abuse can be aggravated by a woman's uncertain visa status. Good Shepherd Australia New Zealand and Wyndham Legal Service noted that dowry-related violence 'typically co-existed with visa and migration challenges for women who were often in Australia on spousal visas and more limited in their options'.¹⁷¹

During the community consultations the Commission heard directly from women who had experienced dowry-related abuse.

One woman said her husband had threatened to report her to immigration authorities if she did not give him money from her parents:

The fact was I was being [pressured] to get money from my parents. He said he needs some dowry. He had a huge house but because I couldn't work because of visa restrictions, I was told to get money from my parents. I have some photos of how much gifts my parents gave—the rings, the gold ... All these gifts were exchanged during the marriage ceremony but they were not happy with this. When I said my parents couldn't afford it and he said then he'd write to the Department of Immigration and I'd be asked to go back to India.¹⁷²

Women who sought assistance experienced difficulty because there was a lack of understanding about dowry and its misuse:

Dowry is a main issue and it's not being recognised here. You go to the police and they have no idea what you're talking about ... here it's hard because the police don't know what it means.¹⁷³

For some women the money their families have spent on dowry also acts as a barrier to their leaving their abusive partners.¹⁷⁴

The Australasian Centre for Human Rights and Health submitted that dowry plays a 'significant adverse role' in leading to emotional and physical abuse¹⁷⁵ and has harmful impacts on mental health.¹⁷⁶ The centre highlighted the need for greater awareness and education¹⁷⁷ and called for the *Family Violence Protection Act 2008* (Vic) to be amended to include misuse of dowry as an example of economic abuse¹⁷⁸ or to make the 'taking and giving of dowry illegal'.¹⁷⁹

Access to services

Chapter 40 describes current workforce gaps that are holding Victoria back from having an effective approach to preventing and responding to family violence. This includes shortcomings in bicultural and culturally-appropriate practice that have been caused by demand pressures, skills gaps and in some cases discriminatory practice.

The Commission heard that people from CALD communities face cultural and linguistic barriers when seeking access to both specialist family violence services and mainstream universal services that intersect with family violence, such as health, Child Protection, police, legal services and the courts.

Universal services

Health clinicians have a valuable role to play in identifying family violence;¹⁸⁰ more than one in five women experiencing family violence will make their first disclosure about it to a health professional.¹⁸¹ Apart from appointments with general practitioners, CALD women are rarely alone with a professional in whom they can confide.¹⁸² The Commission heard that services, including general practitioners, maternal and child health nurses and hospitals and others, need to be equipped to recognise family violence in CALD communities and respond in culturally appropriate ways.¹⁸³

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, 'Some 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' ... Each of these findings has strong implications regarding a woman's willingness and ability to disclose family violence to a health care provider.¹⁸⁴

The Centre for Multicultural Youth submitted that fears about the role and powers of Child Protection in the context of family violence were often amplified in migrant and refugee families, which resulted in families preferring to keep professional help at a distance.¹⁸⁵ The Centre for Multicultural Youth discussed the complexity of child protection involvement with CALD families:

Family support and child protection workers are often ill-equipped or not confident in working with families from migrant and refugee backgrounds. A lack of understanding around language barriers, correct use of interpreters, the centrality of building trust and rapport before meaningful work can be achieved, and a lack of knowledge around cultural issues which may require a different approach or intervention are some of the key areas that need to be addressed.¹⁸⁶

The Commission was told of examples of mainstream services successfully running programs for CALD women. Merri Community Health Services ran an Arabic Speaking Women's Family Violence Program facilitated by an Arabic-speaking counsellor and a family violence counsellor.¹⁸⁷ It reported that the program was promoted and facilitated in a culturally-appropriate way that attracted women who would not have attended a mainstream group. The women who participated in the program reported that they developed an awareness of their rights and a knowledge of community support options. They appreciated the opportunity to have 'a culturally safe space to interact socially' and to just 'be together and share experiences and stories'.¹⁸⁸

Another example is the Safe from Harm project run by the Moonee Valley Legal Service; it aims to raise awareness about family violence in CALD communities living in public housing estates in Flemington and Ascot Vale through the provision of legal advice, assistance and education.¹⁸⁹

Submissions noted that CALD-specific community organisations also need support to build their response to family violence and to work in the community to respond to it:

Government and other funding bodies should, at a minimum, make funding available to community organizations, ethno-specific and multicultural organization[s] to train and develop staff to improve responses to clients presenting with issues relating to family violence. Many services, for established and new and emerging communities, are the first and sometimes the only contact a person may make on this serious issue.¹⁹⁰

Clients and workers from Australia's settlement services have suggested that family violence awareness-raising could also be reinforced through settlement services:

[O]rientation programmes for new arrivals and the Adult Migrant English Program could provide an appropriate setting to further explain Australian law and cultural norms in relation to family violence and sexual assault. Programmes could also support discussion of differing expectations regarding gender roles and ensure that clients understand how to access support services.¹⁹¹

Specialist family violence services

Shakti Australia told the Commission the 'culture neutral' stance of specialist family violence services was problematic and did not adequately respond to the particular needs of CALD women.¹⁹² The Commission also heard directly from CALD victims, including refugees, about the difficulties they had experienced when trying to gain access to services. Some women encountered discriminatory or unhelpful attitudes; for example, in one refuge a staff member repeatedly asked one woman why she 'didn't just go back to India'.¹⁹³

Mainstream services face serious challenges in effectively addressing family violence in immigrant communities. Multiple factors have contributed in creating these challenges, but primarily the differences in the conceptualization of violence against women between mainstream services and immigrant communities. Mainstream service providers, based on a model of individual rights, perceive violence and abuse against women as non-negotiable, and the safety of abused women is the priority in these situations. While immigrant cultures also see abuse as unacceptable, the approach tends to differ. Family violence against women is often seen as a family matter, which implies that only family can and should resolve it without intervention from anyone outside the family. There are particular challenges facing communities from collective societies. There is an expectation that personal needs will be subordinated to those of the collective. Women are expected to maintain harmony in order to uphold the family's status and reputation. In summary, there are many barriers that prevent women from CALD backgrounds from accessing services or assistance relating to family and domestic violence.¹⁹⁴

Many submissions emphasised that specialist family violence services need further support to strengthen their capacity to identify and respond to the needs of CALD communities.

The additional needs and complex presentations among many victims and perpetrators of family violence are widely understood as challenges for the service system. The multiplicity of issues represented here across a range of incident types means that no single prevention strategy is likely to prove effective in this area. However, it reflects the need for both mainstream and specialist services to give adequate weight to the contributions of vulnerability factors (i.e. CALD background, disability, mental health issue or substance dependence) when assessing risk, undertaking safety planning or formulating intervention strategies.¹⁹⁵

There is a general need for all service providers to be culturally sensitive to the community and their needs ... There needs to be culturally sensitive support for victims prior to seeking an intervention order, and once the intervention order is given, the woman needs to be supported to feel safe. There is insufficient housing and help available to women in emergency situations ... More refuges are needed along with a reassessment of how refuges are used and help to provide support. CALD communities in particular are not comfortable sharing houses with multiple families as is the model in the west. Lack of refuge housing often means that women will return to the abusive situation rather than seek help. Domestic violence in this community is severely under reported because of the public knowledge of violence and death that women have suffered for separating or reporting violence in the community.¹⁹⁶

The failure of specialist family violence services to provide culturally appropriate information and assistance can cause CALD victims to disengage from such services at an early stage.¹⁹⁷

CALD-specific family violence services

Studies have found that CALD women would prefer 'ethno-specific' family violence services.¹⁹⁸ Currently, InTouch is the only family violence service in Victoria that provides services specifically for CALD women. It provides case management and access to legal advice, migration advice, counselling and court support. Ms Maya Avdibegovic, Chief Executive Officer of InTouch, gave evidence that 12 case workers provide services in 25 different languages across Victoria. She added that the case workers' ability to directly develop a trusting rapport with clients without the need for an interpreter makes 'a huge difference':¹⁹⁹

... making that first initial contact with a client, it makes [an] enormous difference when it's done in a language by someone who understands the culture and the whole understanding of family violence in that culture.²⁰⁰

Although the availability of CALD-specific services and community supports is crucial, there are also benefits to be gained if CALD communities use mainstream family violence services. Mainstream services may offer benefits such as neutrality, a greater assurance of confidentiality and an 'outside' perspective in situations of family violence, sexual assault, community pressure and harassment:²⁰¹

... there are also risks associated with [CALD] services that serve specific cultural groups. These include safeguarding service recipients' privacy and confidentiality and ensuring that prominent community members do not exert undue influence in organisations in ways that privilege men over the safety and rights of women.²⁰²

Culturally appropriate programs for men

A number of submissions referred to the lack of culturally appropriate men's behaviour change programs for perpetrators of family violence.²⁰³ In particular, perpetrators who do not speak English have limited access to such programs.

At present very few culturally specific men's behaviour change programs are offered—Kildonan Uniting Care runs a program delivered in English for men from South Asia and Relationships Australia delivers a program for Vietnamese-speaking men. A behaviour-change program for Arabic-speaking men is being developed.²⁰⁴ Each of these programs is designed in accordance with the No To Violence minimum standards and quality practice guidelines (see Chapter 18).

Kildonan Uniting Care submitted that its general program failed to take into account the 'cultural norms, beliefs and identity of men from South Asia, the social and economic implications of the migration and resettlement experience, and the lived experience of their communities'.²⁰⁵ Some men participating in the program viewed 'disciplining' their partner as appropriate and their responsibility, did not understand what family violence meant in Australia, and used the threat of deportation as a means of controlling their partner.²⁰⁶

The programs currently offered for South Asian and Vietnamese men cover pre-migration and settlement experiences, gender equality in Australia, understanding attitudes, values and behaviours that underpin family violence, and understanding that family violence consists not just of physical violence and that family violence is a crime.²⁰⁷

A number of submissions expressed support for the development of specific behaviour-change programs for CALD communities that are delivered in the relevant language and respond to the needs of that community, including dealing with family dynamics, pre-migration experiences and trauma.²⁰⁸ Others highlighted the need for further research into effective strategies for engaging with perpetrators of family violence from CALD communities,²⁰⁹ including directly engaging with these communities.²¹⁰

Overcoming language barriers

Many submissions noted the lack of interpreters throughout the family violence system and in intersecting health, and justice services as a major barrier for CALD communities.²¹¹

Failure to provide an interpreter may constitute discrimination and amount to a breach of the *Equal Opportunity Act 2010* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

Accordingly, the Victorian Government's policy on the use of interpreters states that clients who cannot communicate through spoken or written English should have access to professional interpreting services in three situations:

- ▷ when required to make significant decisions concerning their lives
- ▷ when being informed of their rights
- ▷ when essential information needs to be communicated to aid decision-making—including obtaining informed consent.²¹²

The policy also provides that family members or friends (including children) should not be used to interpret in situations involving critical information and decision making.²¹³ Particular risks arise when this occurs in the context of family violence, especially in the case of children.

The Commission was informed that this policy is not being consistently applied. For example, the Federation of Chinese Associations submitted:

It is important for women and their children in a life threatening situation for their calls for help [to be] dealt with immediately. Unfortunately, a number of our clients have expressed their disappointment with the system as they have had problems in find[ing] an online interpreter or person to help with the lifesaving call. During our day to day work we have found that [the] TIS service for Chinese especially for Mandarin speaking services have a long wait times, ... [I]magine people who have been subjected to domestic violence desperately needing help having to struggle to find an interpreter to connect them with crisis services at the same time in fear of their safety.²¹⁴

The Translating and Interpreting Service

The **Translating and Interpreting Service** is a national 24-hour, seven-days-a-week service operated by the Department of Immigration and Border Protection. TIS provides services to government agencies as well as businesses. It provides immediate, voice-prompted and pre-booked phone interpreting services and onsite interpreting services.

The **Victorian Interpreting and Translating Service** is a professional interpreting and translating service which provides services to businesses and government departments across Australia, 24-hours a day, seven-days-a-week. VITS provides certified translators and interpreters for a range of services including document translation, telephone translation and onsite interpretation. A telephone interpreter is provided for 95 per cent of all calls within three minutes.

Emergency responses

The Commission heard that 000 and crisis hotlines do not use interpreters as a matter of course, which can have tragic consequences for victims. As the Coroners Court of Victoria submitted:

A broad range of cultural groups have been represented among the fatal incidents investigated by the Coroners Court of Victoria, and cultural and linguistic diversity has been a particularly salient feature. Here, cultural and language barriers; traditional views of marriage; social isolation and a reluctance to speak out about abuse due to the negative perceptions of others were identified as relevant factors that shaped the victim's experience of violence. By way of example is Judge Gray's recent comments made in his finding into the death of Ms Marzieh Rahimi[:]

"With respect to Ms Rahimi's inability to make contact with police when she telephoned 000 on 1 November 2007, I reiterate the concerns raised by Her Honour Justice King and note that, currently, the 000 emergency call service does not have the facilities to translate different languages at the point of answer. If a caller to 000 is unable to speak English, their call is transferred to the capital city police in the state they are calling from, and an interpreter will then be arranged. In Ms Rahimi's case, it appears that she ended the call before this could occur."²¹⁵

Victoria Police

The Victoria Police Code of Practice for the Investigation of Family Violence states '[T]he police response to CALD communities needs to be sensitive to their diverse needs' and should involve 'interpreters being used at the earliest opportunity and at every stage while providing assistance'.²¹⁶ The Commission received evidence about initiatives designed to improve Victoria Police's response to family violence in CALD communities—among them cross-cultural training, the provision of cultural awareness guidelines, and the use of multicultural liaison officers who are full-time, sworn police officers located in areas with particularly large populations of CALD people.²¹⁷

Although some submissions commended Victoria Police for the improvements in its response to family violence in CALD communities,²¹⁸ the Commission did hear of cases in which police officers failed to respond to family violence incidents in a culturally sensitive way.

The Commission heard of problems with police practices in relation to interpreters, including not using interpreters, not notifying the court of the need for an interpreter when the police are applying for a family violence intervention order, relying on an interpreter from a different language group and inappropriately using children, people known to the perpetrator or the perpetrator themselves.²¹⁹ The Code of Practice expressly contemplates using an independent interpreter as soon as practicable following an incident.²²⁰ Children can be further traumatised by acting as interpreters after witnessing family violence.²²¹

As Superintendent Charles Allen, Priority Communities Division, explained, police can have difficulty arranging a face-to-face interpreter, especially if called out late at night or early in the morning, and so will make use of telephone interpreting services:

[It is] ... difficult to get an interpreter on their feet at a scene in a timely manner. So second best is telephone interpreting services or reliance on networks, which is less than best because that could be bringing another community member which could create a barrier to a safe place to have a conversation.²²²

Superintendent Allen went on to say that police sometimes use family members as interpreters if no other options are immediately available and information needs to be obtained quickly:

[Use of family members as interpreters is] not ideal ... [but] if the situation is very dynamic, police need to be able to draw out information quickly to be able to deal with the dynamics of a situation, hence why on occasions other approaches will be taken to try to get a sense of the issues at play.²²³

The Commission was also told that policing approaches in non-family violence-related matters can lead to general mistrust, such that community members, including victims, will not contact police for assistance with family violence. An example was that poor police relationships with young African Australian people have affected their parents' confidence in police.²²⁴

Former Victoria Police Chief Commissioner Mr Ken Lay APM noted in his foreword to Victoria Police's *Equality is not the Same* report and action plan:

We understand that public confidence is significantly impacted by both the experience and perception that police perform their duties in a manner that is procedurally just and fair, and that at all times we uphold individual rights and treat all persons with dignity and respect. Every interaction between a member of Victoria Police and a member of the community therefore matters, whether as a victim, offender, participant in community activities or in the course of routine daily activities. Therefore, where actions that so critically undermine confidence in policing such as racism or racial profiling remain a concern for communities, it is incumbent on us to be explicit in our zero tolerance of these and to demonstrate this commitment through action.²²⁵

At court

The difficulties victims of family violence can experience in the courts are discussed in Chapter 16. The situation is even more difficult for members of CALD communities, particularly if a person does not speak English, is unfamiliar with the Australian legal system, or has had negative experiences with government agencies in their country of origin.

The Commission was told that, although there have been some positive developments—for example, a full-time Vietnamese interpreter at Sunshine Magistrates' Court and translated directional signs at Heidelberg Magistrates' Court—the magistrates' courts remain 'highly inaccessible and disorientating for CALD women, which often exacerbates their trauma'.²²⁶

The Neighbourhood Justice Centre has developed an audio guide for making family violence intervention order applications that is available in various languages.²²⁷

Problems with access to interpreters at court was a strong theme. The Magistrates' Court currently arranges and pays for interpreters for accused persons in criminal proceedings (including paying for appointments with support services), applicants and respondents in intervention order proceedings and applicants in Victims of Crime Assistance Tribunal proceedings.²²⁸

In 2013–14 there were 1210 cases in which interpreters were requested by applicants and respondents in family violence intervention order applications.²²⁹ The number of respondents requesting interpreters in the Magistrates' Court has nearly doubled since 2004–05 from 235 to 417 in 2013–14.²³⁰ Requests for interpreters for family violence intervention order proceedings now account for about half of the Magistrates' Courts' total interpreter expenditure.²³¹

It was reported that interpreters sometimes had not been booked at court in advance of hearings or only one interpreter had been booked, resulting in long waiting times for an available interpreter.²³² The Magistrates' Court and the Children's Court described the problems in their submission:

Sometimes courts will only be able to secure one interpreter for a case, meaning that interpreter must provide assistance to both the applicant and respondent to an intervention order. This is highly unsatisfactory.²³³

Court Network submitted that generally interpreters are booked only until 1.00 pm, which can result in matters being rushed through before the interpreter leaves or the matter being adjourned.²³⁴ Other submissions noted that magistrates' courts are not uniformly equipped with multilingual signage and that forms, orders and information provided to parties may be unavailable in languages other than English. Family violence intervention orders are provided in English only, increasing the possibility that the parties will not understand what the orders mean.

The Magistrates' Court and the Children's Court called for additional funding to be provided to courts for adequately qualified legal interpreters for all family violence cases, and for information and materials on family violence to be available in a range of languages and delivered using modern best-practice communication approaches in a culturally appropriate manner.²³⁵

Women's Legal Service Victoria and Court Network submitted specific funding should be allocated for family violence interpreters in the Magistrates' Court and court guidelines should be developed that set out the process for booking interpreters in family violence matters—including:²³⁶

- a practice of booking two interpreters if both parties require an interpreter
- a presumption that a female interpreter be booked for a female party.²³⁷

These matters are discussed further in Chapter 16.

Improving family violence competency of interpreters

Professionals Australia's submission, made on behalf of the National Association of Translators and Interpreters Australia, reported a range of acute problems, among them the following:

- ▷ interpreters representing both parties to a family violence intervention order application because a second interpreter was not available
- ▷ interpreters displaying a lack of impartiality—including trying to persuade applicants to withdraw their application or return to a violent relationship, and criticising applicants for drawing negative attention to a particular community
- ▷ ad hoc use of family members and friends to act as interpreters
- ▷ use of interpreters with a history of family violence.²³⁸

An associated concern is lateral violence that female interpreters can face if they do family violence-related work in their own community and it is a community where such violence is tolerated, condoned or regarded as community business.

The Magistrates' Court and the Children's Court submitted:

Competent, ethical and highly skilled interpreters are an essential element in meeting some of the significant safety risks which exist for families from CALD communities living with family violence. An independent governance structure for interpreters, such as an improved accreditation process, would give the court greater confidence.²³⁹

The Commission is not aware of any compulsory training in relation to family violence being provided as part of the process of gaining a qualification as an interpreter. Professionals Australia submitted that interpreters should be provided with specialised training and support to deal with unique issues in the family violence context.²⁴⁰

The way forward

Conceptions of what constitutes family violence can differ across cultures. In some cultures, there can be a lack of institutional prohibition of the use of violence within families. It is clear, however, from the evidence presented to the Commission that attitudes, values and practices that at some level fail to recognise or condemn, or that promote, family violence exist in all cultures including Anglo-Australian culture. When considering the interplay between 'culture' and family violence, it is important to note that culture is not a cause of family violence. Nor does culture excuse violent and abusive behaviour. Culture is multi-layered, and the ways people view themselves through their cultural background can differ.

The effects of family violence experienced by people from culturally and linguistically diverse communities including recent arrivals, are compounded by a range of factors associated with the experience of migration and resettlement, as well as systemic barriers to seeking and obtaining help. The impact of family violence on CALD women who do not have permanent residency is particularly severe because they may have very limited or no access to support and can be at greater risk of coercion and control by sponsoring spouses and other family members.

In addition to forms of family violence experienced in all communities, women in some CALD communities experience some specific forms—for example, forced marriage, female genital mutilation, and dowry-related violence. These forms of abuse are not readily recognised as family violence by some within these communities.

Both mainstream universal services and specialist family violence services struggle to provide culturally appropriate services for victims. The services designed specifically for victims from CALD backgrounds are limited. There are also limited opportunities for men from CALD communities to participate in behaviour change programs that are culturally specific or in their own language. While exposure to pre-arrival violence and trauma does not excuse the perpetration of family violence in relationships, it does reveal the importance of understanding the experiences of some CALD communities and developing appropriate behaviour-change programs.

Mainstream universal and specialist services must be more responsive to the needs of people from CALD communities who are affected by family violence. They should be supported by organisations with the requisite expertise to build the services' capacity to respond appropriately.

The availability of professional and independent interpreting and translating services is inadequate. Professional accreditation standards for interpreters should be amended to incorporate minimum requirements relating to understanding the nature and dynamics of family violence. This will require a national effort.

The Commission acknowledges and agrees that more needs to be done to improve the prevention and response to family violence in CALD communities. Initiatives aimed at promoting the prevention of family violence should reflect the diversity of the Victorian community and be tailored in consultation with CALD communities to meet their specific needs. It is important to encourage and support women in these communities to express their views.

The Commission's recommended priority areas for action are set out below. These are in addition to the recommendations we make elsewhere in this report to improve the responsiveness of the family violence system to the diverse experiences of victims.

Strengthening mainstream services

CALD communities face difficulties gaining access to mainstream services. These services need to develop their capacity to provide adequate culturally-specific services to meet demand.

Service providers such as general practitioners, maternal and child health nurses, and hospitals need to improve their capacity to recognise family violence in CALD communities—including female genital mutilation, forced marriage and dowry-related abuse—and to respond in a culturally appropriate way. This may be assisted if the Family Violence Protection Act were to contain statutory examples of such abuse.

CALD-specific community organisations need support in building their response to family violence and in working within communities to redress it. In particular, settlement services require greater Commonwealth government support in working with people affected by family violence.

Recommendation 156

The Victorian Government amend section 6 of the *Family Violence Protection Act 2008 (Vic)* to expand the statutory examples of family violence to include forced marriage and dowry related abuse [within 12 months].

Strengthening specialist family violence practices

Specialist family violence services need support in strengthening their capacity to identify and respond to the needs of CALD communities and providing culturally appropriate services.

There are two important elements to developing this capacity. First, services should seek to employ workers with relevant bicultural and bilingual skills to meet the needs of specific communities. There are many people in CALD communities whose skills and expertise could be drawn upon. The industry plan recommended in Chapter 40 will facilitate this.

Secondly, the secondary consultation model should be strengthened. As a dedicated statewide CALD-specific family violence organisation, InTouch is ideally placed to offer its expertise (and if required, a secondary referral pathway) to other specialist family violence services, as well as mainstream services. The Commission understands this service is already offered but is overstretched.

This approach encourages specialist family violence services to build their own culturally-appropriate practice, with the ability to call on specialist help where required, without having to establish multiple new organisations and services. In view of the increased demand for such services, InTouch will require increased investment and support from government if it is to do this effectively.

There should be greater collaboration between mainstream, specialist family violence and ethno-specific services to respond to the needs of population groups at the local level; this entails, among other things, direct engagement with new and emerging communities in order to improve responses to them, and the inclusion of CALD community members on the boards, and in the management and staff of service providers. Similarly, organisations providing services to CALD communities, for example refugee support organisations, should seek to develop their understanding of and capacity to address family violence through such collaboration.

Overcoming language barriers

Access to interpreting services must be improved throughout the family violence system and in intersecting health, human and justice services.

As a front-line responder to family violence, Victoria Police needs to improve compliance with its Code of Practice in relation to the use of interpreters and avoid using perpetrators, children or other family members as interpreters, or using the same interpreter for both perpetrator and victim.

Victoria Police should continue its cross-cultural training to improve its response to family violence incidents in CALD communities as well as to build the confidence of and relationship with these communities generally.

The number of adequately qualified legal interpreters for family violence cases must be increased to ensure access to justice for CALD communities. The Commission agrees with the submissions from Court Network and the Magistrates' Court and Children's Court calling for additional funding in this regard. Listing and other administrative practices could also be improved to promote as much efficiency as possible in the use of interpreting services. In addition, information and materials on family violence should be made available in a range of languages and delivered using modern best-practice communication approaches in a culturally appropriate manner. The Neighbourhood Justice Centre's audio guide should be used more widely.

In view of the special vulnerabilities of CALD communities, the Commission is concerned that there is no compulsory family violence training for interpreters. Interpreters should receive training in the dynamics of family violence.

Recommendation 157

The Victorian Government update its guidelines on policy and procedures in using interpretative services to specifically deal with family violence—in particular, the risks of using perpetrators, children and other family members as interpreters, as well as using the same interpreter for both perpetrator and victim [within 12 months].

Recommendation 158

The Magistrates' Court of Victoria allocate specific funding for family violence interpreters and develop court guidelines for booking interpreters in family violence matters [within 12 months]. Among other things, the guidelines should take account of the following:

- ▷ an early process for checking whether parties require an interpreter
- ▷ a practice of booking two interpreters if both parties require an interpreter
- ▷ a presumption that wherever possible a female interpreter will be booked for a female party.

Recommendation 159

Victoria Police [within 12 months]:

- ▷ amend the Code of Practice for the Investigation of Family Violence to emphasise the risks associated with using children as interpreters and using the same interpreter for both perpetrator and victim, as well as to provide practical guidance to officers on the use of interpreters
- ▷ provide training at all appropriate levels on the amended Code of Practice requirements relating to interpreters.

Recommendation 160

The Victorian Government, as a member of the National Accreditation Authority for Translators and Interpreters Ltd, work with the other members of the authority to ensure that accreditation and testing processes and approval of translator and interpreter courses require an understanding of the nature and dynamics of family violence [within two years].

Assisting recovery

Culturally appropriate therapeutic programs and counselling—for both individuals and groups—should be supported. It is especially important that these programs are sensitive to any previous trauma people from CALD backgrounds might have experienced as a consequence of pre-migration events and settlement in their new country. Recovery is not just limited to counselling: it also calls for opportunities to participate in the community and enjoy time with friends and family in a supportive environment.

Initiatives such as those organised by InTouch are an important part of the healing process and should be supported, as should dedicated efforts to facilitate financial recovery and economic security through education and employment support, financial literacy and debt recovery initiatives.

Prevention and early intervention

A sustained focus on prevention and early intervention is as important in CALD communities as it is in other communities. Prevention work in communities requires a rights-based approach that gives priority to safety, choices and empowerment of victims and responds to the increasing diversity in the composition and geographic settlement patterns of migrants in Australia. Prevention of family violence in CALD communities requires targeted initiatives with particular communities and sub-populations.

The Commission supports initiatives that are designed in collaboration with CALD communities themselves, involve women and respond to the particular community's needs. This should form part of a prevention strategy for Victoria.

The Commission is encouraged by the role that school-based respectful relationship programs can play in preventing family violence in CALD populations, if the programs are tailored to meet the needs of specific communities. This is discussed further in Chapter 36.

Community awareness and information

The greater use of audio material to explain and provide family violence intervention orders, should be explored.

Most order conditions are standard and could be pre-recorded in a number of languages. Access to audio information that accommodates differing literacy levels would allow for a better understanding of orders for all parties and potentially reduce the number of breaches resulting from misunderstanding what an order entails. An audio format would also be of use for people with poor literacy (who could additionally benefit from access to Easy English resources) and those with visual impairments.

The Commission welcomes the Commonwealth Government's initiative to provide information packs to migrants, although it recognises that migrants can be overwhelmed with information when they arrive. Consideration should be given to developing pre-arrival packs for migrants, covering Australian laws and expectations around family violence, including the potential for criminal sanctions and deportation.

The Commission agrees that there is a need to develop a strategy to raise awareness in some CALD communities that female genital mutilation is an illegal practice with negative health consequences.

Recommendation 161

The Department of Health and Human Services, in collaboration with the Victorian Multicultural Commission, community organisations and other relevant bodies, develop a strategy for informing service providers, specialist family violence services and other community organisations about the health impacts of female genital mutilation, emphasising that it can be a form of family violence and a criminal offence [within 12 months].

Family violence exception for visa applicants

The Commission considers that the Migration Regulations 1994 (Cth) should be amended to allow a person who experiences violence perpetrated by a family member other than the person's spouse to apply for the family violence exception. Unlike the Family Violence Protection Act and other equivalent state and territory legislation, the current approach does not encompass other forms of family violence (for example, parent-on-child, child-on-parent and sibling-on-sibling violence).

The range of people entitled to Commonwealth crisis payments on account of family violence should be enlarged to reflect all forms of family violence (and be available regardless of their visa status).

Recommendation 162

The Victorian Government, through the Council of Australian Governments, encourage the Commonwealth Government to broaden the definition of family violence in the *Migrations Regulations 1994* (Cth) so that it is consistent with the *Family Violence Protection Act 2008* (Vic) and to ensure that people seeking to escape violence are entitled to crisis payments (regardless of their visa status) [within 12 months].

Endnotes

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- 3 Ibid.
- 4 VicHealth, AMES Australia and Lyn Walker and Associates, 'Understandings and Actions to Prevent Violence Against Women in CALD Communities' (2015) (unpublished, copy on file with author) 37–8.
- 5 Cathy Vaughan et al, 'Promoting Community-led Responses to Violence Against Immigrant and Refugee Women in Metropolitan and Regional Australia: The ASPIRE Project' (Landscapes: State of Knowledge No 12, Australia's National Research Organisation for Women's Safety, October 2015) 6; Department of Social Services (Cth), 'Hearing Her Voice: Report from the Kitchen Table Conversations with Culturally and Linguistically Diverse Women on Violence Against Women and Their Children' (September 2015) 9.
- 6 See, eg, Department of Social Services (Cth), above n 5, 9.
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- 8 Vaughan et al, above n 5, 20.
- 9 In the Australian Bureau of Statistics' Personal Safety Survey, the notes on data collection indicate that restricted access to bi-lingual interviewers make it likely that the survey 'may under represent those from a non-English speaking background': Australian Bureau of Statistics, 'Personal Safety, Australia, 2012' (Catalogue No 4906.0, Australia Bureau of Statistics, 2013); Vaughan et al, above n 5, 6.
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- 12 Janet Phillips and Penny Vandenbroek, 'Domestic, Family and Sexual Violence in Australia: An Overview of the Issues' (Research Paper Series, 2014–15, Parliamentary Library, Parliament of Australia, 14 October 2014) 12.
- 13 Ibid 32.
- 14 Vaughan et al, above n 5, 13.
- 15 Crime Statistics Agency, *An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14* (January 2016), 80.
- 16 Women's Health West Inc, Submission 239, 34.
- 17 Safe Steps Family Violence Response Centre, Submission 942, Appendix 2, 6.
- 18 Ibid.
- 19 Alison Howarth, 'Domestic and Family Violence Crisis Lines of Australia Network (DFVCLAN)—Statistics Report 2015: An Examination and Analysis of Female Victims of Domestic and Family Violence in Australia without Australian Permanent Residency Contacting the State-wide Crisis Lines of Australia for the Period October to December 2014' (Domestic and Family Violence Crisis Lines of Australia Network, April 2015) 5.
- 20 Ibid.
- 21 Whittlesea Community Futures Partnership, Submission 392, 10.
- 22 Vaughan et al, above n 5, 2.
- 23 VicHealth, AMES Australia and Lyn Walker and Associates, above n 4, 8.
- 24 Ibid 10.
- 25 Ibid 12.
- 26 Ibid.
- 27 Ibid.
- 28 'Of the 44 specific projects identified, the majority were located in Victoria. The work conducted and supported by VicHealth during this ten-year period is likely to have contributed to the higher level of activity in primary prevention with CALD communities. Of the projects in Victoria, the primary strategies in descending order were: 1) community strengthening, 2) communications using multimedia, 3) individual-level change, 4) research and 5) policy reform': Ibid 31.
- 29 InTouch Multicultural Centre Against Family Violence, Submission 612, 18.
- 30 See, eg, Whittlesea Community Connections, Submission 375, 15.
- 31 See, eg, cohealth, Submission 852, 42.
- 32 Barwon Area Integrated Family Violence Committee, Submission 893, 11.
- 33 cohealth, Submission 852, 39.
- 34 InTouch Multicultural Centre Against Family Violence, Submission 612, 21.
- 35 See, eg, Victoria Legal Aid, 'Settled and Safe Training' (25 June 2015), produced in response to the Commission's Notice to Produce dated 5 June 2015; Victoria Legal Aid, 'Settled and Safe' (April 2014), produced in response to the Commission's Notice to Produce dated 5 June 2015.
- 36 Department of Social Services (Cth), above n 5, 18.
- 37 Ibid.
- 38 Ibid 34.
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- 40 Minister for Social Services, The Hon Scott Morrison MP, Minister Assisting the Prime Minister for Women, Senator The Hon Michaelia Cash, and the Parliamentary Secretary to the Minister for Social Services, Senator The Hon Concetta Fierravanti-Wells, above n 10.
- 41 See Department of Social Services (Cth), *Family Safety Pack* (10 August 2015) <<https://www.dss.gov.au/family-safety-pack>, accessed 31 August 2015>.
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71 Ibid; Vaughan et al, above n 5, 36.

72 72 Victorian Multicultural Commission, Submission 887, 11.

73 73 Ibid.

74 Ethnic Communities' Council of Victoria, above n 67, 12.

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77 InTouch Multicultural Centre Against Family Violence, 'I lived in fear because I knew nothing: Barriers to the Justice System Faced by CALD Women Experiencing Family Violence' (2010) 15.

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86 Community consultation, Werribee 1, 11 May 2015.

87 Community consultation, Ravenhall, 11 May 2015.

88 Shakti Migrant and Refugee Women's Support Group Melbourne Inc, Submission 500, 8.

89 Transcript of El Matrah, 11 August 2015, 2628 [4]–[10].

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- 148 Australian Catholic Religious Against Trafficking in Humans, Submission 547, 3.
- 149 InTouch Multicultural Centre Against Family Violence, Submission 612, 15.
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- 178 Ibid 4–5, 17.
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- 235 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 8.
- 236 Women's Legal Service Victoria—01, Submission 940, 8.
- 237 Court Network, Submission 927, 5.
- 238 Professionals Australia, Submission 442, 6–12. See also WAYSS Limited, Submission 542, 44.
- 239 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 43.
- 240 Professionals Australia, Submission 442, 8.

29 Faith communities

Introduction

Faith-based communities and organisations play an important role in the lives of many Victorians. These communities and organisations offer a vital opportunity to reach people who are affected by family violence, many of whom might not use formal family violence service pathways to seek help. It is therefore important that faith-based communities address barriers to the disclosure, prevention of or recovery from family violence and make it clear that religion cannot be used by perpetrators and others to condone or excuse abusive behaviour.

The first section of this chapter discusses evidence before the Royal Commission about the importance of faith communities in interacting with people affected by family violence; these communities are well placed to educate their members, influence attitudes and individuals' behaviours, respond to violence, provide support to victims, and facilitate referrals.

In its community consultations the Commission heard from leaders of a number of faith communities—as well as from women and from people working in the family violence field—about the support that faith communities can provide to people affected by family violence. The Commission also heard, however, that women experiencing family violence can face barriers to seeking help within their faith communities as a result of particular religious beliefs and practices.

The second section of this chapter outlines some of the issues leaders and members of faith communities raised. Spiritual abuse and the use of faith to support or condone violence are concerns in some communities. The Commission also heard that training for faith leaders in recognising and responding to family violence is inadequate. This lack of awareness of and knowledge about how to respond to disclosures of family violence limits communities' ability to support those experiencing such violence. Several examples of initiatives led by different faith communities, with the aim of preventing and responding to family violence, are also documented.

The chapter concludes with the Commission's views and recommendations relating to the need to facilitate and resource a multi-faith approach to improving information, training and responses to family violence in all faith communities and to ensure that family violence services take account of the needs of women from faith communities who seek their support.

Context and current practice

A wide range of faiths are practised by people in Victoria. In the 2011 census 67.7 per cent of Victorians indicated a religious affiliation. In terms of numbers, the most prominent faith communities are Western Catholic (26.6 per cent), the Anglican Church of Australia (12.3 per cent), the Uniting Church (4.7 per cent), Buddhism and Greek Orthodox (both 3.1 per cent) and Islam (2.9 per cent).

A comparison of census data for 2006 and 2011 reveals different trends for the top-ranking religions: the predominance of Christian faiths has declined slightly, whereas the number of Victorians of non-Christian faith has increased considerably. For example, the number of adherents of Buddhism increased by 27.1 per cent; the number of those adhering to Islam increased by 39.7 per cent; the number of Hindus increased by 96.5 per cent, and the number of Sikhs increased by 224.6 per cent.¹

Although there is no data on the prevalence of family violence in particular faith communities, anecdotal evidence suggests that such violence is causing increasing concern among those communities and their leaders.²

As noted in Chapter 28, both culture and faith can add complexity to a victim's experience of family violence and their ability to gain access to services. Importantly, however, the difficulties culturally and linguistically diverse communities and faith communities face are often distinct. People might share the same cultural practice yet come from different faith traditions.

The role of faith and faith-based responses to family violence was mentioned at a number of community consultations with women and people working in the family violence field and in submissions to the Commission. The comments predominantly related to the Christian, Jewish and Muslim faiths.

With the assistance of the Office for Multicultural Affairs and Citizenship, the Commission arranged a faith leaders consultation that was attended by representatives of the Anglican, Catholic, Jewish, Hindu, Muslim, Coptic Orthodox and Russian Orthodox communities.³ The consultation provided valuable insights into the experiences of faith leaders. All the leaders recognised that no faith community is immune from family violence by reason of their particular faith. The consultation also afforded the Commission an opportunity to hear about work being done in some communities to prevent and respond to such violence.

The importance of faith-based responses to family violence

Faith communities are 'vital settings' for dealing with family violence for a number of reasons:⁴

- ▷ They have an ability to reach and engage people who might not approach formal service providers in the family violence system.⁵
- ▷ They are places where people can go to find 'solace, meaning, comfort and support',⁶ and they can create supportive social networks for their members who are affected by family violence.
- ▷ They can provide education to their members about family violence.⁷
- ▷ Faith leaders occupy a position of authority in their community and have the ability to influence the behaviour of community members.⁸
- ▷ They can sensitively introduce ways of seeing the roles of men and women in society to members of their own communities, without being seen as 'outsiders'.⁹

Along with friends, family members and work colleagues, ministers of religion feature among the groups of people identified as the most common source of support following a woman's most recent physical assault by her cohabiting partner and in cases of assault generally.¹⁰

An international study commissioned by the United Kingdom's Department for International Development looked at the available literature and held consultations with a variety of experts from around the world on the topic of faith-based prevention and response activities. While noting that the existing literature primarily focuses on particular regions and particular religions,¹¹ the report stated:

The literature and experts agree ... that faith communities are present at grassroots level, all over the world, have existed for generations, are present before, during and after political unrest, and are insiders within the communities they serve. They are thus an integral part of a holistic response to SGBV [sexual and gender-based violence], able to carry out long-term interventions that aim to impact the root causes of SGBV. Particularly faith leaders, as moral authorities, have the potential to influence an entire community.¹²

In view of the authority faith leaders possess and the trust their communities place in them, these leaders are ideally positioned to influence community attitudes and provide strong leadership in relation to family violence:

The influential and respected position held by community and religious leaders provides an opportunity to foster genuine leadership on family violence, particularly in CALD communities. Religious leaders are in the unique position of being asked to provide spiritual guidance and support both to survivors and perpetrators of family violence.¹³

Our experience has shown that congregants who are victims of abuse often disclose to their rabbi; therefore, rabbis play a vital role in enabling vulnerable community members to move forward to create positive change in their lives and the lives of their families.¹⁴

Many faith-based organisations also deliver important services to victims and perpetrators of family violence through their community service agencies. In some instances, however, the beliefs of certain faith groups can become barriers to gaining access to those services.¹⁵

Faith-based initiatives

The faith leaders who participated in the Commission's consultation acknowledged that family violence is a problem facing all faith communities. They also agreed that much could be learnt from the experience of responding to family violence across faith traditions and by drawing on common teachings about compassion, respect and dignity.¹⁶ In relation to Islam, the Australian Muslim Women's Centre for Human Rights stated that the faith is 'a powerful and effective framework towards [family violence's] eradication'.¹⁷

Faith leaders spoke of the diversity that exists between and within faith communities and acknowledged the need to tailor responses to family violence to meet the requirements of their particular communities.¹⁸

Experience suggests that the most effective way of dealing with family violence in faith communities is on a faith-by-faith basis. Drawing on his experience working on the Northern Interfaith Respectful Relationships Project, Mr Scott Holmes, Project Manager, Health Promotion at YMCA Victoria, gave evidence that:

... it is probably much more productive to actually work from a faith by faith basis so that each of those faith traditions can be dealing with the issue in the context of their sacred text, their cultural backgrounds, their world views and so forth.¹⁹

A number of faith communities have been doing important work on preventing and responding to family violence. The Commission was told about the following initiatives:

- ▷ Anglicans Helping to Prevent Violence against Women, launched in October 2011, is a model of primary prevention that seeks to reduce the prevalence of violence by building a culture of equal and respectful gender relationships in Anglican organisations and local churches. The Anglican community has delivered active bystander training, peer mentoring and training in violence prevention in a number of parishes.²⁰
- ▷ The CHALLENGE Family Violence project, a partnership between the City of Casey, Cardinia Shire Council, the City of Greater Dandenong and Monash Health, provided training to local faith leaders and supported them in producing a resource entitled *Creating Equality and Respect: An Interfaith Collaboration on Preventing Family Violence*, which is designed to assist faith leaders in preventing family violence in their communities.²¹
- ▷ The Northern Interfaith Respectful Relationships project was a partnership between Darebin City Council and VicHealth and involved initiatives such as forums and workshops for faith leaders to raise awareness of family violence, production of a manual and tool kit, promotion of White Ribbon Day activities among the faith communities, and a peer mentoring program.²²
- ▷ In partnership with the Rabbinical Council of Victoria, the Jewish Taskforce Against Family Violence published *Will My Rabbi Believe Me? Will He Understand? Responding to Disclosures of Family Violence in a Rabbinic Context*, which is designed to help rabbis respond appropriately to disclosures of family violence.²³ The taskforce also provides training for rabbis about family violence and training to Victoria Police, Domestic Violence Victoria and maternal and child health nurses about Jewish cultural and religious traditions.²⁴ Faith leaders told us this training has been very useful in helping mainstream services respond more sensitively to Jewish women experiencing family violence.²⁵
- ▷ The Islamic Council of Victoria has assigned an imam to visit a different mosque each week to speak about family violence and stress that it is not acceptable.²⁶

Challenges and opportunities

This section outlines some of the challenges and other matters leaders and members of faith communities raised with the Commission and provides several examples of initiatives led by different faith communities with the aim of preventing and responding to family violence.

Faith leaders' views on family violence

In the majority of cases where women had sought assistance from faith communities in which the leaders, the commission was told the leaders were predominantly or exclusively men.

Some women received valuable support after they had disclosed family violence.²⁷ For example, one woman told us her priest helped her secure sole custody of her children and was of great emotional support to her, which was particularly important since she had no family in Australia.²⁸

For many women, however, the response was inadequate. The Commission heard that some faith leaders were uninformed and ill-equipped to respond to such disclosures: 'often the advice given wasn't helpful because the faith leader didn't know what kind of advice to give.'²⁹

My mother was repeatedly advised by elders in our church that she should stay with my father when she approached them for advice or when things at home had become intolerable.³⁰

At some point in our marriage I went to speak to our religious leader and ask advice about my husband's abusive behaviour. The religious leader advised me that perhaps if the house was cleaner when my husband got home, or if I cooked better, he might not be so angry. As a result of confiding to my religious leader, I was referred to a counselling service that advised me on how to be a more obliging and obedient wife.³¹

In other examples provided to the Commission, faith leaders colluded with perpetrators of family violence:

I was manipulated to stay within my marriage by five different ministers and respective congregations ... One church assisted my ex-husband to hide assets. Another minister phoned my friends and warned them to have nothing to do with me, [and] reveal where I was hiding. Another declared I was protected by God because I didn't die in the assault and to drop the AVO and return to my marriage because I married in sickness and in health, and he was only 'sick'. I was told I am my husband's property ... to be obedient so he wouldn't have to hit me, don't place demands, allow him to try and be a man, and be more loving etc, to the point of one congregation member coaching him in how to respond/act regarding psych evaluations and questioning ... I am gravely concerned about the lack of skills for lay ministers, counsellors and psychologist in the area of family violence counselling. One church-sponsored counsellor said 'Be gentle with him, he's trying to be a man'.³²

Some women felt pressured to remain in abusive relationships because of attitudes towards marriage and divorce:

[Family violence] was never, ever spoken of in my church. All that was spoken of was that a wife should submit to her husband. That women should submit to men. That women were not to speak in church. Not to lead prayer or deliver Scripture ... Divorce was considered unacceptable. Abuse was never spoken of so I have no idea whether it would have been an acceptable reason for someone to leave a marriage. I doubt that it would have been. Marriage vows were taken for better or worse. No matter what. You should just pray harder if things were difficult.³³

There was also a perception that ‘religious leaders simply reinforce the patriarchy’.³⁴ This view, which was expressed during the community consultations, has also been noted in recent research:

Most of the faith leaders are male and their reading and interpretation of holy scriptures often carry a decidedly patriarchal bias. Many participants argue that it is because there is an interweaving and cross-contamination of religion and patriarchal culture. Thus religion, and the way faith leaders interpret and teach it, echoes the patriarchal cultural ideas of male and female roles and power dynamics ... The way it is done actually at times facilitates and justifies [sexual and gender-based violence], for beliefs that justify and enable violence are preached and condoned. These include beliefs such as that wives should be submissive, and that women are the property of men.³⁵

In some faith communities the decision not to inform a secular authority of family violence is based on the stigma and shame associated with such a disclosure. The Commission heard that women can be pressured to ‘keep everything in the community’ and that if they seek outside help they are ‘shunned, stigmatised, isolated’.³⁶ One woman said that, although she was brought up to believe her faith leader would help in a time of crisis, she felt she could not turn to him because ‘if you spoke out you were committing a sin’.³⁷

The Casey Multi-Faith Network reported:

We have felt that faith communities often don’t want to be associated with issues related to family violence for fear of stigma or other such apprehensions. We have often found that faith communities want to brush such issues as family violence under the carpet and either do not want to deal with the problems, or want to hide them.³⁸

The Commission heard that in parts of the Jewish community there is ‘heavy reliance on keeping individual problems, such as family violence and child sexual abuse, within the community itself so as not to be seen to bring shame onto the community for exposing these problems to the non-Jewish community’.³⁹

Equipping faith leaders

The Commission heard that many faith leaders have received no training in dealing with family violence or were trained long ago. Mr Holmes noted during his evidence:

... the faith leader might think that they can care for both the victim and the perpetrator equally and not understand that there’s differences of power going on in those relationships and that they may not be the best person to care for both the victim and perpetrator, or indeed either, and need to refer elsewhere. So there is a role there to try to ensure that faith communities have best practice in terms of how to deal with their members who are experiencing family violence.⁴⁰

Some faith leaders were trained in countries where the understanding of relationships and gender roles was different from that in Australia.⁴¹ As a result of increased migration, some faith communities are now more culturally diverse, and faith leaders might not be properly equipped to understand the cultural practices of new communities aligned with a particular faith and where these practices might be misused. As was noted during the Commission’s consultation with faith leaders:

We also need to improve the cultural competence of the clergy to understand these issues [cultural dimensions of family violence, such as dowry]. Many clergy also come from other cultures and don’t fully understand what the issues are. More education and more opportunities for upskilling within the clergy are needed. We also need to have women in pastoral leadership roles as sometimes women won’t feel comfortable coming to a priest in what they perceive to be a very patriarchal system. Access to appropriate pastoral carers is really important.⁴²

In addition, a reluctance in some communities to discuss sex and related matters can inhibit discussion about sexual and family violence:

Addressing SGBV [sexual and gender-based violence] within and through faith communities is thus challenging, for one has first to deal with the refusal to even mention the topic. This refusal to mention or discuss SGBV often extends to the underlying causes of SGBV as well such as patriarchy, power and gender inequality.⁴³

Ms Joumanah El Matrah, Australian Muslim Women's Centre for Human Rights gave evidence about the importance of attitudes to gender equality among faith leaders and suggested this should be the focus of further training:

... while religious leaders may not agree with violence against women, a great number of religious leaders do see men and women as unequal and the idea of men being superior to women is one of the lead contributors to violence against women. Unless that shifts, no amount of support to them to eradicate violence is going to work.⁴⁴

Faith leaders also emphasised the importance of theological training to aid with contemporary interpretation of religious texts that might otherwise be seen to condone violent and controlling behaviour.⁴⁵

Using faith to support or condone the use of violence

The Commission heard that some men use faith to excuse their behaviour. Ms El Matrah gave evidence about the concept of 'spiritual abuse', which she explained as 'the use of religion to justify gender inequality and to justify violence against women'.⁴⁶ Spiritual abuse can occur in all faith communities and can include the following:

- ▷ using religion to dominate, exercise authority and claim superiority
- ▷ using someone's religious or spiritual beliefs to manipulate the person
- ▷ providing to someone incorrect religious information in order to promote the provider's own interests and needs
- ▷ preventing someone from practising their religious and spiritual beliefs
- ▷ ridiculing someone's religious or spiritual beliefs
- ▷ refusing a religious divorce.⁴⁷

The Commission heard that refusing a religious divorce is a particular concern in the Jewish and Muslim communities. Some men use their capacity to refuse a religious divorce as a means of manipulating or otherwise exerting control over women.

In the Orthodox Jewish community religious divorces are arranged by a rabbinic tribunal and entail the delivery of a divorce document called a *gett* from the husband to the wife.⁴⁸ Jewish Care Victoria told the Commission:

A woman who is refused a [gett] is referred to as an *agunah* (a chained woman). Gett refusal is often another form of abuse as it enables one party (the man) to exercise inappropriate power and control over the other. Without a [g]ett, the divorce is not recognised under Jewish law even if Australian courts grant the divorce.⁴⁹

If a man refuses to give his wife a *get*, she will be prevented from remarrying according to Jewish Law and from subsequently having children who can participate fully in the religious community.⁵⁰

In connection with the Muslim community, the Commission heard the following:

In some communities [polygamy] occurs more than others. They just get a second wife who is often from Australia too. It's just a religious marriage, after the first civil one. There's no way the first wife can challenge it. If the man doesn't want to give her a divorce she just has to live with it. The second wife doesn't have any rights either. It then sets up two women for abuse instead of one.⁵¹

Even having a civil divorce doesn't ensure the man will agree to an Islamic [religious] divorce ... Another woman got her Islamic divorce but now he has disappeared and she can't get her civil divorce.⁵²

Isolation from mainstream support services

As noted, faith communities can reach people who might not approach formal service providers in the family violence system. Women from some faith communities can feel isolated from mainstream services such as specialist family violence services, legal services and police. As described in Chapter 28, social isolation is a barrier for many women of culturally and linguistically diverse backgrounds. In the context of faith communities, the following are perceived barriers for women seeking access to mainstream services:

- ▷ lack of knowledge about their rights and about the service system as a whole—especially in communities that do not use mainstream media and communication networks
- ▷ reluctance to seek help outside their own community
- ▷ a belief that mainstream services are not sensitive to their needs and, in particular, that refuge and crisis accommodation will not provide for or support the continuation of their religious and cultural practices. For example, women might be concerned they will not be able to satisfy kosher dietary requirements in a refuge or continue to send their children to the same school and attend the same place of worship.⁵³

These barriers can force women to feel they must choose between their safety and their faith.⁵⁴

The way forward

Despite the challenges experienced in faith-based responses to family violence, faith settings are an integral part of the community response to family violence. Faith leaders and organisations have direct and influential contact with many members of the Victorian community, and their guidance and intervention are often sought when family violence is being experienced. The trust communities have in their faith leaders enables these leaders to play an important role in educating communities about family violence, reinforcing community standards in relation to respect, dignity and non-violence, and providing practical advice and assistance to people in need.

The faith leaders the Commission consulted demonstrated a strong commitment to addressing the family violence that occurs in their communities. They also acknowledged, however, that they and their colleagues and communities require assistance to understand how to prevent, recognise and respond appropriately. Training for faith leaders in recognising and responding to family violence is generally inadequate. This lack of awareness and knowledge of how to respond to disclosures of family violence limits their ability to support women experiencing such violence.

As was evident in the personal accounts the Commission received, some attitudes and practices, and inadequate or ill-informed responses by faith leaders, risk exposing victims to further and sustained abuse by their family members. Women experiencing family violence can face barriers to seeking help within their faith community because of particular religious beliefs (for example, about divorce or gender roles). These barriers can force women into making a choice between their safety and their faith.

The Commission welcomes the different initiatives by faith communities, as outlined above. These communities should be supported in strengthening and building on this work and be equipped to respond sensitively and appropriately to disclosures of family violence, to maximise victims' safety, to refer victims and perpetrators to relevant services, and to challenge violence-supporting attitudes and behaviours. Faith communities should consider how to record the existence of these programs and to regularly assess how well they are working.

The Victorian Multicultural Commission is established under the *Multicultural Victoria Act 2011 (Vic)*, and its functions include promoting full participation by Victoria's diverse communities in the social, cultural, economic and political life of the state and access by the state's diverse communities to services made available by governments and other bodies.⁵⁵ 'Diversity' is defined to include religious diversity, as well as cultural, racial and linguistic diversity.⁵⁶ The Commission notes the work done by the Victorian Multicultural Commission in developing responses to family violence.

The Office of Multicultural Affairs and Citizenship has a continuing role in supporting faith communities in Victoria, including supporting them in developing responses to family violence. It convenes the OMAC Multifaith Advisory Group, which facilitates continuing dialogue between the Victorian Government and Victoria's faith leaders and communities. The Advisory Group consists of about 25 senior representatives of Victoria's diverse faith communities—including various Christian, Jewish, Muslim, Sikh, Hindu, Buddhist and Baha'i communities.⁵⁷

The Victorian Multicultural Commission and the OMAC Multifaith Advisory Group are well placed to assist faith communities in their efforts to prevent and respond to family violence. In light of this, we make a recommendation for these bodies to work in partnership with family violence practitioners and women from faith communities to develop training packages on family violence and sexual assault for faith leaders and communities.

We also acknowledge the importance of mainstream family violence services understanding and being sensitive to people's religious and cultural needs. It therefore proposes that the recommended review of practice standards for specialist family violence services and men's behaviour change programs be informed by representatives of, and women from, faith communities.

Recommendation 163

The Office of Multicultural Affairs and Citizenship Multifaith Advisory Group and the Victorian Multicultural Commission, in partnership with expert family violence practitioners, develop training packages on family violence and sexual assault for faith leaders and communities [within three years]. These packages should build on existing work, reflect leading practice in responding to family violence, and include information about referral pathways for victims and perpetrators. The training should be suitable for inclusion as part of the pre-service learning in various faith training institutes, as well as the ongoing professional development of faith leaders.

Recommendation 164

The Department of Health and Human Services consult with the Office of Multicultural Affairs and Citizenship Multifaith Advisory Group, the Victorian Multicultural Commission and women from faith communities as part of its review of standards for specialist family violence service providers (including men's behaviour change programs), to ensure that these standards and the associated services take account of the needs of people in faith communities who experience family violence [within two years].

Recommendation 165

Faith leaders and communities establish processes for examining the ways in which they currently respond to family violence in their communities and whether any of their practices operate as deterrents to the prevention or reporting of, or recovery from, family violence or are used by perpetrators to excuse or condone abusive behaviour.

Endnotes

- 1 Office of Multicultural Affairs and Citizenship, 'Victoria's Diverse Population: 2011 Census' (2013).
- 2 Faith leader consultation, Melbourne, 2 September 2015.
- 3 A number of invitees from other faith communities were unable to attend the consultation on the day.
- 4 Transcript of Holmes, 10 August 2015, 2439 [26].
- 5 Jewish Taskforce Against Family Violence, Submission 820, 2.
- 6 Statement of Holmes, 26 June 2015, 13 [64].
- 7 See, eg, Anglican Diocese of Melbourne, Submission 173, 5–8.
- 8 Statement of Holmes, 26 June 2015, 13 [65].
- 9 Elisabet le Roux, 'A Scoping Study on the Role of Faith Communities and Organisations in Prevention and Response to Sexual and Gender-based Violence: Implications for Policy and Practice' (Stellenbosch University, Unit for Religion and Development Research, September 2015) 53.
- 10 Peta Cox, 'Violence Against Women: Additional Analysis of the Australian Bureau of Statistics' Personal Safety Survey, 2012' (Horizons Research Paper No 01, Australia's National Research Organisation for Women's Safety, October 2015) 113.
- 11 le Roux, above n 9, 7.
- 12 Ibid 8.
- 13 Brotherhood of St Laurence, Submission 818, 13, (citations omitted).
- 14 Jewish Taskforce Against Family Violence, Submission 820, 20.
- 15 For example, the barriers that can arise for lesbian, gay, bisexual, transgender and intersex people seeking to access these services are discussed in Chapter 30.
- 16 Faith leader consultation, Melbourne, 2 September 2015.
- 17 Australian Muslim Women's Centre for Human Rights, Submission 728, 11.
- 18 Faith leader consultation, Melbourne, 2 September 2015.
- 19 Transcript of Holmes, 10 August 2015, 2440 [21]–[25].
- 20 Anglican Diocese of Melbourne, Submission 173, 7. See also, Faith leader consultation, Melbourne, 2 September 2015.
- 21 City of Casey, Submission 354, 4; Borderlands Cooperative, 'Challenge Family Violence Project: Making Things Happen to Prevent Violence Against Women--Interim Evaluation Report (4), November 2014 to May 2015' (1 May 2015), produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.
- 22 Statement of Holmes, 26 June 2015, 14 [71]–[72], 15 [75].
- 23 Jewish Taskforce Against Family Violence, Submission 820, 2.
- 24 Ibid.
- 25 Faith leader consultation, Melbourne, 2 September 2015.
- 26 Ibid.
- 27 Department of Social Services (Cth), 'Hearing Her Voice: Report from the Kitchen Table Conversations with Culturally and Linguistically Diverse Women on Violence Against Women and Their Children' (September 2015) 36.
- 28 Community consultation, Melbourne, 6 May 2015.
- 29 Community consultation, Sandringham, 29 April 2015.
- 30 Anonymous, Submission 263, 1.
- 31 Statement of Jones', 13 July 2015, 2 [10].
- 32 Anonymous, Submission 230, 1.
- 33 Anonymous, Submission 200, 5.
- 34 Community consultation, Morwell, 13 May 2015.
- 35 le Roux, above n 9, 47–8.
- 36 Community consultation, Geelong 2, 28 April 2015.
- 37 Community consultation, Morwell, 13 May 2015.
- 38 Casey Multi-Faith Network, Submission 400, 2.
- 39 Jewish Care Victoria, Submission 761, 2.
- 40 Transcript of Holmes, 10 August 2015, 2439 [15]–[24].
- 41 Faith leader consultation, Melbourne, 2 September 2015.
- 42 Ibid.
- 43 le Roux, above n 9, 48.
- 44 Transcript of El Matrah, 11 August 2015, 2639 [31]–2640 [6].
- 45 Faith leader consultation, Melbourne, 2 September 2015.
- 46 Transcript of El Matrah, 11 August 2015, 2638 [12]–[14].
- 47 Australian Muslim Women's Centre for Human Rights, Submission 728, 12–13.
- 48 Jewish Care Victoria, Submission 761, 6.
- 49 Ibid.
- 50 Tayla Faigenbaum and Ann Wollner, Submission 484, 2.
- 51 Community consultation, Northcote 2, 6 July 2015.
- 52 Ibid.
- 53 Jewish Care Victoria, Submission 761, 2, 4.
- 54 Ibid 7.
- 55 *Multicultural Victoria Act 2011* (Vic) s 7.
- 56 Ibid s 3.
- 57 Victorian Multicultural Commission, *Consultative Structures* <<http://www.multicultural.vic.gov.au/projectsand-initiatives/promoting-harmony/consultative-structures>>.

30 Lesbian, gay, bisexual, transgender and intersex communities

Introduction

The Commission's terms of reference require it to consider the needs and experiences of people affected by family violence, having particular regard to, among others, people from gay, lesbian, bisexual, transgender and intersex communities.

This chapter outlines the diverse experiences of lesbian, gay, bisexual, transgender and intersex people affected by family violence. Although transgender and intersex communities are often grouped together with gay and lesbian and bisexual communities because of a shared history of discrimination, we recognise that each of these communities and the barriers they face are distinct. It is for convenience only that this chapter refers collectively to 'LGBTI communities'.

This chapter examines the unique forms of family violence that can be experienced by LGBTI people. This can include such forms of family violence as threatening to 'out' a person, using homophobia as a tool of control, refusing to acknowledge or recognise a person's sexuality or gender identity, withholding medication such as hormones or HIV medication, or threatening to disclose HIV status. LGBTI people are less likely to report family violence to police or seek help from services, due to mistrust, fear of discrimination or simply due to a lack of appropriate services being available to assist them. LGBTI people may experience additional disadvantage associated with other identities or attributes they may have—as an Aboriginal or Torres Strait Islander, a person from a culturally or linguistically diverse background, an older person, a person living in a rural, regional or remote area or as a person with a disability.

The family violence experience of LGBTI people are often invisible to the broader community. This chapter considers some of the key challenges for LGBTI people—including a lack of information, data and education within the community. The failure of a number of services and programs to recognise the unique experiences of people in LGBTI communities can lead to services being inaccessible or inappropriate for both victims and perpetrators. The potential for lawful discrimination against LGBTI people, including by providers of family violence services and other related services, also adversely affects LGBTI people.

The Commission recognises the need for greater community awareness of the needs of LGBTI people in relation to family violence. Greater attention by police, the courts and family violence services is also needed. We recommend the development of LGBTI-specific resources, programs and community education campaigns to improve awareness and understanding of family violence in this context. The Commission also recommends improvements to family violence services to respond to the needs of people in these communities.

Context and current practice

LGBTI communities in Victoria

In discussing the experiences of people in LGBTI communities, the Commission recognises that there are both diverse sexualities and gender identities. Sexuality is about a person being attracted to a person. Gay and lesbian people are attracted to people of the same sex, while bisexual people are attracted to people of a variety of sexes. Gender identity is about whether someone identifies as a woman, man or another form of gender identity. A transgender person is someone who was assigned a sex at birth that they do not feel reflects how they understand their gender identity. An intersex person is described by the *Sex Discrimination Act 1984* (Cth) as someone with physical, hormonal or genetic features that are considered neither wholly female or wholly male, are a combination of female or male or are neither female or male.¹ Others define an intersex person to be someone 'born with physical sex characteristics that don't fit medical norms for female or male bodies.'² A person can identify as a gay, lesbian or bisexual (sexuality), as well as transgender or intersex (gender identity). The concept of gender identity is discussed in more detail in the box on this page.

Understanding gender identity

Although our society has historically treated gender as a binary concept—that is, either male or female—there is a spectrum of gender, resulting in gender diversity.³

Affirming gender and transitioning between genders are deeply personal decisions that involve a person seeking to redress a mismatch between their sex and their gender identity. They do not necessarily entail gender-reassignment surgery; they simply mean that a person is living their affirmed gender.⁴

The Commission was told that while attitudes are gradually changing, discrimination towards LGBTI people is still prevalent.⁵ Gay and Lesbian Health Victoria told us that:

...Recent research indicates that, while Australians' attitudes to sexual diversity have improved in the last ten years, still 1 in 8 women and 1 in 4 men think sex between two men is 'always wrong', and 1 in 6 men and 1 in 8 women think sex between two women is always wrong.⁶

Similarly, No To Violence and Safe Steps Family Violence Response Centre note in their submission that:

the prevalence of violence, harassment and discrimination experienced generally by LGBTIQ people, is proportionally higher than that experienced in the broader community.⁷

In recent years, there has been progress in societal recognition of LGBTI people, particularly in our understanding of diverse relationships and family composition. This has been reflected in legislative changes to be more inclusive of people in these communities.

In 2000, gender identity and sexual orientation were recognised as attributes on the basis of which discrimination is prohibited under Victoria's equal opportunity legislation.⁸ In 2001, a series of legislative reforms amended a variety of pieces of legislation to recognise the rights and obligations of partners in domestic relationships, irrespective of the gender of each partner.⁹

The *Relationships Act 2008* (Vic) allowed Victorian couples in domestic relationships, irrespective of their genders, to register their relationship with the Registrar of Births, Deaths and Marriages.¹⁰ This mechanism was intended to make it easier for domestic partners to access rights afforded to other couples under Victorian law.¹¹

In 2015, the Victorian Parliament amended the *Adoption Act 1984* (Vic) to allow same-sex couples to adopt children.¹²

In addition to Victorian developments, the Commission notes the ongoing debate regarding Commonwealth law reform to recognise same-sex marriage.

The definition of family violence in the *Family Violence Protection Act 2008* (Vic) is 'expansive, non-exhaustive and ... gender neutral'.¹³ The definitions of 'domestic partner' and 'family member' are applicable to members of the LGBTI community.¹⁴ In determining whether a person is a domestic partner of another person, the genders of the persons are irrelevant.¹⁵ Further, one of the statutory examples of emotional or psychological abuse set out in the Act specifically relates to a person's sexual orientation.¹⁶

Based on the 2011 Census, in Victoria there were 1,160,880 heterosexual couples, 4666 male same-sex couples and 4056 female same-sex couples.¹⁷ While the number of same-sex couples is likely to be under-reported—including for reasons discussed elsewhere in this chapter such as a fear of homophobia and discrimination if such relationships are identified—this data suggests that same-sex couples ($n=8722$) represent 0.7 per cent of all couples in Victoria. Data regarding the number of transgender and intersex people in Victoria is not readily available.

Prevalence of family violence in LGBTI communities

There has been little research into family violence in LGBTI relationships, in Australia or elsewhere. The Australian Bureau of Statistics' Personal Safety Survey does not collect data on lesbian, gay, bisexual, transgender and intersex identity.

However, the research that has been done suggests that intimate partner violence is as prevalent in LGBTI communities as it is in the general population:

- ▷ A 2008 study of 390 LGBTI Victorians reported that almost one-third of respondents had been in a same-sex relationship in which they were subjected to abuse by their partner.¹⁸
- ▷ Similarly, almost 33 per cent of the 5476 respondents in the Private Lives study—one of the largest surveys of LGBTI people ever conducted—reported experiencing intimate partner abuse.¹⁹
- ▷ In that study, 41 per cent of females and 28 per cent of males reported experiencing abuse within an intimate partner relationship, while 25 per cent of females and 20 per cent of males reported forced sex within such relationships.²⁰
- ▷ Only 18 per cent of those who had experienced forced sex and 20 per cent of those who were physically injured reported this to police.²¹

Victoria Police data also reveals that between 2013 and 2014, there were 373 incidents involving a male affected family member (that is, victim) and a current or former male partner as the other party (that is, perpetrator). This represents 8.3 per cent of all family violence incidents involving a male other party and 5.2 per cent of all male victim incidents involving a current or former partner and three per cent of all male victim incidents.²²

There were 308 incidents involving a female affected family member and a current or former female partner as the other party, representing 10 per cent of all incidents involving a female other party, one per cent of all female victim incidents involving a current or former partner and 0.7 per cent of all female victim incidents.²³

As a subset of family violence incidents recorded, those involving a current or former same-sex partner accounted for 1.7 per cent of all incidents involving a current or former partner and 1.1 per cent of all incidents.²⁴

Research from the Victorian Family Violence Database shows that of some 29,978 original applications for a family violence intervention order between 2013 and 2014, 68 per cent involved a current or former domestic partner or intimate personal relationship ($n=20,284$).²⁵ Applications involving an affected family member in a same-sex relationship ($n=639$) accounted for 3.2 per cent of all applications involving a current or former domestic partner or intimate personal relationship and 2.1 per cent of all applications.²⁶

A systematic literature review of intimate partner violence among US men who have sex with men found that all forms of intimate partner violence (physical, sexual and psychological) occur at 'alarming rates'—similar to or higher than those measured in populations of women.²⁷

Australian research data has identified high incidences of intimate partner violence experienced by transgender and intersex people as compared to non-transgender and non-intersex gay, lesbian and bisexual people.²⁸ The Commission heard that transgender people experience higher levels of violence in their lives than lesbian, gay and bisexual people.²⁹ Transgender women, in particular, are at greater risk of hate crime and sexual assault than others in the LGBTI community.³⁰

Little information is available about the experiences of intersex Australians who suffer family violence, but anecdotal evidence suggests that, because of society's poor understanding of intersex people and the associated social stigma, such people are highly vulnerable to discrimination and family violence.³¹

Gay and Lesbian Health Victoria's submission explained that some aspects of identity—such as a person's age, race, cultural and linguistic background, disability, and living in rural, regional and remote areas—might put LGBTI people at greater risk of experiencing family violence and make it less likely that they can gain access to appropriate services.³²

LGBTI experiences of family violence

Members of LGBTI communities can experience the same forms of family violence as the general population. For example, family violence in gay and lesbian relationships, as in heterosexual relationships, ranges from physical or sexual violence to psychological, emotional or economic abuse. Like family violence in heterosexual relationships, family violence in gay and lesbian relationships can include a pattern of behaviour, involving one partner using and maintaining power and control over the other.³³

Unique forms of family violence for LGBTI people

Experiences of intimate partner violence within LGBTI communities can also be different to the experiences of heterosexual people. Drummond Street Services submitted to the Commission that it has been 'struck by the complexity' of intimate partner violence in LGBTI members of the community who present at counselling services. For example:

IPV assessment is very specialist to understand both sex and gender identity issues and identify victim, perpetrator in relationships where clinically we see high rates of mutual violence. This tends to be common in LGBTIQ couples where both experience or have histories of child abuse, victimisation and bullying, lack of family supports, difficult experienced of coming out or gender affirmation/disclosure and lack of supports.³⁴

The Family Violence Protection Act defines ‘emotional or psychological abuse’ as including the specific example of ‘threatening to disclose a person’s sexual orientation to the person’s friends or family against the person’s wishes’.³⁵ ‘Outing’ a person is a common form of family violence in LGBTI communities.³⁶ The following are other kinds of violence:

- ▷ telling a partner they will lose custody of children as a result of being outed
- ▷ using homophobia as a tool of control—for example, through telling a partner they will be unable to gain access to police or other support services because the system is homophobic
- ▷ telling a partner they deserve the violence because they are lesbian, gay, bisexual, transgender or intersex
- ▷ telling a partner they are not a real woman, man or lesbian, gay or bisexual person
- ▷ disclosing or threatening to disclose HIV status
- ▷ hiding, withholding or otherwise preventing a partner from taking medication or treatment such as hormones or HIV medication.³⁷

Challenging sexual and gender norms can be a major trigger of violence in some families:

LGBTI people may be at greater risk than heterosexual people from abuse, harassment and violence from family members such as parents, siblings and offspring due to entrenched homophobia ... For older people, there may be a heightened risk of homophobic-related family violence, particularly as they become more dependant or frail.³⁸

At a community consultation the Commission was told:

Too often family violence is referred to as ‘difference in values’. We need to recognise abuse against children because they don’t fit in. Often children who come out are at risk of being abused by their parents and family.³⁹

Barriers to reporting violence

The Commission heard that people who experience homophobia and transphobia face particular barriers when it comes to reporting family violence. A recent Sydney study found that 53.5 per cent of 116 female respondents and 67.1 per cent of 70 male respondents who had experienced abuse in a current or previous LGBTI relationship did not seek any form of assistance.⁴⁰

People from LGBTI communities are less likely to report violence, to seek support or to identify experiences of family violence and abuse, partly because of a fear of ‘outing’, as well as actual or perceived discrimination and harassment.⁴¹

In addition, people from LGBTI communities may have less support from family when experiencing violent relationships. The joint submission of No To Violence and Safe Steps explained:

Therefore some LGBTIQ people leaving a violent partner may be doing so without the support of biological family, who may have alienated them due to their intersex status or sexual and gender identity. This creates another layer of disadvantage, particularly if they are experiencing poverty, unemployment or under employment.⁴²

Transgender people report specific forms of family violence that might not be experienced by others; for example, a transgender person’s partner might cease recognising the victim’s gender as a man, woman or non-binary gender as a form of emotional abuse.⁴³

Intersex people can experience family violence in unique ways—for example, when family members do not accept a person identifying with a gender different from that which their parents attributed to them:

Intersex youth can also experience strong reactions from biological relatives if they have physical characteristics that may challenge their fundamental perception about the young person’s place and role within the family. Intersex organisations have stated that these reactions can be, and sometimes are, violent.⁴⁴

The Commission was informed that the justice system as well as service providers are not always supportive of intersex individuals. Police, specialist family violence services and other sources of assistance 'should be aware that a client could be intersex, and that many intersex people identify as women or men and not as a "third gender" or "third sex"'.⁴⁵

Intersection of different aspects of identity

Different aspects of identity can intersect to make family violence different for each individual in the LGBTI community.

Aboriginal people can experience family violence that is informed by both race and sexuality:

Indigenous Victorians witness or experience high[er] levels of family violence within their own communities than the general population as well as racially-based violence from the broader community. For those who identify as Indigenous and LGBTI the effects of this exposure [to] violence can be compounded by violence that might occur in their own partner relationships or be directed towards them by family members because of their sexuality or gender identity.⁴⁶

The Commission heard that LGBTI people from culturally and linguistically diverse communities can be subject to prejudice on the part of family members who have cultural or religious objections to their sexuality or gender identification:

More recently arrived migrant groups and refugee communities often come from countries where homosexuality remains a criminal offence punishable by imprisonment (79 countries) or death (in 9 countries including Iran, Iraq, Somalia and Sudan) ... Lesbian, gay, bisexual and trans* people within such families can be at significant risk in terms of their loss of liberty and personal safety ... LGB individuals have reported situations where family have physically assaulted them, locked them in their rooms, confiscated their bankcards and mobile phones, refused access to more sympathetic family members, and been subjected to 'interventions' by community elders.⁴⁷

For same-sex attracted and gender diverse young people from refugee and newly arrived communities, feeling unsafe at home is a common experience.⁴⁸

Older lesbian, gay and bisexual people also face particular risks and mainstream understandings of elder abuse and family violence may not be attuned to these risks:

The vast majority of older LGBT people have experienced a long life history of social exclusion, family rejection, community-sanctioned violence and discrimination, and in some cases for men, a criminal record for having consensual adult sex. As they move into their final decades of life, their increasing vulnerability and frailty leaves them exposed to emotional and economic abuse, social isolation and physical violence perpetrated by family members and carers. After a life-long habitual need to conceal their sexual identities, older lesbian and gay people can be particularly vulnerable to violence from family members who threaten to 'out' them.⁴⁹

Older transgender people can be extremely vulnerable:

Most older trans* people have only had the opportunity to transition when they reached their 50s and 60s and many are estranged from their parents, siblings and children because of their transition. Consequently there are genuine concerns (founded in stories of what has happened to other trans* people), that family members will re-enter their lives as they become frail and dependant, and attempt to reverse their gender change process by controlling their medication, their income and their lives.⁵⁰

LGBTI people living in rural, regional and remote areas can also be at risk of further marginalisation as a result of social isolation, homophobia and transphobia⁵¹ and a lack of appropriate support services.⁵² Ms Anna Brown, Co-convenor of the Victorian Gay & Lesbian Rights Lobby, gave evidence that:

... we do have some very limited specialist LGBTI providers or mainstream providers with some LGBTI understanding and competency in the metro areas, very, very limited as set out in the submissions. But this obviously is deeply lacking when it comes to regional and rural Victoria and also in those areas that's coupled with the real likelihood of higher rates of discrimination, homophobia and transphobia and more likely that LGBTI people will be in the closet and fearful of seeking help. So those experiences are very much compounded in those geographical areas.⁵³

Such discrimination and lack of support can have a devastating effect on an already traumatised person:

One of our colleagues, a counsellor of family violence victims, told us of a recent case where a gay male victim of intimate partner violence was denied support by a rural domestic violence support service because of his gender. This meant that at the time of the court hearing about his assault he was forced to sit outside a small rural courthouse in close proximity to the perpetrator. He was denied access to the 'women's safe room' because of his gender. He was also denied the support of the domestic violence support worker at the court. The court process and lack of services re-victimised this man, causing him immense distress and compounded the quite significant post-traumatic stress disorder he was already suffering.⁵⁴

Gay and Lesbian Health Victoria submitted that 21 per cent of LGBTI people have a disability and that these people experience higher levels of violence than people without a disability.⁵⁵ The organisation noted that given the high levels of family violence experienced by people with disabilities generally, 'it is likely that LGBTI people face similar or greater risks due to the compounding factors of disability and sexual/gender diversity'.⁵⁶

Current prevention strategies

The *National Plan to Reduce Violence against Women and their Children 2010–2022*, is an initiative of the Council of Australian Governments with a vision to ensure that 'Australian women and their children live free from violence in safe communities'.⁵⁷ The National Plan aims to achieve 'attitudinal and behavioural change at the cultural, institutional and individual levels, with a particular focus on young people'.⁵⁸ The National Plan is supported by three-year action plans.⁵⁹

The National Plan contemplates grants to encourage primary prevention with priority given to 'women with disabilities, older women, culturally and linguistically diverse communities and gay and lesbian communities'.⁶⁰

The First Action Plan *Building a Strong Foundation 2010–2013* sought to address the needs of these diverse communities,⁶¹ though LGBTI communities do not appear to have been a focus.

While the Second Action Plan *Moving Ahead 2013–2016* addresses family violence in some diverse communities—Indigenous and culturally and linguistically diverse communities and people with disabilities⁶²—it does not specifically refer to LGBTI communities.

In Victoria, Building Respectful Relationships education programs are run in secondary schools, educating students on 'gender, violence and respectful relationships' to 'prevent violence against women'.⁶³ Ms Gill Callister, Secretary of the Department of Education and Training, told the Commission that the curriculum contains 'themes relevant to preventing family violence' and the importance of 'challenging attitudes and behaviours such as homophobia and sexism, including discrimination and harassment'.⁶⁴ The materials used to teach the curriculum discuss relationships and gender based violence, including same-sex relationships, diverse experiences of sexuality and homophobia.⁶⁵ They also recognise that '[v]iolence happens in same-sex relationships as well as heterosexual relationships'.⁶⁶

Dr Sue Dyson, Associate Professor and Principal Research Fellow at the Australian Research Centre in Sex, Health and Society, La Trobe University commended the program as a 'really good [example] of sexuality education that also address violence prevention' and is one of the 'best practice examples that we need to be building on'.⁶⁷

Ms Brown suggested that the program might also provide 'a useful model to expand ... for an adult context for LGBTI communities',⁶⁸ allowing community-wide education to occur.

The Commission heard that the Healthy Equal Youth Funding project has been a successful initiative.⁶⁹ It aims to build a same-sex attracted and sex and gender diverse (SSASGD) youth platform within the mainstream youth sector and improving the quality of mental health and support services provided to these young people.⁷⁰ Funded by the Department of Health and Human Services and jointly managed by Gay and Lesbian Health Victoria and the Youth Affairs Council of Victoria Inc., it provides one-off small grants for SSASGD youth projects.

Safe Schools Coalition

The Healthy Equal Youth Project funds the Safe Schools Coalition Australia, which provides training and resources to schools to become free of homophobia and transphobia. There are 490 member schools across Australia who work in coalition with partner organisations to offer:

a suite of free resources and support to equip staff and students with skills, practical ideas and greater confidence to lead positive change and be safe and inclusive for same sex attracted, intersex and gender diverse students, staff and families.⁷¹

The training and resources provided as part of the program include professional development and training for teachers and other school staff. Staff and student surveys are accessible online to measure perceptions, knowledge and experience, guidance and consultation. There are also printed and digital resources for teachers, and resources to support student engagement.⁷²

In a recent United Nations report into school bullying, violence and discrimination which covered the Asia-Pacific region, it was noted that Australia was the only country in the review that had a national whole school program that addresses school bullying, violence and discrimination based on sexual orientation, gender identity and expression or intersex characteristics.⁷³

Challenges and opportunities

Many submissions discussed the particular challenges experienced by those in LGBTI communities. Some of the themes which emerged from the evidence were that issues relevant to LGBTI communities are largely absent from the discourse around family violence (including in relation to awareness and education campaigns and the collection of data), LGBTI people face particular difficulties in reporting family violence to police and in accessing support services, and that discrimination against LGBTI people remains lawful in some instances.

The invisibility of family violence in LGBTI communities

The Victorian Gay & Lesbian Rights Lobby argued that LGBTI communities are rendered invisible in awareness campaigns and that this limits recognition of family violence among LGBTI communities and acts as a barrier to reporting.⁷⁴

The Commission heard that community awareness of family violence usually involves the assumption that violence is invariably perpetrated by heterosexual men against heterosexual women and therefore the majority of intimate partner violence discourse is constructed according to gendered assumptions and 'heteronormativity' (the assumption of heterosexuality). Moreover, 'misconceptions exist which suggest that those who perpetrate domestic violence must be men, or 'bitches' and those who are victims of domestic violence must be women or 'femmes', essentially emulating assumptions about domestic violence in heterosexual relationships.' These misconceptions contribute to the hesitancy of people in same-sex relationships to disclose family violence, 'mask the reality of same-sex domestic violence' and also fail 'to account for the complexities arising in same-sex relationships.'⁷⁵

Dr Philomena Horsley, Research Fellow and Senior Trainer, Gay and Lesbian Health Victoria, Australian Research Centre in Sex, Health and Society, La Trobe University, told the Commission these assumptions can mean that LGBTI victims lack the language to recognise that what is happening to them is family violence:

I think one of the key things is it is often more difficult to recognise domestic violence and family violence from the perspective of being the victim or indeed the offender, that because the language has been extensively relating only to heterosexual couples or in fact families that are all heterosexual, there is an invisibility and exclusion over this whole issue so people don't necessarily have the vocabulary or the sense of recognition around the dynamics that occur.⁷⁶

The Commission was told this was a particular problem in relationships between gay men, who might see family violence as something that happens to heterosexual women. Even if the violence is identified as family violence, there is a degree of shame associated with being a male victim of family violence.⁷⁷ As one commentator has noted, 'The lack of resources available for men in same-sex relationships mirrors the societal belief that abuse is something that only happens to heterosexual women'.⁷⁸

One submission to the Commission commented on the lack of understanding and support in relation to family violence in the gay community:

For gay men who are subjected to family violence, they will often be met with disbelief by others in the gay community or at worse disparaged. The reason for this I think is that the issue of family violence within gay relationships isn't discussed or raised prominently. This has the potential to reinforce that family violence within a gay relationship doesn't exist. Subsequently, when it does occur, the victim is less likely to disclose, thinking that he won't be believed or that the disclosure will be actively dismissed. Community education and awareness raising has a vital role to play in breaking down this response and reinforcing that family violence within gay relationships is unacceptable and that there is help available for those who are being abused or mistreated.⁷⁹

The Safe Steps and No To Violence joint submission noted that the gender-based analysis of violence within the family violence system has led to 'systemic and institutionalised marginalisation of LGBTIQ people'. Some service providers have themselves recognised this as a problem.⁸⁰

Gay and Lesbian Health Victoria further submitted that LGBTI people's 'long-lived experience of abuse, violence and discrimination' from the broader community, can result in 'a high tolerance of violence in personal relationships and an unwillingness to seek help from services':

This is likely to be particularly true for older LGBT people, most of whom who have endured many decades of rejection and/or violence from family members, and are also more likely to be isolated.⁸¹

The Commission also heard that the silence around violence in same-sex relationships may be 'reinforced by the fear that acknowledging it may feed societal homophobia and contribute to prejudice about gay or lesbian relationships'.⁸²

Lack of information

The Commission was informed that, although some family violence online resources provide a degree of support for lesbian, bisexual or 'same-sex attracted' women,⁸³ there is a general lack of relevant information and advice available to LGBTI family violence victims in Victoria. As a consequence, people in LGBTI communities are using interstate resources for information about sources of help for family violence:

There have been some broader campaigns run by the Victorian Aids Council (VAC) and the Aids Council of New South Wales (ACNSW), but nothing specific to Family Violence. Victorian people are referring to the NSW resources as the key resource because there's nothing specific for the Victorian LGBTIQ community.⁸⁴

Another Closet, a website developed by the New South Wales LGBTIQ Domestic Violence Interagency, provides comprehensive information and referrals for people experiencing family violence in LGBTIQ relationships.⁸⁵

The Commission was informed that promoting education about family violence in LGBTI communities and the broader community is an important part of preventing family violence.⁸⁶ Limited prevention strategies specific to LGBTI communities exist. Many prevention strategies focus solely on heterosexual intimate partner relationships.⁸⁷ Gay and Lesbian Health Victoria submitted that 'education initiatives need to be developed and resourced that specifically target the LGBTI community' as '[t]he need to address the gaps that exist in current prevention education programs available to the general community is urgent'.⁸⁸ This would require increased funding of inclusive family violence awareness campaigns and early intervention programs.⁸⁹

Such an education campaign could include running shared campaigns between LGBTI and family violence services so as to encourage people to make use of family violence services. The Stronger Safer Together campaign in Alice Springs was cited as an example of a successful campaign.⁹⁰ It could also include conducting targeted education campaigns for family violence services about their obligations under anti-discrimination and human rights legislation and about working with same-sex attracted and gender diverse people.⁹¹

The Commission was also told that there is a need to develop legal and non-legal resources for LGBTI communities to support the identification and reporting of family violence, along with information about safe, LGBTI-accessible sources of support.⁹² The online resource *Another Closet* provided by the LGBTIQ Domestic Violence Interagency and discussed above was cited as a useful model.⁹³

The Commission was also told that education of judges and magistrates about family violence in LGBTI communities would 'improve the culture of the justice system, including enhancing the sense of safety, confidentiality and respect for those who have experienced violence'.⁹⁴ Gay and Lesbian Health Victoria noted that in some cases, same-sex partner violence has been treated as less important or less serious in nature than heterosexual violence.⁹⁵

Lack of data

As discussed earlier, family violence in LGBTI communities remains poorly understood, partly because of a lack of research and poor data collection.⁹⁶ Data on sexuality is not captured by the Australian Bureau of Statistics, Personal Safety Survey, and may also not be captured by Victoria Police data. The limited state of research regarding the prevalence of family violence in LGBTI communities means it is difficult to understand the scope of the problem. Consequently, it is difficult to identify appropriate and effective policy responses, recognising that these may be different to those that apply to heterosexual people.

It was suggested to the Commission that one of the ways in which this could be addressed would be to improve existing data collection systems and mandate the collection of information about LGBTI status, type of violence, and outcomes and actions in order to refine future service delivery and monitor equality performance.⁹⁷ This would necessitate minor, but important, changes to existing forms and processes; for example, the Victoria Police L17 form should include a field to record 'other' gender for transgender or intersex people. Other measures could include amending the Family Violence Risk Assessment and Risk management Framework (also known as the Common Risk Assessment Framework, or the CRAF) to incorporate risk assessment indicators for specific communities—including LGBTI people⁹⁸—and including LGBTI indicators in the Victorian Government's proposed Family Violence Index.⁹⁹ Finally, the Commission was told that funding research aimed at gaining a better understanding of the nature and prevalence of and most effective responses to family violence in LGBTI communities is key.¹⁰⁰ The lack of data in relation to LGBTI people and family violence is discussed further in Chapter 39.

Reporting violence to police

Police data reveals that of the 65,154 family violence incidences recorded in 2013 to 2014¹⁰¹ there were 741 recorded family violence incidents in which the parties were in a current or former same-sex relationship.¹⁰²

The Commission was told that LGBTI communities have a deep historical mistrust of the police and the legal system.¹⁰³ The past criminalisation of homosexuality has contributed to this mistrust,¹⁰⁴ which can lead to a reluctance in LGBTI communities to report violence.¹⁰⁵ We heard that this is especially the case among older members of LGBTI communities.¹⁰⁶

In one survey, more than half the respondents who cited homophobia and heterosexism as barriers to reporting referred to difficulties with the police. A large number cited fear of the police engaging in 'hetero male ridicule' or said the police would make their gender history public, out them to their parents, or be indifferent to the specific needs of LGBTI people.¹⁰⁷

The Commission was also told of examples of family violence where the police did not realise the people involved were in a relationship:

Police in an outer metropolitan Melbourne suburb received a call-out from neighbours to attend what sounds like a violent argument in the flat next door. When they arrived they found two men inside the flat. The men appeared to the police to be flatmates ... They were assured by the taller man that the two men had simply had an argument about something trivial but that it was all over. Later that night the same police were called to the local hospital's Emergency Department to discover the shorter man had been severely beaten and was being moved to the ICU with serious injuries. On investigation it was confirmed that the two men had been in a relationship for some years. One of the attending officers reflected with great regret that, on arrival at the flat, they did not implement the standard procedure in relation to suspected domestic violence, which required that the two people involved be interviewed separately to ascertain if they felt safe. He recognised that he did not entertain the idea of the men as a gay couple at the time.¹⁰⁸

An LGBTI worker participating in one of the Commission's community consultations said that police 'don't ever' identify a situation as family violence when it involves a same-sex relationship and that 'there's a lot of assumptions and stereotypes'.¹⁰⁹ Another participant in the consultation commented that 'some police stations respond well [to LGBTI family violence incidents] where there has been training'.

In recent years, Victoria Police has sought to build trust between police and LGBTI communities. The establishment of the Police LGBTIQ Portfolio Reference Group and the implementation of a network of gay and lesbian liaison officers, along with important symbolic efforts, have had an important cultural impact in the organisation.¹¹⁰ Gay and Lesbian Health Victoria submitted:

The role of [gay and lesbian liaison officers] is critical for those who wish to report family violence. However, their numbers and their availability are somewhat limited. It is therefore critical that training on family violence [is] provided to both new recruits and current VicPol staff incorporates issues relevant to the LGBTI community.¹¹¹

During its consultations the Commission was told that some gay and lesbian liaison officers were more effective than others.¹¹²

The Victoria Police Code of Practice for the Investigation of Family Violence currently recognises that same-sex intimate partner abuse may involve:

- ▷ threatening to out their partner or someone for whom their partner cares (for example, a friend)
- ▷ telling their partner that no one will help them as the police and the justice system are homophobic
- ▷ telling a partner that they will not be believed because homosexuals do not abuse their lovers
- ▷ telling a partner that they deserve it because they are homosexual
- ▷ telling a partner that they are not a 'real' homosexual
- ▷ withholding of medication for those transitioning to another gender.¹¹³

Victoria Police recommended that the CRAF be updated 'to reflect the range of relationships, harms and risks now under the definition of family violence'.¹¹⁴ This includes incorporating risk assessment indicators for specific communities in the framework, including for LGBTI people.¹¹⁵

The Commission heard that there was support for training to be made available to police so that they could more effectively respond to family violence experienced by LGBTI people.¹¹⁶

Access to support services

The joint submission from Drummond Street Services and the Victorian Aids Council noted:

...there are no hot lines, no shelters, no support groups, no advocacy and no public campaigns for individuals in same sex relationships, or who identify as LGBTIQ who are subjected to intimate partner or family violence.¹¹⁷

The Commission was told LGBTI victims have difficulty gaining access to mainstream family violence services because of the lack of availability of these services,¹¹⁸ as well as a fear on their part that the systemic discrimination, homophobia and transphobia they experience in daily life will similarly occur when they try to make use of these services.¹¹⁹

Gay and Lesbian Health Victoria reported that 50 per cent of LGBTI people 'usually or occasionally' hid their sexuality or gender identity for fear of heterosexist violence or abuse when in public places, at work, and at social and community events.¹²⁰ Living in fear of discrimination damages victims' trust in service providers and creates apprehension at the prospect of using mainstream services.¹²¹

The Commission was told that mainstream family violence services might not have the requisite level of understanding of and sensitivity to respond to LGBTI victims and their needs. In a consultation with LGBTI workers it was said that within both mainstream and LGBTI services training in relation to family violence within LGBTI communities is largely non-existent:

When LGBTIQ people are looking for assistance in Victoria it's a real cycle of hit and miss, but generally miss. There's been no specific training in either mainstream or LGBTIQ-specific agencies, and that has contributed to the myth that there is no family violence in LGBTIQ communities, or that family violence is more applicable to straight relationships.¹²²

The Commission is aware of a variety of ways in which the capacity of mainstream and family violence services to respond to LGBTI victims might be improved.

In 2012, Gay and Lesbian Health Victoria developed what are now nationally recognised standards for LGBTI-inclusive practices in services.¹²³ This included a training program called the How2 Program package, which is designed to help organisations develop their practices in order to provide a safe and inclusive environment for LGBTI people.¹²⁴

Others identified the Rainbow Tick as another way of encouraging family violence services to better accommodate the needs of LGBTI people. Organisations that successfully pass through an accreditation process are awarded a Rainbow Tick to show that they offer a safe and inclusive place for LGBTI people to seek help. There are six standards against which a service can be formally accredited to demonstrate LGBTI-inclusive practice and service delivery:

- ▷ organisational capability
- ▷ consumer consultation
- ▷ LGBTI cultural safety
- ▷ disclosure and documentation
- ▷ professional development
- ▷ access and intake.¹²⁵

According to Gay and Lesbian Health Victoria, the Rainbow Tick is currently under-used among family violence services:

While mainstream services are showing increased interest in undertaking this workplace process, it remains the case that the family services sector remains significantly underrepresented among such organisations, and generally under-resourced to undertake such work.¹²⁶

Drummond Street Services and the Victorian Aids Council submitted:

It is becoming more evident that the LGBTIQ community both require and want LGBTIQ specialist rather than mainstream services to better understand and meet their complex needs. We would argue that ... LGBTIQ specific support services may well be more effective and provide safety.¹²⁷

Several organisations operating in Victoria assist people from LGBTI communities, including in relation to family violence. For example, Gay and Lesbian Health Victoria, the Victorian Gay & Lesbian Rights Lobby and Drummond Street Services all provide some information to do with family violence. Fitzroy Legal Service runs a free LGBTIQ legal service every second Thursday night, focusing particularly on family law matters. Mensline also provides information for male victims of family violence, including those in same-sex relationships.¹²⁸

The Commission was told, however, that the limited LGBTI-specific family violence support services that do exist are fragmented, have inadequate funding, and are limited or non-existent in rural, regional and remote areas.¹²⁹ Accordingly, the Commission was told, there is a need for specialist LGBTI family violence services¹³⁰ and capability building in existing services.¹³¹ It was submitted that there is an 'urgent and on-going need to provide professional education on LGBTI-related issues to the Victorian services sector that have responsibility for, or intersect with, family violence'.¹³²

Lack of accommodation options

Homelessness is a serious risk for people who are coming out about their sexuality or gender identity to their family if the family does not accept that identification. A literature review carried out for the University of Adelaide reported that LGBTI people are over-represented in homeless populations, often experience homophobia or transphobia in accommodation services, and suffer more adverse outcomes associated with homelessness.¹³³

The Commission was told that LGBTI people regularly experience homophobia and transphobia in housing and accommodation services.¹³⁴ A participant in the Commission's consultation with LGBTI workers said, 'There's no safe place ... assumptions are made, there's transphobia in agencies and refuges (trans being refused services)—and all that is re-traumatising'.¹³⁵ Another commented:

There is no access to suitable crisis accommodation, and LGBTIQ people experience not being taken seriously by agencies. In one instance same-sex family violence was not in the frame of reference for a worker from one agency who laughed it off thinking it was a joke.¹³⁶

The Victorian Gay & Lesbian Rights Lobby submitted that there are limited, if any, appropriate emergency accommodation options available to LGBTI victims. It was unaware of any emergency accommodation for gay men experiencing family violence. It also observed that transgender women are refused crisis accommodation set aside for women if they have not had gender-reassignment surgery.¹³⁷ The Safe Steps and No To Violence submission provided an example of a transgender man who was required to live as a woman in order to obtain services.¹³⁸ The Commission was told that Kara House, which includes a women's refuge, has provided support to several transgender clients.¹³⁹

Same-sex attracted and gender diverse young people are particularly vulnerable to family violence and face specific barriers to finding a safe place to call home.¹⁴⁰ They often express concern about experiencing violence in the home if they come out and might leave home early for fear that violence will occur.¹⁴¹ Young LGBTI people can have greater difficulty gaining access to support services because of discrimination or because staff are not adequately trained to be sensitive to the person's experiences and needs.¹⁴² In addition, some young people might not feel comfortable in youth or family violence refuges as a result of the homophobic or transphobic views of other residents.¹⁴³

The lack of safe emergency housing for these communities is a huge impediment. It's a massive issue. Especially for young trans people who have been kicked out of home, it leaves them open to exploitation. They end up sleeping around or going to saunas just to have a roof over their head.¹⁴⁴

Alsorts

Alsorts is run by Family Access Network and provides case-managed transitional housing for same-sex attracted and gender diverse young people who are homeless. Launched in 2006, the service was the first of its kind in Victoria. It offers access to transitional accommodation (with support) for young people aged 15 to 25 years in two properties and an outreach service. In addition, it helps link young people to other housing options (including private rental), provides assistance with or referrals to other support services, and offers one-on-one support through its volunteer mentors.

Discrimination against transgender and intersex people in relation to accommodation is considered further in this chapter.

Lack of access to perpetrator programs

The Commission heard that heterosexual assumptions were also a problem with perpetrator programs. The Victorian Gay & Lesbian Rights Lobby submitted that current government funding is allocated only to behaviour change programs for heterosexual male perpetrators.¹⁴⁵ This is discussed further in Chapter 18. Gay and Lesbian Health Victoria pointed out that the Men's Referral Service website focuses exclusively on heterosexual men and does not recognise gay, bisexual or transgender men.¹⁴⁶ No To Violence has prepared practice guidelines which state that programs should challenge homophobia and recommend referrals, information and resources for men who are in same-sex relationships.¹⁴⁷ This is not the same as providing programs which are targeted towards LGBTI perpetrators.

Historically, there have been no government-funded behaviour change programs at the state or national level appropriate for people in same-sex relationships.¹⁴⁸ The Victorian AIDS Council has run a behaviour change program called ReVisioning for gay or bisexual men, without support by government.¹⁴⁹ On 24 February 2016, the Victorian Government announced \$145,000 for the Victorian AIDS Council to deliver behaviour change programs.¹⁵⁰

The Commission was told that specific behaviour change programs for LGBTI people who use violence against family members should be developed.¹⁵¹

In the context of recognising the need to tailor behaviour change programs for specific groups, the Victorian Government has acknowledged the lack of programs specific to LGBTI perpetrators is a 'service gap' which needs to be considered in the future.¹⁵²

Concerns about discrimination against LGBTI people

Discrimination by faith-based service providers

Faith-based organisations play an important role in the delivery of services such as crisis accommodation, counselling and health services, all of which are essential for victims escaping and recovering from family violence.¹⁵³ Many of these organisations receive government funding to deliver such services.

Section 84 of the *Equal Opportunity Act 2010* (Vic) allows a person to discriminate on the basis of another person's religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity if the discrimination is reasonably necessary in order for the person to comply with the doctrines, beliefs or principles of their religion.¹⁵⁴

Concern was expressed that this exception is 'extraordinarily broad' and represents a barrier to LGBTI victims seeking access to services that would otherwise be provided by government in a non-discriminatory manner.¹⁵⁵

The Commission was told that, although there is no 'concrete data' on the use of section 84 to exclude LGBTI victims from services, there is anecdotal evidence that this does happen. Ms Brown stated:

We have anecdotal stories from people, particularly, for instance, transgender women, that have experienced difficulties and we know from work we did around federal discrimination reforms that LGBTI people experience discrimination from faith based providers in a whole range of settings.¹⁵⁶

The Commission was told that a victim's perception that a faith-based provider might discriminate against them because of their sexuality or gender identity can be a powerful deterrent to seeking help. Ms Brown said:

I think a really important point to make is that it's the fear of discrimination. Even if faith based providers are doing the right thing, and I think more than often they are, it's that fear and apprehension that will stop someone from accessing those services or indeed disclosing the nature of their relationship and getting the help that they need.¹⁵⁷

One consultation participant commented, 'While there is state sanctioned discrimination it doesn't create [an] environment ... of inclusivity'.¹⁵⁸ The Commission was therefore told:

... we would strongly recommend that in this forum we explore possible amendments to discrimination laws and limiting or removing those religious exemptions when it comes to these service providers, but indeed any service provider that's delivering services to vulnerable communities.¹⁵⁹

In other contexts some religious organisations have supported confining the scope of religious anti-discrimination exemptions—for example, to religious ordination.¹⁶⁰

The Victorian Court of Appeal has previously considered the statutory precursor to section 84. In *Christian Youth Camps Ltd v Cobaw Community Health Services Ltd* ('Cobaw') it held that the exemption applies only to individuals (not corporate bodies)¹⁶¹ and adopted a narrow interpretation of what is 'necessary' to comply with a person's religious belief.¹⁶² In that case, the Christian owners of a campground denied access to a 'same-sex attracted young people's' group. The majority of the court held that it was not necessary for the Christian owners, who were in substance operating a commercial venture, to deny access to the group under this exemption in order for the owners to comply with their religious beliefs. Such an approach would generally prevent corporate bodies from relying on section 84 to refuse services to particular people on the basis of religious belief.¹⁶³

Although *Cobaw* might constrain the ability of a faith-based organisation to refuse services to people on the basis of their sexuality or gender identity, given what the Commission was told in written submissions and consultations, it appears few people are aware of the potential application of *Cobaw*. As a consequence, the fear of discrimination by faith-based providers of family violence services might still discourage victims with diverse sexualities or gender identities from seeking help.

The Victorian Government has promised to review Victorian legislation with a view to amending any provisions that 'unfairly discriminate' against LGBTI people:

We will modernise Victorian laws. We will start by reviewing all Victorian legislation to identify provisions that unfairly discriminate against LGBTI Victorians, and act to change them. Equal opportunity laws should exist to promote recognition and acceptance of the rights of every person. Victorians want their laws to be modern and reflect community attitudes. We will amend the Equal Opportunity Act 2010 to restore greater balance to the right to be free from discrimination.¹⁶⁴

It has also created a whole-of-government LGBTI Taskforce with two working groups to support it—the Justice Working Group and the Health and Human Services Working Group. The taskforce was established to provide advice to the Victorian Minister for Equality, The Hon. Martin Foley. It will work closely with the Commissioner for Gender and Sexuality, Ms Rowena Allen.

As at the date of this report, the Commission understands that the contemplated review of Victorian legislation (including the Equal Opportunity Act) is not yet under way.

Discrimination against intersex people

The Equal Opportunity Act does not list 'intersex' as an attribute on the basis of which discrimination is prohibited. In contrast, the *Sex Discrimination Act 1984* (Cth) and the *Anti-Discrimination Act 1998* (Tas) do so.¹⁶⁵ The Sex Discrimination Act specifically prohibits discrimination on the basis of intersex status;¹⁶⁶ the Tasmanian Act lists protected attributes including gender, gender identity, sexual orientation and intersex.¹⁶⁷

The Victorian Act does list 'gender identity' as a protected attribute. It defines this to include the bona fide identification by a person of indeterminate sex as being a member of a particular sex (whether or not the person is recognised as such) by assuming characteristics of that sex (whether by means of medical intervention, style of dressing or otherwise) or by living or seeking to live as a member of that sex.¹⁶⁸

In his Second Reading Speech for the Equal Opportunity (Gender Identity and Sexual Orientation) Bill 2000 (Vic), which amended the Equal Opportunity Act to prohibit discrimination on the basis of sexual orientation and gender identity, the then Victorian Attorney-General explained:

The term 'gender identity' is used in the bill ... because the amendment is designed to protect not only transgender people but also people born of indeterminate sex who seek to live as a member of a particular sex.¹⁶⁹

Although the government might have intended to protect intersex people from discrimination, the adopted definition of 'gender identity'—contrary to recognising a spectrum of genders—might be interpreted to assume that sex, whether biological, affirmed or re-assigned, is binary and so does not encompass any gender other than male or female. As a consequence, an intersex person who chooses not to affirm a binary sex (for example, because they want to identify as intersex or of no particular sex) might not be protected from discrimination. This uncertainty could be resolved by including 'intersex' as a protected attribute in section 6 of the Equal Opportunity Act.

Transgender and intersex people and accommodation

Section 60 of the Equal Opportunity Act allows providers of accommodation in a hostel or similar institution to discriminate on the basis of sex, age, race or religious belief if the institution was established wholly or mainly for the welfare of a particular sex, age, race or religious belief.¹⁷⁰

The Act does not define 'sex'. It could be interpreted narrowly to assume that sex is binary (that is, either male or female) and/or that sex refers to the biological birth sex, rather than a broader concept of 'gender identity'. As discussed, the definition of 'gender identity' as the law stands could also be interpreted to assume that sex is binary.

Therefore, if a family violence refuge is established for women it might be possible for it to lawfully discriminate against a pre-operative transgender woman who is biologically male (even if she has affirmed her gender in accordance with the Act, for example, by living or seeking to live as a woman) or an intersex person (depending on their biological characteristics). Accordingly, even if a transgender woman has lived in her affirmed gender for decades, if she has not had gender re-assignment surgery, it may be lawful to refuse her refuge accommodation. In contrast, it would not be possible to lawfully discriminate against a pre-operative transgender man who was biologically a woman, even if he was living his affirmed gender as a man.

As the Victorian Gay & Lesbian Rights Lobby submitted, transgender women have experienced difficulty gaining access to women-only shelters unless they have had re-assignment surgery. The Safe Steps submission expressed concern about these difficulties and recommended as follows:

That the Victorian Equal Opportunity and Human Rights Commission clarifies the application of exceptions under the Equal Opportunity Act 2010 with regard to transgender women's usage of women's services.¹⁷¹

The Victorian Equal Opportunity and Human Rights Commission submission noted:

Transgender women and men (from homosexual or heterosexual relationships) who are also victim/survivors of family violence also face particular barriers in escaping family violence and accessing housing support services and accommodation. This is partly based on a lack of services designed to assist this group of victim/survivors, but may also be partly caused by discriminatory attitudes and stereotypes towards these groups. More work needs to be undertaken to assist these groups of victim/survivors to safely leave violent relationships and access the supports that they require.¹⁷²

Determining a person's legal sex can be 'complex, contextual and contested'.¹⁷³ In the case of transgender and intersex people, their legal identity often does not align with their self-identity.¹⁷⁴ This 'disconnect' can have serious consequences for victims and perpetrators of family violence.

When interpreting the *Gender Reassignment Act 2000* (WA), the High Court of Australia found that the definition of ‘gender characteristics’ in the Act required consideration of social recognition rather than merely biological characteristics.¹⁷⁵ The court has also accepted that sex is not binary and there may be gradated changes between gender identities.¹⁷⁶ The Victorian Equal Opportunity and Human Rights Commission guideline entitled *Transgender People and Sport* is presumably referring to these cases when it says:

Sex refers to a person’s physical sex characteristics. Traditionally this has been read as being either male or female, but courts are now recognising that ‘sex’ can have a broader meaning to specifically apply to people who are intersex, those who may be a combination, or on a spectrum, of being male and female or identify as being physically indeterminate.¹⁷⁷

Accordingly, such authorities might support a broad interpretation of ‘sex’ for the purposes of section 60, which encompasses a person’s self-affirmed gender (that is, not merely their birth sex or their post-sex affirmation surgery sex), including intersex. Such a broad interpretation would prevent a refuge established for women from lawfully discriminating against a pre-operative transgender woman, or at least some intersex people.

It remains a concern, however, that only a person who has undergone sex-affirmation surgery may apply to the Registrar of Births, Deaths and Marriages to have their birth sex altered.¹⁷⁸ This could be seen as supporting a narrower interpretation of sex for the purposes of section 60—namely, that sex means a person’s birth sex, unless altered by sex-affirmation surgery alone. The current Victorian Government has previously identified this as a problem and has also promised to ‘[r]emove barriers to new birth certificates for transgender and intersex Victorians’.¹⁷⁹

In a letter to the Commission, the Victorian Equal Opportunity and Human Rights Commissioner, Ms Kate Jenkins, recommended a human rights-based approach that would:

... require services to actively consider the human rights that may be engaged or limited by any overarching policies or individual decisions to exclude ... transgender [or intersex] people from accessing services. Ensuring that the safety of those both currently receiving, and seeking to receive services, is maintained should be the primary objective in these considerations.¹⁸⁰

As noted, there remains some doubt about whether the Equal Opportunity Act does prevent all such discrimination in the context of section 60.

The way forward

Family violence in lesbian, gay, bisexual, transgender and intersex communities is under-reported and not well understood. It is an invisible problem within both the broader community and the family violence system.

In addition to intimate partner violence, some LGBTI victims experience homophobic or transphobic violence from family members as a response to their sexual and gender identity. Young people and older people are particularly vulnerable to this form of violence as they may be more dependent on their family. Existing models of family violence prevention and response (including elder abuse) often do not recognise homophobia and transphobia as motivations for family violence.

LGBTI victims might have experienced discrimination when seeking access to services: they might fear and mistrust services such as the police, the courts, and health and community organisations. If victims seek help and this is denied because of their sexuality or gender identity, or the violence is not taken seriously because it does not fit social expectations of what family violence is, they may remain in or return to the relationship rather than expose themselves to such treatment. All parts of the family violence system—including the police, the courts and specialist family violence services—must improve their responses to LGBTI communities.

The Commission's recommended priority areas for action are set out below. These are in addition to the recommendations we make elsewhere in this report to improve the responsiveness of the family violence system to the diverse experiences of victims.

Overcoming barriers to reporting

In view of the current barriers to reporting, information and referral avenues should be developed for LGBTI communities in Victoria. Online and hard copy material should continue to raise awareness of family violence in LGBTI communities and identify appropriate support services for victims.

The Commission supports the development of specific LGBTI resources such as those that have been developed in New South Wales.¹⁸¹ We also support the proposal that the CRAF guidance materials need to be amended to incorporate a greater focus on risk assessment indicators for specific communities—including LGBTI people.¹⁸² For example, a risk factor for the LGBTI community might include threats to 'out' a person or denying their affirmed gender. Providing practitioners across sectors with greater guidance on how to ask questions about and recognise these forms of emotional abuse will in turn improve risk assessment practice.

If family violence is portrayed in a way that does not reflect the different relationship contexts in which it occurs, LGBTI victims will be further marginalised and will continue to remain invisible within the system. Prevention activities and community awareness campaigns, such as those being considered by the Council of Australian Governments, need to be developed in consultation with LGBTI communities; they should use imagery and language that reflect these communities and highlight the problem of family violence in all its forms.

Building capacity for and commitment to inclusive practice

Various submissions identified useful programs for helping implement LGBTI-inclusive policies, principles and practices.

One option is to devise training packages that help organisations develop their practice and so ensure a safe and inclusive service for LGBTI people. The How2Program, run by Gay and Lesbian Health Victoria, is a good example of this.

Another option is for service providers to become accredited Rainbow Tick organisations. Services that receive the Rainbow Tick are listed in a national register of LGBTI-accredited organisations. Apart from being a promotional tool, this initiative offers a structured, practical approach to helping organisations be more inclusive and responsive. Achieving such accreditation would, however, consume resources in an already overstretched service system. In the Commission's view, additional funding should be provided to enable family violence organisations to achieve this accreditation.

Further, the Commission considers that the whole-of-government LGBTI Taskforce should play an advisory role in the Commission's recommended review of the standards for family violence service providers (including men's behaviour change programs) and should also inform the revised policy and practice frameworks that will be required to establish the Commission's recommended Support and Safety Hubs (Chapter 13). Similarly, learning and development around family violence for universal services, judiciary and police (including family violence risk assessment) will need to include a strong focus on family violence experienced by LGBTI communities and the principles of inclusive practice with these communities.

Recommendation 166

The Victorian LGBTI Taskforce, supported by relevant experts, provide advice [within two years] on the following:

- ▷ research priorities relating to the nature and prevalence of and the most effective responses to family violence in LGBTI communities
- ▷ effective prevention strategies
- ▷ the review of the standards for family violence service providers—including men’s behaviour change programs
- ▷ intersections between family violence and health and wellbeing initiatives.

Recommendation 167

The Victorian Government require all funded family violence services to achieve Rainbow Tick accreditation [by 31 December 2018]. This should be achieved by means of a staged approach, using workforce training and LGBTI equity auditing followed by full accreditation. An evaluation should be conducted to determine whether all family violence services are suitably responsive to and inclusive of LGBTI people [by 31 December 2019].

Targeted services

A number of parties alerted the Commission to the need for specialist services that provide support specifically for LGBTI communities.

The family violence system has historically focused on women and their children, and people outside of heterosexual intimate partnerships have been inadequately supported by service providers. This is particularly the case with accommodation services. Transgender women and gender diverse young people can face specific barriers in gaining access to accommodation. This places people at risk and goes against the human rights principles that should lie at the heart of our society’s response to family violence.

At present, there is no statewide organisation or centre of expertise that is solely focused on family violence services for LGBTI communities. Such organisations or centres do exist for other communities who experience barriers in finding support for family violence, for example the Aboriginal Family Violence Prevention Legal Service Victoria; InTouch Multicultural Centre against Family Violence; Seniors Rights Victoria and Women with Disabilities Victoria.

The Commission favours building the capability and inclusivity of existing organisations among both specialist family violence and LGBTI organisations so that they can provide adequate services and support for people from LGBTI communities experiencing family violence. As discussed, there are a range of existing LGBTI organisations who provide statewide services and advocacy, including Gay and Lesbian Health Victoria and the Victoria Gay & Lesbian Rights Lobby. There are also existing family violence services which have LGBTI capability including Safe Steps, Domestic Violence Resource Centre Victoria, Kara House and Drummond Street Services (Carlton, Werribee and Geelong).

In order to develop the necessary statewide LGBTI capacity the Victorian Government will need to fund and support the development of specific resources and programs for LGBTI communities, including for LGBTI perpetrators.

Recommendation 168

The Victorian Government provide funding [within 12 months] for the following:

- ▷ development and maintenance of legal and other resources for lesbian, gay, bisexual, transgender and intersex communities to support the identification and reporting of family violence, along with information about safe, accessible sources of support
- ▷ shared community education campaigns via LGBTI and family violence services to encourage LGBTI people who are experiencing family violence to seek help
- ▷ provision of training and advice to specialist family violence services
- ▷ for those LGBTI victims who cannot remain in their home, assistance with obtaining safe accommodation.

Relevant legislation

A number of options are available to the Victorian Government in seeking to remedy the problems transgender and intersex victims of family violence have in gaining access to crisis accommodation and other services.

One option is for the Victorian Equal Opportunity and Human Rights Commission to issue guidelines under section 148 of the Equal Opportunity Act¹⁶³ to enable specialist family violence service providers to develop their organisational policies to make it clear that staff should not rely on the statutory exemptions to discriminate against transgender or intersex victims. The Victorian Equal Opportunity and Human Rights Commission told the Royal Commission it has the expertise and willingness to assist with the drafting of these guidelines.

The current state of the law is complex and indeterminate. The Commission supports the idea of the Victorian Government proceeding with a review of the Equal Opportunity Act with a view to better protecting LGBTI communities against discrimination. Any such review should consider the following:

- ▷ including 'intersex' as a protected attribute without requiring intersex people to affirm any particular sex in order to be entitled to protection under the Act—consistent with the position in both Commonwealth and Tasmanian law
- ▷ ensuring that transgender and intersex people have their self-affirmed gender recognised and protected—without the requirement to undergo sex-affirmation surgery
- ▷ allaying the concerns expressed to the Commission about the availability of exceptions offered by the Equal Opportunity Act and the chilling effect that fear of discrimination can have on LGBTI victims seeking help.

Whether the Equal Opportunity Act is amended or not, any guidelines that are developed would be most effective if combined with support for implementing non-discriminatory practices. Some accommodation providers, for example, might feel pressure to exclude transgender people from refuges because of the communal setting and the transphobic attitudes of some residents. In cases such as this, implementation of non-discriminatory practices might be best effected by moving away from a communal service model. The Commission supports the Victorian Equal Opportunity and Human Rights Commission's recommendation that a human rights approach be adopted, which seeks to balance the rights of those currently receiving and those seeking to receive support.

In Chapter 9 we recommend that the communal refuge model be phased out over the next five years and replaced with a core and cluster model of self contained units. This may not relieve all the problems that arise from homophobia and transphobia but may assist with those that occur in a shared living environment.

Recommendation 169

The Victorian Government, in the context of its commitment to review equal opportunity and birth certificate laws, examine the need to clarify relevant provisions of the *Equal Opportunity Act 2010* (Vic) to remove any capacity for family violence accommodation and service providers to discriminate against lesbian, gay, bisexual, transgender and intersex Victorians [within 12 months].

Prevention

Education about respectful relationships and diverse sexualities and genders is important to combat the homophobic and transphobic attitudes and beliefs that underlie some family violence. Such programs are also valuable in raising awareness that family violence occurs in LGBTI communities and reinforcing that relationships of all kinds should be free from violence. This builds a basis for better identification and response to family violence in all its forms across the community. For these reasons we strongly support the continuation and development of the Building Respectful Relationships program in all schools.

The Commission also supports the Victorian Government, through the Council of Australian Governments, seeking to ensure that the *National Plan to Reduce Violence against Women and their Children 2010-2022* and the third and fourth action plans take account of and seek to address family violence in LGBTI communities.

Endnotes

- 1 *Sex Discrimination Act 1984* (Cth) s 4. Intersex status is a protected attribute under the Act: *Sex Discrimination Act 1984* (Cth) s 5C. See also, Victorian Equal Opportunity & Human Rights Commission, 'Guideline: Transgender People and Sport—Complying With the Equal Opportunity Act 2010' (January 2015) 7.
- 2 Organisation Intersex International Australia Limited, *What is Intersex? Defining Intersex* (2 August 2013) <<https://oii.org.au/18106/what-is-intersex/>>.
- 3 See generally, Gay and Lesbian Health Victoria; Australian Research Centre in Sex, Health and Society—La Trobe University, Submission 821; Rainbow Families Council, Submission 865; 'Addressing Sexual Orientation and Sex and/or Gender Identity Discrimination' (Consultation Report, Australian Human Rights Commission, 2011); Caroline White and Joshua Goldberg, 'Expanding Our Understanding of Gendered Violence: Violence Against Trans People and Their Loved Ones' (2004) 25 (1, 2) *Canadian Woman Studies/Les Cahiers De La Femme* 124–5.
- 4 See Victorian Equal Opportunity & Human Rights Commission, 'Guideline: Transgender People at Work—Complying with the Equal Opportunity Act 2010 in Employment' (July 2014).
- 5 Gay and Lesbian Health Victoria; Australian Research Centre in Sex, Health and Society—La Trobe University, Submission 821, 5.
- 6 *Ibid* (citations omitted).
- 7 No To Violence; Safe Steps Family Violence Response Centre, Submission 933, 13 (citations omitted).
- 8 *Equal Opportunity Act 2010* (Vic) ss 6(d) and 6(p).
- 9 *Statute Law Amendment (Relationships) Act 2001* (Vic) and *Statute Law Further Amendment (Relationships) Act 2001* (Vic). See also, Explanatory Memorandum, Relationships Bill 2007 (Vic) 1.
- 10 *Relationships Act 2008* (Vic).
- 11 Explanatory Memorandum, Relationships Bill 2007 (Vic) 1.
- 12 *Adoption Amendment (Adoption by Same-Sex Couples) Act 2015* (Vic).
- 13 Victorian Gay & Lesbian Human Rights Lobby, Submission 684, 1.
- 14 *Family Violence Protection Act 2008* (Vic) ss 8, 9.
- 15 *Ibid* s 9(2).
- 16 *Ibid* s 7.
- 17 Australian Bureau of Statistics, *Australian Social Trends: Same-Sex Couples* (25 July 2013) <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features10July+2013>>.
- 18 Participants were able to nominate the type of abuse they experienced and could select multiple answers. Some of the types of abuse nominated were emotional abuse, psychological abuse, being physically attacked or hit, sexual abuse, and deprivation of financial independence: William Leonard et al, 'Coming Forward: The Underreporting of Heterosexist Violence and Same Sex Partner Abuse in Victoria' (Monograph Series No 69, Australian Research Centre in Sex, Health and Society, La Trobe University, December 2008) 45.
- 19 Marian Pitts et al, 'Private Lives: A Report on the Health and Wellbeing of GLBTI Australians' (Monograph Series No 57, The Australian Research Centre in Sex, Health and Society, La Trobe University, March 2006) 51–2.
- 20 *Ibid*.
- 21 *Ibid*.
- 22 Crime Statistics Agency, 'An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14' (January 2016) Victoria Police data source, Tab 10, Table 10: Family incidents where the affected family member and other party were in a current or former same-sex relationships, July 2009–June 2014, provided the Commission by the Crime Statistics Agency, 30 September 2015; Victoria Police data source, Tab 40, Table 40: Relationships between Affected Family Member and Other Party where the AFM is male and the OTH is Male; Tab 41, Table 41: Relationship between Affected Family Member and Other Party where the AFM is Female and the OTH is Female, provided to the Commission by the Crime Statistics Agency, 10 February 2016.
- 23 *Ibid*.
- 24 *Ibid*.
- 25 *Ibid* Magistrates' Court of Victoria data source, Tab 9, Table 9: Primary affected family members on original applications by relationship to respondent, July 2009 to June 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015.
- 26 *Ibid* Magistrates' Court of Victoria data source, Tab 16, Table 16: Number of affected family members on original application in same sex relationship by gender, July 2009 to June 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015.
- 27 Catherine Finneran and Rob Stephenson, 'Intimate Partner Violence Among Men Who Have Sex with Men: A Systematic Review' (2012) 14(2) *Trauma, Violence & Abuse* 168, 180. See also Kylie Lloyd, 'Homophobia, Transphobia and Men's Behaviour Change Work' (No To Violence—Male Family Violence Prevention Association, 2015) 7–8; Joan C McClennen, 'Domestic Violence Between Same-Gender Partners: Recent Findings and Future Research' (2005) 20(2) *Journal of Interpersonal Violence* 149.
- 28 No To Violence; Safe Steps Family Violence Response Centre, Submission 933, 12; Victorian Gay & Lesbian Rights Lobby, Submission 684, 3.
- 29 Transcript of Horsley, 11 August 2015, 2528 [15]–[18].
- 30 No To Violence; Safe Steps Family Violence Response Centre, Submission 933, 19.
- 31 *Ibid* 13.
- 32 Gay and Lesbian Health Victoria; Australian Research Centre in Sex, Health and Society—La Trobe University, Submission 821, 8–11.
- 33 Carrie Chan, 'Domestic Violence in Gay and Lesbian Relationships' (Topic Paper No 16, Australian Domestic and Family Violence Clearinghouse, 2005) 2.
- 34 Drummond Street Services, Submission 685, 12.
- 35 *Family Violence Protection Act 2008* (Vic) s 7.
- 36 Community consultation, Melbourne, 7 July 2015; Commission for Children and Young People, Submission 790, 18.
- 37 Victorian Gay & Lesbian Rights Lobby, Submission 684, 2.
- 38 Gay and Lesbian Health Victoria; Australian Research Centre in Sex, Health and Society—La Trobe University, Submission 821, 4.
- 39 Community consultation, Melbourne, 7 July 2015.
- 40 Janine Farrell and Somali Cerise, 'Fair's Fair: A Snapshot of Violence and Abuse in Sydney LGBT Relationships 2006' (Same Sex Domestic Violence Interagency Group, 2007).
- 41 Transcript of Brown, 11 August 2015, 2541 [24]–2542 [3].
- 42 No To Violence; Safe Steps Family Violence Response Centre, Submission 933, 15.
- 43 Transcript of Horsley, 11 August 2015, 2530 [12]–[14].
- 44 No To Violence; Safe Steps Family Violence Response Centre, Submission 933, 12.
- 45 *Ibid* 17.
- 46 Gay and Lesbian Health Victoria; Australian Research Centre in Sex, Health and Society—La Trobe University, Submission 821, 9–10.
- 47 *Ibid* 9.
- 48 Olivia Noto, William Leonard and Anne Mitchell, 'Nothing for Them: Understanding the Support Needs of Lesbian, Gay, Bisexual and Transgender (LGBT) Young People from Refugee and Newly Arrived Backgrounds' (Monograph Series No 94, The Australian Research Centre in Sex, Health & Society, La Trobe University, January 2014) 12.
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31 People with disabilities

Introduction

It is estimated that 1.1 million Victorians have a disability,¹ of whom 32.7 per cent have a 'profound or severe disability'.² While there is no consistent data on the prevalence and incidence of family violence or sexual assault on people with disabilities, the Commission heard that women with disabilities are at higher risk than men with disabilities, and are more likely to experience family violence than women without disabilities.³ This reflects a disturbing culture of acceptance of violence against people with disabilities, which was highlighted in the recent Victorian Ombudsman's report into allegations of abuse in the disability services sector.⁴

The first section of this chapter considers the meaning of 'disability', reflects on the experience of people with disabilities, and sets out their human rights protections under domestic and international law. The Commission notes that restrictions on people with disabilities participating fully and effectively in society are a result of environmental and attitudinal barriers—including entrenched multiple disadvantages and pervasive negative attitudes toward people with disabilities.

The Commission consulted directly with women with disabilities, their carers and their families about their experiences and understanding of family violence. For some of these women, their disabilities had been caused by their partner's violence against them. In other cases the perpetrator had targeted them because of their disability. We appreciate the generosity these women showed in sharing their experiences.

The Commission also spoke to workers and advocates, including representatives of Women with Disabilities Victoria, Domestic Violence Resource Centre Victoria and the Office of the Public Advocate. Many submissions to the Commission raised the question of disability and family violence and put forward recommendations to improve the situation for people with disabilities. Evidence at the public hearings also canvassed the difficulties faced by victims of family violence who have disabilities.

While violence against people with disabilities living in residential settings has been identified as a serious issue, both in Victoria and nationally, the Commission's terms of reference require us to focus on family violence. In relation to people with disabilities, this includes violence against them by their family members or relatives, as well as violence by paid carers (either home-based or in a residential setting) or co-residents in disability services who have a 'family-like' relationship with the victim.

Victorian and Commonwealth reports and inquiries into violence against people with disabilities are summarised in this section in order to provide a broader context of the issues at both state and national levels.

The second section of this chapter explores issues of concern considered by the Commission. There is a notable lack of systematic data collection on family violence against people with disabilities—as a result, reliable and consistent data on this issue is not available. In community consultations, the lack of data about acquired brain injuries (ABIs) and family violence was also identified. This section then explains how people with disabilities may experience family violence from intimate partners, other family members, non-related carers and co-residents in residential facilities, and how the *Family Violence Protection Act 2008* (Vic) includes an extended definition of 'family member'. Inconsistencies in police and others applying this extended definition are discussed. Barriers to people with disabilities reporting family violence and the lack of a positive reporting culture among those working in the disability support sector are noted. The particular barriers to support and recovery experienced by women with disabilities and the lack of perpetrator programs for men with disabilities are also discussed.

In the third section of this chapter, the Commission provides its opinions and proposes a way forward. Key recommendations include ensuring greater and more accurate data collection and initiatives to enhance the inclusiveness, capability and effectiveness of the system which supports victims with disabilities and intervenes with perpetrators, as well as education and training to develop the capacity of those who come into contact with people with disabilities to identify and respond to family violence.

The Commission considered calls to extend the definition of family member to include all paid carers and co-residents, but has declined to do so as we consider other mechanisms to be more appropriate.

While mental illness is a disability and so is encompassed by the discussion in this chapter, the Commission specifically addresses the mental health system in Chapter 19. Chapter 20 discusses the effect on victims of mental illness and ABIs associated with family violence. Mental illness is also discussed in Chapter 18.

Current context and practice

What do we mean by 'disability'?

Definitions of what constitutes a 'disability' vary, as do people's experiences of disability. The Department of Health and Human Services describes a disability as:

any physical, sensory, intellectual, cognitive or psychiatric impairment that affects a person's ability to undertake everyday activities.⁵

It acknowledges that people can be born with a disability or acquire a disability suddenly through an accident. Some disabilities are episodic; others temporary, and not all are visible.⁶

The Commission has adopted the approach of the United Nations that disability is a social construct, and that 'disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others'.⁷

As the World Health Organization explains, '[o]vercoming the difficulties faced by people with disabilities requires interventions to remove environmental and social barriers'.⁸ The removal of these barriers empowers people with a disability to live their lives with greater independence, self-direction and dignity.

People with disabilities in Victoria

The 2011 census shows that almost one in five Victorians have a disability (19.4 per cent). Around a third of Victorians with disabilities (or 6.4 per cent of the state population) have a profound or severe disability, and almost 40 per cent (7.6 per cent of the state population) have a schooling or employment restriction. Of those 1.1 million people with disabilities, approximately 905,926 (81.3 per cent) have a physical condition and approximately 209,488 (18.8 per cent) have a mental or behavioural disorder.⁹

The prevalence of disability in Victoria is higher in older age groups, rising from 18.6 per cent in the 45 to 54 age group to 86.8 per cent in the 90 and over age group. Women are slightly more likely to have a disability than men (20.3 per cent of all Victorian females compared with 18.5 per cent of all Victorian males). Nationally, Aboriginal and Torres Strait Islander people are 1.7 times as likely as non-Indigenous people to have a disability.¹⁰

Almost 94 per cent of all Victorians with a disability live in a private dwelling, either alone (19.3 per cent) or with others (74.5 per cent), and 4.6 per cent live in 'cared accommodation'.¹¹ The remaining 1.7 per cent live in another non-private dwelling (including hostels, motels and rooming houses).

The Commission heard that people with disabilities are at greater risk of poverty, with Melbourne City Mission submitting:

... the relative income of people with disabilities in Australia is approximately 70 per cent of those without disability (the lowest in the OECD) and ... 45 per cent of Australians with disabilities live in poverty or near poverty, a situation that has worsened since the mid-1990s.¹²

Emerson and colleagues have reported that Australian young people with disabilities were five times more likely to experience entrenched multiple disadvantage and long term unemployment than people without disabilities. They are also less likely to be engaged in full-time work and more likely to experience mental illness, homelessness and be victims of crime.¹³

The Commission was told that a poll of 761 Australians with a disability found that 'negative attitudes towards disability were the single biggest cause of disadvantage'.¹⁴ Pervasive negative attitudes towards people with disabilities mean that women who have grown up with disabilities may have experienced 'discrimination, or been ignored and devalued' over the course of their entire lives.¹⁵

The human rights of people with disabilities

The human rights of people with disabilities—including equality before the law and freedom from violence—are protected under international and domestic law.

Australia has international obligations under the UN *Convention on the Rights of Persons with Disabilities*, which creates a duty for Australian governments to ensure that the rights of people with disabilities are protected.¹⁶ In particular, Article 16 of the convention protects the rights of persons with disabilities to freedom from exploitation, violence and abuse. This is especially relevant in the context of family violence, including in disability service settings.¹⁷ Further rights are contained in the *International Covenant on Civil and Political Rights*, the *Convention on the Rights of the Child* and the *Convention on the Elimination of All Forms of Discrimination against Women*.¹⁸

In addition to the general protections under the *Charter of Human Rights and Responsibilities Act 2006* (Vic) as discussed in the introductory 'Family violence and diversity', the *Equal Opportunity Act 2010* (Vic) expressly requires organisations to make reasonable adjustments to accommodate people with disabilities when delivering services.¹⁹ In addition, the federal *Disability Discrimination Act 1992* (Cth) makes it unlawful to discriminate against people with disabilities in the provision of services.²⁰

Current protections for people with disabilities in Victoria

There are a number of bodies that oversee the disability sector in Victoria, and provide people with disabilities with avenues for complaint about abuse or violence. These include:

- ▷ The Disability Services Commissioner, appointed to resolve complaints raised by or on behalf of people who receive disability services, about their providers.²¹
- ▷ Office for the Public Advocate which acts as the adult guardian of last resort for people with disabilities, with responsibilities including advocacy and oversight of the Community Visitors Program.²²
- ▷ Community visitors, volunteers appointed by the Governor in Council to visit residential services, monitor and report on the adequacy of the services provided and raise concerns about the treatment of residents with staff and management.²³ Since 2010, community visitors have been required to notify the OPA of matters concerning sexual assault, serious abuse or unexplained injuries in facilities they visit. The majority of notifications have been from disability residential services (67 per cent).²⁴
- ▷ The Senior Practitioner (Disability), appointed by the Secretary of DHHS under the *Disability Act 2006* (Vic) and responsible for protecting the rights of people subject to restrictive interventions and compulsory treatment. The Senior Practitioner also reviews some incident reports from disability service providers about allegations of staff-to-client assault involving a serious outcome.²⁵

The Victorian Ombudsman has jurisdiction over each of these, but does not often receive allegations about people with disabilities. It is also unclear whether its jurisdiction is limited to state-run facilities, or whether it extends to funded providers.²⁶

In addition, Victoria Police investigates and prosecutes allegations of abuse or violence which may amount to a criminal offence.

The complexity of the system, under which no single agency is responsible for dealing with reports of abuse or violence against people with disabilities, is noted in the recent Ombudsman's report into reporting of abuse against people with disabilities.²⁷ The report stated that:

[D]espite areas of good practice, oversight arrangements in Victoria are fragmented, complicated and confusing, even to those who work in the field. As a result there is a lack of ownership of the problem and little clarity about who is responsible for what.²⁸

As a result, it concluded that the current system is 'fundamentally failing to deliver protection in a coherent and consistent way'.²⁹ Its recommendations included the creation of an independent oversight body to which all serious incidents must be reported. This is discussed further below.³⁰

The Commission also notes that the National Disability Insurance Scheme (NDIS) will be implemented from July 2016 to July 2019, and will provide a uniform framework for much of the disability service system.³¹ This includes a quality and safeguards framework that includes safeguards against abuse of clients by service providers.

The Commission notes that the Office of the Public Advocate has produced the Interagency Guideline for Addressing Violence, Neglect and Abuse (IGUANA) which provides response guidance, including reporting and investigation guidelines. However, these are guidelines only and are not mandatory.³²

The Interagency Guideline for Addressing Violence, Neglect and Abuse

IGUANA, the Interagency Guideline for Addressing Violence, Neglect and Abuse produced by the Office of the Public Advocate in consultation with a number of organisations, provides useful information for organisations, staff members and volunteers working with adults who are at risk of violence, including family violence, neglect or abuse. It sets out a process for staff reporting abuse, the basic principles of which are to:

- ▷ protect the person
- ▷ support the person
- ▷ report the matter immediately
- ▷ encourage the person to take part in any investigation
- ▷ preserve any evidence
- ▷ contact the family or carer
- ▷ take further action if the person reporting has doubts or concerns.

IGUANA also sets out the process for managers and heads of organisations to ensure compliance within their organisations.³³

The National Disability Insurance Scheme

The first stage of the National Disability Insurance Scheme (NDIS) in Victoria commenced in the Barwon region in 2013. From 1 July 2016 the scheme will be progressively rolled out across the rest of Victoria, with completion due in 2019.³⁴

The Commonwealth and all states and territories have agreed to the development of a national approach to quality and safeguards as part of the NDIS, which will include service standards, complaint mechanisms and management of critical incidents.³⁵ The Council of Australian Governments (COAG) released a consultation paper in early 2015 on options for the national framework. Those consulted supported the following measures to prevent and respond to family violence by disability service providers:

- ▷ a statutory-based, independent complaints body
- ▷ a nationally-consistent approach to staff screening
- ▷ other workplace practices and policies to prevent abuse, for example:
 - ▷ effective recruitment practices
 - ▷ the development of organisational cultures that do not tolerate abuse, neglect and exploitation
 - ▷ ongoing staff training and supervision
 - ▷ the involvement of people with disabilities in selecting staff
- ▷ an independent oversight body and/or community visitor role.³⁶

Family violence was identified as a potential risk for clients of the NDIS, and training and learning in specialist violence prevention was identified as a key element of building a capable workforce for the NDIS.³⁷ This includes consultation with relevant organisations and advocacy groups, and developing cultural competency including understanding the gendered nature of violence and abuse and issues relating to lesbian, gay, bisexual, transgender, queer and intersex communities.³⁸

The Commission understands that work is under way to develop a Decision Regulation Impact Statement for consideration by Ministers in early 2016.³⁹

The Family and Community Development Committee of the Victorian Parliament has also commenced an inquiry into abuse in disability services, the terms of reference of which include informing Victoria's position on an appropriate quality and safeguarding framework for the NDIS.⁴⁰ This is discussed further below.

Experiences of family violence

The extent and nature of violence against people with disabilities

The lack of systematic and disaggregated data on violence against people with disabilities makes it difficult to be precise about the extent of family violence involving people with disabilities – even more so than in relation to the general population. This is discussed further below.

In addition, the Commission heard that people with disabilities experiencing family violence are less likely than people without disabilities to report it. Victoria Police notes in its submission that only a 'small proportion' of family violence incidents in 2014 involved people with disabilities, and suggests that this is a result of the significant barriers to reporting that they may face.⁴¹ These barriers, and the issues of reporting generally, are discussed further in this chapter.

Despite the lack of data, the evidence before the Commission was that women with disabilities experience all kinds of violence at higher rates than women who do not have disabilities⁴² and that this violence is more severe and lasts longer than for other women.⁴³ The Public Advocate, Ms Colleen Pearce, gave evidence that some research suggests that women with disabilities are 40 per cent more likely to be victims of domestic violence than women without disabilities.⁴⁴ Women with disabilities are at higher risk of violence, abuse and exploitation than men with disabilities,⁴⁵ and most interpersonal violence towards women with disabilities is perpetrated by men,⁴⁶ highlighting the salience of gender.

As the Public Advocate said in her statement to the Commission ‘violence against women with disabilities must be understood in the context of the intersections between gender and disability, power and marginalisation’.⁴⁷

Women with disabilities are also more likely to experience violence from a broader range of perpetrators than women without disabilities.⁴⁸

Family violence

In relation to family violence, the Commission was told that women with disabilities experience many of the same kinds of family violence as women without disabilities, including that perpetrated by male intimate partners and sexual violence.⁴⁹ Women with intellectual disabilities are at a ‘considerably heightened risk’ of experiencing sexual assault compared with other women with disabilities, according to the *Voices against Violence* study.⁵⁰ Women with disabilities may also experience ‘disability-based violence’; that is, violence which is unique to their disability, for example, the withholding of a mobility aide or medication.⁵¹

International research shows that acquired brain injuries can be a risk factor for being a victim of family violence. A victim may also experience an ABI as a consequence of family violence.⁵² ABIs and family violence are discussed further in Chapter 20.

The Commission heard that family violence may begin or worsen when women acquire a disability:

Many women who acquire disabilities describe how their status changes. In family relationships their power changes. It may change in all kinds of ways including physically, economically and socially. Similar to what we know about pregnancy, the life change of acquiring a disability can be accompanied by an increase in, or even the commencement of family violence.⁵³

Disability may also overlap with other forms of identity to place women at even greater risk of experiencing family violence, or of not being able to access appropriate services:

The risks are further heightened for women who are indigenous, from culturally and linguistically diverse backgrounds, and living in isolated – rural or institutional – communities.⁵⁴

So, for women with disabilities we experience poorer socioeconomic status, poorer economic and social participation than both men with disabilities and other women. So that gives us what we might call a double disadvantage. If you are an Aboriginal woman, that’s again compounded and this disadvantage compounds itself and significantly increases the risk that women with disabilities, and particularly women from other disadvantaged groups, experience.⁵⁵

The research shows that women with disabilities who live in rural, regional and remote communities are particularly vulnerable:

In the Australian context, women and girls with disabilities living in rural and remote communities are particularly disadvantaged as a result of the inaccessible environments and lack of services, information, awareness and education.⁵⁶

During a community consultation, the Commission heard that family violence against women with disabilities in rural, regional and remote areas is increasing and that it is 'extra hard when you're in a remote area and living with family violence'.⁵⁷ One worker gave the example of a woman in a wheelchair who was pushed against a wall by her husband and left all day while he worked on the farm.⁵⁸

Although older people experience some similar barriers to some women with disabilities (particularly where they have complex care and communication needs), the experience of family violence by these groups is distinct. The experiences of older women who acquire a disability can be different to women with disabilities who are ageing.

Settings

People with disabilities can experience family violence in a range of settings. People with disabilities may live in their own home, with family members or in a facility. Facilities include supported accommodation, day care services, aged care residences, respite care facilities, detention centres and psychiatric care facilities.⁵⁹ The vast majority of Victorians with a disability live at home.⁶⁰

Whether they live at home or in a residential/institutional setting, violence towards them by a family member constitutes family violence.

While a 'family member' generally means a partner, relative, child or someone with whom they are in an intimate personal relationship, violence committed by non-related carers (either in the home or in an institutional setting) or by co-residents in residential facilities may also constitute family violence where the relationship can be said to be 'family-like': see box.

Extended definition of ‘family member’

The definition of ‘family violence’ in the *Family Violence Protection Act 2008* (Vic) involves violent behaviour by a person towards a ‘family member’ of that person.⁶¹ For the purposes of the Act, the definition of ‘family member’ extends beyond intimate partners and relatives and includes:

... any other person whom the relevant person regards or regarded as being like a family member if it is or was reasonable to regard the other person as being like a family member having regard to the circumstances of the relationship.⁶²

The Family Violence Protection Act sets out a range of matters to be considered in determining whether it is reasonable to regard the person as being ‘like a family member’, including:

- ▷ the nature of the social and emotional ties between the relevant person and the other person
- ▷ whether the relevant person and the other person live together or relate together in a home environment
- ▷ the duration of the relationship between the relevant person and the other person and the frequency of contact
- ▷ any financial dependence or interdependence between the relevant person or other person
- ▷ any other form of dependence or interdependence between the relevant person and the other person
- ▷ the provision of any responsibility or care, whether paid or unpaid, between the relevant person and the other person
- ▷ the provision of sustenance or support between the relevant person and the other person.⁶³

In deciding whether a person is like a family member, the ‘relationship between the persons must be considered in its entirety’.⁶⁴

The Act includes an example of where a person might be like a family member, namely:

[a] relationship between a person with a disability and the person’s carer may over time ... come to approximate the type of relationship that would exist between family members.⁶⁵

Who commits family violence against people with disabilities?

Intimate partners

The most common manifestation of family violence suffered by women with disabilities is intimate partner violence.⁶⁶ The Commission heard from women with disabilities who have experienced family violence perpetrated by intimate partners:

My husband was my carer. I didn’t think I could physically support myself. Family violence can result in emotional, physical and financial difficulties but with a disability you also struggle to live independently. I didn’t know there were services available to help me ... My husband told me ‘I didn’t sign up to be your carer. I signed up to be your husband’.⁶⁷

Some had also suffered family violence throughout their childhoods, which continued into adulthood:

I suffered abuse from my real parents and adopted parents ... [My] foster family took advantage of me, sexually abused me and my baby ... Men take advantage of me because of my disability.⁶⁸

Another participant in the Commission's community consultations spoke of how she 'managed' her husband's moods throughout their long marriage, but that this was no longer possible after she was injured at work and acquired a disability:

I had a workplace accident [and] ended up with spinal injuries with chronic pain with depression and anxiety ... He supported me for the first three months – then it went downhill – he then got more violent and more verbal. If we were driving and I made a mistake he would bash me. Kids in the car. Then you get home and you think this is terrible, but you keep going and going.⁶⁹

Intimate partner violence may take on different forms in the context of disability. As the Public Advocate explained:

... we were the guardian for a woman. She had had a stroke. She was in hospital. She told the guardian that she wanted to go into care because her husband hit her. Now, she was in that relationship for 40 years. It was a very difficult decision for her, but her choices were very limited and she expressed the desire to go into care rather than return home. But she said, 'Please don't tell him that I've told you that he hits me.'

The power dynamic continued when she was in fact placed in care and he was continually at her bedside and interfering with the care that was being provided to her, and particularly around feeding time, insisting on—he controlled even her feeding. So, this control that we see is really a very common pattern.⁷⁰

Intimate partner violence can also involve perpetrators with a disability. In another case presented to the Commission by the Office of the Public Advocate, the guardian of a woman with an intellectual disability sought an intervention order against the woman's partner who also had an intellectual disability:

Ms Na was a young woman with an intellectual disability and a life-threatening eating disorder living independently in community housing with case management support. Ms Na's eating disorder was so serious that food cupboards in the house needed to be locked and her food intake was severely restricted by support workers. Ms Na became involved with Mr O who also had an intellectual disability. He did not have the cognitive capacity to understand that Ms Na's eating disorder was life threatening and so he would bring large amounts of food into the house, ignoring the guardian's instructions not to do so.

The guardian attempted to reach an agreement with Mr O for him not to bring food into the house. However, Mr O became violent and abusive towards Ms Na and assaulted a neighbouring resident and ongoing contact with Mr O was considered unsafe for Ms Na. The guardian approached the police who agreed to apply for an intervention order against Mr O that was limited to preventing Mr O from committing family violence.⁷¹

Other perpetrators

As a group, women with disabilities experience family violence from a broader range of perpetrators than women without a disability. Ms Keran Howe, Executive Director of Women with Disabilities Victoria, told the Commission during the public hearings that:

What we find from our research and also from listening to women with disabilities as our members is that ... [t]hey experience violence from intimate partners, but also from other family members. In addition to that, [they] experience violence from a broader range of perpetrators of violence than other women. So that can also take in paid carers and service workers such as transport workers.⁷²

Other research also confirms these findings. In 2010, the Office of the Public Advocate analysed 86 reported cases of physical, sexual, psychological or emotional violence and financial abuse and neglect of clients with a cognitive impairment: 66 of these victims were women, and 20 men. The Office found that the perpetrator was a partner or relative in 64 cases, a staff member of a disability service in nine cases and a co-resident in four cases (the remainder involved neighbours or strangers).⁷³

The 2012 *Voices against Violence* study, which was a joint research project undertaken by Women with Disabilities Victoria, the Victorian Office for the Public Advocate and Domestic Violence Resource Centre Victoria, found that, although intimate partners were the most common perpetrators of violence against women with disabilities, other potential perpetrators are personal carers, support staff, service providers, medical and transport staff (such as taxi drivers) and male co-residents. Once again, it also found that women may be subjected to violence by multiple perpetrators, often over a period of many years.⁷⁴

Carers

Carers can be intimate partners, other relatives, in-home carers and staff at relevant facilities.

As discussed above, under the Family Violence Protection Act, non-related carers can commit family violence if they are in a family-like relationship with the victim.

The Commission was told that women with disabilities are particularly vulnerable to violence, especially when perpetrators are carers who are in a position to exert control and power.⁷⁵

Victoria Police acknowledged the problem of family violence committed by carers in its submission:

Carer [to] patient family violence is a unique subset of family violence that is heavily underreported. A small percentage of all family violence incidents in 2014 identified a carer as the perpetrator, possibly due to few being aware that a disability carer can be considered a perpetrator of family violence under the *Family Violence Protection Act 2008*. In addition to being in a privileged position to perpetrate violence against their patients, carers can also commit unique forms of family violence, including withholding support or medication, and threatening institutionalisation.⁷⁶

A recent survey conducted by the Health and Community Services Union found that nearly half of all Victoria's disability sector employees have witnessed co-workers perpetrating acts of abuse, violence or neglect towards people with disabilities who are in their care.⁷⁷

The Office for the Public Advocate submission notes that there appears to be a culture of denial in some services:

Violence perpetrated by staff towards residents is reported to OPA and Community Visitors in many forms ranging from bullying and disrespectful behaviour to rough handling, physical and sexual violence. In some services there is an implicit acceptance of behaviours that cause harm and a reluctance to name this as violence.⁷⁸

Due to the often highly dependent nature of their relationship with their carers, people with disabilities may suffer unique forms of family violence at the hands of carers. Some examples of abuse by carers are:

- ▷ threatening to withdraw care
- ▷ controlling access to medication
- ▷ controlling access to mobility and transport
- ▷ threatening to institutionalise the person
- ▷ controlling access to tampons and sanitary pads
- ▷ controlling access to pregnancy termination.⁷⁹

Powers of Attorney, guardianship orders and other forms of decision-making power give carers the right to make financial, medical and other decisions about their clients. Some carers use such powers to financially abuse victims.⁸⁰

In its submission to the Commission, the Victorian Civil and Administrative Tribunal (VCAT) noted:

The Guardianship List deals with victims of family and domestic violence. Elder abuse, carer abuse and issues related to the care of those with a disability are complaints that arise often in the context of physical, mental and economic abuse. The existence of family violence is not immediately evident in guardianship proceedings and often does not emerge until the parties are well into a hearing.⁸¹

In its submission, VCAT expressed concern that the Guardianship List is not adequately funded to identify and respond to family violence, potentially endangering witnesses and staff:

Currently, the Guardianship List at VCAT is not fully funded and does not have the resources to adequately case manage prior to a hearing. Case management of applications involves contacting the parties, ensuring that all relevant people are aware of the application and the hearing, and identifying any issues of concern, including any background of abuse, violence or exploitation.⁸²

It suggested that the Guardianship List should be adequately funded to enable case management of Guardianship and Power of Attorney matters and provision of essential and specialised support for victims of family violence.⁸³

The Commission notes that VCAT has a family violence support worker who is available to work across all lists,⁸⁴ but it is not clear to what extent they have the role or capacity to assist with this function.

Co-residents

People with disabilities who live in supported accommodation, such as group homes or supported residential services, may live with other residents for extended periods of time in a home-like environment and come to regard each other as 'family'. Once again, under the Family Violence Protection Act, co-residents can commit family violence if they are in a 'family-like' relationship with the victim.

People with disabilities may have varying abilities to cope with family violence perpetrated by co-residents. The Commission was told of one example of increasing physical assaults by a 21-year-old man with mental health issues on other co-residents who:

... were described as having extremely impaired ability to defend themselves from the perpetrator's attacks. Residents were reported to be remaining in their rooms after returning from day programs, even eating and urinating in their rooms.⁸⁵

In this case, despite the escalating violence, he was not promptly re-located.

Disability and perpetration of family violence

The Commission also heard evidence about perpetrators of family violence with disabilities. For example, Ms Helen Fatouros, Director, Criminal Law Services of Victoria Legal Aid, explained that:

Our client data reveals that 15 percent of our clients who breach family violence intervention orders have disclosed a disability. Of that group, over half had a mental health issue. Seven percent had an intellectual disability and four percent had an acquired brain injury.⁸⁶

One study showed that in a relationship where the man has an ABI the chances of 'marital aggression' (the author's term) are increased sixfold.⁸⁷ A New Zealand study found that in a group of 206 mothers identified as being at high risk of committing child abuse, over 36 per cent had suffered at least one traumatic brain injury over their lifetime, with around a third experiencing multiple such injuries.⁸⁸

The Office of the Public Advocate expressed concern that perpetrators with cognitive impairments are subjected to intervention orders when they may not have the capacity to understand them. More generally, they may have limited capacity to understand and learn from their actions.⁸⁹ The OPA submission included the following example:

While intervention orders have been reasonably effective in keeping him away from certain properties and people there is little indication that Mr S has understood them or they will be effective in determining future violent behaviour. It is a concern that Mr S's breaches could lead to him being imprisoned for up to two years. Long term secure accommodation with a high level of support is needed to circumvent the cycle he is in.⁹⁰

The Victoria Police Code of Practice for the Investigation of Family Violence instructs that if police suspect a perpetrator to have a cognitive impairment, police should not issue a family violence safety notice, however they remain responsible for ensuring the victim's safety.⁹¹

In another example, a perpetrator with a disability was excluded from a facility following the issue of a personal safety intervention order, resulting in him returning to his family home from which he had previously been removed because of suspected family violence.⁹² The Office of the Public Advocate recommended that the government fund emergency accommodation with appropriate intensive support for perpetrators evicted from disability residential settings.⁹³

Inquiries into violence against people with disabilities

There have been several government inquiries and reports into violence against people with disabilities at a state and national level in recent years.

Victoria

In 2012, the Victorian Law Reform Commission conducted a review into the *Guardianship and Administration Act 1986* (Vic), the purpose of which is to enable persons with a disability to have a guardian or administrator appointed.⁹⁴

The scope of the review was broad. It considered, among a range of other things, the functions, powers and duties of the Public Advocate, including its investigatory powers when a person is under inappropriate guardianship, is being exploited or abused, or is in need of guardianship.⁹⁵ It recommended expansion of the Office of the Public Advocate's investigatory role beyond its current ability to investigate only in circumstances where a guardianship or administration order might be appropriate.⁹⁶ This is discussed in more detail in Chapter 27.

In 2015, the Victorian Ombudsman conducted an investigation into how allegations of abuse in the disability sector are reported and investigated.⁹⁷

The investigation looked at:

- ▷ services including residential, respite and day programs funded by the Victorian Government
- ▷ the oversight responsibilities of agencies including the Department of Health and Human Services and the Disability Services Commissioner.⁹⁸

It found that the current system of oversight and accountability reporting is fragmented and disjointed, a positive reporting culture does not exist, that there is a systemic failure by those working in the system to report abuse and inadequate oversight by DHHS of incidents in supported residential services.⁹⁹ Its recommendations included mandatory reporting, by all service providers, of all serious incidents relating to people with disabilities to an independent oversight body.¹⁰⁰

In 2015, the Victorian Parliament Family and Community Development Committee commenced an *Inquiry into Abuse in Disability Services*, examining the reasons abuse is not reported or acted upon, and how it can be prevented.¹⁰¹ The terms of reference asked the Committee to consider these broad issues in two stages: the first stage is to inform Victoria's position on appropriate quality and safeguards for the NDIS, while the second is to consider systemic issues and measures to strengthen the disability services system prior to transition to the NDIS. The terms of reference contemplated that the Committee will work with the Ombudsman to avoid unnecessary duplication of the Ombudsman's work. It is due to report on 30 April 2016.¹⁰²

The Committee released an interim report in August 2015, which identified a number of concerns about the current system of oversight of disability services in Victoria, and made recommendations on the development of a quality and safeguarding framework to ensure the safety of people who access disability services. It endorsed the recommendation in the Ombudsman's report that an independent oversight body should be created. It also identified a number of questions to inform Stage 2 of the review.¹⁰³

The Victorian State Disability Plan 2013–2016 articulates the government's plan to achieve its vision of an 'inclusive Victorian society that enables people with a disability, their families and carers to fulfil their potential as equal citizens'.¹⁰⁴ The plan aims to achieve a number of outcomes in four key areas: a strong foundation in life; upholding rights and promoting participation; accessing information, transport, buildings and places; and a contemporary approach through disability system reform. One of the outcomes of the current plan is the better protection of human rights. One of the strategies to achieve this outcome is to improve responses to violence and sexual assault. The plan does not specifically deal with family violence.¹⁰⁵

Commonwealth

In 2014, the National Cross-Disability Disabled People's Organisations made a submission to the Commonwealth Senate Standing Committee's *Inquiry into Domestic Violence in Australia*.¹⁰⁶ It stated that:

Violence against people with disability in institutions is Australia's hidden shame. It is an urgent, unaddressed national crisis, of epidemic proportions, yet is excluded from national policy responses relating to domestic/family violence and sexual assault, and from national policy responses relating to advancing the human rights of people with disability.¹⁰⁷

It submitted that the overwhelming majority of perpetrators are male residential care workers, some of whom deliberately target those least able to resist or complain.¹⁰⁸

The Senate Committee's report acknowledged the issue of violence against people with disabilities, including by family members and support workers.¹⁰⁹ It also acknowledged the problems with data collection in relation to family violence generally, and specifically in relation to violence against people with disabilities, and made recommendations to improve data collection at a national level.¹¹⁰

The federal Parliament's Senate Community Affairs References Committee also recently conducted an inquiry into violence, abuse and neglect against people with disabilities in institutional and residential settings. The Committee's report, containing 30 recommendations and tabled in November 2015, acknowledged that family violence occurs both outside and within institutions and residential settings and identified the need for people with disabilities to have improved access to a range of mainstream family violence support services.¹¹¹ Some of the Committee's recommendations were relevant to family violence, including that:

- ▷ all accommodation and service delivery funding agreements should have a mandatory gender-sensitivity requirement¹¹²
- ▷ the Australian Government should consider amending the *National Disability Strategy*, the *National Plan to Reduce Violence against Women and their Children* and the *National Framework for Protecting Australia's Children* to include specific needs of people with disabilities and, in order to give effect to these frameworks, increase funding to support women with disabilities escaping family violence¹¹³
- ▷ the Australian Bureau of Statistics should ensure all of its surveys are inclusive of people with disabilities and that the Australian Government commit additional funding to ensure that data is collected on the prevalence of violence, abuse and neglect against people with disabilities in certain surveys, including the Personal Safety Survey¹¹⁴

- ▷ the Australian Government should establish a scheme to ensure national consistency in disability worker training, including mandatory rights based training to develop core competency skills in recognising and responding to violence, abuse and neglect of people with disabilities.¹¹⁵

Challenges and opportunities

This section highlights a number of areas of concern raised with the Commission, including the lack of data available on family violence against people with disabilities, the issue of inconsistent interpretation by police and others of whether carers and co-residents in disability residential services fit within the extended definition of ‘family member’ under the Family Violence Protection Act, and the barriers people with disabilities face when speaking up about or reporting family violence. The reasons why some workers may not report abuse of a client, and the response of specialist family violence services, the police and the courts to victims who have a disability are also discussed.

Lack of data and knowledge

The lack of data on violence (including family violence) against people with disabilities has been noted in the literature, and in the recent inquiries. As noted in the *Voices against Violence* study:

[T]here is no systematic collection of data in Australia or within the states and territories that enables the determination of the prevalence of violence against women with disabilities ... Nor has there been any national scale research into the prevalence of violence against women and girls with disabilities, to date ...¹¹⁶

In relation to family violence:

There is no consistent and inclusive national data available on the intersection of gender, disability and violence that enables reliable ongoing trend analysis into prevalence rates, for either family violence or sexual assault ... The Australian Bureau of Statistics (ABS) has no standard national data collection recording the experiences of violence among adults with disabilities although it has been working on this issue.¹¹⁷

The Senate Community Affairs References Committee’s inquiry into violence, abuse and neglect against people with disabilities in institutional and residential settings (discussed above) also found that there was a concerning lack of data:

The committee notes with great concern, the lack of reliable and consistent data on violence, abuse and neglect of people with disability, and the complete lack of data on the outcomes of reporting and investigations. It is impossible to adequately address an issue that has not properly been identified. Part of the work to eliminate violence and abuse of people with disability must surely include quantifying the precise nature of the problem.¹¹⁸

As discussed above, it recommended that the Australian Bureau of Statistics should ensure all of its surveys are inclusive of people with disabilities and that the Australian Government commits additional funding to ensure that data is collected on the prevalence of violence, abuse and neglect against people with disabilities in certain surveys, including the Personal Safety Survey.¹¹⁹

The Senate Standing Committee’s *Inquiry into Domestic Violence in Australia* also acknowledged the problems with data collection in relation to family violence generally, noting that there is a lack of reliable disaggregated quantitative data regarding family violence experienced by people with a disability and that ‘most methodologies used in Australia systematically [exclude] many people with a disability’.¹²⁰ It made recommendations to improve data collection at a national level.¹²¹

One example of the lack of data in this area is in respect of ABIs. The Commission learned that ABIs may be a consequence of family violence as well as being a risk factor both for being a victim of family violence and for using violence. However, during a community consultation, the Commission was told that there is no 'comprehensive database' that provides information on family violence cases involving ABIs and that this is a 'sleeper' issue.¹²²

Difficulties in applying the extended definition of family member

Submissions identified that the extended definition of 'family member' in the Family Violence Protection Act can be difficult for police and others to interpret and apply, and this is not done consistently.¹²³

The Victoria Police Code of Practice for the Investigation of Family Violence identifies that a 'paid or unpaid carer may, on a case by case basis, be regarded as being like a family member',¹²⁴ but does not refer to co-residents as possible 'family members'.

The Office of the Public Advocate's submission to the Commission notes that violence by staff towards residents and between residents in disability residential services are the 'top two types of notifications to the Public Advocate' and that both 'potentially meet the definition of family violence'.¹²⁵

However the Public Advocate stated that she was unaware of the Act ever being used to seek a family violence intervention order against a paid carer or co-resident.¹²⁶

The Office of the Public Advocate submitted that the Family Violence Protection Act should be amended to make clear that people in disability residential settings are regarded as being in family-like relationships.¹²⁷ They also recommended that the Victorian Government and Victoria Police establish a special taskforce to develop protocols for responding to family violence in disability residential settings.¹²⁸

An intervention order under the *Personal Safety Intervention Orders Act 2010 (Vic)* may be sought against a carer or co-resident who commits violence, regardless of whether they are considered a family member under the Family Violence Protection Act. As the OPA notes, however:

... in practice in group [home] settings, there appears to be little knowledge or understanding of the application of either [the Family Violence Protection Act or the Personal Safety Intervention Orders Act].¹²⁹

The Office of the Public Advocate also notes that police have no code of practice for personal safety intervention orders and as a result 'there is likely to be a less consistent approach by police'.¹³⁰

Speaking up about violence

People with disabilities may not report family violence

In 2015, the Victorian Ombudsman's investigation into reports of abuse in the disability sector highlighted the low levels of reporting of violence against people with disabilities. It stated:

Whether or not they ever have the need to report abuse, it is vital that everyone has confidence in the systems that exist to protect them. Yet reports and research consistently show that many people with a disability will not report abuse, for fear they will either not be believed, that nothing will happen, or that they will suffer repercussions. If no single agency carries overall responsibility for building people's confidence, including in fair and robust outcomes, this sorry state of affairs will continue.¹³¹

The Commission heard that there are a number of reasons why people with disabilities do not report family violence. Fear of retribution or a loss of support can prevent people with disabilities from reporting family violence:

Like all people who have experienced violence and abuse, people with disabilities may feel shame in reporting, and may fear that if abuse is made known to outside parties there will be violent repercussions and other consequences, such as family breakdown. There may also be other obstacles to reporting experienced by people with disabilities, such as a fear that support services will cease, and reliance on abusers for transport or communication assistance that impedes access to support services and police ...¹³²

For someone with a disability, the fear of reporting violence may be compounded if the perpetrator is a carer or someone on whom the person is dependent. For some the choice is between enduring the violence or the indignity of being left without assistance for personal things such as showering and toileting. A witness providing evidence at the public hearings explained that:

I use a wheelchair and I relied on [my husband] for physical and practical support. This put me in a difficult position. I was too afraid to be on my own. I didn't think I could look after myself and my children due to my physical disabilities.¹³³

The witness recounted that after her husband was ultimately removed from the house by police due to his violence she was physically unable to shower for weeks and wanted him to come home because she felt she could not care for herself.¹³⁴

For people with disabilities in residential accommodation, there can be a culture of acceptance of abuse and an atmosphere of fear that can be a barrier to people reporting violence.¹³⁵ The Ombudsman noted that there are fewer safeguards for people living at home to report abuse by their paid carers as they do not receive visits by community visitors and may not have contact with other support workers.¹³⁶

The Commission also heard that women with disabilities fear losing custody of their children if Child Protection is notified of the violence. While many women have this fear, evidence suggested that it has special relevance for mothers with disabilities, because of the prevailing stereotypes about their capability as parents and, perhaps, because removal of children from parents with disabilities happens at a much higher rate than for parents without disabilities.¹³⁷ Ms Howe spoke about this:

There is a strong belief in our community, an unfounded belief that women with disabilities are not able to provide adequately for their children. In fact, it's very common, when a woman reports family violence, that the child can be removed from her care because the belief is if the partner isn't around that she's not able to provide adequate care. There is nothing in the research that suggests that women with disabilities are less able to provide effective parenting and to be good mothers.¹³⁸

The Voices against Violence research study found that some women with disabilities may not perceive that what is occurring is violence:

A lifetime of cumulative discrimination and demeaning experiences can result in some women seeing their experiences of violence as normal and an everyday occurrence. Women then felt that what was happening to them was to be expected, and that they have to live with the violence. Women spoke of perpetrators reinforcing this idea by telling them they deserved the violence they were experiencing.¹³⁹

Experiencing discrimination day-to-day can also lead victims to blame themselves, which itself creates a barrier to reporting. Ms Howe told the Commission:

... women with disabilities ... often have talked about internalising this experience and believing when they do experience violence that maybe it's their fault and perhaps they deserve it.¹⁴⁰

The Commission was told of cases where women believed that family violence was ‘what I deserved’, and ‘I just thought that’s what it is like in families.’¹⁴¹

Finally, the Commission heard that people with disabilities may not report family violence because they do not think they will be believed. People with disabilities may be the subject of negative stereotypes about disabilities—including mental health disabilities—that can cause family, friends, carers and police not to believe them when they report violence:

People may be reliant on family, carers or staff to assist them to report. If these ‘gatekeepers’ do not recognise that a crime has occurred, do not want to see what happened as a crime, or if they do not know how to report, crimes go unreported.¹⁴²

The Commission was informed that women with disabilities are variously stereotyped as ‘incompetent, voiceless, hypersexualised or inherently vulnerable.’¹⁴³ These stereotypes become barriers when women seek help or disclose family violence because they contribute to perceptions that women with disabilities are not credible witnesses:¹⁴⁴

... tolerance of violence against people with disability is high and often one of the greatest difficulties people with disabilities face is the reluctance of others to recognise and believe that abuse has taken place.¹⁴⁵

The Victoria Police Code of Practice for the Investigation of Family Violence acknowledges that people with disabilities who report family violence, are ‘more likely to be disbelieved and the impact of the violence is more likely to be underestimated.’¹⁴⁶ It goes on:

It is important that the police approach to a person with a disability is not informed by negative stereotypes; but that police take the time to listen, acknowledge and respect even if there is insufficient evidence to prosecute.¹⁴⁷

Workers may not report violence

Absence of a positive reporting culture

The Ombudsman’s investigation into the disability sector recently identified a ‘systemic failure by those working in the system to report abuse.’¹⁴⁸ Some reasons given for this reluctance to report abuse include:

- ▷ intimidation
- ▷ fear of reprisal against the reporting staff member, the client and/or their family
- ▷ concern about the reputation of the service provider
- ▷ unease about the impact on the subject of the allegation
- ▷ frustration with the significant paperwork associated with reporting.¹⁴⁹

This lack of a positive reporting culture may in part be due to an acceptance of violence against people with disabilities. The Public Advocate gave evidence that:

The tolerance of violence against people with disabilities is high and often one of the greatest difficulties people with disabilities face is the reluctance of others to recognise and believe that abuse has taken place.¹⁵⁰

She reports that in some residential services:

... there is an implicit acceptance of behaviours that cause harm and a reluctance to name this as violence. This type of culture may also include the bullying of staff, which is intended to discourage reporting.¹⁵¹

The reluctance to name violence as such can lead to inaction on the part of providers. The Public Advocate described how she had written to the Department of Health and Human Services expressing her concern about a number of physical and sexual assaults at a particular facility. She said the department treated the matter as an issue of 'resident incompatibility', despite the fact that nearly 30 incidents had been reported in 12 months.¹⁵² The Public Advocate told the Commission:

It's got nothing to do with resident compatibility. It's got to do with violence. One of the things that the family violence sector has fought for for many years is to have violence and abuse named as that. What we see in disability services calling it 'behaviours of concern' or 'resident compatibility' and not naming it as violence and abuse means that it remains hidden, we are not getting the cultural change or the policy change that's required to in fact address what's happening in these houses, it remains hidden and if it's not named and it's hidden, we can't address it.¹⁵³

The Ombudsman also documented a number of instances of intimidation of disability workers who reported violence or abuse by their colleagues, contributing to a culture of fear around reporting.¹⁵⁴ The protected disclosure legislation designed to protect whistleblowers currently extends to some but not all workers, and the Ombudsman recommended that it extended to all disability workers across the sector in order to support a culture of reporting.¹⁵⁵

Lack of training

The Ombudsman's report identified that disability service staff are not always trained to identify, and act on, incidents of violence or abuse against their clients. The report cited a departmental review stating that 'staff consistently reported that they do not feel confident in their ability to recognise the indicators of abuse and neglect and have not received training on the topic ...'¹⁵⁶

One of the recommendations of the Ombudsman's report was that there be mandatory training for the department's disability workers, with a focus on incident reporting, identifying abuse and respect for human rights.¹⁵⁷ The Victorian Equal Opportunity and Human Rights Commission also recommended, in its *Beyond Doubt* report, that DHHS should deliver training for departmental and funded services staff on preventing, recognising, responding to, and reporting violence, abuse and family violence, including focused efforts to support management to strengthen supervision and recruitment processes.¹⁵⁸

The Commission requested information from the Victorian Government regarding the availability of professional development opportunities in respect of family violence for practitioners in disability services it either manages or funds. Documentation prepared by the Department of Health and Human Services indicates that family violence is identified in the *Introduction to Disability Practice* course. The Commission understands that this training is provided to Department of Health and Human Services disability workers.¹⁵⁹ The *Ready4work Disability Support Work Induction Resource Kit*, which is available to government and non-government disability workers, also considers family violence, including that which may occur in disability settings as well as other forms of violence or abuse in such settings. It describes a number of scenarios as relevant examples, including some that are specific to family violence, as well as information about the Interagency Guidelines for Addressing Violence, Neglect and Abuse.¹⁶⁰

The Commission notes that some disability practitioners also participate in training on the statewide Family Violence Risk Assessment and Risk Management Framework (also known as the Common Risk Assessment Framework or CRAF). The CRAF provides guidance on identifying family violence for both family violence and non-family violence practitioners. However, compared to other sectors their participation was relatively low in the roll-out of training during the period November 2011 to December 2014. Documentation indicates that of 1985 attendees at the first level Family Violence Risk Assessment Training, approximately 77 were disability workers (3.9 per cent). Their participation was higher in the 'train the trainer' course, with 8.9 per cent of participants recording that they worked primarily in the disability sector.¹⁶¹

Proposed minimum standards to support the delivery of accessible domestic violence services to women with disabilities are also identified in *Inclusive Domestic Violence Standards: Strategies to Improve Interventions for Women With Disabilities*.¹⁶²

The Commission notes that a new Community Service Training Package (a set of nationally endorsed standards, qualifications and guidelines developed by the Community Services and Health Industry Skills Council) was released in December 2015.¹⁶³ The Training Package includes courses on disability, ageing and individual support (for example, Certificate IV in Disability, Certificate IV in Ageing Support and Certificate III in Individual Support). Each of these units has as an elective component of the course a unit titled 'respond to suspected abuse'.¹⁶⁴ This unit covers a broad range of abuse but could be developed to cover family violence. Alternatively, the relevant courses could be mandated to include a unit or units on family violence. Units on family violence currently exist as either mandatory or elective units in other courses such as Community Services, Social Housing, Alcohol and Other Drugs, Mental Health and Family Dispute Resolution.¹⁶⁵

Responding to reports of family violence

Access to specialist family violence services

Access needs to be understood in the broadest sense of the word—where women with disabilities not only know about services but are also able to make use of them and obtain benefit from them ...¹⁶⁶

Useful resources

The Commission was told of the following resources that help women with disabilities experiencing family violence access information and support:

- ▷ the Daisy app, which gives victims an easy way to locate a wide range of family violence support services.¹⁶⁷ It provides information into 28 languages, has text-to-voice functionality for women with a vision impairment or poor literacy and an SMS function for women living in rural or remote areas¹⁶⁸
- ▷ Easy English translations of materials for victims of crime by the Victorian Victims Support Agency¹⁶⁹
- ▷ The Tell Someone website developed by the Southern Integrated Family Violence Executive in consultation with people with disabilities and disability services. It provides information videos on family violence for people with mild intellectual disability.¹⁷⁰

The recent ANROWS State of Knowledge report into best practice responses to women with disabilities experiencing family violence notes a lack of awareness among disability services of the needs of women and girls with disabilities who have experienced family violence, and a lack of appropriate responses of family violence services and sexual assault services to people with disabilities.¹⁷¹

A key finding of this review is that effective, accessible services for women and girls with disabilities must be built on multi-agency collaborations.¹⁷²

Lack of accessible accommodation

Women with Disabilities Victoria submitted that women with disabilities fleeing family violence can be forced to return home because they have been unable to obtain appropriate accommodation.¹⁷³ This is the case both for women with physical and mental health disabilities.¹⁷⁴

The Commission visited two refuges that were designed and built to be fully accessible for people with disabilities. However, currently, not all Victorian refuges are fully accessible for people with disabilities:

In talking about disability access we should recognise that there are many different types of disability which require different types of access. For women requiring, for example, ramps or handrails or wider doorways we have on record from the Department of Health and Human Services and Safe Steps that there are up to nine refuges with those facilities across Victoria. Appropriately three of those are for Aboriginal women because nationally 51 per cent of Aboriginal women have a disability.¹⁷⁵

This is also a source of frustration for services. McAuley Community Services for Women submitted:

Currently we are unable to accommodate women and children with physical disabilities as our refuges are not accessible. We have requested assistance to upgrade our facilities from the state government; however, to date no funding is available for physical upgrades.¹⁷⁶

Women with disabilities may also be unable to obtain crisis accommodation because there is not enough room for their carers to accompany them. They might have to move long distances for safety reasons and for some women leaving home means leaving essential supports such as assistance with showering.¹⁷⁷

Seeking help was said to be especially difficult for women with children who have disabilities. A community consultation participant told the Commission:

In families where the child or parent has a disability, it becomes very difficult to leave a violent situation. There is very limited access to services. How can you leave quickly? What refuges are set up for children (including adult children) with disabilities? How do you get the transport you need? How do you get the supplies you need? People need to know what they will need in order to leave safely.¹⁷⁸

The Commission heard that without adequate crisis accommodation for both themselves and their children, women might choose to stay in a violent relationship rather than leave their children behind.¹⁷⁹ This also leaves children at risk of family violence.

Ms Howe said in her evidence that there was an urgent need for funding of the Safe at Home/Safe in the Community program which allows women with disabilities to stay in the home. She told the Commission:

These programs allow women and children to remain where they live safely and to maintain their existing disability supports and social supports. This is an essential option for women with disabilities who may rely on local infrastructure, services or house adaptations.¹⁸⁰

The Commission received evidence about the Department of Health and Human Services' Disability and Family Violence Crisis Response Initiative which provides 12 weeks funding (up to \$9000 per person) for women with disabilities and their children experiencing family violence to access crisis accommodation or disability support to remain safe in their own home.¹⁸¹ The program extends to women (and their children) who are eligible for services under the Disability Act, which does not include people with a mental health disability or a disability related to ageing.¹⁸²

The Commission heard that while initial interest in the program was low, there has been a steady increase in demand following promotion of the program, and in April 2013 the Victorian Government announced that the initiative would be funded on a continuing basis.¹⁸³

The police response

Previous findings

In 2014 in its *Beyond Doubt* report, the Victorian Equal Opportunity and Human Rights Commission documented a number of concerns by individuals and organisations about the police response to people with disabilities. It concluded that building police capacity is an 'urgent priority', and that '[p]olice members told us unequivocally that they need more support to know how to identify, respond to and support people with disabilities reporting crime'.¹⁸⁴ VEOHRC recommended that Victoria Police develop a 'comprehensive, career-long learning strategy' to equip members at all levels to respond equitably to people with disabilities. This includes being able to identify and understand disability, and make adjustments.¹⁸⁵

Victoria Police agreed in July 2014 to implement VEOHRC's recommendations. This Commission received evidence on the progress of these, which include:

- ▷ a review of the *Victoria Police Manual* (under way)
- ▷ a Community and Cultural Diversity Education Strategy to improve and strengthen police education on human rights and the principles of equality (completed)
- ▷ Easy English translations of documents on making a complaint to police and reporting a sexual assault and an Easy English resource for Reporting Crime (under way)
- ▷ development of a bystander response for police members who witness discrimination (under way)
- ▷ development of an Independent Third Person 'Ready Reckoner' to improve the identification of people who have disabilities and uptake of Independent Third Persons for victims of crime (under way).¹⁸⁶

VEOHRC also recommended that the Department of Health and Human Services issue comprehensive practice guidelines around reporting to police, including where the victim has a disability.¹⁸⁷ The Commission understands that the development of these guidelines is in progress.¹⁸⁸

What this Commission heard

The Commission was told that victims of family violence who have disabilities can experience additional barriers to reporting family violence to police.

Many women and children with disability face barriers to accessing support when they seek it because ... [t]here is poor understanding of disability among police, with police often considering women with disability unreliable witnesses, or disregarding their reports of abuse in favour of the perpetrator.¹⁸⁹

We were told that the 'diverse living circumstances of women with disabilities requiring assistance for the most basic and intimate activities of daily living present challenges' for many services, including police.¹⁹⁰ Further, in relation to victims of sexual assault, Western Region Centre Against Sexual Assault told us that:

Victims of sexual assault with a mental health issue or an intellectual disability when reporting matters to the police have difficulties making statements in formats required by the court. Their medical or physical conditions are easily used to discredit evidence.¹⁹¹

The Victoria Police submission acknowledged that Victoria Police data does not reflect the true picture of violence against people with disabilities. In 2013–14, Victoria Police recorded the presence of a disability in only three per cent of family violence incidents.¹⁹² Victoria Police acknowledged that this does not reflect the prevalence of violence against people with disabilities:

Although research indicates people with disabilities are almost twice as likely to experience family violence as those without, Victoria Police statistics do not reflect this prevalence. 18.5% of Australians identify as having a disability, but only a small proportion of family violence incidents in 2014 were marked with a 'presence of a disability' flag.¹⁹³

This was attributed to the 'significant reporting barriers' faced by people with disabilities:

The low number of family violence incidents involving an individual with a disability likely results from the significant reporting barriers they may face (including communication, sensory and intellectual barriers, feelings of shame and deservedness, and fears that a change in circumstances will lead to worse living conditions such as institutionalisation).¹⁹⁴

The Victoria Police submission also noted the importance of:

- ▷ interpreters and independent third parties to help people communicate effectively
- ▷ physically accessible services such as police stations and interview rooms
- ▷ services that can provide support or facilitate access from the point of initial contact until the conclusion of the justice process, rather than the victim having to re-tell their story at each point in the system.¹⁹⁵

While under-reporting is undeniably an issue, as discussed earlier, the Victorian Equal Opportunity and Human Rights Commission also noted in its *Beyond Doubt* report that it had received reports of police members failing to take family violence reports from victims with disabilities.¹⁹⁶

Victoria Police's Code of Practice for the Investigation of Family Violence states that police should engage the services of a support person or independent third person as soon as possible in an investigation involving people with disabilities.¹⁹⁷ However the Commission received evidence from the Public Advocate that police do not always do so, and that there is a disparity in the use of the independent third person program across Victoria.¹⁹⁸

The Women with Disabilities Victoria submission recommended that the Office of the Public Advocate be funded to develop an advocacy and referral scheme for the independent third person program that provides 'holistic support to people who are at risk of having repeat contact with crime, including women with cognitive impairments and mental ill-health who have been victims of violence'.¹⁹⁹

How the courts respond

Previous findings

The *Beyond Doubt* report found that while some progress has been made in court accessibility, basic adjustments to accommodate people with a disability are not always made and court practices and procedures do not always meet the access needs of witnesses with sensory, physical, learning or communication disabilities.²⁰⁰ For example, courts lack hearing loop technology and the paper-based information provided by courts can pose challenges for people with low literacy levels.²⁰¹

The Voices Against Violence research study also described the problems women with disabilities experience in accessing court services. For example:

Women described the humiliation of having to get out of their wheelchair to climb steps up to the witness stand and having to negotiate their wheelchairs around where the perpetrator was sitting.²⁰²

Similarly, the *Beyond Doubt* report cited examples of people with disabilities not being appropriately accommodated in courts (although these were not family violence cases):

We had the example of a person with cerebral palsy, who had a cramped hand being told to lie it flat on the bible rather than curled – just no understanding of disability at all.²⁰³

When I entered the courtroom I accidentally ran over the defence solicitor's feet. There are many problems with courtroom accessibility. My friend who gave evidence had had a stroke and wasn't able to sit in the witness stand, he kept falling off the seat – it was terrible. The access to the actual courts is pathetic. This was the biggest challenge for me. There needs to be a ramp installed instead of the stairs. The whole court environment needs to be re-evaluated to support the needs [of] people with disabilities, to make it more accessible.²⁰⁴

The *Beyond Doubt* report recommended that Victoria Police and the Department of Justice establish a centralised booking system for augmentative and alternative communication for use by Victoria Police, the Office of Public Prosecutions, Victoria Legal Aid, Victorian courts and tribunals, the Victims Support Agency and other justice agencies. To date, however there has been limited progress in implementing this recommendation.²⁰⁵

What this Commission heard

Another recommendation by VEOHRC was to give priority to disability access to courts and to have this consistently implemented across jurisdictions by Court Services Victoria.²⁰⁶ The Commission notes the requirements under the Disability Discrimination to ensure that persons of disabilities are not discriminated against in relation to access to premises.²⁰⁷

The Commission makes a recommendation on court accessibility in Chapter 16.

The Commission was told that people with disabilities—especially those which affect oral communication—are at a disadvantage when appearing in court.²⁰⁸ This is consistent with the *Beyond Doubt* report’s finding that successful prosecutions in cases where victims have disabilities are uncommon.²⁰⁹

The *Evidence Act 2008* (Vic) allows courts to make adjustments to the way they receive evidence from witnesses with disabilities. For example, a witness who cannot hear or be understood may give evidence by any appropriate means, and the court may give directions on the way and means by which a witness may be questioned.²¹⁰ The *Beyond Doubt* report notes that the Act does not give any guidance on this, which means that courts may vary in their approaches to accommodating witnesses with disabilities.²¹¹

The process of giving evidence in family violence matters can be challenging for people with disabilities. People with disabilities, especially those with a cognitive impairment, may face difficulties in understanding proceedings. Family violence proceedings can involve the victim giving evidence about a person with whom they have or have had a personal relationship. This can also be distressing, particularly for people with certain disabilities (such as a cognitive impairment).²¹²

The Magistrates’ Court and Children’s Court submission commented on the need for a vulnerable witnesses service or other support for people with cognitive impairments:

Applicants with a cognitive impairment are particularly vulnerable as witnesses and require assistance in obtaining, framing and understanding orders. This support, as well as individualised services, are required at the time of application, to prevent attrition of cases and to ensure that these vulnerable witnesses are appropriately supported throughout their engagement with the court. Given the complexity of issues facing witnesses involved in family violence related matters (including the distress involved in giving evidence and additional challenges for people with cognitive disabilities), it may be useful to explore the introduction of a vulnerable witness service to provide support similar to that provided by the [Child Witness Service], throughout the court experience.²¹³

The Commission heard that the provision of an independent third person for police interviews and court appearances was a part of the Making Rights a Reality project (see box) for adults with an intellectual disability who have been sexually assaulted. Women with Disabilities Victoria called for funding for a statewide roll-out of this program.²¹⁴

Making Rights a Reality program

This program was a pilot funded jointly by philanthropic trusts and the Victorian Government and delivered by the South Eastern Centre Against Sexual Assault (SECASA), in conjunction with the Springvale Monash Legal Service. It is currently running at reduced capacity due to lack of funding into the future. It helps adults who have been sexually assaulted and who have an intellectual disability, acquired brain injury or who use aids to communicate, by providing counselling, organising an independent third person, communication support worker or an attendant carer to be with them in interviews with police and at court, and helping with applications for compensation from the Victims of Crime Assistance Tribunal. The program was positively evaluated in 2014.

Judicial education

The Judicial College of Victoria, which has the task of educating Victorian judicial officers, outlined in its submission a family violence core curriculum for judges and magistrates. One of the topics is ‘understanding groups with specific needs’ and this includes ‘people (predominantly women) with disabilities’.²¹⁵

Such education may be complemented by materials that assist judicial officers to meet the diverse needs of people with disabilities. The Commission is aware that a resource is being developed by the Judicial College of Victoria, with assistance from the Victorian Equal Opportunity and Human Rights Commission²¹⁶ in line with its *Beyond Doubt* report recommendations that the College should collaborate with the Commission to develop educative resources that specifically address making adjustments for people with disabilities.²¹⁷

Responses to perpetrators with disabilities

The Commission heard that there are no behaviour change programs for perpetrators with learning or mental health disabilities, that restrict their capacity to learn in a group setting. The evidence before the Commission was that they are currently screened out of mainstream men's behaviour change programs.²¹⁸

[Men's behaviour change programs] are currently not well-equipped to work with men with intellectual disabilities. Current levels of funding for MBCP work limit their capacity to offer anything more than standard groupwork interventions, which do not suit some men with intellectual disabilities who require more of an individualised approach. As a result, very few men with intellectual disabilities are referred to MBCPs. Furthermore, little attempt has been made to adapt MBCP curricula or intervention methods for men with intellectual disabilities. This is despite a significant volume of work over the past 35 years focusing on intervention programs for men with intellectual disabilities who commit sexualised offences, which could be adapted for the family violence field.²¹⁹

The Commission understands that the No To Violence standards for men's behavioural change programs are silent on the making of reasonable adjustments to allow men with disabilities to participate in men's behaviour change programs.²²⁰ The standards for men's behaviour change programs do require that interpreters be provided 'for assessment, groups and contact with men's families wherever possible.'²²¹ However the Commission was unable to determine whether the use of AUSLAN (Australian sign language) interpreters is routine because program providers are not audited for performance.²²²

The Commission makes recommendations relating to standards for men's behaviour change programs in 'Family violence and diversity' located at the start of this volume.

The way forward

The picture that has emerged in recent years about the extent of violence against people with disabilities—and particularly women with disabilities—is disturbing. While the Commission's focus is on family violence, the evidence before this Commission indicates that family violence is one part of a wider picture of violence and abuse against people with disabilities. This includes violence by paid carers and other workers, both within home and service settings, and by people living together in group settings. In some circumstances, this violence can constitute family violence.

The Victorian Ombudsman's investigation identified a culture within disability services that deters reporting of violence and abuse against people with disabilities. Her recommendations seek to address this by providing independent oversight of the system and mandatory reporting of violence within it. Her suggested reforms should provide greater protection for people experiencing violence, including family violence. The Commission supports her recommendations.

The Commission heard that intimate partner violence (including sexual violence) is the main form of family violence against women with disabilities and that the dynamics between women with disabilities and their partners can be complicated because of the dual roles of partner and carer. This dynamic can make it even more difficult for women to consider reporting violence and leaving the relationship as they rely on the relationship for practical support. We also heard about the ways in which reliance on other carers can leave women at risk of violence, with women in rural, regional or remote areas and those who have limited English more at risk.

The Commission understands the current difficulties in interpreting and applying the extended definition of 'family member' under the Family Violence Protection Act to cover violence by paid carers and co-residents who are in a 'family-like' relationship with the victim. Ultimately we have decided against recommending an expansion of that definition as we consider that strengthening access to other legal remedies (such as personal safety intervention orders) is a more appropriate mechanism. The Commission supports the recommendation of the Ombudsman for an independent oversight body and for other measures to encourage reporting of violence and abuse against people with disabilities, noting that the entire disabilities services landscape will change with the roll-out of the National Disability Insurance Scheme. Accordingly, a rigorous and independent oversight function will be needed to ensure that the rights of people with disabilities are protected under this scheme.

The Commission is concerned by the significant barriers that women with disabilities face in accessing services, particularly crisis accommodation. We have made a number of recommendations including recommending that refuge accommodation be fully accessible within five years.

We are also concerned that disability service workers are not always aware of the nature and dynamics of family violence and may not be in a position to identify or intervene appropriately. The uptake of previous statewide training on the CRAF by disability workers was quite low. Disability service workers' lack of ability to identify family violence or intervene appropriately leaves many women with disabilities without any recourse. We consider workforce training a priority and have supported the Ombudsman's call for mandatory training for disability workers at all levels. We recommend that family violence be specifically addressed as part of this training.

The aim of those providing services to people with disabilities should be to support their independence, self-determination and dignity. This applies equally in the context of family violence and related services.

To achieve this a much stronger recognition of and response to disability violence as a manifestation of family violence is needed by family violence services, the justice system and across disability and health services.

The Victorian Government is currently developing the Victorian State Disability Plan 2017–2020.²²³ The Commission encourages the Victorian Government to place greater emphasis in this plan on violence experienced by people with disabilities in recognition of the concerning evidence that has emerged over recent years regarding this issue. In particular, we encourage the government to specifically consider family violence experienced by people with disabilities and to include greater detail around the ways in which responses to violence (including family violence) will be improved. The State Disability Plan needs to contain family violence prevention actions linked with the broader state family violence prevention strategy we recommend in Chapter 36.

Understanding the unique experience of family violence for people with disabilities means that family violence and gender must be prominent in disability policy and practice frameworks, including the State Disability Plan, the NDIS Quality and Safeguarding Framework and across disability service standards and protocols. Similarly family violence codes of practice, standards and professional guidelines need to reflect the broad range of family violence experienced by people with disabilities and the range of settings and relationships in which this violence occurs.

Underpinning all this must be strengthened collection, analysis and availability of data so that family violence against people with disabilities comes out from the shadows and sits at the heart of our planning and prioritising of prevention and response.

The Commission's recommended priority areas for action are set out below. These are in addition to the recommendations we make elsewhere in this report to improve the responsiveness of the family violence system to the diverse experiences of victims.

Ensuring accurate data and knowledge

The Commission notes the current lack of data available in relation to violence (including family violence) against people with disabilities, and that lack of data has been a significant and recurring finding in recent state and commonwealth inquiries.

A consistent and comprehensive approach to collecting data regarding people with disabilities who experience family violence (and other forms of violence) is vital to obtaining an accurate understanding of the extent and scope of the problem. The Commission makes a number of recommendations to ensure greater and more accurate data collection in future, including in relation to information gathered by the Victorian Government, by Victoria Police through its L17 form and by the Australian Bureau of Statistics through its Personal Safety Survey.

The Commission also notes the limited Australian research into acquired brain injuries and family violence. The Victorian Government and other funders should consider supporting research into acquired brain injuries among both victims and perpetrators of family violence. Subject to this research, there is scope for policy and practice development, including to ensure identification of acquired brain injuries by family violence services, crisis accommodation services and health services.

Recommendation 170

The Victorian Government adopt a consistent and comprehensive approach to the collection of data on people with disabilities who experience or perpetrate family violence. This should include collecting data from relevant services—for example, incident reports made to the Department of Health and Human Services by disability services when family violence has occurred [within two years].

Recommendation 171

The Victorian Government fund research into the prevalence of acquired brain injury among family violence victims and perpetrators [within two years].

Defining ‘family member’

The Commission acknowledges the difficulties in applying the extended definition of family member in the Family Violence Protection Act, as well as the call for amendments to the Act to recognise the relationship between paid carers and their clients, and co-residents in residential settings.

We have considered whether amendments to this Act might assist. One option might be to amend the definition of ‘family member’ to expressly state that it encompasses non-related carers and co-residents. The Commission determined that this is not desirable. The Family Violence Protection Act is concerned with a specific form of violence, namely that which arises in the context of ‘family-like’ relationships. Where the elements of a ‘family-like’ relationship do exist in relation to non-related carers and co-residents, then the Act should be applied. In other cases, seeking to define a ‘family-like’ relationship to exist in all circumstances involving carers and co-residents risks confusing the purpose of this Act. In these cases, the *Personal Safety Intervention Orders Act 2010 (Vic)*, and the criminal and civil law generally, are available and the approach should be to ensure that these other legal mechanisms are applied. In the case of either a family violence intervention order or a personal safety intervention order, it remains the responsibility of the police to properly investigate the abuse and any criminal offences. We consider that the creation of an independent oversight body, as recommended by the Ombudsman, would provide important additional safeguards in regards to institutional abuse.

Service providers are responsible for ensuring that those whom they serve are safe. In the case of paid carers, providers should ensure there are appropriate reporting and supervision processes in place to monitor staff and clear consequences in the event of abuse, including the involvement of law enforcement. In the case of co-residents, providers should have mechanisms in place to prevent and identify abuse between residents and take action promptly to address any that occurs, including removing the resident who is a risk to others to alternative supported accommodation. Ultimately, the solution requires operational and cultural change more than any changes to the definition of family violence. Systemic oversight of disability services and a prompt response by DHHS where problems are identified is imperative.

The Commission is sensitive to the fact that the dynamics between a person with a disability and paid carers may give rise to 'family-like' relationships very quickly, given the often intimate nature of the care, the social and emotional ties and the levels of 'dependence' (as referenced in the Family Violence Protection Act). The duration of those relationships may be a less critical factor. The Commission considered whether the example in the Family Violence Protection Act, which acknowledges that the relationship between a person with a disability and their paid carer may over time come to approximate a 'family-like' relationship should be amended to remove the reference to 'over time'.

Again, the Commission determined this is unnecessary, as the amendment to the statutory example is unlikely to provide much greater clarity to paid carers, police and the courts.

Encouraging reporting and investigation

The Commission received considerable evidence about the lack of reporting of family violence both by victims and by disability workers. The reasons are numerous and include a culture of acceptance of violence against people with disabilities and a fear of reprisal.

Another reason that was identified in the Ombudsman's report and subsequently also addressed in the Victorian Parliamentary Inquiry report was that the 'existing oversight arrangements for dealing with incidents of abuse in the disability sector are complex, fragmented and confusing' and 'no one body has specific responsibility for receiving abuse allegations/incident reports or for reviewing incidents, reporting on deficiencies and addressing systemic issues to prevent abuse in the disability sector'.²²⁴

The Ombudsman, and the Victorian Parliamentary inquiry in its interim report, recommend establishment of a single, independent oversight body with powers and responsibility for, among other things, handling complaints and managing and investigating incidents.²²⁵ The Victorian Government has said that it will 'consider the recommendation within the context of the final Parliamentary Inquiry report and development of the National Disability Insurance Scheme Quality and Safeguards Framework'.²²⁶ Similarly, in its 2012 *Guardianship* report, the Victorian Law Reform Commission recommends that the Public Advocate be given a stronger 'supervisory, regulatory and investigative role' in order to better 'protect and promote the rights of people with disabilities'.²²⁷

The Commission encourages the Victorian Government to settle on and begin implementation of a model to improve oversight of the disability services sector (including independent complaints handling and investigations where people with disabilities are at risk), whether this be through expansion of the powers of an existing body such as the Office of the Public Advocate, a newly created independent oversight body, or through mechanisms under the National Disability Insurance Scheme Quality and Safeguards Framework.

The Commission considers that in order for the framework or any oversight body to be effective, it must address current inadequacies in the monitoring, reporting and response described throughout this chapter. In particular, disability workers must be supported to recognise and respond to such abuse, including where this amounts to family violence; feel able to report such violence to their superiors; be able to rely upon police or the independent body to investigate it thoroughly; and safely share information with others to protect the safety of the victim.

The Commission supports the Ombudsman's recommendation to extend the protected disclosure legislation to all disability workers across the sector to encourage reporting. Additional training is also needed to ensure that all those providing services to people with disabilities are equipped to identify and respond to family violence. The Commission supports the Ombudsman's call for mandatory training of disability workers and service providers in preventing, identifying and responding to abuse. The Commission also notes the recommendations in the Commonwealth Senate Community Affairs References Committee in respect of national regulation in disability services, including establishing a national scheme to ensure consistency in disability worker training.²²⁸

Whether such training is ultimately carried out through a state or a national scheme, it must include family violence. As most people with disabilities live at home (rather than supported accommodation being their home), such training must also extend to disability workers who provide services in the home. This will equip workers to better identify when family members are perpetrating family violence (including intimate partner violence and financial abuse) by recognising risk factors articulated in the CRAF, as well as being alert to violence committed by colleagues or family members of the person with a disability.

Alongside, or as part of any broader scheme that is implemented, the Victorian Government should fund training and education programs for disability workers—including residential workers, home and community care workers, interpreters and communication assistants and attendant carers—to encourage identification and reporting of family violence among people with disabilities. It should also require, through its accreditation, contracting and funding arrangements with relevant service providers, that all disability service workers, both current and future, have undertaken appropriate training.

As the Victorian Government and the Commonwealth Government (including through the National Disability Insurance Agency) have a dual role in relation to different service providers, and given the recommendation made by the Commonwealth Senate Community Affairs References Committee regarding a national scheme for disability worker training, the Victorian Government should work with the Commonwealth Government to ensure all disability services workers involved in assessing needs and in delivering services are expected to have successfully completed certified training in identifying family violence and responding to it. This could include further developing the units regarding family violence and responding to suspected abuse in the Community Service Training Package. The disability workforce should also be a priority for CRAF training.

In relation to other accommodation settings, the Commission notes the Office of the Public Advocate's call for a special taskforce, set up by the Victorian Government and Victoria Police, to develop protocols for responding to family violence in disability residential settings.²²⁹ This would be a positive first step to address the current situation, and complement the existing work of the Victorian Government in establishing the Disability Workers Exclusion Scheme in residential settings.²³⁰ Consideration should, however, be given as to whether the development of such protocols could be undertaken by the independent oversight body recommended by the Ombudsman. The functions of the independent body, as recommended by the Ombudsman, would include preparing and publicising best practice guides for complaint handling.

The Commission welcomes the Office of the Public Advocate's Interagency Guidelines for Addressing Violence, Neglect and Abuse (IGUANA), but notes these are only guidelines. In addition to supporting mandatory training, the Department of Health and Human Services should adopt IGUANA for its workforce and the Victorian Government should also require, through its accreditation, contracting and funding arrangements with relevant service providers, that they adopt IGUANA or develop and enforce an equivalent code to address the principles and processes for reporting family violence against people with disabilities.

Recommendation 172

The Victorian Government fund training and education programs for disability workers—including residential workers, home and community care workers, interpreters and communication assistants and attendant carers—to encourage identification and reporting of family violence among people with disabilities [within two years].

Recommendation 173

The Victorian Government, through the Council of Australian Governments Disability Reform Council, encourage the Commonwealth Government and the National Disability Insurance Agency to ensure that all disability services workers involved in assessing needs and delivering services have successfully completed certified training in identifying family violence and responding to it. This could include further developing and mandating the units on family violence and responding to suspected abuse in the Community Service Training Package [within five years].

Access to justice

The Commission supports the efforts by Victoria Police to improve its response to people with disabilities reporting family violence following the recommendations in the VEOHRC report. However, more can and should be done. Victoria Police serves as the entry point to the family violence system for many victims. Accordingly, if police do not take a report of family violence seriously, do not conduct a risk assessment and do not complete the associated L17 form—regardless of whether any family violence intervention order or criminal justice process follows—those victims may very well remain unassisted by anyone.

The Commission considers that Victoria Police must improve the collection of disability information. We do not consider that the low numbers of recorded reports of family violence by people with disabilities can be fully explained by barriers to reporting, but consider that there is a lack of consistency in identifying and recording information about disability. While including a disability question on the L17 form is useful, Victoria Police needs to require this field to be completed and should also specify the nature of the disability and/or any assistance (reasonable adjustments) required. We are also concerned about the lack of consistent application of the Code of Practice in relation to the provision of an independent third party for victims with a cognitive disability or mental illness.

Ultimately, Victoria Police must ensure that its practices are non-discriminatory and that it makes reasonable adjustments for people with disabilities, including through supporting the use of AUSLAN interpreters and any communications support that may be required.

Similar considerations apply in relation to the courts.

The Commission welcomes the fact that the Victorian Civil and Administrative Tribunal has a family violence support worker to assist people with family violence matters across all lists. The Commission agrees that more could be done to improve the management of cases within the Guardianship List that may involve people with disabilities experiencing family violence. VCAT is encouraged to develop that capacity.

The Commission welcomes the initiative of the Judicial College of Victoria in developing a core curriculum for judges and magistrates, which addresses family violence, including the specific needs of people with disabilities. We further welcome the development of specific resources for judicial members on disability to be released later in 2016.

The Commission notes that the Judicial College has amended the Uniform Evidence Manual to highlight that people with communication disabilities are encompassed by the definition of a vulnerable witness, in relation to whom a court must disallow improper questioning in cross-examination (section 41(2), (4) of the *Evidence Act 2008* (Vic)) and that augmentative and alternative communication may be used by a witness to give evidence (section 31(2) of the Evidence Act). Against this background, the Commission encourages the Judicial College to provide further training to judicial officers on these matters.

The Commission supports the Magistrates' Court and Children's Court submission suggesting the establishment of a vulnerable witness service, similar to the existing statewide Child Witness Service, for people with cognitive impairments or significant communication impairments.

The Commission also supports the proposal that the Victorian Government provide funding to roll out programs, such as the Making Rights a Reality Program, which seek to assist people with disabilities experiencing family violence (including sexual violence) to exercise their legal rights effectively within the justice system.

Recommendation 174

Victoria Police, in the redesign of the police referral (L17) form, ensure that disability data is collected, including on the type of disability and the support required. Training should be provided to help police members identify how and when to make adjustments for people with disabilities [within 12 months].

Recommendation 175

The Judicial College of Victoria provide training to judicial officers in order to raise awareness and encourage consistent application of section 31 of the *Evidence Act 2008* (Vic), which allows courts to make adjustments to the way people with disabilities may be questioned and give evidence [within 12 months].

Access to family violence services and accommodation

People with disabilities experiencing family violence must be able to access necessary services, including appropriate and accessible accommodation. Accessibility should not be regarded as something aspirational or special; rather, it should be considered the norm.

In Chapter 9, the Commission recommended that all refuge accommodation should be converted to a core and cluster model by 31 December 2020. This model will also address some very practical issues, such as the accommodation being fully accessible to people with disabilities and including carer accommodation, which should alleviate some of the major barriers women with disabilities face when they need to leave their home because they are unable to safely stay.

The Commission also recommends a concerted move towards increased use of individualised and flexible packages of funding, which include funding to meet costs associated with improving the safety of homes, relocation, purchase of essential household furnishings and the provision of rental or mortgage subsidies. These packages should also be used to fund adaptations to private rental properties, with the approval of the landlord, to improve accessibility. In designing and delivering rental subsidies, the Commission is aware that a challenge will be locating private rental properties that are accessible and avoiding landlord discrimination so that women and children with disabilities can take advantage of these additional packages. Another key component of the package is assistance with education and workforce participation, in recognition of the fact that people with disabilities make a valuable contribution to the workforce but face specific barriers to employment due to discrimination.

The Commission emphasises that in recommending expansion of Flexible Family Violence Packages this expansion should be in addition to the support available under the Disability and Family Violence Crisis Response Initiative, which was described above. The Commission supports the continued funding of the Disability and Family Violence Crisis Response Initiative. The initiative is only available to those eligible for services under the Disability Act. The Commission considers it should be available to other victims of family violence with disabilities, even if they are not eligible under this Act.

The Commission believes that the roll-out of the National Disability Insurance Scheme also presents important opportunities to improve the response to family violence by ensuring that the national quality and safeguarding framework provides individual flexible packages that incorporate provisions for crisis and longer term accommodation for women with disabilities experiencing family violence. The Victorian Government should pursue these opportunities through the Council of Australian Governments and the National Disability Insurance Agency.

The Equal Opportunity Act requires that all service providers (including family violence services) make reasonable adjustments for people with disabilities. We are concerned this is not currently occurring, and that standards and practices do not clearly reflect this obligation. In the introduction to this volume, we recommend that the Victorian Equal Opportunity and Human Rights Commission issue a guideline under the Equal Opportunity Act to guide service providers in meeting their obligations.

Similarly, the standards and practices around men's behaviour change programs must also be developed to address the different needs of men with intellectual disabilities or other cognitive impairments. Once again, this includes making reasonable adjustments to such programs, for example, through the use of AUSLAN and other communication supports where required. Also in the introduction to this volume, we recommend that the Department of Health and Human Services should review and update standards for family violence service providers (including men's behaviour change programs). In particular, we recommend that these standards specify an obligation to make reasonable adjustments for people with disabilities.

Recommendation 176

The Department of Health and Human Services review the funding model for crisis supported accommodation to remove barriers for women and children with disabilities [within 12 months].

Recommendation 177

The Victorian Government, in phasing out communal refuges, ensure that replacement accommodation contains disability-accessible units (universal design), where carers can be accommodated as needed and adaptations for children with disabilities are made [within five years].

Recommendation 178

The Victorian Government extend eligibility for the Victorian Disability Family Violence Crisis Response to assist people with disabilities who are victims of family violence and are not eligible for services under the *Disability Act 2006 (Vic)* but who nevertheless require assistance. Such eligibility should apply when these individuals do not have access to alternative supports [within 12 months].

Recommendation 179

The Victorian Government encourage the National Disability Insurance Agency, in the transition to the National Disability Insurance Scheme, to provide flexible packages that are responsive to people with disabilities experiencing family violence. These packages should incorporate crisis supports and assistance for rebuilding and recovering from family violence [within two years].

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- 14 Women with Disabilities Victoria, Submission 924, 9 citing Deakin University and Scope, 'Scope 1 in 4 Information Sheet: Social Inclusion' (25 February 2015) 2.
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- 17 Article 16(1) provides 'States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects'.
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32 Male victims

Introduction

In this chapter, we discuss the challenges faced by male victims of family violence. Men can be victims of violence inflicted by an intimate partner, a parent, a sibling, an adolescent or adult child or another family member. As is the case for all victims, family violence can have a profound and enduring effect on the lives of men who experience it and they should have their experiences acknowledged and their needs taken into account and addressed.

The first section of this chapter reviews the data on male victims of family violence and outlines men's experience of family violence and current responses to male victims. The Australian data shows that when men are victims, they are likely to be victims of violence perpetrated by either female partners or another male family member (for example, brother, son, father). Men make up around one quarter of victims of violence by intimate partners within heterosexual relationships. Violence by women towards male partners is generally less severe than that of men towards their female partners.

The second section of this chapter explores the issues and challenges related to support services for men. It identifies a lack of information and services for male victims, which can create barriers to men seeking help. It also discusses the problems caused by assumptions and misperceptions about male victims.

The final section of this chapter sets out the Commission's recommendations to promote and strengthen the services available to male victims.

The data considered in this chapter includes all men, unless otherwise indicated, but focuses predominantly on the experiences of heterosexual men. The specific experiences of gay, bisexual and transgender men who experience violence are discussed in Chapter 30.

Context

In order to understand the extent and nature of family violence against men and develop an evidence-based policy response, the Commission has carefully analysed the data on this topic.

We acknowledge that interpreting this data is complicated by the possible under-reporting of family violence by both male and female victims.¹ On this point, there is disagreement about whether men are less likely to report family violence. Some of the material we examined supports this proposition,² while other research suggested that reporting may be further complicated because some men may play down the violence they perpetrate, and play up violence used by women.³

Quantitative studies also tend to record discrete incidents of violence rather than tracking the context of the incident and the history of a relationship, which may contain repeated violent incidents.⁴

Estimated prevalence of family violence against men

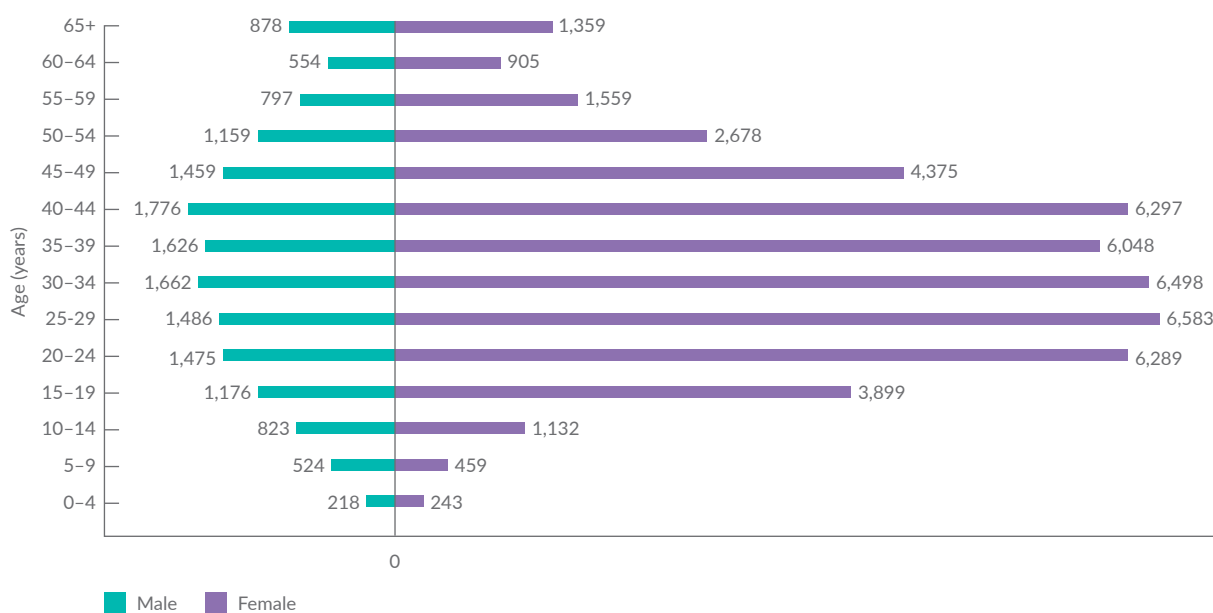
The Australian Bureau of Statistics' Personal Safety Survey estimates that 5.3 per cent of men (that is, one in 19) and 16.9 per cent of women (one in six) have experienced physical or sexual violence perpetrated by a current or previous partner since the age of 15.⁵ Further, the survey estimates that 14 per cent of men and 25 per cent of women aged 18 or over have experienced emotional abuse by a partner since the age of 15.⁶

The ABS Personal Safety Survey also provides information about the estimated prevalence of other types of family violence against men.

- ▷ 2.1 per cent of men (since the age of 15) have experienced violence perpetrated by a parent against them, compared with 3.5 per cent of women—with men making up 37 per cent of victims of parent-on-child violence.⁷
- ▷ 0.9 per cent of men (since the age of 15) have experienced violence perpetrated by a sibling against them, compared with 1.9 per cent of women, with men making up 32 per cent of victims of sibling violence.⁸
- ▷ 0.2 per cent of men (since the age of 15) have experienced violence used by their children against them, compared with 0.5 per cent of women, with men making up 26 per cent of victims of child-on-parent violence.⁹
- ▷ 1.2 per cent of men (since the age of 15) have experienced violence used by other relatives or in-laws against them, compared with 2.4 per cent of women, with men making up 32 per cent of victims of violence perpetrated by other relatives or in-laws.¹⁰

Police data on family violence incidents shows that the proportion of affected family members who are male remained relatively stable in the five years from July 2009, with an average 24 per cent of affected family members being male.¹¹ Figure 32.1, which is based on family violence incidents reported to police, shows the data for 2013–14.

Figure 32.1 Affected family members, by age and sex: Victoria Police, 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), Figure 4: Sex and age of affected family members – Victoria Police, July 2013 to June 2014, 27, provided to the Commission by the Crime Statistics Agency, 8 January 2016.

Gender of victims

The Commission heard many claims concerning the prevalence of male victims of family violence. One such proposition was that one in three victims of family violence are men.¹² Across Australia, men are estimated to comprise approximately one in three victims of physical and/or sexual violence by a current cohabiting partner of the opposite sex.¹³ However, examining violence experienced since the age of 15 and including previous cohabiting partners and boyfriends, girlfriends and dates, men are estimated to comprise approximately one in four victims (24 per cent) of physical and/or sexual violence by intimate partners of the opposite sex.¹⁴

Gender of perpetrators

Perpetrators of family violence against adult males tend to be both male and female, whereas perpetrators of family violence against adult females are mostly male. Research from the Victorian Family Violence Database (which examined court and police data from July 2009 to June 2014)¹⁵ showed that in original applications for a family violence intervention order:

- ▷ Adult perpetrators of family violence against adult males were 43 per cent male ($n=3111$) and 57 per cent female ($n=4119$).¹⁶
- ▷ On the other hand, adult perpetrators of family violence against adult females were 90 per cent male ($n=19,900$).¹⁷
- ▷ For both genders, the majority of adult perpetrators of the opposite sex were a current or former partner, whereas the majority of adult perpetrators of the same sex were another family member (that is, not a same-sex current or former partner).¹⁸

Overall, women are most likely to be victims of intimate partner violence perpetrated by male partners (rather than by any other family member). In contrast, when men are victims, they are likely to be victims of violence either perpetrated by female partners, or by another male family member (brother, son, father).¹⁹

While this quantitative information is the best indicator of the incidence of family violence, it may not capture certain nuances. Quantitative studies tend to assign people to distinct categories of 'victim' or 'perpetrator', which might not always reflect the complexity of family violence incidents—for instance, in determining who is the primary aggressor. A perpetrator can simultaneously receive and inflict injuries (if, say a victim defends himself or herself).²⁰ This can obscure the identity of the primary aggressor.²¹ By way of example, Ms Jacky Tucker, Family Violence Services Manager, Women's Health West, gave evidence that of the 57 referrals her organisation received from police in June 2015 that identified the female as the perpetrator of family violence, after conversations with and assessments of these women, only six were actually found to be perpetrators.²² We examine issues regarding the identification of the primary aggressor in Chapter 14.

Family violence deaths

Data from the Victorian Systemic Review of Family Violence Deaths shows that, of the 288 deaths of relevance to the review between 2000 and 2010, 138 were men and 150 were women (that is, 48 per cent male).²³

The review revealed that there were 136 intimate partner homicides, with approximately 76 per cent ($n=103$) resulting in the death of a woman and 73 per cent ($n=97$) involving male offenders.²⁴ Similarly, the National Homicide Monitoring Program data showed that between July 2010 and June 2012 there were 109 intimate partner homicides across Australia, with 76 per cent ($n=83$) of these victims being women.²⁵

The Victorian System Review of Family Violence Deaths also identified 81 intimate partner homicides where there was a history of family violence, which can be further broken down as follows:

- ▷ 61 of those who died had been the victims of continuing family violence, with six being male victims (9.8 per cent) and 55 being female victims (90.2 per cent)²⁶
- ▷ 18 of those who died had been the perpetrator of violence, with 15 being male perpetrators (83.3 per cent)²⁷
- ▷ two of those who died had been both a victim and perpetrator.²⁸

As discussed, the Victorian Family Violence Database information shows that adult male victims were more likely to experience violence from non-intimate family members than were adult female victims.²⁹ Nationally, between July 2002 and June 2012, when each group of non-intimate partner victim is considered separately, men were more likely than women to be victims of parricides (the killing of a parent—54 per cent, $n=73$), filicides (the killing of a child—56 per cent, $n=132$), siblicides (the killing of a brother or sister—80 per cent, $n=32$) and homicides in other non-intimate partner family relationships (70 per cent, $n=64$).³⁰

In total, of 467 family homicides with male victims, 64 per cent ($n=301$) involved a non-intimate partner perpetrator, whereas of 690 family homicides with female victims, 71 per cent ($n=488$) involved an intimate partner perpetrator.

Therefore, the data suggests that policy responses seeking to address the highest risks to men should focus on the risk posed by parents, siblings and other family members, rather than female intimate partners.

Men's experiences of family violence

Male victims can be subject to physical violence, threats, sexual, emotional, psychological, verbal and financial abuse, property damage and social isolation.³¹ As well as physical injuries, the impact of family violence can include psychological distress, suicidal ideation and loss of work.³² The children of male victims can also suffer these effects.³³

Unlike what you may read, the violence in my household was perpetrated by my mother towards my father. I would routinely see physical assaults of him, either with her hands, punching him, or with her feet, kicking him. She would use weapons, cooking implements, such as saucepans, utensils or furniture. I recall as well where she tried to kill him, running behind him with a garden fork directed at his back. If my sister had not screamed, he would have been seriously injured or killed.³⁴

I think that if you're talking about family violence, even though it's a really small percentage, you've gotta be aware that it's not always a hundred percent directed from the male to the female, it could be the other way around. My dad was very cool and very calm and very placid ... as my sisters and I were, but we copped the full brunt of pretty savage violence directed from the woman, i.e. my mum. That was an ongoing nightmare and it's a difficult one.³⁵

Although heterosexual men are less likely than women to be assaulted by an intimate partner, the Commission received submissions from a number of male victims who had experienced intimate partner violence in a heterosexual relationship.

The Commission was also told about intimate partner violence in circumstances where the woman who used violence had a suspected mental illness or problems with misuse of alcohol and drugs.³⁶ We discuss issues regarding mental health and drug and alcohol misuse in more detail in Chapter 19.

Current responses

The Victims Support Agency is the primary provider of services for male victims of family violence. The Victims of Crime Helpline, a telephone contact service funded by the Department of Justice and Regulation, acts as the 'gateway' to services.³⁷ Most male victims who come into contact with the Helpline have been referred by police through the L17 form (a family violence risk assessment and management report) following police attendance at a family violence incident.³⁸

Of the Helpline's 1143 referrals who identified themselves as a family violence victim in 2013–14, 48 per cent were male and 52 per cent were female.³⁹

The Helpline conducts initial assessments and determines eligibility for referral to the statewide Victims Assistance Program and other services.⁴⁰ The referral pathway through the Helpline depends on a victim's needs and eligibility for services.⁴¹ The Victims Assistance Program helps victims gain access to information, therapeutic interventions and counselling.⁴² Short-term counselling can be provided through in-house counsellors and private providers.⁴³ There is also a case management service that offers assistance with security and finding accommodation.⁴⁴ In addition, the program receives brokerage funding that can be used to provide practical support or therapeutic interventions (including paying for counselling).⁴⁵

The Helpline also makes referrals to Mensline,⁴⁶ which appears to be the only referral point specifically for male victims of family violence. The Mensline website provides some information for male victims.⁴⁷

Challenges and opportunities

Lack of services for male victims

A lack of data makes it difficult to determine the extent of the service gap for male victims of family violence. The Commission was, however, told about the following barriers and shortcomings in services and interventions for men:

- ▷ lack of services for men affected by family violence, and services' limited awareness of the problems experienced by male victims⁴⁸
- ▷ male victims' lack of knowledge of available support⁴⁹
- ▷ lack of online resources for male victims⁵⁰
- ▷ lack of services for male victims of family violence who have children.⁵¹

Some submissions also identified that there are no behaviour change programs for women.⁵²

The Commission was told a number of times about the lack of services designed to respond to family violence against men and the adverse effect this has on male victims.⁵³ The One in Three Campaign submitted that:

It doesn't matter whether males make up 5 per cent, 15 per cent, 35 per cent or 50 per cent of victims of family violence, the fact is that there are few services currently available to assist them.⁵⁴

Other individual submissions noted:

I was unable to access any support and very little reading material to help me whilst I was directly a victim of [family violence]. Any support available was directed towards female victims and the only support services offered to men were for behaviour change programs assuming they were the perpetrator. This immediately negates that I am a victim, showing no acknowledgment of my needs and certainly does not help me remove myself from the situation.⁵⁵

After reporting being knocked out and choked to a [female] GP, she arranged contact with a Domestic Violence support group. A meeting was arranged and I talked to a [counsellor], describing my feelings and what was happening. At the end of the session, the [counsellor] said they do not offer support for men and the meeting [had been] arranged because someone they knew was doing research about male victims. I was utterly devastated, the hard part is asking for help, the harder part is finding it.⁵⁶

The Commission was told that men who seek to leave the family home to escape family violence find that there are few, if any, crisis accommodation options for them, including where they are accompanied by their children.⁵⁷ The Commission was not made aware of any refuges catering only to male victims. General homelessness services can provide accommodation to male victims or provide housing establishment fund assistance with accommodation costs.

National data from specialist homelessness services identified 144,710 female clients and 42,507 male clients who were experiencing family violence.⁵⁸ Importantly, this data does not identify whether the client is a victim or perpetrator of family violence and the data set includes general homelessness services for men which are likely to be a primary source of accommodation for perpetrators when excluded from the home.

In addition, 60 per cent (n=21,254) of these male clients were aged 0–14 years. There were 112,874 female clients aged over 18 years, with 13,602 male clients. Once again, this demonstrates the importance of providing accommodation for children exposed to family violence, including boys and young adult males.

Assumptions and perceptions

The Commission was told of community attitudes that lead to toleration of family violence against men,⁵⁹ including that men should accept violence against them and that men cannot be victims of violence.⁶⁰ The Commission heard that complaints by men about family violence were sometimes disbelieved, not taken seriously or treated with indifference.⁶¹

My first point of contact was the police. It was indifferent. They were trying to play down the situation.⁶²

There were a few outcomes. One of the devastating ones for me was when I went into the police station and told them I had had death threats and had been assaulted. I told them I feared for my life. The police wouldn't investigate because nothing had happened yet. That devastated me. I went for help and they didn't help.⁶³

I went to Men's Helpline and found it atrocious. It's one of the motivators that brought me here. The man [on the phone] said, 'Do you want me to come and hold your hand for you?' He later called back to apologise.⁶⁴

One consequence of this is the difficulties male victims face in proving their victim status to police, courts and services.⁶⁵ Male victims explained that they felt they had to demonstrate that there was more than violence simply perpetrated against them—for example, they could be required to show that their partner had directed her violent behaviour at their children or that she suffered from mental ill-health.⁶⁶

We were also told that in some cases where the man was the victim, it was assumed that he was the perpetrator of the violence:

After the first time I called the police and they attended, I received a letter from Relationships Victoria [sic] asking me if I'd come to a [family violence] program. My wife didn't get a letter. I was the complainant. They presumed I was the perpetrator.⁶⁷

As noted, identifying the 'victim' or 'perpetrator' in a family violence situation can be difficult. The Commission was informed of family violence incidents where the police found both parties were 'equally violent' to each other but charged only the male party.⁶⁸ Ms Annette Vickery, Deputy Chief Executive Officer of the Victorian Aboriginal Legal Service, suggested that this can be traced back to the assumptions sometimes made about men in family violence situations:

I have looked at these things from a range of different experiences and I think we as a society struggle to identify women as being able to be violent and struggle to identify men as being victims in a particular situation. Because we do that, we stumble across an equal and equitable way to deal with people who don't fit into the dominant role.⁶⁹

A number of men expressed a particular sense of injustice in connection with family violence intervention orders. In particular, some said the justice system was unable to differentiate between 'true perpetrators' of family violence and those men who were 'set up' by a female partner.⁷⁰

Conversely, the Commission heard that it was common for male perpetrators of family violence to blame their situation on unfair legal processes, rather than accepting responsibility for their own behaviour.⁷¹

The Commission heard that responses to family violence should be flexible enough to accommodate the experiences of all victims:

So the majority of women, yes, they are victims of family violence. The majority of men may well be perpetrators, but there is that crossover. We need a system that's flexible enough to be able to encompass that experience rather than deny somebody the ability to voice that part of them that is not readily recognised or readily recognisable.⁷²

The Commission heard that any public campaign aiming to reduce family violence needs to reflect the diversity of victims (including gay, bisexual and transgender men). At the same time, campaigns focusing on specific cohorts need to complement and not undermine awareness-raising in relation to family violence against women and children, who remain the majority of victims.⁷³

The way forward

Men and women have different experiences as victims of family violence. It is important to understand these differences. Men are more likely to be the perpetrators of family violence in intimate partner relationships. However, men can also be victims of family violence in these relationships. The data suggests that one in four victims of heterosexual intimate partner violence is male.

Men can also be victims of violence when they are children or as older people, and violence can be used against them by adolescent or adult children, siblings and other family members. The data suggests that responses seeking to address the highest risks to men (including homicide) should focus on the risk posed by parents, siblings and other family members, rather than female intimate partners.

Like all victims, male victims should have their experiences acknowledged and their needs taken into account and addressed. There are opportunities to improve our understanding of male victims and the services available to them.

Below we set out our recommended priority areas for action. These are in addition to the recommendations we make elsewhere in this report to improve the responsiveness of the family violence system to the diverse experiences of victims.

Addressing assumptions and misperceptions

Assumptions about victims and perpetrators can result in a failure to identify both male and female victims of family violence. This can increase the risks for victims and any children involved. It can also make it difficult for some male victims to report their experiences and gain support. Assumptions also create challenges for policy makers seeking to determine the level of service provision required.

One of the purposes of any family violence information strategy should be to improve people's understanding of where suitable support can be found. As part of this, the information needs of specific cohorts, including men (whether heterosexual, homosexual, bisexual and transgender), should be taken into account.

Building services' capacity

The principles the Commission applies in its approach to victims of family violence who are women and children—for example, minimising the duration of crisis, ensuring their safety, improving access to quality accommodation and promoting recovery—apply equally to male victims. Although resources should not be diverted from women and children, who constitute the majority of victims, the family violence system needs to respond better to male victims of family violence.

In identifying and responding to the needs of family violence victims, the Victorian Government should take steps to identify and take account of the needs of male victims—including male children, older men who are victims of elder abuse by family members, and gay, bisexual and transgender men.

Any response should be sufficiently flexible to meet the needs of male victims. For example:

- ▷ Responses should build on existing capacities—for instance, the capacity of the Victims of Crime Helpline to provide counselling or other support.
- ▷ Male victims who cannot remain in their home should continue to be provided with assistance to obtain safe accommodation.
- ▷ Other services that could be enhanced to support male victims of family violence include men's or community health services and services that currently support male perpetrators of family violence, such as Mensline.

As part of the industry plan recommended in Chapter 40, the Commission encourages the Victorian Government to develop and implement a corresponding workforce strategy to ensure the effectiveness of services for male victims. Consideration should be given to the gender composition of the workforce and whether a greater number of male counsellors should be employed in male victim services.⁷⁴

As part of the Commission's recommendations relating to strengthening universal services' response to family violence in Chapter 19, the health system's ability to identify and respond to male victims should also be enhanced.

Recommendations

The following recommendations should be read together with the general recommendations in 'Family violence and diversity', located at the start of this part of the report.

Recommendation 180

The Victorian Government publicise and promote the Victims Support Agency in any information campaign relating to family violence as the primary source of assistance for male victims. The agency should also provide appropriate online resources for male victims [within 12 months].

Recommendation 181

The Victims Support Agency continue to receive all police referrals (L17 forms) relating to male victims, including after the establishment of the Support and Safety Hubs. The agency and all other relevant support services should develop joint arrangements to ensure that male victims of family violence are supported in obtaining the help they need [within two years].

Endnotes

- 1 Rochelle Braaf and Isobelle Barrett Meyering, 'The Gender Debate in Domestic Violence: The Role of Data' (Issues Paper 25, Australian Domestic and Family Violence Clearinghouse, May 2013) 5.
- 2 See, eg, Dads in Distress Support Services, Submission 493, 3–4; *ibid*.
- 3 Braaf and Meyering, above n 1, 5.
- 4 *Ibid*.
- 5 Australian Bureau of Statistics, 'Personal Safety, Australia, 2012' (Catalogue No 4906.0, Australian Bureau of Statistics, December 2013) Table 4.
- 6 *Ibid* Table 32.
- 7 *Ibid* Table 4.
- 8 *Ibid*.
- 9 *Ibid*. The figure for men experiencing violence by son/daughter (0.2) has a 25–50 per cent relative standard error, and so this figure should be used with caution.
- 10 Australian Bureau of Statistics, above n 5.
- 11 Crime Statistics Agency, 'An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14' (January 2016), 26, provided to the Commission by the Crime Statistics Agency, 8 January 2016.
- 12 See generally, One in Three Campaign, Submission 584.
- 13 Peta Cox, Violence Against Women in Australia: Additional Analysis of the Australian Bureau of Statistics' Personal Safety Survey, 2012' (Horizons Research Report Issue 01, Australia's National Research Organisation for Women's Safety, October 2015) Table A1: Men and Women's experience of violence since the age of 15, Type of violence by relationship to perpetrator and sex of perpetrator.
- 14 *Ibid*.
- 15 Crime Statistics Agency, above n 11, Magistrates' Court data source, Tab 10, Table 10: Gender of adult respondents on original applications when affected family member is an adult Female, July 2009 to June 2014; Tab 11, Table 11: Gender of adult respondent on original applications when affected family member is an adult Male, July 2009 to June 2014; Victoria Police data source, Tab 11, Table 11: Sex of adult other party by sex of the adult affected family member, July 2009 to June 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015.
- 16 *Ibid* Magistrates' Court data source, Tab 11, Table 11: Gender of adult respondent on original applications when affected family member is an adult Male, July 2009 to June 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015.
- 17 *Ibid* Magistrates' Court data source, Magistrates' Court data source, Tab 10, Table 10: Gender of adult respondents on original applications when affected family member is an adult Female, July 2009 to June 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015.
- 18 *Ibid* Victoria Police data source, Tab 40, Table 40: Relationship between Affected Family Member and Other Party where the AFM is Male and the OTH is Male; Tab 41, Table 41: Relationship between Affected Family Member and Other Party where the AFM is Female and the OTH is Female, provided to the Commission by the Crime Statistics Agency, 10 February 2016.
- 19 *Ibid* Victoria Police data source, Tab 42, Table 42: Relationship between Affected Family Member and Other Party where the AFM is Female and the OTH is Male; Tab 39, Table 39: Relationship between Affected Family Member and Other Party where the AFM is Male and the OTH is Female, provided to the Commission by the Crime Statistics Agency, 10 February 2016.
- 20 Department of Justice, 'Measuring Family Violence in Victoria—Victorian Family Violence Database Volume 5: Eleven Year Trend Analysis 1999–2010' (2012) 77.
- 21 *Ibid*.
- 22 Transcript of Tucker, 3 August 2015, 1557 [27]–[31].
- 23 Coroners Court of Victoria, 'Victorian Systemic Review of Family Violence Deaths: First Report' (November 2012) 20.
- 24 *Ibid* 25.
- 25 Willow Bryant and Tracy Cussen, 'Homicide in Australia: 2010–11 to 2011–12: National Homicide Monitoring Program Report' (AIC Reports Monitoring Reports No.23, 2015) 17.
- 26 Coroners Court of Victoria, above n 23, 26.
- 27 *Ibid*.
- 28 *Ibid*.
- 29 Department of Justice, above n 20, 18.
- 30 Tracy Cussen and Willow Bryant, 'Domestic/Family Homicide in Australia' (Research in Practice No.38, May 2015) 3–4.
- 31 One in Three, *Male Victims of Family Violence (2015)* <<http://www.oneinthree.com.au/malevictims>>.
- 32 One in Three Campaign, Submission 584, 4; Dads in Distress, Submission 493, 3.
- 33 See Chapter 10.
- 34 Anonymous, Submission 35, 1.
- 35 Fitzroy Legal Service and Homeless Persons' Union, Submission 702, 17.
- 36 Anonymous, Submission 35, 4; One in Three Campaign, Submission 584, 14. See generally, Community consultation, Melbourne 2, 22 May 2015.
- 37 Department of Justice and Regulation, 'Victims of Crime Helpline Practice Manual', 2015, 19, produced by the State in response to the Commission's Notice to Produce dated 5 June 2015.
- 38 *Ibid* 46.
- 39 Crime Statistics Agency, above n 11, 91.
- 40 Department of Justice and Regulation, above n 37, 19.
- 41 *Ibid* 70.
- 42 *Ibid* 86.
- 43 *Ibid* 88.
- 44 *Ibid*.
- 45 *Ibid*.
- 46 Department of Justice, 'Victims of Crime Helpline Male Family Violence Practice Manual', 2014, 14, produced by the State of Victoria in response to the Commissioner's Notice to Produce dated 5 June 2015.
- 47 MensLine, *Are you experiencing violence or abuse in your relationship?* (2014) <<https://www.mensline.org.au/improvingrelationships/are-you-experiencing-violence-or-abuse-in-your-relationship>>.
- 48 Anonymous, Submission 378, 2.
- 49 Paul Rogers, Submission 103, 2.
- 50 Anonymous, Submission 241, 3.
- 51 Anonymous, Submission 12, 4–5. See also, Anonymous, Submission 586, 3.
- 52 Anonymous, Submission 586, 3; Family Life, Submission 758, 25.

- 53 See, eg, Community consultation, Warrnambool 2, 27 April 2015; Community consultation, Werribee 2, 11 May 2015; Community consultation, Melbourne 1, 14 May 2015; Community consultation, Melbourne 2, 14 May 2015; The Police Association Victoria, Submission 636, 20.
- 54 One in Three Campaign, Submission 584, 6.
- 55 Anonymous, Submission 241, 2.
- 56 Anonymous, Submission 378, 1.
- 57 See, eg, Anonymous, Submission 586, 3, 5.
- 58 Australian Institute of Health and Welfare, *The Intersection of Domestic Violence and Homelessness* <<http://www.aihw.gov.au/homelessness/domestic-violence-and-homelessness/intersection/>>.
- 59 Mentality, Submission 501, 4.
- 60 One in Three Campaign, Submission 584, 10.
- 61 See, eg, Community consultation, Melbourne 2, 22 May 2015; Community consultation, Melbourne 3, 24 April 2015.
- 62 Community consultation, Melbourne 3, 24 April 2015.
- 63 Ibid.
- 64 Ibid.
- 65 See, eg, Dads in Distress Support Services, Submission 493, 4.
- 66 Casey Cardinia Community Legal Service, Submission 991, 3.
- 67 Community consultation, Melbourne 3, 24 April 2015.
- 68 Transcript of Vickery, 20 July 2015, 815 [3]–[9].
- 69 Ibid 815 [18]–[24].
- 70 Confidential, Submission 45, 29; Community consultation, Melbourne 2, 22 May 2015.
- 71 Moonee Valley Legal Service, Submission 901, 10.
- 72 Transcript of Vickery, 20 July 2015, 815 [25]–[31]. See also, Transcript of Broughton, 6 August 2015, 2176 [7]–[31].
- 73 See, eg, One in Three Campaign, Submission 584, 15; Dads in Distress Support Services, Submission 493, 4.
- 74 See, eg, One in Three Campaign, Submission 584, 20.

33 Rural, regional and remote communities

Introduction

The Commission's terms of reference require it to consider the needs and experiences of people affected by family violence, having particular regard to, among others, people from rural, regional and remote communities. For completeness, the Commission has also considered the needs of people living in remote communities.

This chapter outlines what we heard from and about people living in and providing services to these communities. The Commission held community consultations throughout Victoria—including in Bairnsdale, Benalla, Bendigo, Colac, Echuca, Geelong, Horsham, Maryborough, Mildura, Morwell, Sale, Shepparton, Traralgon and Warrnambool. It also received written submissions¹ and heard evidence from witnesses at the public hearings that dealt with the experiences of people affected by family violence who live outside Melbourne.

The chapter begins by looking at the limited data on the prevalence of family violence and explores some of the main factors that shape a person's experience of family violence in non-urban areas. These include geographic and social isolation, economic vulnerability and cultural factors, all of which may exacerbate the difficulties in finding support that many urban victims of family violence experience.

The next section describes the challenges faced by the justice and service systems that seek to support people in rural, regional and remote communities, including the limited access to specialist services for both victims and perpetrators. Finally, we consider opportunities for improving coordination, governance and the service system and for using technology to assist in addressing the situation in rural, regional and remote communities.

The Commission heard of an increasing awareness in rural, regional and remote communities of family violence and a growing commitment to seeking to prevent and respond to it. Various plans and initiatives are in progress, many of them initiated and led by the local communities themselves. The social connectedness and resilience within these communities offers great potential. At the same time, these communities face significant challenges in addressing family violence, which demands an active and appropriately resourced response.

Accordingly, our recommendations reflect the view that government and other stakeholders need to take further steps to respond to the particular challenges posed by family violence in rural, regional and remote communities. Government should give priority to preventing and responding to family violence in these communities. Greater flexibility in contracting and funding arrangements for service provision and using new technologies should also be pursued.

Context and current practice

The latest Australian Bureau of Statistics figures (as at June 2014) show the estimated resident population of Victoria to be 5.84 million people. Of this, approximately 1.4 million people (24 per cent) live in regional Victoria; that is, anywhere outside of Greater Melbourne.² ABS data shows that 0.1 per cent of Victoria's population is classified as remote.³

The Regional Statement produced by the Victorian Government sets out the breakdown of the regional population as follows:

- ▷ Barwon: 276,935
- ▷ Central Highlands: 184,804
- ▷ Gippsland: 265,150
- ▷ Goulburn: 154,022
- ▷ Great South Coast: 101,117
- ▷ Loddon Campaspe: 226,640
- ▷ Mallee: 89,847
- ▷ Ovens Murray: 120,296
- ▷ Wimmera Southern Mallee: 48,261.⁴

Family violence in rural, regional and remote communities

The Centre for Rural and Regional Law and Justice's recent *Landscapes of Violence* report acknowledged the difficulty in definitively determining the prevalence and rate of family violence generally, and in comparing one geographic area to another. After reviewing the limited data available, it concluded that Victoria Police family incident statistics 'affirm that higher rates of family violence reports occur in non-urban places'.⁵

This is supported by evidence provided to the Commission that in 2013–14, the 10 local government areas with the highest rates of family violence incidents reported to Victoria Police per 100,000 population were outside metropolitan Melbourne.⁶

According to the Victoria Police submission, although 'metropolitan areas have more than twice as many family violence offences as rural areas, on a per capita basis rural areas account for 65 per cent more offences'.⁷

Although family violence is in general under-reported,⁸ given a number of factors discussed below (including geographic isolation, culture and barriers to accessing services) it is likely that under-reporting is an even greater problem in rural, regional and remote communities.⁹

Experiences of family violence

The Commission heard evidence and received submissions about a number of factors that influence how family violence is experienced in rural, regional and remote communities,¹⁰ as well as posing challenges for government and community responses. These will be discussed in turn.

Geographic and social isolation

One of the biggest difficulties for people living in rural communities is geographic and social isolation.¹¹ Living in remote locations can increase victims' exposure to a variety of forms of violence by perpetrators. Victims living outside towns are particularly vulnerable. This can make it more difficult for police to respond as quickly as would be desirable, as well as making it harder for victims to seek support from family and friends. As one woman noted, 'there is only one road in/out and at times I feel trapped'.¹² Another person commented that:

I live on my own ... up in the Mountains ... very isolated. it's hard to receive the right support to come out to rural areas to see how things are going, as living out in the country on a farm you don't have any visitors or support ... you have to travel to find it.¹³

Isolation also makes it more difficult for victims to obtain relevant services. Many submissions identified transport as posing problems for rural, regional and remote communities,¹⁴ the need to travel increasing both the time and the cost involved in seeking relevant services.¹⁵ There is limited public transport, and any private transport that is available can be expensive, with the result that some victims cannot travel into town to get help.¹⁶ If a perpetrator controls access to private vehicles, this exacerbates the isolation and vulnerability of a victim.¹⁷ The Commission was told in a community consultation that 'people need the services to come to them. They can't get into town, the public transport system is shit. In some towns there's not even taxis'.¹⁸ One woman told the Commission:

I would go out to my car and try to drive away but he would have taken the [removed] out in advance so I couldn't drive the car. By then he would be laughing at me and had locked the door so I'd be stuck outside. I'd have to walk or hitch hike to stay somewhere the night. He thought this was funny.¹⁹

During a consultation, the Commission heard that in rural, regional and remote communities it can be the local taxi service that helps victims escape from the place of violence.²⁰ It was suggested that if taxi drivers were equipped with an understanding of family violence and information about support services, they could better help victims in a crisis.

Position of perpetrator within the community

Paradoxically, victims of family violence in rural, regional and remote communities may be both isolated from services and support, but also concerned about the perpetrator's position within the community and about the inability to maintain privacy, which can make seeking help harder. One woman told the Commission:

People in the local community loved him ... He was the left wing, alternative community hero. We would often drive long distances and he would pull the keys out of the ignition so the steering wheel would jam - we would slide to a halt, skidding alongside the road. He would push me out of the car in the middle of the night and I would have to walk [removed] kms home or hitch hike in pitch darkness through a forest.²¹

Victims can be reluctant to seek help when the police, court staff and the relevant services know the perpetrator. Intertwined with this can be a fear that the victim's (or perpetrator's) circumstances will become more widely known in their community and could result in their ostracism:

If your abuser is seen as an upstanding or outstanding member of the community, it may be difficult to report them to the local authorities.²²

[It's a case of] small town syndrome: the police know the perpetrator and can't believe he's done anything wrong. Everyone talks to everyone.²³

I went to a domestic violence service ... [The perpetrator's] sister worked there. She rang her father and the father told [the perpetrator].²⁴

The Commission was told that this can not only discourage victims from seeking help; it can also deter others from taking action:

[H]ealth professionals may feel unwilling to intervene due to a personal connection with the perpetrator or victim.²⁵

Some doctors who were part of the community tended to try to keep families together or discourage women leaving.²⁶

Importantly, '[k]nowing a person socially does not exclude the potential of that person to be a perpetrator behind closed doors'.²⁷

Economic vulnerability and dependence

Rural, regional and remote communities can also experience economic dislocation—such as underemployment and unemployment.²⁸ This can increase a victim's economic dependence on their partner and family.²⁹

The Commission heard many cases of economic abuse:

I didn't want to go to police because what do I tell them? He held a knife to my throat, but will they believe me? You walk in to a police station saying, "I'm hiding ten dollars under my mattress so that I have some money of my own." I thought I'd be laughed out of the station.³⁰

I gained part time employment in an isolated town he was happy about that because it was so isolated ... he interfered in my work no matter what I did he made trouble for me until I lost the job.³¹

In some cases victims belong to, or have married into, a farm-owning family.³² The Commission heard that if the victim flees or the perpetrator is excluded because of his violence this can have implications for the running of the farm and its ongoing viability. For example, Quantum Support Services submitted that 'family breakup' has implications in the division of the family farm in terms of both livelihood, income and assets,³³ with consequences for the entire family.

Isolation and economic dislocation can also lead to an increase in alcohol and drug misuse and have deleterious effects on mental health.³⁴ One submission noted the 'pub culture' in some small towns.³⁵ The evidence suggests both alcohol and drug misuse and mental illness are more prevalent in rural, regional and remote communities.³⁶ As discussed in Chapter 6, these are individual risk factors for family violence.

Cultural norms in rural, regional and remote communities

Rural, regional and remote communities have many strengths which are relevant to addressing social problems. People living in these communities often feel a sense of connectedness and responsibility for other members of their community who are facing difficulty. As acknowledged in one submission, there is a 'strong community spirit wanting to make changes for the better' in these communities.³⁷

The Commission heard, however, that the culture within some communities is also relevant to experiences of family violence. The Commission was told that rural, regional and remote communities can be characterised by a more conservative view of the world,³⁸ a 'stronger emphasis on gender stereotypes'³⁹ and 'traditional gender constructs and cultures of masculinity'.⁴⁰ The Centre for Rural Regional Law and Justice at Deakin University described a victim's experience of these cultural norms:

Tina spoke of the ways her abuser framed his controlling behaviour – restricting both her access to their finances and her association with others – as 'taking care' of her in an 'old fashioned' manner. On the farm she was encouraged to assume responsibility for the domestic sphere and to have no involvement in the operations and management of the business, which were regarded as male domains by her abuser.⁴¹

At a community consultation, the Commission was told of how these conservative views may affect the response that women receive when they disclose family violence:

In [removed] there is a brilliant police officer but there are two others who do not like assertive women. Unfortunately I had had to deal with them on a call-out.⁴²

Another woman from a country area described the difficulties she experienced in gaining employment, due to expectations that she should be a primary caregiver.

Someone told me I shouldn't be working but should look after my children at home, but I didn't have any money. People would deny me work because 'I should be at home'.⁴³

Victims might not identify family violence as wrong and illegal or might feel forced to endure it. This may be demonstrated by the fact that 60 per cent of women from remote areas who leave the family home after a violent episode return; this compares with 30 per cent nationally.⁴⁴ Others observed that 'values of self-reliance' can be important in rural, regional and remote communities and that this might make it more difficult for victims to seek help.⁴⁵

Unique challenges for communities near state borders

Some of Victoria's rural, regional and remote communities are located close to the state's borders. This can give rise to challenges for people experiencing family violence in such areas.⁴⁶ They might need to cross the border frequently for work, education and leisure,⁴⁷ and the closest police station or other relevant service might in fact be located across the border.⁴⁸

There are no national arrangements for automatically recognising and enforcing intervention orders. An interstate intervention order will not be recognised in Victoria until it is registered, and any breaches of that order in Victoria will not be recognised until registration has occurred.⁴⁹ As one consultation participant put it, 'the border is bad for us ... you're not protected over the border.'⁵⁰ The Centre for Rural Regional Law and Justice argued that 'synchronisation and coordination of laws' and improved cooperation between law enforcement agencies were required.⁵¹ In Chapter 1, the Commission notes that because this issue is being addressed by the Council of Australian Governments, it is not addressed in this report.

Firearms and other weapons

The Commission was informed that access to firearms is a 'major concern' in rural, regional and remote communities.⁵² Firearm ownership rates are higher in these communities⁵³ and, as Victoria Police pointed out, the high prevalence of firearms in such communities increases the risk of serious family violence.⁵⁴ This concern was raised both in community consultations⁵⁵ and in submissions.⁵⁶ A concern about access to and the prevalence of home-made weapons in these communities was also identified.⁵⁷ One woman told the Commission:

There's still a gun missing that the police didn't find. They said that it's not important ... if he comes out and wants to kill me, he will.⁵⁸

It was also observed that in the past 20 years Victoria Police has become much more responsive to the risks associated with firearms.⁵⁹

A family violence intervention order can include a condition cancelling or suspending a firearms authority,⁶⁰ which, it was submitted, could make it difficult for the perpetrator to manage a farm or maintain employment in rural, regional and remote communities.⁶¹ While it is necessary to preserve safety, such intervention order conditions can also have unintended consequences for the economic wellbeing of the victim and any children.

The impact of natural disasters

The Commission further heard that family violence increases in the wake of natural disasters such as bushfires, droughts and floods, which are more common in rural, regional and remote communities.⁶² Some speculated that during such disasters a 'hypermasculinity kicks in for some.'⁶³ The dislocation, stress and loss experienced during and after these events can also contribute to this phenomenon.

Women's Health Goulburn North East and Women's Health in the North submitted there should be '[i]ncreased understanding by emergency [services] personnel (including police) and community of the likelihood that [family violence] will increase after disaster ... and that disaster is no excuse for violence'.⁶⁴ The links between natural disasters and family violence are discussed further in Chapter 2.

Experiences of diverse groups

The Commission received evidence that some people within rural, regional and remote communities face additional difficulties and ‘[i]ntersectional disadvantage’ as a result of other aspects of their identity.⁶⁵ This includes children and young people, older people, Aboriginal and Torres Strait Islander peoples, people from culturally and linguistically diverse backgrounds, people within the lesbian, gay, bisexual, transgender and intersex communities and people with disabilities. Their experiences will be discussed in turn.

Children and young people

The Commission was informed that there is a lack of services for children in rural, regional and remote communities⁶⁶ and that this applies across a broad spectrum of services relevant to family violence. As one person said, ‘[c]hildren’s voices are not heard much and this needs to change’.⁶⁷

Few activities are available specifically for children and young people in rural, regional and remote communities. One parent noted, ‘[w]e need more opportunities for our children to meet other children who are not on drugs. There is nothing here to do except sport clubs and my kids are not sporty’.⁶⁸

Concerns were also raised about the justice system’s response to children and young people. Victoria Police is required by legislation to interview young people in the presence of an independent third person,⁶⁹ most often a parent or guardian. If a parent or guardian is not available, a referral is made to a trained independent third person, but the Commission was told that trained individuals are not always available in some communities.⁷⁰

The Commission heard that there are no appropriate trauma psychologists for children who have experienced violence in these communities.⁷¹ There are also few options for children or young people who use violence, including limited counselling services.⁷² One consultation participant noted that within their community there were ‘[n]o behaviour programs for kids or males under 18 years’.⁷³

Older people

As explored in Chapter 27, older people’s experience of family violence in rural, regional and remote communities can also be more challenging compared with that of those in metropolitan areas. The proportion of older people in rural, regional and remote communities is increasing as younger people leave to pursue study and employment opportunities elsewhere.⁷⁴

Importantly, this development can exacerbate geographic and social isolation and hence increase the risk and consequence of family violence, including elder abuse by family members who have remained in the local community. One woman told the Commission of the abuse she and her husband experienced from their son:

We’ve had no real help ... he falls between the cracks. He’s 40 ... He damages the property. He’s on an intervention order ... I took it out. We have no other family here. We’re getting worried as we’re getting old and we’re worried about what would happen to us and him. I slept next to a knife block for 5 years I was so scared.⁷⁵

Older people may also be more reliant on others for transport. The outflow of younger community members can diminish the workforce available to provide the services older people need.

The Commission also heard of a lack of attention being given to elder abuse in rural, regional and remote communities.⁷⁶

Aboriginal peoples

Just over half (52 per cent) of the Aboriginal and Torres Strait Islander population of Victoria lives outside Melbourne⁷⁷ and submissions outlined challenges for Aboriginal peoples in non-urban areas. These include a lack of mainstream or Aboriginal community controlled services, and a shortage of culturally safe crisis accommodation.⁷⁸ These and other issues relating to Aboriginal and Torres Strait Islander peoples are discussed in detail in Chapter 26.

Culturally and linguistically diverse communities

The Commission was informed that the experience of family violence by people in CALD communities in rural, regional and remote areas presents various difficulties, including the availability of services.⁷⁹ For example, it can be difficult to find suitable interpreters, including ones who are not known to the parties, which is likely to be much more of a problem in rural, regional and remote communities.⁸⁰

The Commission heard that it can also be difficult for CALD women in small communities to access information about their rights, which can lead to an increased vulnerability. One woman told the Commission of her experience in a small town:

... her husband lived there for 25 years. He's a charming person to everyone else. He brain washed her on everything. Told her Immigration will deport her. He has strong connections to everyone in the town. He said 'You cannot do anything here. You can't get help, your life is in my hands.' She ran away, and miraculously ran into a friend. She convinced her to leave. She packed everything. Felt she had to go. Caught a taxi. Sent to [removed]—very helpful. One knew her husband and said you have to be sent to Melbourne. Hard for you to fight your husband as it would be like fighting the whole city.⁸¹

InTouch Multicultural Centre Against Family Violence, which provides culturally appropriate family violence services to CALD communities, noted that it 'rarely sees family violence initiatives targeted at people in CALD communities in [rural, regional and remote communities], even where they make up a significant proportion of the population'.⁸² It added that, because of the 'relatively low cost of living and relatively high rate of low skilled employment opportunities, [rural, regional and remote communities] are attractive to many recently arrived migrants'.⁸³ Such settlement patterns can themselves create vulnerabilities,⁸⁴ confirming the need for suitable services to be available.

Although InTouch is a statewide service, which provides a telephone service and serves as a source of expert advice for other providers (for example, those serving rural, regional and remote communities), its current resources do not allow it to provide more extensive services to CALD communities in these areas.⁸⁵ The experiences of people from culturally and linguistically diverse backgrounds is discussed in more detail in Chapter 28.

LGBTI communities

The Commission was advised that higher levels of discrimination, homophobia and transphobia are experienced in rural, regional and remote communities than in metropolitan communities.⁸⁶ These attitudes can result in a higher prevalence of family members perpetrating violence against their LGBTI relatives.⁸⁷

Discrimination can also make people in same-sex relationships in these communities more likely to remain 'in the closet' and, if they experience intimate partner violence, less likely to seek help.⁸⁸ As is the case throughout rural, regional and remote areas, there is a lack of suitable services—for example, a local or nearby LGBTI support service or health centre, much less an LGBTI family violence worker.⁸⁹ For further discussion see Chapter 30.

People with a disability

The Commission heard that women with disabilities in rural, regional and remote communities face a greater risk than women without disabilities or in metropolitan areas.⁹⁰ Their isolation can be acute. The Commission was told that there is a lack of suitable services for people with disabilities experiencing family violence,⁹¹ as well as a lack of refuges for women who have children with disabilities.⁹² See Chapter 31 for more information about the experiences of people with disabilities.

Community education and prevention initiatives

The Commission heard about a variety of plans and initiatives in progress in rural, regional and remote communities, illustrating their capacity to draw on local resources to prevent family violence and support people affected by it. Among these are establishment of the Benalla Family Violence Prevention Network,⁹³ the Goulburn Valley Family Violence Prevention Network⁹⁴ and the Grampians Integrated Family Violence Committee,⁹⁵ as well as the work of the Go Goldfields Alliance and Family Violence Action Group and the Rotary Club of Maryborough.⁹⁶ This is not an exhaustive list, and the Commission notes that family violence regional integration committees operate across Victoria.

The Commission also heard about examples of work already happening in rural, regional and remote communities, including the following:

- ▷ Community participation in campaigns and events such as White Ribbon Day⁹⁷ and Take a Stand.⁹⁸
- ▷ Distribution of contact cards in an accessible format providing details of local crisis and support options.⁹⁹
- ▷ Placement of advertising messages about family violence on posters and billboards to raise awareness.¹⁰⁰ In the Goulburn Valley, advertisements feature local people in local places as a way of making the messages immediately relevant. The Commission was told this particular campaign had attracted significant local support and positive comment.¹⁰¹
- ▷ Devoting local sporting rounds to the question of family violence—for example, Maryborough's '#sayno2familyviolence football round', which featured players wearing white armbands, the distribution of educational information to players and supporters, and presentation by a female Rotarian of the perpetual shield to the winning team. The intention is that this will be an annual event as part of the Maryborough football-netball league's community round.¹⁰²
- ▷ A focus on parenting (such as Parent and Child Mother Goose, Parents Early Education Partnership, Real Men Make Great Dads and Bringing up Great Kids) and communication and self-defence (such as Rock and Water).¹⁰³
- ▷ Provision of training to employers and local workers in how better to identify and respond to family violence.¹⁰⁴ One such program was attended by over 30 chief executive officers, human resource managers and key staff, with the purpose of embedding knowledge and responses in the workplace.¹⁰⁵
- ▷ Provision of education about respectful relationships to people in schools, sporting clubs and community groups.¹⁰⁶
- ▷ Encouraging local businesses and organisations to support gender equity and respect within their organisational structure,¹⁰⁷ this might include 'increasing the availability and affordability of child care, or changing workplace systems to promote men's equal participation in child-rearing'.¹⁰⁸

Technology

The Commission heard that technology is helping with the provision of family violence-related services. It could be especially promising in responding to some of the challenges rural, regional and remote communities face (although it is recognised that mobile and internet coverage may be an issue for some). The following examples provided to the Commission are indicative of the possibilities:

- ▷ Women's Legal Service Victoria offers the LINK Outreach service which uses Skype to enable rural women to obtain legal advice from professionals with appropriate expertise from across the state.¹⁰⁹ The Commission heard this can be a vital service for rural women when a conflict of interest prevents them from getting legal advice from a local source.¹¹⁰ This could also be used to help provide services to meet specific needs—for example, for culturally and linguistically diverse communities in rural, regional and remote areas.¹¹¹
- ▷ Using technology to disseminate general information on family violence—including to rural, regional and remote communities.¹¹²
- ▷ Electronic security systems and CCTV could be used to improve safety.

- ▷ An online platform (such as that trialled by the Neighbourhood Justice Centre) could be used as a more convenient and secure way to apply for a family violence intervention order.¹¹³
- ▷ Remote witness facilities could be made available for court hearings.¹¹⁴ Given the cost of otherwise improving court infrastructure in rural, regional and remote communities, it was suggested that using remote witness facilities might be a more 'effective investment'.¹¹⁵ It might also help with ensuring access to interpreters.¹¹⁶
- ▷ Services could be integrated across providers and locations by using virtual teams and virtual hubs.¹¹⁷

Although technology promises new ways in which victims can be supported, many consultation participants noted the importance of trusted local people,¹¹⁸ drop-in services¹¹⁹ and face-to-face contact¹²⁰ in encouraging victims to report violence and seek advice and assistance.

Challenges and opportunities

This section examines some of the key challenges and opportunities in relation to addressing family violence in rural, regional and remote communities. Many of these challenges are not unique to these communities—examples of poor or inadequate justice system responses, inaccessibility of necessary family violence services and fragmented governance structures are problems that have been raised statewide. However, the manifestation of these universal challenges in the context of the rural, regional and remote communities needs to be understood in order to develop truly effective responses.

This section outlines the rural, regional and remote communities' experience of the justice system (including police, courts and legal services) and limitations around existing services (including specialist family violence services and access to safe accommodation). The loss of momentum around regional governance frameworks is also discussed.

The justice system

Victoria Police

The evidence before the Commission showed that, as was the case with all victims (see Chapter 14), the experiences of people from rural, regional and remote communities in relation to Victoria Police were varied.

Some referred to 'fantastic'¹²¹ and 'exemplary'¹²² officers and described their 'excellent experiences being looked after by concerned police officers'.¹²³ In the community consultations there was general praise for family violence police teams (units) in rural, regional and remote communities.¹²⁴

On the other hand, some consultation participants suggested that Victoria Police officers in these communities either 'don't want to deal with family violence'¹²⁵ or hold outdated views on family violence. In consultations, the Commission was told that police were reluctant to act if there had been no physical assault.¹²⁶ Examples included police considering that text messages in breach of a family violence intervention order do not amount to family violence¹²⁷ or advising against reporting a breach of a family violence intervention order on a public holiday because of the impact on the perpetrator.¹²⁸ One survivor described the police as 'hopeless' and declared, 'I'll never go through them again'.¹²⁹

The Federation of Community Legal Centres suggested that the closeness of people in rural, regional and remote communities may affect Victoria Police responses: '[T]here is often more empathy from the local police station towards the perpetrator rather than focussing on the safety needs of the women and children'.¹³⁰ Some even alleged collusion between perpetrators and police officers.¹³¹

Police resourcing was also the subject of comment. Ovens Murray Goulburn Integrated Family Violence Services suggested that there were insufficient police resources in rural, regional and remote communities to respond to family violence.¹³² Geographic distance contributes to delays in police attendance, which can ultimately jeopardise safety. The Commission was told by Victorian Police that transporting victims of family violence to a safe place sometimes ties up a police vehicle and delays the response to other incidents.¹³³

The Police Association Victoria argued that the current legislative requirement that family violence safety notices be issued by a Victoria Police officer of the rank of sergeant or higher was inflexible,¹³⁴ noting this was a particular problem in regional areas.¹³⁵

The courts

As in the pattern throughout Victoria, discussed in Chapter 16, concerns were expressed about the level of resources at courts servicing rural, regional and remote communities.

Although the establishment of the Family Violence Court Division of the Magistrates' Court of Victoria in Ballarat was welcomed, there was a general call for a greater number of specialist family violence courts.¹³⁶ The Commission heard from the Magistrates' Court of Victoria that it had endeavoured to spread best practice from the Family Violence Court Division more broadly—'across more courts, across regional and rural Victoria as well as suburban courts'.¹³⁷ The Centre for Rural Regional Law and Justice argued that dedicated family violence services should be extended to all headquarter courts in Victoria.¹³⁸

There was concern about poor infrastructure at many courts in rural, regional and remote communities. Several submissions, consultation participants and witnesses pointed to serious safety shortcomings—for example, the lack of a secure waiting area for applicant victims or their children and in some cases, insufficient space to keep them apart from respondent perpetrators in general waiting areas.¹³⁹ The lack of privacy at the front counter of Magistrates' Courts was seen to be a particular difficulty in small communities.¹⁴⁰ One woman described her court experience in a regional town:

For me it was about the exposure in an open court with people walking in and out when you are distraught and frightened and them reading out your name. The entry area, where you're in a small community and see people you live and work with. When you're standing outside distraught and your name is called out over a PA system. May as well say 'whole of Geelong ...'¹⁴¹

Despite these limitations, some consultation participants reported positive experiences of court staff in rural, regional and remote communities. One person described court staff in such a community as 'brilliant'.¹⁴²

The Goulburn Valley Community Legal Centre emphasised the difficulties experienced by lawyers trying to seek instructions from, and provide advice to, clients in some courts noting that interviews were 'conducted in the park or sometimes in the lawyer's vehicle if it is raining, leaving both client and lawyer vulnerable absent security'.¹⁴³

The Commission was made aware of a variety of perspectives in relation to decision-making in rural, regional and remote communities. Some consultation participants praised the work of magistrates sitting in these communities;¹⁴⁴ others commented that members of the magistracy are trained in and sensitive to the nature of family violence.¹⁴⁵ As the Commission explores in Chapter 16, magistrates sitting in rural, regional and remote communities are more likely than most magistrates sitting in metropolitan Melbourne to deal with a range of issues arising from family violence.

In its submission, the Magistrates' Court of Victoria explained that:

All of our country Magistrates regularly do work in the family law area in terms of their professional development ... We regard this as an incredibly important part, particularly dealing with families who are experiencing family violence, in being able to make appropriate family law orders to promote their safety.¹⁴⁶

It was, however, suggested that some magistrates might not be 'well versed in the latest thinking regarding family violence'¹⁴⁷ and that, with magistrates serving on a circuit, they might lack relevant local knowledge.¹⁴⁸ The result can be 'great variance' in outcomes,¹⁴⁹ some comparing it to a lottery as to both the magistrate hearing the matter and the ultimate outcome.¹⁵⁰

The Centre for Rural Regional Law and Justice called for 'funded applicant and respondent workers in all rural regional courts'.¹⁵¹

Legal services

The Commission heard there was limited availability of legal services for people attending court. Victoria Legal Aid argued it was not feasible for it to have an office in every large regional centre (such as Mildura), so it is unable to deliver duty lawyer services in these locations (including Mildura).¹⁵² In some cases, community legal centres' servicing of regional centres has also been affected by funding uncertainty.¹⁵³

The Commission was also told that, because of the smaller populations in rural, regional and remote communities, it was more common for conflicts of interest to arise. As Victoria Legal Aid or a community legal centre may have previously acted for the victim (or the perpetrator), that service cannot then act for the other party.¹⁵⁴ In some cases this can leave the other party without access to any legal services.

Service systems

Service challenges

It was submitted that there is a 'significant disparity in service availability and provision between metropolitan and [rural, regional and remote communities]'.¹⁵⁵ Relevant services might not be available in a particular community, or it might be necessary for people to travel considerable distances in order to gain access to the services.

The Commission heard that many services are under-resourced, especially if they have to cover a large geographic area, or victims or perpetrators present with a number of different needs. People might also need more than one service. One provider explained that coordinating and integrating the various service systems which a person needs can entail 'quite significant difficulties'.¹⁵⁶ The end result can be that some people are effectively denied access to relevant services. As one consultation participant put it, '[t]here are just no support services here'.¹⁵⁷

Even where services are available, other complexities can arise in rural, regional and remote communities. Sometimes an organisation might provide a variety of services associated with family violence—such as women's specialist services and men's behaviour change programs—which can give rise to safety concerns when both victims and perpetrators attend the same location.¹⁵⁸

The Commission heard that providing services in these communities is challenging. Indeed, 'considerable effort is needed to get new resources, training and projects into [rural, regional and remote communities]'.¹⁵⁹ It is also difficult for service providers to recruit and retain staff, as well as equip them with suitable training and exposure to new ideas.¹⁶⁰ Some providers feel 'over-stretched' and concerned at 'delivering less than an optimal service' and the 'cumulative trauma of the "lost opportunity" to intervene effectively', which has a direct impact on the 'safety and well-being of [their] staff'.¹⁶¹

The Commission heard that rural, regional and remote communities do not have sufficient trained specialist family violence workers.¹⁶² The result is that many people do not have ready access to these services and even where such services exist, as the Department of Health and Human Services acknowledged during the public hearings, the 'wait lists are greater than what we would like'.¹⁶³ One victim noted, however, that despite the long wait, their local service provider was 'brilliant';¹⁶⁴ another said, '[w]ithout [them] I wouldn't be here'.¹⁶⁵

Similarly, problems with access to men's behaviour change programs were described. Some men might be required to travel long distances to attend such programs,¹⁶⁶ and again, there are long waiting lists. For example, in one regional area there were 2000 potential referrals in nine months, but there were only 120 funded places for the year and the result was a waiting list of six months to two years.¹⁶⁷ The Commission also heard that there are particular difficulties in recruiting people who are qualified to run men's behaviour change programs.¹⁶⁸ The Commission considers this issue further in Chapter 18.

Accommodation

The Commission was told of critical shortages in access to refuges and other accommodation options. It was said that in some major regional cities there is no refuge accommodation at all.¹⁶⁹ Service providers try to place people in local motels and caravan parks—'anywhere that we can find a bed'.¹⁷⁰ Some even spoke of resorting to putting people in tents.¹⁷¹ An associated problem in some rural, regional and remote communities is that they are tourist destinations, which decreases the availability of accommodation and drives up costs.¹⁷² Accordingly, Macedon Ranges Shire Council argued for more refuges in these communities.¹⁷³ At present victims are often sent to Melbourne in order to be kept safe.¹⁷⁴

The Commission also heard that the demand for public and community housing in rural, regional and remote communities exceeds the available stock.¹⁷⁵ The situation was described as 'ridiculous' in one major regional city.¹⁷⁶ In the private market, although rental properties are relatively more affordable in rural, regional and remote communities, there are often fewer available.¹⁷⁷

The Commission heard that this shortage of refuge and other accommodation caused considerable hardship for victims and their families seeking to escape violence in these communities. Some victims were forced out of their communities altogether because of these shortages.¹⁷⁸ Leaving their community can offer a measure of immediate safety, but it jeopardises victims' social and economic wellbeing, removes them from their natural supports, as well as having a broader impact on their family, friends and the wider community they have left.

As discussed, the evidence suggests that alcohol and drug misuse is more prevalent in rural, regional and remote communities.¹⁷⁹ Some argue this has a direct impact on levels of family violence in these communities.¹⁸⁰ There is also evidence of higher levels of psychological distress in such communities.¹⁸¹ As described in Chapter 19, increasing the availability of these health services and their responsiveness to family violence, including the link between depression and other psychological impacts of family violence, is another important element in meeting the needs of rural, regional and remote communities.

Building the capacity of universal services

Although the Commission was told that both universal and specialist services can be under-resourced in rural, regional and remote communities, it was emphasised that universal services are particularly crucial in responding to family violence for several reasons.¹⁸² First, it was argued that there will never be enough funds to develop specialist services in every community.¹⁸³ Secondly, it was noted that victims who are seeking help will usually go to universal services, such as the local community health service.¹⁸⁴ As a result, it was said to be important to invest in developing the level of family violence expertise in universal services in these communities.

As a result of the often large geographic areas, as well as the structures and limited amounts of government funding, some service providers seek to partner with others, which can facilitate a multi-disciplinary response. Ms Ailsa Carr, Executive Manager, Family Youth and Children's Services Unit, Gippsland Lakes Community Health, gave evidence that, in order to service communities, maximise the available funding and engage a team of staff, some providers seek to combine various programs 'where there are synergies' into a package of programs that is 'able to better respond'.¹⁸⁵ Ms Carr argued that a flexible approach was preferable to simple centralisation: '[T]here's 200 kilometres between our agencies. So it's not logical to have people relocated to a single agency ... it's also not logical to have a single centre'.¹⁸⁶

At Gippsland Lakes Community Health an integrated model of care has been developed, involving the provision of five different units of health services.¹⁸⁷ One of these units is the Family Youth and Children's Services unit, which aims to provide a holistic response to the various needs of individuals, families, young people and children¹⁸⁸ and offers numerous programs and services, including the following:

- ▷ Integrated Family Services and Child FIRST
- ▷ maternal and child health nursing
- ▷ family violence outreach
- ▷ a men's behaviour-change program
- ▷ women's and children's family violence counselling
- ▷ a youth pregnancy and parenting group

- ▷ alcohol and drug services
- ▷ homelessness programs
- ▷ youth programs.¹⁸⁹

Individuals who go to Gippsland Lakes Community Health are subject to a comprehensive assessment, which includes a risk assessment. Those who are assessed as requiring multiple services are linked to the relevant services.¹⁹⁰ Ms Carr said her staff:

... also try and utilise the same approach in working with external agencies and use a case management type approach so that [they] can provide a coordinated multidisciplinary response.¹⁹¹

The Commission heard that a model of this nature enables workers to develop a good knowledge of services beyond their own,¹⁹² which means they are better equipped to deal with the complexity and range of problems presented by people coming to universal services.

The Commission was also informed that local governments are generally one of the main employers in rural, regional and remote communities.¹⁹³ Local government is an important provider of services, contracts and funding. Many local governments with responsibility for these communities already have relevant plans and initiatives under way. Local governments—in their capacity as a service provider, employer, contractor and funder—can play an important role in both preventing and responding to family violence.

Similarly, in some communities, one or two private entities can also be major employers.

The Commission was told about current workplace initiatives in rural, regional and remote communities, including the Act at Work initiative¹⁹⁴ which aims to improve understanding of sexism, discrimination and violence against women, increase awareness of the impacts of such behaviours, and develop individuals' and workplaces' capacity to take action.¹⁹⁵ As a result of this initiative, the Commission heard workplaces have become more aware of violence against women, including family violence,¹⁹⁶ while early evaluation findings suggest an overall positive change in staff knowledge, skills, attitudes and willingness to be an active bystander.¹⁹⁷

Governance arrangements

The Commission heard about the existing governance arrangements to support integrated service delivery in rural, regional and remote communities: the regional integration committees.

Regional Integration Committees

Historically, regional integration committees were established (supported by a chairperson and with leadership from a regional integration coordinator) with the aim of bringing together organisations from a range of different sectors to work locally to integrate and improve a region's response to family violence. Among the organisations that contributed representatives to the committees were specialist family violence services, men's behaviour change services, homelessness services, and representatives from Victoria Police, the courts, Corrections Victoria, Child Protection and/or the local Department of Health and Human Services office. In some cases the local coordinator of the Indigenous Family Violence Regional Action Group was also a representative. In rural, regional and remote communities, the scope of regional integration committees' membership and activity could be even broader.¹⁹⁸

The committees and their coordinators were funded by the Department of Health and Human Services, receiving varying allocations of funding for distribution. The coordinators were employed by a local service provider, which could be either a specialist family violence service or other service provider. Within government, the Office of Women's Policy supported the committees by providing a statewide policy framework and coordination. The committees were also able to report back to the Office of Women's Policy.

The Commission heard that, although the regional integration committees still exist, the structures for the committees and the sense of whole-of-government support, coordination and relationship with the committees have been lost.¹⁹⁹ Witnesses said there was a need for statewide strategic planning and coordination, as well as measures to ensure consistency in purpose and role definition across committees.²⁰⁰ While it was acknowledged that government had supported the development of a regional family violence integration governance model, the model's relevance to and adoption by various committees differed.²⁰¹

The Commission also heard it was important for the regional integration committees, and the family violence sector more generally, to have a structure through which information could be exchanged with government, including clear and consistent statewide messages from government.²⁰² As Domestic Violence Victoria put it:

... for us as a peak body, if [we] want to go and talk to government about how the system is going there's nowhere to go to. [We] might go and talk to DHHS about what they are doing. [We] might go to police and talk about what they are doing. But in terms of anything that's working together or towards common objectives there's nowhere.²⁰³

During the public hearings the Victorian Government acknowledged this situation. Some of the departmental secretaries who gave evidence are involved in the government's regional management forums, which cover the state. Although the regional management forms are not family violence-specific, the departmental secretary who chairs the southern forum said that one of its priorities in 2015 was family violence, in terms of both prevention and local community awareness.²⁰⁴ In the case of another forum, there have been occasions where there has been a session on family violence,²⁰⁵ although these were 'very ad hoc'.²⁰⁶ The Commission discusses these issues further in Chapter 38.

Structuring and funding services

The Commission heard that there are significant problems with the way the Victorian Government structures and funds family violence-related activities, particularly in rural, regional and remote communities.

The Victoria Police and Department of Health and Human Services regions consist of several local government areas, which can create anomalies in terms of the location from which services are provided or to which people are referred.²⁰⁷ For people requiring multiple services, this can aggravate the problem of being sent in multiple directions, as well as making it harder to share information and integrate services.

Many argued that 'one size does not fit all' when it comes to policies, programs, structures and funding.²⁰⁸ For example, structures and funding arrangements based on models that have been suitable in metropolitan areas (for example, servicing a given population) are difficult to apply in rural, regional and remote communities (the relevant population being distributed across a larger area) and might not take account of the greater cost of delivering the same service in these communities.²⁰⁹

Working with the structures and the limited amount of government funding is not easy. Service providers have to be imaginative.²¹⁰ The great strength of these communities is that service providers in these areas 'know each other and have strong working relationships'.²¹¹

Some witnesses gave evidence that government structures and funding mechanisms can have a centralising effect, forcing services to integrate and relocate to larger cities or towns.²¹² As a consequence, smaller communities can lose their local services, resulting in increased travel costs and longer waiting times to gain access to the services sought.

Among other criticisms was the argument that government approaches lack flexibility²¹³ and force administrative burdens onto providers who have to 'unpack' their different activities and services in order to separately report back to government in accordance with their various funding lines.²¹⁴ It was argued that services should instead be developed in partnership with local communities and service providers.²¹⁵

The way forward

People experiencing family violence in rural, regional and remote communities face particular challenges. These include geographical and social isolation, greater economic vulnerability, cultural factors and a lack of access to services. The shortage of behaviour change programs also means that perpetrators are unable to access the interventions they need to change their behaviour.

However, many of these communities also have a strong sense of social connectedness and community, which can be leveraged to prevent and respond to family violence. Shared community condemnation of family violence is more likely to be effective in these communities, where strong social bonds can work to help to influence and change behaviour. There is also great resilience in many of these communities and great potential to build on this.²¹⁶ The Commission was impressed by the plans and initiatives already under way in some of these communities. These developments give us hope that the prevalence of family violence in rural, regional and remote communities can be reduced and that the barriers that victims face in seeking safety and support can be overcome. This will require the combined commitment of all levels of government, service providers and the community.

In Chapter 38, we propose a Statewide Family Violence Action Plan. This strategy should take account of, and give priority attention to, the particular needs of those experiencing family violence in rural, regional and remote communities when formulating policies, planning, developing structures and allocating funding.

The following section describes the Commission's recommended approach to improving responses to family violence in rural, regional and remote communities, by better leveraging universal services (such as health services), harnessing technology and strengthening community responses through reinvigorated governance arrangements.

Services

The Commission heard that the dispersed population and the long distances between population centres in rural, regional and remote communities means that in some areas specialist family violence services are only available on a part-time basis or if the victim has the ability to travel long distances. Unfortunately, often this results in an effective denial of service.

The Commission accepts that no matter how desirable it might be, ensuring that there are specialist family violence services in every rural, regional and remote community would be financially prohibitive. A little more of the same will only result in a little less effective denial of service. More effective strategies are needed for the delivery of specialist family violence services in these communities. For this reason, we recommend that universal services that already have good geographic coverage in these communities—such as health practitioners, child and maternal health services, hospitals, schools and other education providers—are supported to build their capacity to provide a specialist response to family violence. Many of these universal services are already deeply embedded in, and have a broad reach across, their communities. With support from people with relevant specialist knowledge, these services could build on their existing reputation and networks to improve outcomes in rural, regional and remote communities.

In Chapter 13, the Commission recommends the creation of new Support and Safety Hubs designed to improve access to services for victims and perpetrators of family violence. While in metropolitan Melbourne we anticipate that many will operate from a single location, some in the outer suburban areas not well-served by public transport and in rural, regional and remote communities will need to build on existing universal service infrastructure and significant outreach capacity. We note the examples outlined in this chapter of how this could be achieved. Universal and specialist service providers, together with government and other funders, will need to pursue collaboration, creativity and flexibility in order to improve access to services. The Commission notes that when partnerships and relationships between diverse service providers work well, these providers in rural, regional and remote communities often make a noticeable difference with limited resources.

In our view, working with both local government and strategically chosen private employers presents real opportunities to reach a large proportion of the population in rural, regional and remote communities, enabling these communities to be involved in prevention support activities.

Governance structures

The Commission discusses the desirable elements of regional governance arrangements in Chapter 38. The Commission emphasises here, however, that any new regional governance arrangements, including the regional partnerships, should take account of the role of regional integration committees and the concerns noted in this chapter. Such arrangements will be critical in determining progress in preventing and responding to family violence in rural, regional and remote communities.

Any approach to structuring or funding local services must:

- ▷ consult and involve the relevant community in planning and delivery
- ▷ avoid duplication and 'siloing' of services, and unnecessary administration and reporting
- ▷ balance the need to share best practice information with the need to encourage innovation and services which are flexible enough to respond to local conditions
- ▷ facilitate multi-disciplinary partnerships between service providers.

The Commission notes the roles of various groups and services addressing family violence in Aboriginal communities. These include the Indigenous Family Violence Regional Action Groups, which consist primarily of members of the Aboriginal community, particularly Elders, and Aboriginal services working in the local area, together with associate members such as Victoria Police, DHHS staff and service providers.²¹⁷ These groups have an essential role in developing and reviewing initiatives designed to redress family violence in Aboriginal communities, including those in rural, regional and remote areas.

Technology

Effective and strategic use of technology has the potential to assist in disseminating information and providing services to victims and communities. It can also facilitate effective communication and relationships between service providers, which assists in improving the safety and efficiency of justice and other service systems.

This potential is especially important for rural, regional and remote communities, but should not be regarded as a substitute for the need for face-to-face contact and support for those affected by family violence.

The Commission urges government and service providers to consider funding technological solutions to better meet the specific needs of these communities, as well as ensuring that communications technology infrastructure is in place to support this.

Recommendation

The following recommendation should be read together with the general recommendations in 'Family violence and diversity'.

Recommendation 182

The Victorian Government and other relevant parties, in designing the recommended Statewide Family Violence Action Plan and implementing the Commission's other recommendations:

- ▷ give priority to reducing family violence in rural, regional and remote communities
- ▷ improve access to services by victims and perpetrators of family violence in such communities
- ▷ investigate and fund the use of technological solutions to provide access to service providers—among them those with experience in safety planning and counselling
- ▷ when contracting for and funding services in these communities, recognise:
 - ▷ the importance of building the capacity of universal services to deliver family violence services in order to facilitate an effective, locally based response
 - ▷ the need for flexibility in contracting and funding arrangements in order to facilitate collaboration between different services and providers.

Endnotes

- 1 See generally, Centre for Rural Regional Law and Justice—Deakin University, Submission 511; Gippsland Lakes Community Health, Submission 229; Mallee Family Violence Executive, Submission 617; Women’s Health and Wellbeing—Barwon South West Inc, Submission 780.
- 2 Australian Bureau of Statistics, ‘Regional Population Growth, Australia, 2013–14’ (Catalogue No 3218.0, Australian Bureau of Statistics, March 2015) Victoria. Regional means anything outside Greater Melbourne.
- 3 Ibid Population Estimates by Remoteness Area, 2004 to 2014, Table 1.
- 4 State of Victoria, ‘Victoria’s Regional Statement: Your Voice, Your Region, Your State’ (November 2015), 53–71.
- 5 Amanda George and Bridget Harris, ‘Landscapes of Violence: Women Surviving Family Violence in Regional and Rural Victoria’ (2014) 33–34.
- 6 State of Victoria, Submission 717, 15. See also Women’s Health in the South East Inc, Submission 370, 11. See also Chapter 3.
- 7 Victoria Police, Submission 923, 36.
- 8 See Chapters 3 and 39.
- 9 Centre for Rural Regional Law and Justice—Deakin University, Submission 511, 4 citing George and Harris, above n 5 and Russell Hogg and Kerry Carrington, *Policing the Rural Crisis* (Federation Press, 2006).
- 10 See, eg, Daniel Mulino and Harriet Shing—Members for Eastern Victoria Region, Submission 806, 1–2.
- 11 Ibid 2.
- 12 Anonymous, Submission 76, 6.
- 13 Anonymous, Submission 856, 10.
- 14 Transcript of Smith, 15 October 2015, 3757 [5]–[9]; Castlemaine District Community Health Ltd on behalf of Health and Community Services Sector—Mount Alexander Shire, Submission 211, 1; Centre for Rural Regional Law and Justice—Deakin University, Submission 511, 5; Mary-Anne Thomas—Member for Macedon, Submission 441, 3; Sharon Knight—Member for Wendouree, Submission 788, 1; Municipal Association of Victoria, Submission 641, 55; Anonymous, Submission 251, 5.
- 15 Community consultation, Traralgon, 13 May 2015; Cobaw Community Health, Submission 396, 5.
- 16 Community consultation, Bairnsdale, 28 May 2015.
- 17 Centre for Rural Regional Law and Justice—Deakin University, Submission 511, 5, citing George and Harris, above n 5.
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- 19 Anonymous, Submission 411, 2.
- 20 Community consultation, Horsham 2, 22 April 2015.
- 21 Anonymous, Submission 411, 1–2.
- 22 Sharon Knight—Member for Wendouree, Submission 788, 2.
- 23 Community consultation, Warrnambool 2, 27 April 2015.
- 24 Anonymous, Submission 976, 2.
- 25 Colac Area Health, Submission 599, 1.
- 26 Centre for Rural Regional Law and Justice—Deakin University, Submission 511, 29.
- 27 Anonymous, Submission 383, 1.
- 28 Daniel Mulino and Harriet Shing—Members for Eastern Victoria Region, Submission 806, 2.
- 29 Women’s Health and Wellbeing—Barwon South West Inc, Submission 780, 15.
- 30 Community consultation, Bendigo 1, 5 May 2015.
- 31 Anonymous, Submission 585, 2–3.
- 32 Federation of Community Legal Centres, Submission 958, 18.
- 33 Quantum Support Services Incorporated, Submission 371, 10.
- 34 Daniel Mulino and Harriet Shing—Members for Eastern Victoria Region, Submission 806, 2.
- 35 Macedon Ranges Shire Council, Submission 122, 1.
- 36 Australian Institute of Health and Welfare, ‘National Drug Strategy Household Survey: Detailed Report 2013’ (Drug Statistics Series No 28 Cat no PHE 183, Australian Institute of Health and Welfare, 2014) ix, 84, 86–9; Australian Institute of Health and Welfare, ‘Rural, Regional and Remote Health: Indicators of Health Status and Determinants of Health’ (Rural Health Series No 9, Australian Institute of Health and Welfare, March 2008) 31–6.
- 37 Anonymous, Submission 76, 6.
- 38 Central Goldfields Shire Council, Submission 498, 4; Women’s Health Loddon Mallee, Submission 772, 23; Women’s Health and Wellbeing—Barwon South West Inc, Submission 780, 16; Women’s Health Grampians, Submission 824, 8; Anonymous, Submission 403, 2.
- 39 Transcript of Brennan, 15 July 2015, 302 [22]–[25].
- 40 Victorian Council of Social Service, Submission 467, 51. See also Victoria Police, Submission 923, 36.
- 41 George and Harris, above n 5, 48.
- 42 Community consultation, Shepparton 1, 18 May 2015.
- 43 Community consultation, Melbourne 1, 24 April 2015.
- 44 Women’s Health and Wellbeing—Barwon South West Inc, Submission 780, 15, citing Alexandra Neame and Melanie Heenan, ‘Responding to Sexual Assault in Rural Communities’ (ACSSA Briefing No 3, Australian Centre for the Study of Sexual Assault, June 2004) 5.
- 45 Centre for Rural Regional Law and Justice—Deakin University, Submission 511, 40.
- 46 Owens Murray Goulburn Integrated Family Violence Services, Submission 444, 4.
- 47 Ibid 13.
- 48 Centre for Rural Regional Law and Justice—Deakin University, Submission 511, 36. See also Echuca Regional Health, Submission 754, 3–4; Community consultation, Maryborough 2, 21 April 2015.
- 49 *Family Violence Protection Act 2008* (Vic) pt 10. See also Murray Mallee Community Legal Service, Submission 513, 7; Owens Murray Goulburn Integrated Family Violence Services, Submission 444, 13.
- 50 Community consultation, Mildura, 2 July 2015.
- 51 Centre for Rural Regional Law and Justice—Deakin University, Submission 511, 36.
- 52 Federation of Community Legal Centres, Submission 958, 18.
- 53 State of Victoria, Submission 717, 15 citing George and Harris, above n 5.
- 54 Victoria Police, Submission 923, 36.
- 55 Community consultation, Melbourne, 30 April 2015; Community consultation, Traralgon, 13 May 2015.
- 56 Centre for Rural Regional Law and Justice—Deakin University, Submission 511, 31 quoting George and Harris, above n 5, 153; Goulburn Valley Community Legal Centre, Submission 495, 7; Quantum Support Services Incorporated, Submission 371, 10.
- 57 Centre for Rural Regional Law and Justice—Deakin University, Submission 511, Attachment 1, 55.
- 58 Community consultation, Shepparton 1, 18 May 2015.
- 59 Centre for Rural Regional Law and Justice—Deakin University, Submission 511, Attachment 1, 57.
- 60 *Family Violence Protection Act 2008* (Vic) ss 81(2)(h), 95. In certain circumstances, a firearm can also be seized: ss 160(2)(b)(ii), 163.

61 Centre for Rural Regional Law and Justice—Deakin University, Submission 511, Attachment 1, 99–100.

62 Mallee Family Violence Executive, Submission 617, 17; Women’s Health Goulburn North East, Submission 367, 6; Women’s Health Grampians, Submission 824, 8; Women’s Health Loddon Mallee, Submission 772, 22; Women’s Health in the North, Submission 637, 29; Community consultation, Traralgon, 13 May 2015.

63 Chris Laming, Submission 658, 5.

64 Women’s Health Goulburn North East, Submission 367, 6. See also, Women’s Health in the North, Submission 637, 29.

65 Women’s Health Loddon Mallee, Submission 772, 4.

66 State-wide Children’s Resource Program, Submission 126, 1; Community consultation, Bendigo 2, 5 May 2015; Community consultation, Echuca 2, 7 May 2015; Community consultation, Traralgon, 13 May 2015. On children and young people, see generally Chapter 10.

67 Community consultation, Bendigo 2, 5 May 2015.

68 Anonymous, Submission 76, 6.

69 See, eg, *Crimes Act 1958* (Vic) s 464E.

70 Transcript of Allen, 11 August 2015, 2684 [13]–[17].

71 Community consultation, Traralgon, 13 May 2015.

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73 Community consultation, Traralgon, 13 May 2015.

74 Transcript of Blakey, 11 August 2015, 2601 [13]–[16].

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76 Community consultation, Shepparton 2, 18 May 2015.

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78 *Ibid* 18.

79 Transcript of Avdibegovic, 11 August 2015, 2653 [19]–[22]. See, eg, The Federation of Chinese Associations Vic, Submission 774, 5–6. See also Chapter 28.

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86 Gay and Lesbian Health Victoria; Australian Research Centre in Sex, Health and Society—La Trobe University, Submission 821, 12; Victorian Gay & Lesbian Rights Lobby, Submission 684, 7. On LGBTI communities, see generally Chapter 30.

87 Gay and Lesbian Health Victoria; Australian Research Centre in Sex, Health and Society—La Trobe University, Submission 821, 4.

88 Transcript of Brown, 11 August 2015, 2542 [11]–[16]; Victorian Gay & Lesbian Rights Lobby, Submission 684, 7.

89 Rainbow Families Council, Submission 865, 3.

90 Transcript of Taft, 13 October 2015, 3459 [4]–[6]; Community consultation, Benalla 2, 19 May 2015.

91 Community consultation, Geelong 2, 28 April 2015.

92 Community consultation, Melbourne, 6 May 2015.

93 Benalla Family Violence Prevention Network, Submission 131, 1.

94 Goulburn Valley Family Violence Prevention Network, Submission 801, 1.

95 Grampians Integrated Family Violence Committee, Submission 399, 2.

96 Statement of Higgins, 7 August 2015; Transcript of Higgins, 10 August 2015, 2486 [29]–2505 [31]; Maryborough Rotary Club, Submission 133.

97 See, eg, Benalla Family Violence Prevention Network, Submission 131, 8; Goulburn Valley Family Violence Prevention Network, Submission 801, 2.

98 Benalla Family Violence Prevention Network, Submission 131, 9.

99 Statement of Higgins, 7 August 2015, 9 [35]; Goulburn Valley Family Violence Prevention Network, Submission 801, 2.

100 Statement of Higgins, 7 August 2015, 9 [35]; Goulburn Valley Family Violence Prevention Network, Submission 801, 1.

101 Goulburn Valley Family Violence Prevention Network, Submission 801, 1.

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103 Benalla Family Violence Prevention Network, Submission 131, 9.

104 Goulburn Valley Family Violence Prevention Network, Submission 801, 1–2.

105 Statement of Higgins, 7 August 2015, 5 [36].

106 Benalla Family Violence Prevention Network, Submission 131, 8.

107 *Ibid* 9.

108 Our Watch—02, Submission 922, 18–19.

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110 Berry Street, Submission 834, 44.

111 InTouch Multicultural Centre Against Family Violence, Submission 612, 51.

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113 Centre for Rural Regional Law and Justice—Deakin University, Submission 511, 38.

114 Community consultation, Bendigo 2, 5 May 2015; Centre for Rural Regional Law and Justice—Deakin University, Submission 511, 4, 17; Court Services Victoria, Submission 646, 11.

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117 Transcript of Carr, 13 August 2015, 3021 [10]–[15]; Transcript of Mahoney, 23 July 2015, 1392 [25]–[29].

118 Community consultation, Traralgon, 13 May 2015.

119 Community consultation, Echuca 2, 7 May 2015.

120 Community consultation, Warrnambool 2, 27 April 2015.

121 Community consultation, Sale, 12 May 2015.

122 Centre for Rural Regional Law and Justice—Deakin University, Submission 511, 7.

123 Anonymous, Submission 416, 1.

124 Community consultation, Warrnambool 2, 27 April 2015; Community consultation, Geelong 1, 28 April 2015; Community consultation, Mildura, 2 July 2015; Community consultation, Melbourne, 6 May 2015.

125 Community consultation, Echuca 1, 7 May 2015.

126 Community consultation, Maryborough 1, 21 April 2015; Community consultation, Bendigo 1, 5 May 2015.

127 Confidential, Submission 4.

128 Confidential, Submission 283.

129 Community consultation, Melbourne, 6 May 2015.

130 Federation of Community Legal Centres, Submission 958, 18.

131 Confidential, Submission 594.

132 Owens Murray Goulburn Integrated Family Violence Services, Submission 444, 4.

133 Community consultation, Maryborough 2, 21 April 2015.

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135 The Police Association Victoria, Submission 636, 28.

136 Macedon Ranges Shire Council, Submission 122, 2. See generally Chapter 16.

137 Transcript of Hawkins, 4 August 2015, 1857 [19]–[24].

138 Centre for Rural Regional Law and Justice—Deakin University, Submission 511, 10.

139 Community consultation, Maryborough 2, 21 April 2015; Community consultation, Traralgon, 13 May 2015; Statement of Carr, 8 July 2015, 5 [26]; Transcript of Atmore, 5 August 2015, 1931 [20]–[21]; Transcript of Casey, 4 August 2015, 1780 [24]–[25]; Court Services Victoria, Submission 646, 11; Goulburn Valley Community Legal Centre, Submission 495, 5.

140 Centre for Rural Regional Law and Justice—Deakin University, Submission 511, 17.

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142 Community consultation, Maryborough 1, 21 April 2015.

143 Goulburn Valley Community Legal Centre, Submission 495, 6.

144 Community consultation, Melbourne, 6 May 2015.

145 Gippsland Community Legal Service, Submission 443, 9.

146 Transcript of Broughton, 5 August 2015, 1967 [26]–1968 [2].

147 Statement of Carr, 8 July 2015, 5 [26].

148 Quantum Support Services Incorporated, Submission 371, 12.

149 *Ibid.*

150 Statement of Carr, 8 July 2015, 5 [26]; Gippsland Lakes Community Health, Submission 229, 4; Community consultation, Melbourne, 6 May 2015.

151 Centre for Rural Regional Law and Justice—Deakin University, Submission 511, 19.

152 Victoria Legal Aid, Submission 919, 22.

153 *Ibid.*

154 Community consultation, Werribee 1, 11 May 2015; Barwon Community Legal Service, Submission 535, 4; Central Highlands Community Legal Centre Inc, Submission 463, 2; Centre for Rural Regional Law and Justice—Deakin University, Submission 511, 12; Federation of Community Legal Centres, Submission 958, 7.

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171 Statement of Kirby, 10 August 2015, 13 [53].

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173 Macedon Ranges Shire Council, Submission 122, 2.

174 Community consultation, Horsham 2, 22 April 2015.

175 Statement of Kirby, 10 August 2015, 13 [53].

176 *Ibid.*

177 Council to Homeless Persons, Submission 920, 16.

178 Women’s Health Loddon Mallee, Submission 772, 23; *ibid.*

179 Campaspe Primary Care Partnership, Submission 802, 2–3.

180 Anonymous, Submission 76, 2.

181 Quantum Support Services Incorporated, Submission 371, 5.

182 Community consultation, Traralgon, 13 May 2015.

183 Transcript of Carr, 13 August 2015, 3026 [14]–[17].

184 *Ibid.* 3027 [5]–[6].

185 *Ibid.* 2999 [13]–[17], [26]–[31].

186 *Ibid.* 3021 [5]–[9].

187 Statement of Carr, 8 July 2015, 2 [14].

188 *Ibid.* 3 [15].

189 *Ibid.* 3 [16].

190 *Ibid.* 3 [17].

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196 Statement of Brandenburg, 21 July 2015, 10 [47].

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34 Women in prison

Introduction

The Royal Commission's terms of reference require it to consider the needs and experiences of people affected by family violence, having particular regard to people in diverse communities.¹ Although women in prison are not specifically named, the Commission has chosen to consider them specifically because they are often marginalised, may include a disproportionate number of women from specific communities, and have a particular experience of family violence. In view of their different circumstances and needs, they warrant particular policy and practice interventions to facilitate access to supports and services.

Evidence presented to the Commission suggests that family violence looms large in the childhood and early years of many of these women and might disproportionately affect them in their adult life. Some women in prison might have committed offences as a result of a history of childhood violence or other trauma; some might have committed offences because they were pressured to do so by a violent partner; some might be pursued by a violent partner while they are in prison or might be at risk of violence when they leave prison. Women in these situations need support while they are in prison, to help them overcome the effects of past trauma and avoid re-offending. They might also need risk assessment and management to protect them from violence after their release. In addition, many women in prison face challenges in obtaining support before, during and after family violence. This can have serious consequences for their health and wellbeing, can impede their recovery from violence, and can lead to further criminalisation.

The Commission acknowledges the complexity of the lived experience of these women and the importance of avoiding categorising their identities and experiences. Evidence tells us that women in prison have often experienced social and economic disadvantage, and the intersection between these forms of inequality and family violence can have severe effects on their health, wellbeing and long-term recovery and can contribute to some of them re-offending.

The first section of this chapter describes women's patterns of offending and the policies and practices of Corrections Victoria in relation to family violence. The Commission was informed that Corrections Victoria has to date not collected data on the number of women prisoners who have experienced family violence but that new policies and documents outlining practical initiatives have recently been developed. This section also discusses how family violence can be a contributing factor to women committing offences and outlines current initiatives aimed at alleviating the effects of family violence on female prisoners.

The second section of this chapter discusses the experiences of female prisoners who have been victims of family violence and considers how these experiences can make it more difficult for women to re-integrate into the community after they are released.

In the final section of this chapter, the Commission makes recommendations aimed at helping to identify female victims of family violence in the corrections system and providing intensive practical and therapeutic support to meet their needs. The purpose of the recommendations is to improve the treatment of marginalised women and to ensure that, as victims of family violence, they receive the same access to support as other victims of family violence and that such support reflects the complexity of their experiences.

Context and current practice

Evidence, research and submissions the Commission examined show that women in prison have experienced family violence at much higher rates than women in the rest of the community. This section discusses what is currently known about the population of women prisoners in Victoria and how Corrections Victoria assesses their needs. The chapter then examines how family violence can be a contributing factor to women committing offences and outlines current initiatives to mitigate the effects of family violence on women who have been imprisoned.

Female prisoners

In Victoria there are two female-only prisons—the Dame Phyllis Frost Centre and Tarrengower Prison. As at 30 June 2015 these two institutions had a combined operational capacity of 468 prisoners.²

The Australian Institute of Criminology observes that women's pathways to and patterns of offending are very different from those of males.³ Although the research results vary slightly, when compared with men Australian women tend to commit fewer and less violent crimes—for example, drug offences, fraud and property theft.⁴ They also have shorter average periods of imprisonment but have more frequent periods in prison.⁵ In addition, women offenders have higher levels of previous victimisation, poor mental health and serious mental illness, substance misuse, and unemployment and low educational attainment.⁶

Family violence-related policy and practice: Corrections Victoria

In 2005 Corrections Victoria developed *Better Pathways: An Integrated Response to Women's Offending and Reoffending* with a view to meeting the needs of some women who are at risk of offending and re-offending—including women affected by family violence, mental ill-health, substance abuse, and lack of employment and housing.⁷

The 2014 Corrections Victoria document entitled *Standards for the Management of Women Prisoners in Victoria* establishes the minimum requirements for correctional services in Victorian prisons for women.⁸ It also describes a range of services and supportive interventions designed to prepare prisoners for release and promote integration and reduce re-offending;⁹ one element of this is access to specialist family violence and sexual assault services.¹⁰

The standards document establishes that 'survivors of sexual, physical and/or emotional abuse are provided with specialist counselling, advocacy and support services by an approved community-based agency to assist them in the recovery process and reduce the risk of perpetuating cycles of abuse and reoffending'. This occurs while in prison and after release. In the case of family violence victims, other services are provided, where practical, to respond to unmet needs relating to female prisoners' experiences of family violence.¹¹

In 2015 Corrections Victoria produced its major family violence-related policy document, the *Family Violence Policy Framework*, which outlines the organisation's response and commitment to contributing to the broader work being done in relation to family violence in Victoria.¹² It also issued its Family Violence Service Reform Strategy, which covers all prisons and community corrections and includes identification of perpetrators, delivery of targeted family violence programs and services to perpetrators, support for victims of family violence, cultural and attitudinal change through education, and the need to work with other systems.¹³

The 2015 *Corrections Victoria Reintegration Pathway* document sets out the service delivery model for the re-integration pathway for prisoners, through entry, sentence stage, pre-release and post-release. It states:

The CV Reintegration Pathway provides general and targeted transitional activities at each stage that aim to build on achievements and interventions of previous stages. In accordance with evidence and best practice, transitional activities commence on entry and continue throughout a prisoner's correctional episode. The service will operate as a hybrid model combining internal Corrections Victoria services with contracted services delivered by Community Service Organisations.¹⁴

The Commission notes Corrections Victoria's transition programs—Reception Transition Triage, Case Planning Transition and the General Pre-Release Program. These deal with transitional needs, from entry into prison to pre-release, in combination with support from external services and agencies.¹⁵

The Commission was informed that about 560 Community Correctional Services staff members were trained in the use of the Victorian Family Violence Risk Assessment and Risk Management Framework (also known as the Common Risk Assessment Framework or the CRAF) between 2009–2010 and 2013–2014 and that training continues.¹⁶

In connection with identifying women who have experienced or are experiencing family violence, the Commission was informed that when an offender enters prison Corrections Victoria uses the following assessment tools to determine the general risk of re-offending as well as intervention needs:

- ▷ *The Level of Service Inventory—Revised: Screening Version (LSI-R: SV)*. This is administered as part of the classification process, within 14 days of sentencing or a sentenced prisoner's reception into prison custody.
- ▷ *The Level of Service/Risk, Need, Responsivity (LS/RNR)*. This is administered within six weeks of completion of the LSI-R: SV; it is for prisoners assessed as medium and high-risk who have six or more months remaining on their sentence.¹⁷

The *Sentence Management Manual—Level of Service (LS) Assessment Tools* states that the LS/RNR is an instrument in which static risks and dynamic (criminogenic) needs are combined to produce an overall assessment of offender risk.¹⁸ It allows the interviewer to record whether the prisoner discloses that they are a 'victim of family violence' and whether it is 'past, current, physical, sexual, emotional, neglect'.¹⁹

In response to a request for information on the total number of prisoners for which a history of family violence is flagged or noted, Corrections Victoria said that data is not collected on family violence victim status of prisoners or offenders.²⁰

Family violence and the criminalisation of women

Provocative though it may be, the question then becomes to what extent Victoria would need a women's prison were it not for its epidemic of family violence.²¹

The trauma associated with family violence can be a contributing factor to criminal offending, can exacerbate the trauma of being imprisoned, and can make it difficult to re-integrate into the community on release.²²

Evidence that family violence frequently features in the lives of women in prison was presented to the Commission. Women in prison report substantially higher rates of victimisation, physical and sexual abuse and family violence than in the rest of the community.²³ Although some women are incarcerated for violence-related offences, it is important to stress that female offenders experience higher rates of victimisation than male offenders.²⁴ The Commission's consultations with female offenders revealed that a substantial majority of these women had experienced family violence either as children or from their intimate partners, and sometimes both.²⁵

Caraniche, a Victoria-based psychological consulting firm that delivers forensic drug, alcohol, violence prevention and rehabilitation services in prisons and corrections systems, estimates that more than 70 per cent of its female clients were exposed to family violence as a child and as an adult. This is substantially higher than the rate for its male clients.²⁶ It also noted, however, that the availability of quality data on the prevalence of family violence in offender populations and on the effect of family violence on criminal offending is limited.²⁷

An Australian Institute of Criminology study found that 78 per cent of female offenders ($n=470$) who were incarcerated in 2003 reported experiencing emotional, sexual or physical abuse as an adult and that the primary perpetrators of emotional and physical abuse were spouses or partners.²⁸

As part of their submission, the Mental Health Legal Centre, Inside Access and the Centre for Innovative Justice analysed 50 civil matter case files from women at the Dame Phyllis Frost Centre who sought legal assistance from the prison's Inside Access program. Of the 50 randomly selected case files, family violence was a factor in 44 per cent of cases.²⁹

This is not to say that all family violence victims become criminal offenders: rather, the effects of family violence can contribute to victims committing offences.³⁰ For some women, it is their only option for leaving violence. Other victims experience multiple layers of disadvantage that can contribute to their offending. Caraniche clinicians estimate that 40 per cent of female offenders also use violence in the home, often against their children.³¹

The Commission's discussions with women in prison highlighted the lengths to which some women go for safety from family violence because of the inadequacy of the options they perceive they have outside prison. One woman who had lived in a violent relationship, and who offended to protect a friend from her violent partner, said, 'The only way it stopped with my partner was when I came to jail'.³²

The Australian Centre for the Study of Sexual Assault has noted that women can react violently after long-term exposure to intimate partner violence or sexual abuse, or both, especially when children are at risk.³³ The Commission notes the evidence that violence by women is more likely to be motivated by self-defence and fear of the (male) primary aggressor.³⁴

I thought 'No, I'll change myself' to provoke my partner less. I had to not voice anything to aggravate him. I did that for many years but if you hold your opinions in, it's a heavy burden and it pushes you down. You say enough is enough. He stood in front of the door. I had to take a knife and put it under the bed. He woke me that morning and I said 'Please don't wake the kids up, let's drive somewhere.' I said 'It won't end unless one of us dies.' The police came (he called them), they found the knife and the tables turned. I was the one threatening him. I decided never to get the law involved again.³⁵

The profile of Aboriginal and Torres Strait Islander women is striking: they are over-represented in the prison system and there is a strong correlation between their experience of family violence and their incarceration.³⁶ In 2013 research conducted by the Victorian Equal Opportunity and Human Rights Commission found that Koori women who enter prison are likely to re-enter the criminal justice system 'on multiple occasions, often for relatively short periods ...'³⁷ The report notes the lack of pre-prison diversionary options and post-release support compared to that provided to men.³⁸ VEOHRC added:

Family violence and other stressors manifest across the life cycle, and across generations. This cycle is typified by periods in prison, which entrenches trauma, family breakdown, contact with child protection and out-of-home care systems, homelessness, family violence, substance misuse and mental health episodes. Our research found that these inform further contact with the criminal justice system, post-release breakdown, reoffending and reimprisonment.³⁹

The Mental Health Legal Service, Inside Access and the Centre for Innovative Justice submitted that, generally, women who have experienced the effects of family violence are likely to re-offend on release and that the likelihood is heightened by factors such as mental ill-health, low educational attainment and employment, drug and alcohol abuse and homelessness.⁴⁰

The intersection of social exclusion and multiple forms of discrimination and disadvantage means that for some women the experience of family violence and its effects is exacerbated. The Australian Centre for the Study of Sexual Assault has noted that women entering prison have often experienced extreme disadvantage, and many of the outcomes they experience (such as mental ill-health, reduced socio-economic status and substance abuse) are related to their experience of violence.⁴¹

Addressing the effects of family violence on criminalised women

Corrections Victoria

The Commissioner of Corrections Victoria, Department of Justice and Regulation, Ms Jan Shuard, stated in evidence that one of Corrections Victoria's strategic objectives is to support prisoners and offenders who are victims of family violence.⁴² She said Corrections Victoria recognises that a high proportion of female prisoners and offenders are victims of family violence and that supporting victims must take into account their previous victimisation and trauma.⁴³ She noted in addition:

Identifying and supporting victims of family violence is fundamentally different from identifying and treating perpetrators. Appropriate supports must be in place in the event that a female prisoner chooses to disclose that she is a victim and seek assistance.⁴⁴

Commissioner Shuard told the Royal Commission that Corrections Victoria is considering a number of options, among them the following:

- ▷ targeting transitional housing for victims of family violence who are leaving prison and might be returning to an environment where their safety is at risk
- ▷ strengthening Community Correctional Services case-management resources to include referral to family violence-related services
- ▷ providing training to all Corrections Victoria staff, to improve their understanding of family violence.⁴⁵

Corrections Victoria's Family Violence Reform Strategy, released in December 2015, states that the organisation will also be doing the following:

- ▷ developing a new women's policy to guide future program and service delivery in the women's correctional system
- ▷ piloting a family support program in prisons and Community Correctional Services that aims to build family connectedness
- ▷ increasing support for Aboriginal victims of family violence who are in prison
- ▷ reviewing all Community Correctional Services and prison-based programs delivered to women with a view to including family violence components
- ▷ developing culturally specific family violence awareness programs.⁴⁶

The Commission understands that Corrections Victoria also facilitates the provision of family violence services to victims of family violence in prison, including through the following organisations:⁴⁷

- ▷ Inside Access and the Aboriginal Family Violence Prevention and Legal Service Victoria, which provide legal assistance⁴⁸
- ▷ West CASA and Loddon Campaspe CASA, which deliver sexual assault counselling, advocacy and support services such as individual and group counselling.⁴⁹

Corrections Victoria informed the Commission that between 1 July 2012 and March 2015 a total of 429 counselling sessions were conducted by West CASA and Loddon Campaspe CASA at the Dame Phyllis Frost Centre and Tarrengower Prison.⁵⁰ Corrections Victoria informed the Commission that sexual assault counselling is available to women on remand and sentence.⁵¹

In addition to learning of the Corrections Victoria initiatives, the Commission received a number of submissions detailing programs that might help women avoid prison and also help those in prison who have experienced family violence. Caraniche suggested that imprisonment can present a timely opportunity for women to reconsider the nature and quality of their relationships, link up with support services, and build community networks in preparation for their release.⁵² The Commission understands that while family violence-specific or related programs may not be readily available for prisoners on remand, Corrections Victoria is looking to implement programs for remand prisoners in the future.⁵³

The Women and Mentoring Program

The Women and Mentoring Program Limited is a community-based mentoring program operating in a small number of areas of Melbourne for women who have been charged with criminal offences. The program offers personal and practical assistance to participants, over 70 per cent of whom have experienced some form of family violence.⁵⁴ Of the 37 participants the program has helped to date, 97 per cent have avoided a custodial sentence and 95 per cent have not re-offended.⁵⁵

Out of the Dark

In 2009 Corrections Victoria engaged Melbourne City Mission to deliver the Out of the Dark family violence program at the Dame Phyllis Frost Centre.⁵⁶ Developed by the New South Wales Department of Corrective Services, the program now runs at both women's prisons in Victoria; to date, 163 women have completed the program.⁵⁷ The Commission was told that the existing arrangements with Melbourne City Mission have been extended from 1 July 2015 to 30 June 2016.⁵⁸

The program runs 10 sessions over five weeks and relies on a psycho-educational model that supports women in identifying different forms of abuse, distinguishing between healthy and unhealthy relationships, understanding the effects of violence on children, and learning about family violence and the law.⁵⁹ Women are helped to 'develop strategies for moving forward'.⁶⁰ Program participants told the Commission about the program's benefits:⁶¹

The Out of Dark program helped me understand where the violence came from and the different types of violence there are.⁶²

I'm back here for the second time. I breached my bail conditions. I saw my ex. He was my co-accused. I was in a violent relationship with my ex, and the one before that was violent too. He's got my kids. My daughter is seven and my son is four. I haven't had them for four years. The father is a morph addict. I tried to hang myself. Out of the Dark helped me a lot.⁶³

Melbourne City Mission told the Commission, however, that it is unable to meet the demand for the program because of the number of referrals from another of its programs, Family Support; services in prisons and self-referrals. It submitted that funding should be provided to double the current capacity of the program at the Dame Phyllis Frost and Tarrengower facilities.⁶⁴ The Commission for Children and Young People submitted that the program should be adapted and implemented in other custodial settings.⁶⁵

The Aboriginal Family Violence Prevention and Legal Service Victoria noted the importance of culturally safe, holistic services for imprisoned Aboriginal victims of family violence.⁶⁶ In view of the high proportion of Aboriginal mothers who are in prison, it also called for culturally appropriate, child-friendly facilities and policies in women's prison facilities so that women can care for or meet up with their children.⁶⁷ The Commission notes that through the implementation of the Cultural Wrap Around Model, Corrections Victoria will aim to reduce the risk of Aboriginal re-offending by strengthening the interface between cultural programs and mainstream offending behaviour programs.⁶⁸

Challenges and opportunities

Experiences in prison

As noted earlier, the Commission was informed of Corrections Victoria's assessment tools to determine the risk of re-offending and intervention needs—the LSI-R: SV, and the LS/RNR.⁶⁹

The Victorian Government submitted that, while the primary focus of Corrections Victoria is perpetrators, there is an increasing need for assessing whether female prisoners are victims of family violence and how this might have contributed to their offending.⁷⁰ It was submitted that further work is needed to identify victims of family violence when they enter the corrections system and to determine how they can be better supported while in prison and how services can be better linked up to support them once they are released.⁷¹

The Federation of Community Legal Centres argued that Corrections Victoria should conduct routine assessments of women prisoners in order to identify any history or risk of family violence and provide referrals to therapeutic and legal services.⁷² The Mental Health Legal Centre, Inside Access and the Centre for Innovative Justice agreed that women in custody who have experienced or are at risk of being exposed to family violence must be identified as early as possible in their period of incarceration, so as to guide service provision and case management.⁷³

Once in the prison system, women who are victims of family violence face additional barriers in their everyday living. For example, the Commission was informed about the retraumatising effects prison can have for victims of family violence—for example, through strip searching:⁷⁴ ‘strip searches perpetuate cycles of control, submission and humiliation—similar to the function of violent and abusive behaviour in the family.’⁷⁵

For some, however, prison offered respite and was a positive circuit-breaker in the violence and trauma of their lives:⁷⁶

Women who have suffered family violence who are incarcerated find that by committing a crime, they are finally provided with a safe haven. They are finally away from their abusers and they have a place to stay and three meals a day.⁷⁷

One woman who had experienced extensive childhood violence and then severe and protracted intimate partner violence before ending up committing an act of violence herself described the experience of prison in very positive terms:

A year ago I came to prison scared, shattered and angry. But I want to say—this is the best thing that ever happened to me. It gave me the time I needed to reflect on my life and on why I ended up in prison and how could I change.⁷⁸

The Mental Health Legal Centre, Inside Access and the Centre for Innovative Justice did, however, express concern that women might still not be safe from abusive partners while in prison.⁷⁹ They described a situation in which a female client in prison continued to receive letters from her ex-partner, despite the existence of an intervention order.⁸⁰

In evidence, Corrections Victoria outlined its processes for preventing family violence perpetrators from having contact with female prisoners in contravention of an intervention order. Its approach involves approved contact monitoring and visiting lists, prisoner phone call detection, and intervention order information that can be entered into the Corrections Intelligence Unit database, Centurion.⁸¹ Corrections Victoria noted that a joint project with Victoria Police will allow employees in both systems access to up-to-date intervention order information on prisoners and offenders in the Corrections Victoria system.⁸²

The Commission also heard arguments that the prison environment is not therapeutic and does not aid recovery.⁸³ Flat Out Inc., for example, called for the Victorian Government to curb the number of female prisoners and reduce the harm of imprisonment and for state and federal governments to fund and expand specialist services in the community.⁸⁴ The Victorian Equal Opportunity and Human Rights Commission report noted that for Koori women involved in the research:

Rather than rehabilitating the women or tackling the factors contributing to their offending, imprisonment of these women further damaged the protective factors that might have prevented reoffending.⁸⁵

For many women, incarceration means separation from their children. The Mental Health Legal Centre, Inside Access and the Centre for Innovative Justice noted that the Corrections Victoria Mothers and Children Program provides pre and ante-natal care in prison and allows prisoners' young children to reside with them in custody. They also reported that, for many of their Inside Access clients, gaining access to their children who are subject to child protection orders is deeply distressing.⁸⁶

Post-release transition

On release from prison, victims of family violence can experience difficulties with recovery—for example, in family re-unification and the risk of returning to pre-incarceration and potentially violent relationships.⁸⁷ The Commission was informed that:

The experience of having been incarcerated can directly contribute to women's vulnerability to subsequent violence from their partners – the disconnection caused by incarceration not only propelling them back to their violent partners upon release, but actually acting as a threat to an abusive man's sense of control.⁸⁸

Corrections Victoria noted research performed by Monash University in a tracking study of 90 women prisoners after their release.⁸⁹ At the three-month interview stage about 21 per cent of the study group of released women reported victimisation of some type; the figure had increased to one-third (32 per cent) by the time of the final interview at 12 months post-release. The most frequent types of victimisation were assaults and domestic violence.⁹⁰

The Commission was informed that, apart from returning to violence, women can also face family violence-related debt and homelessness on release, which can disrupt their transition back into the community.⁹¹ Research into ex-prisoners' housing and social situations found that accommodation instability—being in a 'state of homelessness'—is an indicator of whether the person will return to prison.⁹²

In addition to trying to recover from the violence, victims are having to face challenges in common with other prisoners on release—including securing accommodation, gaining employment and rebuilding social skills. Researchers have also found chronic homelessness, poverty and lack of support to be common in post-release participants' lives.⁹³

Several submissions argued that post-release support and planning are vital for recovery. For example, the Mental Health Legal Centre, Inside Access and the Centre for Innovative Justice recommended that pre-release planning be integrated with post-release support and be delivered to all women through an intensive case-management model.⁹⁴

Alongside other therapeutic interventions, the Commission was informed that the Victims of Crime Assistance Tribunal could be particularly useful in recovery and should form part of post-release planning for family violence victims. The Mental Health Legal Centre, Inside Access and the Innovative Centre for Justice submitted:

VOCAT could be an important piece of the puzzle in helping some of these women to heal, move forward, and to break the cycle of trauma. Planning for release from prison is an ideal time for these women to be submitting VOCAT applications, but because of their isolation and other difficulties they often need additional support to do so. This is particularly the case given the high rates of illiteracy or semi-literacy that we see among prisoners.⁹⁵

The Victims of Crime Assistance Tribunal is discussed in Chapter 20.

The Commission was also told of inadequate, 'judgmental, non-responsive' responses by the justice and service systems towards women who have experienced family violence and committed offences, a factor that increases many women's reluctance to report family violence.⁹⁶ The Commission heard that on occasion police failed to investigate family violence reports and take steps to ensure the safety of these women because they view them as criminals rather than victims.⁹⁷ Victims of family violence who have been criminalised have also been reported to have been excluded from refuges because of their complex support needs.⁹⁸

The way forward

The Commission heard from a number of women in prison who were experiencing or had experienced family violence. These women helped the Commission gain an understanding of the link between the criminalisation of women and family violence, of initiatives designed to alleviate family violence-related trauma, and of how best to provide support during the post-release phase.

Identifying victims of family violence in prison

Understanding the circumstances that contribute to the incarceration of women who have experienced family violence is important, in part because it casts light on the specific challenges they can face in prison. If women prisoners with a history of family violence are identified, case-management processes and service providers will be better able to support them in dealing with trauma and the other effects of violence.

The Commission understands that there are two assessment tools for determining intervention needs and the general risk of re-offending. These are the Level of Service Inventory—Revised: Screening Version (LSI-R: SV) and the Level of Service/Risk, Need, Responsivity (LS/RNR). The Commission did not review the LSI-R: SV, but it notes that the screening takes place within 14 days of sentencing or reception into prison custody and provides an opportunity to develop and offer support in the early stages of the victim's imprisonment. The Commission did, however, look at the use of the LS/RNR. Although this assessment tool is primarily used to assess offender risk, it does offer an opportunity to determine intervention needs, which can include family violence-related support services.

The LS/RNR is administered only for prisoners assessed as medium and high-risk and with six or more months remaining on their sentence. This could mean that some women are not subject to this screening tool. If the LS/RNR is administered, the Commission understands that identifying female offenders entering prison who have experienced family violence might be dependent on self-disclosure. It can be difficult for victims to disclose family violence and, if this is not identified in the initial assessment process, they might not receive any subsequent support.

In evidence to the Commission, Commissioner Shuard noted that Corrections Victoria is examining the training provided to staff to better support victims, with the option of expanding training on the CRAF to staff within the women's prison system being considered.⁹⁹ The Commission welcomes this initiative. It may mean that interviewers and employees gain the skills needed to allow victims to disclose safely. In addition, the Commission notes that CRAF training for community corrections staff continues.¹⁰⁰ This is also positive.

The Commission supports the suggestion of the Federation of Community Legal Centres, the Mental Health Legal Centre, and the Centre for Innovative Justice, that Corrections Victoria establish a process for identifying as early as possible female offenders with a risk or history of family violence. This information should guide service provision and case management.

Recommendation 183

Corrections Victoria review the current processes for identifying female offenders at risk of or with a history of family violence and respond through therapeutic interventions and education programs [within 12 months].

Therapeutic interventions

Serving time in prison can exacerbate the trauma family violence victims experience and disrupt efforts to promote recovery. As a consequence, therapeutic initiatives and support programs that can serve to enhance victims' recovery from family violence are needed in prisons.

The Commission was advised of the importance of interventions and programs in alleviating the trauma that led to female offenders' imprisonment and in preparing them for their release.¹⁰¹ The Commission supports these programs and interventions, which have shown benefits in terms of victim recovery.

However, the Commission is concerned about the lack of family violence-related therapeutic initiatives and support programs available for women on remand or in prison for short periods. This presents an opportunity for Corrections Victoria to think creatively about support initiatives targeted at these groups of women. The Commission welcomes Corrections Victoria's intention of looking at family violence-specific or related programs for remand prisoners in the future.¹⁰²

Melbourne City Mission recommended that Corrections Victoria provide funding to double the current capacity of the Out of the Dark program at the Dame Phyllis Frost Centre and Tarrengower Prison.¹⁰³ Corrections Victoria should ensure that therapeutic interventions such as individual counselling and group-based programs such as Out of the Dark are available for all women who are in prison or on community correction orders and have experienced family violence. Interventions of this nature should be culturally appropriate, including specifically for Aboriginal and Torres Strait Islander victims of family violence.

Commissioner Shuard described several initiatives that the organisation is considering in relation to post-release transitional housing, family violence service referrals, and staff training to improve their understanding of family violence.¹⁰⁴ Together with the range of family violence-related support and education programs described in Corrections Victoria's *Family Violence Reform Strategy—Priority Initiatives 2015–16*, the Commission welcomes these developments.

It is very positive that Corrections Victoria is proactively turning its mind to facilitating the provision of a wide range of programs to female prisoners; these programs are delivered by various community organisations, among them Inside Access. The continued provision of these programs in the prison environment requires both adequate funding and continued support from Corrections Victoria. The Commission therefore urges that such programs continue to be funded—as well as programs designed to support women following their release from prison—and that Corrections Victoria continues to support their delivery.¹⁰⁵

Recommendation 184

Corrections Victoria ensure that therapeutic interventions such as individual counselling and group-based programs such as Out of the Dark are available for all women in prison who have experienced family violence [within 12 months].

Post-release support and planning

The Commission received evidence that victims of family violence experience major challenges on their release from prison—challenges ordinarily faced by other prisoners on release as well as family violence–related safety or recovery challenges, or both. We heard about women who returned to violent relationships or reported victimisation of some kind, including assault or family violence.¹⁰⁶ In addition, women can face financial problems, homelessness and difficulties gaining employment.

The Commission understands that Corrections Victoria’s Reintegration Pathway provides pre-release programs aimed at prisoners’ transitional needs when entering prison, throughout their incarceration and in preparation for release. Post-release support is available to prisoners with additional support needs.¹⁰⁷

The Commission is concerned, however, about the lack of pre-release planning and post-release support specifically directed at women who are or have been victims of family violence. Family violence risk assessment should form a major part of discharge planning and ongoing risk management as part of post-release support. The Commission supports the Mental Health Legal Centre, Inside Access and Centre for Innovative Justice proposal that pre-release planning be integrated with post-release support and be delivered to all women through an intensive case-management model.¹⁰⁸ In addition, protocols between the prison and post-release services, including specialist family violence services, integrated family services and/or other support services, could assist in the post-release transition.

In particular, the Commission is concerned about post-release accommodation arrangements, which can place a woman at risk of further victimisation or perpetration, or both. If it is aware that a prisoner has a history of family violence perpetration or victimisation, Corrections Victoria should inform post-release support services in order to avoid accommodation placements that increase risk to women. This, of course, depends on Corrections Victoria being aware that a woman might experience victimisation and/or perpetration of family violence when she is released, highlighting the importance of family violence risk assessment as part of post-release planning and the need for appropriate services and case-management strategies being provided. These considerations must also be extended to women on community corrections orders.

The Commission is aware that Corrections Victoria has screening and identification processes, therapeutic interventions and pre- and post-release transition programs, but in view of the very large number of women in prison who are affected by family violence, there are substantial shortcomings when it comes to identifying and providing targeted interventions to assist these women while they are in prison and after their release.

Recommendation 185

Corrections Victoria [within 12 months]:

- ▷ inform post-release support services if a prisoner has a history of family violence victimisation to ensure that post-release accommodation arrangements do not place the prisoner at increased risk
- ▷ refer prisoners who have been victims of family violence to family violence services when they are being released.

Endnotes

- 1 Royal Commission into Family Violence, *Letters Patent—Terms of Reference* (22 February 2015) 3 <<http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/UploadedDocs/Terms-of-Reference.pdf>>.
- 2 Corrections Prisons and Parole, *Prison* (30 March 2015) <<http://www.corrections.vic.gov.au/home/prison/>>.
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- 22 *Ibid.* 2.
- 23 Stathopoulos et al, above n 3, 6; Forsythe and Adams, above n 3, 2. See also Mental Health Legal Centre and Centre for Innovative Justice, 648, 24.
- 24 Stathopoulos et al, above n 3, 7.
- 25 Community consultation, Ravenhall, 11 May 2015.
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- 27 *Ibid.* 1.
- 28 Holly Johnson, 'Drugs and Crime: A Study of Incarcerated Female Offenders' (Research and Public Policy Series No 63, Australian Institute of Criminology (Cth), 2004) 77.
- 29 Mental Health Legal Centre Inc; Inside Access; Centre for Innovative Justice, Submission 648, 2.
- 30 Stathopoulos et al, above n 3, 1, 5–7.
- 31 Caraniche, Submission 456, 4.
- 32 Anonymous, Submission 973, 2.
- 33 Stathopoulos et al, above n 3, 7.
- 34 *Ibid.* 7.
- 35 Community consultation, Ravenhall, 11 May 2015.
- 36 Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 19. See also Debbie Kilroy, 'Sister's Inside: The Over-Representation of Aboriginal and Torres Strait Islander Women in Prison' (April 2013) 3.
- 37 Victorian Equal Opportunity and Human Rights Commission, 'Unfinished Business: Koori Women and the Justice System' (August 2013) 3.
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- 54 Women and Mentoring Limited, Submission 431, 1–2.
- 55 *Ibid.* 1.
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- 57 Note: the May/June program data for Tarrengower Prison not available at the time of reporting. *Ibid.* 2–3.
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- 75 Flat Out Inc, Submission 980, 10.
- 76 Anonymous, Submission 964, 1.
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- 80 Ibid 13.
- 81 Statement of Shuard, 27 July 2015. 5 [27], 11 [61], 11–12 [63], 12 [65]–[66].
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35 Women working in the sex industry

Introduction

The Royal Commission's terms of reference require it to consider the needs and experiences of people affected by family violence, having particular regard to people in certain diverse communities.¹ Although women working in the sex industry are not specifically named, the Commission decided to include them in its considerations because they are often marginalised and have a unique experience of family violence.

Although not all women in the sex industry have been exposed to family violence, many have experienced it in the past and some may still be victims of family violence. The Commission heard from a number of women who have previously been or are sex workers, along with people and organisations who have given them support.

The Commission was told that women who work in the sex industry are disproportionately affected by family violence and that they face particular challenges when seeking support before, during and after the violence. The impact of family violence on their health and wellbeing can be particularly severe and can impede their recovery.

The Commission is mindful of the diversity in experience of women who work in the sex industry. The Commission's focus is on ensuring that supports and services are available to women in the sex industry who have been or are still affected by family violence.

The Commission was informed that some women enter the sex industry as a consequence of family violence. While no reliable data on the number, sex or gender identity of people who work in the sex industry in Victoria exists, research and submissions suggest that those who work in the industry have higher levels of exposure to violence than others and experience additional barriers when seeking help and support because of entrenched, persistent stigma and discrimination. These women often feel 'invisible' or overlooked in the broader family violence system in terms of both prevention and response.

Submissions received by the Commission described the ongoing effects of trauma resulting from family violence for women in the sex industry and the lack of available therapeutic interventions and support. The Commission was also told that inadequate responses and poor attitudes on the part of police and family violence services prevent women who work in the industry from obtaining these services.

The Commission recommends that Victoria Police amend its Code of Practice for the Investigation of Family Violence to take into account the challenges faced by women in the sex industry when investigating family violence perpetrated against these victims.

Context and current practice

The Commission took into account research and submissions relating to the experiences of women who work in the sex industry and who have been victims of family violence.

Under the *Sex Work Act 1994 (Vic)* people may provide paid sexual services in brothels and any premises on which an escort agency carries on business, but cannot solicit a person in a public place.²

There is no reliable data on the number, sex or gender identity of people who work in the sex industry in Australia or in the states or territories.³ In its submission, Project Respect, a community-based organisation that aims to empower and support women who work in the sex industry, also noted an absence of data, including on the impact of sex work.⁴

The Commission was told that women who work in the sex industry are disproportionately affected by family violence: many are victims of family violence perpetrated by an intimate partner; others experienced it during childhood; and, for some, family violence led them into the sex industry.⁵ The effects of this violence on their health and wellbeing can be severe.⁶

In its submission, Project Respect provided evidence to the Commission from a number of international studies that suggest that women who work in the sex industry can experience higher rates of family violence than other women in the community.⁷ A study of 72 street-based female sex workers in Kings Cross, New South Wales, found that 81 per cent of female sex workers had experienced sexual assault and 44 per cent had been raped outside work.⁸ Other research confirms that sex workers are mostly assaulted by someone known to them.⁹

Project Respect noted that 55 per cent of the 714 women with whom it had had contact in 2011–12 had experienced or were experiencing family violence.¹⁰ It outlined the women's varying experiences:

- ▷ They are often subjected to violence, including in their work, which compounds the family violence they experience or have experienced, and they are disproportionately likely to have experienced violence as children.
- ▷ They experience additional barriers to seeking help when they are subjected to family violence because of entrenched, persistent stigma and discrimination.
- ▷ Although they experience high levels of family violence and other violence, they might be less likely to label these experiences violence because they have been exposed to and have normalised violence in their childhood, in previous relationships and in the sex industry.
- ▷ They commonly enter the sex industry as a consequence of family violence—including when they leave relationships with violent men—and in order to gain access to an income.¹¹

Although the Commission did not receive evidence about the experiences of male or transgender sex workers, it is conceivable that some of them are likely to have also been subjected to family violence as children or adults.

The Commission heard from women who work in the sex industry about their experiences of family violence, and in some cases sexual assault, as a child¹² and about the continuing effects of this trauma and the lack of therapeutic interventions:

I have such a poor memory of my childhood. There are huge blocks in my memory. I have no memory and I should. I've blocked out so much of the bad stuff that a lot of the good stuff has gone as well. It creeps back too. Suddenly I remember something. It's traumatic.¹³

Childhood sexual abuse started at three – couldn't tell anyone as he threatened that something would happen to mum. She died at seven from cancer and I thought I've brought this on myself. It never stops that constant background noise of guilt. There are some who go into the industry with their eyes open and it's heartbreaking, seeing these women feeling 'less'.¹⁴

As a kid I lost my virginity to rape – it just goes downhill from there.¹⁵

One woman who previously worked in the sex industry but now supports women who work in the industry explained why she became involved in the industry:

Again, the whole reason I went into the sex industry was because, my body wasn't mine it was always theirs always someone else's to control, whether it was mum's or boyfriends ... So my body was never mine. I was a binge drinker before I started using heroin. So I blacked out a lot. I don't remember ever saying yes or I'd say no and it wasn't listened to and I didn't know how to say no further. So doing prostitution, was 'why not?' I'm not going to hurt anyone else, why not get paid for it, it's getting taken for free, why not get paid for it. Once you're a prostitute, you're a worthless piece of shit, you're belted, a non-human, you're not a woman and you're not a man, not a child, you're not on the human spectrum, you're a fucking whore.¹⁶

The Commission's consultations with women who work in the industry highlighted the correlation between unresolved trauma from family violence and sex industry work. Feelings of isolation and a loss of control were central to many of their experiences:

I just want to make a link with the sex industry and domestic violence – I was raped numerous times by my first proper boyfriend and I didn't know it was rape ... I decided to go into the sex industry ... my justification was sex was taken from me so many times why shouldn't I get paid for it.¹⁷

The Kings Cross study of 72 street-based female sex workers also found that a substantial majority (87 per cent) of women who participated in the research had experienced depressive symptoms ranging from mild to severe: 74 per cent had experienced suicidal ideation and 42 per cent had attempted suicide.¹⁸ The study found that 45 per cent of non-Aboriginal and Torres Strait Islander sex workers had sought the help of a mental health professional in the preceding six months, whereas only 25 per cent of Aboriginal and Torres Strait Islander sex workers had done so.¹⁹ Eighty per cent of these consultations with mental health professionals were related to depression.²⁰

Several women who work or used to work in the sex industry described the normalisation of violence in the industry:

Links between domestic violence and sex industry is so strong. The expectation that it's part of the job to be abused. Women expect that he is going to try and have anal sex, push further than what's agreed upon. That is the norm. Link between women controlled by their boyfriend and them living off them working in industry. That normalised violence—it just makes sense that it's going to happen forever. And women ignore it and allow it to happen because that's what women are meant to do.²¹

100% connection between family violence and being in the sex industry. It's the reason for working in the sex industry, my justification for working in the sex industry. It was normal for every single guy, tries to get more so if we've made an agreement to have sex, they will try to have anal sex, I would have to fight them off, but I expected that to be the norm because that was the norm at home. All my relationships, in regards to anal sex, I've always had to fight them off, how many times do I have to say no. And then cop a beating.²²

... being involved in the [sex] industry. You are further compromised because of the work you're doing. You may have experienced violence before going into the industry; it's compounded by the industry. If your partner finds out then it's a reason for it to continue.²³

Some women who work in the industry explained how the nature of sex work can make it less likely for intimate partner violence to be recognised as abuse:²⁴

Until you see a list of what family violence is, you don't realise that that's what it is, [it's] threats, making you feel small, him threatening to write on Facebook that I've worked in the industry if I ask for child support. He had been violent to other people, and I'd seen him in a rage, he would threaten me. We went to family counselling instead of family violence, if I had have known it was family violence ...²⁵

Often with women in the sex industry unless they're being physically beaten they often don't realise they are in an abusive relationship, not when it's emotional and psychological abuse.²⁶

For some women, their work in the industry was used as another form of control by abusive partners.²⁷ One woman who previously worked in the industry said, for example, "[T]here are often threats. Men will say "don't you dare leave because I will tell child protection you're in the sex industry".²⁸ For other women, it was their partners who forced them to work in the industry.²⁹

Challenges and opportunities

As noted, women working in the sex industry face particular difficulties when seeking support and assistance. This includes sex industry workers who report family violence to police. Additionally, a range of barriers can present themselves when these women seek access to family violence services in Victoria.

The police

The subject of inadequate and inappropriate police responses to women who are or have been involved in the sex industry and have experienced family violence was often raised with the Commission as a concern. Women who were working or who had worked in the industry described the negative attitudes police held towards them, which in many cases affected the justice outcome they received:

When I was with [removed] I had told him I'd been a prostitute and when the police was called, he would tap them on the shoulder and say ... she's a prostitute and the police would say to me you need to pull your head in, and to him they'd say 'just don't hit her mate, just get rid of her'.³⁰

From the police the other day: 'How can she be raped if she's a prostitute?' 'How can she be raped if she's married to him?' Both of these comments came from the police.³¹

The Commission also heard accounts of police physically and verbally abusing and sexually harassing workers in the sex industry who reported family violence. Many women told the Commission they would not report to the police again.³²

Some women who work in the industry explained, however, that the police response is often dependent on which police station they attend or contact, and which police member assists them.³³ The Commission heard consistently that women who work in the sex industry want to be treated in the same way as other victims of family violence—to be listened to, believed and supported:

If just once a cop would have pulled me aside, and said 'he's not allowed to hit you' and given me his number, and said 'call me'. If they'd taken me away – not in front of my boyfriend. Just once, said call me, I'll do something, not even, I'll try and help you. It's not your fault. That would have helped me. But the number of times I heard 'you have gotta get off their back'.³⁴

In contrast, one support worker described a positive experience with police:

I had a women at a brothel, her partner had bashed her and she left the house. I told her to get in a cab and come to me. I encouraged [her] to call the police and the guy was great. [The] cop said 'no matter what you do for a job, you shouldn't be treated like that'. He came past the brothel later that week to check if she was okay.³⁵

Participants in the Commission's consultations suggested that exposure to the sex industry and adopting a pro-active approach might make a difference to the police response.³⁶ One woman who previously worked in the sex industry said:

Police need training—whatever training they've had is shit. No faith in the police. I can't change that, not trustworthy. I was gobsmacked re their response. The Family Violence Unit. They have an inkling that she's in the sex industry. They tried to take a statement without an interpreter—lucky I was there—ended up using my mobile and my interpreter. They need training from women who have experienced family violence and from women who they actually hear.³⁷

The Commission heard that women who work in the sex industry can face multiple barriers when it comes to receiving a fair response from police. Some of these women told the Commission of their experiences:

I was sexually abused by quite a few men. I took it to the police and I was just treated horrible. They cancelled appointments, bringing up the past 'when you were 16 you stole ...'³⁸

It is all too familiar ending up in court. Everything is looked at from your past to belittle. When you have that mentality used against you it's incredibly demoralising. You end up giving up trying.³⁹

It is plain that these women's situations are complex and that their difficulties can be compounded by continued victimisation, ostracism and inadequate police responses.

Family violence and related support services

Through submissions and consultations with women who work in the sex industry and their supporters, the Commission learnt that a range of factors can prevent these women from benefiting from family violence-related services in Victoria. For example, Vixen Collective submitted that women who work in the sex industry might be fearful of having their working status recorded by family violence services because this could result in them experiencing discrimination, changes to child custody arrangements, and difficulty gaining access to housing (including refuges).⁴⁰

The attitudes of some family violence services and professionals towards women who work in the sex industry were noted as a concern.⁴¹ One woman who previously worked in the sex industry told the Commission that family violence services need to be able to put their personal views aside and simply look at the situation of the victim of violence.⁴²

Victims described not knowing how or where to obtain support services that would allow them to remain employed in the sex industry. One woman explained:

When you're looking for help—there isn't help out there. Unless I packed up my whole life right at that moment then I couldn't see the crisis people. They told me about AVOs because I was getting death threats: 'We can't help you until it happens'. Rigidity in the supports [is] a real barrier. There's not enough help out there. Years ago I didn't know about help. Unless you talk to the right people you don't know there is help out there. Things are only done when it's too late. There needs to be more help along the way.⁴³

The Commission also heard about the lack of integration between family violence services and other support services, which can mean women who work in the sex industry become 'lost in the system'. One supporter of women working in the sex industry explained:

Women in the sex industry are often linked in with mental health services, alcohol and drug services, CASA workers – who may or may not be working with them on the family violence issues. By the time I make a referral to Safe Steps they're at the point where they've been beaten so much and they can't go home and they're just desperate.⁴⁴

Participants in the Commission's consultations noted that this can serve to hinder a return to health and wellbeing for victims of family violence.⁴⁵ As Vixen Collective observed, women leaving family violence can face additional challenges obtaining housing (including in refuges) because of their employment status.⁴⁶ A community consultation participant said:

A lot of times we had to put women in a hotel because there was nowhere to take them. There was one woman at Project Respect who had called the domestic violence service. She said she was working in the industry, they said 'We don't deal with women like you. We're only for good nice women'. I was cut off. That was it. We're still looking for a domestic violence service that we can contact. Not all the workers were like that.⁴⁷

It is also apparent that some women who work in the sex industry experience multiple forms of discrimination and disadvantage as a result of their cultural and linguistic background, disability, age, race, sexuality, gender identity or socio-economic status. For example, there has been limited research done on the experiences of transgender women who work in the industry, although there is some evidence to suggest that they face additional challenges in seeking access to family violence specialist services and programs such as housing support and accommodation.⁴⁸

The way forward

The Commission was greatly assisted by speaking with women who work or have worked in the sex industry and by a number of submissions provided by individuals and organisations who support them. There is a need to ensure that sex workers who are victims of family violence can access the support of police, family violence services and other related services. These services should work closely with organisations that advocate for and assist sex workers.

The effects on the health and wellbeing of women who work in the sex industry and who are family violence victims can be particularly severe. As Project Respect found, women who work in the sex industry face additional barriers to seeking support when they are victims of family violence because of entrenched, persistent stigma and discrimination.⁴⁹ Access to appropriate support is essential to their recovery. Submissions and consultations revealed that there remain major shortcomings in how the family violence system responds to the experience of women who work in the sex industry and who are victims of family violence. It is vitally important that support services understand the complexity and 'instability' of these women's lives when delivering services.⁵⁰

The Commission notes that some diverse groups in the community, including women who work in the sex industry are often 'invisible' to the family violence system. In Chapter 13, the Commission found that there is a need for structural change to ensure better coordination within the service system—to improve entry into the system and access to a broad range of services. The needs of diverse communities must be part of this service system reform.

The Victoria Police Code of Practice for the Investigation of Family Violence⁵¹ should acknowledge that people in the sex industry face particular challenges in reporting family violence and that they should be assisted in the same way as anyone else who reports such violence. It is not acceptable for police to turn away from reports of family violence brought forward by victims who either work in the sex industry or who have in the past had contact with the criminal justice system. Victoria Police must take steps to ensure that police members take reports of family violence by women who work in the sex industry seriously and investigate them as they would any other family violence report. Further, in areas that have high numbers of sex workers, police should take active steps to encourage reporting.

The Commission notes that neither the Victoria Police Code of Practice for the Investigation of Family Violence nor the Code of Practice for the Investigation of Sexual Assault mentions the particular challenges faced by women who work in the sex industry and who are victims of family violence or sexual assault. There is an opportunity to insert 'women who work in the sex industry' into the 'Responding to diverse communities' section of the (family violence) Code of Practice and to note that these women are disproportionately affected by family violence and might require specific support and consideration in their dealings with the justice system. The Commission encourages Victoria Police to make similar amendments to the Code of Practice for the Investigation of Sexual Assault.

In view of what the Commission learnt about the attitudes of some police towards women who work in the sex industry, there is a need to enhance understanding by police of the effects of family violence and more broadly, to improve the workforce's response to particular communities experiencing family violence. On this point, the Commission notes the recommendations made in Chapter 15 to develop a model to strengthen the investigation of family violence offences.

Recommendation 186

Victoria Police amend the Victoria Police Code of Practice for the Investigation of Family Violence to describe the difficulties women in the sex industry face in reporting family violence to police and how to take those difficulties into account when investigating family violence perpetrated against these victims [within 12 months].

Endnotes

- 1 Royal Commission into Family Violence, *Letters Patent—Terms of Reference* (22 February 2015) 3 <<http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/UploadedDocs/Terms-of-Reference.pdf>>.
- 2 See generally *Sex Work Act 1994* (Vic) ss 12–14. The Commission acknowledges Project Respect's submission that the sex industry includes a range of sexual services, including pornography, stripping, table-top dancing, and escort, street and brothel prostitution. Project Respect, Submission 930, 4.
- 3 Lauren Renshaw and Jules Kim, *The Australian sex industry* (21 September 2015) Australian Institute of Criminology <http://aic.gov.au/publications/current%20series/rpp/121-140/rpp131/05_aus_industry.html>; Project Respect, Submission 930, 5.
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- 5 Community consultation, Melbourne, 21 May 2015.
- 6 See Chapter 20.
- 7 Project Respect, Submission 930, 6–7.
- 8 Amanda Roxburgh, Louisa Degenhardt and Jan Copeland, 'Posttraumatic Stress Disorder Among Female Street-Based Sex Workers in the Greater Sydney Area, Australia' (2006) 6(24) *BMC Psychiatry* 6.
- 9 Antonia Quadara, 'Sex workers and sexual assault in Australia: Prevalence, risk and safety' (Issues No 8, Australian Institute of Family Studies, 2008) 5 (citations omitted) <https://www3.aifs.gov.au/acssa/pubs/issue/acssa_issues8.pdf>.
- 10 Project Respect, Submission 930, 9.
- 11 *Ibid.* 2.
- 12 Community consultation, Melbourne, 21 May 2015; Anonymous, Submission 962, 1.
- 13 Community consultation, Melbourne, 21 May 2015.
- 14 *Ibid.*
- 15 *Ibid.*
- 16 Kate Connett, Submission 960, 4.
- 17 Community consultation, Melbourne, 21 May 2015.
- 18 Roxburgh, Degenhardt and Copeland, above n 8, 6.
- 19 *Ibid.*
- 20 *Ibid.*
- 21 Community consultation, Melbourne, 21 May 2015.
- 22 Kate Connett, Submission 960, 5.
- 23 Community consultation, Melbourne, 21 May 2015.
- 24 See, eg, *ibid.*
- 25 *Ibid.*
- 26 Shirley Woods, Submission 959, 2.
- 27 Anonymous, Submission 961, 2; Anonymous, Submission 311, 1; Kate Connett, Submission 960, 4.
- 28 Shirley Woods, Submission 959, 1.
- 29 *Ibid.*; Anonymous, Submission 311, 1.
- 30 Kate Connett, Submission 960, 3.
- 31 Community consultation, Melbourne, 21 May 2015.
- 32 *Ibid.*
- 33 *Ibid.*
- 34 Kate Connett, Submission 960, 4.
- 35 Shirley Woods, Submission 959, 2.
- 36 Community consultation, Melbourne, 21 May 2015.
- 37 *Ibid.*
- 38 *Ibid.*
- 39 *Ibid.*
- 40 Vixen Collective, Submission 671, 9.
- 41 Kate Connett, Submission 960, 5; Anonymous, Submission 962, 3; Shirley Woods, Submission 959, 2.
- 42 Shirley Woods, Submission 959, 3.
- 43 Community consultation, Melbourne, 21 May 2015.
- 44 Shirley Woods, Submission 959, 2.
- 45 Community consultation, Melbourne, 21 May 2015.
- 46 Vixen Collective, Submission 671, 9.
- 47 Community consultation, Melbourne, 21 May 2015.
- 48 Fiona Patten—Member for Northern Metropolitan Region, Submission 979, 3; Victorian Equal Opportunity and Human Rights Commission, Submission 609, 17; Safe Steps Family Violence Response Centre, Submission 942, 43; Gay and Lesbian Health Victoria; Australian Research Centre in Sex, Health and Society—La Trobe University, Submission 821, 16.
- 49 Project Respect, Submission 930, 2.
- 50 Roxburgh, Degenhardt and Copeland, above n 8, 12.
- 51 See generally Victoria Police, 'Code of Practice for the Investigation of Family Violence—Edition 3' (2014).

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. |
| Crimonogenic | 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. |

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| 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). |

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| 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 (Vic)</i> . 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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into Family Violence

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into Family Violence

Volume VI

Report and recommendations

March 2016

Royal Commission into Family Violence

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The Hon. Marcia Neave AO – Commissioner
Patricia Faulkner AO – Deputy Commissioner
Tony Nicholson – Deputy Commissioner

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Contents

| | |
|---|-----|
| 36 Prevention | 1 |
| 37 The workplace | 71 |
| 38 Sustainable and certain governance | 99 |
| 39 Data, research and evaluation | 137 |
| 40 Industry planning | 171 |
| 41 Investment | 219 |
| Appendix H Cost categories of PwC report | 255 |
| Appendix I The Victorian Government's budget for specialist family violence services, 2014–15 | 257 |
| Appendix J Funding in the Victorian Government 2015–16 Budget for family violence initiatives | 259 |
| Appendix K List of the activities and activity sub-elements for family violence service providers who receive funding | 261 |
| Glossary | 277 |

36 Prevention

Introduction

Preventing family violence is essential for the health and wellbeing of our community. While we have tended to focus on how best to respond to family violence once it occurs, prevention deserves an equal degree of attention.

Unless we address the problem of family violence at its source, and get better at preventing it from occurring in the first place, our communities and support systems will continue to be overwhelmed. As Mr Ken Lay, APM, the former Victorian Chief Commissioner of Victoria Police, told the Commission:

... despite all that investment, despite all the work, despite all the goodwill, we still have a court system that many victims and women describe as a horrendous experience. We still have women being murdered at almost a weekly rate. We still have terrible, terrible injuries. We still have much of our focus on trying to arrest our way out of this. So the violence continues ... I don't see the current model, unless we get into that primary prevention space, moving.¹

Prevention strategies in relation to family violence, also referred to as primary prevention, are concerned with changing the underlying social determinants that allow family violence to occur. Prevention and early intervention are often conflated in practice and policy. Early intervention, also referred to as secondary prevention, includes activities that target individuals at risk of perpetrating or experiencing violence. Responding to family violence, sometimes referred to as tertiary prevention, aims to reduce the effects of violence once it has occurred, and to prevent its recurrence. Strategies include providing support for victims of violence, and justice responses to perpetrators.

The first section of this chapter begins with an overview of research on population and individual risk factors for family violence. This research has largely emerged in the context of efforts to prevent violence against women. As intimate partner violence and sexual violence (which may be perpetrated by men who are unknown or unrelated to the woman) are the most common forms of violence against women, the research focuses on the prevention of these forms of violence. This body of research has informed the development of programs and strategies to prevent violence against women and their children, with a key focus on preventing intimate partner violence.

Strategies that seek to prevent violence against women focus on addressing gender inequality by, among other things, challenging gender norms and attitudes towards women:

... primary prevention is not about simply stopping or disrupting an individual from 'going down a path' to perpetrating violence. Nor should it end at awareness raising or even attitudinal change. It is a transformative agenda that requires shifting the social conditions that excuse, justify or even promote violence. Individual attitudinal or behaviour change may be the intended result of prevention activity, but such change cannot be achieved prior to, or in isolation from, a broader challenge to the underlying drivers of such violence across communities, organisations, and society as a whole.²

The literature on prevention of violence against women also recognises that prevention efforts need to address social conditions such as socio-economic disadvantage, discrimination based on race, sexuality or age, and prior exposure to violence alongside gender inequality.³

Programs to prevent violence against women aim to develop and promote respectful relationships generally, to change broader social norms around the use of violence and to create environments in the home that model non-violent and respectful behaviour to children. On this basis, strategies that have been developed to prevent intimate partner violence against women are also likely to be applicable to the prevention of other forms of family violence, such as violence committed against children, in same-sex relationships, and against parents, siblings and older people.

However, there is still a need for a more robust research base in relation to the factors that drive these other forms of family violence, and the prevention actions required to directly address all circumstances that give rise to family violence.

The chapter then offers an overview of recent prevention policy at both the state and Commonwealth levels and a discussion about the elements of best practice primary prevention responses. Victoria has been recognised internationally for its work in the area of prevention of violence against women in research, policy and practice development over the last 10 years, and the substantial contribution of VicHealth (the Victorian Health Promotion Foundation) has positioned Victoria well for the future. Coordinated policy and planning effort is a significant gap, however, and an immediate priority.

Some of the important features of best practice primary prevention programs are that they involve the whole community, including men and boys, and that they are tailored to, and developed in partnership with, communities who have experienced sustained discrimination, and communities from different cultures. There is growing understanding about the value of investing in prevention strategies focused on children and young people, and in the settings that have greatest influence on their development—such as schools and home visitation programs. The Commission also heard evidence that prevention programs do not work in isolation and that a more systematic approach, rather than a ‘project-by-project’ approach, is required.

Primary prevention strategies work best when they are delivered in the places where people live, work, play and learn. The remainder of this section outlines current prevention actions within key settings including schools and tertiary institutions, workplaces, sporting clubs and local councils. Prevention programs occurring in schools are a particular focus of this section.

In the second section, we outline some of the key challenges raised in the evidence in relation to prevention. These include the lack of a coordinating strategy or framework for the current proliferation of prevention initiatives, and the need for strong leadership by government as well as dedicated funding and more effective monitoring and evaluation of programs.

In the final section the Commission makes its recommendations. It is clear from the evidence that a key priority for the Victorian Government is to effectively coordinate the current efforts supported by appropriate regional governance, and ensure that they are well-founded and resourced, appropriately targeted and subject to evaluation and improvement. To this end we recommend that a dedicated primary prevention strategy be developed as a discrete part of the Statewide Family Violence Action Plan proposed in Chapter 38. That strategy should be informed by the Gender Equality Strategy which is currently being developed by the Victorian Government, and which will address community attitudes towards women and issues such as economic inequality, health and wellbeing, employment and workplace issues, and inequality among diverse groups of women.

Further, we recommend that the Victorian Government resource a mechanism to provide policy and technical advice to policy makers, and oversee the research, development and implementation of primary prevention initiatives within organisations and communities. We have discussed a number of options but have ultimately left the decision to government about the location of that oversight mechanism.

Political leadership will be required to drive this strategy, and a bi-partisan approach is essential. However, the actions of the Victorian Government itself will not be enough. This strategy relies in large part on the efforts of all Victorians in coming together to change attitudes and behaviours. Individuals and organisations all have a role to play.

Finally we recommend that respectful relationships education be mandated in all government schools in Victoria from prep (or foundation) to Year 12, and be delivered through the effective resourcing of a whole-of-school approach. This accords with the evidence that educating children and young people about the basis for healthy and respectful relationships is crucial to preventing family violence in the future. Further work in other key settings, such as workplaces, must also continue. This is discussed further in Chapter 37.

The Commission’s recommendations on prevention strategies aim to position Victoria for the next generation of reform in the area of family violence prevention.

Context

Understanding the causes of family violence is an important step in determining what sort of prevention strategies are effective. This section discusses common risk factors that have been identified across different types of family violence, including intimate partner violence and child abuse, and also looks at key population risk factors for violence against women, such as gender inequality. Prevention policies and planning, at both state and Commonwealth level, are also discussed, as are best practice planning principles for engaging the community, including diverse groups, in prevention strategies.

Research on the causes of family violence

The terms of reference for this Commission do not require determination of the causes of family violence. However, understanding the many factors which contribute to it must inform future action, particularly primary prevention strategies.

The Commission has reviewed evidence from expert Australian and international organisations over the last decade about the causes of violence against women.⁴ In November 2015, Our Watch, a national body established in 2013 to drive change in the culture, behaviours and attitudes that lead to violence against women and children, released a *National Framework to Prevent Violence Against Women and Children*. The national framework provides a synthesis of research on the causes of violence against women and their children, and effective interventions.⁵

The most common form of family violence is male intimate partner violence against women.⁶ Research on the causes of violence against women, both in Australia and internationally, has focused on factors that contribute to intimate partner violence.

Progress towards understanding, and developing effective prevention measures are recognised to be considerably less well developed for elder abuse.⁷

Research on child abuse and maltreatment (which can occur within a family, but also in institutional and other non-family settings) suggests that child abuse frequently occurs alongside intimate partner violence. Co-existence rates identified in the literature range from 30 per cent to 70 per cent.⁸ Research about the risk factors for child abuse and maltreatment indicates that they are broadly consistent with the risk factors relating to intimate partner violence (such as gender inequality, socio-economic disadvantage, discrimination, and violence supportive cultures)⁹—this is unsurprising given the frequent co-occurrence of violence against children and intimate partner violence against women. There is also research on other forms of child abuse such as neglect, maltreatment and sexual abuse and the specific factors associated with these forms of violence.¹⁰

Professor Leah Bromfield, Deputy Director, Australian Centre for Child Protection, University of South Australia, told the Commission that 'if you were looking at some of those social determinants for child abuse, they would be common to some of the things you are looking at in trying to reduce the incidence of domestic violence'.¹¹

The Commission notes that design of family violence prevention efforts must encompass all available evidence, as well as addressing gaps in the research where they exist. Prevention efforts must be targeted to all forms of family violence, such as elder abuse, violence against men, including gay, bisexual and transgender men, and violence used by young people in the home.

Risk factors

Risk factors are determined by comparing rates of violence, or precursors to violence (such as social tolerance for violent behaviour) between individuals, groups, and communities with varying levels of exposure to certain conditions. Where the rate of violence is found to be lower in the presence of a given condition, this condition is considered a 'protective factor' against intimate partner violence. Where the rate of violence is higher in the presence of a particular condition, this condition is considered a 'risk factor' for intimate partner violence.

Some of the factors implicated in intimate partner violence are present at the population level; that is, they affect a significant proportion of the population, or the population as a whole. Population-level risk factors refer to social conditions or norms that are reinforced through social structures and cultures.

Research suggests that gender inequality is a significant population risk factor for intimate partner violence. There have been some challenges to this proposition based on observations about violence against women in Nordic countries which are relatively gender equal yet still have high rates of violence against women.¹² However, it has been suggested that this 'may be the result of increased disclosure of violence in surveys, as disclosing violence becomes less socially stigmatised in more gender equitable contexts'.¹³ Another possible explanation is that efforts in Nordic countries have focused primarily on women in the public sphere (such as leadership and pay equity), and less focus has been on achieving gender inequality in the private sphere (such as addressing inequalities in roles and responsibilities).¹⁴

Different forms of inequality and discrimination can create social and economic disadvantage.¹⁵ While international evidence is equivocal on socio-economic status as a factor to the occurrence of family violence,¹⁶ when socio-economic disadvantage intersects with other forms of inequality, the risk of violence increases.¹⁷

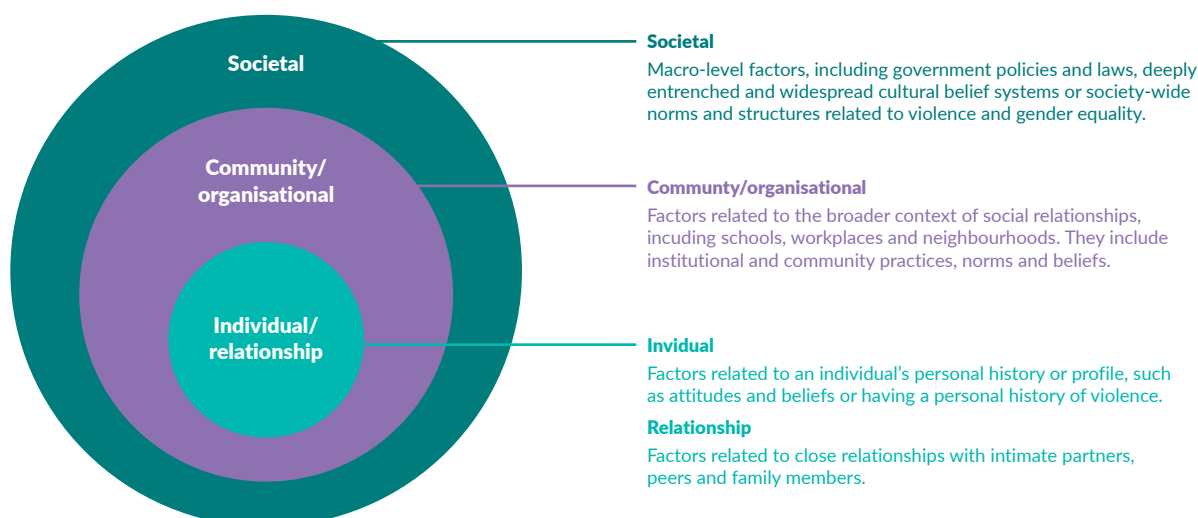
In addition, intersections between disadvantage and family violence can contribute to spatial patterns of incidence because disadvantage is heavily concentrated in some areas.¹⁸ Social and economic disadvantage is further discussed in Chapter 21. Gender inequality is discussed in more detail below.

Population-level factors are not the same as those that put particular individuals at high risk of perpetrating or experiencing violence. These 'individual-level' risk factors include mental illness and harmful use of alcohol or other drugs.¹⁹ Individual risk factors for family violence are considered in more detail in Chapter 6 and in Chapter 18.

Population-level and individual-level risk factors can interact with one another to influence the likelihood of violence. For example, a woman may have a low level of individual risk if she has a high level of education (education is considered a protective factor), but this may not necessarily equate to a low level of actual risk if there are marked population-level risks, such as intimate partner violence being widely tolerated in her community. Due to the need to assess the relationship between these factors, key expert bodies now use an 'ecological approach' to understand the causes of intimate partner violence, where factors are mapped across individual, community and broader social environments. This approach is represented in Figure 36.1.

Recent international studies have found a significant variation between countries in the prevalence of intimate partner violence.²⁰ This finding, coupled with the evidence that biological factors and individual psychopathologies cannot explain intimate partner violence on their own, has led to a consensus among experts that changeable social conditions play a key role in the prevalence of intimate partner violence.²¹

Figure 36.1 An ecological approach to understanding intimate partner violence²²



Source: Adapted from Lori Heise, Mary Ellsberg and Megan Gottemoeller, 'Ending Violence Against Women, Population Reports' (Series L No 11, John Hopkins University, School of Public Health, 1999) 8.

Gender inequality

There is consensus among international experts that gender inequality is an important population risk factor for intimate partner violence.²³ Responding to gender inequality needs to be considered along with other factors that contribute to or influence violence.²⁴ For example, poverty or the effects of colonisation and racism, can influence how gender inequality is experienced, and may in some cases have a greater influence on the risk of violence. The impacts of disadvantage and discrimination, when occurring in the context of gender inequality, can increase the probability of violence occurring.²⁵

A substantial body of research shows that the prevalence of intimate partner violence varies according to the gender inequality present at each level of the ecological model. This has been confirmed in a recent study, spanning 44 countries, of the relationship between intimate partner violence and a suite of gender equality indicators.²⁶ Indicators of gender inequality at different levels include:

- ▷ social practices, such as the use of violence to discipline children, and applying different rules in child rearing practices about how girls and boys should behave
- ▷ social structures, such as gender hierarchies within families and the gender pay gap
- ▷ formal and informal social norms, or the rules of conduct and models of behaviour expected by a society or group, such as weak laws against intimate partner violence, or the belief that women are solely responsible for the care of children.²⁷

There are particular expressions of gender inequality at all of these levels that are linked with an increased risk of intimate partner violence. Intimate partner violence is likely to be higher when:

- ▷ women lack autonomy and men dominate decision-making in public life, as well as in families and relationships. For example, violence is more common in societies where property, inheritance and family laws discriminate against women
- ▷ there is rigid adherence to stereotyped gender roles
- ▷ dominant constructions of masculinity emphasise dominance, aggression and entitlement in relationships, while dominant constructions of femininity emphasise purity, passivity and subordination
- ▷ peer relations encourage bonding between men at the expense of respect for women; relations between men and women are seen as naturally adversarial; or connections between women are weak.²⁸

Studies show that social norms that support violence against women, such as the belief by a significant proportion of the population that violence is justified in some circumstances, can increase the risk of intimate partner violence occurring.²⁹ High levels of exposure to violence, such as exposure to media representations of violence, may also increase this risk.³⁰ Men who use violence in other contexts, such as in the workplace or in the community, are more likely to also use violence against their female partners. Breakdowns of social norms, for example, in the context of natural disasters, may also increase intimate partner violence.³¹

However, exposure to and tolerance of violence in general is not sufficient, on its own, to explain violence. Many people who have been exposed to violence do not become perpetrators or victims of intimate partner violence.³²

Child abuse

The causes and prevention of child abuse have been examined in the Protecting Victoria's Vulnerable Children Inquiry (the Cummins Inquiry), and are currently a focus of the Royal Commission into Institutional Responses to Child Sexual Abuse.

Children may be the victims of violence perpetrated by their fathers or mothers, or as in the case of institutional abuse, by people with authority over them. Research shows that the experience of violence and neglect as a child is linked to perpetrating or being a victim of intimate partner violence as an adult: 'gender impacts place girls at higher risk of victimisation as adults and boys at greater risk of perpetration as adults'.³³ Boys and girls who are exposed to violence against their mother are learning about gender, power and disrespect in relationships,³⁴ and they may model this in their future relationships.

Research also indicates that while there are different risk and protective factors for child abuse and for intimate partner violence, many are common. Consideration of child abuse as a precursor to family violence is therefore important, as is consideration of the social determinants that can reduce child abuse, as they may also reduce family violence.³⁵

The Commission heard that there is a gap in our collective knowledge about the extent of child abuse in Australia.³⁶ Child abuse covers a range of behaviours including physical, sexual and emotional abuse, neglect and exposure to family violence.³⁷

A recent review by the Australian Research Alliance for Children and Youth of early intervention and prevention practices relevant to children and young people found that there is a core set of protective factors against child sexual abuse present at individual, family, and community levels. These factors include relationship and problem-solving skills development, competence as a parent, the company of positive peers and adults, and supportive school and community environments.³⁸ Risk factors for child sexual abuse include poverty, family violence, the lack of positive attachment to a parent, and the presence of parental mental illness or substance abuse.³⁹

The review notes evidence that services targeted at parents experiencing mental illness, substance misuse and/or family violence have significant flow-on benefits for their children.⁴⁰ The Commission heard that an important element of addressing intergenerational violence is targeting intervention efforts towards women with histories of abuse and neglect:

... noting that fostering safe, stable, nurturing relationships between mothers and their partners and between mothers and their children appears to be a key factor in breaking the cycle of abuse from one generation to the next.⁴¹

The Commission also heard that effective primary prevention strategies in relation to child abuse include 'kids attending schools, kids going to high quality child-care, parents who are socially connected [and] parents who have access to high quality information about parenting'.⁴²

Recent prevention policy and planning

The Victorian Government's *A Right to Respect: Victoria's Plan to Prevent Violence Against Women 2010–2020* was referred to by many written submissions received by the Commission as one of the significant policy reforms in the area of primary prevention over the last 10 years.⁴³ The health journal *The Lancet* has recognised *A Right to Respect* as the 'first public policy of its kind worldwide with a focus on primary prevention of violence across individual, community, and societal levels'.⁴⁴

Under this policy, the Victorian Government focused on working with local government to embed prevention practice within schools, workplaces, and sporting clubs.⁴⁵ With the change of government in 2010, a new policy was developed, and Victoria's *Action Plan to Address Violence Against Women and Children 2012–2015* was released in October 2012. This policy framework committed to targeted primary prevention strategies as part of a broader approach that also included early intervention and response efforts.⁴⁶

A Right to Respect builds on the evidence in the 2007 VicHealth framework *Preventing Violence Before it Occurs—A framework and background paper to guide the primary prevention of violence against women in Victoria*.⁴⁷ Many written submissions received by the Commission highlighted the contribution of VicHealth to policy and practice initiatives that have been recognised internationally relevant to primary prevention of violence against women.

The significance of the VicHealth framework cannot be underestimated and could certainly be described as a key reform and development in the field of preventing violence against women. The framework helped to coordinate effort across a range of sectors previously not engaged in prevention, such as the sport and recreation and education fields. Alongside identifying where action should be directed, the framework consolidated previously fragmented attempts to prevent violence against women through outlining how key partners might contribute to addressing the determinants.⁴⁸

In October 2014, the Victorian Government introduced *Ending Violence Against Women and Children: Further initiatives for Victoria's action plan to address violence against women and children 2012–2015*.⁴⁹ This strategy outlines a range of initiatives to 'prevent violence against women and children before it occurs, keep victims of violence safe and hold perpetrators to account', and was supported with government funding.⁵⁰ The new government, elected in November 2014, deferred spending the majority of this investment, and it will be reconsidered in light of this Royal Commission's recommendations.⁵¹

There is debate within the Aboriginal and Torres Strait Islander communities about the contribution gender inequality makes to violence against women and children in Aboriginal and Torres Strait Islander families. The Commission heard that, as with policy in relation to responding to family violence generally, the development of prevention policy specific to the Aboriginal and Torres Strait Islander community has had a different trajectory to prevention policy targeted to the non-Aboriginal population in Victoria. *Strong Culture, Strong Peoples, Strong Families: Towards a safer future for Indigenous families and communities* is a 10-year plan focused on developing 'an Indigenous specific prevention framework for family violence'.⁵²

This plan led to the *Indigenous Family Violence Prevention Framework* released in 2012. This was designed to 'support primary prevention capacity building; effective, sustainable activities, and ownership and leadership within Aboriginal communities'.⁵³ The framework includes six key strategies: raising community awareness, family strengthening, cultural strengthening, responding to grief and trauma information and education, and self-esteem and resilience building.⁵⁴

Funding for prevention

In 2014–15 the Victorian Government budgeted \$3.6 million for prevention programs, services and activities. This represents four per cent of the \$80.6 million that the Victorian Government budgeted for services and programs specifically focused on family violence.⁵⁵ The Commission notes that this proportion would be even smaller if the total cost of family violence to the Victorian Government was included, such as the proportion of police and court expenditure arising from responding to family violence.

This funding is spread across a number of programs, including:

- ▷ Respectful Relationships Education in Schools program (\$0.55 million in 2014–15)
- ▷ twelve one-off grants supporting local projects to reduce violence against women and their children, including four projects specifically addressing violence in Aboriginal communities (\$2 million in 2014–15)
- ▷ development and trialling of primary intervention models with two culturally and linguistically diverse communities (\$0.55 million in 2014–15)
- ▷ a targeted community awareness-raising project focused on elder abuse across six culturally and linguistically diverse communities (\$0.22 million in 2014–15)
- ▷ support for the Municipal Association of Victoria to build local government capacity and action in the prevention of violence against women (\$0.2 million in 2014–15).⁵⁶

Information provided by the Victorian Government indicates that most of the above funding is not ongoing and will lapse.⁵⁷

In the 2015–16 State Budget the Victorian Government allocated \$2 million to extend three projects for preventing family violence against women and children.⁵⁸ Two projects target key settings (workplaces and local government), with a further project focused on women with disabilities. As we discuss in Chapter 41, most of the additional funding allocated in the 2015–16 State Budget is for one year only, including the above initiative, with the Victorian Government advising that future investment would be informed by the findings of the this Royal Commission.

The Victorian Government acknowledged to the Commission that there is currently a funding gap in relation to prevention:

Over the years, there has been comparatively low investment in prevention initiatives aimed at the key determinant of family violence or its contributing factors. Prevention programs have often relied on short-term, project-based funding rather than ongoing and sustained investment.⁵⁹

Prior to 2013, the Victorian Government had provided some funding towards prevention programs. For example, in 2011–12, \$7.2 million was allocated through the (then) Department of Justice Reducing Violence against Women and their Children grants program.⁶⁰ With criteria informed by the VicHealth Framework, *Preventing Violence Before it Occurs*, the program allocated \$600,000 each to eight Victorian regions over three years. The organisations leading these projects were women's health services, local councils, and community health services. In addition, \$2.4 million was allocated to four Aboriginal services for Koori Community Safety Grants. The purpose of these grants was to enhance collaborative relationships at a local level and help build a primary prevention and early intervention evidence base. The programs are being evaluated by the Australian Institute of Criminology,⁶¹ and interim evaluations have demonstrated clear evidence of positive outcomes across the programs.⁶²

The Commonwealth approach to prevention

The *National Plan to Reduce Violence Against Women and Their Children 2010–2022* has been endorsed by the Council of Australian Governments (COAG).⁶³ The plan is overseen by a ministerial committee of nominated state and territory ministers, chaired by the relevant Commonwealth minister.⁶⁴ The plan is being implemented through four three-year action plans, supported by state and territory implementation plans.⁶⁵

The *Second Action Plan: Moving Ahead 2013–2016* was released in June 2013. As part of the development of each action plan, the Commonwealth and states and territories have nominated a number of priority areas for joint focus. These include: prevention, improving responses for diverse communities, supporting an integrated service response to family violence, improving perpetrator interventions, and continuing to build the evidence base.⁶⁶ The third action plan is due in 2016.

Of the six outcome (strategy) areas of the national plan, there are two that relate specifically to prevention

- ▷ outcome area 1: Communities are safe and free from violence and
- ▷ outcome area 2: Relationships are respectful.⁶⁷

Commonwealth-led prevention activities to date have included The Line (a social marketing campaign targeting young people that is now being led by Our Watch); a \$3 million Community Action Grants program; and a \$9 million Respectful Relationships Grants program.⁶⁸ Evaluation of these grants programs is pending.

In 2015, COAG established an advisory panel and nominated a number of new priority areas for action under the national plan. The three priority areas identified were the National Domestic Violence Order Model Law; the national outcome standards for perpetrator interventions; and strategies to keep women safe from technology-facilitated abuse.⁶⁹

During the Commission's deliberations, the Commonwealth Government announced specific funding for the prevention of violence against women and their children.⁷⁰ This included \$5 million to expand the Safer Schools website as a resource for teachers, parents and students around fostering respectful relationships.⁷¹ The Commonwealth Government has indicated that this will build on the \$30 million national campaign (jointly funded by the Commonwealth, states and territories) to change young people's attitudes to violence, and will commence in early 2016.⁷² In 2015, all governments agreed on a national curriculum, which now includes respectful relationships education. This is detailed further in this chapter.

National prevention foundation: Our Watch

In 2013, as part of the National Plan, the Victorian and Commonwealth Governments established and jointly funded Our Watch, a national foundation to prevent violence against women and their children. Our Watch is an independent, not-for-profit organisation that is currently funded until 2017. The organisation's role is to drive nation-wide change in the culture, behaviours and attitudes that underpin and create violence against women and children. Our Watch has four areas of focus: design and deliver public campaigns; promote a sustained and constructive public conversation; enable organisations, networks and community to effect change; and influence public policy, systems and institutions.⁷³

Our Watch and VicHealth have also established a formal partnership. VicHealth is currently transferring knowledge and resources that it has developed to Our Watch.⁷⁴

Our Watch has been funded to deliver specific prevention projects. As part of its establishment in 2013, Our Watch was funded to deliver:

- ▷ respectful relationships education (RRE) in schools. This project focuses on embedding RRE in a number of secondary schools across three local government areas.⁷⁵ This project is discussed further below
- ▷ culturally and linguistically diverse prevention strategies with Indian and Iranian communities.⁷⁶ Further discussion is in Chapter 28.

In late 2015, the Victorian Government provided \$900,000 in funding to Our Watch to manage the Workplace Equality and Respect Project, aimed at developing policies and practices relevant to preventing violence in Victorian workplaces.⁷⁷ This project is discussed further in Chapter 37.

Our Watch has also been funded to deliver the Strengthening Hospital Responses to family violence project, working with the Royal Women's and Bendigo Hospitals. This has an early intervention rather than primary prevention focus, and is discussed in detail in Chapter 19.

At the time of writing this report, the South Australian Government, the Tasmanian Government, and the Northern Territory Government have also partnered with Our Watch. In its submission to the Commission, opportunities that Our Watch identifies for collaboration across states and territories are:

- ▷ guidance on monitoring and evaluating prevention strategies
- ▷ nationally agreed quality standards and implementation tools for work in different settings and tailored for different groups
- ▷ technical and specialist expertise in prevention practice and policy
- ▷ prevention training programs and materials, adaptable to different sectors
- ▷ design and delivery of communications campaigns/social marketing initiatives to change norms, behaviours and practices.⁷⁸

New national framework for prevention of violence: *Change the Story*

The national framework for prevention of violence against women and their children was developed by Our Watch in partnership with Australia's National Research Organisation for Women's Safety (ANROWS) and VicHealth.⁷⁹ The development of the framework was a priority under the second action plan of the *National Plan to Reduce Violence against Women and their Children 2010–2022*.⁸⁰

Change the Story: a shared framework for the primary prevention of violence against women and their children in Australia

The national framework *Change the Story* was released in November 2015. It includes a review of international literature about prevention, and a number of independent opinion pieces about key areas. The framework was informed by consultations undertaken across Australia with researchers, practitioners and policy makers, from community and non-government organisations, community networks, and government agencies.

The intent of the shared national framework is to present current evidence and research about prevention of violence against women and their children, and to outline a conceptual approach and guide to progressing action.

Drawing from the evidence, *Change the Story* provides an explanatory model, key actions to prevent violence, presents practical strategies, and details the most effective settings. A main message is that governments, the service sector, and the community cannot solve this challenge alone—it must be a shared endeavour.

The new national framework will provide Victoria with further evidence and guidance that it can build on to inform its own state level policy and program planning.

Table 36.1 Time line of key milestones in prevention of violence against women and their children (includes national markers)

| Time line | Victoria | Key indicators | National and international |
|-----------|---|--|--|
| 1995 | | | First national Community Attitudes to Violence Against Women Survey conducted by the Office for the Status of Women (equivalent to the National Community Attitudes towards Violence Against Women Survey [NCAS]). |
| 1996 | | 1 in 3 women are subjected to male violence at some time in their adult lives ⁸¹ | The Australian Bureau of Statistics leads the first <i>Women's Safety Survey</i> . |
| 2002 | Victorian Government launches <i>Women's Safety Strategy 2002–2007</i> . | | World Health Organization launches the <i>World Report on Violence and Health</i> , which identifies violence against women as a key area for action across the globe. |
| 2004 | VicHealth and Vic Government launch <i>The Health Costs of Violence: Measuring the burden of disease caused by intimate partner violence</i> . This is the first international study assessing the burden of disease associated with intimate partner violence. | Violence is identified as the leading preventable contributor to ill health, death and disease for Victorian women aged 15–44 ⁸² | Release of the Access Economics report, indicating that the economic cost associated with violence against women is \$8.1 billion in 2003. |
| 2006 | Victorian survey of community attitudes towards violence against women led by VicHealth. | Of Australian women who had experienced physical assault in the 12 months prior to the survey, 1 in 3 experienced physical assault from a male partner ⁸³ | Australian Bureau of Statistics releases results from the <i>Personal Safety Survey</i> (replaces the <i>Women's Safety Survey</i> undertaken in 1996). |
| 2007 | VicHealth releases <i>Preventing Violence Before it Occurs: A framework and background paper to guide the primary prevention of violence against women in Victoria</i> , commissioned by the Victorian Government. | | |
| 2008 | <i>Strong Culture Strong Peoples Strong Families: Indigenous family violence 10-year plan</i> . | | |
| 2009 | The Victorian Government releases <i>A Right to Respect: Victoria's plan to prevent violence against women 2010–2022</i> , which included a dedicated prevention budget. | | Second National Community Attitudes Towards Violence Against Women Survey led by VicHealth and Commonwealth Government. |
| 2010 | | | World Health Organization releases <i>Preventing Intimate Partner and Sexual Violence Against Women: Taking action and generating evidence</i> . |
| 2011 | | | The Commonwealth Government releases the <i>National Plan to Reduce Violence Against Women and Their Children 2010–2022</i> . |
| 2012 | <i>Victoria's Action Plan to Prevent Violence Against Women and Children 2012–2015</i> , that included a number of prevention projects. Reducing Violence Against Women and their Children Grants, through the Victorian Department of Justice Crime Prevention Program. | | |

| Time line | Victoria | Key indicators | National and international |
|-----------|---|---|--|
| 2013 | Our Watch, previously the Foundation to Prevent Violence Against Women and their Children, is established by the Victorian and Commonwealth Governments. | | |
| | | 1 in 6 women have experienced violence from a male partner since the age of 15. ⁸⁴ | Australian Bureau of Statistics releases the third <i>Personal Safety Survey</i> . |
| 2014 | Victorian Government introduces <i>Ending Violence Against Women and Children: Further initiatives for Victoria's action plan to address violence against women and children strategy</i> . | | Australia's National Research Organisation for Women's Safety (ANROWS) is established under the <i>National Plan to Reduce Violence against Women and their Children 2010–2022</i> . |
| | | | Third National Community Attitudes Towards Violence Against Women Survey is released by VicHealth and Commonwealth Government. |
| 2015 | Victorian Government starts consultation on a gender equality strategy. ⁸⁵ | 1 in 4 women have experienced intimate partner violence since the age of 15. ⁸⁶ | ANROWS releases report entitled <i>Violence Against Women: Additional analysis of the Australian Bureau of Statistics' Personal Safety Survey, 2012</i> . <i>Change the Story</i> , a shared framework for the primary prevention of violence against women and their children in Australia, is released. |

Best practice in prevention

Prevention strategies targeted to population-level risk factors for family violence are relatively new. Research on the most effective form of action at the population level is therefore limited.⁸⁷ The Commission heard that the success of other population-level prevention strategies relevant to public health, such as reducing smoking and increasing road safety, may be useful in informing prevention strategies relevant to all forms of family violence.⁸⁸

Population-level prevention strategies used with public health strategies vary depending on the issue being addressed, but the following components and approaches are broadly consistent:

- ▷ legislative, policy and regulatory reform to support the strategy
- ▷ community mobilisation to engage communities in shifting practices and norms
- ▷ communications and social marketing to shift social norms and practices
- ▷ organisational development to change policies, structures and cultures
- ▷ education of key workforces to enable them to build prevention into their job roles
- ▷ development of the skills of individuals through direct participation programs
- ▷ advocacy to ensure that attention is given to the problem and that barriers are addressed
- ▷ research, monitoring and evaluation.⁸⁹

In 2007, VicHealth adopted this framework in developing prevention policy and programs relevant to violence against women.⁹⁰

In 2010, WHO reported on the status of the effectiveness of initiatives to prevent violence against women.⁹¹ Our Watch, as part of the development of its *National Framework to Prevent Violence Against Women and their Children*, has recently updated this research.⁹² It categorised prevention initiatives (targeted to prevent intimate partner violence against women) as follows:

- ▷ effective—the initiative has shown to be effective in preventing violence
- ▷ promising—the initiative has an impact on risk factors, but has not been shown to reduce violence

- ▷ conflicting—some evaluations show the intervention is effective and others show that it is not
- ▷ ineffective—current studies have not established that the intervention has a positive impact on violence against women or its risk factors.⁹³

These initiatives are outlined in Table 36.2.

Table 36.2 Interventions to prevent violence against women—current state of the evidence for effectiveness⁹⁴

| Intervention | Assessment based on available evidence of effectiveness |
|---|--|
| Policy, legislative and institutional reform | |
| Macro-level reforms designed to address specific aspects of human rights and gender inequality established in research to be strongly linked with violence against women | Successfully implemented but not yet evaluated for impact on violence/precursors to violence |
| Efforts to reform the media's representation/reporting of gender relations, women and violence against women (including self-regulation) | Successfully implemented but not yet evaluated for impact on violence/precursors to violence |
| Strengthening infrastructure and transport, for example by improving the safety of public transport and street lighting ^ | Successfully implemented but not yet evaluated for impact on violence/precursors to violence |
| Community mobilisation and strengthening | |
| Community mobilisation, involving community-driven, participatory projects that engage multiple stakeholders to address gender norms | Effective** |
| Organisational development | |
| 'Whole-of-school' programs involving teachers and other school staff, pupils, reporting mechanisms, parents and the local community, along with national advocacy. A variety of strategies are used (e.g. curriculum and group-based programmes, policy reform, advocacy) | Promising |
| Multi-strategy approaches with media outlets to promote the responsible portrayal of women, girls and violence against women in the media (e.g. involving advocacy, training, guidelines) | Successfully implemented but not yet evaluated for impact on violence/precursors to violence |
| Organisational auditing processes to identify and address structures and practices contributing to gender inequality and violence against women. Involves developing audit tools and processes for engaging staff, community members and volunteers in using these to reflect on organisational cultures and processes and plan reform. Inducements may be used to encourage or support compliance (e.g. funding, awards) | Successfully implemented but not yet evaluated for impact on violence/precursors to violence |
| Communications and social marketing | |
| Social marketing campaigns or edutainment plus group education. Long-term programs engaging social media, mobile applications, thematic television series, posters, together with interpersonal communication activities | Promising |
| Single-component communications campaigns (e.g. a campaign involving advertisements through television and print media) | Ineffective |
| Advocacy | |
| Skills training and capacity building for organisations and community members advocating for gender equality and the elimination of violence against women | Successfully implemented but not yet evaluated for impact on violence/precursors to violence |
| Leadership programmes that identify and support influential, non-violent individuals to 'speak out' and play a leadership role regarding gender inequality and the elimination of violence against women. These may be targeted to prominent individuals or be delivered through informal peer groups (e.g. among young people) or organisational settings (e.g. workplaces). Based on social norms theory which proposes that the views of prominent others are influential in shifting social norms (Webster et al. 2014) | Successfully implemented but not yet evaluated for impact on violence/precursors to violence |

| Intervention | Assessment based on available evidence of effectiveness |
|---|--|
| Individual or group direct participation programs providing education, support and skills development | |
| School or community programs to improve women's and girls' agency. Can include other components such as safe spaces, mentoring and life-skills training | Effective** |
| Economic empowerment and income supplements including micro-finance, vocational training, job placement or cash or asset transfers (e.g. land reform) | Conflicting evidence** |
| Economic empowerment and income supplements plus gender equality training | Effective** |
| Collectivisation [^] . Supporting women's and girls' empowerment by strengthening supportive links to other women and girls in similar circumstances (e.g. a collective for sex workers) | Effective |
| Peer education. Supporting individuals from particular sub-populations to educate their peers on gender norms and violence against women | Successfully implemented but not yet evaluated for impact on violence/precursors to violence |
| School programs and community workshops with men and boys to promote changes in social norms and behaviours that encourage violence against women and gender inequality | Effective |
| School and community workshops to promote changes in norms and behaviour that encourage violence against women and gender inequality. In contrast to the above, they involve both men and women | Effective** |
| Programs to support young people to engage critically with media and popular culture representations of women and gender relations, often referred to as strengthening media literacy. Based on the theory that the negative influences of the media on constructions of masculinities and femininities and on behaviours can be lessened by encouraging young people to engage in a critical way with the media | Successfully implemented but not yet evaluated for impact on violence/precursors to violence |
| Programs to strengthen individual skills and knowledge to take positive or 'pro-social' action in relation to attitudes and behaviours supporting violence (e.g. the belief that women deserve violence) and precursors to violence (e.g. sexist attitudes). Often referred to as 'bystander' programs. Typically implemented as part of a broader program of community/organisational mobilisation | Conflicting evidence (emphasis in many current evaluations is on bystander responses to violence, as opposed to its precursors, and on bystander approaches as 'stand-alone' interventions) Have been successfully implemented in Australia |
| Programs to support the skills of parents (both men and women) to promote gender equality and non-violence in their parenting practices (noting that these programs differ from the parenting programs below which have the goals of preventing child abuse) | Not yet systematically assessed |
| Group or relationship-level interventions for equitable and respectful relationships Couple interventions to support them to maintain equitable and respectful relationships have been successfully implemented (e.g. among couples expecting a first child). There may be some potential in such programs as preventive measures at the population or sub-population level. However, relationship-level interventions without a gender transformative approach may inadvertently compound gender inequality and hence be harmful to women | Conflicting evidence |

| Intervention | Assessment based on available evidence of effectiveness |
|--|--|
| Protective behaviours programs [^] . Group programs teaching women and girls how to modify their behaviour to reduce the risk of sexual assault and/or to defend themselves in the event of being threatened with assault | Conflicting evidence. Such programs may increase victim-blaming (itself contributing by way of social norms to sexual violence). If they encourage women and girls to curtail their movements and divert attention from perpetration as a human rights violation, such programs would be incompatible with a rights-based approach. Promoting self-defence in the absence of comprehensive skills training has been found to increase risk. Ideally these programs would be implemented alongside those promoting changes in norms pertaining to gender and violence among men and boys |
| Collaborating with other policy settings to address issues of common concern | |
| Nurse home-visiting programs aimed to strengthen parenting attitudes and skills, noting that the primary purpose and benefits of such programs are the prevention of child abuse. These programs are distinguished from those above which have an emphasis on promoting skills to raise children in ways that promote gender equality and non-violence | Promising for IPV (effective for reducing child abuse and neglect) |
| Regulation to reduce the density of alcohol outlets or reduce alcohol consumption (e.g. through taxation, rationing, regulating trading hours) | Effective*, although optimally should be implemented alongside other interventions addressing normative support for violence against women |

[^] Interventions evaluated were for the purposes of preventing non-partner sexual assault only.

* Evidence from high income countries only.

** Evidence from low and middle income countries only.

Principles of effective prevention

The Commission heard that best-practice prevention approaches have a number of features in common. These are:

- ▷ involving the community
- ▷ having strategies not just single programs
- ▷ engaging men and boys
- ▷ taking account of the circumstances of particular groups.

Principles specific to respectful relationships education and effective prevention in school and place-based settings are outlined later in this chapter.

Involving the community

The Commission heard that while preventing and responding to family violence should be a core responsibility of government, 'whole-of-community' approaches to preventing family violence are essential:⁹⁵

Community development and community mobilisation are important but underutilised strategies ... Community mobilisation shows increasing promise, with a recent review documenting that well-designed interventions ... can have a positive impact upon violence perpetration or victimisation.⁹⁶

Ms Rosie Batty, domestic violence victim advocate, Luke Batty Foundation, told the Commission that community involvement should be as inclusive as possible as 'cultural change means no-one is immune, everyone has to change, and really become aware of their behaviour and their influence on others'.⁹⁷ Professor Tony Vinson, Emeritus Professor at the University of New South Wales submitted that community level prevention approaches should be focused on the most disadvantaged communities with the greatest need.⁹⁸

The Commission was told that all communities are different—some have good social networks and strong local leadership, others have a diversity of cultures with different attitudes to family violence. Many people talked about the importance of responding to local needs and delivering whole-of-community initiatives in ways that recognise and respond to local circumstances.⁹⁹

The Commission also heard about the importance of ensuring that systems are in place to support prevention strategies, as increased community awareness and involvement will mean an increase in demand for service responses.¹⁰⁰ Ms Batty told the Commission that ‘speaking openly about these issues can make it easier for some women to confront their situation and make a change, and perhaps take steps to leave a violent relationship’.¹⁰¹ However, if specialist services are not in place and well-resourced, this can be devastating for victims who are often at their most vulnerable when they try to leave an abusive partner, as was the case for a prevention strategy in New Zealand:

In Gisborne, Levin, Ohakune, New Plymouth and Paeroa, a scarcity of adequate referral, support and intervention services was raised as a primary concern. While the Campaign has resulted in increased awareness and referrals for support and intervention, communities have struggled to meet these demands. Moreover, areas that include isolated rural communities faced additional challenges responding to requests for family violence related support and intervention.¹⁰²

Why attitudes matter

Measuring and changing attitudes to violence against women is recognised as an important way of informing prevention activities, as attitudes reflect and reinforce social norms. Attitudes influence community expectations of what is acceptable behaviour, which in turn influences individual behaviour. Community attitudes also influence how people respond to violence, and whether or not they seek help. The 2013 National Community Attitudes towards Violence Against Women Survey identified links between attitudes and behaviour including:

- ▷ violence against women is more common in communities where violence-supportive attitudes are prevalent
- ▷ men who have violence-supportive attitudes are more likely to perpetrate or say they would perpetrate violence
- ▷ where victims have violence-supportive attitudes, they are more likely to experience family violence again
- ▷ violence-supportive attitudes held by people who witness violence and its precursors may result in less empathy and support being given to victims of violence, which in turn can affect their recovery.¹⁰³

The link between attitude and behaviour is not necessarily direct (e.g. if someone holds violence-supportive attitudes it does not mean they will therefore perpetrate violence). Attitudes influence, and are in turn influenced by broader norms and cultures, including how gender roles and relationships in families and organisations are formed, and how women and men are portrayed in the media and popular culture.¹⁰⁴

The Commission notes that the 2013 National Community Attitudes towards Violence against Women Survey revealed that community attitudes may be slower than public policy to recognise that alcohol and drug use is not an excuse for family violence. Nine per cent of those surveyed believed that partner violence can be excused if the perpetrator is affected by alcohol and 19 per cent believed that the woman bears some responsibility if she is raped while affected by alcohol or drugs. Eleven per cent also believed that family violence can be excused if the victim is heavily affected by alcohol.¹⁰⁵

Strategies not just single programs

Changing deeply entrenched beliefs, behaviours and cultures in communities to prevent problems such as family violence, requires sustained and coordinated efforts over a long period of time.¹⁰⁶ Consistent with the experience in other areas of population-level prevention (like smoking) the evidence suggests that interventions are more likely to be successful when they combine multiple strategies and target more than one level of the community: for example, whole-of-school interventions are more effective than implementing a single strategy such as a group education program. Similarly, media campaigns are more likely to be successful when combined with group training and efforts to develop leadership. Research shows that individual prevention interventions may have positive effects, but violence prevention interventions will not be effective in achieving widespread behavioural and attitudinal change on a 'project-by-project' basis:

... duration and intensity of programs makes a difference. We know that one-off, short duration programs are ineffective in changing attitudes and behaviour. Similarly, stand-alone social marketing and communications campaigns which don't have community development input are also ineffective. Multi component programs which combine multiple prevention strategies are more likely to generate change, according to recent international reviews, although it is challenging to figure out what components are most important or what the most desirable package of interventions is.¹⁰⁷

There is little evidence that awareness-raising communications campaigns on their own (such as a campaign with advertisements through television and print media) have any substantial positive effect.¹⁰⁸ These campaigns may simply increase demand and without sustained funding,¹⁰⁹ potentially putting victims at increased risk. Messages encouraging victims to feel empowered to 'end the violence' by getting help could implicitly reinforce messages that they are responsible for the violence.¹¹⁰

It is critical to note that public education and awareness (at the broadest community level or tailored and targeted to particular services and settings such as schools) has the potential to elicit disclosure of current family violence risk. It is essential therefore to ensure that additional resourcing of specialist family violence responses is available to support people making those disclosures, noting that this will likely include children and young people.¹¹¹

Berry Street also highlighted that it was essential to ensure adequate specialist responses were in place before initiating prevention initiatives.¹¹²

Research indicates that social marketing and media advocacy strategies are of value when they are integrated, mutually reinforce on-the-ground activities, and are supported by cross-sector partnerships that allow for consistent approaches with broad reach.¹¹³ Where these campaigns promote policy or legislative changes, they can have additional benefits. Campaign strategies that are sustained beyond a single 'dose' are also important to embed the uptake of campaign messages. The most useful role of social marketing may be to raise awareness and supplement the efficacy of other strategies.¹¹⁴

If they are going to run big social marketing campaigns everybody has to be on board because that's going to have impacts on the police and the courts and the response system. So everybody has to be prepared for that. We have seen examples of Federal Government campaigns increasing people ringing up a phone number and there's nothing happening at the delivery end, and where the state and Commonwealth haven't been in sync and the service system hasn't been engaged. So anything that involves campaigns ... you can't just have one ... [and] [t]hey have to be in sync.¹¹⁵

The Commission heard that historically the tendency has been for prevention activities to focus on changing community attitudes, without addressing the structures and practices known to shape them, such as practices in families, organisational and community cultures, or the portrayal of gender relations and violence in the media.

In my view, one of the problems in the violence prevention field is that the focus so far has been on attitudes. Attitudes are influential, but not the only determinant. Violence prevention efforts must seek to change not only individual attitudes and community norms, but also behaviours, social and sexual relations, and the structural conditions that perpetuate violence. Interventions aimed at attitudinal and cultural change must be accompanied by changes in social practices and structural relations if violence in relationships and families is to be undermined and prevented ... For example, various forms of gender inequality – such as women’s economic dependence on men – are risk factors for family violence. They are related to attitudes but not reducible to attitudes.¹¹⁶

The Commission heard that more attention must be given to prevention programs that go beyond awareness raising and instead focus on supporting communities to develop norms that promote equality and respect. As reported in the 2013 National Community Attitudes towards Violence Against Women Survey:

The literature on which this study was based shows that while there may be some value in community and professional education and campaigns to strengthen attitudes, sustained change is most likely to be achieved by changing the family, social, community and organisational environments that shape attitudes, and influence whether they are manifest in violent or violence supportive behaviour or not.¹¹⁷

Engaging men and boys

I am as concerned for my son as I am for my daughters in this environment. I do not want my son growing up thinking that to be a man means being rough, dominating, having an entitlement to more based on his gender.¹¹⁸

Most interpersonal violence, whether against men or women, is perpetrated by men.¹¹⁹ This suggests that constructions of masculinity—the identities and roles attributed to men, and the norms, structures and practices supporting these identities and roles—are important considerations when discussing prevention strategies. In line with this view, the Commission was told that ‘research indicates ... interventions which address and seek to transform gender are more effective than those interventions which do not.’¹²⁰ Dr Michael Flood, Australian Research Council Future Fellow and Senior Lecturer in Sociology, University of Wollongong, described how masculinity is constructed:

By masculinity, I mean the meanings attached to being a man and the social organisation of men’s lives and relations. This does not just include attitudes and values, but men’s practices and interactions with others – how men’s lives are actually organized, how they learn to treat each other and to treat women.¹²¹

The Commission was told that prevention programs need to support men and boys to critically reflect on what it means to be a man, and to shift some of the meanings and practices that are traditionally associated with masculinity.¹²² Effective prevention work will also require acknowledging that violence against women perpetrated by men cannot be reduced solely to constructions of masculinity or to gender relations, since ‘masculinity’ is experienced in the context of other social and economic conditions, such as poverty.¹²³

The involvement of men in violence prevention work is now widely recognised as central to the success of primary prevention activities.¹²⁴

The field of violence prevention has seen a shift in the last decade towards primary prevention activities which explicitly engage men and boys. There is a compelling argument for the need to engage men in prevention of men’s violence against women. Prevention activities need to address attitudes, relations and behaviours of men and boys in general.¹²⁵

Many submissions received by the Commission cited the work of White Ribbon in engaging men and boys to prevent violence. Active in Australia since 2003, White Ribbon is a national public education and violence prevention campaign that aims to drive behavioural and attitudinal change across the community, primarily among men and boys.¹²⁶ The Commission heard that the annual White Ribbon Day and Ambassador Program were useful and well-known mechanisms for engagement. The Koori Caucus submitted:

White Ribbon Day events are great activities for reaching out to the whole community; and the events take place across the community. Information packs, t-shirts and caps with messages about not tolerating family violence also feature in White Ribbon Day activities ... White Ribbon Day primary prevention activities often create momentum for future partnerships and prevention activities.¹²⁷

A recent review of efforts in engaging men in the prevention of violence against women found that while there have been a number of achievements, and there is significant momentum to continue this work, most interventions have not been evaluated and therefore their impact is unknown.¹²⁸ The review also highlights tensions, including that most work in engaging men in violence prevention continues to be done by women, and that male advocates are often given greater status and power than women doing similar work.¹²⁹ Women's Health in the South East noted caution that '[p]lacing male champions of change on a pedestal reinforces traditional power structures and somewhat limits the discourse to "say no to violence", rather than challenging rigid gender stereotypes and gender inequality'.¹³⁰

A review commissioned by the NSW Government in 2014, titled *Less to Lose and More to Gain? Men and Boys Violence Prevention Research Project final report* found that there are promising prevention approaches targeted to men and boys, including: respectful relationships education; bystander strategies; community development; whole-of-organisation practices; infant and parenting programs; and social marketing.¹³¹ The report emphasises that engaging men and boys in the prevention of family violence is facilitated by:

- ▷ addressing the role of gender in violence against women in a way that boys and men can understand
- ▷ utilising educators who boys and men can relate to as role models
- ▷ recognising that masculinities are diverse and affected by class, location, ethnicity, cultural background, sexuality and other factors
- ▷ engaging men and boys in the places where they live, work and play.¹³²

The National Community Attitudes towards Violence Against Women Survey refers to evidence that young men in particular are 'struggling with changes in gender power and gender roles' and that there is a 'greater preparedness [among young men] to justify and excuse violence in certain [situations]'.¹³³ The report states that these findings mean that young people are a priority when designing and delivering prevention programs. It also stresses that effective programs need to draw on contemporary thinking about gender relations:

This is consistent with efforts that critically draw on rather than merely reject aspects of dominant gender scripts—for example, promoting control over behaviour and sexuality as positive masculine characteristics or using high-profile men to denounce violence against women—that are [likely] to be compelling to young people.¹³⁴

Dr Flood told the Commission that, in his view, one of the key challenges in gaining traction with young men is to minimise hostile and defensive reactions:¹³⁵

Often men feel they are being stereotyped as batterers or rapists. In my view, we need to minimize hostile and defensive reactions by emphasising men's positive role in stopping family violence, by acknowledging their own victimization (which is largely at the hands of other men), and by creating safe spaces for men to reflect and learn.¹³⁶

An interim evaluation of CHALLENGE Family Violence, a program led by the City of Casey and the City of Greater Dandenong, notes that ‘... men engaged with the project [were] keen to contribute to reducing men’s violence against women and developing alternative forms of masculinity that challenge gendered beliefs and behaviours – but not at the cost of their friendships’.¹³⁷ In addition, the project found that men reported ‘feeling uncomfortable in discussing violence-related issues with women present, and were not ready to embrace women as allies’.¹³⁸ While highlighting that there were some positive changes in individual men in the program,¹³⁹ the evaluation also noted:

Men’s speaking out about violence against women and sexism, attending events to call for preventing violence against women and wearing a white ribbon are not enough for social gender transformation ...¹⁴⁰

The Commission was told that many of the factors that influence intimate partner violence and other forms of family violence are related to how men’s identities are shaped. Targeting prevention strategies to settings where men congregate, such as sports clubs, is particularly important.¹⁴¹

Engaging diverse communities

Some groups within the community experience higher rates of family violence, and can experience more prolonged and severe violence.¹⁴² Factors such as Aboriginality, class, age, sexuality, ethnicity and disability intersect with gender inequality to shape the experience and risk of family violence, as well as access to appropriate responses:

Women’s diverse backgrounds, contexts and life experiences demands a sophisticated, long term commitment to addressing the diverse and intersecting forms of discrimination faced by women and ensure an approach to both prevention and response that is accessible, inclusive and relevant ...¹⁴³

Aboriginal and Torres Strait Islander communities

The higher rates of intimate partner violence and child abuse experienced by Aboriginal and Torres Strait Islander women makes prevention strategies a critical priority for this group.

The need for community-specific prevention programs for Aboriginal and Torres Strait Islander peoples was emphasised to the Commission, as was the need for these programs to be designed and implemented by Aboriginal leaders. At a consultation with members of Aboriginal and Torres Strait Islander communities, the Commission was told about a family violence campaign developed by the community in Mildura:

There was a series of 6 TV ads on local TV in Mildura. They used local people in Mildura, Robinvale, got the attention of those communities because people knew someone on TV. They were run during primetime. They were about elder abuse, younger relationships, early indicators, cyber abuse. They were funded by the Koori Justice Unit as a community safety grant. Makes the community proud.¹⁴⁴

The Commission heard that many Aboriginal people prefer to deal with Aboriginal organisations, as community-managed programs that are community-owned and controlled are better able to engage with communities and respond to trauma.

The Commission heard that under the 2011–12 Department of Justice and Regulation’s Reducing Violence against Women and their Children grants program, \$2.4 million was provided for four projects in Koori communities (the Koori Community Safety Grants).¹⁴⁵ There were a number of activities delivered by each of these projects, including the Dilly Bag Programs, Sisters Day Out workshops, Dardi Munwurro youth camps, men’s groups, harmony days, and mediation training.¹⁴⁶ The Australian Institute of Criminology has reviewed progress to date on these four projects. The interim evaluation found that a number of programs demonstrate leading practice in the design of Aboriginal family violence prevention.¹⁴⁷

Lessons from the interim evaluation include the importance of locating the program design in cultural frameworks, and including a mix of targeted and universal activities (a 'one size fits all' approach is not appropriate given the differences between communities).¹⁴⁸ Ensuring adequate implementation time is an important factor, as many project workers are juggling a number of roles and responsibilities.¹⁴⁹

The importance of community-led prevention effort is shown by the results of the National Community Attitudes towards Violence Against Women Survey (NCAS) which found that Aboriginal and Torres Strait Islander communities have a similar attitude to the non-Aboriginal community that family violence is wrong. However, Aboriginal and Torres Strait Islander respondents were two and a half times more likely to believe that partner violence can be excused where a victim is affected by alcohol (25 per cent compared with nine per cent of the broader community surveyed).¹⁵⁰ The survey also indicates that Aboriginal and Torres Strait Islander respondents were nearly twice as likely to agree that such violence can be excused if a person is under stress.¹⁵¹

For further discussion see Chapter 26.

Culturally and linguistically diverse communities

The Commission heard that targeted prevention strategies are required for culturally and linguistically diverse communities, and that funding has been limited:

The 'CALD project' ... announced in July 2013 as an initiative of the Foundation to Prevent Violence against Women and their Children (now Our Watch), and again in September 2014 as part of the National Plan's second action plan, remains one of two primary prevention Victoria's Action Plan investments targeting immigrant and refugee communities. Thus far, funding for primary prevention activity in Victorian immigrant and refugee communities has been inadequate, short-term, and ill-timed.¹⁵²

While many CALD communities will be effectively reached by strategies delivered to the population as a whole, there are a number of communities, such as new and emerging communities, or long-standing migrant groups affected by social exclusion, that will require targeted effort.¹⁵³

For respondents born in non-English speaking countries, the NCAS found that while only a relatively small proportion considered family violence to be acceptable, the proportion endorsing attitudes that excuse, trivialise or minimise the problem, or blame the victim, was higher than the broader surveyed community. For example, respondents born in non-English speaking countries were more than three times as likely to agree that family violence can be excused if the victim is heavily affected by alcohol (22 per cent compared with seven per cent of the broader community surveyed).¹⁵⁴

CALD communities are identified as a priority in the NCAS. A recent AMES and VicHealth report, titled *Understandings and Actions to Prevent Violence Against Women in CALD Communities* was commissioned through the national plan.¹⁵⁵ The report stresses that when planning, developing, implementing and evaluating prevention strategies, the varying cultural, religious, social and economic circumstances of communities need to be considered.¹⁵⁶ It concludes that prevention work in communities requires a rights-based approach that prioritises the safety, agency and empowerment of women, and responds to increasing diversity in the composition of the migration program, as well as geographic diversity in settlement patterns in Australia.

The Commission heard of a number of initiatives that are progressing work with CALD communities with regard to primary prevention. These include the InTouch Multicultural Centre Against Family Violence program CALD Communities Leading the Way to Respectful Relationships, which was the state winner of the Australian Crime and Violence Prevention Awards, and worked with Croatian, Indian, Sudanese and Vietnamese communities.¹⁵⁷

The Commission heard that including strategies that focused on women's leadership and empowerment were important elements of a broader prevention strategy.

Recognising the fundamental underlying role of gender inequalities in VAW, efforts to prevent this violence must support the empowerment of CALD women, including by engaging them as leaders in prevention programs and settings.¹⁵⁸

Enhance and foster the leadership of women from immigrant and refugee communities as an integral strategy to build gender equity.¹⁵⁹

Seniors Rights Victoria told the Commission that while elder abuse is not necessarily more common in ethnic communities, older people within these communities 'may be at greater risk or face additional barriers in accessing assistance', including lack of English language skills, cultural influences and smaller family networks.¹⁶⁰ Seniors Rights Victoria highlighted that approximately one-third of people over 65 years of age in Victoria are from CALD backgrounds.¹⁶¹

Faith can also play an important role in the experiences of family violence for some people from CALD communities. The Commission explores the role of faith as an important additional setting for prevention later in this chapter, as well as in Chapter 29.

For further discussion, see Chapter 28.

People with disabilities

As discussed in Chapter 31 evidence shows that women with disabilities face a higher risk of violence than other women and men with disabilities.¹⁶² Our Watch told the Commission that women with disabilities are more vulnerable to family violence due to restricted mobility or dependency on the perpetrator, and/or the fear of being institutionalised.¹⁶³

There is also limited evidence on the effectiveness of prevention and early intervention activities targeted to this group. However, key themes emerging from the available literature include:

- ▶ the need for community awareness-raising to address stereotypes about women with disabilities
- ▶ training for all service providers on the particular needs of this group
- ▶ involvement of women with disabilities in policy development
- ▶ providing women with disabilities with information about family violence, and the need for a standard screening and assessment tool for use by a range of services.¹⁶⁴

The Commission heard that the Gender and Disability Workforce Development Program, developed by Women with Disabilities Victoria, was a good example of a program that aims to improve the quality of gender-sensitive practice among disability workers.¹⁶⁵ A key aspect of this approach has been engagement and training of women with disabilities and professional trainers from women's health and violence response services to deliver jointly the program to disability services.¹⁶⁶ The program is being evaluated, with an initial findings report indicating that there are changes that can be directly attributed to the program.¹⁶⁷

Case study: Gender and disability Workforce Development (Women with Disabilities Victoria)

The Gender and Disability Workforce Development Program is designed to change culture across whole organisations, working with clients, staff, managers and executives.¹⁶⁸ The aim is to improve gender equitable service delivery as a strategy for increasing women's wellbeing and reducing gender based violence. The package is co-delivered by women with disabilities and professionals from relevant sectors.

- ▷ 'I have observed a marked difference in staff approaches to working with women with disabilities, in particular between staff who have completed the training and those that have not. Moving from managing one residential service to another has highlighted this for me.' (*Participant*)
- ▷ 'We lose insight of gender issues in "individual person centred planning". It needs to remain at the forefront.' (*Disability Service Manager*)
- ▷ 'It opened my eyes. It flicked a switch and made me more aware.' (*Disability Support Worker*)
- ▷ 'Reaffirmed the amount of power we have over our clients and how we must be mindful (constantly) how we use it.' (*Disability Worker*)

The program is targeted to services providing support to women and men with disabilities; one of the findings of the evaluation was that some participants raised that the experience of men with disabilities was a gap within the training.¹⁶⁹

Rural, regional and remote communities

The Commission heard that geographical factors, and social norms and attitudes that are specific to life in these communities significantly shape the experience of family violence and that these need to be considered for prevention strategies to be effective with these communities.¹⁷⁰

Through its consultations, submissions and the hearings the Commission noted an increasing awareness in rural, regional and remote communities of family violence, and a growing commitment to seeking to prevent and respond to it. Specific plans and initiatives, many of these initiated and led by the local communities, were described to the Commission. These are discussed in more detail in Chapter 33.

Lesbian, gay, bisexual, transgender and intersex people

People who identify as lesbian, gay, bisexual, transgender or intersex can face particular patterns of family violence, including violence directed at young people by family members in response to their sexuality or gender diversity, the use or threat of outing, or disclosing a person's HIV status.¹⁷¹

Submissions to the Commission identified that there are very few prevention strategies aimed at people who identify as LGBTI.¹⁷² It is argued that the invisibility of family violence in LGBTI communities within the broader community contributes to this problem.¹⁷³

While *Moving Ahead 2013–2016*, the second action plan under the National Plan to Reduce Violence Against Women and their Children, addresses family violence in some diverse communities it does not specifically refer to LGBTI communities.¹⁷⁴

The Australian Institute of Criminology report on same-sex partner homicide pointed to the need for a 'more nuanced approach to violence prevention' among same-sex attracted persons, and highlighted the effect of discrimination and marginalisation in increasing the risks for these communities.¹⁷⁵

The Commission also heard that broad-based prevention campaigns need to address LGBTI needs and that the gendered framework often used to discuss family violence does not resonate with the LGBTI community.¹⁷⁶

The most established family violence information program targeted to LGBTI people is the LGBTI Domestic and Family Violence Project run by the AIDS Council of NSW. This project includes a website (Another Closet), which provides information on support services and campaigns.¹⁷⁷

In regard to prevention initiatives in schools, the Healthy Equal Youth Project funds the Safe Schools Coalition Australia, which provides training and resources to schools to become free of homophobia and transphobia.¹⁷⁸ In addition, materials used in respectful relationships education as part of the national curriculum discuss relationships and gender-based violence, including same-sex relationships, diverse experiences of sexuality and homophobia.¹⁷⁹ We discuss Respectful Relationships Education below.

Further discussion is located in Chapter 30.

Older people

The Commission heard that there is very little research on the effectiveness of programs in preventing elder abuse, which in the context of an ageing population, is a critical gap. Family violence against older people can take different forms including intimate partner violence, financial abuse and neglect. As with all family violence, violence against older people tends to be under-reported. As discussed in Chapter 27, specific challenges in responding include a reluctance by some older people to engage the legal system in these circumstances.

Awareness and education campaigns must be inclusive of older people in their messages and imagery to enable the abuse to be recognised for what it is, rather than 'normal' ... Campaigns should also more generally aim to educate the broader community about elder abuse as a form of family violence. Educational 'respect' campaigns should begin in primary schools.¹⁸⁰

Older women are less likely to report violence than younger women, and may be in relationships and social environments in which 'traditional' or conservative norms about violence and gender relations prevail.¹⁸¹ Older women may also have a relatively high degree of economic dependence on their male partners, increasing their vulnerability to violence.¹⁸²

Seniors Rights Victoria submitted that there is an increasing awareness of the hidden levels of sexual violence against older women, and that the system needs to be more responsive to this issue.¹⁸³

A focus on children and young people

The Commission heard that there are sustained benefits in targeting prevention strategies to children and young people.¹⁸⁴ As outlined earlier, research indicates that many of the risk factors for family violence are acquired in childhood. Childhood and adolescence are also stages of life when ideas about and relationships to gender, as well as gender identities, are formed. Intimate relationships outside the immediate family develop during adolescence, and intervention at this life stage can reinforce respectful, non-violent relationships, or change the trajectory of disrespectful ways of relating.¹⁸⁵ Experiences during childhood and adolescence have a powerful influence on behaviour and outcomes in adult life.¹⁸⁶

National research indicates that there is a higher level of tolerance for violence against women and girls among children and young people, than among adults.¹⁸⁷ Young women experience a high prevalence of intimate partner violence when dating and cohabiting. A substantial proportion of men who report perpetrating rape against women or girls did so for the first time before turning 20 years of age.¹⁸⁸

Three recent surveys looking at the attitudes of Australian young people towards violence against women and gender equality found that:

- ▷ most young people believe that violence against women is due to men being unable to manage their anger¹⁸⁹
- ▷ two in five young people agree that 'rape results from men not being able to control their sexual urges' (an increase from 2009, when one in three believed this)
- ▷ a sizable portion of young people surveyed support male dominance in decision-making in relationships.¹⁹⁰

These findings are reinforced by recent research undertaken by the Commonwealth Government to inform a future national campaign to prevent violence against women and their children.¹⁹¹ The research identifies some of the challenges in engaging young people to prevent violence. These include that intimate partner violence is often not 'named' by young people, and young people may have little understanding of its causes.¹⁹²

The research also discusses the 'automatic defences' that impede the ability of young people to prevent intimate partner violence. These defences include automatically blaming victims, minimising the behaviour of men, and a tendency to protect and empathise with men's experience over the experience of women.¹⁹³ The implications of these defences are that some young men's disrespectful and aggressive behaviour goes unchallenged and so is normalised, and in turn some young women accept gender inequality, disrespectful relationships and aggressive behaviour from men as the norm.¹⁹⁴ Mr Lay, informed the Commission that he found the research confronting and highlighted the importance of prevention work with young people.¹⁹⁵

The Commission heard that effective prevention work with children and young people needs to be appropriately tailored to young people's specific concerns, contexts and preferred modes of learning.¹⁹⁶ Prevention strategies should also be delivered in settings that are influential in shaping the attitudes and behaviours of children.¹⁹⁷ Embedding respectful relationships education in schools and recreation settings was consistently raised with the Commission.¹⁹⁸

Prevention work with children and young people also needs to be able to respond effectively when violence occurs and to the ways in which it manifests.¹⁹⁹ The Commission heard about adolescents who use violence against family members, and sibling violence, as growing areas of concern. The Commission also heard that these young people are often victims (or have been victims) of family violence themselves.²⁰⁰ Research also demonstrates the seriousness of sibling conflict, including aggression and violence, which has been linked 'to a wide range of negative youth outcomes'.²⁰¹

Prevention strategies targeting children and young people are discussed in more detail in Chapter 10 and Chapter 23.

The influence of media and popular culture on young people was also a common theme raised with the Commission. The need for increased support for young people to engage critically with popular culture and new media, including critiquing representations of women and girls in the media, is a recommendation of NCAS.²⁰²

Current prevention practice in key settings

Places where people live, work, learn and play, such as schools and workplaces, are key settings for implementing prevention strategies.²⁰³ Evidence to the Commission identified a number of key settings for delivering prevention strategies, which are described below.

Schools

Many people the Commission consulted emphasised the importance of educating children and young people about healthy and respectful relationships.²⁰⁴

There need to be education programs in schools about healthy relationships, bullying, intimate relationships. Teaching boys how to treat girls and women and teaching women what comes under the umbrella of abuse. Needs to be mandatory. Girls don't recognise abuse. You need messages outside the family especially if you are in a violent family.²⁰⁵

I think it should be in schools – they talk about sex education, but they don't talk about family violence. Need to explain that everyday abuse is not OK. It's so common, kids don't know what's right and wrong.²⁰⁶

This message was reinforced when the Commission met with the principals and staff of government secondary schools, the Catholic Education Office, Independent Schools Victoria, and the Australian Education Union. The Commission heard a strong and consistent view that the prevention of family violence, and creating generational change in attitudes to family violence, must start with children and young people. The Commission also heard that violence prevention initiatives targeted to children and young people have been shown to work:²⁰⁷

Respectful relationship education programs that are delivered, predominantly in secondary schools, are ... an important development contributing towards preventing family violence ... These programs successfully introduce concepts around gender that challenge existing rigid gender stereotypes that create inequity and violence supportive attitudes and behaviours. This approach works systemically to prevent family violence through creating cultures that are based on principles of equity and respect. Further extension of this work in both the early childhood and primary school settings is needed to ensure that these important messages are being embedded from an early age and in all phases of development. It would be beneficial for this to be incorporated in to government policy and curriculum development across all education settings.²⁰⁸

Recognising the value of schools as a platform to drive cultural and attitudinal change has long been recognised. In 2006 the Victorian Law Reform Commission in its *Review of Family Violence Laws: Report* recommended the Victorian Government consider introducing a 'state-wide and consistent education program for Victorian secondary schools on respect in relationships'.²⁰⁹

Schools are a logical environment for prevention action for a number of reasons:

- ▷ Schools are small communities that provide a 'mass and captive audience' for learning about family violence.²¹⁰
- ▷ As well as sites of learning, schools are workplaces, which means that prevention strategies in schools can reach two main population groups: 'students who are at a critical age for forming their attitudes and knowledge, and a diverse teacher and non-teaching workforce'.²¹¹
- ▷ Violence-supportive cultures are evident in some schools, so situating prevention programs in this setting can target these aspects of the school environment.²¹²
- ▷ Delivering prevention programs in schools is relatively cost effective and less stigmatising than other settings.²¹³
- ▷ Violence prevention education generates broader benefits for schools, and children's overall education and development. It can help make schools safe and supportive environments and reduce time and energy spent on conflict resolution and managing disruptive behaviour.²¹⁴
- ▷ Prevention programs delivered in schools reach beyond the immediate school environment—they facilitate partnerships between the school and parents, teachers and counsellors.²¹⁵

The importance of starting in schools and with education was emphasised to the Commission as essential for all communities. Ms Jill Gallagher AO, the Chief Executive Officer of the Victorian Aboriginal Community Controlled Health Organisation, told the Commission that to 'get violence out of our community, keep families together and give kids the best start in life that we can ... we need education':

For example, we need to run programs in our local schools that teach our young men and young women about what respectful relationships are. Already, as teenagers, we see that our young men are displaying behaviours that are disrespectful and we are seeing our young women accepting that behaviour, they think that it's normal but it's ... not part of Aboriginal culture.²¹⁶

The importance of school environments to the lives of children was highlighted by Hue Man Dang, a year 12 student and Hobsons Bay Young Citizen of the Year.

... schools are the main environment, other than their homes, where children spend most of their day, and it is where children learn the life lessons of what is right and wrong. These institutions combined with a healthy relationship program, will shape the normative and secretive culture of domestic violence, into a healthier one. Most importantly, education into domestic violence will allow students, who have experienced or witnessed domestic violence, to identify stressors throughout their life, which will as a result improve their development and overall education. Schools are an oasis for children who live in violent homes, and to make it a better place, we need to make it more supportive and accommodate the young people who are often neglected.

Finally, we need to show students, this is what a healthy relationship looks like, this is where you go to get help, and we need to let them know that they are not alone. The education program should cover things such as: The definition of domestic violence, what constitutes as domestic violence and the warning signs; causes of family violence and abuse; the differences between a healthy and unhealthy relationships; gender stereotypes within intimate relationships; how and where to seek help; if a victim is being abused, it isn't their fault.²¹⁷

Respectful relationships education

In 2009, the then Victorian Department of Education and Early Childhood Development published *Respectful Relationships Education: Violence prevention and respectful relationships education in Victorian Secondary Schools*.²¹⁸ Developed by VicHealth, the report maps current violence prevention programs in Victorian schools, and identifies the most effective and promising practices in Victoria and elsewhere. The report remains the most comprehensive overview of the evidence relating to school-based primary prevention initiatives.

Prior to 2009, specialist family violence, sexual assault and women's health services primarily delivered these programs, on request by the school. In 2010, the Victorian Government committed to implementing respectful relationships education in schools as part of a multi-setting approach to prevention, under the policy *A Right to Respect: Victoria's Plan to Prevent Violence against Women 2010–2020*.²¹⁹ While the state policy did not continue, pilots commenced in four Melbourne secondary colleges, based on the good practice criteria outlined in the Respectful Relationships Education report.²²⁰ The pilots ran for 10 weeks and tested two units of curriculum—one designed for year 8, to develop a common understanding of gender, relationships and respect; and one designed for year 9, exploring family violence and sexual assault in the context of power, social and institutional structures, and young people's lives.²²¹

In 2014, following this pilot, an optional AusVELS (now the Victorian Curriculum F–10) curriculum²²² for years 8 and 9, called 'Building Respectful Relationships: Stepping Out Against Gender-based Violence' was released. The curriculum provides 'a set of sequential teaching activities to educate secondary school students about gender, violence and respectful relationships'.²²³

Also in 2014, under the Respectful Relationships Education in Schools project, the Victorian Government provided funding to Our Watch to support up to 30 schools in central, outer eastern and western metropolitan Victoria to implement the Building Respectful Relationships curriculum resource. As a result of the project, 4000 students received respectful relationships education.²²⁴ The project sought to build the capacity of the education system through a suite of professional learning for individual teachers and all school staff.²²⁵ Additionally, three specialist project implementation leaders based in Department of Education and Training regional offices worked closely with the schools.²²⁶ Leadership from departmental Deputy Regional Directors was reported as an essential strategy for principals and schools engaging with the project.²²⁷ Internal school project champions (such as the principal, or the curriculum leader), were seen as essential and the most highly valued external supports were the Department of Education and Training regional office specialist project workers.²²⁸ A particularly valued element of their role, according the evaluation, was the translation of a whole-of-school approach.

The draft evaluation report for the project provided to the Commission said that students demonstrated increased understanding about violence, gender and gender inequality, and were also less likely to trivialise and excuse gender-based violence, or victim blame.²²⁹

As stated in the evaluation however, ‘perhaps the greatest impact of the RREiS pilot was the positive changes in student behaviour’, with 64 per cent of 42 teachers stating that there had been a positive change in classroom behaviour.²³⁰

In addition, the evaluation emphasised that schools need to have better training, and access to referrals for responding to disclosures. Increased disclosures from students, as well as from staff members, was common across all schools in the pilot.²³¹ A common theme through all parts of the evaluation was a strong concern about the lack of staff confidence in where to refer, and how to respond, as well as not having procedures in place.²³² This was particularly the case for those disclosures that fell outside of the mandatory reporting guidelines.²³³

As part of the project, Our Watch will develop a suite of resources that can be used ‘by schools, community organisations, local governments, and the Department’s own regional offices as part of a whole of school approach to assist in building school cultures that support equality and respect’.²³⁴

The Commission notes that there are varying understandings about what constitutes respectful relationships education in a school context. As respectful relationships education is a relatively new field, there is not yet a standard model in the Australian context that can guide policy makers and education departments.²³⁵

The Commission heard that there are currently a number of programs, focused on healthy and respectful relationships, being delivered in schools. Several of these have been delivered over a number of years, and have in the main been developed and delivered by sexual assault, women’s health and family violence services. In addition to the program currently being delivered by Our Watch, other respectful relationships prevention programs include:

- ▷ Sexual Assault Prevention Program in Secondary Schools. An initiative of CASA House, this program includes staff professional development, respectful relationships curriculum for year 9 and 10 students, train-the-trainer workshops for teachers, peer educator programs for older students, and evaluation. It depends on strong, committed partnerships between sexual assault services and schools and has been evaluated²³⁶
- ▷ Solving the Jigsaw. Developed by the Centre for Non-Violence (formally EASE) in 1997, this program includes classroom activities, accredited trainers, and professional development of teachers and others to deliver whole-of-school 20-week program²³⁷
- ▷ Girls Talk/Guys Talk. An initiative of Women’s Health West, this program combines year 9 sexuality education with a World Health Organization whole-of-school approach, a feminist philosophy, and VicHealth’s *Participation for Health: Framework for Action*²³⁸
- ▷ Gippsland Respectful Relationships Education in Schools. An initiative of Gippsland Women’s Health, this program seeks to prevent violence against women by promoting gender equality and reducing adherence to rigid gender roles in school communities²³⁹
- ▷ Respect Protect Connect Program. An evaluated initiative of South Eastern CASA, this program offers workshops for students at all secondary year levels, to build understandings of violence, healthy relationships and respect²⁴⁰
- ▷ Reality and Risk. Run by Brophy Family Community Services, which has developed a range of educational materials to promote critical thinking about pornography, including curriculum resources, teacher-training materials, parent education and audiovisual resources
- ▷ Feeling Safe Together. A South Eastern CASA initiative, this program is delivered in a number of primary schools and focuses on advanced personal safety.²⁴¹

The White Ribbon Foundation also offers a respectful relationship program for schools nationally that includes a professional development program, and works ‘with school leadership to embed models of respectful relationships in school culture and classroom activities’.²⁴²

Strengthening the respectful relationship education program

In August 2015, the Victorian Government announced that in 2016, respectful relationships education will be introduced into the school curriculum from prep to year 10. It will 'focus on challenging negative attitudes such as prejudice, discrimination and harassment that can lead to violence, often against women'.²⁴³

The Secretary of the Department of Education and Training, Ms Gill Callister, told the Commission that successful implementation will require the development of age-appropriate curriculum for these year levels:

We have a number of resources currently, as I said, that will help implement that curriculum. But our most immediate focus is to have some independent assessment of those different resources and look at how we develop something much more specific but more primary appropriate for the foundation to year 6. So there will be resources that are more explicit about gender and more explicit about violence. We think we have some of them, but we want some advice about how to integrate them and build on them utilising what we know now about the year 8, year 9 resources.²⁴⁴

On 14 September 2015, the Victorian Government announced the development of a new state curriculum under the Education State reform agenda.²⁴⁵ The government emphasised to the Commission that support for disengaged and disadvantaged students is a focus of the new reforms, noting that factors such as isolation and poverty can indicate an increased risk of family violence.²⁴⁶ The Education State reform agenda notes that funding will be provided over three years to 'help all government school teachers teach the new Victorian Curriculum—including mandatory new subjects like digital coding and respectful relationships'.²⁴⁷

Victorian government and Catholic schools are required to use the new curriculum for Victoria schools, called the Victorian Curriculum (F–10).²⁴⁸ Independent schools may use the curriculum as a model and resource for the effective implementation of the Australian Curriculum.

Ms Callister gave evidence that there are two areas in the curriculum that address the underlying factors relevant to family violence—Health and Physical Education 'learning area' curriculum, and the Personal and Social 'capability' curriculum. In particular, the curriculums in these two areas address gender stereotypes and norms, power imbalances, and the use of violence or aggression to resolve conflict or express negative emotions.²⁴⁹

Ms Callister further advised that the resources available to assist schools in delivering the curriculum are:

- ▷ Building Respectful Relationships: Stepping Out Against Gender-Based Violence, for years 8, 9 and 10
- ▷ Building Resilience: A model to support children and young people
- ▷ Catching On sexuality education resources.²⁵⁰

The Commission was advised that all Victorian government and Catholic schools will be required to implement the new curriculum, including the content about respectful relationships.²⁵¹ How this is undertaken, including the particular resources used, is a decision for the school.²⁵² Funding has been provided to support government schools to implement the new curriculum, including training for school leadership teams and new staff in regional schools.²⁵³

In December 2015, the Victorian Government announced that a new module for year 10 will be introduced, which includes a focus on sexualisation, pornography and gender, and will build on the respectful relationships modules for years 8 and 9.²⁵⁴ The year 10 curriculum was developed with a view to equipping young people to understand how they can develop a positive sexuality that incorporates respect and the negotiation of free and full consent.²⁵⁵

Dr Flood gave evidence to the Commission about the importance of discussing pornography with young people. Dr Flood described the link between pornography and violence as follows:

There is good evidence ... particularly from research among young adults, that pornography consumption, particularly consumption of violent pornography, is linked to the perpetration of sexual violence; that is that young men, for example, who consume pornography, particularly violent pornography, are more likely to be tolerant of and indeed to perpetrate sexual violence to try to coerce or force a girl or woman into sex, than other young men.²⁵⁶

Similarly, the Jewish Taskforce Against Family Violence told the Commission that

... many young men think that what they see on those sites reflects normal sexual relationships and young women feel coerced into complying with their boyfriends' requests lest they are cast aside ... What is required is funding to provide programs which are, in essence, respectful relationship programs but with an emphasis on how porn demeans women.²⁵⁷

A number of submissions commented on the Reality and Risk project developed by Brophy Family Community Services as a project that is contributing valuable resources, research and curriculum focused on 'engaging young people in thinking critically about pornography'.²⁵⁸

The Victorian Government has also announced continued funding for the Partners in Prevention program, led by Domestic Violence Resource Centre Victoria, which aims to build the capacity of school staff to support schools in delivering respectful relationships education. Community organisations which work with early childhood services and primary and secondary schools are included in the program.²⁵⁹

The Commission understands that the Minister for Education has broad powers under section 5.2.1(2) of the *Education and Training Reform Act 2006* (Vic) to issue directions to education institutions. Specifically, section 5.1.2(2)(b) states that the Minister has the power to issue policies, guidelines, advice and directions to education or training institutions in or related to Victoria. In addition, the Minister has the power to set the overall policy for education and training in or related to Victoria.²⁶⁰

In her evidence to the Commission prior to the Victorian Government announcement of the new state curriculum, Ms Callister stated that it may be possible to mandate the inclusion of respectful relationships programs in Victorian schools through use of a Ministerial Direction.²⁶¹

Respectful relationships education in the national curriculum

The inclusion of respectful relationships education in the national curriculum was an agreed action in the *National Plan to Reduce Violence against Women and their Children 2010–2020*.²⁶²

On 18 September 2015, the Education Council, consisting of ministerial representatives from all Australian jurisdictions (and New Zealand), endorsed the contents of the first national school curriculum, from prep to year 10, for Australia.²⁶³ The curriculum includes the following learning areas: English, mathematics, science, humanities and social sciences, the arts, technologies, and health and physical education.²⁶⁴ The health and physical education component of the curriculum includes express reference to respectful relationships, sexuality and safety. The curriculum addresses:

physical, social and emotional changes that occur over time and the significant role relationships and sexuality play in these changes. The content supports students to develop knowledge, understanding and skills that will help them to establish and manage respectful relationships. It also supports them to develop positive practices in relation to their reproductive and sexual health and the development of their identities. In doing so, students will gain an understanding of the factors that influence gender and sexual identities.²⁶⁵

...

[it includes] safety issues that students may encounter in their daily lives. The content supports students to develop knowledge, understanding and skills to make safe decisions and behave in ways that protect their own safety and that of others.²⁶⁶

These topics will be included in the curriculum for all year levels, from prep to year 10.²⁶⁷ State and territory authorities are responsible for implementing the curriculum in their respective jurisdictions, and for the timing of that implementation.²⁶⁸

A whole-of-school approach

The Victorian Government's 2009 Respectful Relationships Education report states that the single most important criterion for effective violence prevention and respectful relationships education in schools is the adoption of a whole-of-school approach.²⁶⁹ This was also a clear message from the Commission's consultations with education and community service providers, researchers and academics:²⁷⁰

The most effective programs – in terms of positive changes to student attitudes/behaviours and to school culture/practices – were those that used a whole-school approach. This meant that prevention of violence was integrated into the curriculum and teacher training, supportive school policies and protocols were developed and widely understood, and school leadership, parents and community organisations were engaged.²⁷¹

A whole-of-school approach requires a prevention program to address four broad areas:

- ▷ curriculum, teaching and learning: curriculum content, pedagogy, resources and outcomes
- ▷ school policy and practices: formal school policies and practices
- ▷ school culture, ethos and environment: informal school culture and ethos (attitudes, values and practices), extracurricular activities, and the social and physical environment
- ▷ partnerships and services: the relationships between school, home and the community.²⁷²

Figure 36.2 Elements of a whole-of-school approach²⁷³



As outlined in the respectful relationships curriculum, a key challenge is for schools to apply the whole-of-school approach comprehensively:

... it may be tempting for educators and others to focus on issues of program content and delivery, and these are undoubtedly important, but more important are the comprehensive involvement of schools in violence prevention.²⁷⁴

The Commission heard that effective implementation of whole-of-school violence prevention approaches requires substantial commitment from schools. Resources and training are one aspect; another challenge is investing the time required to set up the systems and structures to ensure the sustainability of initiatives and their adoption across the whole school and broader school community.²⁷⁵

The Commission heard that there is also a need for both policy and institutional support for a whole-of-school approach, as ‘without support for and commitment to schools-based violence prevention, efforts will be piecemeal, insubstantial, vulnerable and ultimately ineffective.’²⁷⁶ The specialist regional support being provided by the Department of Education and Training, within the current model being tested by Our Watch, was spoken of highly by schools participating in this trial. Feedback from the Our Watch evaluation also reflected that the ‘centralised support and “top down” leadership from Ministers is essential and needs to be sustained’.²⁷⁷

Involving parents is an essential aspect of whole-of-school approaches, as they are one of the ‘critical domains of influence’ on children’s lives.²⁷⁸ A number of submissions raised the importance of including parents in the delivery of school-based prevention programs,²⁷⁹ as well as highlighting the role of schools in changing the attitudes and behaviours of parents.²⁸⁰ Schools and other educational settings play a central role in teaching children and young people about violence against women and how it can be prevented, and provide an environment in which children and young people already living with violence at home or in their relationships may receive support and appropriate referrals.

Schools are also major workplaces and community hubs: the school culture, policies and practices can therefore influence attitudes and behaviours of staff, parents and other adults towards violence, discrimination and stereotyping.²⁸¹ In addition, Our Watch’s recent review of respectful relationships education highlights several ‘infrastructure’ requirements to ensure successful implementation of the whole school model:

- ▷ policy and planning frameworks helping to mainstream respectful relationships education into implementation and school strategic plans
- ▷ programs are supported and included within school global budgets
- ▷ schools engage the right expertise, such as gender and family violence experts
- ▷ the whole school community, including school leadership, teachers, parents/carers and school staff is engaged and supportive.²⁸²

Principles of school-based prevention

Effective implementation is a critical element in the success of school-based prevention programs. Conversely, inadequately resourced programs are ineffective, and in some cases cause harm.²⁸³ An international review of the available evidence undertaken by Our Watch has distilled seven criteria of good practice in schools-based violence prevention programs:²⁸⁴

- ▷ Take a ‘whole-of-school’ approach—recognise that change will not be achieved through classroom learning alone.
- ▷ Address the drivers of gender-based violence—respectful relationships education approaches need to acknowledge the power imbalances that foster gender-based violence in age-appropriate ways.
- ▷ Have a long-term vision and the funding to match—political leadership and sustainable resourcing is required to ensure respectful relationships education is embedded across all schools.
- ▷ Establish mechanisms for collaboration and coordinated effort—working in partnership with specialist services is key to supporting successful implementation in schools. These specialist services will require increased support to respond to disclosures.
- ▷ Ensure integrated evaluation and continual improvement mechanisms are in place—there are currently no longitudinal research studies in Australia to demonstrate the effect of prevention strategies on the prevalence of family violence.
- ▷ Provide resources and support for teachers—well-trained teachers can teach respectful relationships education and promote gender inequality through all their subjects. Teachers will require access to secondary consultation and specialist support when they require advice on how to approach a specific student’s issues or disclosure.
- ▷ Use age-appropriate, interactive and participatory curriculum—curriculum needs to match the developmental age of students, and should be designed to allow for applicability to students of all diverse backgrounds.

Reaching children and young people not in schools

The Commission notes that school-based interventions will not reach all young people. Many young people most at risk of perpetrating or experiencing family violence may not be engaged with formal educational institutions. School-based interventions therefore need to be complemented by interventions targeted to children who do not attend school.²⁸⁵

The need for joined-up approaches across prevention and response settings for children and young people was emphasised:

The historical focus of work in this area with children and young people has been on responding to existing violence and (more recently) on intervening early. As a result, early intervention and response programs and systems exist in a number of settings and across jurisdictions nationwide. A key challenge and opportunity lies in ensuring a ‘joined up’ approach, so that children and young people who experience violence are not only respected, supported and encouraged in their own efforts to overcome its impacts – but that all children and young people in Australia grow up with the skills to build healthy relationships and reject violence.

Education, health and social services departments can play a key role in ensuring and/or strengthening such a coordinated and holistic approach between primary prevention, early intervention and response initiatives with this age group.²⁸⁶

The Commission heard that from 2016, the Victorian Government will fund new initiatives responding to children and young people who are disengaged from schooling.²⁸⁷ These strategies included new Lookout Centres, working with children in out-of-home care,²⁸⁸ and the 'Navigator' initiative, which will provide specialist support workers to maintain regular contact with disengaged young people.²⁸⁹ These initiatives are discussed in Chapter 10.

Tertiary institutions

There is limited prevention work currently undertaken in Victorian universities. The Commission heard that Monash University is participating in the White Ribbon Workplace Accreditation Pilot Project and has a focus on promoting gender equity; and La Trobe University includes a focus on respectful relationships through their Living Well student counselling and education program.²⁹⁰ Compared to universities in the United States however, where sexual violence prevention programs are a common feature of induction for first-year students, this area is underdeveloped.²⁹¹ Dr Flood informed the Commission that the international evidence is positive with regard to the effect of these programs, and a 'systemic rollout in Australia' should be considered.²⁹²

Our Watch submitted that the university setting offers unique opportunities to implement prevention activities, with potential to drive whole-of-campus activities, link to associated professional development for relevant university educators, develop tools for students to engage in respectful relationships and take bystander action, and reach a number of businesses who are onsite at the university.²⁹³

The Department of Education and Training informed the Commission of relevant work in the area of vocational and higher education, including standards and guidelines that recognise that students attending vocational training and higher education settings may be experiencing family violence.²⁹⁴

The Commission also heard that Victoria University, working in partnership with Victoria police, relevant experts, and local support services, is developing a Respect and Responsibility policy that includes professional development for university staff and students, and bystander strategies.²⁹⁵ A key driver of this policy was VU acknowledging 'the prevalence and impact of violence against women on individuals, communities and our society in general' and understanding 'our responsibility, as a public institution, to support those who have experienced this violence'.²⁹⁶

Given individual students can be with us for a number of years, an opportunity is created for the University to undertake activity which raises awareness of the unacceptable nature of violence against women and provides students with the necessary behaviours and skills to reject this violence, as they progress into the broader community.²⁹⁷

The role of universities in incorporating an understanding of family violence into curriculum and pre-service training is discussed in Chapter 40.

Local government

For many years, local government has been a key setting for mobilising local communities to prevent family violence.²⁹⁸ Local councils have broad reach and access to members of the community who may be otherwise hard to reach, such as people with disabilities, people from culturally and linguistically diverse backgrounds, and Aboriginal people. Local councils are also major employers, and in rural and regional areas are often the largest employer in the whole local government area and are therefore ideally positioned to implement workplace-based prevention initiatives.²⁹⁹

The Commission received over 26 submissions from local government, and 29 local governments were represented at community consultations. These representatives told the Commission about numerous programs and initiatives undertaken by local councils or by councils in partnership with the Victorian Government, aimed at preventing family violence.³⁰⁰

A number of councils mentioned the statewide capacity-building program funded by the Victorian Government through the Municipal Association of Victoria, which provides expert advice and support to all local councils relevant to prevention initiatives.³⁰¹ The Commission also learnt about funded partnerships between VicHealth and local governments.³⁰²

In 2009, the Victorian Government funded the Preventing Violence Against Women Local Clusters Project, which involved the Outer Eastern Metropolitan Cluster, Maribyrnong City Council and the Mount Alexander Shire Council. An overview of this project is presented in the case study below.

Some councils are members of family violence regional integration committees, and the Commission heard that councils are also involved in forming Children and Youth Area Partnerships, which are aimed at better addressing child and youth vulnerability.³⁰³ These partnerships are discussed in Chapter 10.

The Commission understands that a significant number of councils currently include activities to address violence against women or family violence in their 2013–17 Municipal Public Health and Wellbeing Plans.³⁰⁴ A number of submissions received by the Commission include a recommendation that the Victorian Public Health and Wellbeing Plan should mandate the inclusion of family violence prevention programs in municipal plans.³⁰⁵

In addition to specific, targeted programs that look to prevent and respond to family violence, many local governments have made efforts to promote the prevention of family violence and violence against women in the broader community. This includes programs and strategies that aim to reduce gender inequality at a community and organisational level. Maribyrnong City Council, for example, introduced the She's Game program in 2015 which sought to increase the participation of women and girls in local sporting clubs.³⁰⁶

In 2012, the City of Ballarat endorsed the *City of Ballarat Community Charter for the Prevention of Violence Against Women*.³⁰⁷ This charter aims to:

highlight the need for a community approach to prevention, gather support for action that reduces violence against women and inspire people to act at an individual and community level to eliminate the attitudes that support violence. Approximately 3000 residents have signed 'The Charter' since its launch in October 2012. The Charter has not been formally evaluated, however its exposure to the community in a wide variety of settings (including education, business and community) has allowed for a community conversation and greater understanding of the extent of violence against women.³⁰⁸

Like the City of Ballarat, many local governments have created a plan for the prevention of family violence. For example, Brimbank City Council has worked to implement the Brimbank Family Violence Prevention Action Plan (2010–2013), which outlines 'a whole-of-Council approach to create a respectful, gender equitable and violence-free community in the municipality'.³⁰⁹

As discussed further in Chapter 37, many local governments have sought to make their own organisations more aware of preventing and recognising family violence. In 2010, Surf Coast Shire Council introduced a family violence clause into their Enterprise Bargaining Agreement allowing up to 20 days of paid leave for staff experiencing family violence.³¹⁰ Other local governments have adopted this clause and/or have sought to make their employees more aware of family violence and how it may be affecting not only the community but their own staff as well.

Case study: Preventing Violence Against Women Local Clusters Project

The evaluation of the Victorian Government Preventing Violence Against Women Local Clusters Project,³¹¹ initiated in 2009, has provided information to inform further investment in place-based initiatives. The project's aims were to embed cultural change in local governments to mainstream gender equity across policy and programs, and build skills in local governments and their communities to promote respectful relationships and non-violent norms. An evaluation was undertaken by the Australian Institute of Criminology. Positive findings included:

- ▷ increased understanding and awareness of the severity and prevalence of violence against women and its underlying causes among council staff
- ▷ the capacity of council staff to promote gender equitable relationships and non-violent norms improved
- ▷ the project was innovative in both its design and approach to preventing violence against women, particularly in terms of the role of local government.

The evaluation concluded that local government should continue to take a leadership role in the delivery of prevention initiatives. The evaluation however reported a number of barriers to successful implementation. These included insufficient senior management 'buy-in' across the local councils, due to inadequate project management resourcing. The original intent of other mutually reinforcing programs were to be included (such as programs in schools and workplaces) did not eventuate, due to state government funding decisions. There was also wide variation across councils around the selection of particular activities, resulting in difficulty measuring any cumulative impact.³¹²

Place-based initiatives

Place-based initiatives are collaborations between government (often local government) and a local community, including businesses, service providers and community groups. The Commission heard about place-based prevention initiatives which harnessed community effort by establishing trust and respect, and recognising the existing of cultural practices that may 'assist (or hinder) the change process'.³¹³ The Rotary Club of Maryborough submitted that the community needs to accept that change is required³¹⁴ and that the Victorian Government should then actively support local campaigns to progress change.³¹⁵

Mr Jeremy Hearne, Manager of Prevention, North and Inner North at cohealth, also told the Commission that place-based initiatives must be targeted to the local community, and engage with the community where 'they are ready to start the conversation'.³¹⁶ This was the approach of New Zealand's It's not OK program:

The idea is we will support local communities to be able to pick that up and drive that themselves. So it's really taking a linking national to local kind of approach. The community mobilisation or community action is about local communities who what to do something about family violence but are not sure where to start or what to do, and the campaign team will help support them in terms of identifying where their community is at, what they are ready for, what are the right messages, what's going to work, what might work in this community.³¹⁷

The Commission heard that while place-based approaches may be diverse, the principles underpinning them should be consistent.

Local and regional knowledge is essential in ensuring successful community led approaches based on universal principles which are tailored to specific areas and populations. These should build on pre-existing networks and communities of interest and engage local leaders and influencers from a range of sectors, including community, health, education, business, sport and agriculture, essentially engaging mainstream partners.³¹⁸

Implementing a whole-of-community approach to preventing violence against women: Lessons from effective practice

The Australian Institute of Criminology was commissioned by the then Victorian Department of Human Services' Office of Women's Affairs to prepare a guide for agencies, such as local government, implementing whole-of-community strategies to prevent violence against women.

The guide was developed following a comprehensive literature review, a small number of focus groups and workshops, and a review and analysis of past evaluations of the Preventing Violence Against Women in our Community Project. Because research specific to whole-of-community approaches to preventing violence against women is limited, the Institute also drew on community-based programs for other social problems such as 'health disorders (eg childhood obesity), child abuse and neglect and criminal offending (eg alcohol-related violence)'.³¹⁹

The guide defined 11 principles, based on best-practice evidence, for the design, implementation, delivery and management of a whole of community approach.

1. Communities should be selected on the basis that they are ready to receive, support and participate in the program.
2. The operation of the program should be overseen by a high-level governance body comprised of representatives from key program agencies who have delegated authority and have demonstrated their willingness and ability to work together.
3. Prior to implementing the program, it is important to develop an accurate understanding of the nature, extent and causes of VAW [violence against women] (determinants and contributing/protective factors) in the community being targeted.
4. Program staff and coordinators should attempt to collaborate with a range of key partners and in key settings in a range of capacities. Key partners should be selected on the basis they have a role to play in preventing VAW, have demonstrated their willingness and ability to work together, and their culture is consistent with the key aims and messages of the program.
5. Identify the level of community engagement required to drive the program, and the tools and methods that will be used to facilitate this process.
6. Involve men as leaders, participants and advocates and approach them as partners in addressing VAW rather than simply as the cause.
7. Appropriate strategies should be identified early in the program period and supported and maintained throughout the program period.
8. All aspects of the program should be deliverable with the available resources.
9. Responses that target key determinants, contributing and protective factors for VAW, are supported by evidence of effectiveness and are relevant to the intended audience.
10. Plan for evaluation from the start of the program period and identify short-term and intermediate outcomes that are attributable to the program.
11. Plan for program sustainability by ensuring that the program is implemented in accordance with evidence-based principles, identifying opportunities for ongoing funding throughout the life of the program and embedding the program in core work undertaken by program partner agencies.³²⁰

Source: Based on Australian Institute of Criminology report produced to the Commission by the Department of Premier Cabinet.³²¹

The Commission heard about several examples of place-based initiatives to prevent family violence within local communities.

Generating equality and respect project

The Generating Equality and Respect pilot is a place-based model funded by VicHealth, which commenced in 2012. The program was delivered over three years through a partnership between VicHealth, Monash City Council and MonashLink Community Health Service. Previous VicHealth investments have focused on prevention efforts within 'single' settings, such as in local councils, in workplaces and in sporting clubs. GEAR was designed as a 'saturation' model, providing one community with many mutually reinforcing programs. Its goals included to:

- ▷ build communities, cultures and organisations that are gender equitable and value and support non-violent norms
- ▷ foster respectful and equal relationships between men and women
- ▷ realise sustainable primary prevention through strong collaboration with established and new partners
- ▷ pilot an innovative model for the primary prevention of violence against women that is transferable and informs practice.³²²

Over the life of the program, prevention activities focused on the suburb of Clayton and included:

- the Baby Makes 3 program, for first time parents delivered through Maternal Child Health Services
- an organisational change program at MonashLink Community Health Service and Monash City Council to promote respect and equality within the workplace, which will be extended into the broader community through the programs and services they deliver
- a suite of training has been delivered to more than 700 participants including the VicHealth Preventing Violence Against Women Short Course and Leaders' Masterclass
- a local Monash Partners in Prevention Network to actively support youth practitioners to deliver good practice respectful relationships education and promote gender equality through their programs and services. Network members include local teachers, police, school nurses, youth services and community organisations
- Robert Bosch Australia, a significant employer in Clayton, is a partner in the program and has joined forces with Monash Council, MonashLink Community Health Service and VicHealth to raise awareness of family violence and respectful relationships for its male and female employees. The Clayton headquarters of Robert Bosch Australia is a home for awareness raising and training activities integrated into existing staff health and HR programs over the next six months.³²³

The evaluation of GEAR found that having effective gender equity processes in place within lead organisations is a necessary prerequisite to work in external settings. In effect, prior to undertaking work with communities, organisations needed to 'get their own house in order':

Of the settings included in the Program those that attained most depth were the two organisational partners. Having mature and embedded gender equity processes in place within lead organisations is a necessary prerequisite to work in external settings, and in particular communities and or/sites.³²⁴

This element was emphasised in research underpinning the development of the GEAR model which indicated that leadership was a key ingredient in place based interventions: 'if there's no authority or buy-in, there's no reach'.³²⁵ The GEAR evaluation also found that leadership within a place-based intervention requires organisational and partnership agency backing, with links to specialist support and expert partners to build credibility. In addition, the evaluation reinforced that as a prevention to place based prevention, a well-functioning violence against women response system was a prerequisite.³²⁶

Go Goldfields

The Central Goldfields Council has developed a strategy to address disadvantage within the Central Goldfields Shire. The Go Goldfields Alliance is the committee tasked with implementing the strategy. The Alliance includes a Family Violence Action Group, which has developed the Central Goldfields Family Violence Strategy. The strategy covers prevention, early intervention/detection, tertiary response and capacity building.³²⁷ Prevention actions include:

- ▷ funding a maternal and child health nurse to consider prevention and early detection strategies in rural communities
- ▷ training service providers to recognise family violence
- ▷ using a White Ribbon event to raise community awareness of family violence.³²⁸

The evaluation report for the first stage of the Go Goldfields program, states in relation to family violence that:

Go Goldfields has produced a Family Violence Position Statement to acknowledge that family violence is a community issue and there is collective responsibility to take action against it. Apart from Council, there have been no other signatories. This indicated that more work is required to fully engage the Go Goldfields Alliance in the family violence work.³²⁹

SAFE

Maryborough Rotary told the Commission that it decided to take action on family violence because the Maryborough region has 'one of the highest rates of family violence in the state'.³³⁰ After consulting with their local council and groups like Go Goldfields, Maryborough Rotary developed the SAFE model to change community attitudes about family violence:

... everyone has a responsibility to act and a role to play in addressing family violence. SAFE would provide an umbrella to coordinate community messaging [about family violence] and work with the district's support services and partner organisation networks. Central to the social change model was its communications and marketing strategy.³³¹

One of the club's first steps was to 'make a public statement in the form of a White Ribbon oath, pledging to take a stand against family violence and to become strong advocates for its eradication'.³³² Mr Garry Higgins, Membership Director of Maryborough Rotary, argued that this experience 'seeded the motivation to put words into action'.³³³

Since the SAFE program was launched in January 2015, education programs have been rolled out in workplaces, sporting groups, schools and the general community. Initiatives include:

- ▷ preparing and disseminating wallet cards with information and advice about where to get help³³⁴
- ▷ sponsoring a message campaign that used local transport company truck signage to spread the campaign message
- ▷ working with sporting clubs to get the SAFE messages to target groups like young males
- ▷ funding overseas travel for vocation scholarships to benchmark best-practice family violence projects in overseas communities³³⁵
- ▷ sponsoring bystander projects to help people know what to do if they are aware of or witness someone subject to or perpetrating violent behaviour. These were delivered through onsite workplace education.³³⁶

Mr Higgins stated to the Commission that as a result of the SAFE project, there is greater awareness of family violence in the Maryborough community and this has influenced decisions made by local government and service providers. A group has been established to promote collaboration in delivering community focused services, and there is a plan to establish a family violence project in the shire with a dedicated worker. Reporting of family violence has also increased.³³⁷

Workplace and organisational settings

Workplaces are an important site for family violence prevention and response strategies. Women's experience of violence in the home affects the workplace in many ways, and workplaces can play a direct role in supporting victims of existing violence. Workplaces can support victims through providing access to services and a safe place away from home, and through providing family violence leave. Workplaces can also reduce the future harm of violence by supporting women to retain employment. Being unemployed can contribute to keeping women 'stuck' in violent situations as they lack the financial autonomy to leave.³³⁸

Workplaces are settings that provide significant opportunity to reach large sections of the population, as well as unique potential to reach and support vulnerable or isolated groups. For newly arrived immigrant or refugee women, the workplace may be the only contact with systems of support beyond their own families.³³⁹

Organisations and organisational cultures are increasingly recognised as having significant potential to influence and shape social norms, through modelling respectful behaviours and reinforcing gender equitable and non-violent cultures.³⁴⁰ Workplaces can play a key role in building people's capacity to challenge sexist, discriminatory and bullying behaviours and cultures. Active bystander training has been identified as an important aspect of all prevention initiatives undertaken in workplaces and organisations.³⁴¹

As with all prevention activity, organisational change is not a short-term exercise, and each organisation is likely to face different issues. A key finding from an interim evaluation of workplace partnerships in the western region of Melbourne titled *United: Working Together to Prevent Violence in the West* highlights the need to engage senior management to implement prevention strategies effectively in the workplace.³⁴²

The role of workplaces is further discussed in Chapter 37.

Sports settings

Sports clubs are accessed by a large segment of the community and so are a key setting for promoting prevention and gender equity equality programs. They can also be primary sites for reinforcing negative community attitudes about women, and some sporting environments may increase the risk that men associated with them will perpetrate violence.³⁴³ Recent media reports of women being harassed by prominent sportsmen highlight the need to target sport settings for prevention activities.

The Commission heard that sports clubs have an important role to play in influencing the behaviour of men and boys.

In part, sport has been identified as a setting for primary prevention as a result of the number of high-profile incidents of sexual assault and violence against women, and also because of the sexist peer norms that are often associated with male-dominated sports (Dyson & Flood, 2008). This has been described as 'group disrespect', a phenomenon which includes rude and aggressive behaviour, consumption of pornography, and encouragement of group drinking at both individual and group levels (Rosen et al., 2003).³⁴⁴

Some of the most well-developed workplace initiatives aimed at men have taken place among athletes in male-dominated sporting workplaces.³⁴⁵ Both the Australian Football League and the National Rugby League have developed violence prevention programs for their athletes and the wider communities associated with these sports. The AFL's Respect and Responsibility initiative was developed with VicHealth in consultation with violence prevention agencies, and launched in 2005. The initiative includes changes to AFL rules regarding violent behaviour, education of players and officials, development of model policies and procedures, and a public education program.³⁴⁶

In 2015, the Commonwealth Government provided funding for a Sports Grants program, managed by Our Watch, to 'facilitate violence prevention activities in the sporting community and embed gender equality and respectful relationships into their networks and communities'.³⁴⁷ The AFL, NRL, Netball Australia and Australian Rugby Union will each receive \$250,000 over a three-year period to participate in the program, and will contribute their own additional funding to demonstrate their commitment.³⁴⁸

Dr Sue Dyson, Associate Professor and Principal Research Fellow at the Australian Research Centre in Sex, Health and Society, La Trobe University, evaluated the AFL Victoria program Fair Game Respect Matters, a program that works with clubs to create socially inclusive environments and promoting gender equitable programs and environments behaviours.³⁴⁹ Dr Dyson spoke to the Commission about the longer-term outcomes that such programs can deliver:

Early changes that I observed in clubs were superficial. Women in clubs were consulted about what would make the club more welcoming for them. From this emerged simple solutions like cleaning up the female facilities, installing baby change tables, and decentering the bar – which was usually at the centre of the club rooms where (mainly male) social gatherings occurred. By making simple physical changes, more women started to see the club as welcoming and stayed for longer rather than dropping their children at training and leaving. These clubs focused on becoming family-friendly as well as on encouraging equal and respectful relationships ... Six years on, we can see more complex, nuanced changes that have emerged in the culture of clubs and the structure of the organisation. Women have asserted themselves in a range of roles and are making themselves heard in operations, such as decision making and in a range of (often non-traditional) on- and off-field positions. Structural change has also been implemented at the head office of AFL Victoria: policy changes have been introduced and social responsibility mainstreamed into every aspect of the sport, so equal and respectful relationships have become part of training for coaches, umpires and development staff who work in schools and with Indigenous and multicultural communities.³⁵⁰

Bystander intervention

A bystander is somebody who observes an act of violence, discrimination or other unacceptable or offensive behaviour. Bystander action refers to actions taken by a person or persons who is not the victim or perpetrator of violence to identify, speak out about, or seek to engage others in responding to specific incidents of violence and/or behaviours, attitudes, practices or policies that contribute to violence.³⁵¹

Bystander action can have different objectives. While some forms of bystander action require intervention in violent incidents, others challenge the social norms and attitudes that perpetuate violence in the community.

Bystander training is a prevention approach that is increasingly being adopted by sports teams. Research undertaken with professional male athletes in the AFL highlights the value of this work, but it also raises some significant challenges. The research indicates that while many men are willing to raise concerns when others express disrespectful attitudes or behaviours towards women, there were substantial numbers that were hesitant or unwilling to do so:³⁵²

... it depends on who the comment was said to. Like you know if someone said to a random girl walking past something super-derogatory, you'd just have to [say] 'What was that? I don't know if I liked that at all'. But you know, if we're just in here and someone just makes a joke about someone's mum or wife, or something like that, the boys just generally laugh it off.³⁵³

Some of the reasons given by men for not responding to disrespectful behaviour include:

- ▷ fear of not belonging to the group
- ▷ being young and lacking in confidence
- ▷ concerns about the implications of intervening
- ▷ homosocial codes of silence, that is, 'what happens on the end of season trip stays on the end of season trip'.³⁵⁴

The Commission heard that this research reinforces the need for prevention interventions to be appropriately tailored to the existing culture of the specific organisational, sporting or workplace context.³⁵⁵

Sport is also a useful way to reach particular communities. The Commission heard of an indoor soccer program in Whittlesea that works with Iranian men, providing targeted respectful relationships training 'adjusted to incorporate a human rights, legal education and settlement lens'.³⁵⁶

The Municipal Association of Victoria told the Commission that local and state governments have particular leverage with sports clubs given the funding they contribute to sport and recreation associations. Local councils, in particular, intersect regularly with these associations.

There are a number of programs directed at improving the participation of women and girls in sporting activities.³⁵⁷ While these may not be specifically aimed at reducing family violence, they may contribute to doing so. The Commission heard about the Active Women and Girls Policy introduced by Moreland City Council in 2009. The policy is directly linked to sporting ground allocations, and any club wanting to access community-owned facilities for their sports teams must demonstrate the role girls and women have at their clubs. Moreland City Council has seen a substantial increase in participation by girls and women since the implementation of the policy.³⁵⁸

The Gender Lens for Leisure project, led by Knox City Council, has produced a 'suite of recommendations' for the council's three outer east leisure services teams (Knox, Maroondah and Yarra Ranges) around identifying 'the ways in which leisure services can support the equal participation, inclusion and respect of women and girls in sport and recreation activities'.³⁵⁹

Media and popular culture

The normalisation and acceptance of violence against women portrayed in media, is a factor contributing to violence against women.³⁶⁰ The media is therefore an important site for influencing the prevention of violence,³⁶¹ and many submissions received by the Commission highlighted their important role.³⁶² Other submissions suggested that building awareness does not necessarily lead to changed behaviour: 'The recent increase in media exposure and awareness is making the public more aware but unfortunately awareness is not transferring into a change of perceptions or attitudes'.³⁶³ Mr Joe Calafiore, Chief Executive Officer of the Transport Accident Commission also commented on the media's 'important and a critical role in influencing debate, [both] good and bad'.³⁶⁴

In 2015, the Victorian Government released *Working with News and Social Media to Prevent Violence Against Women and their Children: A strategic framework for Victoria (2015)*.³⁶⁵ Developed by Domestic Violence Victoria, the framework makes it clear that accurate news coverage and engaged social media interaction around family violence makes a positive contribution to prevention efforts.³⁶⁶ The framework emphasises the need for:

- ▷ accuracy in reporting
- ▷ challenging common myths
- ▷ ensuring women's experiences of violence are accurately and sensitively communicated.³⁶⁷

The Commission also heard about the Eliminating Violence Against Women Media Awards, first funded by VicHealth through Domestic Violence Victoria.³⁶⁸ The EVAs honour journalists for excellence in reporting on violence against women, and include guidance and training for journalists. In 2014, the EVAs became the Our Watch Awards, with Our Watch continuing to coordinate the awards annually. The Commission heard that these awards have made a positive contribution to more responsible journalism, and are a successful incentive-based approach to prevention.³⁶⁹

A recent current 'state of knowledge' review by ANROWS regarding media representation of violence against women and their children has further contributed to understanding the media's role and influence around family violence.³⁷⁰ The review highlights:

- ▷ the frequency with which stories about violence against women are sensationalised
- ▷ over-reporting on incidents where the perpetrator is female
- ▷ the propagation of myths such as 'stranger danger'
- ▷ how the media can reinforce victim blaming by providing excuses for perpetrators.³⁷¹

Another initiative that has received positive attention is the Media Advocacy Project, which 'empowers women by giving them the tools to tell their stories so that they are heard and understood'.³⁷² The statewide service Safe Steps Family Violence Response Centre has operated the program over several years. The Commission also heard that a number of women's health and family violence services run similar programs as part of their media advocacy.³⁷³

The importance of strong engagement between specialist family violence services and the media, particularly local media, was emphasised to the Commission as a way to ensure that the media makes a positive contribution to preventing violence against women.³⁷⁴ The Commission also heard positive examples of local Aboriginal community family violence prevention initiatives working in partnership with local media, in particular the Mallee District Aboriginal Service's Community Safety Project TV advertisements.³⁷⁵

Faith-based contexts

Faith communities are places where people 'learn their values, experience community [and] practise their gender relationships' and are therefore, as much as any other setting, a space to target prevention strategies.³⁷⁶

The Commission heard several examples of faith and spiritual leaders responding to and preventing family violence in the community. As noted in Chapter 29, the Anglican Diocese of Melbourne launched Anglicans Helping to Prevent Violence against Women in 2011, which is a primary prevention model that seeks to build 'a culture of equal and respectful gender relationships in Anglican organisations and local churches'.³⁷⁷ Another model was the CHALLENGE Family Violence project, an interfaith collaboration involving three local governments (City of Casey, Cardinia Shire Council and City of Greater Dandenong), and Monash Health.³⁷⁸ A component of this model focuses on influential male community leaders 'promoting ... gender equity and challenging sexism [and] male privilege ... within their spheres of influence'.³⁷⁹

The Anglican Diocese of Melbourne submission emphasised to the Commission that preventing family violence requires sustained work, commitment and resourcing, as 'challenging deeply engrained norms ... affect how women are viewed and treated, individually and systemically'.³⁸⁰

Women's voices are largely silent in my church except in the choir, Sunday School and women's groups. Women seeking a voice have to counter the many theological arguments – based on Biblical interpretation – advanced to deny women access to church leadership. What is worse, women like me who strive to break with tradition find themselves in many instances without the support of their own gender in their struggle.³⁸¹

The Commission heard that providing faith leaders with sustained support and training was essential.

Active bystander training, coaching and peer mentoring all assist leaders to develop a deeper understanding of the issues involved in prevention work and builds capacity for change at a structural and cultural level. One-off awareness raising sessions that are not linked to training, are the least effectual in terms of bringing about any significant change to attitudes or behaviour.³⁸²

Faith-based communities and family violence are discussed further in Chapter 29.

Challenges and opportunities

A consistent message to the Commission in evidence and submissions was the need for an integrated, system-wide approach to primary prevention, which encompasses governance mechanisms, funding and resources, and provides a framework to address all forms of family violence.

The absence of a primary prevention strategy

Many submissions articulated the need for a statewide strategy to prevent all forms of family violence.³⁸³ For example, Darebin City Council submitted that ‘without leadership, a state policy commitment and plan to implement primary prevention actions, our [prevention] efforts are greatly diminished’.³⁸⁴ In its submission, the State of Victoria recognised that ‘Victoria needs a consistently applied and resourced prevention framework with both universal and targeted programs’.³⁸⁵

The Commission heard that while increased awareness of the need for prevention programs has led to innovation, in the absence of such a framework, the standards guiding these programs and broader benefits of these programs are unknown.

The Chief Executive Officer of Domestic Violence Victoria, Ms Fiona McCormack observed:

What we’ve got now, family violence is like the flavour of the day, and we get every man and his dog claiming “oh yes we do prevention, we do prevention”. We get civic groups saying: “We’re starting a website, we’re doing this for women, or we’re doing this for men”. People who have absolutely no qualifications, expertise, they’re people in the community. If we’re going to prevent violence against women we actually need the community, but without a policy framework that says “in Victoria this is what informs our approach, and this is where we’re heading”, it’s very difficult to hold those organisations to account, or even bring them in under the umbrella, in the fold, which is what is needed.³⁸⁶

The Commission heard, for example, that the diversity of respectful relationships programs currently available to schools presents challenges:

As public awareness of family violence has grown, many community members have become interested in working with young people on the topic, developing their own modules and engaging directly with schools. This process is not guided by any central coordinating body, accreditation process, or minimum standards, and as such the style, content and quality of programs vary considerably. Some programs are not informed by current research, and may promote ideas about gender and violence which are confusing or harmful.³⁸⁷

The Commission heard that a statewide prevention policy and corresponding plan should be informed by research on best practice and implemented across key settings, as outlined in the previous section of this chapter, and that it should be supported by strong infrastructure. The infrastructure most commonly identified in the evidence before the Commission was:

- ▷ leadership and governance mechanisms at all levels
- ▷ funding and resources
- ▷ a framework that addresses all forms of family violence
- ▷ a trained prevention workforce
- ▷ evaluation and monitoring.

The Commission heard that prevention strategies must address gender inequality, as well as being linked to other policy agendas related to family violence:

Prevention of violence against women activity should be conceptualised as having ‘common cause’ with policy and practice agendas to end alcohol abuse, redress socio-economic disadvantage or prevent violence against children, for instance, and should seek to inform and strengthen such agendas (and be informed and strengthened by them).³⁸⁸

In the same vein the World Health Organization reported that there is little coordination between programs and research agendas on child abuse, alcohol and substance misuse, and intimate partner and sexual violence and yet ‘all of these problems regularly affect families, predictably with greater frequency in economically disadvantaged communities where there is often also greater inequality between women and men’.³⁸⁹

Submissions emphasised the importance of ensuring that there was an effective support system to back up prevention strategies:

Primary prevention can often be associated with a surge in service demand and police reporting and referrals, as community awareness about violence against women increases, the topic loses its ‘taboo’ status, and women experiencing violence become more aware of their rights to live free from violence.³⁹⁰

Leadership and governance

Strong government leadership and policy around prevention is urgently required.³⁹¹

Active engagement and formal support from leaders at all levels of government, non-government organisations, and private sector agencies was cited as essential to ensuring the development and implementation of a statewide prevention strategy. Dr Dyson described the need for ‘authorising environments’ to champion and propel change:

... those formal and informal bodies and significant individuals that provide legitimacy and support for a particular issue or area. These might include governments, community organisations and non-government organisations, religious leaders, senior managers, published research based evidence, high profile advocates, the media and many others that have an influence on public opinion.³⁹²

Dr Dyson emphasised that the ‘importance of authorising environments at all levels cannot be overstated as the foundation’ of effective prevention strategies.³⁹³ She told the Commission that two key factors for success emerge from evaluations of sexuality and relationships programs in Australia: ‘active leadership from the school principal and high-quality training for teachers’.³⁹⁴

There was a focus in the evidence on the fundamental role of the Victorian Government in creating the conditions for other organisations to drive change.³⁹⁵

Ms Helen Campbell, Chair of the Eastern Metropolitan Regional Family Violence Partnership, told the Commission that clarity from government is required to support services working more effectively together.

We will do everything within our power to build those relationships and partnerships at a regional level. But at the same time we all need the same shared authorising environment which stipulates a very clear and unequivocal statement of what safety looks like and means for every single service sector in the state.³⁹⁶

In terms of regional leadership and planning for prevention, the Commission heard that women’s health services have played a substantial role in building regional partnerships with local government, specialist and community organisations, and most now have published regional prevention plans.³⁹⁷

The *Women's Health Services Leading Regional Action to Prevent Violence Against Women and Children 2013–2015* project was developed by the Women's Health Association of Victoria (WHAV) and funded by the Department of Health and Human Services.³⁹⁸ The statewide service Women's Health Victoria, is the lead agency and coordinator of the project and will play a primary role in ensuring the guidelines are maintained and updated and that the tools and resources are current and evidence based.

The project aims to support a consistent and coordinated approach to primary prevention activities across Victoria, with outcomes including a new online hub, called Equality and Safety for Women, that brings together information, evidence, tools, resources and best practice examples to support planning, implementation and measurement of primary prevention efforts in the Victorian regional context.³⁹⁹ The online hub was launched in late 2015. A guide has been prepared to assist those preparing regional plans, and the Victorian Government has funded Women's Health Victoria to appoint a person to support the preparation of these plans.⁴⁰⁰

Women's Health West Inc. described to the Commission how their regional prevention plan, *Preventing Violence Together* has contributed to a better coordinated prevention system:

... as a result of their participation in the United project, 100 per cent of Preventing Violence Together partners have integrated primary prevention and/or gender equity into significant organisational and community planning documents (including integrated health promotion plans and municipal public health plans). This demonstrates that the commitment to primary prevention, as well as the vision and leadership for it, are steadily and surely building in our region. Even though it is still early days, regional action plans such as Preventing Violence Together appear to be effective in forging links between partners, harnessing the strengths and capacities of each, and working for a seamless primary prevention system of partner organisations with incredible reach into the wider community.⁴⁰¹

Women's Health in the North highlighted in its submission some of the achievements since it launched its regional prevention strategy in 2011, *Building a Respectful Community Strategy*:

In May 2013, 50 organisations endorsed the vision and goals of the strategy, including seven councils, nine community health services, three PCPs, three hospitals, and 29 community organisations, including family violence services and Victoria Police

...

Since the adoption of the regional strategy, three local councils have developed and adopted gender equity strategies. Three have adopted specific family violence policies and strategies. All seven local councils in the NMR [Northern Metropolitan Region] have identified violence against women, gender equity and family violence in key organisational strategies and plans (Community Safety Action Plans and Municipal Public Health Plans (MPHPs)).⁴⁰²

The Commission heard that there are currently a range of other regional governance systems in place, such as Crime Prevention Regional Committees,⁴⁰³ Services Connect,⁴⁰⁴ and Children and Youth Partnerships.⁴⁰⁵

The role of local government in coordinating prevention strategies, as well as delivering local services was emphasised to the Commission by the Victorian Government:

Local government plays an important role in delivering local services, including jointly delivering the Maternal and Child Health Service, public education and community development initiatives, supporting local partnerships, influencing a range of local settings via prevention activities and pursuing their own organisational change.⁴⁰⁶

Maribyrnong City Council advocated for more resourcing of local councils relevant to prevention programs and that programs should build on the Preventing Violence Against Women Local Clusters project.⁴⁰⁷ As previously discussed, as part of the work of this project, the Victorian Government commissioned the development of a guide, titled *Implementing a Whole-of-Community Approach to Preventing Violence Against Women: Lessons from effective practice, to support whole-of-community approaches*.⁴⁰⁸ This guide is targeted to community-based organisations, particularly local government.

The Commission was also told of the need for leadership to sustain community initiatives. Several people referred to 'backbone' support, which is specifically recognised in the Go Goldfields project evaluation as a condition for success:

Creating and managing Collective Impact requires a separate organisation(s) with staff and a specific set of skills to serve as the backbone for the entire initiative and coordinate participating organisations and agencies.⁴⁰⁹

A peak body

A number of submissions argued for a well-resourced peak body to coordinate primary prevention action and strategy, and engage with and expand partnerships across the sector.⁴¹⁰ The Commission was told that, in addition:

State funded coordinator roles similar to the Family Violence Regional Integration Coordinators model (currently funded by the state government) ought to be implemented. These coordinators would act as an advocate and conduit between local work and the peak body.⁴¹¹

Ms Patricia Kinnersly, Director, Practice Leadership, Our Watch told the Commission that while VicHealth and the Victorian Government have undertaken this role to some extent and at different points, a lack of an ongoing centralised body to coordinate prevention strategies has meant that resources are used inefficiently:

So what's happened in that absence of that kind of vision, if you like, housed within a structure that can do evaluation and monitoring and all of those sorts of things is that there has been short-term funding, project funding, which we know is not an effective way to do prevention—prevention is a long-term effort—and so there can be competitiveness in the sector because there's only a small amount of money and people needing to access that money; the skill base moves around, so it is hard to invest long-term in building the skill base because the funding is short-term.⁴¹²

The role of political leadership in ensuring that effort could be sustained was reinforced to the Commission,⁴¹³ with submissions reflecting the need for a prevention strategy to have bipartisan support so that it can withstand changes in government.

The State government must develop a stand-alone primary prevention action-plan for Victoria that sets out the government's long-term commitment to preventing violence against women. This plan must be long-term, adequately funded, evidence-based, targeted towards redressing the determinants of violence against women, and represent a whole-of-government commitment to preventing violence against women.⁴¹⁴

Dedicated prevention funding

Dedicated government funding for prevention programs was a consistent theme in the evidence before the Commission. Various stakeholders told the Commission that the buy-in and collaboration across organisations that are central to cultural change are undermined by funding uncertainty.⁴¹⁵ Women's health services currently leading regional prevention strategies emphasised this point, noting that the significant time spent on planning for future funding is time not available for implementing programs. Further, uncertainty about whether resources will be available to see a project through can mean that projects are not embraced and therefore have limited impact.⁴¹⁶

Primary prevention needs to be funded for more than one or two year funding cycles. Everyone talks about evidence based. With primary prevention, the evidence base is thin. The need for evaluation is there. We have a sense that what we do at the primary prevention level works and the evidence base is building. But to convince funders to fund stuff for 5 or 10 years or for ongoing funding ...⁴¹⁷

The Commission heard from many sources that moving to approaches that worked across settings across local areas (such as progressing school-based and workplace programs concurrently), could not be done within current resources.

The Australian Institute of Criminology report has noted that having sufficient resources to deliver whole-of-community prevention programs is a key principle of good program design. The lack of resources is, however, a commonly cited problem.⁴¹⁸

A prevention framework that addresses gender inequality

Gender inequality refers to the 'gender norms, roles, cultural practices, policies and laws, economic factors and institutional practices that collectively contribute to and perpetuate unequal power relations between women and men'.⁴¹⁹

In the *National Plan to Reduce Violence against Women and their Children* gender equality is identified as having a profound influence on violence at every level of society.⁴²⁰ The Victorian Government notes in its submission that:

A key determinant of family violence is gender inequality, yet the government does not have a long-term gender equity framework. Not enough has been done to target gender inequality in a whole of government fashion, addressing gender stereotyping, discriminatory behaviours and leadership disparities between women and men. Nor has there been sufficient investment in gender focused programs.⁴²¹

In December 2015, the Victorian Government commenced consultations on the development of a Victorian gender equality strategy. The terms of reference address a broad range of issues including community attitudes towards women, economic inequality, health and wellbeing, employment pathways and flexibility in workplaces, and inequality amongst diverse groups of women. The consultation phase runs to March 2016.⁴²²

The Commission also heard of the need for a better understanding of how the link between gender inequality and family violence is 'operationalised' through prevention strategies.⁴²³ Further research is being led by Our Watch and ANROWS, and the Commission notes that the new *National Framework to Prevent Violence Against Women and their Children* provides guidance in this area.⁴²⁴

The need for policy makers in all parts of the system to assess how policies may have disproportionately adverse impacts on women's lives, was another issue raised with the Commission.⁴²⁵ Some organisations have treated building gender equality as an essential first step in building commitment to prevent violence against women. For example, the City of Whittlesea's Gender Equity Strategy policy includes:

- ▷ applying a gender lens to sporting facilities that are being built and upgraded, to ensure equitable access for women and girls
- ▷ partnering with the Planning Institute Australia to host a Women in Growth Areas forum to explore opportunities to enhance gender equity in growth area communities
- ▷ scheduling a pay equity audit every four years
- ▷ extending parenting programs to weekends and after-hours, and increasing engagement around parenting with men/fathers.⁴²⁶

Respectful relationships education has included material on gender equality and gender roles.⁴²⁷ The schools that the Commission met with gave positive feedback about the response of boys and male staff to this aspect of the curriculum. The curriculum itself identifies the risk of the curriculum being seen to 'blame the boys'. Testing of the curriculum in fact indicated that boys can see the connection between the construction of gender and violence, and understand that it is 'not an individual problem but rather a collective and institutional problem'.⁴²⁸

More broadly, the Commission heard of the importance of schools creating cultures based on gender equity and respect, and challenging discriminatory behaviours and attitudes.⁴²⁹

I do not want my son growing up thinking that to be a man means being rough, dominating, having an entitlement to more based on his gender, superior, etc. Addressing gender effectively in a primary school environment is good for boys as well as girls. I do not believe that there is any particular or widespread opposition to gender equity within the school. However, there appears to be a general lack of understanding about the full importance of promoting a gender equitable environment and how to go about it. This is an area where prevention work could reap significant rewards.⁴³⁰

Submissions received by the Commission also highlighted that supporting teachers to reflect on their own internalised assumptions about power and gender increases their confidence and skill in their ability to teach, shape and model appropriate attitudes, so that 'every teacher is a teacher of culture and gender'.⁴³¹

Schools are becoming vigilant at picking up on the need to recognize and deal with racism and homophobia – so should it be with sexism. Whether it be sexist jokes in the playground – or the staff room, whether it be internet pornography, students sharing sex texts or sex pics, students participating in forums such as Tinder – all need to be challenged, every time. Teachers need to have increased training around family violence to know how to recognize this, how to ask about this and where to refer families in trouble.⁴³²

Nine leading Victorian organisations recommended building blocks for prevention, with one of these building blocks being an 'intersectional gender analysis' applied to all government policy:

All government policy, legislative development and budgeting should:

- Be informed by an intersectional gender analysis;
- Involve consultation with women's organisations;
- Include provisions or resources specifically designed to address existing gender inequalities and empower women; and
- Require a gender impact statement, ideally as part of a broader Human Rights Impact Assessment Statement. This would take account of all forms of discrimination against women, to ensure that policies and practices are consistent with the Charter of Human Rights and Responsibilities 2006 and that they [policy makers] continue to work to promote and progress the right to equality and non-discrimination.⁴³³

The literature on prevention of violence against women also recognises that prevention efforts need to address, alongside gender inequality, social conditions such as socio-economic disadvantage, structural discrimination and exposure to violence.⁴³⁴

In evidence, representatives of Our Watch and VicHealth agreed that if there was a state entity dedicated to primary prevention of family violence it would need to deal with preventing all forms of family violence, as well as violence against women, while maintaining a focus on the gendered nature of violence against women.⁴³⁵

Workforce development

There is a diverse approach to developing and implementing prevention strategies in Victoria. Concerns were expressed to the Commission about inconsistent practices within the prevention workforce.

The Commission heard that an understanding of health promotion theory and practice is important to effectively developing and delivering prevention programs.

Many are skilled practitioners who use a feminist framework based on understandings about gender and power. For others, the public health discourses that underpin many programmes may not be well understood or well applied. Without a critical understanding of the application of health promotion theory, programmes are unlikely to be effective. Health promotion is a discipline which should be implemented by practitioners with a sound understanding of the practice and its ramifications (Whitelaw et al., 2001).⁴³⁶

As part of its review in developing national standards for the primary prevention of sexual assault, the National Association of Services against Sexual Violence reported that there is a lack of workforce development programs for people working in primary prevention,⁴³⁷ and that programs have historically been developed by professionals working with victims of violence, which means that 'there may be an assumption these workers do not require further training and skills to deliver prevention education'.⁴³⁸

The primary focus of prevention work is behaviour change. People delivering prevention programs need a range of skills in behavioural science, and education, as well as an understanding of family violence.⁴³⁹ As NASASV states in its report, 'doing primary prevention in the area of sexual assault is a practice far more sophisticated than merely raising people's awareness'.⁴⁴⁰

Pre-service training targeting early childhood educators, teachers and health promotion workers was highlighted as a priority and a current gap in workforce development:

While some in-service training is currently provided for prevention practitioners, no specific pre-service training is available to prepare people for the work, which is complex and challenging and requires specific skills, resources, tenacity and a belief that change is possible.⁴⁴¹

The Commission heard that a well-equipped prevention workforce has 'two arms'—those working outside and those working within organisations:

First are the primary prevention experts who can work alongside workplaces and sports clubs to provide them with technical advice. Second are the in-house experts, the staff inside the workplaces and sports clubs, who can be provided with training so that they integrate prevention to their existing skillset in, for example, human resource management, sports administration, workplace wellbeing, or community development. Further and coordinated development of these two arms of the prevention workforce would enable greater traction for prevention across sectors and enhance outcomes in relation to equal and respectful relationships.⁴⁴²

In addition to workers having expertise in prevention, the Commission heard that they must have the capacity to respond to violence, and to be effectively linked to response services. This was particularly raised in the context of prevention work with children and young people:

No setting in which prevention activity is undertaken should be presumed to be free of existing violence. Nor should the likelihood be overlooked that some children and young people who are participants in prevention programs and activities are already experiencing violence. For this reason, while a clear distinction needs to be drawn between the prevention of violence and early intervention or response efforts, any prevention activities that involve working with children and young people should seek to link with and support early intervention initiatives aimed at children experiencing (or who have experienced) violence (and create referral pathways to link individual children to those programs and services where appropriate).⁴⁴³

The Youth Affairs Council of Victoria provided an example of a model for enhancing coordination as the Partners in Prevention, or PiP, network. Established in 2007, the network is hosted by Domestic Violence Resource Centre Victoria and was set up to augment the capacity of various sectors (among them health, youth and education) who work with young people in the area of primary prevention.⁴⁴⁴ The network provides online resources and operates as a community of practice for respectful relationships educators.⁴⁴⁵ The Youth Affairs Council of Victoria submitted that models such as PiP could be extended to other areas—particularly to support youth services operating in rural communities.⁴⁴⁶

The Commission notes that VicHealth has previously developed workforce modules, including evaluated short courses and leaders' courses, specific to preventing violence against women. The Commission understands that the national foundation, Our Watch, is considering its national workforce development and training role in this area.

Evaluation and monitoring

It was reiterated to the Commission that there is a need for ongoing applied research and evaluation to keep workforces up to date on how to develop and deliver prevention programs.⁴⁴⁷

The Commission heard that in an area like family violence, success is hard to measure and it is difficult to be confident about what will work.⁴⁴⁸ Measuring the outcomes of prevention initiatives and programs is conceptually and practically difficult, and requires an understanding of the complex factors that contribute to family violence, as well as long-term investment. In a report prepared for VicHealth on preventing violence against women, Dr Wei Leng Kwok noted that:

As with other health and social problems, the challenge of addressing violence against women is conceptualized as a long term endeavor: reducing or ending violence against women is unlikely to be seen in the life of a project or program, suggesting that the effects of any primary prevention initiative can only ever contribute incrementally to change on the underlying determinants and that this change in turn contributes eventually to ameliorating the problem.⁴⁴⁹

Mr Hearne told the Commission that people involved in place-based prevention activity recognise that the stakes are high and are aware of the importance of evaluating what has happened elsewhere, and how new initiatives might be monitored, assessed and improved as information about effectiveness emerges:

... you would be looking at considering what the data might be telling you with regard to the need in a certain community or within a given population, but also you rely on your local understanding of the community in which you have relationships and a general understanding of what the indicators might be for greater risk for communities such as the diversity, the level of employment or unemployment or underemployment in the community, what the data says around family violence outcomes through justice indicators.⁴⁵⁰

While there is research available on the outcomes of prevention programs and activity, it has primarily focused on individual and organisational change (given the short-term nature of many prevention programs), rather than on social, structural or cultural change. Given this context, the majority of current evaluation has focused on measuring changes in individual attitudes or beliefs around gender and violence, changes in organisational practices, and increases in individual skills to promote non-violent social norms (such as increased bystander activity).⁴⁵¹ Our Watch has argued that while these evaluations have 'sometimes been perceived as 'weaker' than those measuring reduced future levels of violence', changes against the factors known to contribute to violence could be assumed to affect future levels of such violence.⁴⁵² Individual initiatives delivered alongside other programs (such as a school based program delivered concurrently with a local media campaign or community initiative) may have greater impact.⁴⁵³

The need for long-term evaluation was made by Mr Shaun Leane, Member for Eastern Metropolitan Region, who emphasised the need for strengthened regional effort:

One area where evidence is missing relates to the impacts of undertaking a range of mutually reinforcing activities at a population level. Well evaluated regional action plans have the capacity to add to this gap in evidence.⁴⁵⁴

The Commission heard that funding decisions are currently premised on a 'confidence' that individual-level outcomes will lead in the longer-term to population-level outcomes.

The World Health Organization emphasised however, that despite the challenges with the current evidence base, action cannot wait:

Although pressing, the need for evidence and further research in all these areas in no way precludes taking action now to prevent both intimate partner violence and sexual violence. Those programmes that have evidence supporting their effectiveness should be implemented and, where necessary, adapted. Those that have shown promise or appear to have potential can also play an immediate role – provided strenuous efforts are made to incorporate at the outset rigorous outcome evaluations. It is only by taking action and generating evidence that intimate partner and sexual violence will be prevented and the field of evidence-based primary prevention of such violence will successfully mature.⁴⁵⁵

The Commission heard that alongside the challenges of resourcing, the prevention workforce has limited guidance about how to evaluate primary prevention initiatives. The Commission notes that this area has been a significant focus of VicHealth's work, and that a number of resources have been developed.⁴⁵⁶

The Commission was told of the value of building communities of practice to pool and develop evidence-based practice resources:⁴⁵⁷

... one of the things that VicHealth has given us the opportunity to do with the AFL projects and with the one in the YMCA is a much more in-depth kind of evaluation, which is called constructivist evaluation, where the evaluation isn't something that comes in and judges the value of change at the end but works alongside the project giving it continuous feedback and allowing for continuous improvement to occur.⁴⁵⁸

The Commission also notes there are opportunities for greater collaboration across national expert research bodies, such as Our Watch, ANROWS, the Australian Institute of Family Studies, and the Australian Centre for Child Protection, so that evaluations have a broader scope and use best-practice methodologies.

The way forward

Preventing family violence requires cultural change. There are no quick fixes—a long-term perspective and sustained effort is needed. Successful population-level prevention strategies in Australia, such as anti-smoking and drink-driving campaigns, are a good source of information about what it takes to shift social practices and norms. Preventing family violence is an even bigger task—it is one of the most complex problems confronting the Victorian Government and the Victorian community.

The Victorian Government must make preventing all forms of family violence a priority. This will require political leadership. As recommended by the Commission in Chapter 38, the government should develop a Statewide Family Violence Action Plan. A discrete and prominent part of this plan needs to address primary prevention of family violence. There should be a Victorian body either within or outside government responsible for championing, driving and monitoring the implementation of prevention strategies under the plan. This function must be well resourced. As submitted by Women's Health West Inc:

Primary prevention is different from the response system because the actions and settings required to prevent violence before it occurs are different from those required to respond. Prevention is everyone's business and requires a distinct system comprising cross-government, multi-sector, community and business partnerships; and a distinct workforce and practitioner skill set. It also needs to be funded and resourced distinctly from the already-overloaded response system, not as 'either/or' but as 'both/and'.⁴⁵⁹

To date, the discussion around prevention has been focused largely on preventing intimate partner violence against women. Preventing intimate partner violence must remain central to a prevention strategy, as it remains the most prevalent form of family violence. Addressing gender inequality, and changing social norms that perpetuate an acceptance of violence will be of significant benefit to the whole community. The co-occurrence of family violence, child abuse and neglect means we must target effort towards children and young people, and in the settings that have greatest influence on their development—such as schools and home visitation programs.

Effort should also be directed to increasing our understanding about how best to prevent specific forms of family violence, such as the abuse of children, older people, parents and siblings. Prevention programs also need to be tailored to, and developed in partnership with, communities who have experienced sustained discrimination, and communities from different cultures.

Promising prevention programs, including respectful relationships education in schools, should be enhanced and made a mandatory part of the school curriculum across all year levels, with the resources necessary for these to have their full effect provided. Prevention efforts in workplaces should also be given high priority.

Engaging communities in the task of preventing family violence is essential. Whether communities are defined by a geographic place, or a population group with a shared ethos or interests, the culture they establish can have a powerful influence over the behaviour of individuals. Cultural change cannot happen without enabling community-led prevention action.

There are a number of recommendations relevant to prevention that are discussed in other chapters. These include the need for statewide and regional governance (Chapter 38), development of the prevention workforce (Chapter 40), and the need to prioritise prevention efforts in workplaces (Chapter 37).

Develop and implement a prevention action plan

As recommended in Chapter 38 of this report, an independent Family Violence Agency will be established to monitor the implementation of the Royal Commission's recommendations. One of the Commission's recommendations is that the Victorian Government develop a Statewide Family Violence Action Plan for Victoria. This plan will include both prevention and response strategies and actions. Prevention strategies and actions must be a discrete and prominent part of this plan.

The overarching goals of the plan should be the prevention of family violence in all its forms; addressing the structures, norms and practices that are driving and contributing to all forms of family violence; and building community awareness. All prevention action must be underpinned by a commitment to keep victims safe and hold perpetrators accountable.

Victoria has been investing in the prevention of violence against women and their children for a number of years, and there is a strong base of practice and understanding in the community sector and in government on which to build. A key aim of the *National Plan to Reduce Violence Against Women and their Children 2010–2022* is to build mechanisms to share evaluation and learning about good practice across jurisdictions. The national plan should inform Victoria's statewide plan, and in turn, Victoria's statewide plan will form part of its commitment to the national plan. The recent release of the national framework by Our Watch, and research undertaken by ANROWS and VicHealth, will be of value to the Victorian Government when considering prevention planning. This work focuses on preventing violence against women and their children.

Family violence, sexual assault and women's health services have been key in developing and supporting the translation of prevention models into mainstream sectors. Drawing on their expertise will be necessary to developing effective prevention programs, as well as bringing the voices and experience of women and children into prevention practice.

The prevention aspect of the Statewide Family Violence Action Plan should last for at least 10 years so that prevention approaches can be adapted in response to evaluation outcomes. The plan should feature a carefully phased approach. Pre-conditions for implementing effective prevention strategies include assessment of community or organisational readiness, putting the right support services in place, building the right workforce, and training people in how to respond to disclosures.

To date, the Victorian Government has funded piecemeal initiatives and pilots aimed at preventing violence against women and children. Dedicated prevention funding has primarily been time-limited and targeted to one-off projects. Projects that demonstrate effectiveness need to be resourced for the longer term. Future funding arrangements for prevention should be sustainable, give certainty to service providers to adequately plan and implement strategies, and allocate for a duration that recognises that prevention activities have a longer time frame than service delivery. The Commission notes the approach of VicHealth and the Department of Justice and Regulation in investing in prevention programs for the longer-term, and for their commitment to evaluation.

The Commission notes the Victorian Government's commitment to developing a gender equality strategy. The prevention aspect of the statewide plan should be informed by, and align with, that strategy.

The plan should reflect the following principles and make provision for their implementation.

Prevention requires a multi-strategy, multi-setting approach

A range of prevention approaches and strategies is required. These will include direct participation programs, organisational development, and building community engagement and mobilisation. Social marketing and communications campaigns are important strategies, but they need to be multi-phased and not undertaken as single initiatives. The Commission notes that community awareness-building campaigns about violence against women and children come within the remit of Our Watch, which has a national reach. Victorian prevention activities need to be aligned with the work done by Our Watch.

The proposed prevention action plan should put in place mutually reinforcing prevention initiatives across multiple settings, such as schools, early childhood services, local government, sports clubs, workplaces and the media. Other settings, such as tertiary institutions, should be assessed for intervention given the evidence of their potential. Online and digital environments should also be used.

Priority should be given to interventions targeting children and young people, through respectful relationships education in early childhood and care settings, primary and secondary schools and parenting services. The Commission makes a number of recommendations below about mandating respectful relationships education in schools.

Employers have an opportunity to implement best-practice responses to victims of family violence and promote gender equity in their own workplace. Many employers are also recognising that attitudes towards women in the workplace have implications for how employees make decisions in their service or business delivery and interact with the community.

The Victorian Government is in a position to drive change across public sector workplaces.

The Victorian Government's role as an employer extends beyond providing employees with family violence leave and associated supports. The government and its agencies can also institute policies and programs in public sector workplaces that take a broader view of responding to and preventing family violence, by building respectful and gender equitable cultures.

The work that has been commissioned through Our Watch by the Victorian Government, the Workplace Equality and Respect Project, will provide government with advice about program models that it can draw from. In addition, as Victoria Police implements the recommendations from the Victorian Equal Opportunity and Human Rights Commission review, this will have broader application to other public sector workplaces, in preventing violence-supportive attitudes that can contribute to the occurrence of family violence.

Detailed discussion about this area and related recommendations are included in Chapter 37.

Prevention must engage communities

The Commission heard that government-initiated prevention campaigns can 'wash over' communities. Prevention programs targeted to communities need to be designed in consultation with communities, and the Victorian Government should provide support to community-led initiatives that have been shown to work.

The Commission heard many examples of how the altruism and effort of communities has been harnessed around the issue of family violence to great effect. The approaches adopted were diverse, but several principles that emerge that are likely to be relevant to future endeavours in mobilising community effort to prevent family violence:

- ▷ A broad cross-section of the community must be involved, not just government agencies and funded service providers. Leaders in the economic, social and civic spheres of the community, as well as those with the lived experience of family violence, need to be engaged.
- ▷ The community must determine the initiatives that it is going to work on and how it is going to pursue them. They cannot be imposed upon the community. The priorities of different parts of the community may be quite different.
- ▷ Government and funded service providers can act as enablers by providing information and advice, and at times some funds, but they cannot control or run community initiatives. These must be led by the community.
- ▷ Wherever possible, existing networks and social and administrative infrastructure should be used rather than attempting to establish something new.
- ▷ While specific initiatives may change from time to time a long-term commitment is required.
- ▷ The identification of measurable outcomes underpinned by data collection that enables the measuring progress can assist in keeping the community engaged and in engendering confidence that change is possible.

- ▷ Prevention work must be adequately resourced to support this effort.
- ▷ A ‘backbone’ organisation can be valuable in providing of administrative support and ensuring there is continuous communication with all involved.

Prevention should reflect diverse communities

Given that population-level strategies will not reach all, there will need to be targeted investment in and co-design of prevention strategies tailored to different communities, including Aboriginal and Torres Strait Islander communities, culturally and linguistically diverse communities, people with disabilities, and LGBTI communities.

There is increasing evidence that context is important and that more research is required on how successful programs can be transferred from one setting to others. This is particularly the case for whole-of-population strategies that may not translate for all groups.⁴⁶⁰

Elsewhere in this report, the Commission recommends that prevention programs and activities reflect the diversity of the community (see Volume V).

Effective prevention requires a dedicated specialist workforce

The Commission notes that there is currently limited investment in specialist expertise for delivering prevention programs. Limited workforce training programs are available and there is a lack of accredited training. Our Watch is committed to development in this area as part of the transfer of resources from VicHealth, but the nature of its investment is currently unclear. A dedicated workforce development strategy that is part of the industry plan (see Chapter 40) will be required to deliver the Statewide Family Violence Action Plan. An oversight mechanism will also be required to coordinate and maintain consistent prevention practice (see below).

Prevention programs need to be monitored and evaluated

A performance monitoring and evaluation framework is required. In the short term this could include appropriate indicators to measure changes in attitudes and social norms relating to family violence. In the longer term, however, we should expect to be able to measure whether primary prevention activities result in a reduction in the prevalence of family violence. Work with the Australian Bureau of Statistics will be required to build on the National Community Attitudes towards Violence Against Women Survey so that Victoria can run local surveys and collect data at regional area levels to support local level planning and monitoring.

There is existing evidence about what works to prevent violence against women. The Victorian Government should continue to build on this evidence base, by continuing to support the work of Our Watch and ANROWS. Working with other relevant research bodies will also be necessary to increase the evidence, and to develop effective primary prevention strategies, in relation to forms of family violence other than intimate partner violence.

Prevention should inform and be informed by other policy

The Victorian Government must work effectively with sector partners and relevant academic institutions to build the evidence base in the area of intimate partner violence and other forms of family violence. Strengthened partnerships between those working on the prevention of family violence and those working in other areas of social policy—such as alcohol and drug misuse, mental health and child protection—will consolidate shared effort and resources.

For example, the Commission heard that Victoria’s *Vulnerable Children—Our Shared Responsibility Strategy* (2013–22), had three goals, one of which was to ‘prevent abuse and neglect’.⁴⁶¹

At a national level, greater linkage between relevant policies, such as the *National Plan to Reduce Violence Against Women and their Children*, and the *National Framework for Protecting Australia’s Children 2009–2020* needs to be further developed.

Recommendation 187

The Victorian Government ensure that the Commission's recommended Statewide Family Violence Action Plan includes a primary prevention strategy [within 12 months] that should:

- ▷ be implemented through a series of three-year action cycles
- ▷ refer to actions to be taken and be accompanied by performance measures
- ▷ guide and be guided by the Victorian Government's Gender Equality Strategy
- ▷ be supported by dedicated funding for family violence primary prevention.

Overseeing prevention activities

There is a plethora of programs, some positive innovation, and strong sector momentum to continue the work in prevention. However this work has been inconsistently funded and supported, and programs often operate on an ad hoc basis. The Commission has heard that it is critical that prevention activities be funded consistently in the future.

Implementing the family violence prevention plan will require a process to oversee and coordinate prevention activities within and across government, local government, community agencies and the broader community.

Because VicHealth has now reduced its involvement in this area, Our Watch has assumed some aspects of VicHealth's previous role in prevention. Established and located in Victoria, Our Watch provides technical expertise in prevention to Victorian government and non-government services, undertaking research and testing prevention programs across a range of settings. Our Watch is also responds to calls from community organisations for advice on prevention as the momentum and interest in this area has grown.

However, Our Watch is a national organisation and will be unable to provide the level of support to Victorian agencies and communities that is required to drive prevention practice.

There is a need for a mechanism at state level to:

- ▷ oversee and work with organisations already involved in prevention activities
- ▷ undertake evidence-based program design
- ▷ provide technical advice and expertise to organisations engaged in prevention
- ▷ build partnerships with governments, non-government organisations, the private sector and community
- ▷ contribute to the development of the prevention workforce.

These functions are outlined in Table 36.3 below.

Table 36.3 Proposed prevention oversight functions

| Function | Example |
|--|---|
| 1. Program design, technical advice and expertise | <ul style="list-style-type: none"> ▷ Statewide coordination role in monitoring implementation of prevention practice across different settings ▷ Provides support to regional governance structures and arrangements ▷ Provides technical advice and expertise to government, community organisations |
| 2. Build partnerships with governments, non-government organisations, private sector and community | <ul style="list-style-type: none"> ▷ Works with peak bodies in Victoria, such as Municipal Association of Victoria, the Victorian Employers' Chamber of Commerce and Industry, Worksafe, state sporting bodies to support their prevention efforts ▷ Builds partnerships with sectors new to prevention, such as health, arts, media ▷ Works with business and corporate sector |
| 3. Workforce development [^] | <ul style="list-style-type: none"> ▷ Provides technical advice to inform the industry plan ▷ Coordinates training delivery through registered training organisations ▷ Manages communities of practice, facilitates workshops, conferences to build and share knowledge ▷ In conjunction with Our Watch, disseminates up-to-date practice guidance, tools and resources |
| 4. Build on the evidence base | <ul style="list-style-type: none"> ▷ Funds and supports research/innovation where gaps identified, but is not a grant making body ▷ Seeks philanthropic funding to support research/innovation ▷ Works in partnership with Our Watch, ANROWS, the Australian Institute of Family Studies and other relevant research agencies in family violence prevention. |

[^] Note that the agency will not directly provide workforce development and training, and will work through registered training organisations.

The Commission considered a number of ways that prevention activities could be overseen and supported. One option would be to locate these functions within government, for example, within the proposed family violence unit in the Department of Premier and Cabinet. This would align prevention with other aspects of family violence planning and facilitate interaction with other departments when they implement family violence prevention and workplace initiatives.

A second option would be to place the prevention function within the independent Family Violence Agency. The proposed independent Family Violence Agency will be a statutory body that will oversee the implementation of the Royal Commission's recommendations and have power to undertake research and provide expert policy advice. This would create a coherent link between oversight of family prevention and support activities. On the other hand, the Commission is concerned that engaging in prevention could detract from the independent Family Violence Agency's broader role. In addition, the location of the prevention function within the Family Violence Agency could create the perception of a conflict of interest between its role in monitoring the performance of the system and its own prevention activities.

A third option would be to create a stand-alone entity that is independent from government and separate from the Family Violence Agency.

The Commission looked at national agencies that were established specifically to drive prevention. The Australian National Health Prevention Agency was established in 2011 as a statutory entity through the Council of Australian Governments, with the agreement of all governments. It was responsible for providing advice to governments on the development of preventive health policy, managing a research fund and evaluating existing programs, and publishing biennial reports on the state of preventive health in Australia. It was also responsible for developing national guidelines and standards, conducting educational and community awareness campaigns, and establishing partnerships with governments, health and industry sectors. It was abolished in 2014.⁴⁶²

The Commission heard evidence about the Transport Accident Commission, a government-owned entity whose role is to promote road safety, improve the system and provide support to victims.⁴⁶³ The TAC spends 'about \$160 million of its budget on prevention work'.⁴⁶⁴

The Victorian Equal Opportunity and Human Rights Commission is a statutory organisation that monitors and reports the implementation of relevant legislation to eliminate inequality and discrimination. VEOHRC's role includes responding to individuals experiencing discrimination, community engagement and awareness raising.

The Commission has not expressed a view about which of these options should be adopted. Each has advantages and disadvantages. Whichever option is adopted, it will be important for the prevention mechanism to be supported by:

- ▷ a government commitment to funding for prevention as part of the delivery of the Statewide Family Violence Action Plan, with continued government leadership
- ▷ adequate funding for response services, as an increased investment and focus on prevention activity will increase disclosure
- ▷ effective regional governance and coordination for local and regional prevention planning that can act as a conduit for the state agency
- ▷ continued funding for the national foundation, Our Watch and for the national research body driving research, ANROWS
- ▷ adequate investment in the prevention workforce, and training for those sectors who are prioritised, such as teachers. This will need to be supported by the industry plan, and appropriate registered training organisations with the capacity to deliver accredited training.

Whichever option is adopted, it will be necessary for the Victorian Government to consider how the mechanism collaborates with Our Watch, to avoid the risk of duplication and confusion among Victorian stakeholders.

Recommendation 188

The Victorian Government resource an initiative (either inside or outside government) [within 18 months] to:

- ▷ oversee prevention of family violence activities in Victoria
- ▷ provide policy and technical advice to policy makers—including government—on primary prevention
- ▷ provide to organisations technical advice and expertise on building primary prevention in their organisations and within communities
- ▷ coordinate research that builds evidence around the primary prevention of all forms of family violence
- ▷ ensure that accredited workforce development training in primary prevention is available through registered training organisations.

This Victorian initiative should be undertaken in close collaboration with Our Watch, ANROWS (Australia's National Organisation for Women's Safety) and other relevant bodies.

Respectful Relationships Education in schools

One of the most consistent messages the Commission heard was about the opportunity that the education of children and young people offers to prevent family violence in the future. In all of our community consultations with victims of family violence, specific communities and people who work in family violence-related fields, across metropolitan Melbourne and regional Victoria, people emphasised the value of educating children and young people about respectful and healthy relationships.

Respectful relationships education must be a fundamental component of Victoria's family violence prevention strategy. The objectives of RRE should be to educate our children to have greater respect for themselves and for one another, and to support more cohesive families and communities.

The Commission acknowledges the Victorian Government's planned expansion of respectful relationships education curriculum in schools from prep to year 10. The need to expand into primary schools was an area highlighted as a gap in a number of submissions.⁴⁶⁵

However, the Commission is concerned that the Victorian Government's current approach to the implementation of respectful relationships education is inadequate. It does not appear to meet the whole-of-school test that the best evidence indicates is necessary for the program to be effective and for unintended harm to be avoided. A whole-of-school approach requires not only the introduction of new curriculum but needs to be accompanied by a broad range of school policies, training and professional learning for teachers beyond those actually delivering the curriculum, the establishment of protocols with support agencies beyond Child Protection, and the engagement of the parent community in preventing family violence.

The Commission is particularly concerned that a failure to incorporate these aspects creates the risk that harm already caused by family violence will be exacerbated if the curriculum triggers disclosures of family violence in schools without appropriate policies and protocols in place, without teachers having the appropriate knowledge and skills, and without parents understanding respectful relationships education.

In addition, the design of appropriate respectful relationships education curriculum and associated resources for all year levels will be required, building on the *Building Respectful Relationships: Stepping Out Against Gender-based Violence* curriculum developed for years 8 to 10. The implementation of respectful relationships education should occur in concert with, not in competition with, other programs that schools are implementing to build the health, wellbeing and resilience of children and young people, such as programs addressing bullying, homophobia and transphobia, and sexual and reproductive health.

The Commission acknowledges that the implementation of respectful relationships education in a way that reflects whole-of-school best practice, will entail major reforms in Victorian schools and will necessitate significant resourcing throughout an implementation period of several years. This is a small price to pay for the very real prospect that these programs will support future generations to adopt attitudes and behaviours that will leave a legacy of significant reductions in all forms of family violence.

Given the complexity of this change, a detailed and staged approach to implementation will be required. The Commission welcomes the Victorian Government's commitment to expand respectful relationships education in 2016, however given the planning and preparation that will be required to ensure readiness within individual schools, we suggest that a staged approach should be adopted.

The Commission expects that by the end of 2016, a learning and development strategy for the education workforce will be implemented to support the statewide rollout of the *Building Respectful Relationships: Stepping Out Against Gender-based Violence* curriculum to all secondary schools in years 8 and 9. Concurrently, the department's module of respectful relationships education for year 10 will have been tested and evaluated. By the end of 2018, new curriculum, teacher training and associated resources for prep to year seven should be developed. These will have been piloted and tested in primary and secondary schools, building on the lessons from the Our Watch evaluation. In addition, the Commission considers that respectful relationships education should be developed for years 11 and 12.

The Commission notes that the resources and guidelines that Our Watch have developed will be important to build on, given that the Commission notes the varying understandings about what constitutes respectful relationships education in a school context, and as a relatively new field, there is not yet a standard model in the Australian context that can guide policy makers and education departments.⁴⁶⁶

The Commission notes from the Our Watch evaluation the strong message that teaching and learning resources and curriculum are often used as the 'way in' to implementing a whole-of-school approach, but they are just one part of the larger strategy that is required. We also heard that leadership from senior executives in the Department of Education and Training was essential, as was expertise located in regional offices dedicated to support schools.

In addition, one of the most critical elements was the need for greater guidance, training and support for school staff to manage the increase in disclosures from students and staff. This will be a priority element of the rollout of the respectful relationships program.

The Commission notes that all three education sectors—government, independent and Catholic—now have an enabling environment for respectful relationships education through the national and Victorian curriculums. Consistent with the statewide implementation for government schools, the Commission's view is that Catholic, and independent schools should be supported to mirror this commitment, and we note that the Victorian Government has indicated that 'support for Catholic and independent sector schools will be arranged with the respective sectoral authorities' for implementation of the new Victorian curriculum under the education state reforms.⁴⁶⁷

Recommendation 189

The Victorian Government mandate the introduction of respectful relationships education into every government school in Victoria from prep to year 12. Implementation should be staged to ensure school readiness and to allow for ongoing evaluation and adaptation. It should be delivered through a whole-of-school approach and be consistent with best practice, building on the evaluation of the model being tested by the Department of Education and Training through Our Watch [within five years].

Endnotes

- 1 Transcript of Lay, 15 October 2015, 3705 [14]–[22].
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- 3 UN Women, 'A Framework to Underpin Action to Prevent Violence Against Women' (United Nations, November 2015) 26–7. See also Our Watch, Australia's National Research Organisation for Women's Safety and Victorian Health Promotion Foundation, 'Framework Foundations 1: A Review of the Evidence on Correlates of Violence Against Women and What Works to Prevent It—Companion Document to Change the Story: A Shared Framework for the Primary Prevention of Violence Against Women and Their Children in Australia' (Our Watch, 2015) 21.
- 4 See, eg, United Nations, 'Ending Violence Against Women: From Words to Action—Study of the Secretary General' (2006); Victorian Health Promotion Foundation, 'Preventing Violence Before it Occurs: A Framework and Background Paper to Guide the Primary Prevention of Violence Against Women in Victoria' (December 2007); European Commission, 'Review of Research on Factors at Play in Perpetration' (Feasibility Study, October 2012); World Health Organization and London School of Hygiene and Tropical Medicine, 'Preventing Intimate Partner and Sexual Violence Against Women: Taking Action and Generating Evidence' (World Health Organization, 2010); Our Watch, Australia's National Research Organisation for Women's Safety and Victorian Health Promotion Foundation, 'Change the Story: A Shared Framework for the Primary Prevention of Violence Against Women and Their Children in Australia' (2015); UN Women, above n 3.
- 5 Our Watch, Australia's National Research Organisation for Women's Safety and Victorian Health Promotion Foundation, above n 4.
- 6 Australian Bureau of Statistics, 'Personal Safety, Australia, 2012' (Catalogue No 4906.0, Australian Bureau of Statistics, December 2013) Table 1, 4, 5.
- 7 Rae Kaspiew, Rachel Carson and Helen Rhoades, 'Elder Abuse: Understanding Issues, Frameworks and Responses' (Research Report No 35, Australian Institute of Family Studies, 2016) 4; World Health Organization, 'Global Status Report on Violence Prevention 2014' (2014) 46.
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- 11 Transcript of Bromfield, 12 October 2015, 3358 [11]–[15].
- 12 See European Union Agency for Fundamental Rights, 'Violence Against Women: An EU-wide Survey—Main Results' (April 2014) 21–53. See also Gay Alcorn, 'Australians are Being Told That Gender Inequality is the Root Cause of Domestic Violence. But is it?' *The Guardian Australia* (online), 19 February 2016 <<http://www.theguardian.com/society/2016/feb/19/australians-are-being-told-that-gender-inequality-is-the-root-cause-of-domestic-violence-but-is-it>>.
- 13 Our Watch, Australia's National Research Organisation for Women's Safety and Victorian Health Promotion Foundation, above n 3, 15.
- 14 *Ibid* 16.
- 15 *Equal Opportunity Act 2010* (Vic) s 3(d)(i); *ibid* 16–17.
- 16 Our Watch, Australia's National Research Organisation for Women's Safety and Victorian Health Promotion Foundation, above n 3, 55.
- 17 *Ibid*.
- 18 Brotherhood of St Laurence, 'What Next for Place-based Initiatives to Tackle Disadvantage? A Practical Look at Recent Lessons for Australian Public Policy' (April 2015) 2.
- 19 UN Women, above n 3, 26; Our Watch, Australia's National Research Organisation for Women's Safety and Victorian Health Promotion Foundation, above n 3, 40.
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- 24 *Ibid* 24–8.
- 25 Our Watch, Australia's National Research Organisation for Women's Safety and Victorian Health Promotion Foundation, above n 4, 21, 55.
- 26 Lori Heise and Andreas Kotsadam, 'Cross-National and Multilevel Correlates of Partner Violence: An Analysis of Data From Population-based Surveys' (2015) 3(6) *The Lancet Global Health* e332, e336–40.
- 27 Victorian Health Promotion Foundation, above n 4, 8, 36–9.
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- 29 For example, violence against women is more common in communities in which violence-supportive attitudes are prevalent: Victorian Health Promotion Foundation, 'Australians' Attitudes to Violence Against Women: Findings from the 2013 National Community Attitudes Towards Violence Against Women Survey' (September 2014) 37.
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37 The workplace

Introduction

Workplaces can play an important role in preventing and responding to family violence. They reflect the breadth and diversity of the community and offer a key opportunity to reach people who are affected by family violence, to provide support for them and to help them take steps to secure their safety. Workplaces are also important sites for dealing with family violence because the effects of violence reach into them in a variety of ways and because attitudes and cultures that prevail in them can influence the level to which violent behaviour is supported or condoned.

The first section of this chapter considers the factors that make workplaces, and workplace culture, important in preventing or countering family violence, and the impact family violence has in the workplace—for workers experiencing family violence, their co-workers and employers. It then outlines initiatives that have been developed and implemented in workplaces in Victoria with the aim of preventing and responding to family violence, and some of the main findings that have emerged about what is required for effective implementation of these initiatives.

The second section of the chapter discusses the concept of paid family violence leave, which emerged in evidence to the Commission as an issue, and considers recent moves to expand its availability to a greater number of employees who might be affected by family violence. The section discusses evidence from employers about how they have responded to the practical challenges of implementing family violence leave.

In this section, the Commission also explores opportunities for expanding the roles and functions of WorkSafe Victoria and the Victorian Equal Opportunity and Human Rights Commission to work with employers to ensure that workers are protected from occupational health and safety risks posed by family violence and from any discrimination they might experience as a result of being a victim of family violence.

In the final section of the chapter, after considering current practice and the issues raised by stakeholders, the Commission sets out a way forward. The Commission proposes that the Victorian Government ensure that when it implements its decision to provide public sector employees with access to dedicated family violence leave, it also provides employees with suitable information and supports, and managers with training and resources. Secondly, the Commission proposes that the Victorian Government implement best-practice workplace programs in all public sector workplaces to ensure that these workplaces have suitable policies for helping family violence victims and to build a respectful, gender equitable culture.

Finally, in order to foster more widespread adoption of family violence-related policies and programs in Victorian workplaces, the Commission proposes the Victorian Government support moves to expand the availability of family violence leave to non-government employees, facilitate the dissemination of resources and tools to help workplaces address family violence, and review and report on options for using existing regulatory frameworks and government procurement policies to support all Victorian employers in implementing best-practice family violence policies.

In Chapter 36, the Commission discusses the importance of engaging with organisations to promote cultures of non-violence, respect and equity as strategies to prevent family violence.

Context and practice

Workplaces are an important site for intervening to prevent and respond to family violence. This section examines the relationship between family violence and workplaces and provides an overview of various workplace programs and initiatives for preventing and responding to family violence.

... we know that [family violence] is an issue that needs to be dealt with by the community at large and that the workplace is a very important part of the community, and that if we are serious about tackling this issue then the workplace has to be part of the solution.¹

Workplaces present an opportunity to reach large sections of the population. This is important both for harnessing community effort in tackling family violence and for reaching people who might need help or advice.

Workplaces have particular potential to reach and support members of vulnerable or isolated groups, who can have limited access to services and agencies they need. For newly arrived immigrant and refugee women, for example, their workplace might be their only point of contact with systems of support beyond their own families.

Relationship between family violence and workplaces

Workplaces are widely regarded as an important site for intervening to address family violence for several reasons:

- ▷ Family violence can have a negative impact on a victim's employment.
- ▷ The workplace can be a place where family violence is perpetrated.
- ▷ Employment can be a protective factor against family violence, and employers and colleagues can play a role in recognising the signs of violence and supporting an employee who is experiencing it.
- ▷ A workplace's culture can perpetuate attitudes that support and condone family violence, making it an important place for promoting gender equity and positive changes to violence-supportive attitudes and behaviours.²

Many of these considerations were apparent in the account one woman provided in a witness statement to the Commission. Ms 'Anjali Jana' told of her experience of family violence, including how it affected her employment and, in turn, how her workplace supported her in seeking help and regaining her financial independence:

I was doing really well at work and I was given more shifts than I was contracted for, meaning that I was earning quite a bit of money ... He [my husband] started to make me put all of my money that I was earning directly into his personal bank account, so that I had nothing. I had to rely on him for access to my money, but he always spent it and said that we had no money for anything.

Because of [the abuse], I began to feel sad all of the time, and it was hard to feel motivated, particularly in terms of my work. Previously I had been an excellent employee but now I was having trouble concentrating and I found it hard to do a good job, like I used to, I found that I would make lots of mistakes at work. They started giving me less shifts as a result.

People at work had noticed the drop in my performance and I think that they were privately concerned for me but I didn't talk about my life at home with them. I didn't understand at the time that a marriage was supposed to be any different to what I was experiencing. I thought that this is just how marriage is supposed to be. However, when I spoke to the other people that I worked with, I began to see that they were really happy in their marriages and their lives. In contrast, I grew to realise that the marriage that I was living in was like being in hell. I knew that there was something wrong with my marriage, that the way that my husband was treating me was not right.

My manager spoke to me and I admitted to her what was going on, that it was really bad. I knew that if I went back I would do something that I would regret, to myself, because this was not the life that I wanted. One of my colleagues was there and she gave me a 1800 number to call, I think it was the Woman's Domestic Violence Hotline. I called them but they said that they couldn't help me because I had a job. They told me to call WAYYS in Dandenong instead, so I did. WAYYS told me to come and see them in person. I asked my manager and she said that was absolutely fine, that I needed to go and sort this out and get my life in order because I couldn't work like this. She said that she would look after my shift and that I should take as long as I needed. My manager spoke to the area

manager and he said that this was OK as well. Normally you have to give four days' notice for leave but they were great about letting me go with no notice at all. They were so supporting and lovely throughout the whole process.

I am starting to get my life back on track after all of this. It has been about a year since I left. He took everything, every penny in my account, however I have been able to save up by working hard and my manager helped me to find extra shifts. In addition, the people at work have been so amazing in helping me get all of the basics that I needed. They gave me money to help me when I had first left my husband. They were like my family, when I had no one else to turn to. My employer has been so supportive, they did things like making sure that I was never rostered on alone until my intervention order was in place, in case my husband turned up at work, so that I was safe. They have been amazing.

I have saved enough money and I have started my training to be a nurse. I am so happy. However, I will still keep working one shift with my employer so I can stay in contact with all of my friends there.³

The effects of family violence on employment

Family violence can have negative effects on a victim's employment, which can in turn compound the overall effects of the violence. Victims report that unexplained absences, poor performance, anxiety and distress caused by family violence can lead them to leave or change their employment, accept insecure employment or otherwise disrupt their working arrangements. The Commission was told of a case in which a woman's employment was directly at risk as a result of the time she took off work following episodes of violence:

She had been in full time employment for 27 years in a large metropolitan school. She began to feel deeply embarrassed about the injuries to her face and arms, which were becoming more visible, and started missing work. As a result, she was disciplined and told she could be terminated from her role and the ongoing financial security and safety it provided to her.⁴

ANROWS (Australia's National Research Organisation for Women's Safety) analysed the 2012 Australian Bureau of Statistics' Personal Safety Survey and found, among other things, that:

... 145,700 women who had been physically assaulted by a male cohabiting partner, took time off work in the 12 months after the incident. This is over one in four women who were employed during this time and who had experienced this type of violence.⁵

The Australian Family and Domestic Violence Clearinghouse's National Domestic Violence and the Workplace Survey in 2011 found as follows:

... women with a history of domestic violence have a more disrupted work history, are consequently on lower personal incomes, have had to change jobs more often and are employed at higher levels in casual and part time work than women with no experience of violence.⁶

Nearly half of the survey respondents who had experienced family violence reported that the violence had affected their capacity to go to work. The main reason for this was physical injury or restraint (67 per cent). Some reported that their violent partner hid keys and personal documents such as drivers licences, failed to care for children or refused access to transportation money;⁷ others reported that sleepless nights affected their performance at work or that the violence caused them to be distracted, anxious, tired or unwell.⁸

This experience was echoed in the Commission's community consultations. One woman reported:

I lost one job because I went to work with a black eye and they said we don't want your crazy husband here. So staff don't understand, managers don't understand. There's no trust, you can't confide in anyone because people gossip, people blow it out of proportion, people don't understand.⁹

The workplace as a site of family violence

The workplace itself can sometimes be a site where family violence occurs—for example, if a victim is harassed by the perpetrator at her place of work or in the context of her employment in a family business. People now work in many types of environments, and the workplace can be a site of family violence when victims of family violence work from home.

Of the respondents to the Family and Domestic Violence Clearinghouse survey who reported family violence in the preceding 12 months, 19 per cent reported that the violence had continued in the workplace in the form of abusive telephone calls, emails or physical confrontations.¹⁰

It is also not uncommon for violence to occur between two employees at the same workplace who are in a relationship.¹¹ The FDVCH survey results show that 12 per cent of those who reported experiencing family violence were employed in the same workplace as the person perpetrating the violence.¹²

In a recent case heard by the Fair Work Commission an employer was found to have unfairly dismissed a woman who had taken time away from work because of a domestic violence incident perpetrated by her partner and her subsequent court attendance to obtain an intervention order against him.¹³ Both she and her partner worked at the same place. When the woman returned to work her employer told her it would 'not be safe or nice for [her] employment to continue'¹⁴ and that 'keeping [both her and her partner] in the office [was] a no.'¹⁵ The Fair Work Commission found that the employer's words during the meeting effectively amounted to the woman's dismissal and ordered the employer to pay her \$27,500 in compensation.¹⁶

A perpetrator can also use a woman's earning capacity to abuse her financially. Financial abuse is discussed in Chapter 21.

Employment as a protective factor

Employment is a crucial 'protective' factor in relation to family violence:

- ▷ The financial security and independence provided by paid employment increase a victim's ability to leave the relationship and recover from the effects of the violence. This is discussed in Chapter 21.
- ▷ The workplace can be the only place where the victim spends time physically away from the perpetrator, giving her the space to take steps to ensure her safety.
- ▷ Employers and colleagues can play an important role in helping victims recognise that they are experiencing family violence and supporting them in seeking help.

The Commission heard that the financial security provided by paid employment is of particular importance when someone is leaving a violent relationship. The Young Men's Christian Association of Victoria noted in its submission:

A critical factor for women experiencing violence is their ability to secure financial independence. Maintaining employment is therefore crucial. At the same time, the impacts of the violence may compromise the victim's ability to get to work and meet agreed expectations at work. This creates a ... dilemma for women seeking to escape the impact of violence – at the time they most need their work they are most [in] danger of losing it.¹⁷

The Commission was also told about the ways in which a workplace can provide access to support services, as well as being a source of support itself.

... we do know that people do get support through their workplace, it is a significant place where women get support. For some women it's the only safe place they have. It may be the only place that they can look on-line for resources and know that they are not going to be checked, their browser history is not going to be checked, where they can have 10, 15 minutes to themselves. So work is an incredibly important place for women to get support about family violence.¹⁸

Initiatives taken by the City of Whittlesea are indicative of the protection that can be afforded victims through their employment:

The City recognises the impacts that workplace policy has on increasing access to support services for women experiencing violence and how it could engage in the prevention of escalating violence by intervening early through support and paid leave entitlements for staff. The policy helps to develop an environment that promotes gender equity and models non-violent and respectful relationships to prevent family violence occurring; while creating a supportive environment to encourage victims of family violence to seek support.¹⁹

ANROWS has reported that the 2012 ABS Personal Safety Survey shows that work colleagues were included among the most common sources of support for women who had been physically assaulted by their cohabiting partner.²⁰

Workplace culture

Some workplaces are said to contribute to the family violence problem. Dr Michael Flood, Australian Research Council Future Fellow and Senior Lecturer in Sociology, University of Wollongong, has noted that ‘there is now substantial evidence that violence-supportive attitudes are encouraged and institutionalised in the peer relations and cultures of particular organisations and workplaces’—particularly male-dominated sporting clubs, workplaces and military institutions.²¹

Dr Sue Dyson, Associate Professor and Principal Research Fellow at the Australian Research Centre in Sex, Health and Society, La Trobe University, reflected this point in her statement to the Commission:

Workplaces are another setting in which sexism and cultures of disrespect can thrive. There are also likely to be women in any workplace who have been personally affected by violence and the culture of the workplace can potentially exacerbate the effects of intimate partner or sexual violence. Despite decades of anti-discrimination legislation and the availability of equally (or better) qualified women, gender equality in senior leadership roles remains an intractable problem ...²²

Workplaces have therefore been identified as important settings for the prevention of family violence and violence-supporting attitudes. Employers can be partners in violence prevention by encouraging attitudinal and behavioural change in their workplaces: they can create a culture that encourages respectful relationships, both inside and outside the workplace, and builds people’s confidence to challenge sexist, discriminatory and bullying behaviours and environments.

Workplace programs and initiatives

Numerous workplace-based programs and initiatives for preventing and responding to family violence have been developed and implemented in Victoria and elsewhere in Australia in the past 20 years, led by a range of different organisations.

Our Watch commissioned RMIT University to review workplace and organisational programs and approaches for preventing violence against women.²³ The RMIT researchers noted that workplace initiatives can have three main targets of activity—responding to violence that is already occurring, preventing violence, and promoting gender equality and respect.²⁴ Most of these activities are voluntarily engaged in by employers, although, as discussed shortly, employers also have a range of legislative obligations to provide safe and non-discriminatory workplaces.

In the case of responding to violence that is already occurring, workplace initiatives can include the following:

- ▷ helping individual staff and managers to recognise the signs that an employee might be experiencing violence at home, to respond appropriately to a disclosure of violence, and/or to refer the person concerned to appropriate services
- ▷ having policies and additional leave entitlements to support individuals experiencing violence. The availability of family violence leave is discussed in detail later in this chapter, under the heading 'Family violence leave'
- ▷ supporting people in taking bystander action to confront perpetrators of violence about their behaviour or intervening in an incident observed in the workplace.

Bystander intervention approaches are designed to instil a sense of responsibility in community members, so they are able to intervene in incidents of violence or challenge violence-condoning attitudes. There is strong support for incorporating bystander training in workplace programs.²⁵ Victorian research conducted in 2012 analysed the factors suggesting that an individual might be more likely to take bystander action when witnessing sexist, discriminatory or violent behaviour. Central factors were the individual's level of confidence, their assessment of whether the action would have a positive effect, and whether they thought the action would have the support of their friends, peers or colleagues.²⁶ In a workplace context an additional factor was an individual's confidence that their employer would take the matter seriously.²⁷

Prevention and gender equality initiatives involve improving workplace culture, conditions and practices to combat violence-supporting attitudes and behaviours and to ensure women's equal participation in the workforce. Organisational development is increasingly recognised as a specific component of effective prevention strategies:²⁸ as a technique, it recognises that organisations and organisational culture have great potential to influence and shape social norms through modelling respectful behaviours and reinforcing gender equitable and non-violent cultures.²⁹

The RMIT paper noted that, although response and prevention activities are conceptually distinct, in practice they can and do co-exist and are often blurred. The authors also state that 'policies and programs to respond to incidents of violence are less likely to be effective within an informal workplace culture that condones violence against women, sexist and/or other discriminatory behaviour, or accepts gender inequality'.³⁰ Table 37.1 shows the various activities possible in each focus area nominated in the RMIT paper.

Table 37.1 Response, prevention and promoting gender equity: complementary models for change in the workplace

| Model | Area of focus | Example activities |
|-------------------------------------|---|--|
| Responding to violence | Knowledge, attitudes | Awareness-raising communications across the organisation about the extent and nature of intimate partner violence and how to support staff who may be experiencing it. Leadership active in speaking about intimate partner violence. Support and referral information for potential victims and perpetrators made available throughout the workplace. |
| | Behaviours, informal culture, practices | Managers and key contact staff trained to recognise the signs of family violence, respond appropriately to disclosures, and refer to services. |
| | Structures, formal policies, procedures | Family violence leave provisions, and flexible work policy and safety planning in addition to legislative requirements (e.g. <i>Sex Discrimination Act 1984</i> (Cth), and <i>Workplace Gender Equality Act 2012</i> (Cth)). |
| Preventing violence against women | Knowledge, attitudes | Awareness-raising communications across the organisation about the extent and nature of violence against women and the connection between sexism, rigid gender roles and gender stereotyping in supporting violence against women. Leadership active in speaking about violence against women and challenging sexist cultures and practices within workplaces. |
| | Behaviours, informal culture, practices | Managers and key contact staff trained in recognising and responding to sexism and discriminatory or exclusive gendered practices. Staff trained in taking prosocial action as bystanders when they witness sexism and discriminatory or exclusive gendered practices. |
| | Structures, formal policies, procedures | Employee codes of conduct and/or values statements commit to intolerance of sexism, discrimination and violence against women, in addition to meeting legislative requirements (e.g. <i>Sex Discrimination Act 1984</i> (Cth) and <i>Workplace Gender Equality Act 2012</i> (Cth)). |
| Promoting gender equity and respect | Attitudes, norms | Awareness-raising communications across organisation about the foundations and causes of gender inequality, sexism, discrimination, unconscious gender bias and promoting respectful relationships. Leadership active in speaking about valuing females and males equally, promoting the same rights, opportunities and rewards across the organisation, including women's equal participation in decision making and pay structures. |
| | Behaviours, informal culture, practices | Managers trained to recognise and address unconscious gender bias in workplace decision making and practice. Leadership training for women to encourage and promote women in leadership positions. |
| | Structures, formal policies, procedures | Reporting to the Workplace Gender Equality Agency on equity measures. Building a gender equality strategy in consultation with staff. Review of hiring and promotion policies and practices to attract and retain quality women employees. |

Source: Based on Anastasia Powell, Larissa Sandy and Jessica Findling, 'Promising Practices in Workplace and Organisational Approaches for the Prevention of Violence Against Women' (Report prepared for Our Watch, RMIT University, 2015), 13.

During the course of its inquiry the Commission learnt about a number of programs that incorporate some or more of the types of response and prevention activities listed in Table 37.1:

- ▷ Act@Work—Challenging Sexism, Discrimination and Violence against Women and Children (Women's Health Grampians in partnership with Child and Family Services Ballarat, WRISC Family Violence Support and the City of Ballarat)³¹
- ▷ Engage to Change (McAuley Community Services for Women)³²
- ▷ the White Ribbon Australia Workplace Accreditation Program³³
- ▷ Take a Stand: Working Together against Domestic Violence (VicHealth, Women's Health Victoria, Women's Health Loddon Mallee, Melton City Council, Women's Health and Wellbeing Barwon South West)³⁴
- ▷ United: Working Together to Prevent Violence in the West (Women's Health West Inc.)³⁵
- ▷ Gender and Disability Workforce Development Program (Women with Disabilities Victoria)³⁶
- ▷ Y Respect Gender Project (YMCA Victoria)³⁷
- ▷ We Need to Talk: Preventing Violence Against Women Strategy (City of Melbourne)³⁸
- ▷ Darebin Says NO to Family Violence: A Whole-of-Organisation Approach to Preventing Violence Against Women (City of Darebin)³⁹
- ▷ Paving the Way (Wellington Shire Council, Baw Baw Shire Council)⁴⁰
- ▷ the Equal Footing tool kit (VicHealth)⁴¹
- ▷ Safe at Home, Safe at Work (previously the Workplace Rights and Entitlements Project) (UNSW Australia's Family and Domestic Violence Clearinghouse under the leadership of the Centre for Gender Related Violence Studies)⁴²
- ▷ Male Champions of Change (established by Elizabeth Broderick AO, Sex Discrimination Commissioner, Australian Human Rights Commission)⁴³
- ▷ Male Champions of Change (Victorian Equal Opportunity and Human Rights Commission)⁴⁴
- ▷ the Respect and Responsibility initiative (Australian Football League).⁴⁵

Building on this work, the Victorian Government has announced it will allocate \$900,000 to a project, the Workplace Equality and Respect Project, to be carried out by Our Watch to help Victorian workplaces equip their staff to recognise and respond to family violence and maintain respectful relationships.⁴⁶ The project will work directly with selected participating workplaces and will partner with regional service providers to support the implementation of workplace programs in rural and regional Victoria. It is expected the project will directly reach over 2000 employees in multiple sectors, workplaces and geographical locations.⁴⁷ It will draw on existing programs, resources and evidence about effective practice to strengthen and consolidate workplace initiatives in Victoria. It will also develop minimum-practice standards as well as tools, guides, resources and training packages for future workplace programs.⁴⁸ These resources will be made available on an 'online knowledge hub'.⁴⁹ A project evaluation report is due to be provided to government in May 2017.⁵⁰

During its inquiry the Commission received information from the Department of Premier and Cabinet, the Department of Justice and Regulation, Victoria Legal Aid and Victoria Police about the policies and supports in place for any employees experiencing family violence.⁵¹ In broad terms, the initiatives consisted of access to employee assistance programs, fact sheets on family violence, the provision of referrals to support services and the availability of leave. The Family Violence Support Guidelines and Related Policy, issued by the Department of Justice and Regulation, offers staff access to professionally trained family violence officers within the Victims Support Agency. The role of these officers is to take a sensitive, non-judgmental approach to an employee who is experiencing family violence, assist with referrals to community support services, discuss measures for making safety a priority, and offer advice about suitable leave and flexible working arrangements.⁵²

Court Services Victoria told the Commission that, although it has no support, referral or assistance programs that relate specifically to family violence, court staff can have access to an employee assistance program for a range of matters. It further advised that at present it has no policies, guidance or work directions for managers that relate specifically to employees experiencing family violence, but is considering the development of such policies as part of its process of reviewing a number of human resources policies.⁵³ The Commission also heard from the Magistrates' and the Children's Courts that staff have access to an employee assistance program and that individual support is provided as required by management to staff, although there is no formal policy on this.⁵⁴

Victoria Police provides a number of employee support services, among them a confidential counselling service and a consultation service for managers seeking advice about employee wellbeing.⁵⁵ Chapter 14 discusses work done by Victoria Police to respond to family violence incidents involving police members as victims and/or perpetrators and to address cultural norms and attitudes within the organisation relating to casual sexism, adherence to rigid gender stereotypes and support for gender inequality.

The Independent Review into Sex Discrimination, Sexual Harassment, including Predatory Behaviour, in Victoria Police,⁵⁶ conducted by the Victorian Equal Opportunity and Human Rights Commission at the request of Victoria Police, presented its Phase One report in 2015. The review's recommendations focused on the response to and prevention of sexual harassment and sex discrimination, recognising that workplaces are crucial settings for the prevention of violence against women. Among the recommendations, a whole-of-organisation Gender and Diversity Strategy linked to performance and capability was proposed, as was improving recruitment and retention processes and promotional pathways.⁵⁷ The review also recommended developing victim-centric internal complaint mechanisms and appropriate victim support services.⁵⁸ The Victorian Government has since announced a Victorian Equal Opportunity and Human Rights Commission review of gender equity and workplace culture in Victoria's fire services.⁵⁹

The South Australian Government has commissioned the Equal Opportunity Commission of South Australia to work with all South Australian government departments to achieve accreditation as White Ribbon workplaces.⁶⁰ The Commission was told that the Department of Justice and Regulation in Victoria is participating in the White Ribbon Australia Workplace Accreditation Program.⁶¹ In addition to engaging in a range of activities, such as an annual campaign, social marketing and promotional activities, White Ribbon offers, on a fee-for-service basis, prevention programs in schools and workplaces.⁶² Its workplace accreditation program involves workplaces committing to implement policies, programs, leadership and training to prevent and respond to violence against women. Workplaces are accredited for three years, during which time they must continue to promote cultural change, which is measured by means of a survey after 18 months.⁶³

Principles of workplace initiatives to address family violence

Although there have been limited reviews and evaluations of workplace initiatives, there is some evidence that they are effective in raising awareness and understanding within organisations, and in encouraging people to speak out against violence condoning attitudes and behaviours.⁶⁴

A number of factors have been cited in the literature and by people the Commission consulted as important considerations or preconditions for effective implementation of workplace-based programs. Central among these are the importance of leadership, ensuring that programs are tailored to the needs of the organisation and its employees, and building and disseminating the evidence base for what works.

Leadership required at all levels to promote organisational change

The Commission heard that leadership in organisations is crucial to ensuring not only that programs and initiatives are taken up in the first place but also that they are given priority within an organisation, that messages are consistently reinforced, and that employees have the confidence to put what they have learnt into practice.

A recent evaluation of the workplace training component of the Take a Stand program—which aims to strengthen organisational capacity to promote gender equality and non-violent norms—found that employees in organisations where the leadership style encouraged and valued employee feedback and participation, felt more positive about their capacity to challenge behaviours and attitudes that normalise violence against women. Employees in these types of organisation also felt more positive about their capacity to obtain help for a colleague found to be experiencing domestic violence.⁶⁵

It is also important that such a workplace program is part of the organisation's strategic and business planning process and is seen as the direct responsibility of senior organisational leadership,⁶⁶ rather than approaching family violence as merely a 'private issue' for individual workers, to be managed by human resources departments.⁶⁷ Additionally, it is vital to involve both senior managers and middle managers in organisational change programs.⁶⁸

The role of internal workplace 'champions' in leading organisational change is also seen as crucial to creating an enabling environment.⁶⁹ The Take a Stand evaluation stressed that such champions are needed to encourage respectful cultural attitudes, to provide advice about how to respond to inappropriate attitudes and behaviours, and to provide referrals to people seeking help when needed.⁷⁰ The specific role of the senior project officer of the Y Respect Gender project was cited in that project's evaluation as an important success factor; it had a positive impact on other senior managers, who also became advocates internally and in the wider community.⁷¹ Providing opportunities for internal workplace champions has also been identified as a way of involving more men in strategies for combatting family violence.⁷²

The City of Whittlesea informed the Commission that, as part of its family violence workplace support policy, it has 16 family violence contact officers on staff to act as contact points for anyone in the workplace experiencing family violence.⁷³ The role of the contact officers is to provide information about external services and workplace entitlements, to liaise confidentially with the local family violence specialist service on behalf of the employee, and to act as a conduit between the employee and the human resources department if the employee does not wish to talk to her immediate manager about her situation.⁷⁴

Tailoring the intervention to the needs of the organisation and its employees

The Commission heard that approaches to encourage workplaces to become involved in family violence prevention and responses need to be tailored to meet the needs of an individual organisation and that 'starting where the organisation is at' is an important part of ensuring that suitable programs are identified for specific organisations. There is no 'one size fits all' model. Knowledge of an organisation's readiness for change, as well as levels of motivation within the organisation, will help determine the nature of the resources, support and interventions to be adopted.

The RMIT paper reinforced the notion that understanding an organisation's current capacity and readiness is essential to determining the 'way-in':

... it became apparent that, for some workplaces, engaging in a discrete project of raising awareness of family violence and improving workplace policy and responses to potential victims of family violence (such as through the White Ribbon Workplace Accreditation Program), became a *way-in* to progressing further workplace changes in policy and practice to promote gender equity. [Alternatively] for other workplaces, such as in some corporate environments, gender equity in relation to retaining skilled women in senior positions and leadership was a *way-in* to a broader program of change that connected gender equity, respect and the prevention of violence against women.⁷⁵

Experience from previous programs suggests that program messaging and delivery need to be both targeted to the audience and 'non-confrontational'.⁷⁶ The Y Respect Gender project pointed to challenges in communicating the project goals in ways that did not alienate people and in managing defensive responses from some senior staff, particularly some male staff.⁷⁷ Similarly, the authors of the RMIT paper found that the language and concepts used in some workplace programs are overly technical and complex and are not easy to communicate to diverse audiences—in particular, the way they explain the connection between attitudes and gender stereotypes and incidents of violence.⁷⁸

It has also been found that local ownership is crucial in both facilitating attitudinal and organisation change and ensuring program stability and sustainability.⁷⁹

Building and disseminating the evidence base

As with many other programs and policies in the area of family violence, there is relatively little evidence about whether and how effective workplace-based programs are at preventing or responding suitably to family violence. It has been noted that 'new initiatives need comprehensive review and evaluation so that some form of cost-benefit can be accurately estimated to give an indication of the utility and effects of these types of interventions'.⁸⁰

Evaluating programs and initiatives and gathering information about their impact are also important for guiding the development of tools, knowledge and resources that reflect leading practice. Such materials can be disseminated to workplaces that have an interest in doing what they can to prevent and respond to family violence but do not know where to start or what steps to take.

In this regard, the RMIT paper puts forward a series of recommendations, including for the creation of a web-based portal for workplaces interested in relevant programs, the development of tool kits and common education materials that can be adapted for use by different organisations, and the introduction of national standards for workplace programs, supporting good evaluation practice, and highlighting promising practice.⁸¹

Challenges and opportunities

The Commission received evidence about the value of family violence leave as a necessary support for people experiencing family violence. This section considers the current extent of family violence leave in Victorian workplaces where enterprise agreements currently include or soon will include such leave. Additional mechanisms for providing family violence leave for employees who are not covered by existing entitlements under federal workplace laws, is then considered.

In the final part of this section other regulatory measures to deal with the workplace impacts of family violence are explored—such as occupational health and safety legislation and equal opportunity legislation.

Family violence leave

Lack of dedicated family violence leave can make the situation worse for people who are experiencing family violence. The Commission heard that victims often exhaust their leave entitlements when they must attend medical appointments and court appearances, organise accommodation, and care for their family. As one family violence survivor said, 'All workplaces should be able to give leave for those leaving a violent relationship, without my long service and sick leave I would not have financially survived'.⁸² The Commission was also informed that without paid leave, women are less likely to report family violence or manage the necessary interactions with courts, medical services and schools.⁸³

Mr Craig O'Donnell, the father of Rekiyah O'Donnell, who was killed by her partner, submitted that immediate family members of homicide victims should be entitled to a special category of leave to enable them to attend the trial of the accused 'without penalty or loss of job ... nor having to ... use some other form of leave that they have rightly accrued'.⁸⁴ Mr O'Donnell submitted that this would 'help minimise the trauma in seeking time off when experiencing such an ordeal'.⁸⁵

The concept of dedicated paid family violence leave has evolved as a specific mechanism for supporting victims. The ACTU submitted:

Paid domestic violence leave is designed to assist victims of domestic violence to remain in paid employment, support them through the process of escaping violence and to promote safe and secure workplaces for them and their work colleagues. The leave is based on an employee's need to, for example, attend court appearances and related appointments, seek legal advice, and make re-location arrangements.⁸⁶

The availability of family violence leave also sends a message to staff that the organisation takes family violence seriously.

On the question of whether there should be a designated family violence leave entitlement or simply greater access to already existing leave entitlements, Ms Ged Kearney, President of the ACTU, told the Commission she was in favour of specifically naming the entitlement 'family violence leave' because:

... if we do actually label it, if we do say that this is specifically for family and domestic violence leave, then it makes absolutely no doubt that that is the issue we are trying to tackle ... I think that that's an important part of culturally swinging about the attitude to domestic and family violence in the community.⁸⁷

Mr Phil Cleary, whose sister was killed by her former partner in 1987 and who has been a long-time advocate for the prevention of violence against women, submitted that paid family violence leave should be supported because it validates a woman's experience of violence.⁸⁸

Ms Wil Stracke, Campaigns and Industrial Officer at the Victorian Trades Hall Council, gave evidence that the provision of a specific family violence leave entitlement in an enterprise agreement was also a way of countering the stigma associated with family violence, the message to victims being:

This is a workplace where your co-workers have voted with you in an enterprise agreement for this entitlement, so they stand with you, and your employer has accepted that claim, which means they stand with you. So this is a workplace where we all stand together to support you in this situation.⁸⁹

The Commission heard that for people who do not have other sources of support and advice, this might encourage a victim to disclose violence and seek assistance.⁹⁰

The Commission notes that in August 2015 the Senate Finance and Public Administration References Committee handed down its report on domestic violence in Australia.⁹¹ The committee supported the notion of victims of domestic and family violence having access to leave provisions that help them maintain employment and financial security while attending necessary appointments such as court appearances and obtaining legal advice; it recommended that the Commonwealth Government investigate ways of implementing this throughout the private and public sectors.⁹²

Enterprise agreements

In the past five years there has been a marked increase in the adoption of family violence leave clauses in enterprise agreements. The Productivity Commission's report on its Workplace Relations Framework Inquiry noted that 840 enterprise agreements approved between 1 January 2012 and 30 June 2015—covering an estimated 630,592 employees—contained a family violence provision of some kind, most of them providing for family violence leave. It also noted that access to domestic violence provisions is skewed in favour of public sector employees.⁹³

One of the earliest family violence leave clauses negotiated in Victoria was that between the Australian Services Union and the Surf Coast Shire Council in 2010.⁹⁴ The agreement provided for up to 20 days' paid leave for an employee experiencing family violence. The employee could use the leave for medical appointments, legal proceedings and other activities related to the violence.⁹⁵ The clause required the employee to provide evidence of the violence in the form of a document issued by the police, a doctor, a district nurse, a family violence support worker or a lawyer in order to obtain the entitlement.⁹⁶ By September 2014 at least 60 of Victoria's 79 local councils had family violence leave provisions incorporated in their enterprise agreements.⁹⁷

The Commission heard from employers who, through their association with the White Ribbon Foundation and other initiatives, have introduced family violence leave policies into their workplaces. Ms Katherine Paroz, Human Resources Advisor at Telstra Corporation, gave evidence that Telstra's family violence leave policy had received a very positive response in that organisation's workplace.⁹⁸ She noted that, with 33,000 employees, Telstra thought it highly likely that some of its staff would be experiencing family violence.⁹⁹ Accordingly, Telstra introduced a policy providing for 10 days of paid, dedicated family violence leave for permanent employees and 10 days of unpaid family violence leave for casual employees in order to support staff and ensure that the business does not lose talented employees unnecessarily.¹⁰⁰

In August 2015 the Victorian Government announced that all future Victorian public sector enterprise agreements would contain a family violence clause.¹⁰¹ The government is the state's largest employer, so this will significantly increase the number of Victorians having access to family violence leave. Under an in-principle agreement reached with the Victorian Public Service, employees will be entitled to up to 20 days' paid family violence leave.¹⁰² Similarly, an in-principle agreement has been reached with Victoria Police, whereby employees will be entitled to 10 days' paid family violence leave plus such additional leave as is reasonable.¹⁰³ The government has not yet released any further details about how the entitlement to family violence leave will be communicated or otherwise implemented.

Although entitlements arising out of enterprise agreements negotiated to date provide coverage for a large number of Victorian employees, the current availability of family violence leave is low overall and largely dependent on an employer's goodwill. As Ms Stracke told the Commission:

... it should not be a matter of luck that you work for an employer who will do those things and bend over backwards, and that's why our submission is around an entitlement to this leave, that that's a critical thing because your safety should not be dependent on having an employer who is understanding.¹⁰⁴

Mr O'Donnell similarly submitted that entitlement to family violence-related leave should be 'enshrined in law' on the basis that not all employers are 'so gracious' as to offer a special category of paid leave when asked by an employee.¹⁰⁵

Many women work in insecure employment, do not have union representation, or work for organisations or businesses that are not covered by enterprise agreements, so inclusion of family violence leave in enterprise agreements can only ever be part of a broader effort to extend the availability of family violence leave throughout the workforce. As a result of this concern, the discussion associated with family violence leave has become focused on the creation of a right or entitlement to family violence leave entrenched in statute or modern awards.

Efforts are being made to make family violence leave an entitlement that is available to all national system employees (that is, employees covered by Australia's national workplace relations system) through inclusion in the National Employment Standards and to include an entitlement to family violence leave in all modern awards.

The Productivity Commission noted in its report on the Workplace Relations Framework Inquiry that employer organisations have been generally opposed to, or silent on, the introduction of a regulatory obligation on employers to provide entitlements related to family violence, on the basis that employees already have access to other generic forms of leave.¹⁰⁶ For its part, the Australian Industry Group has said that in its view the best way of involving employers in responding to family violence is to engage them in a positive way, to educate them and encourage their participation, rather than imposing 'heavy handed and inappropriate measures on them'.¹⁰⁷

Ms Julie Kun, Deputy CEO and Business Development Manager of WIRE (the Women's Information Referral Exchange) gave evidence that, when advocating in the past for employers to implement family violence leave entitlements, she has found employers responsive to the argument that such entitlements offer benefits not just for individual employees but also for the workplace and the wider community and in terms of how employers are perceived.¹⁰⁸

The Productivity Commission noted that paid domestic violence leave provisions can impose additional costs on employers but can also offer productivity and other benefits.¹⁰⁹

The National Employment Standards

The National Employment Standards are a set of 10 minimum employment standards that apply to all national system employees and cannot be displaced by employment contracts, modern awards or enterprise agreements.¹¹⁰ They are contained in the *Fair Work Act 2009* (Cth) and cover entitlements such as annual leave, personal or carer's leave, and compassionate leave.¹¹¹ Pursuant to the standards, employees (other than casual employees) may also make a request for flexible working arrangements, including in circumstances where they are experiencing violence from a member of their family.¹¹²

It has been proposed that the National Employment Standards be amended to include an entitlement to family violence leave. Subject to the way such a standard is drafted, including family violence leave in the standards would ensure that most employees in Victoria would have access to this category of leave. In 2011 the Australian Law Reform Commission recommended that the Commonwealth Government review the National Employment Standards with a view to including an additional entitlement to family violence leave.¹¹³ Amending the standards to this end has the support of the ACTU National Congress, which passed a resolution supporting the initiative in May 2015.¹¹⁴

In November 2015 the Commonwealth Government stated that it would consider the proposal to introduce family violence leave into the National Employment Standards and noted that the Productivity Commission was considering the matter as part of its workplace relations review.¹¹⁵ The Productivity Commission has since concluded that any decision about including family violence provisions in the standards should await the outcome of the Fair Work Commission's review of modern awards.¹¹⁶

The Federal Opposition announced, also in November 2015, that it would incorporate five days of paid family violence leave in the National Employment Standards if elected to government, following consultation with business, unions and other stakeholders.¹¹⁷

Modern awards

Modern awards, which are made by the Fair Work Commission, set minimum conditions for employees working in particular industries or occupations; they apply to all employees and employers covered by the relevant modern award.¹¹⁸ Not all employees will be covered by a modern award. A modern award creates a safety net for an industry, ensuring that the terms of any enterprise agreements made in that industry are better overall than the terms of the relevant modern award. Modern awards also offer the benefit of covering employees in the classifications set out in the award across an industry, regardless of the employees' relative bargaining power or level of union representation.

The Commission was informed that the ACTU and its affiliated unions are running a campaign to include 10 days' paid family violence leave as a minimum entitlement in all modern awards.¹¹⁹ The ACTU submitted:

The inclusion of domestic violence leave in Modern Awards ensures that the entitlement is available to all employees [for whom the award applies who are] affected by domestic violence as a matter of law and removes the need for [these] employees facing extremely difficult circumstances to negotiate with their employer in order to take time off work.¹²⁰

The Commission received no submissions from employer groups on the question of including family violence leave in modern awards. A number of employer groups did make submissions to the Fair Work Commission as part of the four-yearly modern award review process,¹²¹ opposing the introduction of a family violence leave clause.¹²² For example, the Australian Industry Group expressed concern that the inclusion of family violence provisions in modern awards was 'heavy handed' and risked generating negative views among employers in relation to efforts to deal with family violence.¹²³ It went on to say:

Awards are already far too complex to constitute a genuine safety net. Awards need to be simplified – not expanded to deal with the numerous very important community problems which exist. If family violence is to be dealt with through a specific clause in awards, why not street crime, drug dependence, alcohol dependence, illiteracy, homelessness, mental health, age discrimination, gender inequality, road accidents, traffic congestion, environmental degradation, and so on? All social problems interact with the workplace in one way or another.¹²⁴

The Commission notes that the Fair Work Commission has scheduled a hearing for October 2016 in respect of the inclusion of a family violence leave clause in modern awards as part of its modern awards review.¹²⁵

Considerations for employers introducing family violence leave

A number of concerns were expressed about the practical implementation of family violence leave in the workplace, regardless of the source of the entitlement. In particular, concern was expressed about the supports provided to employees, privacy, confidentiality, and the type of evidence to be provided by an employee seeking access to paid family violence leave.

A University of NSW Australia study of the incorporation of domestic violence clauses in enterprise agreements surveyed a number of large workplaces and consulting employees about their experiences. The researchers concluded, '[T]he essential elements for a successful implementation of domestic violence clauses are ongoing monitoring and research, awareness and information strategies, the guarantee of confidentiality, and training'.¹²⁶

Ms Paroz of Telstra told the Commission that when the corporation introduced family violence leave it communicated the policy widely to staff, required leaders to attend training, and provided assistance to managers in supporting employees seeking leave.¹²⁷ The Commission heard in evidence, however, that by July 2015 only 17 people had availed themselves of the entitlement to family violence leave since its introduction in November 2014, there being a total 45 days of family violence leave taken in this period.¹²⁸ Ms Paroz stated that Telstra was confident the policy was understood internally and that she expected employees would develop the confidence to use the entitlement to family violence leave over time.¹²⁹

The ACTU has proposed the following set of best-practice principles for evaluating and guiding the implementation of paid family violence leave provisions in workplaces:

- ▶ There must be a workplace contact for employees who want to disclose family violence.
- ▶ The role and responsibilities of the person to whom an employee has disclosed family violence must be clear.
- ▶ Processes and procedures for ensuring confidentiality for employees disclosing family violence must be clear.
- ▶ The clause must take account of mandatory reporting and *Privacy Act 1988* (Cth) requirements if relevant.
- ▶ The clause must include anti-discrimination protections for employees disclosing family violence.
- ▶ Training and support must be provided for all employees—in particular, those who are likely to have an employee disclose circumstances related to family violence to them.¹³⁰

The Victorian Equal Opportunity and Human Rights Commission expressed concern about the evidence that an employee who sought access to family violence leave would be required to provide—for example, whether an employer would ask for a note from a police officer, doctor or family violence worker or whether a statutory declaration signed by the victim would be sufficient.¹³¹

VEOHRC suggested that the test could be modelled on section 107 of the Fair Work Act, which provides that an employee who has notified their employer that they intend to take leave ‘must, if required by the employer, give the employer evidence that would satisfy a reasonable person’ that the leave is taken for the permissible reason. This test would usually be satisfied by a statutory declaration signed by the employee.¹³²

Further regulatory measures

Employers have some statutory obligations—in addition to those relating to existing general leave provisions—that require them to take into account some of the potential workplace impacts of family violence. For example:

- ▶ Occupational health and safety legislation requires that employers maintain a safe workplace.¹³³ These provisions can apply, for example, to a situation in which family violence is being perpetrated in the workplace by a co-worker.
- ▶ Equal opportunity legislation requires that employers not discriminate against employees on the basis of certain attributes. A woman who is treated less favourably by her employer because she is experiencing family violence might be able to avail herself of the protection afforded by the legislation if the treatment relates to one of the existing protected attributes. If, for example, the discrimination relates to mental illness she experiences as a result of the family violence, she might be able to make a discrimination claim on the basis of the disability attribute.

Some submissions the Commission received recommended that these regulatory regimes be amended to impose express obligations on employers to take steps to respond to family violence in the workplace. For example, a number of submissions called for amendments to OHS legislation to include the impacts of family violence at work as an express OHS consideration and for the introduction of a new attribute in the *Equal Opportunity Act 2010* (Vic).

VicHealth has previously identified scope for employers to use workplace policies in these contexts as vehicles for responding to family violence:

There is potential for incorporating support for bystander action in key policies (such as occupational health and safety, equal opportunity) as a way of fulfilling for example legislated employer ‘positive duty’ obligations. Promoting an organisational culture where sexism, discrimination and violence (including sexual harassment for example) towards women are not only not tolerated, but where staff are encouraged and skilled to identify and take action when witnessing these behaviours, could be an important component of these positive duty obligations.¹³⁴

Occupational health and safety

Under OHS legislation, employers are obliged to provide and maintain a working environment that is safe and does not pose risks to health.¹³⁵ They are also required to monitor employees’ health, including their psychological health.¹³⁶ WorkSafe Victoria, the authority with responsibility for monitoring and enforcing compliance with Victorian OHS laws, provides guidance to employers on their obligations in cases where a person is being bullied, abused, threatened or assaulted in circumstances relating to their work—including how to identify and respond to hazards and risks and implement suitable control measures.¹³⁷ Victorian OHS legislation and policy is silent on whether the specific impacts of family violence in the workplace constitute risks to workers’ health and safety.

The Canadian province of Ontario has amended its Occupational Health and Safety Act to include ‘domestic violence’ as a type of workplace violence. Pursuant to this legislation, an employer is required to take every reasonable precaution to protect an employee from physical injury in the workplace if the employer becomes aware, or should reasonably be aware, that domestic violence is a risk. Employers are also required to have policies and programs relating to workplace violence.¹³⁸

Some submissions the Commission received argued that Victoria's OHS laws should be amended to include the impacts of family violence at work as an OHS consideration.¹³⁹ Submissions referred the Commission to recommendations the Australian Law Reform Commission made in its report *Family Violence and Commonwealth Laws—Improving Legal Frameworks*, which considered the Commonwealth OHS system in the context of moves to harmonise OHS law across Australia.¹⁴⁰

According to the ALRC among the circumstances in which family violence can pose a clear OHS concern or risk are the following:

- physical or verbal abuse between partners employed at the same workplace
- threats to a partner or the partner's co-workers at the workplace
- harassment or attacks on a partner or a partner's co-workers at their workplace either in person or through phone calls and emails
- stalking a partner at the partner's workplace – for example, 29 per cent of victims who were stalked by their previous partner reported that the person using family violence loitered outside their workplace
- in the most extreme cases, family violence-related homicide at the workplace.¹⁴¹

The ALRC concluded that lack of knowledge, rather than legislative inadequacies, was the primary challenge in this regard and made a range of recommendations in relation to the need for guidance, education, training and appropriate employer responses.¹⁴² It pointed to the need for future policy development in this area to be guided by further research¹⁴³—in particular, in relation to instances of family violence where it is more difficult to establish that the incident would engage an employer's duty of care or be covered by existing OHS laws.¹⁴⁴

The ACTU submitted to the Royal Commission:

- ▷ The Victorian Government and WorkSafe Victoria should work with Safe Work Australia, unions, employer organisations and other relevant bodies to raise awareness about family violence and its impact as a possible work health and safety consideration, as well as develop and provide education in this area.
- ▷ WorkSafe Victoria should ensure that information about family violence as a work health and safety matter is provided to employers and employees.¹⁴⁵

Our Watch called for the Commission to recommend that WorkSafe Victoria examine the possibility of strengthening prevention work through existing OHS strategies¹⁴⁶ and that support be provided to private sector workplaces and other non-government organisational settings to implement good-practice programs. It observed that this should be done by means of a comprehensive and coordinated model and strong evaluation to ensure consistent standards and adherence to legislative requirements, including those of the *Occupational Health and Safety Act 2004 (Vic)*.¹⁴⁷

WorkSafe Victoria has established a number of programs that adopt what are known as 'integrated approaches' to worker health and safety. Integrated health, safety and wellbeing approaches 'address environmental exposures in the workplace, the social context that workers experience on the job, and workers' individual health behaviours'¹⁴⁸ and in so doing seek to improve workforce productivity. WorkSafe Victoria's principal programs of this nature are WIN (the WorkHealth Improvement Network) and WorkHealth.¹⁴⁹

A 2013 report prepared for WorkSafe Victoria by Monash University and the Institute for Safety, Compensation and Recovery Research reviewed initiatives in Victorian workplaces and concluded that integrated approaches are effective for both physical and mental health outcomes, provide a positive return on investment, and are able to be adopted rapidly within existing OHS structures.¹⁵⁰ The report found that, in addition to engaging in activities related to physical workplace safety, an integrated approach should consider non-work factors such as work-family conflict.¹⁵¹ On the basis of the report's findings, WorkSafe Victoria has published a guidebook on implementing integrated health, safety and wellbeing approaches in the workplace.¹⁵²

The annual WorkSafe Awards are another relevant initiative. The awards celebrate businesses, groups or individuals who 'are making a dedicated commitment to safety, health and wellbeing and return to work in their workplace'.¹⁵³ This is not limited to workplace health and safety: it can extend to initiatives aimed at improving the wellbeing of employees more generally. For example, in 2015 St Vincent's Private Hospital was shortlisted for an award as a consequence of its implementation of a program the McAuley Community Centre developed to help management and staff recognise and respond to family violence and know where to refer staff for support.¹⁵⁴

Equal opportunity and discrimination

The Commission was informed that victims of family violence may experience both direct and indirect discrimination in the workplace, which can exacerbate their initial experience of family violence.¹⁵⁵ Victims report they fear that disclosure will jeopardise their position or career progression, they will be stigmatised, and/or their employer will be unresponsive to a disclosure.¹⁵⁶

It was also argued that victims of family violence face a unique set of negative stereotypes at work. One union representing workers in a predominantly female profession reported:

Specific negative assumptions and stereotyping about victims of domestic violence include that they are unreliable, likely to underperform or bring danger or disruption into the workplace. These assumptions are likely to reflect community attitudes towards domestic violence and specifically, stigma attributed to victims, who are perceived as complicit in their own abuse.¹⁵⁷

In their submissions to the Commission, the Victorian Equal Opportunity and Human Rights Commission, the Victorian Trades Hall Council, the Australian Education Union (Victorian Branch), the ACTU and the Australian Services Union (Victorian and Tasmanian Authorities and Services Branch) recommended that the Victorian Government amend the Equal Opportunity Act to include 'victim of family violence' (or 'victim/survivor of family violence') as a protected attribute for the purpose of anti-discrimination legislation.¹⁵⁸ VEOHRC recommended that the definition of family violence in the Equal Opportunity Act be aligned to that in the *Family Violence Protection Act 2008 (Vic)*.¹⁵⁹ These organisations submitted that a dedicated attribute would have both symbolic and practical effects. In broad terms, they submitted that a dedicated attribute would help combat negative stereotypes and allow victims to obtain assistance safely while at work. Both the Australian Law Reform Commission and the Australian Human Rights Commission have previously advanced a similar proposal.¹⁶⁰

Section 18 of the Equal Opportunity Act provides specific protections against discrimination in the workplace. 'Discrimination' is defined as including the following:

- ▷ denying or limiting access by the employee to opportunities for promotion, transfer or training or to any other benefits connected with the employment
- ▷ dismissing the employee or otherwise terminating their employment
- ▷ denying the employee access to a guidance program, an apprenticeship training program, or another occupational training or retraining program
- ▷ subjecting the employee to any other detriment.¹⁶¹

These protections apply to people who have an attribute protected under the Equal Opportunity Act; among these attributes are disability, age, sex, race, religion, sexual orientation, political belief or activity, and expunged homosexual conviction.¹⁶² The Equal Opportunity Act prohibits treating people unfavourably or imposing unreasonable conditions on them because of those attributes.¹⁶³

If 'victim of family violence' were to be added to the list of attributes, victims who experienced unfavourable treatment would no longer be required to fit their experience into an established category of discrimination but would instead be able to rely on their status as a victim of family violence in order to gain the relevant protections. The new attribute would prohibit employers from discriminating against victims of family violence in the ways just described. For example, it would be unlawful for an employer to fail to promote a woman because of a perception that she is 'unreliable' or uses too much personal leave as a result of family violence. Affording victims of family violence this protection could be particularly important for casual employees, for whom paid family violence leave might be unavailable. Adding 'victim of family violence' to the list of attributes protected by the legislation would also make it unlawful to discipline a woman whose violent partner attends the workplace and threatens other staff.

A protection under anti-discrimination legislation might also offer an avenue of relief for someone whose employment has been terminated as a result of the impact family violence has had on their work, in a situation where no other relief is available under unfair dismissal laws.¹⁶⁴

The protections offered by the Equal Opportunity Act apply not only in the context of paid employment: they also apply in other areas of public life—for example, in the delivery of services. Accordingly, if an education provider refused the enrolment or temporary attendance of a child affected by family violence who was living in a refuge or transitional accommodation, this could amount to discrimination under the Act.

The Victorian Equal Opportunity and Human Rights Commission also submitted that this specific protection would foster important cultural and attitudinal change in the workplace on the basis that the Equal Opportunity Act places an obligation on duty holders to take positive action to eliminate discrimination, sexual harassment and victimisation. In this way a new attribute would promote proactive improvements by requiring employers and other holders of a duty to take reasonable and proportionate measures to eliminate discrimination as far as possible. VEOHRC suggested that duty holders could be expected to do the following:

- introduce or review existing policy/practices which either directly relate to, or indirectly affect, people experiencing family violence
- increase awareness of the issue of family violence in the workplace or the provision of accommodation
- introduce staff training on the issue (particularly for management and human resource personnel), including training on the causes of violence against women
- conduct an environmental scan of their organisation's policies, procedures and practice to look more broadly at what they can do to support victim/survivors (e.g. whether to provide external counselling, safety planning, peer support, flexible arrangements). This scan should also consider the drivers of family violence and what the organisations can do to improve gender equity.¹⁶⁵

The Royal Commission notes that it received no submissions from employer groups or others in relation to the proposal to add a new attribute to the Equal Opportunity Act.

The way forward

The manner in which family violence intersects with the workplace is profound and multi-faceted. The Commission supports workplace-based initiatives to prevent and respond to family violence and acknowledges the extensive work that has been done to date to harness workplaces' capacity to deal with such violence. Although, as highlighted in the RMIT paper, these endeavours have primarily focused on addressing intimate partner violence against women, they have laid the foundation for similar approaches that can and should be taken to prevent and respond to all forms of family violence.

As settings that represent and reflect the community at large, workplaces can identify and respond to victims and perpetrators, reduce further harm, and act in accordance with changing social norms and attitudes. Employers are vital partners in dealing with family violence, having responsibilities such as motivating employees—and even clients and consumers—to take part in efforts to end family violence.

The Victorian Government should model best practice. Because the Victorian Government is the state's largest employer, it has the opportunity to support and equip its own workforce to respond to and prevent family violence.

Modelling best practice in Victorian public sector workplaces

The Victorian Government's decision to provide all public sector employees with an entitlement to paid family violence leave is a welcome initiative, not only because of the practical benefits it will bring to people whose working lives are disrupted by such violence, but also because it shows its workforce that the Victorian Government takes the impact of family violence on individuals seriously. This is important in building a community that confidently recognises and responds to disclosures of family violence.

The Commission supports the introduction of paid family violence leave for Victorian Government employees. It is essential, however, that it be accompanied by adequate information and support for employees, and training and resources for managers and human resources staff to implement the new entitlement. The Victorian Government cannot require other employers to introduce family violence leave, but its own successful implementation of this category of leave for public sector employees might well persuade other employers to do the same.

The Commission recommends that, in implementing its commitment to provide family violence leave to public sector employees, the Victorian Government ensure the following:

- ▷ Employees have access to appropriate support services and referrals.
- ▷ Any requirement for employees to provide evidence supporting their application for leave is not excessively onerous.
- ▷ Employees' confidentiality is maintained as far as possible.
- ▷ Employees are helped to make reasonable and necessary adjustments to their working arrangements.
- ▷ Employees, managers and human resources staff are trained and equipped to respond suitably to disclosures of family violence, taking into account all the types of family violence and the diversity of people who are affected by it.
- ▷ Provision is made for managing situations in which a victim and a perpetrator are working in the same workplace.

Although government departments and agencies currently offer staff access to generic employee assistance programs, the Family Violence Support Guidelines and Related Policy issued by the Department of Justice and Regulation represents a detailed family violence-specific policy aimed at providing practical and specialised advice and support to any employee experiencing family violence. Adoption of a policy along these lines could be more widespread throughout government and its agencies.

The Commission notes that, although family violence leave clauses are generally aimed at supporting victims of family violence, it might be that they could also be used by perpetrators of family violence—depending on how the clauses are drafted—including to facilitate the attendance of perpetrators at court hearings as well as compliance with any relevant court orders to attend appointments. Consideration will need to be given to the eligibility of perpetrators for family violence leave—including whether perpetrators' use of such leave should be restricted to activities of a rehabilitative nature such as attending counselling appointments and men's behaviour change programs. It will also be necessary to equip managers and staff to respond to circumstances of this nature. Additionally, consideration will need to be given to whether the leave entitlement should be available to employees who are relatives of victims of family violence in exceptional circumstances—for example, when there has been a homicide.

Of course, the Victorian Government's role as an employer extends beyond providing family violence leave and associated supports and information to its employees. The government and its agencies can also institute in public sector workplaces policies and programs that take a broader view of responding to and preventing family violence by building respectful and gender equitable cultures. This represents a crucial leadership opportunity for the Victorian Government.

The Commission therefore recommends that the Victorian Government implement best-practice workplace programs in all public sector workplaces to:

- ▷ enable them to build respectful and gender equitable cultures
- ▷ ensure they have suitable policies for family violence victims
- ▷ provide suitable responses and do not allow for collusion with family violence perpetrators
- ▷ build skills and support staff in taking bystander action.

Leave entitlement in National Employment Standards and modern awards

The Commission supports moves to extend the availability of dedicated family violence leave to as many Victorian employees as possible by embedding an entitlement in the National Employment Standards and modern awards, and recommends the Victorian Government encourage the Commonwealth to make the necessary amendments to the standards. It acknowledges the close consideration of these matters by the Productivity Commission and the Fair Work Commission and the contributions employer and employee representatives have made in those forums. Since these matters fall within the Commonwealth's purview, the Commission recommends that—in the context of discussions by the Council of Australian Governments on family violence reforms—the Victorian Government encourage the Commonwealth to amend the National Employment Standards in Part 2-2 of the Fair Work Act to include an entitlement to paid family violence leave for employees (other than casual employees) and unpaid family violence leave for casual employees.

The Victorian Government might also consider making a submission to the Fair Work Commission, as part of the Modern Awards Review, in support of the inclusion of family violence leave in all modern awards. It is noted that, according to the directions the Fair Work Commission issued on 30 November 2015, any interested party supporting the introduction of family and domestic leave must file written submissions and any witness statements or documentary material on which it seeks to rely by 16 May 2016.¹⁶⁶

Encouraging and supporting initiatives in non-government workplaces

In addition to being the state's largest employer, the Victorian Government and its agencies have the capacity to influence the culture and practices of private and community sector workplaces and to ensure the more widespread availability of family violence-related information, supports and/or protections in a broad range of industries and professions throughout the state. The government collaborates with industry at a policy level but also in relation to the procurement of goods and services. Agencies such as WorkSafe Victoria and the Victorian Equal Opportunity and Human Rights Commission work closely with employers to improve the health, safety and rights of employees.

The Victorian Government's recent announcement of its \$900,000 commitment towards workplace programs is a critical initiative—in particular, because it is intended to develop resources and tools that can support the involvement of a greater number of employers and workplaces in combatting family violence in the future. At present different providers deliver different programs and activities, with very little independent assessment or evaluation. The Workplace Equality and Respect Project, which is being conducted by Our Watch and funded by government, offers an important opportunity to test workplace strategies aimed at combatting family violence, taking into account lessons from past programs, and to advise the Victorian Government and the community on the most effective ways of securing the participation of employers and employees.

Similarly, the findings of the Victorian Equal Opportunity and Human Rights Commission's review of Victoria Police have a broader application to other workplaces in preventing violence-supportive attitudes that can contribute to the occurrence of family violence. Victoria Police recognised that attitudes towards women in the workplace have implications for how police make decisions and interact with the community.¹⁶⁷ By confronting gender-based harm in the workplace, employers have an opportunity to implement best-practice responses to victims, target violence-supportive attitudes, and promote gender equality in their workforce and in their service delivery.

In order to maximise the outcomes of the Workplace Equality and Respect Project, on receiving the final report of the project the Victorian Government should support the maintenance of the planned online hub of program models, tool kits, training resources and packages for application in government and non-government workplaces.

The Commission considered submissions about extending or clarifying the occupational health and safety or equal opportunity regimes to support or require employers to implement measures to respond to family violence. The Commission is conscious that any regulatory intervention to mandate family violence strategies in the workplace through frameworks would need to be supported by a suite of educational and other materials that are based on best-practice knowledge. It therefore considers that any regulatory reform in this area should await the further development and evaluation of strategies, tools and measures for dealing with family violence in workplaces through the Workplace Equality and Respect Project, and should be subject to further detailed consideration and consultation with experts and stakeholders by means of a separate review.

In relation to the application of occupational health and safety laws, the Commission considers that there is scope for a greater role for WorkSafe Victoria to support workplaces that respond to family violence, and any future work it embarks on in connection with integrated health, safety and wellbeing approaches to complex problems. Such a role would capitalise on WorkSafe Victoria's expertise in and capacity for engaging with workplaces large and small throughout Victoria on a broad range of workplace matters. It would also bring efforts currently made in a piecemeal, ad hoc fashion into the sphere of core government business.

This would require WorkSafe Victoria to have a detailed understanding of the workplace impacts of family violence and a familiarity with workplace strategies for preventing and responding to such violence. To this end, the Commission suggests that the Victorian Government facilitate the involvement of representatives of WorkSafe Victoria in the Workplace Equality and Respect Project—for example, as part of the project's advisory group. We also suggest that Our Watch consult with WorkSafe Victoria as part of the Workplace Equality and Respect Project to identify opportunities for WorkSafe Victoria to lead future workplace strategies relating to family violence.

As major purchasers of goods and services, governments can use their purchasing power and procurement policies to encourage the implementation of improved workplace policies and practices by the organisations with which they contract. For example, members of the Victorian Government's Government Legal Services Panel are required to commit to a range of conditions aimed at achieving some broader social justice benefits, including the provision of pro bono legal services, equal opportunity practices in the workplace, the briefing of female barristers, and adherence to model litigant guidelines.¹⁶⁸

The Commission proposes that, in reviewing options for invoking equal opportunity and OHS frameworks to address family violence, the Victorian Government also identify ways in which its procurement policies can incorporate requirements for employer organisations with which it contracts to provide family violence-related information, support, and/or leave entitlements to their employees.

Recommendation 190

The Victorian Government should ensure that the inclusion of family violence leave in all public sector enterprise agreements is accompanied by access to suitable support services and referrals, as well as adequate planning, training and resources to equip managers and human resources staff to communicate and implement the leave entitlements.

Recommendation 191

The Victorian Government, through the Council of Australian Governments, encourage the Commonwealth Government to amend the National Employment Standards in Part 2-2 of the *Fair Work Act 2009* (Cth) to include an entitlement to paid family violence leave for employees (other than casual employees) and an entitlement to unpaid family violence leave for casual employees [within 12 months].

Recommendation 192

On receipt of Our Watch's Workplace Equality and Respect Project final report, the Victorian Government should:

- ▷ begin implementing best-practice workplace programs in all public sector workplaces in order to:
 - ▷ enable them to build respectful and gender equitable cultures
 - ▷ ensure that they have suitable policies for family violence victims
 - ▷ provide adequate responses to and not allow for collusion with family violence perpetrators
 - ▷ build skills and support staff in taking bystander action
- ▷ support the maintenance of the proposed web-based portal or database of program models, tool kits, training resources and packages for application and use in all workplaces
- ▷ review and report on options for using existing regulatory frameworks and government procurement policies to support all Victorian employers in implementing best-practice family violence policies [within 12 months of receipt of the final report].

Endnotes

- 1 Transcript of Kearney, 10 August 2015, 2509 [10]–[14].
- 2 See, eg, Statement of Bignold, 13 July 2015, 6 [28]–8 [37], 12 [58].
- 3 Statement of Jana, 16 July 2015, 1 [7], 2 [13], 5 [31], 9 [36]–[37].
- 4 Statement of Kun, 10 July 2015, 10 [41].
- 5 Peta Cox, 'Violence Against Women: Additional Analysis of the Australian Bureau of Statistics' Personal Safety Survey, 2012' (Horizons: Research Paper No 01, Australia's National Research Organisation for Women's Safety, October 2015) 116.
- 6 Ludo McFerran, 'Safe at Home, Safe at Work? National Domestic Violence and the Workplace Survey: 2011' (Australian Domestic and Family Violence Clearinghouse—A Project of the Centre for Gender Related Violence Studies and Micromex Research, December 2011) 2 [1.2].
- 7 *Ibid* 8, Table 6.
- 8 *Ibid* 10, Table 9.
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- 10 McFerran, above n 6, 10, Table 8.
- 11 We also touch on this issue in the context of the police force in Chapter 14.
- 12 McFerran, above n 6, 11.
- 13 *Leyla Moghimi v Eliana Construction and Developing Group Pty Ltd* [2015] FWC 4864. A subsequent application by the employer to appeal the decision was refused: *Eliana Construction and Developing Group Pty Ltd v Leyla Moghimi* [2015] FWCFB 7476.
- 14 *Leyla Moghimi v Eliana Construction and Developing Group Pty Ltd* [2015] FWC 4864, 22.
- 15 *Ibid* 23.
- 16 *Ibid* 59.
- 17 The Young Men's Christian Association of Victoria, Submission 196, 9.
- 18 Transcript of Kun, 16 July 2015, 453 [28]–454 [5].
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- 26 Anastasia Powell, 'More Than Ready: Bystander Action to Prevent Violence Against Women in the Victorian Community' (Victorian Health Promotion Foundation, May 2012) 8.
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- 29 Our Watch, Australia's National Research Organisation for Women's Safety and VicHealth, 'Change the Story: A Shared Framework for the Primary Prevention of Violence Against Women and Their Children in Australia' (2015) 44.
- 30 Powell, Sandy and Findling, above n 23, 10–12.
- 31 Women's Health Association of Victoria, Submission 509, 13; Women's Health Grampians, Submission 824, 11; City of Ballarat, Submission 146, 4.
- 32 McAuley Community Services for Women, Submission 480, 38–40.
- 33 White Ribbon Australia, Submission 880, 8; Australian Education Union Victoria, Submission 235, 9; Child and Family Services Ballarat Inc, Submission 687, 2.
- 34 Women's Health Victoria, Submission 514, 19–20; Women's Health Loddon Mallee, Submission 772, 11; Mallee Family Violence Executive, Submission 617, 15–16; Castlemaine District Community Health Ltd on behalf of Health and Community Services Sector—Mount Alexander Shire, Submission 211, 1; Melton City Council, Submission 538, 13; Women's Health and Wellbeing Barwon South West Inc, Submission 780, 25.
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- 37 The Young Men's Christian Association of Victoria, Submission 196, 3–7.
- 38 City of Melbourne, Submission 798, 7–8.
- 39 Darebin City Council, Submission 222, 11.
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- 70 Department of Justice and Regulation, above n 65, 49.
- 71 The Young Men's Christian Association of Victoria, Submission 196, Attachment 2, 35.
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- 73 City of Whittlesea–01, Submission 714, 29.
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- 89 Transcript of Stracke, 10 August 2015, 2511 [29]–2512 [3].
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- 94 *Surf Coast Shire Council Enterprise Agreement No.7 2010–2013* [2010] FWAA 9380 (10 December 2010).
- 95 Ibid Clause 4.3.3.1.
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- 97 Statement of Nagle, 28 July 2015, 5 [26].
- 98 Transcript of Paroz, 10 August 2015, 2508 [18]–[28].
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- 100 Ibid 2 [15].
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- 108 Statement of Kun, 10 July 2015, 9, [40]; Transcript of Kun, 16 July 2015, 451 [26]–[30].
- 109 Productivity Commission (Cth), above n 93, 550.
- 110 *Fair Work Act 2009* (Cth) s 61. The NES do not apply to employees who fall outside the Fair Work regime, such as certain public sector employees: see *Fair Work Act 2009* (Cth) ss 13, 14, 55, 61. Employers and employees not covered by the *Fair Work Act 2009* (Cth) are covered by the applicable state industrial relations system. Further, while full-time employees must be provided with conditions that meet all 10 standards, casual employees are paid a loading in lieu of some of the entitlements.
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- 148 WorkSafe, *Integrated Worker Health: A How to Guide* <https://www.worksafe.vic.gov.au/_data/assets/pdf_file/0007/178162/WS_FACTSHEET_INTRO_D1.pdf>.
- 149 See generally, WorkSafe, *Integrated Approaches to Worker Health, Safety and Wellbeing*, <<http://www.worksafe.vic.gov.au/safety-and-prevention/health-and-wellbeing/integrated-approaches-to-worker-health-safety-and-wellbeing>>; Amanda Cooklin et al, 'Integrated Approaches to Worker Health, Safety and Well-Being' (Research Report No 1213-088-R1C, Monash University School of Public Health and Preventative Medicine, December 2013). An advisory group was appointed in 2015 to identify initiatives to expand and improve the WorkHealth program: Minister for Finance, The Hon Robin Scott MP, 'Minister Announces New WorkHealth Advisory Group' (Media Release, 28 April 2015).
- 150 Cooklin et al, above n 149, 10.
- 151 *Ibid* 27.

- 152 Amanda Cooklin et al, 'Guidebook: Integrated Approaches to Worker Health, Safety and Well-Being' (Institute for Safety Compensation and Recovery Research, 2014).
- 153 WorkSafe Victoria, *WorkSafe Victoria 2015 Awards* <<http://worksafeawards.worksafe.vic.gov.au/>>.
- 154 WorkSafe Victoria, *Family violence: it is your business—St Vincent's Private Hospital Melbourne* <<http://worksafeawards.worksafe.vic.gov.au/browse-entries/entries/family-violence-it-is-your-business2>>.
- 155 Victorian Equal Opportunity and Human Rights Commission, Submission 609, 13; Victorian Trades Hall Council, Submission 562, 6–7.
- 156 Australian Law Reform Commission, *Family Violence and Commonwealth: Employment and Superannuation*, Issues Paper No 36 (2011) 6 [21].
- 157 Australian Education Union Victoria, Submission 235, 19.
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- 159 Victorian Equal Opportunity and Human Rights Commission, Submission 609, 10–11; Victorian Trades Hall Council, Submission 562, 8.
- 160 Australian Human Rights Commission, *Fact sheet: Domestic and family violence – a workplace issue, a discrimination issue* (2014) <<https://www.humanrights.gov.au/our-work/family-and-domestic-violence/publications/fact-sheet-domestic-and-family-violence-workplace>>; Australian Law Reform Commission, above n 113, 407–411.
- 161 *Equal Opportunity Act 2010* (Vic) s 18.
- 162 *Ibid* s 6.
- 163 *Ibid* s 7.
- 164 For example, employees are required to have completed a 'minimum period of employment': see *Fair Work Act 2009* (Cth) ss 382–4. Employees will also not be protected from unfair dismissal where they earn above the high income threshold: see *Fair Work Act 2009* (Cth) s 382.
- 165 Victorian Equal Opportunity and Human Rights Commission, Submission 609, 19–20.
- 166 Fair Work Commission, Directions, Family and Domestic Violence Clause (AM2015/1), 30 November 2015.
- 167 Victorian Equal Opportunity and Human Rights Commission, above n 56, 40.
- 168 Victorian Government, *Victorian Government Procurement: Achieving Excellence in Government Procurement—Legal Services Panel* (commencing 1 March 2016) State of Victoria <<http://www.procurement.vic.gov.au/State-Purchase-Contracts/Legal-Services-Panel>>.

38 Sustainable and certain governance

Introduction

The Royal Commission's terms of reference require it to, among other things, 'identify and focus on practical short, medium and long-term systemic improvements to Victoria's current response to family violence and the need for this response to be sustainable into the future'. The Commission therefore investigated systemic responses to family violence in different systems and considered how government agencies and community organisations might better integrate and coordinate their efforts.¹

This chapter proposes a governance system to support overall reform. Governance is particularly important because of the complexity of family violence and the fact that many systems are involved in the response to it. Without strong governance arrangements to underpin these systems, family violence can fall between the gaps and not attract the policy attention and investment it requires and deserves. For individuals seeking to engage with agencies or services, the unnecessary complexity, confusion, duplication, service gaps or inconsistent practices that are identified in this chapter and throughout this report can compromise safety or compound the effects of the violence, or both.

For these reasons the Commission considered whether the existing governance structures and consultative forums are working effectively and identified areas in which they can be improved.

The first section of this chapter briefly outlines the recent history of family violence governance arrangements in Victoria and how the family violence reforms of the mid-2000s evolved into the arrangements in place today. The second section of this chapter considers evidence and submissions the Commission received about how the existing arrangements are failing to deliver on their promise and could be improved. There were a range of consistent themes. For example, many individuals and organisations expressed frustration at a fragmented and dislocated system, with disparate governance and consultative arrangements running parallel and, occasionally, at cross-purposes. The absence of agreed goals and a system for overseeing the overall performance of the family violence system was also highlighted as a concern.

In the final section of this chapter the Commission makes recommendations for a new system architecture. This includes recommendations for a Statewide Family Violence Action Plan, arrangements for supporting regional governance, a clear focus on prevention and the establishment of a dedicated agency to provide expert independent oversight and monitoring. It is intended that these changes will promote greater coordination, consistency and accountability throughout the state, without stifling innovation and tailored approaches at the local level.

The Commission recognises the need for strong political leadership and bipartisanship to ensure that family violence remains a central consideration in policy-making and investment decisions. This will provide stability and consistency for service providers and the people they support. We make a number of recommendations to embed the continued consideration of family violence in all levels of government, drawing on clear goals and shared principles.

The Commission also proposes that the voices and experiences of victims of family violence directly inform service planning and performance evaluation, to ensure that the system is designed to suit victims' needs, rather than being based on bureaucratic convention or convenience. Family violence governance arrangements will be ineffective if they fail to take account of the needs of the people and families they are intended to support.

Context and current practice

Following is a brief overview of the historical development of the family violence system and in particular the reforms in the mid-2000s, which were intended to create an integrated family violence system. Chapter 4 provides a more comprehensive history. The second part of this chapter then describes the current governance arrangements.

Historical development

From the late 1960s onwards, many women worked to expose the extent of family violence and keep women and children who were victims of such violence safe. Much of their work was done at a grass-roots level, without the benefit of formal support structures at the government level.

In the mid-2000s a series of reforms were implemented to formalise the governance arrangements for the various systems and processes in place to address family violence. One of the main objectives of the governance arrangements was to achieve an integrated family violence system. Describing the system before the reforms, Dr Rhonda Cumberland, Chief Executive Officer of Good Shepherd Australia New Zealand, stated:

Well, in the pre-integrated period there was no nuance or real complexity, let me be blunt. It was simply you came into one part of the system, you might have come through via Victoria Police, you might have come through via a women's service, you might have come through via an intervention order through a legal support program. But those programs never spoke to each other. Hence, as a service provider we had very few options that we could provide to women. It was one way or no way at all. Of course, those systems failed and women were subjected to repeat incidences of violence. The system did not, as a system, protect or give her options or in any way treat her as an individual with particular sets of circumstances where she might exercise some decision about what might happen to her.²

The introduction of the Victoria Police Code of Practice into the Investigation of Family Violence in 2004 represented the first step towards a multi-agency integrated response to family violence in Victoria. For the first time, police were required to make referrals to family violence services when they attended a family violence incident, regardless of whether police took further action.³

In 2005 the Statewide Steering Committee to Reduce Family Violence plotted a course toward an integrated family violence system in its report titled *Reforming the Family Violence System in Victoria*.⁴ The vision of the Steering Committee was a response to family violence in which all parts of the system focused on the safety of the victim—including by managing perpetrator risk. The goal was to build an 'integrated family violence system' that would bring together all key services to ensure that 'women receive an appropriate response regardless of the pathway through which they choose to receive assistance'.⁵ The report stated:

Family violence is a problem that cannot be addressed by one sector or service alone or when services work in a fragmented and inconsistent way. The model proposed in this paper will bring together government and non-government agencies, including the police, justice system, housing and community services to work together to provide an effective and consistent response to family violence.⁶

The report's recommendations went beyond coordinating services and referral pathways: the vision was for a fully integrated response supported by regional implementation to allow for local circumstances.⁷ The report said that an integrated approach is 'critically dependent on agencies across the service system agreeing and articulating what an integrated system means and the components that are necessary to ensure that an integrated response by the justice system and victim support services can be achieved'.⁸

The report noted, that while there were local examples of organisations working together and other positive steps to improve responses, this was the first attempt to integrate a family violence response at the statewide level.⁹ The committee concluded:

Integration of services is more than co-ordinated service delivery – it is a whole new service. Co-location of agencies, agreed protocols and codes of practice, joint service delivery, agencies reconstituting or realigning their core business to confront the challenges posed by a broadened conception of the problem: these are the key indicators of an integrated response.¹⁰

One of the features of the Victorian reforms is that the roll-out was statewide. Elsewhere, an integrated approach had been applied at the local level as ‘the operation of such initiatives is relatively easy to influence monitor and evaluate.’¹¹ The achievement of an integrated approach across all of Victoria was recognised as a challenging but important aspiration.¹²

Among the elements of the integrated system put forward by the Committee in 2005 were the following features:

- ▷ multiple entry pathways to ensure that a person entering the system received a consistent response regardless of the entry point
- ▷ expanded and improved support services that embrace diversity
- ▷ individual advocacy for women and children at all points in the system
- ▷ common risk assessment and referral processes
- ▷ consistent case coordination
- ▷ intensive case management for high-risk and complex-needs families
- ▷ a more streamlined justice response through legislative and practice change
- ▷ longitudinal tracking of cases
- ▷ effective data collection and recording that includes data on Aboriginal and Torres Strait Islander peoples, culturally and linguistically diverse communities and women with disabilities
- ▷ advocacy at a systems level, informed by experiences in advocating for individuals
- ▷ effective and efficient monitoring and evaluation processes mechanisms.¹³

This broadly correlates with the features of an integrated response to family violence identified by the Australian and New South Wales law reform commissions in their 2010 report.¹⁴

As a result of the Statewide Steering Committee’s report, a statewide and regional governance structure involving courts, police and specialist family violence services was introduced¹⁵ to build an integrated response to family violence. Other important developments from this era included:

- ▷ enactment of the *Family Violence Protection Act 2008 (Vic)*, which set out objectives for the family violence intervention order system, introduced family violence safety notices, and extended protection to a wider range of family violence victims
- ▷ community–government partnership governance structures that supported the development and implementation of the Indigenous Family Violence 10 Year Plan: *Strong Culture, Strong People, Strong Families*¹⁶
- ▷ oversight arrangements for the development and implementation of the Family Violence Risk Assessment and Risk Management Framework (also known as the Common Risk Assessment Framework, or the CRAF).

These reforms, often referred to as the ‘first generation’ of governance arrangements, set a strong foundation for the current family violence system.

Governance structures from the mid-2000 reforms

The Victorian Government's submission to the Commission outlined the various statewide and regional structures established in the years following the release of the *Reforming the Family Violence System in Victoria* report in 2005, describing these as the 'beginnings of an integrated family violence system'.¹⁷ At the statewide level, these included:

- ▷ establishment of a Family Violence Statewide Advisory Committee, which met quarterly and consisted of key government, sector and statewide representatives, co-chaired by the Department of Planning and Community Development and Victoria Police, to provide advice to government on the progress of the reforms and on the direction and issues related to the reform program (renamed in 2011 as the Violence Against Women and Children Advisory Forum)
- ▷ regular meetings between relevant senior ministers and the establishment of a Family Violence Interdepartmental Committee, a regular meeting of senior executive officers with relevant portfolio responsibilities
- ▷ a Family Violence Roundtable—a biannual meeting of all stakeholders.¹⁸

In addition, the Indigenous Family Violence Partnership Forum was established following the release of the Indigenous Family Violence Task Force Report (2003) to provide a forum for ongoing, high-level dialogue between government and Aboriginal communities.¹⁹ Chapter 26 provides more detail about the forum and the task force's report.

Current governance arrangements

The main features of the current governance arrangements in Victoria include:

- ▷ a ministerial task force, chaired by the Premier and attended by relevant ministers, meeting monthly to set strategic directions for addressing family violence. This is now a standing sub-committee of Cabinet
- ▷ family violence regional integration committees
- ▷ the Indigenous Family Violence Regional Action Groups and the Indigenous Family Violence Partnership Forum
- ▷ Violence Against Women and Children Advisory Forum—a quarterly meeting for policy discussion and consultation attended by government, justice and community agencies.²⁰

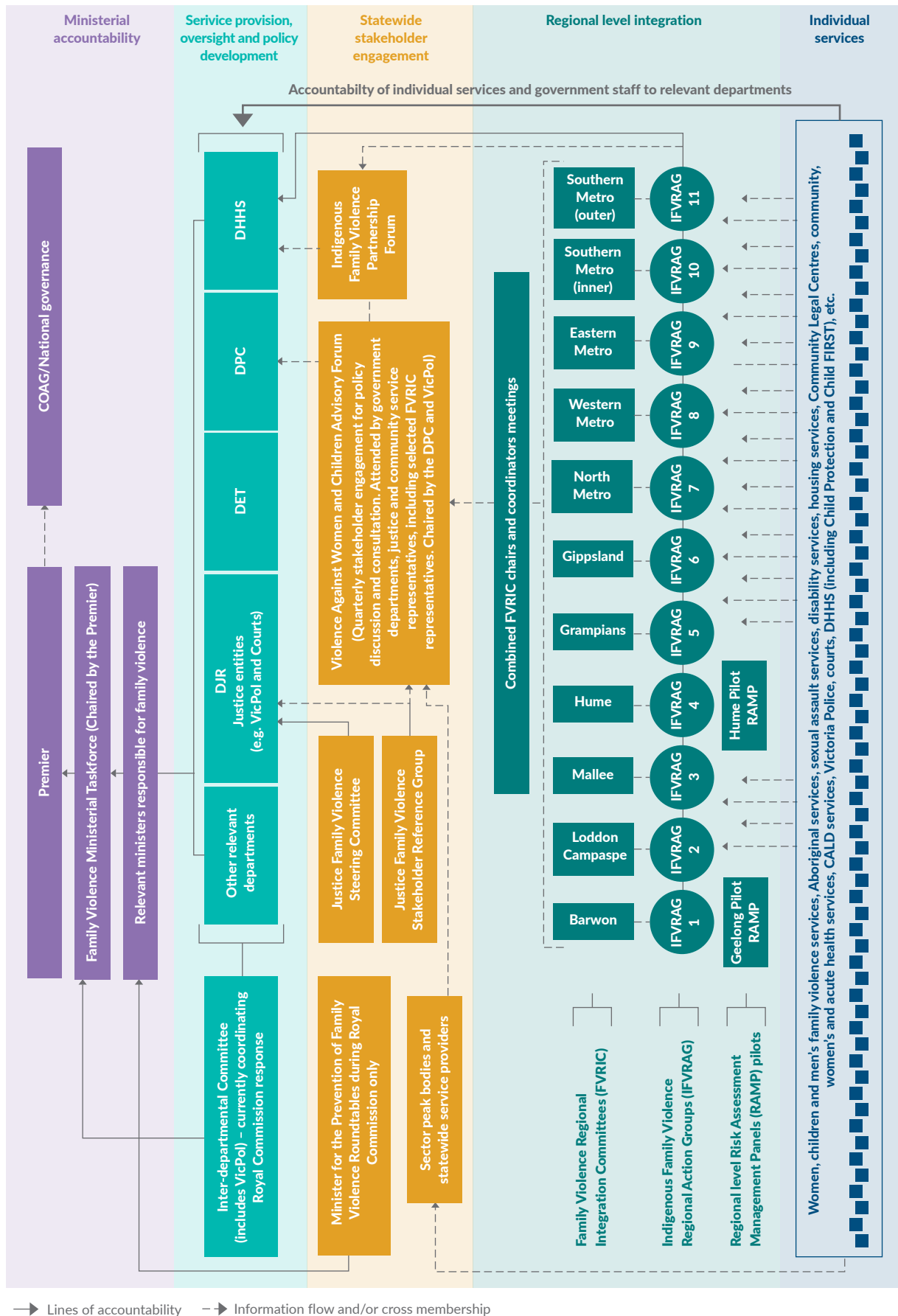
In its submission, the Victorian Government also highlighted governance arrangements made as a consequence of this Royal Commission, including ministerial roundtables convened on a temporary basis and a Family Violence Royal Commission Interdepartmental Committee.²¹

The Commission was also informed of regular meetings of the Victorian Secretaries Board, which consists of seven departmental secretaries, the Chief Commissioner of Police and the Victorian Public Service Commissioner.

Mr Chris Eccles, Secretary of the Department of Premier and Cabinet, told the Commission that the Victorian Secretaries Board has three primary responsibilities: coordination, leadership and stewardship.²² He went on to say it could play an important role in guiding the Victorian Government response to family violence because '[i]t is the perfect forum for a matter that has whole-of-government significance that presents in complex issues'.²³

Figure 38.1 shows the current governance arrangements.

Figure 38.1 Governance architecture: Victoria



Source: State of Victoria, Submission 717, 33.

Regional arrangements

Governance arrangements for integrated family violence systems at the regional level have been in place since 2006. The role and responsibilities of family violence regional integrated committees were set out in *Guiding Integrated Family Violence Service Reform 2006–2009*. These regional committees were intended to provide a forum to support coordinated responses to family violence at the local level. They were given nine priorities:

- ▷ establish regional coordination and planning structures
- ▷ work together to provide quality services for clients
- ▷ develop clear referral pathways and intake processes
- ▷ develop continuous improvement strategies
- ▷ ensure access by Indigenous Victorians
- ▷ ensure access by diverse groups—including culturally and linguistically diverse people and lesbian, gay, bisexual, transgender and intersex people
- ▷ focus on children and young people
- ▷ develop critical linkages
- ▷ ensure workforce development to support quality services.²⁴

Some regional committees identified additional priorities such as primary prevention and/or a focus on children and young people.

The regional committees were intended to bring together local representatives of the sectors that made up the integrated family violence system. Each committee was to be overseen by a Regional Integration Chair and supported by a Family Violence Regional Integration Coordinator (RIC).²⁵ Funding for the establishment and implementation of these arrangements, including funding for the role of the RIC, was provided by the (then) Department of Human Services to auspice agencies that were responsible for recruiting, employing and managing the RIC on behalf of the regional committees.²⁶

The family violence regional integrated committees have been represented through nominated chairs and RICs on the Family Violence Statewide Advisory Committee, and later the Violence Against Women and their Children Advisory Forum, to provide regional perspectives on implementation challenges and opportunities to the Victorian Government. Domestic Violence Victoria convenes biannual meetings of chairs and RICs to explore emerging challenges and opportunities, as well as provide an information-sharing forum.

The structure and roles of the committees were reviewed and the (then) Department of Human Services and this review provided further guidance to support more consistent arrangements across the state in 2013.²⁷

In Chapter 26 the role of Indigenous Family Violence Regional Action Groups (IFVRAGs), established in 2003, is discussed. IFVRAGs have a leadership role in implementing community-led responses that aim to educate, prevent, reduce and respond to family violence in Aboriginal and Torres Strait Islander communities.²⁸

The regional committees and IFVRAGs work to pursue projects and initiatives to support responses to family violence in Aboriginal communities. While the mechanisms and effectiveness of these collaborations vary across the state, these relationships are crucial for developing culturally-appropriate practice throughout the system in responding to Aboriginal people affected by family violence.

Challenges and opportunities

Family violence requires government to set policy and fund or provide services in many different areas, including health, human services, courts, police, correctional services, legal services and education. Community organisations provide services to victims and perpetrators under service agreements with government. All of these services contribute to the response to family violence.²⁹

The Commission heard about the many efforts agencies and non-government organisations make to respond to the needs of victims of family violence and to ensure that perpetrators take responsibility for their behaviour. It was told that there is often cooperation, and various levels of service coordination and integration, between people and agencies working in different parts of the system at the local, regional and state levels.

Despite this, the evidence before the Commission was that the existing system faces problems. As outlined here, the Commission was told of a system that is fragmented and broken into 'silos', with diffuse responsibilities spread across different departments, agencies and community organisations. The importance of effective system oversight and a shared understanding of how best to respond to family violence was emphasised. In particular, the Commission was told there is a need for strong political leadership and bipartisanship in the area of family violence, to ensure that it is considered core government policy. The need for victims' voices and stories was also highlighted.

Fragmentation and lack of coherence

Lack of integration in policy and service responses

Although submissions to the Commission spoke positively about the reforms of the mid-2000s, many noted that the potential to build a system that provides an integrated response to family violence has not been fully realised. Court Network described a 'patchy and incomplete reform process' which has resulted in 'cobbled together responses, without understanding how changes in one part of the system impact on another'.³⁰

Court Network also noted:

A coherent governance structure with clear and shared Ministerial accountability to guide the reforms has not been maintained ... Integration at the local level has lacked clear direction and guidance about 'what' and 'how to' integrate – there was no 'blueprint' or direction for integration that might have assisted in developing common understandings about how to achieve integration.³¹

The Commission heard that implementation of the reforms failed to maintain momentum in the long term. Dr Cumberland said in evidence:

We hoped for more momentum in the reforms that were set out in 2005. We built the reforms unfortunately for a sprint race, where we should have built them for a marathon, and we are feeling the consequences of that today. We now know that the biggest challenge in any policy reform, whether it be in family violence or in any social policy, economic policy or reform, the challenge is to have it last the distance ... it's about a longer term agenda and it's about what we leave for next generations. So how we use all our policy capacity to build tools and structures that ensure reform can last the distance I think is a big challenge, and it's something we failed to do back then.³²

Many witnesses criticised the absence of governance processes to support better services for victims and perpetrators of family violence. Ms Helen Campbell, Chair of the Eastern Metropolitan Family Violence Partnership, told the Commission:

In terms of the mechanisms for integration I think a lot of the conversation in recent years has really focused around services integration and has ignored the policy, strategy and legislative and authorising environment integration that enables this to happen.³³

The need for a system owner

The Commission was told that, although various departments had responsibility for individual parts of the family violence system, there was no 'system owner'. Ms Fiona McCormack, Chief Executive Officer of Domestic Violence Victoria, told the Commission:

Say for us as a peak body, if I want to go and talk to government about how the system is going there's nowhere to go to. I might go and talk to DHHS about what they are doing. I might go to police and talk about what they are doing. But in terms of anything that's working together or towards common objectives there's nowhere.³⁴

It was argued there should be some central point of accountability for all the systems that have a role in preventing and responding to family violence. In its submission, Good Shepherd Australia New Zealand told the Commission:

The main governance challenge would appear to be identifying a central point for governance of the system. The most obvious central point would be the Premier and Cabinet. The present system of a group of Ministers working as a Ministerial Council has been problematic. Ministers have competing priorities and family violence has never been on top of the list.³⁵

Stakeholders felt it was important to ensure that government departments do not shift responsibility for family violence between each other. Although different departments and agencies have different roles in responding to family violence, there was a view that overall responsibility for the operating of the system should be shared. Mr Dave Heatley, Principal Advisor, New Zealand Productivity Commission stated:

I think whole-of-system oversight obviously doesn't fit well within one agency, one existing government department. Defining outcomes I think is something that is a role of government rather than agencies. Overall system performance again cuts across agencies, because no one agency is in a position to determine it by themselves.³⁶

Good Shepherd Australia New Zealand further noted, 'Under the current system everyone is responsible for a part, which often means no one is responsible for the whole'.³⁷

A focus on programs rather than people

The Commission was also told that a focus on programs rather than people had contributed to a framework where departments and agencies operated in silos. These programmatic barriers can result in multiple referrals to different agencies and programs, rather than a response to all aspects of a person's experience. As one victim put it:

While we have received verbal assurances of sympathy (and disbelief) at what has occurred, there is a resounding pattern. Every person who has been contacted has referred us across to another agency. Our 'file' has just been sent around in a big circle. Not one person or agency has at any point really looked into what is happening to me, my children and now my partner.³⁸

This problem was acknowledged by departmental secretaries who gave evidence to the Commission. Ms Gill Callister (former Secretary of the Department of Human Services and current Secretary of the Department of Education and Training), gave the following evidence:

I think part of the problem is that the programmatic lens, which is the lens that the system is designed to view the client through, is the label that you get. So it's a focus on program and problem rather than people. So some of the examples ... that the Commission will be familiar with after lots of evidence are that if you appear in the homelessness system as a victim of family violence you are largely seen through the lens of homelessness; if you appear in the mental health system as a victim of family violence you will be seen through a mental health lens; if you appear in the family violence system as a victim but you have a mental illness you will be seen perhaps first through a family violence lens; and you won't necessarily get much attention as a child until you appear in a child system.

So it's about sort of I think changing the lens from a program-dominated lens to understanding the whole person and what's going on. One of the consequences of those lenses is people are referred to a service for each component, and each service does a plan and each service has a kind of intervention plan with the client.³⁹

This lack of integration is also seen in the fact that family violence, sexual assault and Child Protection have traditionally been dealt with separately in policy development and service provision, despite the obvious link between them. This is described further in Chapters 11 and 12.

Lack of shared understanding

As discussed elsewhere in this report (see, for example, Chapters 11, 18 and 26), there are persistent philosophical and theoretical differences in relation to policy and service provision in the area of family violence.

It was said there is still some way to go to reach a shared understanding within government and the not-for-profit service sectors about how best to prevent and respond to family violence. This has been described in the following way:

The structural fragmentation in the family violence sector also involves a great deal of philosophical and organisational cultural variation in the way that family violence is understood, and the way that responses to it are framed within organisational cultures.⁴⁰

In relation to violence against women, Ms McCormack said in her evidence:

... fundamentally one of the core issues that we have is a lack of gender literacy amongst the public sector. So it's really, really difficult even having discussions around what we need to be doing in family violence or how regional committees are going when we are talking a completely different language. We don't even have a fundamental understanding of the causes of the impact of gender on population health outcomes.⁴¹

The Commission heard that this lack of a shared understanding or language can inhibit the development of effective responses.

Disconnection between state government and regional bodies

The Commission heard concerns about the state government's lack of engagement with the regional family violence governance structures in recent years.⁴² Witnesses noted that the regional governance arrangements had been developed with a strong state government 'centre' but that whole-of-government oversight had diminished. This meant that regional committees had effectively been operating in isolation. The Gippsland Integrated Family Violence Service Reform Steering Committee told the Commission 'Consequently there have been several regional initiatives developed without consideration of family violence from a policy or practice level at a state wide level'.⁴³

This issue was also reflected in concerns about the lack of a formal process by which peak organisations and regional family violence governance bodies could inform government about problems or positive developments or discuss proposed changes. Ms Tammy Smith, Regional Integration Coordinator, Ovens Murray Goulburn Integrated Family Violence Network, said to the Commission:

We had a structure where we could actually feedback up into and alert the ministers and the government of what the localised and statewide concerns were. We don't seem to have that at all at the moment. So it appears that we need some sort of structure in place where we can actually have – whether it's an authorising body or a committee, I'm not sure, but we need some sort of structure in place where we can actually feed up and feed down.⁴⁴

Ms Kym Peake, then Acting Secretary of the Department of Health and Human Services, said there was a three-year evaluation of the regional governance structure under way, but that some feedback had suggested that guidance was needed on state government directions.

... what needs to happen is that there is a state framework which describes what is our approach to improving the way that we deal with family violence which cascades down to a local plan, and I think that sort of structure and resourcing could then be incredibly powerful in helping to develop that local plan, to track progress against that plan and to share learnings across the state about what is working.⁴⁵

The Commission was told that the role of family violence regional integration committees, their reporting lines to government and their relationship with other regional bodies should be more precisely defined.⁴⁶ On this point, Ms Peake told the Commission:

That structure really has evolved over the last 10 years as a very organic, ground-up way of bringing together all of the professionals who may have a role in better supporting particularly victims but increasingly also responding to perpetrators of family violence. So its strength is that it has built those relationships, but I think, as you have heard, the challenge for that structure is that it is neither embedded in any sort of statewide structured approach to thinking about where to put your effort, nor is it supported to be really clear about what the priorities, accountabilities and reporting on results should look like.

I know we will move through to how we think about the whole sort of governance and stewardship model, but the solution to better supporting joining up of organisations on the ground needs to be connected to both how there is that vertical connection to planning strategy, evaluation and accountability for family violence services specifically and for responses to people experiencing family violence specifically, but also the sort of horizontal connection to how are social service systems being organised and how are community safety strategies being given effect. As we move through that there will always be a place for place-based partnerships that bring together the professionals particularly focused on family violence, but they can be better supported, more structured and more accountable.⁴⁷

The Commission also heard that in some regions, overlapping and inconsistent administrative boundaries set by different portfolios have created difficulties for regional family violence governance and service provision. This in turn has implications for victims seeking access to services. Ms Smith told the Commission:

So we don't have a marrying up of the Department of Health boundaries with Department of Human Services boundaries and Victoria Police boundaries, which can create a few anomalies for some of our local government areas in terms of where they receive responses from and where our referrals go to in our region.⁴⁸

The Commission notes that an independent review of regional development, led by former Premier and Regional Development Minister Mr John Brumby, has been conducted for the Victorian Government. It examined the administrative arrangements for delivery of services and governance arrangements of various portfolios in the state.⁴⁹ The Victorian Government is working through the findings of the review. Ms Peake told the Commission that the intention is that any new regional governance arrangements will:

... connect government with local government, Commonwealth Government and community leaders to identify what the strategic plan is for a region, which then cascades down into what's the specific actions that are going to be taken in that place to advance family violence.⁵⁰

The departmental secretaries suggested it would be desirable that, as part of these arrangements, there should be:

- ▷ guidance from government about a number of common statewide priorities but flexibility to supplement these with local priorities⁵¹
- ▷ a focus on strategic place-based planning, including engaging non-government participants and obtaining information from local regions to inform central decision-making⁵²
- ▷ improved feedback in both directions, between government and the regional management forums⁵³
- ▷ a direct connection between the regional management forums and the regional integration committees,⁵⁴ with possibilities including the committee chairperson being a member of the forum or otherwise participating in its planning processes.

Mr Eccles, Secretary of the Department of Premier and Cabinet, told the Commission that 'regional governance is being addressed as part of a broader plan to set the direction of Victoria's regional policy'.⁵⁵

Victoria's Regional Statement

In November 2015 the Victorian Government released *Victoria's Regional Statement: Your Voice, Your Region, Your State*.⁵⁶ The statement outlines arrangements for government administration and community consultation in rural and regional Victoria as well as initiatives in a range of areas such as employment, tourism and telecommunications. It confirmed that from 1 July 2016, regional partnerships will be formed in nine regions in rural and regional Victoria, replacing the regional management forums. The regional partnerships will bring together representatives from local business, education, social services and community groups with the three tiers of government, with the aim of connecting regional priorities with government decision-making processes. The partnerships will develop existing regional strategic plans and determine 'actions and outcomes to progress economic and social priorities'.⁵⁷ Each partnership will communicate directly with a rural and regional ministerial committee, providing a direct pathway for regional priorities into resourcing decisions by ministers and departments. The statement acknowledged that knowledge, expertise, resources and experience are present in all sectors—public, private and community⁵⁸—and that a change to one-size-fits-all approach often does not work.⁵⁹

Leadership and a whole-of-government approach

In evidence to the Commission, Dr Cumberland stated that a whole-of-government approach was needed to ensure that family violence is treated as a priority:

The first thing we have to do is to get our public sector system more involved in family violence. We can't keep treating a mainstream problem in the margins. We have to move into this real whole government response ... It was an integrated response, but it was still deeply isolated from a whole-of-government perspective.

It would seem to me that we won't make inroads until we really start to look at our departments and our government in a holistic way, our courts in a holistic way, and once and for all accept that family violence is not the filtered down problem at the end of the spectrum ... Because if it's having such an impact on the work that you do, in courts, in hospitals and in police and in support services, if it is having that impact, then don't put it as number 10 on your list, put it at number one.⁶⁰

Strong political leadership

Overwhelmingly, the evidence put to the Commission pointed to the importance of strong political leadership in bringing about a whole-of-government approach to family violence. The Commission heard that until recently this leadership has been lacking.

Mr Ken Lay APM, Chair of the Council of Australian Governments Advisory Panel on Reducing Violence against Women and their Children, highlighted the contrast between the political leadership shown by government and opposition members in making changes to reduce road accident-related death and injury and the approach to family violence:

The political leadership was there that spoke about this, that understood it was important. Premiers, police ministers, road ministers knew what worked, knew what didn't work, and we had a model as a result where I had never seen a group of agency heads so tight as they were in the road safety space. I think it was because of the political leadership. They felt empowered. They were game to actually challenge politics. Innovation flowed, investment flowed, legislation flowed; and I always take it back to that political leadership.⁶¹

In the past decade, ministers with portfolio responsibility for women have typically taken a 'lead' role in family violence. The current Victorian Government has appointed a Minister for the Prevention of Family Violence, The Hon. Fiona Richardson, who has actively advocated for change. As Mr Lay observed, recent statements by the Prime Minister and the Victorian Premier have been '... enormously empowering, I suspect, for people like the Chief Commissioner, for agencies, for the community, and people start to understand'.⁶²

The Federation of Community Legal Centres submission emphasised the importance of government leadership on family violence:

... from the top-down [there] must be strong leadership and multi-ministerial responsibility on this issue, including sending an inspirational message to the community that male leaders are prepared to put men's violence towards women and girls at the forefront of public policy. It would demonstrate that violence is not only a women's issue, but also a crisis that affects all Victorians and which requires a well-resourced and concerted effort in order to be effectively addressed.⁶³

A whole-of-government approach

Submissions to the Commission argued that leadership on policy relating to family violence and violence against women must come from all parts of government at both political and bureaucratic levels. It should be backed up by clear arrangements to hold departments responsible for implementing the overall policy. For example, Women's Legal Service Victoria recommended that:

1. The State Government create a governance structure that places responsibility for addressing and eliminating family violence across multiple Departments and Ministerial Portfolios.
2. The State Government develop protocols and processes that strengthen communication, collaboration and accountability across Departments and Ministerial portfolios.⁶⁴

As part of the Victorian reforms of the 2000s, the Victorian Government supported the SAFER research project. This was an Australian Research Council Linkage Project and included a research stream into governance.⁶⁵ The researchers found that the elements needed to drive whole-of-government reform included:

... the demonstrated commitment to reform and leadership provided by ministers, agency heads and senior managers; the involvement of community sector representatives; and the role of the Department of Planning and Community Development.⁶⁶

The importance of bipartisanship

Individuals and organisations spoke of the importance of ensuring stability and continuity in family violence policy and argued for a process that ensured that family violence reform was not dismantled every time a new government was elected.⁶⁷

In reflecting on the adequacy of existing arrangements, the Victorian Government has acknowledged the lack of 'robust governance structures'.⁶⁸ In its submission to the Commission, the Victorian Government observed, 'We need lasting structures—with proper governance and accountability arrangements—which outlive the commitment of the current government to address the problem'.⁶⁹

The Commission notes that bipartisan commitment was shown by members of parliament at the joint sitting of the Legislative Assembly and Legislative Council on 26 November 2015.⁷⁰ At this joint sitting victims of family violence, the Chief Commissioner of Victoria Police and representatives of a number of specialist family violence services addressed Victorian Parliament. The Premier, the Leader of the Opposition, and members of parliament from all parties also made their own contributions on the topic of family violence, acknowledging the harm it causes, its prevalence, and its disproportionate impact on women and children. They also acknowledged the need for a suite of mutually reinforcing strategies to tackle family violence, for the implementation of measures that are proven to work, and for reforms that will bring about cultural and attitudinal change in the long term.⁷¹

System oversight

The Commission heard that there is no formal mechanism for planning and overseeing prevention of, and responses to, family violence. Such a mechanism is needed to ensure that departmental, functions, policies, services and funding relevant to family violence fit together rationally and respond to the needs of people affected by such violence.

Nor is there any process for evaluating the overall system or major system components such as police, courts or Integrated Family Services' responses to family violence.

The Commission notes that in its new program to ensure that government agencies respond to sexual and family violence more effectively, New Zealand has recognised that there needs to be a cohesive whole-of-government approach with a clear understanding of who is leading the areas of service response.⁷²

The recent New Zealand Productivity Commission report argued that there was a need for a 'system steward' in New Zealand to oversee and actively manage the social service system.⁷³ The responsibilities of a system steward include conscious oversight of the whole system, clearly defined outcomes, performance monitoring, consistent standards and regulations, data collection and dealing with system underperformance. The New Zealand Productivity Commission report treated these functions as falling within the concept of system stewardship. The report observed:

The role of system steward falls to the Government. This is because of its unique role as the major funder of social services, and its statutory and regulatory powers unavailable to other participants. Stewardship responsibilities can be spread over several bodies or agencies – for example, responsibility for monitoring performance could be assigned to a separate, independent, government entity. As part of stewardship, the Government has responsibility for the "enabling environment" for the social services system. Two particularly relevant enablers are budgeting for and funding social services, and ensuring a comprehensive data network that can boost the capabilities and effectiveness of all participants.⁷⁴

Overseeing implementation of reforms

In his evidence Mr Neil Comrie AO, APM, Implementation Monitor, Hazelwood Mine Fire Inquiry, warned that there was also a need for oversight to ensure that the recommendations of this Royal Commission were implemented. He commented:

[S]adly, with my long history in the government area ... there are many reports from reviews, inquiries that have not been fully implemented and I think it's worthy of note that some of these same issues keep re-emerging at subsequent inquiries. So I think the rigour and discipline that this monitoring process applies is really important to make sure that there is not only a commitment but a delivery of the undertaking.⁷⁵

The Victorian Government has previously established monitors to oversee implementation of recommendations made by previous Royal Commissions and other inquiries. Mr Comrie held the statutory position of implementation monitor for the Victorian Bushfires Royal Commission and now monitors implementation of the recommendations made by the Hazelwood Coal Mine Fire Inquiry.⁷⁶ In that capacity, Mr Comrie's role has been to 'ensure that the commitments made by the State in response to the Royal Commission and the Inquiry [were] implemented, and to comment on the efficacy of the implementation actions that were put in place'.⁷⁷

In his evidence to this Commission, Mr Comrie explained that the responsibilities of the Victorian Government in implementing the recommendations of the Victorian Bushfires Royal Commission were assigned to particular agencies and that discussion between the implementation monitor and the relevant agency sometimes resulted in a modification of priorities. Mr Comrie told this Commission that the implementation process:

... provided me with the opportunity to go back to the department or agency and say, "Look, you have done these things, but when we have examined them we don't actually think they are achieving what the Commission wanted to be achieved or we don't think that it's actually going to make a difference in the long run."

... I have made the point on a number of occasions that with the best of intentions sometimes an agency will commit to do something in the immediate aftermath of the inquiry or commission, but then with further examination they may find there's actually a better way of doing something. It makes no sense to me to lock in to doing something in a way which is superseded or not efficient when another way has been identified. So we consider that. On a few occasions in my reports I have actually said that the State has opted to undertake this a better way but we agree with that because we believe it's a more effective and efficient way of doing things.⁷⁸

Mr Comrie said that having an independent monitor:

... sends out a very strong signal about the importance of the issues that are being addressed. Having a legislative background ... really sends out a very strong signal that the state is serious about addressing these issues.⁷⁹

Independent oversight and monitoring of performance

One of the matters explored in the hearings was whether these two oversight functions— monitoring implementation of this Commission's recommendations and independently evaluating the performance of the system as a whole—should be combined in a single body.

The departmental secretaries who gave evidence to the Commission discussed various options. Mr Eccles put forward the tentative view that the functions of conducting research into the operation of the system and monitoring the implementation of the Commission's recommendations should be located in separate entities.⁸⁰ He recognised, however, that a 'blended' model of monitoring the implementation of the Commission's recommendations could then transition into a broader 'assurance and reporting' role.⁸¹

The importance of victims' voices in policy and service design

It was suggested to the Commission that listening to the experiences and voices of victims is crucial to assessing the effectiveness of the family violence system. There are several contexts in which victims might participate in policy development and system improvement. These include:

- ▷ having the opportunity to share their stories directly with those who have ongoing responsibility for making decisions, running agencies and delivering services, with a view to ensuring that people working in organisations that respond to family violence understand the nature and dynamics of that violence
- ▷ being consulted on policy proposals and reforms as a member of a standing committee or on an ad hoc basis
- ▷ providing direct feedback to services and agencies on their experience of the family violence system, with a view to guiding system improvement through either better complaints processes or surveys.

Various organisations representing victims of family violence already play a vital role in making sure that victims' stories and experiences are reflected in their advocacy. Some research projects also seek to record and reflect the experiences of victims. ANROWS (Australia's National Research Organisation for Women's Safety) is funding a range of projects that use participatory and qualitative research methodologies involving victims/survivors of family violence. In its submission to the Commission it noted the importance of researchers 'amplify[ing] the voice of women themselves, their articulation of their experience of violence, their needs and the needs of their children'.⁸²

The Commission heard that victims' voices should be heard more directly by policy makers and service providers. Vixen Collective, Victoria's peer-only sex worker organisation, emphasised the importance of women being allowed to speak on their own terms:

Key to addressing the ongoing safety and wellbeing of those affected by violence is:

- Listening directly to the voices of those affected.
- Understanding that those affected by violence must be considered the key stakeholders in the discussion.
- Recognising that when other interest groups are permitted to speak on behalf of those affected by violence, this both silences the voices of those directly affected and takes up space in which their lived experiences may be heard.⁸³

A similar point was made by the Aboriginal Family Violence Prevention and Legal Service Victoria, which noted the importance of maintaining a focus on Aboriginal and Torres Strait Islander women's individual voices in community-led strategies to prevent and eliminate family violence in Aboriginal communities:

FVPLS Victoria wholeheartedly supports the notion that solutions to family violence impacting Aboriginal people lie within Aboriginal communities and that Aboriginal people must lead strategies to prevent and eradicate family violence in our communities. Community ownership and community-driven solutions are fundamentally important. However, it is crucial that community approaches do not result in the voices and perspectives of Aboriginal women being lost. Without reference to women or to gender, reliance on a 'community voice' can serve to reinforce pre-existing gendered power dynamics and silence Aboriginal women.⁸⁴

A number of other submissions to the Commission emphasised the importance of victims having a voice in the reform of the family violence system. For example, Women's Legal Service Victoria recommended strengthening victims' participation in influencing change through the establishment of a peak advocacy organisation led by victims.⁸⁵ It also supported government agencies, Victoria Police and the court system '[formalising] the participation of women who are victims of family violence in the development of reforms. This could be achieved through an advisory group structure'.⁸⁶

Mr Eccles noted that, in evaluating the performance and efficacy of programs, qualitative assessments are often best served by speaking with the program users:

Data is not going to be able to capture every element of system performance. I would imagine they would be able to make a qualitative assessment of the system's performance by talking to victims, families and perpetrators ...⁸⁷

Community initiatives to capture victims' experiences

The Commission heard of a number of current community initiatives that seek to capture the experiences of people experiencing family violence.

The Centre for Non-Violence, an integrated family violence support service in the Loddon Campaspe region, is developing a 'listening post' model in consultation with women from the region who have suffered family violence and specialist family violence organisations.⁸⁸ The model is being developed under the auspices of the Loddon Campaspe Family Violence Advisory Committee. It will pilot 'listening post' workshops with the women, with a view to informing advocacy and consultation sessions with services, police and court registry staff to improve family violence responses. The Family Violence Advisory Committee told the Commission:

The 'listening post' project aims to improve the family violence system response (family violence stakeholder culture, practice and advocacy) and its systems of accountability for women and children experiencing family violence in the Loddon and Campaspe region (Maryborough, Bendigo, Echuca and Kyneton).

The 'listening post' is an evidence based evaluation method of the family violence system response that enables family violence stakeholders to hear directly from the women their lived experiences of their practice.

Women with lived experience of family violence are recruited through trusted family violence stakeholders and supported to convey their lived experience of their family violence system response to relevant family violence stakeholders in a confidential safe setting.⁸⁹

The Commission was made aware of The Listening Project: Victims and Survivors Voices Heard, a series of workshops held on 3 December 2015 and hosted by the Victorian Parliament. The project provided an opportunity for family violence victims to tell their stories and offer opinions on how the current system can be improved.⁹⁰

The Commission also heard about programs to promote advocacy work by victims, such as the Eastern Media Advocacy Program⁹¹ and the Safe Steps Family Violence Response Centre's Media Advocacy Project.⁹²

Finally, the Commission learnt of another option for inviting victims' input—a legal system victim impact statement.⁹³ This involves victims describing the impact of the interaction with police on them in a written statement; has been said to serve 'an important expressive function for the victim, and be instrumental in the development of "best practices" in the field'.⁹⁴

The way forward

Preventing and responding to family violence is a complex endeavour. There is no simple solution, no single source of expertise, and no guarantee that solutions advanced today will continue to be the most appropriate solutions in the future.

The Commission was told by numerous organisations and individuals that previous measures to make family violence a priority for all parts of government have not been sustained. Among the reasons for this were said to be the following:

- ▷ a lack of shared understanding and agreement throughout the community and service systems about the goals of family violence responses and the best way to achieve them
- ▷ a lack of sustained leadership
- ▷ loss of momentum following a change of government
- ▷ a lack of bipartisanship on policy responses to family violence
- ▷ a lack of accountability and oversight of the system
- ▷ the absence of machinery to support service providers in working in a more integrated and consistent way.

In response to this, the Commission proposes a governance framework that makes family violence a central consideration for all levels of government. It is intended to provide strong leadership and support effective and coordinated strategies to address family violence. In summary, this framework comprises:

- ▷ a bipartisan standing parliamentary committee on family violence
- ▷ a Cabinet standing sub-committee chaired by the Premier of Victoria
- ▷ a requirement for all ministers to report regularly on the risks and opportunities in their portfolio relevant to family violence
- ▷ Victorian Secretaries Board oversight of government administration arrangements for family violence policy
- ▷ a family violence policy unit located in the Department of Premier and Cabinet
- ▷ a reinvigorated Statewide Family Violence Advisory Committee, including representatives of the Indigenous Family Violence Partnership Forum as members
- ▷ a continuation of the Indigenous Family Violence Partnership Forum
- ▷ family violence regional integration committees, supported by Regional Integration Coordinators
- ▷ an independent Family Violence Agency established by statute
- ▷ mechanisms for ensuring that the voices of victims are heard and guide policy development and service delivery.

The Commission also proposes that the Victorian Government prepare a Statewide Family Violence Action Plan to guide implementation of the recommendations put forward in this report. This plan will include both prevention and response to family violence. In recognition of the importance of prevention the plan must include a discrete primary prevention strategy.

This section sets out the detail of the proposed framework, as well as the underpinning rationale and guiding principles.

Recommended principles for a statewide response to family violence

The Commission heard that although individuals, non-government organisations and government agencies have worked hard to respond to family violence, disparate approaches and the development of 'silos' have undermined coordinated efforts and consistency in responding to the problem. Reforms will succeed only if all parts of the system have a shared understanding of how best to prevent and respond to family violence. Defining the goals that guide the prevention of and the response to family violence will help to build this understanding.

The goals of the family violence system should be to:

- ▷ prevent family violence in all its forms and to establish and promote a culture of non-violence and gender equality
- ▷ keep victims safe—and in their homes and communities as much as possible
- ▷ hold perpetrators to account for their violence
- ▷ help victims find the assistance they need to rebuild their lives and reach their goals.

On the basis of the evidence and submissions, as well as its consultations, the Commission considers that the following principles should be adopted to guide the statewide response to family violence:

- ▷ Family violence is a fundamental violation of human rights. All members of society should be protected from such violence and be enabled to live free of it.
- ▷ Preventing family violence is the most effective way of protecting people from it in the long term.
- ▷ Ending family violence requires a change in the attitudes of individuals and in community attitudes that allow violence to be excused, justified or condoned. All elements of the community should be involved in ending family violence: government, business, non-government organisations, the media and communities should play a part.
- ▷ Priority should be given to early intervention in family relationships where violence is threatened or likely to escalate.
- ▷ Services for victims and perpetrators of family violence must be adequately funded.
- ▷ Family violence service systems must ensure the safety of all victims of family violence, regardless of the family relationship within which the violence occurs. The majority of those harmed by family violence are women and children. Services must be accessible and able to respond to a broad range of victims and types of family violence—including non-intimate partner violence and other less understood forms of family violence.
- ▷ All parts of the system should apply evidence based risk assessment and management and understand their roles and responsibilities for this.
- ▷ Services (whether universal or specialist) must treat victims with dignity and respect their choices. Service provision cannot be based on provider convenience. Services should:
 - ▷ empower victims and respect their needs and decisions
 - ▷ aim to reduce, as far as possible, the need to seek support from many different services
 - ▷ take account of factors that might increase the risk of someone being a victim or perpetrator of family violence—including poverty, locational disadvantage, disability, mental illness and substance misuse
 - ▷ respect differences in culture and identity while making it clear that family violence cannot be condoned in any community or culture
 - ▷ be consistent and predictable.
- ▷ Supporting children and young people should be central to family violence policies. This includes both child victims of family violence and children or young people who use family violence, some of whom might previously have been victims of it. Young people who use violence should be helped to change their behaviour.
- ▷ Services for victims of family violence should not be confined to providing crisis support but should also aim to support victims to recover from the effects of past violence and to rebuild their lives at their own pace.
- ▷ Those who use violence against family members should be held responsible for the violence and helped to change their behaviour. It should never be seen to be the victim's responsibility to stop the violence. Those who use violence should always be held responsible for their actions, although this might not always require a criminal justice response. Stopping the violence is the way to ensure the safety of victims.

Making family violence a central government concern

At present, responsibility for family violence is diffused across a variety of government departments and agencies. This fragmentation has led to family violence policy and service design being pushed to the margins of broader government policy making, rather than being a central concern for all parts of government. Family violence has not been given the priority—in policy development and investment—it deserves. As a consequence, policies are vulnerable to changes of government and bureaucratic arrangements.

Family violence is a complex phenomenon, no single area in government can take entire responsibility for responding to it. In many instances the way that different policy decisions intersect with family violence will not be immediately obvious: responses to natural disasters, tenancy matters and liquor licensing, prenatal care and equal opportunity initiatives are examples of areas that have a relationship with family violence. A failure to identify intersections and overlaps between different government initiatives can lead to unintended policy consequences or a failure to seize opportunities.

Accountability for achieving the goals of the family violence system needs to be held at each level of the system—cascading down from ministers to government agencies and the service providers who work on preventing and responding to family violence. There should also be horizontal accountability, so that each system that responds to family violence has a responsibility to act in ways that support an integrated approach. No single sector can assume responsibility for safety, accountability and recovery outcomes: all have a role to play in ensuring that the gaps that people might fall through, are closed.

The importance of bipartisanship

Family violence is a problem so deeply embedded in our society and culture, and so widespread, that bipartisan support is required to maintain a sustained and coherent strategy.

The Commission's recommendations are intended to encourage bipartisanship on family violence policy, to increase and build on community involvement in preventing family violence, and to support people who are affected by it. A bipartisan approach needs to be premised on a shared commitment to the principles set out in this chapter.

This commitment to addressing family violence means that the response to family violence can move beyond raising awareness of the nature and extent of the problem, towards a much more sustained focus on developing and evaluating initiatives that will have a real impact on the incidence of family violence. The Commission considers that Victoria is well placed to face the challenges ahead.

The establishment of a standing parliamentary family violence committee—as applies in the case of road accident deaths and injuries—would encourage development of a bipartisan approach to family violence. The family violence standing parliamentary committee should be clearly defined to support the goals of the family violence system and oversee matters relating to prevention and responses to family violence in Victoria. The role of the committee should be to:

- ▷ inquire into and report on any proposal, policy or legislation concerned with family violence
- ▷ examine and report to Victorian Parliament when legislation is introduced that might be relevant to family violence—including whether it has the potential to support or undermine the Statewide Family Violence Action Plan.

In doing so, the committee would need to liaise with the Scrutiny of Acts and Regulations Committee.

Integrated and effective system architecture

A whole-of-government response to family violence requires 'system stewardship'. The Commission proposes a governance architecture that ensures oversight of the overall government response to family violence.

The architecture would also distribute functions such as monitoring, evaluation, data collection and funding across different parts of government. As noted, the goals of the family violence system relate to the areas of prevention, safety, accountability and recovery. The governance architecture is intended to meet these goals.

The Commission also makes a number of related recommendations in relation to coordinated approaches to funding (Chapter 41), data collection (Chapter 39) and prevention of family violence (Chapter 36).

Continuing Cabinet involvement

The Commission welcomes the establishment of a Cabinet sub-committee dedicated to family violence and recommends that a standing Cabinet sub-committee on Family Violence, chaired by the Premier, continue into the future. Establishment of that sub-committee recognises the priority to be accorded to family violence in government policy, and will enable discussion and reconciliation of different ministerial views. It will support integrated whole-of-government decision-making processes at the highest levels.

The role of the Cabinet sub-committee

The primary role of the Cabinet sub-committee would be to oversee the development and implementation of the Statewide Family Violence Action Plan.

The Statewide Family Violence Action Plan

The Statewide Family Violence Action Plan should be based on the recommendations of this Commission. The plan should be a 10 year plan setting out the concrete outcomes to be achieved in the short and long term. It should also explain how performance will be measured and monitored. For example, short-term service outcomes could include a requirement that victims who leave their homes because of family violence are housed in particular accommodation within a specified period or a requirement that police conduct a regular audit of the response to family violence incidents, for example, investigation of breaches. A longer term prevention outcome might be reductions in the prevalence of family in particular communities and a reduction of the number of children taken into care because of family violence.

The Statewide Family Violence Action Plan should not be a static document: it should evolve over time in response to community experience and expert knowledge of the effect of particular approaches and programs. The plan should be developed by the Victorian Secretaries Board, which would also have responsibility for implementing and reviewing the plan. This process would be overseen by the Cabinet sub-committee and endorsed by Cabinet. The Family Violence Statewide Advisory Committee and the independent Family Violence Agency would provide advice on future strategy and necessary modifications to the action plan.

The Cabinet sub-committee should introduce a process whereby relevant ministers agree to make a joint budget submission to support implementation of the Statewide Family Violence Action Plan. This will require sub-committee members to reach agreement about budget bids to ensure that investment is aligned with family violence plan priorities.

The Premier of Victoria should direct all ministers to review and regularly report on the family violence-related risks and opportunities within their portfolio areas and the Cabinet sub-committee should assess the potential impact of Cabinet submissions that might have an impact on family violence prevention or responses. One method that could be used to ensure that family violence is given priority is through the use of charter letters (also known as portfolio priority letters), which could be sent by the Premier to all ministers with instructions to this effect. The purpose of this reform would be to ensure that approaches taken in other areas of government responsibility support the Statewide Family Violence Action Plan and that other policy initiatives do not undermine the plan.

Another way of achieving this goal would be to require departments proposing legislative or policy change to submit a family violence impact statement, describing the relationship between the proposal and the Statewide Family Violence Action Plan. Victorian government policy requires a legislative impact statement to be prepared if legislative proposals impose potentially significant effects on business or competition, or both. Along similar lines, the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* requires that all new bills be accompanied by a statement of compatibility assessing the extent to which the Bill is consistent with the human rights protected by the Charter.⁹⁵

On balance, the Commission decided against this latter approach. A large number of proposals put to Cabinet will have no relevance to family violence and departments already have to prepare impact statements in other contexts. There is a risk that requiring a family violence impact statement might be given lip service only. In the Commission's view, the requirement for regular reports, whether incorporated in charter letters or otherwise, offers a more effective way of requiring ministers to maintain family violence as a priority regardless of the extent to which their portfolio intersects with family violence.

The government is considering a means of introducing a more coordinated system, involving ministers being jointly responsible for achieving outcomes in priority areas, with funding allocation to occur across portfolio areas.⁹⁶ The Commission considers that family violence could be identified as a priority for the purpose of this initiative.

Bureaucratic leadership

Heads of relevant departments will have central responsibility for implementing the Statewide Family Violence Action Plan and 10 year industry plan, as endorsed by Cabinet.

The roles and responsibilities of departmental heads relate to their capacities as policy makers and advisors, service deliverers, service purchasers and employers. Further consideration of how the Victorian Secretaries Board oversees system matters associated with family violence will, however, be needed.

The Victorian Secretaries Board

The Commission envisages that the Victorian Secretaries Board will have collective responsibility for promoting a whole-of-government approach. In all matters, the board's focus will be on family violence system implications, regardless of how many (or few) portfolios are involved in policy and programming processes. The board should resolve working and decision-making arrangements to ensure that a whole-of-government perspective and oversight is maintained, without delaying or impeding the good efforts of individual portfolios.

The Victorian Secretaries Board should appoint a sub-committee to take primary responsibility and report to the board. The Secretary of the Department of Premier and Cabinet should chair the sub-committee. The secretaries of Treasury and Finance, Justice and Regulation, Health and Human Services and Education and Training, the Chief Commissioner of Victoria Police and the Chief Executive Officer of Court Services Victoria should be members. In the case of prevention proposals, the Victorian Secretaries Board's working arrangements might include other members—for example, the portfolios of Local Government and Sports and Recreation.

Roles and responsibilities

Some of the 'siloeing' described in this chapter occurs within departments and could be dealt with by more effective planning and coordination. Ensuring better information sharing across programs could prevent the unintended effect of one policy or initiative undermining the purpose of another. It will also enable expertise acquired in one area to be shared throughout government.

The Commission envisages that the Victorian Secretaries Board will advise government on performance outcomes and be responsible for delivering and reporting on milestones associated with the Statewide Family Violence Action Plan. It will also prepare the Statewide Family Violence Action Plan for the Cabinet sub-committee's consideration.

As part of the Statewide Family Violence Action Plan, it is envisaged that the Victorian Secretaries Board will oversee planning to implement the Commission's recommendations. The Secretaries Board should assume responsibility for developing the overarching performance framework for the action plan, as well as a framework to guide monitoring and evaluation at all levels of the system. Members of the Secretaries Board will be held jointly and individually accountable for meeting the objectives set by the Statewide Family Violence Action Plan. The Secretaries Board should also play a crucial role in ensuring that activities in different areas of government are developed and implemented in ways that are coordinated and support intended policy outcomes for family violence.

In developing the Statewide Family Violence Action Plan, the Victorian Secretaries Board should also consider the role of departmental secretaries as employers. Heads of departments should lead culture changes within their workplaces to help to prevent family violence. Secretaries have an important role to play in changing social attitudes—in the same way as leaders of business and organisations such as Victoria Police have done. For example, Victoria Police led the way in commissioning the Victorian Equal Opportunity and Human Rights Commission's independent review of sex discrimination, sexual harassment and predatory behaviour in Victoria Police.⁹⁷ Leadership in the workplaces for which secretaries are responsible could model, build and track progress towards building respectful and inclusive workplaces and ensure that gender equity, and an understanding of its relationship to family violence, are enhanced in their respective workplaces.

The Secretaries Board should also advise the Cabinet sub-committee and relevant ministers on the relationship between the Statewide Family Violence Action Plan and relevant state policy and the National Plan to Reduce Violence against Women and Children 2010–2022.⁹⁸

Another important function of the Victorian Secretaries Board will be to consider the changes necessary to bring the family services, child protection and family violence systems closer together and maintain oversight of progress in individual portfolio areas. This will also require that police, the courts and service systems operating in these areas work together more effectively. The Commission notes that there is some common membership between the proposed sub-committee of the Victorian Secretaries Board and the Children's Services Coordination Board, which was established under the *Child Wellbeing and Safety Act 2005* (Vic). As a result of the relationship between child services and family violence services, it would be useful for the Victorian Secretaries Board family violence sub-committee to engage with the Children's Services Coordination Board.

Both the standing Cabinet sub-committee and the Victorian Secretaries Board sub-committee should be able to seek advice from the independent Family Violence Agency—the establishment of which is proposed shortly.

The Victorian Secretaries Board should also oversee adjustments to the procurement requirements and processes of individual departments to ensure that the Victorian Government consistently and adequately specifies the type of and standards for services it intends to procure, as well as the way in which those service providers will be expected to interact with the wider family violence system.

As noted briefly in this chapter, and discussed more comprehensively in Chapter 39, there is an urgent need to purchase or redesign information technology to underpin and enable the collection of data that can be used to assess and improve risk management and system performance. Victoria needs databases that effectively link the courts, the police and other service systems. This is essential if we are to protect victims of family violence; it is also essential to enable evaluation of the overall effects of policy changes made in different service systems.

The Victorian Secretaries Board should also assume responsibility for ensuring that systems are established to permit the collection and sharing of data for these purposes. Further, the Victorian Secretaries Board should be responsible for ensuring that their member departments' regional implementation is consistent with the intent of the Statewide Family Violence Action Plan.

As discussed elsewhere in this report, ongoing identification of government expenditure on family violence is required. An important function of the Victorian Secretaries Board will be to create the impetus for and propose comparable methodologies for department's reporting of expenditure, to make funding for family violence more transparent so that the costs and benefits of particular strategies can be assessed.

The Victorian Secretaries Board would advise and report to the Cabinet sub-committee on the implementation of the Statewide Family Violence Action Plan, including the funding measures required to implement it. It is also envisaged that the board would report to the Cabinet sub-committee and relevant ministers on progress with the implementation of recommendations relating to core system factors such as information sharing, risk assessment and management mechanisms, Support and Safety Hubs, workforce development, the systems data platform, and procurement of the data system to support risk management.

Administrative support

The Commission proposes that the work of both the Cabinet sub-committee and the Victorian Secretaries Board be supported by a dedicated Family Violence Unit in the Department of Premier and Cabinet.

Systemic advocacy, from the community sector and from victims, will continue to have an important role in the design of prevention strategies and in liaising with the Victorian Government on response matters. For the reasons explained shortly, the Commission recommends the re-invigoration of statewide consultation recommends the arrangements with the establishment of a new Family Violence Statewide Advisory Committee. The dedicated family violence unit will provide secretariat support for the statewide consultation mechanism to support the design and implementation of the Statewide Family Violence Action Plan.

In addition to providing secretariat services to government and its advisory structures, the role of the dedicated family violence unit should be to:

- ▷ coordinate and provide strategic policy advice to government on directions and implementation of all aspects of the Statewide Family Violence Action Plan, including, in collaboration with the Office of Women's Policy, reporting on the National Plan to Reduce Violence against Women and their Children 2010–2022
- ▷ manage and coordinate effective consultation with advisory bodies and stakeholders to guide the development and implementation of the Statewide Family Violence Action Plan
- ▷ manage regional governance structures
- ▷ liaise with and consult throughout government to support and implement all efforts to prevent all forms of family violence and all forms of violence against women.

System accountability: an independent agency

Family violence systems are not static and new problems and concerns will arise in the future. There is need for an expert body, independent of government, that has, among other roles, the task of advising government about future responses to family violence, monitoring progress of systems processes and outcomes, identifying opportunities for improvement, and encouraging cultural change within systems to support those improvements.

The creation of an independent agency would recognise that family violence should be at the centre of government policy in an enduring way.

The primary function of the independent Family Violence Agency would be to advise government on the overall performance of systems designed to prevent and respond to family violence and to identify areas where the Statewide Family Violence Action Plan should be modified in the future. The agency would have the capacity to respond to requests for advice by the Cabinet sub-committee, the Premier and the Victorian Secretaries Board, as well as to conduct own-motion investigations of particular matters and perform or commission research for those purposes.

The Family Violence Agency's work would complement the research activities of ANROWS by focusing on Victorian practice, and encouraging communication between service providers in relation to policy successes and failures.

In relation to the question of whether this agency should have both a monitoring function and broader oversight one (as discussed earlier in this chapter), the Commission considers it appropriate that the agency have responsibility for monitoring implementation of the Commission's recommendations as well as the broader functions just described.

The Commission considered various independent bodies that have been created at the state and territory and Commonwealth levels. These bodies fulfil some combination of the following functions:

- ▷ engaging in primary prevention activities
- ▷ providing education programs to the community
- ▷ providing services in particular areas of government activity⁹⁹
- ▷ collecting and assessing data in relation to the relevant subject area¹⁰⁰ or coordinating data collection and impact assessment¹⁰¹
- ▷ conducting and disseminating research about the relevant subject area¹⁰²
- ▷ monitoring and reporting on performance of the relevant system as a whole¹⁰³
- ▷ conducting system-wide reviews¹⁰⁴
- ▷ issuing guidelines in the relevant area¹⁰⁵
- ▷ setting written performance indicators¹⁰⁶
- ▷ providing policy advice to the relevant minister,¹⁰⁷ Premier or a Cabinet committee—including advice on priorities for funding¹⁰⁸
- ▷ coordinating whole-of-government policy and implementing government reform initiatives¹⁰⁹
- ▷ providing or evaluating training to maintain and strengthen capability¹¹⁰
- ▷ independently monitoring implementation of the relevant scheme.¹¹¹

Many of these bodies are empowered to conduct research relevant to the area for which they have responsibility and to advise ministers or other bodies. Some of these bodies also have a function similar to that of an implementation monitor along with other functions, and some bodies are empowered to carry out system reviews or monitoring.

Monitoring implementation will require an examination of how the family violence system, or particular parts of it, is functioning. It is desirable that the function of monitoring implementation of the Commission's recommendations be brought together with that of carrying out applied research into the effectiveness of particular policies and systems that are currently in operation, and advising on new ways of addressing family violence. The proposed applied research functions of the agency will equip it to ascertain whether prevention activities or service initiatives have met their objectives or should be modified to make them more effective.

Functions and structure of the independent Family Violence Agency

Functions

The Commission proposes that the independent Family Violence Agency have the following functions:

- ▷ monitor implementation of the Commission's recommendations—including that of the Statewide Family Violence Action Plan
- ▷ provide expert policy advice on family violence at the request of Cabinet, the Premier or the Victorian Secretaries Board
- ▷ conduct and commission applied research, policy and evidence reviews as well as conduct own-motion inquiries into the operation of the family violence system
- ▷ liaise with relevant Commonwealth Government and national agencies to inform policy and practice to improve primary prevention efforts and responses to family violence
- ▷ establish a means by which service providers can share information about programs
- ▷ liaise with the Crime Statistics Agency and other agencies to coordinate data collection and sharing for the purpose of monitoring the overall performance of systems that respond to family violence.¹¹²

The agency should be required to report to parliament annually on the performance of its functions.

The independent Family Violence Agency would not be involved in the implementation or coordination of any programs or services. These would remain the role of government. Instead, the agency's role would be providing advice and monitoring and evaluating the program of work set out in the Statewide Family Violence Action Plan. Among other matters to be reviewed, monitored and evaluated for their systems impact are risk assessment and management processes, workforce development strategy and standards, procurement, quality assurance processes, governance, and consultation and engagement processes to enhance the inclusiveness and impact of primary prevention and family violence responses across the state.

Any overlap between the monitoring role of the independent Family Violence Agency and the financial and performance audit functions of the Victorian Auditor-General would need to be considered and resolved in the establishment phase of the agency.

Structure

The Family Violence Agency should be established by statute as an independent entity and be chaired by a person who is independent of government. It should have a board of directors with primary responsibility for guiding the development of a family violence system that upholds safety, accountability and recovery. The agency should draw on contemporary evidence and good practice in performing its work.

The board of directors should include a person with broad experience in government, a senior member of the academic staff of a university who has broad expertise in family violence policies and systems, a person who has been a victim of family violence or represents victims of family violence, and the Commissioners for Children and Young People and Aboriginal Children and Young People.¹¹³

The independent Family Violence Agency should also have power to appoint an advisory committee of people involved in systems advocacy, either through service provision to people affected by family violence or through their experience of family violence. The advisory committee should include a representative of Victoria Police and a magistrate.

The independent Family Violence Agency should establish stakeholder engagement processes to help guide its monitoring and evaluation of the Statewide Family Violence Action Plan, as well as to ensure its advisory function is able to meet contemporary challenges and opportunities.

The board of directors should reach early agreement with the Victorian Government on the nature of the agency's engagement with government policy development, planning and consultation processes in ways that both preserve the agency's independence and ensure it is involved in government processes in a timely manner.

The independence of the agency will be crucial to maintaining bipartisan support for its function.

The future role of family violence regional integration committees

In consultation with the Statewide Family Violence Advisory Committee, the Victorian Secretaries Board should determine the core roles and responsibilities of regional family violence governance committees in implementing the Statewide Family Violence Action Plan. The role of these family violence regional integration committees should include developing supporting regional systems architecture to:

- ▷ guide, implement and report on workforce development at the regional level
- ▷ support and report on implementation of data system reforms and data collection and analysis
- ▷ create common platforms to support the integration of the Support and Safety Hubs into the regional family violence systems, as well as implementation of the Risk Assessment and Management Panels, and engagement with services associated with other risk factors—such as alcohol and drug services, disability services, and universal services
- ▷ extend engagement with systems advocates to all forms of family violence
- ▷ provide feedback to government on regional implementation of the Statewide Family Violence Action Plan to support intended systems outcomes
- ▷ ensure mutually supportive working relationships with regional primary prevention leaders and collaboratively determine appropriate regional governance arrangements.

The Commission was advised of different responses to family violence in different regions; it was also told about the particular challenges people face in obtaining services in regional, rural and remote Victoria. In defining the primary role of family violence regional integration committees, it is important that these committees promote consistent systems practices throughout the state, so that people experiencing family violence can expect consistent justice and service responses that are applicable to their needs, regardless of where they live. This does not preclude regional family violence governance committees from identifying matters of regional interest to pursue.

Regional governance overseeing both prevention and responses to family violence should be guided by and accountable to the proposed Family Violence Unit within the Department of Premier and Cabinet. The aim here is to ensure that regional family violence governance committees maintain a strong systems focus. Service delivery, as a subset of this, requires integration and seamless service delivery alongside justice and universal service processes. The engagement of the justice portfolio and the courts in the regional context is crucial.

A further consideration is that the ongoing role and funding of family violence regional integration committees should be independent of service funding. To support this focus, the role of the family violence Regional Integration Coordinator should be elevated. The coordinator should have expertise in family violence and strong strategic and stakeholder engagement skills and be funded on a continuing basis.

Regular consultation should be established between the Family Violence Unit and family violence regional integration committees to support implementation of the recommended system improvements. The objectives of the consultation process will be to define and monitor the role of regional family violence governance committees to achieve statewide consistency, to share experience and best practice, and to guide policy development, priorities and work sequencing.

Within the regions, the role of the regional family violence governance committees should be clearly recognised as the regional governance structure for matters relating to family violence at both the state and regional levels. The chairs of the committees should also be members of regional partnerships (the contemplated successor arrangements to the regional management forums) to support aligned and complementary regional efforts. Chairs should be resourced to reflect the level of involvement required for them to influence and effect the changes needed in their regions in order to implement the family violence system as intended.

Aboriginal and Torres Strait governance

The existing governance structure of the Indigenous Family Violence Partnership Forum should be retained. The forum should continue to oversee the Indigenous Family Violence Strategy, and the Indigenous Family Violence Regional Action Groups should continue to report to the forum. In order to ensure consistency and integration with the broader framework, representatives of the Indigenous Family Violence Partnership Forum should be members of the Statewide Family Violence Advisory Committee, continuing their current role on the Violence Against Women and Children Forum.

At the regional level, the Commission supports and encourages the collaborative relationships between the family violence regional integration committees and the Indigenous Family Violence Regional Action Groups to pursue projects to support prevention and responses to family violence in Aboriginal and Torres Strait Islander communities.

In Chapter 26, the Commission endorses the recommendations of the mid-term evaluation of the Indigenous Family Violence 10 year plan. Central to these recommendations is the need for the Victorian Government to commit to providing high-level oversight of implementation of the plan's objectives and reporting on achievements annually to the Cabinet Sub-committee on Family Violence.

Alignment with other regional place-based initiatives

Whole-of-government leadership is required to ensure that place-based initiatives take into account the risk assessment and management processes associated with family violence—and consult to ensure that their work does not generate unintended consequences. Such leadership should also ensure that place-based initiatives are supported to engage with implementation of the Statewide Family Violence Action Plan through suitable policy frameworks, guidance and capacity development.

Evaluation and oversight

It will be necessary to examine the entire area of family violence and assess the effectiveness of different interventions. Regular evaluation of the operation of systems-level mechanisms should be undertaken to ensure that processes for integrating systems, such as risk assessment and management and information sharing, are having the intended effect on the system as a whole and contribute to intended safety, accountability and recovery outcomes.

At the state level there is a lack of sufficiently robust and consistent data with which to assess current and future service needs and systems bottlenecks and to show the quality of service and system interventions. Reliable data is required, so that government knows whether primary prevention and response programs are working and to determine any necessary modifications and so there can be robust planning for future levels of service demand. These things are interrelated: for example, the success of an early intervention program might reduce pressure on Integrated Family Services or child protection programs and demand for police and courts in responding to family violence incidents.

Changes are necessary to ensure that the data required for evaluation or planning purposes can be effectively collected by the relevant department or agency and shared as required. Databases held by different parts of government need to be changed to make information more accessible across different systems, subject to privacy protection. We make recommendations about these matters in Chapter 7.

Consultative arrangements

A Statewide Family Violence Advisory Committee

Non-government community organisations are the main source of support for women and children affected by family violence. The Commission was greatly assisted by submissions from specialist family violence service providers and their peak bodies. It is vital that the community organisations that are the repositories of expertise on family violence policy and practice continue to participate in advocacy and policy development and have the opportunity to bring gaps and weaknesses in service provision and possible solutions to the attention of government.

Revitalisation of a Statewide Family Violence Advisory Committee is necessary. It should be underpinned by genuine consultation and co-design principles and should have functions similar to those of the previous Statewide Steering Committee. The previous Statewide Steering Committee focused on improving responses to family violence against women and children and supporting these groups of victims. As with previous advisory structures, the new Statewide Family Violence Advisory Committee should have a wider role: it should deal with all forms of family violence and have a focus on enhancing perpetrator accountability and supporting men to change their behaviour, as well as including perspectives from victims of family violence whose needs have not been recognised or adequately responded to in the past.

In addition, the Statewide Family Violence Advisory Committee should include representation from experts, systems advocates and victims of family violence. It should reflect different perspectives to ensure that government is receiving the benefit of input from experts in a variety of disciplines. The committee should assist with the evaluation and implementation of the Statewide Family Violence Action Plan. In developing the working arrangements for the Statewide Family Violence Advisory Committee, the Victorian Government should ensure that processes allow for comprehensive engagement with stakeholders engaged in both response and primary prevention work.

In relation to implementation, representation on the Statewide Family Violence Advisory Committee should continue to include representatives of regional governance committees; as noted, the committee should be accountable to the new dedicated Family Violence Unit in the Department of Premier and Cabinet.

The Commission also notes that the current Violence Against Women and Children Advisory Forum also considers other forms of violence against women such as sex trafficking and sexual assault (which may or may not be family violence). We contemplate that the Statewide Family Violence Advisory Committee would continue to do this work.

The government should also examine how it manages continuing governance and advisory structures for non-family violence forms of violence against women, such as sex trafficking, that are beyond the scope of the Commission's work.

Victims' voices

One of the main themes to emerge from the Commission's public hearings concerned the importance of involving victims of family violence in the design and review of systems and services, to ensure that their voices are heard and that their experiences help guide the system response. Effective family violence governance arrangements count for little if they fail to support a system that responds effectively to the needs of the victims—the very people the entire governance system is intended to serve. It is therefore important that governance arrangements for policy setting and service provision build in mechanisms for gathering the views and experiences of victims and use these to inform decision-making.

Providing opportunities for victims to talk about their experiences is important for other reasons too. First, for many, speaking about their experiences in a safe forum is important to their process of recovery. Secondly, victims need to feel that they have been heard and acknowledged in their interactions with police, courts and service providers. These two aspects of victims' voices are discussed in Chapter 20.

It is for these reasons that victims should be represented on the board of the proposed independent Family Violence Agency and on the Statewide Family Violence Advisory Committee.

As noted, organisations representing victims of family violence already play a vital role in making sure that victims' stories and experiences are reflected in their advocacy. This was certainly the case during the Commission's inquiry; a considerable number of submissions we received from organisations incorporated case studies and quotes from people who had experienced family violence and had subsequently had to navigate the various systems and processes. The Commission also heard about a range of ways in which victims might participate in policy development and system improvement—including the 'listening post' model and the Speaking Out program.

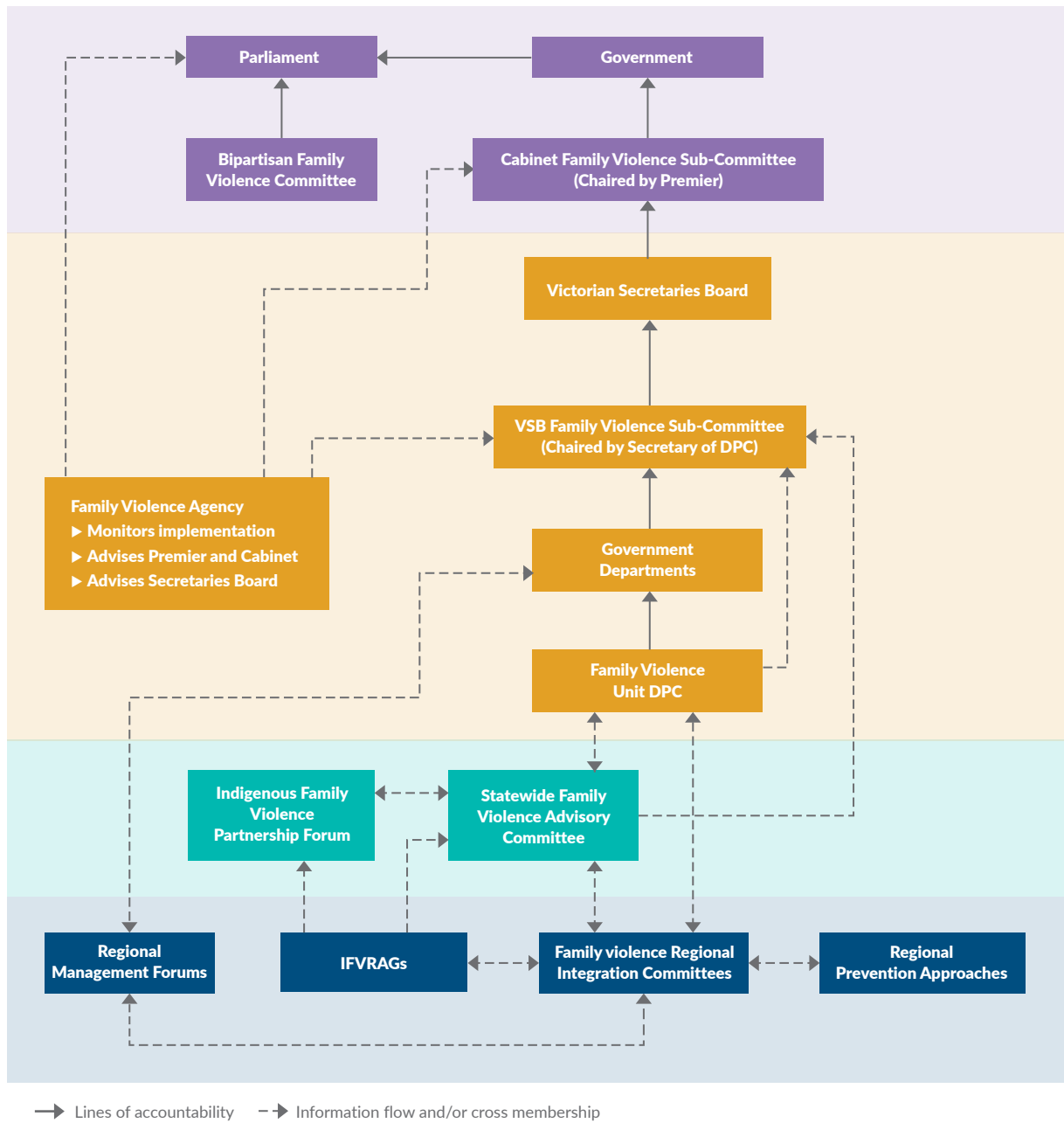
Other ways of giving government and service providers insight into the experience of victims might be through membership of statewide, regional and agency advisory committees, involving victims in professional development and training programs for people working in agencies that respond to family violence, and better monitoring and evaluation of clients' experiences of services such as the police, the courts and specialist family violence services. In addition, contracts for service providers could require organisations to specify how they will obtain feedback from victims. Agencies such as Victoria Police and the courts should introduce victim feedback mechanisms. Such mechanisms are to some extent currently in use on an ad hoc basis in the family violence system, but there is scope for developing them in a more coordinated and systemic way.

It is important that any such avenues for victim participation are safe, constructive and meaningful and that they are accessible to victims from diverse groups—including Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse communities, people who identify as lesbian, gay, bisexual, transgender and intersex, older people, people with disabilities and young people.

Table 38.1 Proposed governance architecture

| Entity | Role |
|---|--|
| Bipartisan parliamentary committee | <ul style="list-style-type: none"> ▷ Maintain parliamentary commitment to address family violence ▷ Inquire into and report on relevant legislative and policy proposals ▷ Examine and report on bills introduced |
| Cabinet family violence sub-committee | <ul style="list-style-type: none"> ▷ Oversee development of Statewide Family Violence Action Plan ▷ Propose expenditure priorities, including facilitating joint budget submissions ▷ Assess the impact of Cabinet submissions on family violence |
| Victorian ministers | <ul style="list-style-type: none"> ▷ Report on risks and opportunities within their portfolios relevant to family violence |
| Victorian Secretaries Board (including through sub-committee) | <ul style="list-style-type: none"> ▷ Oversee whole-of-government family violence prevention and response ▷ Develop, implement and coordinate the Statewide Family Violence Action Plan, including developing the performance framework and reporting on milestones. Prepare family violence industry plan ▷ Coordinate budget bids and develop methodologies for reporting on family violence expenditure ▷ Coordinate common tools (for example, information sharing and IT systems) |
| Department of Premier & Cabinet Family Violence Unit | <ul style="list-style-type: none"> ▷ Support the Cabinet sub-committee, Victorian Secretaries Board and Statewide Family Violence Advisory Committee ▷ Coordinate and advise on whole-of-government work ▷ Manage regional governance structures ▷ Ensure Victoria meets its National Plan obligations |
| Family Violence Agency (supported by an Advisory Committee) | <ul style="list-style-type: none"> ▷ Monitor and report the implementation of this report's recommendations and the Statewide Family Violence Action Plan, in order to advise on overall performance of systems responding to family violence ▷ Provide policy advice ▷ Undertake and commission research ▷ Liaise with Commonwealth Government and national agencies ▷ Liaise with the Crime Statistics Agency and other agencies to coordinate data collection and sharing ▷ Report annually to the Victorian Parliament |
| Statewide Family Violence Advisory Committee | <ul style="list-style-type: none"> ▷ Engage with experts, victims and systems advocates with perspectives on both prevention of and responses to family violence ▷ Facilitate codesign ▷ Inform evolution and implementation of Statewide Family Violence Action Plan |
| Indigenous Family Violence Partnership Forum | <ul style="list-style-type: none"> ▷ Oversee Indigenous Family Violence Strategy |
| Family Violence regional integration committees | <ul style="list-style-type: none"> ▷ Chair serves as member of Regional Partnerships (successors to Regional Management Forums) |
| Indigenous Family Violence Regional Action Groups (IFVRAGs) | <ul style="list-style-type: none"> ▷ Members of or input to Family Violence regional integration committees ▷ Report to Indigenous Family Violence Partnership Forum |

Figure 38.2 Proposed governance architecture



Although the intention is that these changes, combined with clear leadership, will provide the guidance, oversight and accountability that has sometimes been lacking, the Commission is aware that these structures will be effective only if those who work within the system—in all its manifestations and at all levels—are open to new ideas and solutions. We are confident that this is the case.

The sound foundations of Victoria's family violence system, and the examples of best practice to be found in different settings around the state have evolved as a result of people working together in the face of pressing demand. Their efforts and the efforts of other parts of the community who are ready to play a greater role in tackling family violence, must be harnessed and supported through the provision of guidance, resources and infrastructure support and the dissemination of practice knowledge.

Extending responsibility for tackling family violence will require each sector or component of the system to re-inforce the work of the other, to collaborate with and trust others, and to understand the experience of family violence in all its manifestations and look outwardly. At present different sectors and service systems operate according to distinct underlying principles, service delivery models and ideological frameworks; this can create barriers to service integration, collaboration and innovation.

Our approach to family violence today has come a long way from the days when family violence was ignored and invisible. This has come about as a result of trust gradually built between women's services and agencies such as the police and the courts, which saw them overcome scepticism about each other's roles and objectives and forge a partnership that made family violence a priority for the justice system. This next step will build on that strong history in strengthening dialogue and partnership among the sectors, supported by a stable, independent system of governance.

Recommendations

Recommendation 193

The Victorian Government establish a governance structure for implementing the Commission's recommendations and overseeing systemic improvements in family violence policy [within two years]. The structure should consist of:

- ▷ a bipartisan standing parliamentary committee on family violence
- ▷ a Cabinet standing sub-committee chaired by the Premier of Victoria
- ▷ a family violence unit located in the Department of Premier and Cabinet
- ▷ a Statewide Family Violence Advisory Committee
- ▷ Family Violence Regional Integration Committees, supported by Regional Integration Coordinators
- ▷ an independent Family Violence Agency established by statute.

Recommendation 194

The Cabinet Family Violence Sub-committee advise Cabinet on the Statewide Family Violence Action Plan based on the Commission's recommendations and be responsible for:

- ▷ specifying outcomes for achievement relating to prevention, early intervention and responses to family violence, supporting victims (including in their long-term recovery), and holding perpetrators to account
- ▷ proposing priorities for expenditure
- ▷ setting performance targets.

The sub-committee should report regularly to Cabinet on progress in implementing the plan [within 18 months].

Recommendation 195

The Victorian Government require all ministers to report regularly on the risks and opportunities in their portfolio relevant to family violence. The charter letters of all ministers should require them to consider the effect of proposed policies or legislation in their portfolios on the Statewide Family Violence Action Plan and family violence [within 12 months].

Recommendation 196

The Victorian Secretaries Board institute working arrangements—for example, the establishment of a sub-committee—to support effective oversight of family violence prevention and responses. Membership of the sub-committee should include, the Secretaries of Treasury and Finance, Justice and Regulation, Health and Human Services, and Education and Training, the Chief Commissioner of Police and the Chief Executive Officer of Court Services Victoria. The sub-committee should be chaired by the Secretary of the Department of Premier and Cabinet [within 12 months].

Recommendation 197

The Victorian Secretaries Board advise the government [within 12 months] on all measures to be taken to develop, implement and coordinate the Statewide Family Violence Action Plan (including any adaptations that should be made to the plan in the future), among them:

- ▷ preparation of a 10-year industry plan for family violence prevention and response
- ▷ areas where joint budget bids should be made in order to give effect to new proposals
- ▷ collection, sharing and use of information to enhance system performance
- ▷ means of ensuring aligned policy development and implementation, as well as avoiding gaps and overlaps in departmental service provision
- ▷ oversight, development and adaptation of regional structures to give effect to the Statewide Family Violence Action Plan
- ▷ development of processes for identifying Commonwealth and state and territory funding expended on matters relevant to family violence—including funding expended on universal services that are relevant to family and the cost of grants made for family violence-related projects
- ▷ a strategy for purchasing or modifying data collection systems relevant to family violence—including systems used by Victoria Police, the Magistrates' Court of Victoria, the Children's Court of Victoria and the Department of Health and Human Services—to ensure there is capability to link information relevant to the safety of victims of family violence and their children.

Recommendation 198

The Victorian Government establish a family violence unit within the Department of Premier and Cabinet to support the work of the Cabinet Family Violence Sub-committee, the Victorian Secretaries Board, and the Statewide Family Violence Advisory Committee. The unit will lead whole-of-government work with other departments and policy units with family violence responsibilities (including the Office for Women) and should be responsible for ensuring that Victoria meets its obligations under the National Plan to Reduce Violence against Women and their Children [within 12 months].

Recommendation 199

The Victorian Government establish an independent statutory Family Violence Agency [by 1 July 2017] to:

- ▷ monitor and report on the implementation of the Commission's recommendations and of the Statewide Family Violence Action Plan
- ▷ provide expert policy advice on family violence at the request of Cabinet, the Premier or the Victorian Secretaries Board
- ▷ undertake and commission applied research, policy and evidence reviews and conduct own-motion inquiries into the operation of the family violence system
- ▷ liaise with relevant Commonwealth government and national agencies in developing policy and practice to enhance primary prevention efforts and improve responses to family violence
- ▷ establish a means by which service providers can share information about programs
- ▷ liaise with the Crime Statistics Agency and other agencies to coordinate data collection and sharing for the purposes of assessing the overall performance of systems that respond to family violence.

Recommendation 200

The Victorian Government re-establish the Violence against Women and Children Forum as the Statewide Family Violence Advisory Committee to advise the government on family violence policy and service provision [within 12 months]. The committee should include representation from experts, victims of family violence and system advocates with perspectives on both prevention of and support for victims of family violence. Consultation with the committee should inform the evolution and implementation of the Statewide Family Violence Action Plan.

Recommendation 201

The Victorian Government and agencies that respond to family violence identify and develop safe and constructive ways to ensure that the voices of victims are heard and inform policy development and service delivery [within two years]

Recommendation 202

With the advice of the Family Violence Agency, the Victorian Secretaries Board Family Violence Sub-committee consider how to ensure that local council performance measures are used to encourage local council activities designed to prevent family violence and to assess the outcomes of any services they provide to victims and perpetrators of family violence [by 1 July 2018].

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99 The first three functions listed are performed by the Victorian Responsible Gambling Foundation: *Victorian Responsible Gambling Foundation Act 2011* (Vic) s 6(1)(a)–(c). Providing services (such as assessing claims for compensation) and engaging in prevention activities are also functions of the Transport Accident Commission: *Transport Accident Act 1986* (Vic) ss 12(1)(b); 12(2).

100 *Transport Accident Act 1986* (Vic) s 12(1)(i).

101 *Emergency Management Act 2013* (Vic) s 32(1)(l).

102 *Victorian Responsible Gambling Foundation Act 2011* (Vic) s 6(1)(f); *Sentencing Act 1991* (Vic) s 108C(1)(c); *National Health Reform Act 2011* (Cth) s 9(1)(b). See, eg, Victorian Responsible Gambling Foundation, *Foundation Research Program* <<http://www.responsiblegambling.vic.gov.au/about-us/what-we-do/foundation-research-program>>; Monash University Accident Research Centre, *Transport Safety* (8 January 2016) <<http://www.monash.edu/muarc/research/research-areas/transport-safety>>; Sentencing Advisory Council, *Establishment Functions* (18 March 2014) <<http://www.sentencingcouncil.vic.gov.au/about-us/establishment-functions>>; National Health Performance Authority, *Our Work* (30 October 2015) <<http://www.nhpa.gov.au/internet/nhpa/publishing.nsf/Content/Our-work>>.

103 *National Health Reform Act 2011* (Cth) s 9(1)(j). See, eg, National Health Performance Authority, above n 102.

104 *Emergency Management Act 2013* (Vic) s 64(1)(b). See, eg, Department of Justice and Regulation, *Inspector-General for Emergency Management* (16 October 2014) <<http://www.justice.vic.gov.au/utility/contact+us/inspector-general+for+emergency+management.shtml>>.

105 *National Health Reform Act 2011* (Cth) ss 9(1)(e)–(f). See, eg, National Health and Medical Research Council, *How NHMRC Develops its Guidelines* (5 November 2014) <<http://www.nhmrc.gov.au/guidelines-publications/how-nhmrc-develops-its-guidelines>>.

106 *National Health Reform Act 2011* (Cth) s 9(1)(g). National Health Performance Authority, *Performance Indicator Reporting* (18 February 2016) <<http://www.nhpa.gov.au/internet/nhpa/publishing.nsf/Content/Performance-Indicator-Reporting>>.

107 *Emergency Management Act 2013* (Vic) s 17(2)(b). See, eg, Emergency Management Victoria, 'Corporate Plan 2015–18: Shared Vision—"Safer and More Resilient Communities"' (2015) 8 <<https://www.emv.vic.gov.au/about-us/corporate-reporting/f>>.

108 See, eg, South Australian Social Inclusion Initiative Board and Social Inclusion Initiative Chair, which is to advise the Premier and Cabinet Committee on funding priorities and mechanisms and innovative and challenging models of co-operation and collaboration across the public sector for engaging other levels of Government, the community and business sectors.

109 *Emergency Management Act 2013* (Vic) ss 17(2)(a), 17(2)(c). See, eg, Emergency Management Victoria, 'Corporate Plan 2015–18: Shared Vision—"Safer and More Resilient Communities"' (2015) 8 <<https://www.emv.vic.gov.au/about-us/corporate-reporting/f>>.

110 *Emergency Management Act 2013* (Vic) s 64(1)(d). See, eg, Department of Justice and Regulation, above n 104.

111 *Emergency Management Act 2013* (Vic) ss 64(1)(e)–(f). See, eg, Department of Justice and Regulation, above n 104.

112 See, eg, the functions of the Emergency Management Commissioner, *Emergency Management Act 2013* (Vic) s 32.

113 See as a useful reference the composition of the board of directors for the Sentencing Advisory Council, *Sentencing Act 1991* (Vic) s 108F.

39 Data, research and evaluation

Introduction

The Commission's terms of reference require it to 'provide recommendations on how best to evaluate and measure the success of strategies, frameworks, policies, programs and services put in place to stop family violence'. The Commission was invited to consider 'systems and mechanisms to identify and appropriately prevent and respond to family violence, including information sharing and data systems'.

Many examples of data-collection and research practices relevant to family violence have been canvassed throughout this report. Gaps in family violence data and in systems for comprehensively capturing and assessing data were consistently raised with the Commission by service providers and stakeholders.

The Victorian Government's submission to the Commission identifies 10 gaps in the current family violence system. The first is 'poor measurability of the scale and breadth of family violence in Victoria'. The government notes that 'not all aspects of the ... system are evidence based, monitored or evaluated', which undermines a 'system wide understanding of the size of the family violence problem' and the capacity of the system 'to innovate or reduce the incidence or severity of violent incidents'.¹ In this chapter, the Commission considers how measuring family violence could be improved.

The Commission notes that some forms of family violence, particularly intimate partner violence, are increasingly well understood and that knowledge of family violence is constantly developing as new research emerges, new lines of inquiry arise and populations grow and change. In addition, the completeness of current data collections and research is a matter of degree. There is excellent research in areas that remain generally poorly understood, and gaps even in well-researched areas.

The first part of this chapter considers the aims of data collection and provides an overview of established principles relevant to data collection, including what data should be collected and how. The Commission is concerned with data collection for the purposes of better understanding family violence and what responses to it are most effective, to inform research and funding priorities.

The second part of this chapter considers common gaps in data and research relevant to individuals and population groups. These gaps include poor recording of demographic information, a lack of focus on children, limited data on perpetrators, and limitations on tracking individual pathways through the system. These gaps make it difficult to accurately assess the extent of family violence in the community. The third part of this chapter considers common gaps in data and research relevant to measuring the system's response to family violence. The Commission heard that there is a focus on measuring service outputs or activities, rather than evaluating whether a program makes a positive contribution to meeting the goals of the system. Collectively, these issues make it difficult for government and service providers to assess how people experiencing family violence can best be helped.

In the final part of this chapter, the Commission recommends a way forward to improve family violence data collection and research, including by developing a statewide data framework informed by relevant Commonwealth standards that adopt shared data definitions, and improving evaluation standards for those delivering family violence services.

The purpose of these recommendations is not to supplant current efforts to improve collective knowledge of family violence. Rather, the Victorian Government should work with existing bodies, including ANROWS (Australia's National Research Organisation for Women's Safety), VicHealth (the Victorian Health Promotion Foundation) and the Australian Bureau of Statistics, and in addressing our recommendations, should be informed by the work these bodies have done to date. The Commission's expectation is that our recommendations will complement the efforts of these and other groups.

The Commission thanks the Crime Statistics Agency for preparing the report *An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14*² for the Commission. The report provides an update of the Victorian Family Violence Database, an analysis of recidivism among a cohort of alleged family violence perpetrators identified in family violence incident data; a discussion of some of the gaps that limit the utility of the Family Violence Database, and opportunities to strengthen the database.

Data-collection principles

The Australian Bureau of Statistics' 2013 report *Defining the Data Challenge for Family, Domestic and Sexual Violence* (Defining the Data Challenge) was developed to support the *National Plan to Reduce Violence Against Women and Their Children 2010–2022* (the 'National Plan')³—in particular, the National Plan's goal of developing a sound evidence base in family violence.⁴

Defining the Data Challenge was conceived as a step towards developing a national family violence data-collection and reporting framework, and explains some of the aims of a successful framework. These aims provide an indication of what a more robust data-collection framework in Victoria might look like.⁵ They include establishing a shared understanding of data priorities and needs, including shared priorities about where to invest effort and resources, and common indicators and variables within data sets. This in turn will facilitate:

- ▷ improved data quality (data which is timely, accessible, coherent, relevant, accurate and interpretable)
- ▷ a strong, collaborative network of data custodians in family violence and related areas
- ▷ improved statistical data integration to meet needs not satisfied in single data sets
- ▷ improved description and presentation of the family violence evidence base—including appropriate metadata and definitions to ensure the data is used in an informed and appropriate way
- ▷ ethical collection, storage and presentation of information relating to those affected by family violence.⁶

Collecting the right data

There is distinction between collecting 'point-in-time' data for performance monitoring or case-management purposes, and collecting data for analytical or evaluative purposes. For example, a specialist family violence service may collect information on the characteristics of a particular case (sometimes referred to as 'administrative by-product' data). That information will help them manage that case appropriately, and may be shared with other organisations managing the same case. In addition, that data may also be provided to the department funding the service's activities; or to consultants evaluating the organisation's performance; or to bodies like the Crime Statistics Agency, which undertakes and publishes research on crime and criminal justice issues in Victoria.

In this chapter, the Commission's focus is on the collection and use of data for the latter purpose—that is, the use of data to improve understanding of the incidence, prevalence and nature of family violence, how well it is responded to and which responses are most effective and efficient. Collecting and sharing data for case-management purposes raises distinct questions of law and policy, which are discussed in Chapter 7.

Defining the Data Challenge sets out six elements of data collection. For each element, the optimal data sources, and the obstacles to data collection, will vary. However, most deficiencies in data collection relate to one or more of these elements:

- ▷ the **context** or 'setting' within which family violence is taking place, either at a population level or in a particular case—this includes situational (e.g. socio-economic, geographical) and psychosocial (e.g. beliefs, attitudes, mental/physical health) circumstances within which family violence is taking place, either at a population level or in a particular case⁷
- ▷ the actual or perceived **risk** of a person being a victim of family violence—both population-level risk factors, including prevalence rates, and individual risk factors⁸

- ▷ the **incident** itself, including whether it was short-term or sustained, the type of family relationship, and the setting in which violence took place⁹
- ▷ **responses** to the incident, both formal and informal, from individuals, families, the community, institutions and services¹⁰
- ▷ **impacts and outcomes** of the violence for the individual, their family and the community¹¹
- ▷ **research and evaluation** into family violence and responses to it.¹²

On the ABS' analysis, sufficient information in respect of these elements will allow us to:

- ▷ analyse the current state of affairs in family violence
- ▷ measure the activity and performance of systems and services responding to family violence
- ▷ measure changes over time.

Further to Defining the Data Challenge, the Australian Bureau of Statistics released the *Foundation for a National Data Collection and Reporting Framework for family, domestic and sexual violence*.¹³ This document provides the basis for consistent collection of administrative data by organisations working in family violence. It sets out data items in relation to persons, events and transactions. These include:

- ▷ key individual characteristics, such as sex, date of birth, address, cultural and linguistic diversity characteristics, Aboriginal and Torres Strait Islander status, disability status, mental health, and indicators relating to pregnancy and children, housing and income
- ▷ the date, location, type of relationship and type of violence applicable to episodes of family violence
- ▷ the date, organisation and outputs relating to the service provided.

How data should be collected

The 2009 Australian Bureau of Statistics' Data Quality Framework sets out seven dimensions of quality—institutional environment, accuracy, timeliness, relevance, coherence, interpretability and accessibility—and key aspects within each. For our purposes, some key points of this framework are useful. 'Quality' is understood as 'fitness for purpose'. Accordingly, good quality data will match its intended use.¹⁴

Data quality is partly determined by the organisational environment in which it is produced. High-quality data is more likely to be produced if collected and maintained in a transparent and impartial setting, and if the resources and authorising environment exist to allow data to be collected and its quality to be maintained.¹⁵

The data itself should be accurate, relevant and timely. Accuracy may be compromised if, for example, the target group is small, poorly selected or incompletely surveyed, or the questions asked or responses provided are incomplete or misleading.

Relevance is the capacity of the data source to meet the needs of those using it. This means, for example, aligning the reference period, target population, level of detail and standards and classifications used with the data's intended use.

Data is timely if it is released within a reasonable period after it is collected, and according to plan.¹⁶

The data set should also be coherent, interpretable and accessible. Coherent data is internally consistent and comparable with other data sources, over time and in a particular field of inquiry.¹⁷

A data set is best able to be interpreted when there is information available—including metadata about methods of calculation, variables and limitations—to explain the data, and when the data is presented and summarised in a clear way. Accessible data is easily available to the public and researchers.¹⁸

Measuring individuals, population groups and communities: common gaps

Prioritising individuals

The Commission heard that some important data sets report and measure service-based metrics, such as the number of ‘episodes of service’ provided by their organisation, rather than identifying unique clients, or how many individuals and families received the relevant service/s. Further, where individuals are identified within a particular data set, in many cases they are not identified in consistent ways between data sets (such as by a unique client number).

In such cases, it may be unclear:

- ▷ how many individuals account for the overall volume of family violence dealt with by a service or system, or across the system
- ▷ what proportion of individuals have multiple engagements with a service or system, and how many they have
- ▷ what range of services and systems are accessed by someone in relation to family violence.

It follows that significant correlations—for example, between specific relationships, risk factors, population groups or manifestations of family violence on the one hand, and multiple contacts with a given service or system, or engagements with a particular set of services and systems, on the other—may be indiscernible.¹⁹

An example within a particular area of the system is in Victoria’s state courts, and the Magistrates’ Court in particular. As noted in Chapter 16, significant efforts have been made to increase the links between the Victoria Police and the Magistrates’ Court databases. However, there is no common identifier for individuals involved in court proceedings which would allow, for example, a magistrate to readily discern whether a person involved in a magistrates’ court proceeding also had active proceedings in other jurisdictions (for example, the County Court, the Supreme Court, the Children’s Court, the federal courts or the Victims of Crime Assistance Tribunal).²⁰ Yet as is noted in Chapter 16, it is not uncommon for an individual or family to be involved in parallel legal proceedings in relation to the same family violence circumstances.

Similarly, the unit of purchase for services funded through the homelessness program (which is the funding source for the majority of specialist family violence services for women, including refuges and support), is ‘episodes of support’. This represents an occasion of providing assistance. One person may receive many episodes of support over a year, with each provider’s assistance for the same person recorded as a different episode of support.²¹

Ms Lisa Dunlop, Executive Director of Clinical Operations at the Royal Women’s Hospital, gave evidence that within hospitals, there are three data sets—emergency department, outpatients and inpatient—and that:

one of the problems is that the systems don’t necessarily gel at a patient level. So we have data from emergency presentations, we have data about inpatient episodes, but it’s not necessarily linked to an individual patient.²²

More broadly, as part of its work for the Commission, the Crime Statistics Agency analysed gaps and opportunities in the Victorian Family Violence Database, which is comprised of data sets from a range of sources across health and human services, homelessness services, legal services, courts and policing. Regarding the absence of a common identifier used in these data sets, the authors note:

One of the key drawbacks of the current database is its inability to use the same identifiers across the datasets to determine whether individuals are held in common across the datasets. This makes it difficult at present to use the various datasets together to better understand how an individual comes into contact, and interacts, with and across services in Victoria. With the exception of LEAP and Courtlink which share common identifiers in some cases, each of the other datasets contain identifiers that are specific to that dataset. This means that it is currently difficult, for example, to identify through the data which individuals have come into contact with police, homelessness services and victims assistance programs and which service they first contacted.²³

The Commission notes the evidence of Ms Kym Peake, Acting Secretary of the Department of Health and Human Services (now Secretary), who stated that the Department of Health and Human Services was seeking to work towards the development of a 'single client view', linking DHHS' databases to feed into a single electronic file for each client.²⁴

The inability to track an individual's 'journey' through the system has particular implications for family violence perpetrators, which are discussed below. This issue is also considered in Chapter 38.

Prioritising children

One of the key deficiencies in current data collection relates to children. Domestic Violence Victoria noted that there is no single source of national or state level data collected on children and young people affected by family violence. Therefore measuring the extent to which Victorian children are impacted by violence is difficult. The submission went on to note that the data system for most specialist family violence services (the Specialist Homelessness Information Platform) quantifies children:²⁵

As 'add-ons' to their mothers but do not capture their individual support and counselling needs, rendering them invisible in case for funding children-specific services.

Domestic Violence Victoria proposed that the platform consider children as clients in their own right, recognising that they have a distinct experience and distinct needs.²⁶

The 2012 Report of the *Protecting Victoria's Vulnerable Children Inquiry* concluded that available data:

[D]o not provide the basis for a comprehensive assessment of the performance of child protection, out-of-home care and family services, in particular regarding the critical measure of their effect on the incidence and impact of child abuse and neglect.²⁷

The Victorian Auditor General's review of the Early Intervention Services for Vulnerable Children noted that the Department of Health and Human Services does not know whether Child FIRST and Family Services (that it funds to assist vulnerable children and families) are effective, due to 'significant data limitations and a lack of outcomes monitoring at the system level'.²⁸

The Commission makes recommendations below for the inclusion of more child-specific information in the Victorian Family Violence Database.²⁹

Demographic information

The Commission heard and observed evidence of deficits in the completeness and reliability of demographic information collected by agencies, departments, specialist family violence services and others responding to family violence.

The State of Victoria submitted that there was a need for improvement in the measurability and data capture of family violence incidents in high-risk groups and specific cohorts.³⁰

Basic demographics (age, sex, location) are maintained with reasonable consistency.³¹ However, population group information such as lesbian, gay, bisexual, transgender and intersex (LGBTI) status, mental health, Aboriginal and Torres Strait Islander status, disability and culturally and linguistically diverse (CALD) status may:³²

- ▷ not be provided for on forms and databases
- ▷ if provided for, may not be mandatory
- ▷ be reliant on unsolicited self-identification by individuals
- ▷ be reliant on a service provider's judgment that this data is required in the circumstances, or on a service provider's (untested) perceptions or assumptions (e.g. that someone is an Aboriginal and/or Torres Strait Islander person or has a disability)³³
- ▷ if collected, not be cross-correlated with other demographic data.

Ms Fiona Dowsley, Chief Statistician at the Crime Statistics Agency, noted in her evidence:

When it comes to core identifiers about individuals—age, sex, the really basic building blocks—those are very well recorded. We have got good quality there. The areas where it tends to be a little bit more patchy ... [are] around the slightly more peripheral socio-demographic variables, which maybe aren't as tied to the core business of the agency doing the recording. Unfortunately, they tend to be areas of very high policy interest. So our Aboriginal identification is not always as we would like it to be. It's quite often of reasonably poor quality. Recording of disability is generally fairly poor and also difficult to define. So operationally there are challenges there as well. Similarly, CALD is an area of high interest but where there's very limited information available, and I would suspect a lack of agreement about what's really required there as well. So, depending on how far you move from the really core variables, the quality tends to get ... diminished.³⁴

In its report for the Commission, the CSA identifies Aboriginal and Torres Strait Islander status, culturally and linguistically diverse indicators and health and disability indicators as 'data items with varying quality', which are 'of a high priority for decision-makers'.³⁵

In relation to Aboriginal and Torres Strait Islander status the CSA noted:

Understanding the experience of family violence as it relates to those who identify as Aboriginal and/or Torres Strait Islander is highly desirable information for policy making that informs operations ...

... [T]here is significant room to improve the quality of Aboriginal and Torres Strait Islander data before coverage will be sufficient to enable robust statistical and research use across datasets ...³⁶

The CSA notes that agencies, departments and service providers do not uniformly use the Australian Bureau of Statistics' standards on the collection of an individual's Aboriginal and Torres Strait Islander status.³⁷ In particular, an individual's identification as an Aboriginal and/or Torres Strait Islander person should be confirmed by that person, not simply assumed by others.³⁸

In relation to CALD communities, the CSA notes that information about family violence experiences of people from culturally and linguistically diverse communities 'varies, and collection methodologies differ amongst data sources'.³⁹ In particular:

... some agencies collect information about an individual's country of birth or main language spoken at home, while others use operational information to estimate the number of people who come into contact with a service from CALD backgrounds. Most often this information relates to incidents or events where an interpreter is required, where the use of an interpreter is used as a proxy CALD indicator. As a result, there is an opportunity to increase the consistency of CALD data item collection across datasets ...⁴⁰

The CSA proposes standardising CALD data items as part of improving the governance of family violence data in Victoria.⁴¹ It recommends that health and disability indicators 'be collected with careful consideration and appropriate sensitivity', but that this should not preclude efforts to improve data collection in relation to people with disabilities.⁴²

The CSA also identifies LGBTI indicators as an area of less reliable data across the Victorian Family Violence Database.⁴³

These and similar concerns were reiterated in submissions to the Commission, which draw attention to a range of technical and practical barriers to collecting data on particular population groups.⁴⁴

Many organisations pointed out that agencies, departments and researchers who collect data often fail to record (at all, or accurately) the cultural, linguistic or ethnic status of individuals and families.⁴⁵ For example, the Multicultural Centre for Women's Health submitted that:

There has been very little comprehensive research that investigates the specific experiences of violence of immigrant and refugee women as a group in Australia. The majority of research that is conducted about women's experiences of violence excludes immigrant and refugee women due to methodological limitations: web-based and/or written surveys that only enable participation of research subjects who are English speaking, highly literate and web-savvy; or verbal interviews conducted in English only.⁴⁶

Similarly, several organisations that work with Aboriginal and Torres Strait Islander peoples note deficiencies in data collection.⁴⁷ For instance, the Victorian Aboriginal Legal Service stated:

... data issues are significant—at mid-term evaluation meeting of Indigenous Family Violence Ten Year Plan, almost 50% of [Victoria Police] Family Incident Reports have an unknown Aboriginal status. Unless we fully understand the data we can't be confident our service responses are hitting the mark.⁴⁸

With respect to people with disabilities, the Melbourne Research Alliance to end violence against women and their children, submitted that:

Most [women with disabilities] live in the community and not in disability or aged-care settings; for example, one per cent of Victorian people with disabilities live in a non-private dwelling such as a group home or other cared-accommodation ... The living arrangements of people with disability, disaggregated by ability, age, gender, Aboriginality, cultural and linguistic background, age and state/territory is difficult to access publicly, or it is limited, or perhaps may not exist ...

Disaggregated, quantitative data relating to violence against people with disabilities is similarly lacking; for example, neither the Australian Bureau of Statistics' Personal Safety Survey (2012) nor the Survey of Disability, Ageing and Carers (2012) provides data that would help us understand the nature or extent of the problem of violence against [women with disabilities]. We rely, instead, on small-scale studies, often qualitative in nature, or on quantitative data generated in other countries where data disaggregation includes disability status.⁴⁹

Similar concerns were raised on behalf of lesbian, gay, bisexual, transgender and intersex people.⁵⁰ For example, the joint submission of No To Violence and Safe Steps Family Violence Response Centre stated that:

At a time when more research needs to be done, and specific needs within the LGBTIQ spectrum need to be identified, there is a lack of ... services available to collect any data on LGBTIQ people ...

Much of the Australian police crime data and larger scale surveys on sexual violence also [do] not take into account sexuality or that gender identity does not necessarily fit within a woman and man binary, nor the distinction between current gender and experience of having lived in another gender during one's lifetime ...⁵¹

The submission's authors suggest this means there are few available indicators of 'gay, bisexual or lesbian people (transgendered or cisgendered) who experience violence'.⁵² They also note that measuring family violence in LGBTI communities is hindered by limitations in collections not specific to family violence, such as the Australian Census. This makes it difficult, for example, to compare reports of family violence involving LGBTI people with total populations of LGBTI people.⁵³ In some cases, survey questions may not be posed in a way that corresponds with how LGBTI people describe themselves; the authors suggested:

... most LGBTIQ people in Australia do not describe themselves using the identity labels in this acronym, yet people's own ways of describing these life experiences are legitimate; such as 'queer', or a transgender woman who identifies as a 'woman' rather than a 'transwoman'.⁵⁴

Finally, the submission notes that the majority of research on community attitudes to violence is conducted from a heterosexual perspective, and that further research on LGBTI community attitudes to family violence would be beneficial.⁵⁵

Although many submissions raise concerns on behalf of population groups and communities that tend to be vulnerable to discrimination and disadvantage, it is worth considering that data sets and data-collection practices may also obscure the nature and incidence of family violence in more mainstream groups. One submission notes that administrative by-product data sets tend to under-represent the number of middle- to high-income families who may be experiencing family violence. This may be because people with greater wealth or more established social networks may not engage with the support services reflected in these data sets.⁵⁶

Issues specific to the communities and population groups mentioned in this section are discussed further in Chapters 10, 26, 27, 28, 30 and 33.⁵⁷

Survey data

The Commission notes the limitations of survey data in capturing the experience of particular population groups. The ABS Personal Safety Survey (PSS), is the foremost indicator of family violence prevalence,⁵⁸ and is of critical value for departments, agencies and funded services engaged with family violence.

The PSS seeks information from respondents that includes their age, sex, country of birth, first language and language spoken at home, education level, employment status, income level and disability status. However, it does not publish other demographic categories—including LGBTI status and Aboriginal and Torres Strait Islander status. The published PSS data also has limited cross-correlations with existing demographic factors.⁵⁹

The 2012 PSS has other limitations:

- ▷ It only conducted interviews directly with the people surveyed. Family members, interpreters or other proxies were not used. A small number of interviewers with skills in languages other than English conducted interviews, but if an interviewer did not speak the respondent's language, no interview was conducted.⁶⁰ The authors of the 2012 PSS concede it is 'likely that the PSS will under represent those with a profound or severe communication disability' (which includes many people with disabilities), and 'possible that the PSS may under represent those from a non-English speaking background'.⁶¹
- ▷ It only surveyed residents in private dwellings. Motels, rooming houses and other non-private dwellings were excluded, as were 'people who usually reside in non-private dwellings'.⁶²
- ▷ It did not survey people living in 'very remote parts of Australia' or in discrete Aboriginal and Torres Strait Islander communities.⁶³
- ▷ It did not survey households where all residents were less than 18 years old.
- ▷ It did not survey overseas visitors intending to stay in Australia for less than 12 months, and members of non-Australian defence forces stationed in Australia and their dependants.⁶⁴
- ▷ The survey definitions do not clearly delineate some forms of violence. For example, women are asked about experiences of emotional abuse, defined by reference to a range of experiences that include some forms of economic abuse, but the survey does not capture the prevalence of economic abuse.⁶⁵
- ▷ The response rate was 57 per cent, which the authors describe as 'relatively low'.⁶⁶

The Commission notes that the Senate Standing Committee on Finance and Public Administration's 2015 report on domestic violence in Australia calls for the Australian Bureau of Statistics to address, before the next PSS, deficiencies in 'the adequacy of sampling sizes of particular subgroups ... such as women with a disability, women from culturally and linguistically diverse backgrounds, immigrant and refugee women, and Indigenous communities'.⁶⁷

Perpetrators

The Commission looks in more detail at some of the difficulties in evaluating programs for perpetrators, together with the improvement of perpetrator risk factors, in Chapters 6 and 18. In relation to data collection and research, the Commission notes that numerous organisations and individuals gave evidence about gaps in the understanding of characteristics of, or outcomes for, perpetrators.

Dr Kristin Diemer, Senior Research Fellow, Department of Social Work, University of Melbourne, commenting on how to design a better system, told the Commission that:

The primary gap is we have very little data on perpetrators. There just isn't a body collecting much information. There is police data, but it is also limited on what you can get on perpetrators through the police dataset. The Corrections data is quite difficult to get access to. ... the police data and the Corrections data don't necessarily synchronise ...⁶⁸

This point was also made in a number of submissions.⁶⁹ For example, Caraniche, a psychological consulting firm whose services include providing drug, alcohol, violence prevention and rehabilitation services within adult prisons, juvenile justice and community corrections systems, noted that there is poor data on the prevalence of family violence in criminal offender populations, and little systematic study in areas such as the role of exposure to family violence in the development of offending, family violence as a component of general criminal offending, and the design and assessment of family violence perpetrator programs.⁷⁰

Perpetrators in the justice system

The Commission understands there are ongoing difficulties, both with establishing how many family violence-related matters are heard in Victoria's courts, and with linking data between police, courts and Corrections Victoria in order to chart a perpetrator's trajectory through the law enforcement and justice systems.⁷¹ The difficulty in tracing a perpetrator's journey through the justice system is part of the wider challenge of linking data sets to clarify an individual's engagement with different parts of the system.⁷² Both Victoria Police and the courts (and associated authorities) drew attention to these issues. In relation to courts data, Court Services Victoria (CSV) noted difficulties identifying family violence matters:

There are significant gaps in data collection and quality in relation to family violence across almost all jurisdictions. This limits CSV's ability to identify, analyse, report and forecast in relation to family violence matters. This means that evidence driven optimisation of service delivery, funding and staffing levels and skill sets is limited.

Data is generally collected from case management systems. Each jurisdiction has a different case management system ... Cases are generally categorised on these systems according to objectively ascertainable information on the face of the legal documents charged (i.e. the offence charge, the nature of the applications made) rather than the underlying circumstances (family violence). This contributes to the gaps in available data on the number and nature of family violence matters currently being addressed across the jurisdictions.⁷³

The Magistrates' and Children's Court joint submission noted that 'other than charges for contraventions for an intervention order, the court cannot collect accurate data on criminal offences, which take place in a family violence context'.⁷⁴

The County Court also reported:

Current County Court processes and systems do not record when a criminal law proceeding involves family violence ... Without this information it is difficult for the County Court to identify, report, plan and manage family violence matters before the court. In addition, poor data means that the court lacks evidence to drive service delivery improvements related to family violence matters.⁷⁵

The Judicial College of Victoria noted that:

In preparing this submission, we have been unable to access data on the number of family violence proceedings in the County Court. Information on the number of offences involving circumstances of family violence and the number of ... appeals is not publicly available. Measuring family violence-related cases is an important step in identifying the scale of family violence ...⁷⁶

Importantly, the College pointed out that:

Family violence can also manifest in civil litigation, such as property or contract disputes, testator family maintenance, guardianship and residential tenancy disputes. The prevalence and increasing awareness of family violence mean these issues appear more frequently in civil courts ...⁷⁷

Obstacles to data collection in the courts and in corrections are discussed further in Chapters 16, 17 and 18.

A 2013 Australian Bureau of Statistics report on addressing gaps in family violence data states this is a nationwide issue, and argues that 'a key limitation of police data are a lack of integration with other justice data sets which is where perpetrator outcomes are often determined'.⁷⁸

In addition, general criminal offences (assault, burglary, etc.) are not automatically classified in a way which discloses a relationship with family violence.

The Commission heard that difficulties also arise because of the range of intervening steps and the number of different institutions and agencies involved in charging, prosecuting, trying, sentencing and administering the sentence. For example, the police might lay multiple charges in relation to a single course of conduct. Some may be subsequently altered or withdrawn because the prosecutor decides before trial that this is the best course, or the courts refuse to permit some charges to proceed. The matter may be transferred from police prosecutors to the Office of Public Prosecutions if it is to be tried in the higher courts. This means transferring between different organisations, and between different courts—and some data will be lost in that process.

If the defendant pleads or is found guilty and sentenced, the sentence will be administered by Corrections Victoria. The Commission heard from Commissioner Jan Shuard, Corrections Victoria, that detecting a relationship between an offence and family violence is not ‘automatic’, and there are generally three ways it is discovered:

One will be either by self-disclosure through our assessment process in terms of the nature of the offence that the offender will self-disclose or that we will be able to glean that information. We will seek out the police summaries so that we ourselves or our staff can read the details of the offence and then know it was in the context of family violence, or in the higher courts obviously we will get access to the judge’s sentencing comments.⁷⁹

Issues relating to Corrections are discussed further in Chapter 18. In Chapter 17, the Commission looks at ways to resolve this issue through ‘flagging’ the relationship between an offence and family violence. As noted in Chapter 17 there has been recent work between the Magistrates’ Court of Victoria and Victoria Police on identifying the relationship between criminal matters and family violence, which ensures that the relationship between an offence and family violence is ‘flagged’ in Courtlink, and some individuals are identifiable in common between Victoria Police and the Magistrates’ Court records. However, given the complexities outlined above, this does not inevitably occur. Nor does it ensure that the individual will be identified through other courts and systems. The Commission also notes that \$2.5 million has been allocated by the Victorian Government to the Department of Justice and Regulation to scope IT-based solutions to address current information-sharing barriers and needs in the family violence justice system in Victoria.

The Commission also notes Ms Dowsley’s comments that the CSA has been able to use a ‘statistical linkage key’ to join information from different data sets.⁸⁰ The Commission returns to this issue below. The CSA’s analysis of recidivism, conducted on the Commission’s behalf, used recorded police data only, but suggested that the incorporation of data from Corrections Victoria and courts would enable the development of a more comprehensive recidivism model.⁸¹

Recidivism

The CSA has undertaken research on recidivist perpetrators of family violence, based on a cohort identified in police family violence incident reports. The CSA explained:

Publicly available information about levels of recidivism and the characteristics and behaviours of perpetrators over time in Victoria could not be located by the CSA. A key component of the work undertaken by the CSA to support the Royal Commission into Family Violence (RCFV) sought to begin to address this gap in the existing evidence ...⁸²

As ‘begin to’ suggests, the CSA research did not aim to provide a comprehensive picture of family violence recidivism in Victoria. It is limited to family violence incidents recorded by police, and even where these incidents come to the attention of police, much information about victims and perpetrators is not recorded.⁸³ In addition, recidivism in this context may not be entirely negative; as the CSA explained:

While recidivism incidents are an adverse outcome to the extent that they indicate repetition of violent behaviour towards victims, they can also be interpreted as an indicator of increased victim willingness to contact police and/or police follow-up and involvement where there are ongoing concerns for victims’ safety.⁸⁴

The Commission acknowledges recent efforts to address gaps in understanding recidivism, including Victoria Legal Aid's 'Characteristics of respondents charged with breach of family violence intervention orders'⁸⁵ and the forthcoming Sentencing Advisory Council report on prior offending and reoffending among offenders sentenced for contravening a family violence intervention order or safety notice.⁸⁶

Hidden reporting and under-recording

Many of the issues identified above are exacerbated by under-reporting. The problem of under-reporting of family violence is well known and noted elsewhere in this report (see Chapter 3). Two dimensions of under-reporting are worth noting in this context:

- ▷ hidden reporting, where an incident is reported, but in a way that conceals its links to family violence⁸⁷
- ▷ under-recording, where the extent or nature of offending is incompletely or inaccurately recorded through 'process and procedural variations in recording incidents by authorities or services' or incidents being 'classified incorrectly, such as when a victim presents as a general assault victim and a judgment is made by the individual making the record about the nature of the incident.'⁸⁸

Hidden reporting and under-recording are made more likely by the complexity of family violence, and distinct responses to it. Family violence can be constituted by a complex pattern of behaviour. Different parts of that pattern will correspond with contact with different systems and services. People affected by family violence may characterise their experience differently, and it may be recorded differently, in each of these settings. They may also not appreciate which parts of their experience are relevant to which setting.⁸⁹ As the Australian Bureau of Statistics notes in *Defining the Data Challenge for Family, Domestic and Sexual Violence*:

Incidents of family, domestic and sexual violence are varied in nature and treated differently depending upon the disclosure of the incident. Disclosure may be made to authorities and classified as criminal under state or territory legislation. The incident may be disclosed to health personnel or other support services and, depending on the circumstances and the details of disclosure, the incident may or may not be perceived as family or domestic violence by the victim and/or perpetrator and/or support worker...⁹⁰

Similarly, the report notes that because family violence may be 'ongoing' and constituted by a 'pattern of behaviour', difficulties arise in classification and measurement:

... there may be a long history of incidents between the persons involved, incorporating different categories of family and domestic violence. Some of these may or may not be classified as criminal, be detected by the criminal or civil justice system or handled through a service agency.

Despite the ongoing pattern of behaviour and number of prior incidents, a civil or criminal justice system response may also be triggered by a single incident of assault. This one incident may be classified as family or domestic violence, recorded, processed and prosecuted in isolation. As a result the recorded incident may not clearly represent all that has occurred.⁹¹

Under-recording may be more likely in departments, agencies and services which are not primarily focused on family violence (even though a significant number of their clients may be experiencing family violence), and may arise simply because databases do not make sufficient provision for the collection of family violence-related information. A specific example is the Housing Establishment Fund, which among other things is the source of funding for ad hoc emergency accommodation for women who need alternative accommodation and for whom a refuge is not available. The Fund does not collect or record information about the expenditure where family violence is an issue.⁹² Similarly, Corrections Victoria advised that data is not collected on the family violence victim status of prisoners or offenders.⁹³

The Royal Women's Hospital drew attention in its submission to the risks of hidden reporting and under-recording in the health system:

Core inpatient, outpatient and emergency data systems in Victoria's hospitals are not mandated to capture and report the rate of disclosures of family violence, to capture social issues as a co-morbidity or to track outcomes for women and children. This renders family violence-related presentations and activity invisible in hospitals, with consequences for funding and service planning.⁹⁴

Melbourne Research Alliance to end violence against women and their children corroborated these problems, noting that:

The limited research into disclosure to health practitioners (HPs) and inquiry by HPs reveals low rates of either with around one third of abused women ever disclosing and an inquiry rate of around 1 in 10. However, research suggests that women want to be asked directly about abuse by supportive HPs. Women suffering the effects of FV typically make 7-8 visits to health professionals before disclosure. Unfortunately, if women do disclose FV to their HP, there is evidence of an inappropriate, poor quality response.⁹⁵

Dr Diemer drew attention to under-recording and hidden reporting, using the example of housing and homelessness service providers:

... there is a lot of data that's missing, and it's not just because ... it's not filled in for the client but the client may not actually be recorded as a family violence client because of the way that the person entering the data is either asking the questions or what's available on their data screen ... they might not have the option of family violence appearing.

So even when people are seeking assistance we may be missing a whole lot of people who have family violence issues or are seeking a service for family violence-related matters. An example would be the housing data, homelessness data, where clients are asked for their main reason for seeking support or seeking housing support and that particular day it might be related to 'I can't afford my rent', so that goes in as their main reason, and then there might be other reasons that lead to that. Depending on how busy the worker is, they may or may not ask for the other reasons. They may not ask those questions well. The person may not want to disclose that there is family violence behind the reason that they can't afford their rent, for example. Through asking the rest of the questions the worker may determine that there is family violence issues but they may never go back and change that original data field for the main reason for seeking support.⁹⁶

Some of the above data gaps are associated with periods of high risk. Knowledge and practice in relation to heightened risk of experiencing and/or perpetrating family violence are discussed in Chapters 2, 6 and 18.

A number of initiatives seeking to improve hospital and health responses to women experiencing family violence are described in Chapter 19. For example, the Strengthening Hospitals Responses to Family Violence Initiative is a continuing, DHHS-funded project involving the Royal Women's and the Bendigo Hospitals, to improve hospital responses to women experiencing family violence. Part of the project involves mapping current data-collection processes, and reporting on options to develop a 'consistent, efficient and reliable system and process for data capture, retrieval and reporting'.⁹⁷

The Commission also acknowledges the launch of the Victorian Women's Health Atlas, an interactive database developed by Women's Health Victoria in collaboration with statewide and regional women's health services. The Atlas provides extensive health data, including data relating to family violence, and allows area-based comparisons in order to enhance evidence-based decision making about service design, program planning and priorities for health services.⁹⁸

Measuring the system's response to family violence: common gaps

The following section examines how current data-collection approaches lead to gaps in our knowledge about the nature and effectiveness of responses to family violence.

Outputs and outcomes

The Commission has observed how a range of departments, agencies and government-funded services measure and record service activities related to family violence—for example, number of hours of support, number of family violence incidents attended, number of referrals, number of applications and orders, and so on.

This is, of course, a necessary aspect of performance monitoring and evaluation. However, measures focused on goals—such as whether a victim of family violence remained safe, returned to work, experienced improved mental and physical health, and so on—are scarcer. As the State of Victoria's submission notes, 'Some departmental collections are focused on service outputs only and may not assist with measuring outcomes'.⁹⁹ Further, because the data collected by different organisations and sectors may be incommensurable—in particular, because they use different measures and definitions—there is limited capacity to aggregate data and measure our overall progress towards family violence-related outcomes.¹⁰⁰

This scarcity of outcome-based metrics is part of a broader problem with how government and government-funded service providers measure what they do. Mr Peter Shergold's 2013 report on service sector reform concludes that outcome measurement and accountability for outcomes are underdeveloped, and proposes that government be held jointly accountable with providers for the achievement of outcomes.¹⁰¹ Mr Shergold recommends that government and community service organisations work together to develop an outcomes framework that focuses on beneficial social impacts. This framework would establish metrics that can be used to monitor, audit, measure and report on programs.¹⁰² The report also suggests 'individual government departments should clearly articulate the outcomes sought from government investment in the services they fund and, wherever possible, link funding to the achievement of those outcomes'.¹⁰³

Domestic Violence Victoria has suggested specific outcomes relating to women's and children's safety as service targets: these include a reduction in the number of women and children having to leave home and live in refuges; a reduction in the number of children going into out-of-home care; a reduction in family violence deaths of women and children; increased feelings of safety; increased satisfaction with parenting arrangements; and reduced educational disruption for children due to having to change schools.¹⁰⁴

Ms Peake noted that one of the reasons that there had not been a decisive shift towards outcomes away from outputs is because they require both good definition of those outcomes and good data sources to measure progress against when managing contracts with external providers, and this is a work in progress.¹⁰⁵

The lack of a system-wide measure of success was a significant prompt for plans to develop a Family Violence Index. These plans are considered further below.

Evaluation

Two further issues that the Commission is aware of are that many services do not undertake evaluations regularly and that the quality of evaluations is inconsistent.

The Victorian Strategic Management Framework of 2011 notes that the role of public sector evaluation is to:

... objectively review and evaluate the success of the policy, program or project in achieving the stated goals, including their impact on achieving outcomes, and recommend appropriate actions.¹⁰⁶

Evaluation helps to answer critical questions, such as whether and why a program or approach is producing the intended (and any unintended) outcomes; whether there are better ways of achieving intended outcomes; whether the program might work in other settings; and so on.

Concerns were raised about a lack of time, resources and know-how to collect and provide data to support evaluation, to embed regular evaluation into service delivery, and to design programs, strategies and processes with evaluation in mind. Dr Diemer, referring to programs with which she has been involved, told the Commission that:

... a program might be funded ... for a short period of time ... usually a maximum of three years. Then they are requested to provide an evaluation so they can apply for additional funding when that expires.

That process is flawed both in terms of the time frame and the fact that you are asking service providers to do an evaluation who are not trained evaluators and who often don't have the data systems in place to be able to do an effective evaluation. If they have to purchase evaluation contractors to come in, they are often purchasing them mid-way through the program or towards the end and there's little scope to actually improve the data collection from the beginning. So the evaluation can be really flawed in terms of what they feasibly can evaluate. If there were better systems put in place where you had an evaluation component built into the program from the beginning and you had informed guidance on how that could proceed, then I think you would have much better evaluations coming out in this space.¹⁰⁷

Subject to consultation with funders and stakeholders, Dr Diemer suggested:

... you could fund a program for six years with an in-between three-year review so it gives you time to get a program running, have the evaluation with the expectation that the funding is going to continue, but if there is a real problem with the evaluation they might review the funding in that fourth year ...¹⁰⁸

Dr Diemer further added that funders:

... tend to fund for the program but they don't fund for the evaluation but expect an evaluation to happen ... funding also needs to include a component for evaluation so a proper evaluation can be done.¹⁰⁹

Ms Dowsley at the CSA offered an evaluator's perspective, noting:

It is often a challenge for particularly smaller organisations to handle evaluation. As someone who is often asked for information to try to support these things after the fact ... I would definitely support [evaluation being] part of the initial planning. It's very hard for us to find data about things well after they have happened. But if we know at the time we can provide assistance ...¹¹⁰

Evaluation also relies on having a clear and articulated understanding of what the program or strategy being evaluated is meant to achieve, and sharing that understanding with evaluators.¹¹¹

Several submissions reiterate these and similar concerns. For example, the Federation of Community Legal Centres submitted:

In order to assess the efficacy of the system and to improve strategies, accurate, timely and thorough data collection and independent evaluation are essential. However, data related to specific justice and legal assistance aspects of the family violence system is often not available or even not collected, making it hard to assess 'what works'.

...

Perhaps most importantly, it would be invaluable not to simply have access to a snapshot picture of CLC legal assistance in family violence, but to be able to gain a sense of how victims/survivors and perpetrators track over time, and the associated interventions that might make the most difference to safety and accountability.¹¹²

The Darebin Community Legal Centre noted:

All Darebin's family violence funding goes to providing the duty lawyer legal service. It has been stretched to encompass expanding needs of family violence clients. In the process of advising and representing clients Darebin collects a great deal of valuable information about where, when and how family violence is occurring, how it is perceived and responded to by those who perpetrate and endure it, and how the support services and institutions that have the responsibility to address it do so. Darebin, like many others in the community legal sector, does not have the resources to properly utilize this information for the purposes of research, policy development and law reform to address some of the underlying causes of family violence.¹¹³

The National Aboriginal and Torres Strait Islander Women's Alliance writes:

Limited research and data on interventions – successful or otherwise – impedes effective and meaningful work with service users. While efforts to build the evidence base are vital, one must be mindful that such efforts can represent a significant impost on services, particularly smaller organisations. Research and evaluation comes at a cost and agencies need to be resourced to collect accurate and timely data, undertake evaluations and contribute to research. While national research conducted by large-scale bodies exists, Aboriginal and Torres Strait Islander data is deficient in accurate and timely data about the effectiveness of the services it provides, largely because of a lack of time, skills and resources to enable those providing services to undertake follow up, and other data collection activities that enhances research and analysis.¹¹⁴

Effective evaluations for some family violence interventions rely on accessibility of data across multiple service systems and data sets. Mr Rodney Vlasis, Manager, No To Violence, in explaining the lack of an evidence base for men's behaviour change programs, noted that evaluations were limited due to several factors including cost and access to data:

We need to triangulate data from police, Corrections, from women's own reports. As a result of that, there have been very few high quality evaluations being done.¹¹⁵

Dr Diemer expressed the view that an independent body could be set up to conduct evaluations, or provide tools and guidance for evaluations.¹¹⁶

Time for Action, The National Councils' Plan for Australia to Reduce Violence against Women and their Children (2009–2021), highlights that 'data relating to violence against women and their children in Australia is poor', and that adequate data and evaluation to understand what works, what works best and why are consistently lacking.¹¹⁷

ANROWS (Australia's National Research Organisation for Women's Safety) submitted to the Commission that without robust longitudinal evaluative studies, it is difficult to ascertain the effectiveness of interventions in responding to violence against women. This means that the evidence base required by governments to draw upon when making resource allocation decisions is effectively reduced. The Commission heard that there is a need for strategic investment to support the research field of domestic and family violence response evaluation and to support services to embed a culture of evaluation in their work. This need is particularly acute in programs and services working with Aboriginal and Torres Strait Islander communities.¹¹⁸

Further to the need for evaluations of particular programs is the need for wider evaluations of the system and its parts. The Commission acknowledges the work that ANROWS has undertaken in this area, including a meta-evaluation of interagency partnerships, collaboration, coordination and integrated interventions and service responses to violence against women, and a meta-evaluation of the key features of effective 'safe at home' programs.¹¹⁹

This issue is explored further in Chapter 38. In Chapter 41, the Commission makes recommendations about the duration of funding periods.

Measuring the impacts of change

Forecasting and responding to levels of and changes in demand requires analysis of the influence of different drivers of demand, including policy changes and population shifts. The Commission heard that, to date, there have been only limited efforts to conduct such analyses, and that existing data sets are not robust enough to support them. In commenting on the limits of the existing Victorian Family Violence Database, Ms Dowsley suggested:

We see new things come into the system, but we have not been watching it at such a close grained level that we are actually effectively mapping what those impacts are ... if we can work on some of the quality and standardisation we have a much better evidence base through which we can then analyse what are the impacts and what are we seeing.¹²⁰

The Commission considers the issue of forecasting demand in greater detail in Chapter 41, and recommends the development of a robust demand-modelling tool or set of indicators so that government can better plan how departments and agencies respond to family violence. The effectiveness of this process will depend on access to high-quality data.

The Grampians Integrated Family Violence Committee noted that the lack of system-wide data impacted on its capacity to plan and identify priorities:

There is plenty of 'data' in the system: funded agencies, non-funded agencies, Victoria Police, and the Court system all gather, collect and to varying degrees communicate data and information about family violence. However there is no common system of data collection. This limits GIFVC's ability to understand and act upon priority issues and trends as they arise.

For instance, all agencies have reported growing demand following recent increase in profile of family violence as a community-wide issue. However there is currently no way of effectively monitoring the system-wide impact of these increases. The current service system makes it hard to adequately shift service resources while meeting increasing demand.

...

The current system means that the results and impacts of interventions are limited in their relevance, and at times limited to only one organisation.¹²¹

The Commission acknowledges that past efforts have been made to measure the impacts of reform.

For example, from 2007 to 2009 the Victorian Government initiated the Family Violence Benchmark Data Project,¹²² which collected two weeks of data biannually from the Magistrates' Court, Victoria Police, the Department of Health and Human Services and specialist services who volunteered to participate.¹²³ The aim was to measure the outcomes of the reforms that had occurred from 2005 onwards. The project arose from the Victorian Government's recognition that information and data to support and evaluate those reforms was 'partial and systemically fragmented', and more information was necessary 'to be able to understand better, and measure more effectively, the impacts of the new system'.¹²⁴ The project provided previously unavailable information relevant to the outcomes of the reforms, including the impacts on children and the capacity of women to remain safely at home and the use of the Family Violence Risk Assessment and Risk Management Framework (also known as the Common Risk Assessment Framework or the CRAF).¹²⁵

In 2007, an Australian Research Council Linkage grant was provided for a five year research program to a partnership between the University of Melbourne and Monash University, the (then) Department of Planning and Community Development, the (then) Department of Justice, Victoria Police and the (then) Department of Human Services. The research program was known as SAFER (Safety and Accountability in Families: Evidence and Research), and was provided to research Victoria's integrated family violence service system reforms.¹²⁶

The broad goal of the SAFER project was to gain an understanding of how Victorian family violence reforms are impacting on the safety and wellbeing of women and children and the accountability and responsibility of men who use violence.¹²⁷ Three different strands of research were chosen: a 'safe at home' strand, examining women's experiences and the decisions they make about how to remain safe from family violence in the home; the 'Men who use violence' project; and a governance stream of research, examining the translation of Victorian Government policy into service delivery practice.¹²⁸

Outcomes from this research have informed Victorian policy and practice development.¹²⁹ The final year of the project was dedicated to a review of the implementation of the Victoria Police Code of Practice for the Investigation of Family Violence that the Commission understands is being used to inform the ongoing development of policing family violence in Victoria.¹³⁰

Measuring unmet demand for services

The Commission notes the difficulties in measuring unmet demand, which can be defined in different ways to include:

- ▷ people who seek or are referred to assistance but are not able to access it
- ▷ people who seek or are referred to assistance for a range of needs, only some of which can be or are attended to
- ▷ people who, for various reasons, do not seek assistance although they need or are eligible for it.

The administrative by-product data currently produced is not particularly useful for measuring unmet demand, because it focuses on what services do rather than what they do not, or are not able to do. As the CSA noted in commenting on the limitations of the Victorian Family Violence Database:

In order for a record to be made in the recording systems of the various agencies which can then be forwarded to the Database, a report or call for service must first be made ... As a result, statistics held in this Database will not contain information relating to all incidences of family violence which may be experienced ...¹³¹

Proxy measures can be used to provide an indication of unmet demand. However, the reliability of these measures varies depending on the measure used and the context. For example, accommodation waiting lists may be used as a proxy measure for unmet demand for housing, even though the fact that a person is on a waiting list is not always a reliable indication of their current or ongoing level of need. Notably, the Australian Institute of Health and Welfare, via the Specialist Homelessness Services Collection, does collect information from housing and homelessness services (including specialist family violence services such as Safe Steps) that includes unmet requests for assistance as well as needs recognised by service providers that were not met.¹³²

Some individuals not captured in administrative by-product data sets may be captured in survey data: the PSS, for example, records people who experienced family violence but did not report it.

Measuring the effectiveness of prevention programs

Measuring the effect of family violence prevention programs is also difficult, not least because the target of the program or campaign may be broad—a whole community, workplace or school—and its influence may be gradual, and mediated by a range of other variables. It may require a long time to pass before some programs have any effect.

VicHealth advocates for robust data-collection systems to support prevention and early intervention, and for the adoption of shared standards and definitions to enable standardised data collection nationwide. The Commission acknowledges the value of the *National Community Attitudes towards Violence Against Women Survey*¹³³ in providing a measure of community attitudes among different population groups and over time.¹³⁴

These issues are explored further in Chapter 36.

The way forward

Despite extensive efforts and areas of excellent practice, there are serious gaps in our knowledge about the characteristics of victims and perpetrators of family violence, and about how the systems that respond to family violence are working. Limited linkage between data sets, and inconsistent practices and definitions in collecting data, inhibit a holistic evaluation of the family violence problem. Currently, the system captures insufficient information about, for example:

- ▷ particular demographics and population groups that may experience higher levels of unmet need for services
- ▷ the number of people affected by family violence who access various support systems, including Child FIRST, Integrated Family Services, homelessness services, courts, and police
- ▷ the extent of recidivism, which would allow a measure of the extent of the problem and patterns of demand for services
- ▷ the experience of perpetrators, including their trajectory through the justice system and use of other services
- ▷ family violence other than heterosexual intimate partner violence.

These gaps restrict the Victorian Government's ability to respond to family violence effectively or to plan for the future. They can result in some individuals or groups being overlooked, and others double-counted or overemphasised; overlapping data collection and service provision, rather than a coordinated response; poorly targeted prevention and early intervention strategies; ineffective expenditure on some responses to violence; and insufficient expenditure on others. Ultimately they can contribute to the continuation of family violence.

The evaluation of family violence-related programs and initiatives delivered by departments, agencies and funded services is often poorly planned and poorly resourced. The Commission heard that there is a tendency to measure system performance by using output-based metrics (for example, number of clients and episodes of service provision) rather than outcome-based metrics (that is, how effective particular programs, approaches or services are in addressing family violence or its effects). Evaluation is not, as a matter of course, undertaken during the life of a program to allow ongoing reflection and adaptation.

The Commission's recommendations are directed to addressing these issues to facilitate a more informed and effective approach to reducing family violence.

Addressing gaps in data collection and analysis

The Commission accepts that using a unique identifier system-wide to record each individual user of different systems and services would help to discern, among other things:

- ▷ the range of services that particular individuals (including children) and families use
- ▷ how many individuals and families account for the overall volume of family violence in particular systems and services, and in the system as a whole.

This information could inform resource allocation and case-management decisions.¹³⁵ The development of linkages between data sets is likely to be a valuable shorter-term measure to address this gap.

The Commission accepts that there are serious difficulties associated with collecting some types of demographic information. Demographic gaps are of concern not only because they obscure the experience of particular groups and communities, but because they may also point to deficient training or practices: if a question is not being asked about a particular characteristic of someone's identity, it may reflect the fact that a service provider is not attuned to this characteristic, and to the specific needs that might arise in connection with it. Continued efforts to close these gaps are urgently needed, precisely because the circumstances that make family violence more difficult to detect in general population surveys (geographical isolation, homelessness, social and cultural isolation), also tend to heighten the risk of family violence.¹³⁶

In relation to survey data, it is important to emphasise the extraordinary efforts that are made to ensure that the Personal Safety Survey is as comprehensive as possible. Its limitations are largely the product of design, cost constraints or practicalities.¹³⁷ The fact that no proxy interviews are conducted, for example, is intended to ensure participants' safety (as the respondent may live in the same household as the perpetrator) and the reliability of data (where a respondent may not be comfortable revealing information through a third party, particularly a family member or interpreter).¹³⁸ Effective surveys of Aboriginal and Torres Strait Islander peoples will need culturally specific approaches. Some Australian Bureau of Statistics surveys use such approaches.¹³⁹

Nonetheless, the Commission's central concern is that some population groups at heightened risk of family violence are likely to be under-represented in family violence data collections. These groups include Aboriginal and Torres Strait Islander peoples, people living in remote communities, people with disabilities, people from CALD backgrounds (including those with an insecure migration status) and people who, because of homelessness, live in non-private dwellings not covered by the Personal Safety Survey.¹⁴⁰ The fact that these limitations exist even in a survey of such exceptional breadth and depth demonstrates the complexity and challenge of collecting comprehensive data about particular population groups.

There are also shortcomings in our collection of perpetrator information. These issues are explored further in Chapter 18. The Commission notes that some advances have been made: for example, the initiatives between police and courts (noted above) offer a partial solution to some areas of information loss.

However, substantial improvements still need to be made to data sets and how they interact. The CSA's commissioned research on recidivism is first-rate: it is careful, thorough and informative, but its necessarily limited scope has highlighted the insufficiencies of existing data. The research was limited to police data, which tells us only so much about the characteristics of family violence. For example, the fact that police have not recorded repeated family violence incidents at a given address does not indicate that none have occurred; and where such incidents are recorded, police data does not capture the features of repeated violence that are relevant to understanding recidivism. More generally, there is a need for more departments and agencies to contribute to the Victorian Family Violence Database, improved quality within data sets, and improved links between data sets to gain a complete picture.

The Commission reiterates the importance of evaluative criteria that allow funders and service providers to determine whether services have been delivered in compliance with funding agreements and broader policy goals, and whether their delivery has been cost-effective and efficient. The way data is collected should reflect and inform the aims of a given initiative: what the program is, what it seeks to achieve, and how it will be measured against its objectives. The design and evaluation of programs and initiatives should be underpinned by a clear understanding of the program's medium and long-term goals, which should in turn reflect system-wide goals. The issue of clear and shared goals is discussed further below.

Funding arrangements also contribute to shortcomings in outcome measurement and evaluation. Data collection is shaped by how the Victorian Government defines the activities it funds, and the accountability and reporting requirements attached to funding. A focus on system-specific outputs (number of episodes of support and so on) can lead to siloed data collection that has little potential to improve our understanding of family violence or the effectiveness of our response to it.

The Commission accepts Dr Diemer's evidence that in some cases, programs are not designed or resourced to be comprehensively evaluated. Funding tends to be directed towards service delivery, which leaves limited resources for evaluation and research activities. We examine this issue in more detail in Chapter 41, and make recommendations there for changes to funding arrangements.

Effective evaluation requires funders to anticipate the need for evaluation and build it into the program design from the outset. This maximises the collection of data to assess the program against agreed objectives and performance criteria. The Commission expects that funders will involve service providers in the design. Further, government and agencies should make provision for adequately resourcing the evaluation component at the time of establishing new programs as well as making resources available for periodically evaluating longstanding programs to help programs adapt to emerging issues. They should also fund programs to operate for a long enough period to allow meaningful evaluation. Resourcing evaluation across government departments and agencies and applying it to both internally and externally delivered services will enrich decision making by both the funder and the service provider.

Where appropriate, evaluation should be conducted in parallel with a program's activities, rather than being restricted to a retrospective analysis of a period of operation. In the early stages of a program, there will be unforeseen complexities and areas of uncertainty. Particularly in such cases, evaluation should incorporate a variety of methodologies, including stakeholder reflection and 'action research'—that is, research conducted during the life of a program and feeding back into program design.¹⁴¹ This will enable continuing, 'on the ground' assessment of program delivery, and allow for periodic adaptations during the life of a program in response to findings. Monitoring and reflection that continue during the implementation of a program have the capacity to foster:

- ▷ confirmation that collection of required data is under way and effective
- ▷ management of unforeseen or unintended consequences
- ▷ mapping of, and adjustment for, changes in the external environment (beyond the direct control of the initiative)
- ▷ deeper qualitative understandings of the initiative, which can validate or challenge the design and theory behind the initiative
- ▷ confirmation of readiness for a further evaluation based on outcomes and value for money
- ▷ the development of a 'community of practice' among practitioners.

Equally, the Commission accepts the crucial role of demand forecasting, and the need to better capture unmet demand data and improved measurement of prevention programs.

Recommendation 203

The Victorian Government work with organisations it funds to provide family violence services, to improve evaluation standards [within 12 months] by, among other things:

- ▷ ensuring that where an evaluation is anticipated or expected, resources are provided to allow for the evaluation, including funding for the evaluation itself and for the design and/or implementation of processes and systems to support data collection
- ▷ ensuring that the initial period for which a program is funded contains a period of service delivery that is long enough to support a thorough evaluation of the program
- ▷ resourcing those delivering initiatives to conduct 'action research' during the life of the program, so that adaptations can be made to improve data collection and service delivery
- ▷ publishing evaluation outcomes where appropriate.

The need for a coordinated response

Over and above the gaps and inconsistencies outlined above, there is a lack of common purpose, accountability and leadership around family violence data collection. Different services, departments and sectors largely operate according to their own priorities and constraints. Data-collection systems have developed over years to enable services to measure their own performance and outputs. There are areas of excellent practice, but their value is limited by a lack of system-wide coordination.¹⁴²

A coordinated response to data collection is essential because of the diverse and diffuse nature of family violence. As is emphasised throughout this report, family violence is often characterised by complex patterns of behaviours perpetrated over time. Different aspects of the patterns register in different ways in different services and systems. To understand family violence—both in individual cases and as a continuing problem—there must be a clear view across different parts of the system and over time. Limitations in data, and in the aggregation of data sets, mean that family violence is not reported or recorded in a way that reflects its full extent.

The Commission acknowledges the challenges of a coordinated approach to data collection. Such an approach requires a clear and shared understanding of what family violence is, agreement about the objectives of family violence data collection, and the procedures and infrastructure to support it.

Departments, agencies and funded services sometimes use different definitions of family violence, as well as different definitions of the data items used to measure and respond to it. This can produce data sets that:

- ▷ are inconsistent and incommensurate with each other
- ▷ are of limited use for wider purposes, including policy development
- ▷ lead to divergent conclusions about family violence.

The use of incommensurate data items partly reflects the variety of forms that family violence may take, and the disparate settings in which responses to it are made. Definitions are shaped 'by the context of enquiry and informed by the strategies, perspectives and agendas of individuals and organisations', including 'specific legal, policy, service provider or research perspectives'.¹⁴³ 'Units' of service provision vary enormously between contexts: one service may measure the number of counselling sessions; another, referrals; another, attendances at family violence incidents. Meaningful comparisons between these figures are difficult. Equally, each case of family violence is unique, involving as it does individuals with their own history, needs, capabilities and vulnerabilities.

The use of incommensurate data items and data-collection practices may also reflect disparate, program-specific goals: data items might suit those goals within a particular program but be unsuitable for wider purposes.¹⁴⁴ This often applies to administrative by-product data, collected by service providers in the context of routine service delivery and case management. Yet those who collect data in these contexts are often well positioned to seek more accurate or precise information than can be captured in surveys.¹⁴⁵ There could be advantages in expanding the categories of data collected in these situations to make it more useful for general purposes. This is more likely to happen if the agencies and departments collecting the data have shared goals, and a sense of how their data-collection activities might contribute to a wider body of knowledge.

Finally, incommensurate data items and practice may reflect different values: about family violence, and about data collection.¹⁴⁶ Recent research shows that one's definition of family violence can influence what data is selected for analysis and how it is analysed.¹⁴⁷ In addition, data collection itself is value-laden: the body of evidence reflects judgments about the relative value of different data items and different sources of knowledge.¹⁴⁸ This is exemplified by recent debates about the validity and weight of quantitative information compared to qualitative information or 'practice wisdom'.

It is not the Commission's role to adjudicate these disputes. Our purpose in raising them is to emphasise, first, that decisions about what data should be collected and how, are far-reaching. They affect evaluation and funding criteria, and practice standards, guidelines and protocols, and shape how services and systems understand and do their work. In this sense, the way the system is measured affects the system itself.

Secondly, shared data-collection practices and standards must be underpinned by shared goals and a shared understanding of family violence and the importance of data collection in family violence. Developing this framework requires continuing cooperation and governance.

As well as producing an update of the Victorian Family Violence Database, the CSA has considered ways to improve the database in the future. Some of these recommendations are of more general relevance for data collection in Victoria.

In particular, the CSA stresses the importance of governance to ensure the overall management of the availability, usability, integrity and security of data, and to provide consistent standards, goals, strategic direction and an authorising environment for data management.

Currently, the Victorian Family Violence Database is managed by the CSA and the Department of Justice and Regulation. The CSA and the Community Operations and Victims Support Agency at the Department of Justice and Regulation have established two working groups to provide advice, comment and feedback on data outputs and data quality issues. The CSA notes, however, the absence of a broader system for data governance:

... a high level steering committee whose role is to set strategic directions for coordinated family violence data activities across the state does not currently exist. High level leadership can be influential in ensuring coordination and alignment with cross-government needs. It is important for garnering commitment across government and helps to ensure efforts to improve Databases are afforded appropriate levels of authority and priority.¹⁴⁹

Further, noting that data sets included in the database operate in parallel and are of variable quality, the CSA recommend establishing a statewide data framework to 'consolidate data activities under an overarching strategic plan that guides the collection, provision and output of timely and relevant family violence information'.¹⁵⁰ This would also include prioritising key data gaps, and providing a structured set of activities to address these gaps.

The CSA suggest that ABS frameworks such as Defining the Data Challenge, and Bridging the Data Gaps, as well as the principles and concepts outlined in the National Data Collection and Reporting Framework, could serve as a basis for the Victorian framework.¹⁵¹

In relation to priority gaps, the CSA notes in particular that information gaps around Aboriginal and Torres Strait Islander status, CALD status and health and disability indicators inhibit the capacity of the database to contribute to policy and programs tailored towards these groups. In the Commission's view, this is true of gaps in Victorian data sets generally.

In terms of guiding the collection of data, the CSA recommends adopting practices to address variations in data quality and improve quality assurance practices. For example, the Victorian Emergency Minimum Dataset incorporates a systematic audit of each hospital that contributes data every three years, to help maintain consistency and quality. Ensuring that similar practices are adopted across the family violence system is a priority.¹⁵²

The Commission endorses the CSA's observations. The Commission recommends that the Victorian Government, in consultation with the new Family Violence Agency discussed in Chapter 38 and the CSA, perform an ongoing governance role in relation to statewide data collection, including by implementing a statewide data framework.

The Commission notes that the new Statewide Family Violence Action Plan proposed in Chapter 38 could include progress towards shared objectives.

The Commission acknowledges previous efforts to devise shared standards. In addition to the Family Violence Benchmark project described above, work commenced in 2011 under the Family Violence Interdepartmental Committee to develop an optimum and minimum family violence data set.¹⁵³ The project reviewed current data collection, articulated what was available within data sets, and provided recommendations as to potential indicators that could support improved measuring of policies and programs.¹⁵⁴

The Melbourne Research Alliance to end violence against women and their children recommends renewed efforts to introduce a family violence minimum and optimal data set. Their submission includes a table of items that might be included in the data set. For example, the minimum data set should include demographic characteristics and unique identifiers for victims and perpetrators; characteristics of the incident (including the presence of children, police involvement, the need for immediate protection); records of referrals and follow-ups; and characteristics of the violence, both in general and with respect to the perpetrator and victim specifically.¹⁵⁵ A model such as this may be a valuable component of the shared standards set by the Victorian Government.

The Commission also notes that the Senate Standing Committee on Finance and Public Administration has called for the ABS and other relevant organisations to investigate the feasibility of developing systems and tools to enable 'survey questions, delivery and data analysis developed pursuant to' the National Framework to 'be modified and made available for organisations to use on a local level'.¹⁵⁶

This system-wide approach to family violence data collection and research will need to be supported by individual improvements to particular data sets, and consideration should be given to developing a system-wide platform for communication between data sets. Recommendations for the improvement of IT infrastructure, and for improved integration of IT platforms, are made elsewhere in this report (see, for example Chapters 7 and 16).

Developing shared outcomes

To support the above, there is a need to develop shared, specific outcomes against which the efforts of organisations and systems working in family violence can be evaluated.

The Commission recommends that the Victorian Government develop these shared outcomes in consultation with the Family Violence Agency (and potentially in consultation with the CSA and other relevant parties). The outcomes should align with other family violence objectives that Victoria supports, such as those in the *National Plan to Reduce Violence Against Women and Their Children 2010–22* and *Victoria's Action Plan to Address Violence against Women and Children, Everyone Has a Responsibility to Act 2012–2015*.¹⁵⁷

The shared outcomes should be specific enough to be applied to the efforts of particular departments, agencies and funded services, and to design data-collection platforms used by these bodies to measure progress towards those outcomes.

As an example of broad but measurable goals, the Closing the Gap targets developed by the Council of Australian Governments to tackle disadvantage in Aboriginal and Torres Strait Islander communities include:

- ▷ halving the gap in life expectancy by 2031
- ▷ halving the gap in reading, writing and numeracy achievements for children by 2018
- ▷ halving the gap in Year 12 attainment rates by 2020.¹⁵⁸

As noted above, Domestic Violence Victoria has suggested shared outcomes relating to women's safety. Without seeking to pre-empt the task of framing shared outcomes, we suggest they might be usefully informed by Domestic Violence Victoria's suggestions.¹⁵⁹ We note that they should be consistent with the principles for the statewide response proposed in Chapter 38.

Recommendation 204

The Victorian Government work with the recommended Family Violence Agency and the Crime Statistics Agency to improve statewide family violence data collection and research [by 1 July 2018], including through:

- ▷ setting a strategic direction and addressing recurrent data gaps
- ▷ developing a statewide data framework, informed by relevant Commonwealth standards—for example, relevant Australian Bureau of Statistics frameworks such as the National Data Collection and Reporting Framework guidelines and ANROWS (Australia’s National Research Organisation for Women’s Safety) guidance. This should include shared data definitions and performance indicators, guidelines on the collection of demographic information—in particular, on older people, people with disabilities and people from Aboriginal and Torres Strait Islander, culturally and linguistically diverse, and lesbian, gay, bisexual, transgender and intersex communities—and shared best-practice and auditing standards and procedures to foster consistency and quality among Victorian data sets
- ▷ exploring opportunities for data linkage between existing data sets and other enhancements to increase the relevance and accessibility of existing data
- ▷ holding regular stakeholder meetings to review the function and quality of the Victorian Family Violence Database.

Building on existing data and research

Our understanding of family violence and the response to it could be improved by better use of existing resources. In particular, the Commission recommends making existing data sets and research efforts more accessible, conducting further analysis of existing data, increasing links between data sets, and where necessary, augmenting existing efforts.

Improving the Victorian Family Violence Database

The Commission has already noted above the CSA’s recommendations for improving the database through general governance. They also propose the following means to improve the database.¹⁶⁰

Add more data sets to the Database

Additional data sets could include call and dispatch data relating to ambulance callouts, and Ambulance Victoria data, as well as data from Child Protection and Child FIRST–Integrated Family Services, the criminal courts (including the County and Supreme Courts), Corrections Victoria and the youth justice system, community legal services and some health services. It may also be valuable to include data or data sets that shed light on non-physical (for example, economic, emotional) violence. In the Commission’s view, the addition of Integrated Family Services and Child Protection data should be a priority.

The CSA notes that family violence–related events need to be able to be differentiated from the general data in these data sets. This could be achieved by ‘flagging’ family violence episodes or linkage with other data sets. The CSA also proposes some preliminary work by family violence database custodians to ensure these data sets are commensurate with the database standards and definitions.

Statistical linkage

As already noted, there is an absence of unique identifiers for individuals across different data sets.

The CSA recommends that, given the immediate absence of IT and information-sharing systems and processes to support a system-wide identifier, more work could be done to create statistical linkages between data sets.

Statistical linkage is a process by which a person's identifiable details (such as name, date of birth, sex, and so on) are combined to create a de-identified unique key, which can be used across multiple data sets. The CSA describes this as 'a way of connecting disparate datasets to create a more useful source of information without significant investments in system upgrades or significant data manipulation'.¹⁶¹

The Commission notes that the Melbourne Research Alliance to end violence against women and their children also advised establishing a confidential data linkage to 'enable better understanding of help seeking and service system pathways'.¹⁶²

Information sharing

The CSA notes a lack of clear information-sharing protocols across government, which makes the negotiation of content and time frames for the database more protracted. Information-sharing issues are discussed further in Chapter 7.

The Commission concurs with these recommendations and considers that the CSA is well-placed to maintain and develop the Victorian Family Violence Database.

Recommendation 205

The Crime Statistics Agency maintain and develop the Victorian Family Violence Database and consider what additional data sets should be incorporated in the database, how links between all relevant data sets can be created, and how the database can otherwise be developed [within 18 months].

Enhancement of existing information

As part of its 2014–16 research agenda, ANROWS is already making a valuable contribution to improving the state of our knowledge in relation to family violence. For example, in October 2015 they produced an analysis of the 2012 Personal Safety Survey. This included several hundred new statistical items related to violence against women, almost all of which had not been previously published or generated from the survey results.¹⁶³ ANROWS is currently conducting a further study on the burden of disease (including death and disability) of intimate partner violence.¹⁶⁴

This is very valuable work. The Commission notes that organisations designing policy or programs, or making a case for particular approaches, are poorly resourced to undertake research or extract relevant data from existing data sets. ANROWS helps perform that role, analysing existing data sources to provide accessible, selective, pertinent information that can inform and advance both the practice of service providers and their capacity to demonstrate their continuing value to funders.

The submission from ANROWS noted that its funding commenced on 1 July 2013 for a three-year period until 30 June 2016, and that the National Plan extends until 2022.¹⁶⁵

The Commission recommends that the Victorian Government continue to resource ANROWS for its work.

The Specialist Homelessness Services collection is another useful database that could be used. The collection is comprised of data provided to the Australian Institute of Health and Welfare by homelessness service providers. It utilises a unique identifier and includes information about, for example, the number of clients supported, the demographic characteristics of clients and the type of support provided. Each year, the AIHW produces reports on the collection.

The Commission heard that the collection of family violence-related information (including relevant risk factors) by homelessness service providers in Victoria was variable, that there was room for a greater focus on family violence, and that data collection relevant to family violence was in part constrained by the reporting platforms.¹⁶⁶ Domestic Violence Victoria submitted that because the SHIP database is a homelessness platform, data collected by agencies in this format 'wildly underrepresents the work that they are doing' in family violence.¹⁶⁷ To the extent that Specialist Homelessness Services collection is comprised of data supplied via these platforms, it will reflect these limitations. In the Commission's view the AIHW should consider amending the collection to increase the focus on family violence, given the nexus between family violence and homelessness.

In addition, though the AIHW produces an annual Specialist Homelessness Services collection report and provides selected data for inclusion in the Victorian Family Violence Database, the Commission believes that the data could be more thoroughly used and interrogated by the Victorian Government.¹⁶⁸

Recommendation 206

The Victorian Government continue to fund ANROWS (Australia's National Organisation for Women's Safety) to do research in relation to preventing and responding to family violence.

Uptake of existing knowledge

The Commission also advises strengthening the processes by which research and current knowledge are translated into policy and practice.

ANROWS conducted a recent scoping paper on 'knowledge translation and exchange' (KTE).¹⁶⁹ KTE is an area of research concerned with the 'science on how to more effectively promote and support the use of evidence, thereby building the research to policy and practice gap'.¹⁷⁰ ANROWS reviewed the results of 24 studies, 20 relating to 'domestic violence or intimate partner violence' and four to sexual assault.

There are different models of KTE. In some models, knowledge is translated into practice best when research questions are developed by those who will use the knowledge in a practical or policy setting; or if researchers build an intention to share the research with the target audience into their work strategies; or if the researchers' empirical knowledge and the users' tacit knowledge are both part of the research. Within these models there are specific strategies. The ANROWS review is explicitly preliminary and calls for further research, but it identifies a range of promising strategies, including:

- ▷ working with informal opinion leaders (competent, influential people within fields who can influence practitioners and policy makers)
- ▷ audit and feedback mechanisms that measure clinical performance (in a health setting, for example, medical records and patient observations may serve this purpose)
- ▷ educational interventions (such as continuing professional development), refresher training, and interventions that are multi-faceted and tailored to specific sectors.¹⁷¹

The Commission notes that factors that inhibited practitioners in applying their learning included discomfort in discussing violence or a fear of offending people, a lack of time and a lack of privacy.¹⁷² This underscores the fact that effective data collection is also about preparing those delivering services and collecting data to comfortably approach sometimes sensitive and difficult questions. In Chapter 40 we consider family violence training more broadly.

It is the Commission's view that practitioners, researchers, and those designing and funding research and policy programs need to consider appropriate KTE strategies—as well as factors that inhibit the ability of practitioners to apply their knowledge—and to include these considerations in their practice, design and funding models. Generally, it is important for data collectors to consider not just what data is for, but whom it is for.

Establishing an expert panel

One promising strategy is to establish an expert panel to assist service providers. The Commission notes the Australian Institute of Family Studies has recently been commissioned by the Commonwealth Department of Social Services (DSS) to establish an expert panel to support, strengthen and evaluate the department's Families and Children Activity. The expert panel is comprised of experts with a variety of relevant specialisations and backgrounds across service delivering research, training, academic and service support. Members of the panel provide expertise and tools to improve the service delivery of DSS-funded providers. For example, members of the panel assist with:

- ▷ implementation support and training in using evidence-based programs and practice
- ▷ developing outcome measures for evaluating services and programs
- ▷ training and support in developing, trialling and evaluating new programs and approaches
- ▷ research and evaluation activities.

The panel's work was referred to by Professor Leah Bromfield, Deputy Director of the Australian Centre for Child Protection at the University of South Australia and Professorial Fellow at the Royal Commission into Institutional Responses into Child Sexual Abuse. Professor Bromfield noted in evidence that the panel's functions included assisting services to 'use the best available evidence in selecting programs and in developing programs'; assisting organisations providing services to 'set up good evaluation parameters so that they can be developing the evidence base'; and providing 'implementation support', to overcome divergence between program selection and design and 'on the ground' program implementation.¹⁷³

The Commission also notes the relatively recent formation of the Melbourne Research Alliance to end violence against women and their children. The alliance draws together experts on family violence in Australia, with a variety of experience and specialisations across social work, primary care, public policy and education. It encourages interdisciplinary research to end violence against women and children.

In the Commission's view, the Victorian Government might consider establishing an expert panel (or potentially multiple panels) to assist organisations and institutions in developing and delivering family violence initiatives. The Alliance may be a viable candidate for performing this role.

The Family Violence Index

The Victorian Government has announced its intention to produce an aggregate indicator of family violence, similar to the Consumer Price Index or the Housing Affordability Index, which will incorporate a range of metrics such as:

- ▷ numbers of perpetrator convictions
- ▷ rates of reporting to police
- ▷ rates of police referrals to family violence services
- ▷ the number of working days lost by employees affected by family violence
- ▷ the number of presentations to hospitals and the justice system connected with family violence.¹⁷⁴

The Victorian Government has commissioned ANROWS to advise on the scope and content of the project, including what indicators should form part of the proposed Victorian Family Violence Index (FVI).¹⁷⁵

The FVI could contribute to the improved measurement of family violence, as well as better coordination of the data sets that will underpin this process. The Commission endorses this initiative (as have a number of our stakeholders in submissions to the Commission).

The Commission notes that if the FVI is to be a single aggregated measure of multiple, disparate data sets, an appropriate methodology will need to be devised. Many measures related to family violence are, on their face, incommensurate, and their relationships complex and contestable. Producing an aggregate figure that reflects Victoria's performance in responding to family violence is likely to be challenging. Assessing what a change represents can also be challenging. For example, an increase in a demand indicator may be interpreted as a positive (greater willingness to report, better responsiveness by services such as police) or as a negative (a proxy for an increase in prevalence and incidence).

The FVI may nevertheless have a valuable role, particularly in maintaining community awareness of family violence and the need to continuously improve our responses to it.

The Commission understands that the FVI would build on existing research and data-collection efforts in Victoria. We commend that objective, and advise the Victorian Government to liaise with the Crime Statistics Agency to explore means of developing the FVI in a way that complements and builds on the Victorian Family Violence Database.

It is crucial that the Family Violence FVI include measures that reflect experiences of family violence in particular groups and communities, including Aboriginal and Torres Strait Islander peoples, people with disabilities, children and young people, older people, LGBTI communities, people in rural and regional Victoria, and people from culturally and linguistically diverse backgrounds.

The Commission notes that at date of writing, the development of the FVI is under way, and that a recent review of international literature confirms it is a world first.¹⁷⁶

Endnotes

- 1 State of Victoria, Submission 717, 39.
- 2 A copy of the CSA report is in Volume VII.
- 3 Australian Bureau of Statistics, 'Defining the Data Challenge for Family, Domestic and Sexual Violence, 2013' (Catalogue No 4529.0, Australian Bureau of Statistics, February 2013) 2–3.
- 4 Council of Australian Governments (COAG), 'The National Plan to Reduce Violence Against Women and Children 2010–2022' (Department of Social Services, February 2011).
- 5 See generally, Australian Bureau of Statistics, above n 3.
- 6 Ibid 4.
- 7 See, eg, *ibid* 23–6.
- 8 See, eg, *ibid* 29–32.
- 9 See, eg, *ibid* 35–8.
- 10 See, eg, *ibid* 39–46.
- 11 See, eg, *ibid* 49–53.
- 12 See, eg, *ibid* 55–58.
- 13 Australian Bureau of Statistics, 'Foundation for a National Data Collection and Reporting Framework for family, domestic and sexual violence, 2014' (Catalogue No 4529.0, Australian Bureau of Statistics, September 2014) Introduction.
- 14 Australian Bureau of Statistics, 'ABS Data Quality Framework' (Catalogue No 1520.0, Australian Bureau of Statistics, May 2009) Introduction.
- 15 Ibid Institutional Environment.
- 16 Ibid Timeliness.
- 17 Ibid Coherence.
- 18 Ibid Interpretability, Accessibility.
- 19 We do not seek to suggest, of course, that multiple contacts with services carries negative implications. Often, a victim's path to safety will involve multiple interactions with service providers, and this is entirely appropriate. Equally, multiple interactions may signify that a service provider is prioritising and monitoring a family violence situation.
- 20 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 53.
- 21 Department of Health and Human Services, 'Attachment 10: Transitional support—20082', 3, produced by the State of Victoria in response to the Commission's Notice to Produce dated 13 October 2015.
- 22 Transcript of Dunlop, 12 August 2015, 2776 [8]–[25], 2778 [1]–[5].
- 23 Crime Statistics Agency, 'An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14' (January 2016), 141, provided to the Commission by the Crime Statistics Agency, 8 January 2016.
- 24 Transcript of Peake, 16 October 2015, 3921 [24]–3922 [10].
- 25 Domestic Violence Victoria—04, Submission 943, 4, 10.
- 26 Ibid 10–11.
- 27 Victoria, Inquiry into Protecting Victoria's Vulnerable Children, Full Report (2012) vol 2 511.
- 28 Victorian Auditor-General's Office, 'Early Intervention Services for Vulnerable Children and Families' (May 2015) vii.
- 29 See also Australian Human Rights Commission, 'Children's Rights Report 2015' (2015). Among other things, the report recommends enhancing the Personal Safety Survey's collection of data on respondents' experiences of abuse as children.
- 30 State of Victoria, Submission 717, 43.
- 31 Transcript of Dowsley, 14 October 2015, 3581 [30]–3582 [2].
- 32 Ibid 3582 [2]–[17].
- 33 See eg, Transcript of Diemer, 14 October 2015, 3583 [3]–3584 [18]; Transcript of Dowsley, 14 October 2015, 3584 [22]–3585 [26]; Crime Statistics Agency, above n 23, 138.
- 34 Transcript of Dowsley, 14 October 2015, 3581 [30]–3582 [17].
- 35 Crime Statistics Agency, above n 23, 144.
- 36 Ibid.
- 37 Ibid.
- 38 For example, the ABS recommends that a person's Aboriginal and Torres Strait Islander status be sought each time they come into contact with a service provider (as their understanding of it, or their willingness to report it, may change), and that they be asked to specify whether they are Aboriginal, Torres Strait Islander, both Aboriginal and Torres Strait Islander or neither Aboriginal nor Torres Strait Islander. See *ibid*.
- 39 Ibid 145.
- 40 Ibid.
- 41 Ibid.
- 42 Ibid.
- 43 Ibid 139.
- 44 Victorian Refugee Health Network, Submission 939, 5; Centre for Multicultural Youth, Submission 452, 1; National Aboriginal and Torres Strait Islander Women's Alliance, Submission 912, 6; Koorie Youth Council, Submission 906, 5–6; Victorian Gay and Lesbian Rights Lobby, Submission 684, 2.
- 45 See, eg, Centre for Multicultural Youth, Submission 452, 1; Multicultural Centre for Women's Health, Submission 616, 8; Shakti Migrant and Refugee Women's Support Group Melbourne Inc., Submission 500, 5; Australian Muslim Women's Centre for Human Rights, Submission 728, 19; Victorian Refugee Health Network, Submission 939, 5; Australian Greek Welfare Society, Submission 578, 2.
- 46 Multicultural Centre for Women's Health, Submission 616, 8.
- 47 See, eg, National Aboriginal and Torres Strait Islander Women's Alliance, Submission 912, 6; Victorian Aboriginal Legal Service, Submission 826, 7; Northern Metropolitan Region Indigenous Family Violence Action Group, Submission 934, 5; Koorie Youth Council, Submission 906, 5–6; Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 6; Victorian Aboriginal Child Care Agency, Submission 947, 29.
- 48 Victorian Aboriginal Legal Service, Submission 826, 7.
- 49 Melbourne Research Alliance to end violence against women and their children (Prof. Cathy Humphreys et al)—02, Submission 840, Briefing Paper 8, 6.
- 50 See, eg, Gay and Lesbian Health Victoria; Australian Research Centre in Sex, Health and Society—La Trobe University, Submission 821, 3–4; Victorian Gay & Lesbian Rights Lobby, Submission 684, 2; No To Violence; Safe Steps Family Violence Response Centre, Submission 933, 21–22.
- 51 No To Violence; Safe Steps Family Violence Response Centre, Submission 933, 21–22.
- 52 Ibid 22.
- 53 Ibid.
- 54 Ibid.

55 Ibid.

56 See, eg, Sustainability Australia, Submission 845, 3–4.

57 We note that ANROWS has been commissioned to conduct a Diversity Data Project on the experiences of diverse groups, including Indigenous women, women from culturally and linguistically diverse communities, and women with disability. Its findings will inform the National Plan's Third Action Plan. See ANROWS, *Diversity Data Project* <<http://anrows.org.au/resources/news/diversity-data-project>>.

58 Australian Bureau of Statistics, 'Personal Safety, Australia, 2012' (Catalogue No 4906.0, Australian Bureau of Statistics, December 2013).

59 Importantly, not all of the raw data collected as part of the PSS is published, and further data can be released and/or developed from the collected data on request.

60 Australian Bureau of Statistics, above n 58, Explanatory Notes, Introduction [20]–[21].

61 Ibid Explanatory Notes, Introduction [21].

62 Ibid Explanatory Notes, Introduction [13].

63 Ibid Explanatory Notes, Introduction [33].

64 Ibid Explanatory Notes, Introduction [13].

65 A person was considered to have experienced emotional abuse where they reported they had been subjected to or experienced behaviours including 'Stopped or tried to stop them knowing about or having access to household money', and 'Stopped or tried to stop them from working or earning money': Ibid Explanatory Notes, Glossary.

66 Ibid Explanatory Notes, Introduction [29], [34].

67 Parliament of Australia, Senate Finance and Public Administration References Committee, 'Domestic Violence in Australia' (August 2015) ix.

68 See, eg, Transcript of Diemer, 14 October 2015, 3591 [19]–[27].

69 See, eg, Centre for Forensic Behavioural Science–Swinburne University of Technology, Submission 649, 9; Melbourne Research Alliance to end violence against women and their children (Prof Kelsey Hegarty et al), Submission 885, 25.

70 Caraniche, Submission 456, 1, 4.

71 The Commission notes that the Victorian Government has commenced a review information-sharing needs and barriers across the justice system. See Statement of De Cicco, 7 August 2015, 16–18 [48]–[57].

72 We note by way of analogy that in the 2015–16 Victorian Budget, the Victorian Government has allocated funding for real-time prescription monitoring, which will enable pharmacists and prescribers to access a patient's dispensing history of medications such as methadone and oxycodone at the time of consultation. The system requirements and benefits, of real-time prescription monitoring may be of interest to the Victorian Government in considering approaches to monitoring family violence perpetrators. See State of Victoria, '2015–16 Budget Paper No 3: Service Delivery' (Department of Treasury and Finance, 2015) 72.

73 Court Services Victoria, Submission 646, 17–18.

74 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 21.

75 County Court of Victoria, Submission 835, 9.

76 Judicial College of Victoria, Submission 536, 9.

77 Ibid 10.

78 Australian Bureau of Statistics, 'Bridging the Data Gaps for Family, Domestic and Sexual Violence, 2013' (Catalogue No 4529.0.00.002, Australian Bureau of Statistics, November 2013) 44.

79 Transcript of Shuard, 6 August 2015, 2191 [9].

80 Transcript of Dowsley, 14 October 2015, 3578 [26]–3579 [1].

81 Crime Statistics Agency, above n 23, 134–5.

82 Ibid 104.

83 Ibid.

84 Ibid.

85 Victoria Legal Aid, 'Characteristics of respondents charged with breach of family violence intervention orders: key findings' (2016). See Victoria Legal Aid, *Research reveals risk factors for continuing family violence* (18 February 2016) <<https://www.legalaid.vic.gov.au/about-us/news/research-reveals-risk-factors-for-continuing-family-violence>>.

86 Sentencing Advisory Council, *Reoffending Following Sentencing for Contravening a Family Violence Intervention Order or Safety Notice* (14 January 2016). <<https://www.sentencingcouncil.vic.gov.au/projects/reoffending-following-sentencing-contravening-family-violence-order>>. We also note that the Commonwealth Government has commissioned ANROWS to implement a dedicated Perpetrator Interventions Research Stream: ANROWS, *Perpetrator Interventions Research Stream* <<http://anrows.org.au/research-program/perpetrator-interventions-research-program>>.

87 Australian Bureau of Statistics, above n 3, 15.

88 Ibid.

89 Ibid 14.

90 Ibid.

91 Ibid 14–15.

92 Department of Premier and Cabinet, 'Table of items where no relevant documents or data identified/available under Notice to Produce dated 5 June 2015', 15, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.

93 Ibid 23.

94 The Royal Women's Hospital, Submission 356, 3.

95 Melbourne Research Alliance to end violence against women and their children (Prof Kelsey Hegarty et al), Submission 885, Briefing Paper 1, 1.

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40 Industry planning

Introduction

In consultations across Victoria, the Commission was struck by the commitment, knowledge and expertise of hundreds of practitioners in a range of different roles who assist people affected by family violence—police, specialist family violence workers and integrated family service case workers and outreach workers, crisis workers, lawyers, magistrates, court-based support workers, prevention practitioners and policy experts. Despite working under enormous pressure, and facing unprecedented demand, these practitioners demonstrated their dedication to those they supported, and to ending family violence. In making recommendations to improve responses to family violence across all sectors that assist people affected by family violence, the Commission aims to build on the work of these dedicated practitioners.

While workforce issues are discussed in other chapters throughout this report, this chapter provides a comprehensive focus on the major workforce issues facing those who work in the area of family violence. Some issues are common across workforces, but each workforce also has unique needs. There is a particular focus in this chapter on specialist family violence services. Domestic Violence Victoria highlighted for the Commission the many skills that specialist family violence practitioners possess, and the first section of this chapter examines the capabilities a specialist family violence worker, or someone working in the specialist area of family violence prevention, must bring to their daily work. Workforce issues raised with the Commission regarding this sector are then discussed.

The next section of this chapter summarises the evidence the Commission received on workforce issues with regard to the police, the courts and legal practitioners. Since these matters are discussed in Chapters 14 and 16, this section of the present chapter is brief. Workforce issues in non-family violence specific services, such as health, education, Child Protection and other government departments are also discussed.

In the final section of this chapter, after considering the range of workforce issues across these sectors, the Commission proposes a way forward. The Commission recommends a comprehensive 10-year industry plan to ensure the right mix of highly skilled, appropriately remunerated family violence prevention and response specialists, as well as the police, and justice system workforces needed to meet the challenge of what is a highly complex problem as well as a high volume crime.

Given the pervasive nature of family violence, all service systems and professionals must be able to recognise family violence and respond safely and sensitively. Therefore the industry plan should also deliver family violence-literate health, welfare, children's and education workforces.

To achieve this, the Victorian Government should work with specialist family violence services, other government and non-government stakeholders, Victoria Police, business, unions, tertiary institutions, professional associations and community leaders to produce and implement the industry plan.

Careful, considered industry planning is essential in developing an effective response to family violence. This will take time, yet we know that family violence is an issue that demands an urgent response. In the final part of the discussion on the way forward, the Commission makes a number of recommendations about important actions that can be taken in the short term to forge stronger relationships; build capability across legal, family violence, universal services and non-family violence specific services; and improve service delivery for both victims and perpetrators.

Overview of the family violence workforce

There are many ways victims of family violence seek help. There are specialist family violence services with expertise in assessing and managing risks and providing support to victims during crisis and beyond. Police and courts respond to immediate safety needs. Universal services that are available to all Victorians—for example, schools, hospitals, health, ambulance and other emergency services—as well as specialist systems such as Child Protection and Integrated Family Services, also work with victims and perpetrators.

While all services have a role in responding to or preventing family violence, the nature of their involvement differs and, therefore, so do the issues in workforce training and industry planning. For victims of family violence the distinctions between universal and specialist services are irrelevant. What they need is a quick, informed and sensitive response to the situation that has resulted in them seeking help.

Specialist family violence services are never going to be able to support every single woman and child who is experiencing violence and nor support every man to change his behaviour who is perpetrating violence. That is just not a realistic expectation of the service, and nor do women always want to go to specialist services. But the focus on managing medium- to high-level risk is the particular and unique role ...¹

Whilst those other services do want to be able to identify and respond to that woman who is sitting in front of them, they don't want to be in control of managing that risk. It's too much for them to do, it's not their professional expertise and they have no desire to manage those high-risk cases where women are at risk of being murdered, and there are particular times and contexts within which it is really important to have a specialist family violence response.²

In evidence, Ms Emily Maguire, Chief Executive Officer of Domestic Violence Resource Centre Victoria, described a tiered approach to mapping roles and competencies in family violence risk assessment.³ Although, her model relates specifically to risk assessment and management it also provides a good starting point for thinking about the competencies each part of the system needs to possess. Ms Maguire identified four tiers of service.

- ▶ Tier 1: specialist family violence and sexual assault services. These are agencies that spend 90 per cent or more of their time responding to women and children who are victims of violence. They have sole responsibility for dealing with medium to high-risk cases on an ongoing basis.⁴ This tier would also include those who work with perpetrators, for example, in men's behaviour change programs. Specialist family violence practitioners and teams may form part of larger organisations that provide a range of services, or they may be stand-alone services. What they have in common as practitioners is that their sole or major focus is on family violence (and/or sexual assault).
- ▶ Tier 2: core support or intervention agencies. These are agencies whose core business is not directly related to family violence but who spend a significant proportion of their time responding to victims or perpetrators of violence. This includes Victoria Police, courts, legal agencies and court services, Corrections Victoria and Child Protection. Child FIRST and Integrated Family Services might also be included in this tier since a significant proportion of the families they work with may be at risk of or are experiencing family violence.⁵
- ▶ Tier 3: mainstream services and non-family violence specific support or intervention agencies. These are agencies whose core business is not family violence but which work in sectors that respond to the impacts of family violence (such as homelessness and the health effects of depression and anxiety) or in sectors where disclosures of violence are more likely to occur. These services are also likely to come into contact with perpetrators, although responding to perpetrators is not their primary function.

Tier 3 services include the health-care system (GPs, community health, hospitals and so on.), drug and alcohol services, housing/accommodation/homelessness services, mental health services, agencies that support financial security (for example, Centrelink), and individuals providing therapeutic services (psychiatrists, psychologists, social workers, counsellors, family therapists, and so on.).⁶

- ▷ Tier 4: general organisations. A range of organisations in the community can support victims of family violence with whom they have regular and extended contact. They may also be able to respond to perpetrators of violence.⁷

Ms Maguire noted that each of these tiers has required competencies and skills. Some of these are common, for example all tiers need to be able to identify early warning signs or indicators of family violence.⁸ However responsibility for action is different in each tier. For example, a specialist family violence practitioner needs to be able to assess and manage risk, including high-risk⁹ and complex needs. In contrast, a health practitioner should have the ability to assess basic family violence risk, know how to get specialist support to help the victim to safety plan and manage risk, and then fulfil their usual role of responding to the health needs of the victim.

The specialist family violence workforce

Specialist family violence services are considered in detail in Chapter 8. This chapter focuses on workforce issues relevant to specialist family violence services.

Specialist family violence services are the services that respond to women and children experiencing family violence. A small number of services also respond to male perpetrators.

As noted, specialist family violence practitioners work primarily with the victims of family violence at medium to high-risk. To do this they need to be able to assess and manage ongoing risk.¹⁰ This is complex and demanding work, which requires a detailed knowledge of the dynamics of family violence, what risk looks like, how to communicate with victims without causing more trauma, and how to help victims develop a detailed plan for their ongoing safety.¹¹

There is a wide range of practice specialties in family violence services. These include legal specialists (such as Women's Legal Service Victoria and the Aboriginal Family Violence Prevention and Legal Service Victoria), children's specialists, bi-cultural specialists and multi-disciplinary services that combine functions. This means that people who work in specialist family violence services are likely to come from a wide range of professions, including law, social work, health promotion, counselling, psychology and other 'helping' professions.

The family violence workforce is predominantly female (98 per cent).¹² This is probably because of the major role women's organisations played in establishing safe places for women, because the majority of services are for women and their children, and because most women who experience family violence are likely to be more comfortable talking to other women, rather than men.¹³ Some specialist family violence services have obtained exemptions under Victoria's equal opportunity legislation to employ only women.¹⁴

A 2007 workforce survey of 845 employees in the community-managed housing and support sector found that, compared with other parts of the sector, specialist family violence workers are substantially older, with almost a third of workers between 45 and 54 years of age. Of the 115 specialist family violence workers surveyed, only 26 per cent were under 35 years.¹⁵ Over half of the family violence workers worked part time (56 per cent).¹⁶

Capabilities and competencies of specialist family violence practitioners

Domestic Violence Victoria drew the Commission's attention to the diversity of skills that specialist family violence practitioners require.¹⁷ While the skills vary between response and prevention work, and between different agencies and services, workers generally need technical expertise in the area in which they work, and a complex set of high-level communication, organisation and management skills.

Family violence workers need to respond appropriately to clients who are traumatised; work with children who have witnessed and/or experienced violence; cooperate with other agencies to integrate their responses across regions or coordinate the package of services available to a victim; engage and develop protocols with a broad range of stakeholders outside the sector, including the health-care system, courts and police; network and cooperate with partner agencies, including those providing secondary consultation; support women through the court system with a working knowledge of relevant legislation and judicial processes; and, occasionally give evidence in court.¹⁸

It was submitted that relevant competencies are likely to include empathy, listening and communication skills, negotiation and advocacy.¹⁹ Many practitioners also contribute to policy making and practice reform in partnership with courts, police and other agencies.²⁰ Because funds are scarce many also have marketing, promotion and fundraising skills, and the budget and financial acumen needed to plan resources, account for and acquit funding, and run a service. Managing a service also requires good people management skills.

Prevention specialisation

The Commission heard that family violence prevention work is also highly skilled and may draw on some of these competencies. Prevention practitioners, however, have specific expertise that differs from that of those who work in family violence response, and their practice is therefore specialist in its own distinct way.

The Commission heard that much of the Victorian prevention specialisation has been developed using a public health lens.²¹ Prevention practitioners such as women's health services promote organisation and systems change and conduct health promotion and public health initiatives. 'This is because effective primary prevention strategy relies upon influencing public and organisational policy, targeting community engagement and action, and reorienting systems'.²²

Challenges

This section examines challenges faced by specialist family violence services. The Commission notes that some of these challenges—for example vicarious trauma and workplace stress—are also concerns for other workers who respond to family violence, among them police, magistrates and court staff and child protection workers.

A number of major workforce issues emerged in evidence. First, there may be gaps in the training and skills of people entering the specialist family violence sector. Secondly, the Commission consistently heard that services face major problems attracting and retaining staff because of:

- ▷ low remuneration
- ▷ the part-time nature of much of the work
- ▷ instability in employment due to short-term contracts and funding insecurity
- ▷ limited career development opportunities
- ▷ a lack of ongoing professional development
- ▷ vicarious trauma and stress.

Thirdly, there was concern that these problems are not being addressed through any systematic process of workforce planning and development for the sector.

Workforce skills

Information about the qualifications profile of the specialist family violence sector is not centrally collected. A 2007 KPMG report, however, identified higher rates of non-graduate qualifications in family violence services compared with other community-managed housing and support services.²³

At the time of the KPMG report, of 115 specialist family violence workers surveyed, 68 per cent held a university degree, 12 per cent had a vocational certificate and 20 per cent had secondary school completion as their highest qualification. The most common disciplines of higher education were welfare (27 per cent), social work and community development (both 24 per cent). Thirteen per cent had a management qualification.²⁴

There are no mandatory qualifications for employees who provide specialist family violence services to victims. It is typical for advertised positions to require a relevant tertiary or vocational qualification. This is consistent with the 2007 KPMG findings on qualification profiles.²⁵

The Chisholm Institute is concerned that the national vocational training competencies for family violence work are inadequate.²⁶

Primarily what you will find in the specialist sector is that you need a certificate in community development or community services, some will be social work trained, but there are also agencies who are willing to accept, given the history of this work and given there used to be in the '70s a significant focus on ensuring that the women who were working in this space were victims/survivors themselves, which is not so much the case now, but that was very much where it came from. Given that previous history, there are also services who are willing to accept history of work in the sector as the qualification for working. But there is no kind of consistent standard or framework, which is a significant gap.²⁷

As noted elsewhere in this report, the Commission heard evidence that family violence services do not always have the understanding and sensitivity necessary to respond to the diverse range of people who need their assistance. This can include older people, women with disabilities, lesbian, gay, bisexual, transgender and intersex Victorians, those from culturally and linguistically diverse communities, children and young people, and Aboriginal and Torres Strait Islander peoples.²⁸ These communities also face significant barriers accessing other parts of the family violence system, including police and the courts, as described in Chapters 14 and 16.

Similarly, building capability to deliver culturally appropriate services to Aboriginal and Torres Strait Islander peoples who choose to access mainstream services was a strong theme in submissions,²⁹ along with calls for strategic investment to develop the Aboriginal and Torres Strait Islander workforce in family violence, including in leadership positions.³⁰

Domestic Violence Victoria reported its members' concerns that new social work graduates are inadequately prepared for work in the family violence sector.³¹ The Chisholm Institute noted that the tertiary education sector's approach to family violence qualifications was emerging and inconsistent. Only one institution offers a family violence-specific qualification in Victoria (and it focuses solely on perpetrator programs).³²

Other family violence-related subjects are dispersed through courses such as social work, public health, politics and law.³³ Only some social work degrees have family violence as a mandatory subject.³⁴ Deakin University, for example, offers a unit, Addressing Violence and Abuse, as part of its Master of Social Work professionally qualifying program. RMIT University has a similar elective unit as part of its Bachelor of Social Work program, and since 2014, Berry Street's Family Violence Service and Take Two program have been providing an elective to the La Trobe University Social Work program, providing specialist contemporary knowledge on family violence and trauma.³⁵ The University of Melbourne has postgraduate social work subjects in Assessing Risk and Vulnerability and Legal and Ethical Contexts of Practice.³⁶

Attracting and retaining staff

Domestic Violence Victoria reported that its member agencies are 'having increasing difficulty recruiting and retaining staff' and that services are 'now considering candidates for positions who would not have been deemed appropriately qualified or skilled as recently as three years ago'.³⁷

Similarly the peak body for men's behaviour change programs, No To Violence, has identified major problems recruiting and keeping quality staff. In 2010 it surveyed male family violence workers anonymously on issues related to pay and conditions.³⁸ The survey found a 'sheer lack of suitably qualified applicants' for facilitator positions—largely due to poor pay, particularly since most of the group work is conducted at night.³⁹

Another provider, Bethany Community Support, noted that current program funding 'does not acknowledge the highly specialist work that is required to work with men who use violence and the need for staff to be equipped, trained and highly supported to do this work'.⁴⁰

The Commission heard that these workforce challenges are acute in Aboriginal organisations and as a result the Aboriginal community controlled sector 'is quite variable in terms of the capacity across the state'.⁴¹

Retention and turnover

Retention and turnover was a common theme in submissions. As noted earlier, there is a higher proportion of older employees in the family violence workforce than in the general workforce. The Australian Services Union noted that this ageing workforce 'coupled with young women coming into the sector and then leaving after relatively short periods of time due to high cost of living, low pay, poor conditions and workplace stress is leading to significant brain drain in this highly specialised sector'.⁴²

A 2014 Australian Services Union survey found that 33 per cent of managers in family violence services reported a problem in retaining high-quality staff 'all the time', compared with other parts of community services where the rate was 17 per cent.⁴³

In 2007 the average turnover rate for the community-managed housing and support workforce (which includes specialist family violence services) was 25 per cent. Staff working in the family violence sector were most likely to leave their existing workplace in the following two years, with 39 per cent of the 115 workers surveyed indicating that this was their intention. Some of these workers intended to move to another employer in the sector, but 26 per cent intended to leave the sector in the next two years.⁴⁴

Problems in retaining staff were echoed by men's behaviour change program providers, who submitted that working with men who use violence is challenging and demanding and there is high staff 'burnout' and turnover.⁴⁵ Family Life Service Centre indicated that staff would extend themselves to meet demand and this contributed to 'workforce burn out and churn, irrespective of the workplace management and supervision support'.⁴⁶ It added, 'turning people in need away is not something which sits comfortably with our vocationally dedicated people. This pressure of demand, in turn [affects] service system stability'.⁴⁷

Remuneration

In 2012 Fair Work Australia (now the Fair Work Commission) made an Equal Remuneration Order for the social, community and disability services industry throughout Australia.⁴⁸ This order resulted in wage increases of between 23 and 45 per cent to be phased in over eight years.⁴⁹ While this change has been welcomed by the specialist family violence sector, adequate remuneration remains a significant issue.⁵⁰ The Australian Services Union submitted:

Since the equal remuneration order, the ASU has seen many instances of employers re-classifying roles in the family violence sector in order to avoid paying higher wages that the order requires. The outcome has been a de-skilling of the work such that lower qualified staff with less experience are delivering work, or employees are continuing to work at higher levels but "accepting" lower levels of pay for it.⁵¹

Information on the workforce and remuneration profile of the specialist family violence sector is not centrally collected and the Commission found it difficult to assess current remuneration patterns. Details of each service provider's cost structure, workforce profile and operating expenses are not collected by the Department of Health and Human Services.⁵²

Organisations are funded for the 'delivery of specific activity output targets'.⁵³ These refer to the episodes of support to be delivered rather than specifying the number of staff at particular grades or employee classifications. According to the Department of Health and Human Services, funding represents a reasonable cost of delivering services 'across a mix of agency sizes, structures and locations'.⁵⁴ For example, specialist family violence outreach and crisis support accommodation programs use a fixed funding base that increases annually through the application of non-government organisation indexation and increases ordered through the equal remuneration case just mentioned.⁵⁵

DHHS was, however, able to provide funding model workforce profiles for the Family Violence Counselling Services Program. Using this information the Commission compared the salary assumptions that inform funding levels for family violence counselling services with other human services working with families. This analysis is, however, based on only one of the program categories the department has for family violence and 'the actual mix of resources applied by agencies to deliver their agreed targets varies across service providers for the provision of an identical activity target, and could cover a diverse range of costs at the discretion of each service provider'.⁵⁶

The analysis showed that there are anomalies between the salary assumptions built into funding models between specialist family violence services and Integrated Family Services. Broadly, the funding model assumes that family violence counselling caseworkers are paid at least one award classification level below the majority of family services caseworkers (where there is a range of salaries).⁵⁷

Similarly, team leaders in family violence counselling services are assumed to be two employee classification levels below team leaders in family services.⁵⁸ Anomalies also exist between assumed salary grades in the funding model and remuneration of child protection practitioners.⁵⁹

Trade unions told the Commission that most specialist family violence workforce members are paid at the award rate rather than above award.⁶⁰ The 2007 KPMG report noted that most specialist family violence services provide salary packaging to employees.⁶¹

In a survey of 515 members across 106 workplaces, the Australian Services Union also found that 58 per cent of employees regularly worked more than their contracted hours (unpaid), with 88 per cent of these working up to an additional six hours a week.⁶² This is consistent with the KPMG survey which found that over 30 per cent of the 115 specialist family violence workers surveyed reported working more than 15 per cent of their paid hours as unpaid work each week.⁶³

Workers in men's behaviour change programs face similar workforce members issues as those women's family violence services. A survey of 28 men's behaviour change providers conducted by No To Violence in 2010 found that:

- ▷ The average hourly rate paid to workers within standard business hours was \$28.35.
- ▷ The rate for out-of-hours work—which is when most group sessions are held—was \$31.28 for non-casual workers and \$33.12 for casual workers. No To Violence found that some casual out-of-hours workers were paid below the Social and Community Service Award (now the Social, Community, Home Care and Disability Services Industry Award 2010).
- ▷ Part-time positions are not attractive to potential facilitators, not all applicants are able to work nights and an 'exceptionally high commitment' was required of staff to do male family violence work well.⁶⁴

Career paths and professional development

The Commission heard evidence that professional development in the sector appears piecemeal and fragmented, with no requirement for continuing professional development to maintain registration or accreditation.⁶⁵ An exception to this is men's behaviour change contact workers and facilitators, who are required to attend at least four professional development activities each year.⁶⁶

Access to training was described as ad hoc, typically consisting of brief, one-off programs. The Commission was told that agencies are not given adequate funding for training and because agencies do not have the funding and staff to backfill positions, training is very likely to be deferred by agencies dealing with a crisis.⁶⁷

There are specific barriers for rural and regional practitioners. Women's Health Loddon Mallee noted that 'it is vitally important for workers from small communities and small organisations to be actively supported to attend conferences, forums and professional development' since these 'build, knowledge, commitment and collaboration'.⁶⁸

In its submission, Domestic Violence Resource Centre Victoria noted that while there is an increased demand for training there is no sustainable strategy for ongoing delivery.⁶⁹ DVRCV recommended the development of a strategy that incorporates capability benchmarks, targets participants' skills and experiences and allocates sufficient training time, stating that ongoing and consistent funding is essential.⁷⁰ Ms Maguire, stated:

I think supporting practice is the particular key. I think delivering training is one useful function, and I think it is a function—that is something that [DVRCV] has been playing a role in for a number of years now. But training is not the only component of workforce development, and I think ongoing practice support and having a well-resourced system that allows professionals to have that time away from case management and to do that level of support is very useful.⁷¹

The concept of mentoring and supervision, as part of professional development, was a consistent theme in evidence. Ms Ilana Jaffe, Project Coordinator at Inner North West Primary Care Partnership noted:

The main thing I would talk about would be supervision, because it's great just to send a worker off to training, but if that's not then incorporated into your day-to-day practice and monitored and critical feedback provided if it is not managed well, then there's no point in training, to be honest. The policies and procedures of organisations and the frameworks of organisations need to incorporate all of those elements.⁷²

The Australia Services Union submitted that giving people opportunities to lead is very important:

There are limited opportunities for leadership roles in a non-management capacity in this sector. This leads to low morale and highly experienced employees leaving the sector.⁷³

In other areas of specialist expertise there are more programs to support front-line workers—for example, in the Department of Health and Human Services, the Office of Professional Practice supports the child protection workforce. Ms Tracy Beaton, Chief Practitioner and Director of the Office of Professional Practice, DHHS, gave some examples of their work:

We do a number of things which is about supporting front-line practitioners. So we might do complex case reviews. We might be called in to have a look at something. There might be some themes happening in a division and they might want the office to develop some resource and work alongside people to look at that. We do a lot of reflective practice, so where it is that we are trying to critically analyse what it is that's happened. For example, we might put a genogram up, have a look back through the family, how people understand that, is there anything missing, what else could we have looked at, where else might we consider we need to go with this family, what are the options for this family and so on, to large-scale trainings ...⁷⁴

The Child Protection Operating Model, which significantly restructured the child protection workforce, commenced on 5 November 2012.⁷⁵ It saw the introduction of advanced practice roles at the divisional level, with divisional teams comprising child protection practitioners, advanced child protection practitioners, senior child protection practitioners, team managers, practice leaders and principal practitioners.

The principle applied was that 'more experienced practitioners were given carriage of the most complex cases and increased support was made available in each team for less experienced practitioners'.⁷⁶

The Commission was told that the benefits of divisional roles that are aligned to differing levels of experience include that they provide for a 'systemic understanding of the workforce needs to support improved practice'.⁷⁷ The advanced practice roles have been credited with increasing retention rates among child/protection practitioners.⁷⁸

Workplace stress and vicarious trauma

Domestic Violence Victoria noted that family violence work is stressful, emotional and fatiguing.⁷⁹ This stress is exacerbated by difficulties accessing services and resources for their clients, lack of time to respond to the complexities of client needs, and limited access to supervision.⁸⁰

The majority of people working in this sector do so because of their personal commitment to address violence against women and this increases their personal investment in the work they do with individual women. This increases the risk of vicarious trauma for specialist family violence workers and the need for organisational support and professional supervision.⁸¹

These views are consistent with previous studies that found that personal commitment to helping others and human rights are prime motivators for seeking employment in family violence services.⁸² The Commission was told increasing workloads, limited resources and marginalisation by other systems demotivate workers in the sector.⁸³ The impact of these constraints on employee wellbeing and organisational health was also highlighted in submissions:

There is a huge demand on our system, continually and with very little or no reprieve ... Our intake workers are faced with the decision every day to triage the 2 most serious cases out of the 15 calls that we could work with which [we] receive every week. Additionally, we receive many calls each day which don't make it past the Intake desk and either have to be refused any service or receive a minimum service due to 'not being serious enough' ... The workers feel they can't do the job properly ... The workers constantly listen to stories of horrific trauma and this translates into compassion fatigue ... They are constantly frustrated due to broken systems, and feel hopeless and helpless in their role. Managers continually feel over burdened by inability to support staff adequately.⁸⁴

Vicarious trauma was a consistent theme in evidence across both family violence services and justice responses, including courts and police.⁸⁵ This was echoed by providers of men's behaviour change programs. For example, Bethany Community Care reported that staff were predisposed to suffer from vicarious trauma as a result of working with men who use violence.⁸⁶

It was recognised that providing 'counselling, debriefing and other support programs builds resilience, improves emotional wellbeing and can address secondary or vicarious trauma'.⁸⁷ Workers in other fields such as sexual assault, social work and counselling often receive regular clinical supervision and debriefing.⁸⁸ It was submitted, however, that this is not the case in family violence services. Gippsland Centre Against Sexual Assault noted this contrast:

We notice burnout as a significant factor in the Family Violence sector, this impacts service delivery. In contrast sexual assault support services (CASA's) have relatively high retention rates whilst managing material that correlates to the most violent end of the violence continuum (Braaf, 2011; Australian Women's Coalition, 2010). I believe the CASA's have needed to develop strong clinical governance and structures that support staff wellbeing as trauma is the core business. Over time CASAs have experienced and develop strategies for prevention and management of vicarious trauma and organisational trauma.⁸⁹

The Magistrates' Court of Victoria also submitted that 'consideration needs to be given to the cumulative impact of family violence on those who work in this area and how to manage this on an ongoing basis'.⁹⁰ In addition to external counselling and support through the Employee Assistance Program and critical incident debriefing, Court Services Victoria has started a vicarious trauma project, involving representatives from across the jurisdictions.⁹¹

Other workplace safety issues relate to the nature of the work. It was reported that family violence outreach workers generally work alone, particularly in rural and regional settings. Services reported that family violence workers are often subject to abuse and aggression in the course of their work, including when supporting women and children at court.⁹² The Australian Services Union reported that among its members:

Limited resources means that employees are forced to “choose” unsafe work practices due to resource shortages such as driving their own cars, on their own, to out-postings which are often dangerous. They may be faced by threats or actual violence by the perpetrator of the client they are supporting.⁹³

Workforce planning and development

Industry and employee bodies argued that a comprehensive workforce strategy for the family violence sector is needed to address workforce concerns. The lack of a workforce strategy was lamented by Barwon Area Integrated Family Violence Committee, for example. The committee reflected that a key plank of the mid-2000 family violence reforms was specialisation as a strategy for achieving best practice. However, this was not accompanied by adequate investment or a comprehensive workforce development strategy, so ‘the intended benefits of a specialist response have not been fully realised’.⁹⁴

Domestic Violence Victoria and others similarly called for a workforce strategy.⁹⁵ No To Violence stated that ‘the lack of a workforce development strategy for specialist men’s family violence practitioners, including bicultural workers, constrains the scope and confidence that stakeholders have in this work’.⁹⁶

Domestic Violence Resource Centre Victoria raised concerns about the lack of training requirements and minimum standards of competency for different professionals responding to family violence.⁹⁷ It also recommended that the Victorian Government develop a comprehensive workforce strategy to improve consistency in Victoria’s family violence service system.⁹⁸

The supporters of such a strategy argued that it should be comprehensive and inclusive. For example, the Australian Services Union—Victorian and Tasmanian Authorities and Services Branch recommended that the strategy be facilitated and supported by the Victorian Government and include:

- (a) Training and development, including strategies to address current barriers faced by employees to participate in training and development.
- (b) Strategies to improve attraction, recruitment and selection of staff.
- (c) Developing case studies for best practice conditions of employment.
- (d) Resources and frame works for improved support and supervision.
- (e) Retention strategies for existing experienced staff.
- (f) Career development and pathways.⁹⁹

Among other elements of a comprehensive workforce strategy that were identified in submissions were:

- ▷ mandatory units on understanding violence against women and family violence as part of the core curriculum for social work, psychology, education, nursing and other relevant degrees transferring existing professional development and training courses to meet certificate, diploma and bachelor level qualification requirements
- ▷ attraction and recruitment of suitably qualified graduates and identifying strategies to ensure that working in the family violence sector is seen as a desirable career choice
- ▷ peer support and mentoring structures
- ▷ evaluation to assess the effect of workforce development strategies on work practice and service outcomes.¹⁰⁰

Domestic Violence Resource Centre Victoria stated that a workforce strategy needs to incorporate and review the Family Violence Risk Assessment and Risk Management Framework (also known as the Common Risk Assessment Framework or the CRAF), including developing family violence risk assessment competency benchmarks to 'identify core vocational competencies required across sectors in relation to the operation of risk assessment, detailing the levels of capability required depending on service or sectors involved, or the nature of service delivery'.¹⁰¹ In addition to family violence specialist services DVRCV identified statutory agencies; courts, judiciary and legal services; and other sectors that regularly work with clients experiencing family violence (such as maternal and child health, homelessness, mental health and hospital staff) as target groups for such benchmarking.¹⁰²

The Victorian Government has recognised the need for such a strategy in the past. The 2007 KPMG survey of the community-managed housing and support sector, including family violence services, was commissioned by the (then) Department of Human Services as the first step in the 'development of a workforce strategy to improve the qualifications, skills and career pathways of workers in the sector'.¹⁰³ The KPMG survey was part of an 'overall strategy to develop an industry plan for the community-managed housing and support sector,' which received \$2.1 million in funding over three years.¹⁰⁴ To the Commission's knowledge, however, the workforce strategy and associated plan were not produced.

Supporters of a comprehensive workforce strategy also argued that efforts to do with workforce planning and development must address current and future requirements of workforce sectors such as prevention practitioners.¹⁰⁵ The submission from nine leading organisations noted:

The current 'demand' for initiatives to prevent violence against women – from sporting clubs, schools, workplaces, local governments and other sectors – greatly exceeds 'supply' of an adequately skilled workforce that is capable of designing, delivering and monitoring effective and safe interventions. Significant investment in workforce and organisational development and capacity building is required to meet existing demand safely and effectively, and essential if we are to expand the reach of current primary prevention activities across Victoria.¹⁰⁶

Specific client groups identified included older people; women with disabilities; lesbian, gay, bisexual, transgender and intersex Victorians; those from culturally and linguistically diverse communities; children and young people; and Aboriginal and Torres Strait Islander peoples. Drummond Street Services recommended:

A defined and specific workforce training and capacity building strategy for LGBTIQ sensitivity practices which includes; the legal profession, counselling professionals, family dispute resolution practitioners, women's refuge staff and the homelessness sector. These professional groups are the most likely to intersect with families experiencing family violence as a result they need to improve their ability to respond to the emotional, psychological and physical needs of families at immediate risk of family violence.¹⁰⁷

The importance of any future workforce development strategy incorporating the specific needs of rural, regional and remote Victoria was also stressed.¹⁰⁸

Police, courts and legal services

Victoria Police

Specialised education and training are essential for effective police responses to family violence.¹⁰⁹ The evidence the Commission received on recent advancements in police training and current education and training arrangements is discussed in Chapter 14. Briefly, many submissions and participants in community consultations called for improved family violence training for police in relation to:

- ▷ understanding the nature and types of family violence and the harms it causes¹¹⁰
- ▷ identifying the primary aggressor¹¹¹
- ▷ understanding and sensitively responding to the needs of all population groups including:
 - ▷ people experiencing elder abuse¹¹²
 - ▷ culturally and linguistically diverse populations¹¹³
 - ▷ people with mental health or other disabilities¹¹⁴
 - ▷ the lesbian, gay, bisexual, transgender and intersex communities.¹¹⁵

The 2013 Review of the Victoria Police Code of Practice for the Investigation of Family Violence noted that 'only a limited amount of police practice can be taught through desk-based or formal learning' and that 'on-the-job, practical application is by far the most important element to build member confidence in attending incidents'.¹¹⁶ It further noted that supervision is critical to consistent and quality police practice.¹¹⁷

Courts

Courts are considered in detail in Chapter 16. The present chapter focuses on workforce issues relevant to the Magistrates' Court of Victoria.

In Chapter 16, the Commission described the role of the courts, and the practitioners who work in that setting. Submissions and consultations also discussed the training available to people working in the courts system; some of the initiatives to improve knowledge and practice around family violence by judicial members and court staff; and victims' perspectives on their experiences with that system. This is described below.

The Commission notes that, although family violence accounts for a sizeable proportion of court workloads, the majority of magistrates, registrars and court support staff are not specialised and work across all of the Magistrates' Court's jurisdictions. There are, however, some specialist positions in the Family Violence Court Division (at Ballarat and Heidelberg courts) and the Specialist Family Violence Services courts.

Experiences with the Magistrates' Court

Differing views were expressed about the attitudes, knowledge and skills of magistrates in relation to family violence. Women's Legal Service Victoria noted:

Magistrate interaction with victims can have a real impact on whether victims feel empowered or disempowered in the court process. Consistency in court craft and decision-making varies across the state.¹¹⁸

The Commission was told that, while some magistrates understand the dynamics of family violence, others either do not have sufficient experience in family violence matters or appear not to understand its features or its impact on victims.¹¹⁹ Research has referred to a 'diversity deficit' among Victorian magistrates and suggested that 'greater diversity in the magistracy is necessary to maintain community confidence'.¹²⁰ Submissions also noted that family violence specialisation and training for magistrates has had a positive impact:

There has been a notable shift in our region of late in the practice and commentary or reasons provided by Magistrates. Some have cited family violence training they have been provided with. Examples are Magistrate's [sic] increased sensitivity to women who may be being coerced into revoking orders, or respondents citing lack of contact with their children as to motivation of an applicant despite no efforts being made by a respondent to obtain contact by consent or court order.¹²¹

A number of submissions raised concerns about the ability of magistrates to understand and respond to diverse applicants and respondents in family violence matters, such as Aboriginal and Torres Strait Islander peoples, lesbian, gay, bisexual, transgender and intersex people, older people and people with disabilities.¹²² This issue has gained increasing prominence internationally and in Australia as the value of education to make the judiciary more aware of the barriers faced by victims from these groups is acknowledged.¹²³

In the ANROWS (Australia's National Research Organisation for Women's Safety) survey described shortly, the majority of judicial officers felt they understood the dynamics of family violence, including its impact on people of different cultures.¹²⁴

Judicial education

The need for judicial education on family violence was a theme in submissions and has been highlighted in recent Australian reports. For example, the joint Australian and New South Wales Law Reform Commissions' report *Family Violence—A National Legal Response* included recommendations for the family court system and magistrates' courts.¹²⁵

These issues were also explored in a state-of-knowledge paper prepared by ANROWS.¹²⁶ This included a voluntary survey of Queensland and Victorian magistrates. Thirty-eight participants were from Victoria. Across all participants 48.5 per cent said their primary work was family violence matters.¹²⁷ The survey found that, of the 47 participants in Queensland and Victoria:

- ▷ 96 per cent agreed or strongly agreed that they understood the dynamics of domestic and family violence
- ▷ 74.5 per cent agreed or strongly agreed that they were confident that they were able to engage and convey key messages to perpetrators in their courtrooms
- ▷ 72 per cent agreed or strongly agreed that they felt confident their decisions in court help make children safer
- ▷ 77 per cent agreed or strongly agreed that they understood family violence impacts for people from different cultures.¹²⁸

Of the 40 participants who responded to the relevant question, almost one in three agreed or strongly agreed that magistrates in their jurisdictions receive sufficient training in domestic and family violence to make informed decisions. Approximately 38 per cent had not had any family violence training in the previous year. Eleven participants had one session and 14 had between two and five sessions. Of the 39 participants who responded to questions on the constraints to taking up training, 28.5 per cent agreed or strongly agreed that time constraints prevented them from participating in domestic and family violence training, and 23 per cent agreed or strongly agreed that location was a constraint.¹²⁹

The Judicial College of Victoria has published and periodically updates the *Family Violence Bench Book*, a dedicated resource for magistrates and other judicial officers on family violence-related issues.¹³⁰ In its submission JCV recommended that funding be made available to update this resource.¹³¹ During this Commission the Commonwealth Government also announced funding for a national Family Violence Bench Book for judges across Australia, as recommended by the Australian Law Reform Commission and the NSW Law Reform Commission.¹³² This online resource will cover civil and criminal laws in federal, state and territory jurisdictions.¹³³ It is being developed by the Australasian Institute of Judicial Administration and the University of Queensland and is expected to be available in June 2017.¹³⁴

In 2014 JCV began a specialised education project with the Magistrates' Court of Victoria to enhance magistrates' professional development. The 'program aims to deliver best practice education for Victorian magistrates in the hearing, determining and sentencing of family violence matters'.¹³⁵ In that year the JCV conducted a family violence program for magistrates, which included a specific session on the CRAF. Eighty-four magistrates attended, including six magistrates who sit exclusively in the Children's Court.¹³⁶

The Judicial College Victoria 2016 prospectus includes programs on family violence, such as a two-day program examining 'the challenges for magistrates confronting family violence matters in court'.¹³⁷ The program will cover causes of violence against women; how to increase the safety of women and children (in-depth risk assessment skills training); perpetrator accountability in the courtroom; men's behaviour change programs; cultural issues confronting people from immigrant and refugee backgrounds, family violence in Aboriginal communities; women with disabilities; and the victim's response to trauma (mental health outcomes, courtroom presentation). Other programs include a specific focus on Aboriginal peoples and family violence in the Koori Twilight Series.¹³⁸

In addition, the Magistrates' Court's internal professional development consists of initial one-on-one induction and mentoring for all new magistrates, based on that person's professional experience—followed by regular whole-of-court professional development days on 'aspects of family violence theory, practice, legislative and legal developments'.¹³⁹

The Magistrates' Court of Victoria and Children's Court of Victoria submission explained the role of specialist family violence magistrates noting that 'having specially trained and assigned magistrates has strengthened the leadership across the MCV in the management of family violence matters'.¹⁴⁰

Qualifications and training for other magistrates' court staff

In its submission the Judicial College of Victoria proposed that a 'core' family violence curriculum relevant to judicial officers from all courts, supplemented by jurisdiction-specific education on the issues particular to each court, be developed. In addition, it proposed a Judicial Research Hub to support court-led research into family violence issues across the courts system—to support 'ongoing judicial education on family violence and contribute to public policy responses to family violence'.¹⁴¹ The Magistrates' and Children's Courts endorsed these recommendations.¹⁴²

The Magistrates' and Children's Courts also recommended funding to continue the development of a comprehensive family violence learning and development package, targeted to match the roles and functions of court registry and support staff, and support the professional development of state judicial officers, court registry and support staff in family law, particularly in the context of family violence and child protection. Statewide access to counselling, debriefing and support to ensure the wellbeing of judicial officers and court staff were recommended.¹⁴³

Registrars

Registrars of the Magistrates' Court perform a wide range of tasks. These include in-court (bench clerk) duties, client inquiries (telephone and counter), and back-of-office administrative responsibilities.¹⁴⁴ When a person attends the court to make a family violence intervention order application the registrar can assist them with completing the application form. In specialist courts, family violence registrars are employed and work 'alongside the judiciary, court registrars, support workers, police, legal services and other support services to effectively manage cases involving victims and perpetrators of family violence'.¹⁴⁵

The 2015 Landscapes of Violence report found positive and negative experiences with registrars and noted with concern wide variations in practice because the ‘encounter with the registrar can shape women’s subsequent experiences of court, particularly if the registrar is the first stranger with whom they discuss their abuse.’¹⁴⁶

In the Commission’s community consultations, registrars were described as ‘a critical point where a lot of extra support could be added’.¹⁴⁷ The Commission also heard about the value of professional support and debriefing for registrars including due to the risk of vicarious trauma that can affect staff across the family violence system described above. Ms Karen Field, Specialist Family Violence Service Registrar at Sunshine Magistrates’ Court stated:

I think that better support services (such as more supervision and debriefing) for registrars should be implemented. This professional support is given to (for example) applicant support workers, but nothing is provided to the registry staff ... I think there is a risk that staff can suffer vicarious trauma if they are not properly supported, with less experienced staff members particularly at risk.¹⁴⁸

Dedicated family violence registrars work at the specialist family violence service and family violence division courts. They were described as the ‘linchpin’ of these courts and specialised induction programs are provided for these staff.¹⁴⁹ Many submissions focused on the benefits of specialist family violence registrars and recommended they be expanded to more magistrates’ courts.¹⁵⁰

Registrars are recruited and trained through the Magistrates’ Court Trainee Court Registrar program, which is open to people who ‘have VCE/HSC (or equivalent), tertiary course or work experience in a relevant field’.¹⁵¹ Participants complete a Certificate in Court Services, which is delivered in-house by Court Services Victoria.¹⁵² Approximately 40 to 50 trainee court registrars complete the certificate each year.¹⁵³

CRAF training was provided to all magistrate court registrars on the commencement of the *Family Violence Protection Act 2008 (Vic)*.¹⁵⁴ The current Certificate in Court Services includes a specific family violence subject on providing crisis intervention and support for those experiencing domestic and family violence, which is inclusive of the CRAF.¹⁵⁵ There are also family violence components in the workplace-based subjects for staff working in the family violence intervention order registry—which includes bench clerking in intervention order proceedings, processing court orders, making appointments for intervention orders, observing the serving of documents, processing notices, providing advice to parties and observing interviews between an applicant and a registrar.¹⁵⁶

After completing this two-year program, trainees may be appointed as Qualified Court Registrars.¹⁵⁷ Non-specialist registrars are Victoria Public Service grade 3 positions.¹⁵⁸ Specialist family violence registrars are Victorian Public Service grade 4 positions.¹⁵⁹ In Chapter 16 the Commission makes recommendations regarding the role and qualifications of court staff.

Applicant and respondent workers

At the time of writing there are nine applicant support workers and seven respondent support workers in magistrates’ courts. These roles are VPS 3 positions. They are being extended to every headquarter court and Moorabbin Magistrates’ Court.¹⁶⁰ Workers in these roles must have ‘relevant qualifications in welfare, social work, psychology, behavioural sciences, or other related field, and experience working with people who have perpetrated family violence’.¹⁶¹ However, no specific qualification is mandated.

All support workers are required to complete Domestic Violence Resource Centre Victoria’s CRAF training when they commence their roles.¹⁶²

The Magistrates’ Court of Victoria advised the Commission that they are finalising a comprehensive induction program for these positions. Applicant support workers will be also trained in conducting risk assessments and advocacy. Respondent support workers training will include engaging respondents in conversation, conducting eligibility assessments and explaining the consequences of breaching a family violence intervention order.¹⁶³

The Family Violence Programs and Initiatives Unit at the William Cooper Justice Centre (part of the Magistrates' Court of Victoria) is developing best practice standards and guidelines for the expansion of applicant and respondent workers, including a training schedule and plan for family violence registrars and support workers.¹⁶⁴

Other staff at all the magistrates' courts (such as administrative and support staff, and coordinators/listing staff) receive information about the definition of family violence, purpose of the Family Violence Protection Act, common terms, relationships covered by the Act, nature of intervention orders and the court's response to family violence as part of their induction.¹⁶⁵ The Magistrates' Court of Victoria's Family Violence Unit is working together with its Learning and Development Unit to develop a general training package for all staff across the court, including refresher training.¹⁶⁶

Legal practitioners

Legal practitioners are considered in detail in Chapter 16. This chapter focuses on workforce issues relevant to them.

Experiences with legal practitioners

Victims of family violence frequently described having negative experiences when dealing with the legal profession. The Commission was told that many lawyers displayed a limited understanding of the dynamics of family violence, which compounded victim trauma. Victims said:

I have been humiliated, degraded and been in tears all because of a solicitor that does not understand what family violence is and a system that hasn't even got any common sense.¹⁶⁷

He was a bully. He was ignorant of family violence and gave me misinformation and bad, bad, bad advice ... I felt like he didn't listen or understand my concerns ...¹⁶⁸

The Commission heard that:

- ▷ processes and procedures were not adequately explained to victims¹⁶⁹
- ▷ lawyers questioned the veracity of their client's allegations against perpetrators¹⁷⁰
- ▷ women were encouraged by their lawyers to accept terms that were not in their best interests¹⁷¹

There were however good experiences:

This lawyer provided a range of assistance which helped my daughter feel much more confident and safer. She referred her for some property law assistance, to counselling, made [an] application for victims of crime compensation and compiled a case (which was successful) to argue for a 5 year intervention order.¹⁷²

The need for family violence training

The need for lawyers to have family violence training was identified by the Law Institute of Victoria as important, particularly for lawyers in family law and child protection.¹⁷³ It was also suggested by Victoria Legal Aid that training more broadly would assist to change cultural in the profession:

Just as in the sexual assault space, training that also addresses cultural change and an understanding of the broader context of family violence offending will ensure all lawyers are sensitive to the complex and varied presentation of family violence victims and accused.¹⁷⁴

The Federation of Community Legal Centres raised concerns about the expertise of private lawyers who may be engaged in rural areas where there is greater potential for the body that provides duty lawyer services (a community legal centre or Victoria Legal Aid) to have a conflict in representing a particular person so that the person cannot be assisted by them.¹⁷⁵ It recommended that specialist family violence legal services be funded to train private lawyers, including in risk assessment and in legal issues arising from family violence such as family law, credit and debt and homelessness.¹⁷⁶

The Commission heard that family violence ‘has not featured as part of the formal training of lawyers at all’.¹⁷⁷ The Commission heard that family violence is not widely offered as a stand-alone subject in law schools and is not mandatory for practising lawyers. Instead the topic is likely to be dispersed across a number of subjects such as family law, criminal law and children and the law. Some law schools offer specific subjects—for example Monash University offers an externship in a family violence legal clinic and RMIT Law has a postgraduate course unit on working with family violence contexts within justice environments.¹⁷⁸

Practical Legal Training

In Victoria, once a person has graduated from university with either a Bachelor of Law or Juris Doctor they are required to undertake a Graduate Diploma of Legal Practice or legal traineeship, to enable them to apply for a legal practising certificate.¹⁷⁹ Legal traineeships or graduate programs are offered by private firms across the state where graduates are exposed to different areas of the law prior to specialising in a particular practice area.¹⁸⁰ The primary providers of the GDLP in Victoria are Australian National University, Leo Cussen Centre for Law and College of Law.

The College of Law program is a Graduate Diploma in Practical Legal Training and includes as electives family law and criminal practice.¹⁸¹ However, there is no specific training provided to law graduates about family violence either in terms of underlying causes of family violence, how it may affect people, the interrelation of the different courts, fields of law and jurisdiction that as a whole constitutes the current family violence system in Victoria, skills about how to engage with people who have experienced or are at risk of experiencing family violence or how to develop skills as a lawyer to limit the extent to which lawyers suffer from vicarious trauma.

The Leo Cussen program consists of the Practical Training Course (Graduate Diploma in Legal Practice).¹⁸² As with the College of Law, there is no specific training provided about family violence.

The Australian National University also offers a Graduate Diploma in Legal Practice.¹⁸³ There does not appear to be any specific training provided in relation to family violence.

Source: Law Institute of Victoria.

Continuing professional development

The Law Institute of Victoria provided a summary to the Commission of some of the professional development opportunities available, noting that at the time of preparing its submission most of the training that was available focused on particular aspects of family violence (for example, the process of applying for or responding to family violence intervention orders; parenting cases with family violence or child protection proceedings) and was aimed at practitioners who predominantly worked in the Magistrates’ Court and/or with clients who were applying or responding to a family violence intervention order.¹⁸⁴

The LIV advised that it intends to include further training sessions around family violence in its 2016 program, including cross-jurisdictional education seminars.¹⁸⁵ Topics being considered include CRAF training, financial and economic abuse, effects of family violence on a witnesses giving evidence, technology-perpetrated family violence and effects on children from being exposed to family violence, including suitable parenting orders and the child’s best interests.¹⁸⁶

Some practitioners also develop particular knowledge and awareness of family violence dynamics during the course of their work: ‘... it’s been something that’s evolved, if you will, organically lawyer by lawyer, but it’s not systemic and we certainly are not required to do it.’¹⁸⁷

The Commission heard that one of the challenges in providing continuing professional development on family violence is engaging legal practitioners when the topic does not appear to cover their area of practice specifically. However, ‘[l]ike the broader community, the legal community is increasingly aware of the impact of family violence.’¹⁸⁸ The Law Institute of Victoria is working with practitioners to highlight the connection between family violence and their day-to-day practice.¹⁸⁹

Victoria Legal Aid Family Violence Panel requirements

Practitioners who wish to be on the Family Violence Panel to receive work from Victoria Legal Aid have to meet requirements of specialisation. They must have:

- ▷ two years’ recent experience predominantly practising in at least one of VLA’s relevant practice areas (which include family violence, family law and child protection among others)
- ▷ had personal carriage of at least 10 intervention order matters in the Magistrates’ Court within the last 24 months and submitted a written outline of how the practitioner prepared one of these intervention order matters for contested hearing
- ▷ submitted a written outline of one family violence intervention order matter that the practitioner has had personal carriage of within the last 24 months, that has impacted on, or been relevant within, a family law or child protection matter that the client was also involved in
- ▷ completed at least three continuous professional development points covering child-related family law topics, within the last twelve months, or have completed CRAF training within the last 36 months.¹⁹⁰

Family violence duty lawyer training initiatives

Training packages are available for community legal centre and legal aid lawyers who act as family violence duty lawyers at magistrates’ courts. Victoria Legal Aid offers in-house training to their duty lawyers, delivered in collaboration with No To Violence. It includes content on working with respondents in a way that does not collude with or condone violence-supporting attitudes.¹⁹¹

Victoria Legal Aid also provides family violence training to its criminal law team.¹⁹² There is also a detailed family violence sub-program in the VLA Practice Essentials course and in the New Lawyers Program.¹⁹³ Continuing professional development courses delivered by VLA also include specific content on family violence.¹⁹⁴

Women’s Legal Service Victoria trains its staff and other community legal service lawyers working as duty lawyers.¹⁹⁵ It has two training packages on family violence. The first package is on working with women who have experienced trauma.¹⁹⁶ The second package is training for community legal centre lawyers called ‘Safer-Families’. It includes three-day training for family violence lawyers who act for applicants.¹⁹⁷

Family law practitioners

The Law Institute of Victoria told the Commission that in preparing its submission it identified:

... a lack of training available that was tailored to private family law practitioners or those who practice exclusively in the family courts. There was also limited training available about the family violence system as a whole as most focused on one aspect of a family violence matter and few training programs explored how the different courts and jurisdictions interact with each other as a whole.¹⁹⁸

It stated that the limited training on the interaction among courts was particularly concerning since many clients have concurrent matters in more than one court, including: family violence intervention orders in the Magistrates' Court; parenting and/or property orders in the family courts; child protection proceedings in the Children's Court where a child is at risk if a parent cannot protect them because of family violence; and the criminal courts, because of a criminal charge arising from a police family violence incident or a family violence intervention order being breached.¹⁹⁹

The LIV offers an Accredited Specialist program for family lawyers twice yearly. It is also considering introducing family violence awareness (in particular risk screening) as a required assessment area for accredited family law specialists for its next program in 2017. It submitted that '[t]his would be an important step to establish a level of family violence knowledge that the profession can use as a benchmark to work towards as they progress through their career'.²⁰⁰

Family violence-related training and education is available to family lawyers through the Family Law Section of the Law Council of Australia. These include sessions at the Biennial National Family Law Conference; workshops as part of the Independent Children's Lawyer Training Program; National Family Law Intensives that examine significant decisions by the Family Court, including the Federal Circuit Court; a section on family violence in the Best Practice Guidelines for Lawyers Doing Family Law Work; and a specific project on the Family Court risk assessment tool for the separating families—the Detection of Overall Risks Screen.²⁰¹

Training aimed at disciplines that work in family law is also offered through the online Avert Family Violence training program. This training was developed by the Australian Institute of Social Relations, a division of Relationships Australia South Australia. The training aims to provide workers at all levels in the family law system 'with a sound and practical understanding of family violence and to promote a stronger capacity within the family law system for multidisciplinary collaboration'.²⁰² The package targets lawyers, judicial officers, counsellors, psychologists, social workers, legal advisers, court staff (including family report writers), family consultants, family dispute-resolution practitioners and child contact service workers. The training has a general intensive program and specific programs for these groups.²⁰³

Locally, the Law Institute of Victoria advised the Commission that as well as developing information to assist family lawyers to advise their clients on how to navigate the family violence system as whole, it is also looking at 'introducing family violence awareness (in particular risk screening) as a required training area for accredited family law specialists for its next program in 2017'.²⁰⁴ It considers this is 'an important step to establish a level of family violence knowledge that the profession can use as a benchmark to work towards as they progress through their career'.²⁰⁵

Family law practice is discussed further in Chapter 24.

Workers in non-family violence specific services

Workers in areas such as health, education, youth, drug and alcohol, corrections and child protection services may have disclosures of family violence made to them by victims. Perpetrators may also disclose their use of violence or practitioners may become aware of the violence and need to respond appropriately.

The Commission heard that psychologists, social workers, psychotherapists and generalist casework counsellors receive very little training in family violence in the course of obtaining foundational qualifications. No To Violence submitted that 'As a result, the potential for one-to-one interventions with family violence perpetrators to cause harm and accentuate risk is significant'. It was concerned that 'the vast majority of this one-to-one work is being conducted without any associated partner support, is devoid of interagency risk assessment and risk management contexts, and without great care is likely to be collusive with perpetrators' violence-supporting narratives'.²⁰⁶

Health workforce

The health system is considered in detail in Chapter 19. This section summarises workforce issues relevant to the health system.

Chapter 19 discusses the role of the universal health service system and the pivotal role that health professionals play in identifying family violence and getting victims and perpetrators plugged into the services they need. Health professionals are often a first point of disclosure, have the trust of patients and have a wide geographic reach. They may also have to respond to injuries caused by family violence, for example a dentist may have to treat a woman who has lost teeth in a violent assault.

The Commission heard, however, that there is little education provided in undergraduate or other courses for the health professions that directly speaks to family violence and 'so clinicians are not trained to manage this complex issue.'²⁰⁷ For example, The Royal Women's Hospital submitted:

Family violence is a common but invisible issue in health care in Victoria ... This pattern of invisibility begins in the undergraduate education of health professionals. As far as the Women's is aware, family violence is not part of core curriculum in the undergraduate training of health professionals or social workers in any university in Australia. Australian trained doctors, nurses, midwives, social workers and other allied health professionals therefore begin providing clinical care without being sensitised to the prevalence and dynamics of family violence, informed about its health impacts, trained to recognise the signs or to respond safely and effectively to a disclosure.²⁰⁸

The Melbourne Research Alliance to end violence against women and their children cited a review of Australian medical schools that shows that some have no specific content, some provide three hours and others do up to 12 hours of training on family violence issues.²⁰⁹ The Royal Women's Hospital told the Commission that in its role as a training hospital it includes violence against women in its orientation for nurse and midwife clinical placement, and submitted that something similar should be considered for other training hospitals, including training for junior doctors.²¹⁰

After graduation, the Royal Australian and New Zealand College of Obstetricians and Gynaecologists offers doctors a training module on sexual assault, titled *Medical Responses to Adults Who Have Experienced Sexual Assault*. This module informs doctors about the health outcomes experienced by adults who have been sexually assaulted; scenarios to assist doctors to become familiar with signs alerting them to the possibility that sexual assault has occurred; self-learning tasks to explore responses to disclosure of sexual assault; a section on self-care for doctors; a list of contacts for referrals to sexual assault services; and a list of further resources and additional reading in specialist areas. This module does not have an external assessment component.²¹¹ There does not appear to be a similar resource specifically for family violence.

The Royal Australian College of General Practitioners sets the curriculum which forms the basis for assessing GPs' competence to practice in the Australian community.²¹² They submitted that 'the knowledge, skills and attributes of GPs recognized by the RACGP as fundamental to responding to and managing family and domestic violence are reflected throughout the Curriculum'.²¹³

The Royal College produces a resource called *Abuse and Violence: Working with our Patients in General Practice* (sometimes called the 'white book') and provides an online active learning module for GPs.²¹⁴ The College is also developing a decision-making pathway for working with perpetrators as an adjunct resource to the white book; it identified this as an area 'needing more attention across the sector'.²¹⁵ The College stated that:

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.²¹⁶

The College also recommended increased funding to enable more accessible training for GPs in identifying and managing family violence; a greater emphasis on training for psychologists, social workers and psychiatrists, particularly in family violence counselling; expanding its active learning module to a wider group of health professionals; extending its focus to men, including those who use violence and to men and boys who have been exposed to family violence; and additional training in safeguarding children.²¹⁷

The Royal Australian College of Surgeons submitted that it 'supports programs that help to identify and support family violence victims, including training programs that improve the confidence and competency of health professionals to identify and care for people experiencing family violence.'²¹⁸

The Royal Australian and New Zealand College of Psychiatrists Victorian Branch noted that mental health professionals are not required to obtain specialist family violence training through the curriculum of medical undergraduates, postgraduate training for psychiatry trainees or continuous professional development.²¹⁹ They submitted that it should be mandatory for all mental health professionals to be trained in family violence.²²⁰

Education workforce

Ongoing learning and development on family violence also appears limited for the education workforce. Ms Gill Callister, Secretary, Department of Education and Training, gave evidence that the main training for teachers on family violence is through an online training module on teachers' mandatory reporting obligations to Child Protection.²²¹ The training module must be undertaken every year by all teachers and principals registered by the Victorian Institute of Teaching, and includes how to identify child abuse, family violence and neglect, how to manage disclosures and how to make a report.²²² The training module includes an explanation of family violence and of some of the physical and behavioural indicators of family violence.²²³

Primary school welfare officers, primary school nurses, secondary school nurses, student welfare coordinators, student support officers, chaplains and other pastoral care staff who are DET employees also have access to this module. It must be completed annually by all principals, teachers and staff registered to teach.²²⁴

Ms Callister noted that primary school nurses in two regions have been trained in the Common Risk Assessment Framework.²²⁵

The Commission did not hear any specific evidence on whether or not pre-service teacher training (the training teachers receive before they are qualified to teach) includes a component on family violence. After broadly reviewing publicly available materials, the Commission found that most tertiary courses in education did not mention family violence as a component of the course.

Child Protection and family services

Child Protection is considered in detail in Chapter 11. This section summarises the workforce issues relevant to Child Protection.

Improving child protection practitioners' understanding of family violence was a consistent theme in evidence.²²⁶ Family violence victims were often afraid of Child Protection and did not always report the violence because they were afraid they would lose their children.²²⁷ This was particularly so for Aboriginal and Torres Strait Islander women.²²⁸

People spoke of the need for more collaboration between Child Protection, Child FIRST-Integrated Family Services and the specialist family violence sector, and said that this requires all these services to change.²²⁹ Cultural change could be encouraged by cross-sector training for workers in all the systems which come into contact with children affected by family violence and integrated practice models that focus on the perpetrator and shift the burden away from the mother as the 'protective parent'.²³⁰

The Department of Health and Human Services described several initiatives that are discussed in Chapter 11. In summary these are:

- ▷ Training to improve understanding of family violence among child protection practitioners—for example, as part of the compulsory induction program known as ‘Beginning Practice’.²³¹ Family violence is also included in the Best Interest Case Practice Series for child protection staff.²³²
- ▷ In June 2014, senior child protection practitioners statewide were trained on effective responses to family violence by No To Violence and the Office of Professional Practice within DHHS.²³³ In June 2014, the specialist practice resource, *Working With Families Where an Adult is Violent* was published.²³⁴
- ▷ Ms Beaton stated that Cumulative Harm Specialist Practice Resource also provides practical advice to workers in the area of child protection.²³⁵
- ▷ The introduction in 2012 of advanced practitioner roles in Child Protection.²³⁶ (See the discussion earlier in this chapter on career path and professional development).
- ▷ Co-location of family violence specialists in child protection offices (under the 2015–16 budget commitment of \$3.9 million for ‘child protection flexible responses’).²³⁷

Office of Professional Practice

The position of Principal Practitioner, now the Chief Practitioner, was established in 2006 to support the legislative reforms associated with new child protection legislation—the *Children, Youth and Families Act 2005* (Vic). The role of the chief practitioner is to act as the principal clinician and adviser on child protection practice in DHHS, set and monitor service delivery standards, and ‘develop modes of service delivery and to lead and promote a strong learning culture’.²³⁸

In 2009 and 2010, two additional statewide principal practitioners were employed to embed these reforms and to assist the principal practitioner. In 2010 the Office of the Principal Practitioner was also created to support these functions.²³⁹

The Office of Professional Practice was established in 2012 by the amalgamation of the Office of Senior Practitioner (Disability) and the Office of the Principal Practitioner.²⁴⁰ Its purpose is to create an environment that continually improves workforce capability to meet the needs of the Department of Health and Human Services’ clients.²⁴¹ The office is now made up of a chief practitioner and director, a senior practitioner—disability, an assistant director and two statewide principal practitioners.²⁴² The principal practitioners are responsible for practice leadership, which includes supporting front-line practitioners and programs, monitoring and reviewing practice; practice research and evaluation; promoting professional development and training; being the expert spokesperson on professional practice; and influencing policy and program design.²⁴³

The office supports a workforce of about 7330 people, including 1410 Child Protection staff, 417 Secure Services staff and 5500 Disability Services staff.²⁴⁴ Child protection practitioners, for example, can contact the office for advice and support on a case they are working on. This is in addition to the support practitioners receive from the principal practitioners and other professionals in their divisional teams. In some cases the office provides direct practice leadership to external services that work with departmental clients, for example Integrated Family Services or out-of-home care providers.²⁴⁵

There is no specific principal practitioner for family violence. However as noted above family violence is a critical component of practice leadership given the intersections between child protection and family violence.²⁴⁶

Other sectors

Family violence units within relevant departments

In the Department of Justice and Regulation, the Family Violence and Sexual Assault Unit leads the development and implementation of family violence and sexual assault policy. This team is in the Community Operations and Victims Support Agency—Criminal Justice, and comprises nearly seven full-time equivalent staff. Additionally, there is a legal policy officer in the Criminal Law Policy Unit who works on family violence (0.8 FTE), and three staff in Corrections Victoria who are dedicated to family violence work. DJR noted that while there are no staff in the Koori Justice Unit specifically dedicated to family violence, staff spend a significant amount of time on family violence matters, equivalent to a 0.3–0.4 FTE role.²⁴⁷

There is a specialist family violence unit in the Department of Health and Human Services, known as the Family Violence and Sexual Assault Team. Its functions relate to the design and delivery of family violence and sexual assault services. It comprises nearly eight full-time equivalent staff and an additional four temporary staff members, to respond to the Commission and delivery of the Victorian Government's election commitments. DHHS also analyses data and develops and coordinates policy, advice and strategy on family violence. These roles are spread across multiple areas of DHHS, centrally and at the divisional and local area levels.²⁴⁸

There is no specialist family violence unit, or staff dedicated to family violence, in the Department of Education and Training.²⁴⁹

The Commission heard that other service systems—each with their own specialisation—such as youth justice, drug and alcohol, disability, aged care, homelessness, mental health and the corrections system—need to enhance their capability to recognise family violence and work more effectively with victims and perpetrators.²⁵⁰ Three areas of issues were identified:

- ▷ Family violence skill development and guidance has been piecemeal across sectors.
- ▷ Knowledge transfer is hindered by ad hoc relationships across other specialist and family violence services.
- ▷ Different practice methodologies and philosophies ('it's not part of my work') create barriers to engaging with family violence.

Family violence skill development and guidance across sectors

Several submissions described a piecemeal approach to family violence skill development and guidance in their sectors. For example, the Victorian Alcohol and Drug Association noted variability in the confidence and skill levels of alcohol and drug treatment clinicians who seek to explore family violence issues with clients.²⁵¹ It is not mandatory to assess family violence issues in the drug treatment sector. However recent reforms have standardised assessment tools.²⁵² Optional modules in the new assessment tool include one to identify and record family violence and one that explores the impact of alcohol and drug use on family members.²⁵³

Concerns were also raised that mental health workers are not being trained to identify and respond appropriately to family violence.²⁵⁴ Cobaw Community Health submitted that 'Mental Health workers have a tendency to focus on the presenting symptoms and do not always apply a lens of systematic issues such as [f]amily [v]iolence.'²⁵⁵

The Department of Health and Human Services 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.²⁵⁶

The Commission requested information from the Victorian Government about professional development regarding family violence for practitioners in human services, aside from that contained in the CRAF training undertaken between 2008 and 2010, and from 2011 to 2013. Documentation indicates that family violence is identified in a number of foundational courses for DHHS for example, it is listed as an important practice consideration in the Introduction to Disability Practice course.²⁵⁷ The Ready4work Disability Support Work Induction Resource Kit—which is available to government and non-government disability workers—also considers family violence.²⁵⁸ The Beginning Practice in Youth Justice course materials also includes content on family violence, including the *Family Violence Protection Act 2008*.²⁵⁹

Ad hoc relationships hinder knowledge transfer

Victorian Council of Social Service submitted that workers' limited understanding of the interconnection between drugs, alcohol, and mental health, and organisations' capacity to build workforce understanding and clinical skill is a barrier to responding to family violence. Workers in each sector needed to understand the others' role better, through targeted training and workforce development.²⁶⁰ Although there are many local relationships between services these are not systematised and are largely dependent on individuals or where there have been sustained efforts to integrate services.²⁶¹ Some formal multi-agency service partnerships were described in evidence, for example in justice/legal partnerships supported by funding from the Legal Services Board.²⁶²

Barriers created by different practice methodologies and philosophies

The Commission heard that family violence is not seen as a priority by all crisis homelessness and transitional housing providers.²⁶³ Similarly, within family violence services 'there is a need for an understanding of the kind of theoretical frameworks used' in child protection, drug and alcohol and mental health.²⁶⁴

The importance of interdisciplinary and shared approaches to learning was a key theme that arose from the evidence with some examples given of successful initiatives that had been short term. In 2008, for example, Swinburne University and Domestic Violence Resource Centre Victoria developed and delivered joint training for staff from disability and family violence services 'designed to implement cross-program and cross-sectoral learning' so that women with disabilities experiencing family violence received greater support from both disciplines.²⁶⁵ Approximately 20 sessions were held across Victoria but the training was discontinued.²⁶⁶

The inadequacies of focusing solely on short course training for those from disciplines other than family violence was identified in evidence. For example, Ms Lorna McNamara, Director of the Education Centre Against Violence in NSW, stated that:

... one-off training is fine if you are getting training in an area of expertise that you know and it's actually providing additional information. That can be quite useful. But, if you are training a workforce in an area that they are completely unfamiliar with, one-off training tends not to be held over time because the dynamics within their own workplaces will take precedence and it will lose its influence over time.²⁶⁷

On health and other workforce training, Ms McNamara criticised the train the trainer approach, which she described as 'another very flawed model, particularly where the content of the training is so vastly different to what is being delivered within the service stream'. Her experience was that 'Usually, a worker attends a two or three day training session, and is then expected to deliver and answer complex questions in an area where they have almost no expertise. This too often results in incorrect ideas and beliefs being reinforced instead of challenged'.²⁶⁸

Workforce education across sectors

The Education Centre Against Violence is a unit in New South Wales Health. It is responsible for developing the statewide workforce and providing training in how to identify and respond to adults, young people and children who have experienced sexual assault, domestic violence, Aboriginal family violence, and childhood physical and emotional abuse and neglect.²⁶⁹ ECAV trains government and non-government providers, for example non-government drug and alcohol services.²⁷⁰

Ms McNamara explained that ECAV is funded to:

... provide training, undertake research, run pilot programs, develop resources, provide clinical supervision and run training programs for both governmental agencies and non-governmental organisations (NGOs) with the aim to provide a whole of system response, not just a departmental or organisational response.²⁷¹

Ms McNamara told the Commission that many courses are provided to specific target groups for free and other services are provided at a subsidised rate.²⁷² ECAV has approximately 24 full-time employees (including its administrative workforce) and engages around 50 contractors.²⁷³

On family violence training, Ms McNamara said that ECAV:

... would train nurses, social workers, psychologists. We would have doctors attending – that includes medical doctors, GPs, psychiatrists, forensic specialists ... We have also provided training to Victims Services, which is part of the justice department, the Department of Public Prosecutions. We have shared training with Family and Community services, so delivered with them; and then broadly the NGO sector.²⁷⁴

Specialist family violence courses are provided by ECAV and it has developed and maintains a comprehensive suite of materials to support the family violence training modules.²⁷⁵ In its training a co-facilitation model is commonly used.²⁷⁶

ECAV also provides introductory and advanced courses on child-focused and therapeutic approaches to working with children. A four-day foundation course around domestic violence, which includes training about its effects on children, is offered and used by non-government organisations to train new workers.²⁷⁷ The ECAV is also developing qualification pathways 'to support an Aboriginal work force skilled in case management and counselling in the areas of sexual assault, family violence and child abuse'.²⁷⁸

It was put to the Commission that the ECAV's experience in training government and non-government agencies puts it in a unique position, providing a broad perspective across these different organisations. Ms McNamara stated that this has

... allowed us to see where the gaps are across the whole system and where inter-agency processes do not function optimally. We are then able to advise on that and develop broad reaching training solutions to address the gaps. Without this line of sight, gaps in service provision would result in further isolation and silencing of victims.²⁷⁹

In comparison, the Victorian Government model is not centralised. Ms Frances Diver, Deputy Secretary, Health Service Performance and Programs, Department of Health and Human Services stated that the department funds health services, registered training organisations and other organisations to deliver professional development. 'The department does not, however, directly deliver or mandate professional development initiatives for the health workforce'.²⁸⁰

Noting Ms McNamara's evidence that the ECAV can influence policy because it is in the NSW health department, Ms Diver reflected:

That's interesting, and I guess that's also about how the department interacts with the sector in terms of where they get their policy advice from to inform what policies would occur. So there's a little bit about working with the sector to make sure that the policies that government are going to put together are informed by best practice. Does that mean that we have to have training units sitting in the Department of Health and Human Services? I'm not sure that's the only way. It's working for New South Wales. Could it work for us? Possibly. But there are other ways of doing it as well. Probably a distributed model fits more with the model of service delivery in Victoria where the department holds a kind of planning, policy, funding role and the sector holds much more of a delivery role.²⁸¹

In Victoria, Domestic Violence Resource Centre Victoria (a registered training organisation that receives funding from the Department of Health and Human Services) plays a somewhat similar role to ECAV.²⁸² It provides training and workforce development and produces resources to assist in the response to family violence. It does not, however, have designated status as a whole-of-government provider of family violence education. Instead it has been contracted by government to deliver specific training programs and initiatives including, for example, the training of the maternal and child health nurse workforce on the CRAF.²⁸³

The Domestic Violence Resource Centre Victoria and training provision

Domestic Violence Resource Centre Victoria is the major provider of family violence training programs to the government and non-government sectors in Victoria.²⁸⁴ It also collaborates with organisations such as No To Violence, Women's Legal Service Victoria, Centres Against Sexual Assault, Victoria Police and the Aboriginal Family Violence Prevention and Legal Service Victoria.²⁸⁵

In 2008, the Victorian Government contracted DVRCV and Swinburne University to design and deliver training for the CRAF.

Over the years, this training has been contracted by various government departments and supported through non-government grants. Further sessions have been funded by DHHS in 2015–16.²⁸⁶

Currently, three different training packages are available reflecting different professional roles and the levels of risk assessment outlined in the CRAF.²⁸⁷ Workers from a broad range of disciplines have participated, including practitioners from Child FIRST and Integrated Family Services, Child Protection, health services (including drug and alcohol and mental health), homelessness services, disability services, youth services, counsellors, Aboriginal services and those services working with people from culturally and linguistically diverse backgrounds.²⁸⁸

In addition to CRAF training, DVRCV provides training on working with children experiencing family violence, strengthening hospital responses to family violence and supporting women with disabilities experiencing family violence. It also provides nationally accredited training units that can be credited towards qualifications in vocational education training courses.²⁸⁹ Recently, DVRCV and Domestic Violence Victoria developed online eCRAF training programs.²⁹⁰

The way forward

Family violence affects the lives of tens of thousands of Victorians. Yet we have never had a comprehensive industry plan considering the workforce needs of the various systems that work with family violence or the implications for workers in other systems who have contact with victims and perpetrators, or who work in the area of primary prevention.²⁹¹

Family violence work is a human service and, like all human services, it is complex. However, as the rest of this report makes plain, for too long it has been treated as a marginal addition to our human services system. We must invest in the people who work directly with victims and perpetrators. They are fundamental to our success in stopping family violence.

In relation to specialist family violence services, the evidence shows that the sector has not had the benefit of a workforce development strategy or a comprehensive government approach. As a result the sector:

- ▷ involves multiple and diverse employers
- ▷ has difficulties recruiting and retaining people because of insecurity of employment (due to short-term funding), low remuneration, large workloads and vicarious trauma
- ▷ lacks clarity on the core competencies of its workforce as it has tried to adapt to the vagaries of funding and deal with excessive demand
- ▷ does not have consistent, clearly articulated and up-to-date professional standards or mandatory qualifications for practice
- ▷ does not have a consistent approach to workforce training, professional development and career progression because this activity is not sufficiently resourced in existing funding models
- ▷ relies on training sessions or courses as its principal method of learning and development. While opportunities to critically review and reflect on practice may exist in individual organisations delivering family violence services, there does not appear to be a sector-wide approach
- ▷ needs to build capability in the employment of—and service delivery to—diverse groups including women with disabilities, lesbian, gay, bisexual, transgender and intersex Victorians, older people, children and young people, Aboriginal and Torres Strait Islander peoples and people from culturally and linguistically diverse communities
- ▷ has a workforce that experiences high rates of burn-out and vicarious trauma because of the nature of the work, pressures created by heavy demand, and frustration due to external factors that stop the client's needs from being met. Vicarious trauma is also experienced by others working with family violence victims and perpetrators, including police and court staff.

It is difficult to profile the current qualifications or salaries of the specialist family violence workforce as this information is not centrally collected. This is itself a barrier to effective workforce planning.

The Commission looked at the capabilities needed by specialist family violence practitioners, and other people who respond to victims or perpetrators of family violence, or work in areas in which disclosures of violence are more likely to occur. It considered how the capacity of each of these sectors can be strengthened.

The Commission also considered the capabilities needed by prevention practitioners. There are distinct competencies required for this group, who are using the lessons of successful public health promotion initiatives to inform and change behaviours. Their challenge is not simply to educate, but use evidence to change hearts and minds. The demand for their expertise is also growing and this cannot be met without a corresponding focus on developing this workforce.

This will all require planning. A comprehensive industry plan is essential. That plan needs to cover the specialist family violence sector and related services, including prevention practitioners. It should address ongoing issues that include capability, qualifications and associated remuneration, with a focus on building practice that is sensitive to diversity and rewards collaboration across sectors (not just services). As such a plan will take time to develop, some interim steps should be taken to promote better career paths in the specialist family violence sector.

Action cannot be confined to the specialist sector. The industry plan must also address family violence capability in key justice, health, education and human services areas in recognition that all these professions have a role to play.

Capability requirements of specialists

In considering workforce capability it is essential to first define the competencies and skills each practitioner needs. In Victoria there is no agreed understanding of what the core vocational competencies are in family violence work, or for associated professions that have contact with family violence victims and perpetrators.

Many different people are involved in responding to family violence—each with their own role and skill set. Investing in the capability of each requires a clear focus on who does what, how and when.

For most victims their experience of family violence is not just one-off; while some leave after the first instance of violence, most do not act immediately. We heard of women experiencing violence for months, years, and even decades before seeking assistance, with some never seeking assistance. The reasons for this are complex and mean that supporting women experiencing violence takes time and skill.

As described throughout this report, specialist family violence services work primarily with victims of family violence at medium to high-risk. This is their unique role.

Staff carrying out these functions need to be confident about discussing a victim's experience. They need to understand how the violence affects a victim's thinking and how it affects children, and know that the risk posed by the perpetrator is not static—it can escalate quickly. Comprehensive risk assessment and management is in itself a complex task with a high degree of responsibility. For some victims the circumstances are literally about life or death.

Some victims may require assistance over time, particularly if they do not want to leave the relationship. The challenge of this work is to balance a desire and duty of care to offer assistance that will keep the victim and her children safe, while respecting her choices.

Acting to safeguard someone's safety is common in the helping professions. In some cases (such as in Child Protection) this can occur without consent. However, in family violence this does not apply (nor do we recommend that it should). This means that workers need to deliver support that works towards safety without the power of enforcement. This is delicate and skilled. Getting this process wrong has consequences, including putting the victim and children's life at risk. It can also result in victims being exposed to violence for longer than they would have been had they been listened to and offered appropriate support.

Similarly, work with perpetrators requires an ability to assist the perpetrator to recognise their use of violence and work to change their behaviour, as well as making sure the victim is safe through partner contact work. This also requires nuance and sophistication in working with men from all walks of life who have differing levels of motivation, insight and trust.

Family violence practitioners also need to have a good working knowledge of the law, be able to navigate multiple systems and secure resources for their client in the face of demand pressures across other systems. They need to look beyond their own service—including providing secondary consultation or advice to non-family violence practitioners. As closer links are built between services this work will become even more complex.

In the past, the system responded to family violence through a particular and specialised workforce located within family violence services. While some specialist family violence services have worked well across some sectors, this has relied on individual relationships rather than being a feature of the way things work. While this workforce has established deep and specialised skills, the disadvantage is that other systems have not developed some of the skills needed to contribute to the overall response. This needs to change.

The recommendations below aim to deliver the workforce needed to ensure that people experiencing family violence receive all the supports required to keep women and children safe and assist recovery from family violence—from both inside and outside the family violence system.

An industry plan for family violence prevention and response over the next ten years

There is widespread agreement that a comprehensive workforce development strategy is required. The evidence before the Commission was that attracting and retaining enough suitable people is becoming increasingly difficult in the face of relatively poor remuneration, job insecurity and workplace safety risks including vicarious trauma.

The Commission has had regard to the clear evidence from universal and other specialist systems that gaining confidence and literacy in family violence is increasingly seen as core business. This is a welcome acknowledgement of the scale and effect of family violence across all parts of our community and the role all service systems have in meeting that challenge.

We were also struck by the interest that professional bodies in health care, social work and legal practice had in progressing pre-service and post-qualification learning around family violence. This reflects the reality that in every classroom, GP's office, hospital and courtroom in Victoria there will be a person that has been affected by family violence. Every teacher, doctor, nurse, ambulance officer, child protection or family service worker, lawyer, magistrate and registrar needs to be able to recognise family violence and know what to do next.

In making recommendations on workforce development and planning, the Commission could propose that the Victorian Government work with the specialist family violence sector to develop a strategy to address the substantial challenges the sector faces in attracting and retaining well-qualified staff. There is no doubt that this is required.

However, we consider that while the specialist family violence workforce needs to be a primary focus, a much more ambitious and strategic approach needs to be taken: the strategy must be one that addresses the size and skillset of the direct family violence workforce (across response and prevention) as well as planning for the police, justice, health, family services and associated workers who are required for a truly intersectoral approach. This would involve workforces that respond effectively within their field of expertise and also collaborate with agencies in other sectors.

The Commission proposes that the Victorian Government work with specialist family violence services, other government and non-government stakeholders, Victoria Police, business, unions, the courts, community leaders, professional bodies and the tertiary education sector to develop a ten-year industry plan. This will form a key component of the Statewide Family Violence Action Plan set out in Chapter 38. This should include an assessment of workforce requirements in metropolitan, regional and rural areas regarding:

- ▷ specialist family violence services
- ▷ perpetrator interventions including, but not limited to, men's behaviour change programs
- ▷ family services, sexual assault, health services, drug and alcohol, mental health and counselling services, maternal and child health services, Child Protection and other workforces in contact with victims and perpetrators of family violence
- ▷ justice services including Corrections Victoria, community legal services, Victoria Legal Aid, and court-based supports
- ▷ prevention work, including through local government, schools, women's health services and community initiatives
- ▷ community services for people with disabilities, lesbian, gay, bisexual, transgender and intersex Victorians, older people, children and young people, Aboriginal and Torres Strait Islander peoples and people from culturally and linguistically diverse communities.

Once developed, the actions from the industry plan will need to be funded, so demand can be met over the medium term. Accordingly, the industry plan needs to be delivered by 31 December 2017 and include costed recommendations and actions on:

- ▷ workforce size requirements for each sector
- ▷ capability and skill requirements
- ▷ mechanisms to develop and deliver a family violence professional workforce that reflects the diversity of the Victorian community, including bi-cultural workers, Aboriginal and Torres Strait Islander workers and workers with lived experience of disability
- ▷ remuneration and career development for family violence professionals
- ▷ workforce development and learning in each sector, based on leading practice internationally
- ▷ intersections with tertiary and vocational training—including opportunities to mandate family violence subjects in key professions including social work, medical practice, nursing and law
- ▷ practice to ensure non-discrimination, including culturally appropriate service provision and provision of services to people with disabilities, children and young people, older people, lesbian, gay, bisexual, transgender and intersex people, people from culturally and linguistically diverse communities, and other marginalised groups
- ▷ actions to support the wellbeing and health and safety of the workforce including preventative actions and responses to vicarious trauma.

This is a substantial endeavour. The Royal Commission considers an industry plan to be a central plank in the program of change. The plan is required to take Victoria's approach to family violence to its next logical step, consistent with the principles of shared responsibility and integration and so clearly put in evidence to the Commission.

Recommendation 207

The Victorian Government develop or commission the development of a 10-year industry plan for family violence prevention and response in Victoria, to be delivered by 31 December 2017 with commensurate funding for workforce transition and enhancement to begin from that date.

The plan should cover:

- ▶ the workforce requirements of all government and non-government agencies and services that have or will have responsibility for preventing or responding to family violence—among them specialist family violence services, perpetrator interventions, police, legal and justice services, and universal and secondary service systems
- ▶ remuneration, capability and qualifications, workforce diversity, professional development needs, career development and workforce health.

Key issues for the industry plan

While the Commission considers that the details of the industry plan need to be developed through consultation with stakeholders, it has identified three issues that need to be included:

- ▶ establishing the qualifications and mandatory knowledge for those who work with people experiencing family violence
- ▶ building practice that is aware and sensitive to diversity and is delivered by a workforce that reflects the needs of the people they work with
- ▶ facilitating integration of family violence and family services, including through the establishment of Support and Safety Hubs (see Chapter 13).

This list is not exclusive. As noted above, the plan will also need to cover issues that include remuneration and workforce health, including responding to vicarious trauma.

Qualifications and mandatory knowledge

Currently, family violence is not a mandatory subject in social work degrees, or equivalent professional qualifications in psychology, nursing, drug and alcohol practice or other caring professions. Nor is it a mandatory stand-alone subject in legal qualifications or medicine, even though many health and legal practitioners deal with family violence frequently in their day-to-day work.

The Commission considers that work needs to start now to improve the skill base and professional standing of people working in the family violence sector. This will require an increase in the available training and encouragement for people to take up the training.

Mandating family violence as a required subject in a social work qualification

One option would be to require family violence to be a core subject in relevant degrees and professional qualifications, for example in a social work qualification. With this reform social workers would, over time, have consistent exposure to family violence knowledge and contemporary practice principles, regardless of where they studied or worked. It may also encourage some to enter the specialist family violence field having been exposed to the issues in their pre-service training.

The practical effect of including family violence as a mandatory subject would still be limited unless key competencies such as risk assessment and management were also undertaken. Despite this, the Commission's view is that family violence should be made a mandatory subject in social work.

The Australian Association of Social Workers stated in its submission:

The AASW has over 8500 members and regulates the profession by setting the standards for accreditation of university programs across Australia in regards to the entry-level professional training of social workers. These standards are set through the Australian Social Work Education and Accreditation Standards. During the upcoming review of these standards, the AASW will look to establish a 'working with family violence' subject as a component of the core curriculum in all social work education across Australia.²⁹²

Our recommendation supports this approach.

Requiring an appropriate tertiary qualification to work as a family violence practitioner

Requiring an appropriate tertiary qualification to practice in a government-funded family violence service would potentially enhance the professional standing of family violence practitioners, reflect the range and complexity of their work and lead to improved remuneration. This would be consistent with minimum qualifications for counsellor/advocates in sexual assault services where a degree in social work, behavioural sciences or psychology, or relevant postgraduate qualification, is a requirement.²⁹³

Services may wish to have a range of practice skills within their team and so equivalent qualifications should also be recognised. There is great value in bringing people from different backgrounds and disciplines into organisations, and employers will want to maintain flexibility in the skill base they deploy.

The Commission recognises that new requirements for practitioners to be qualified will require a period of transition and a realistic time frame would need to be set.

There are a number of options that could be considered by government in developing the industry plan and moving towards a minimum qualification system. One would be to include a 'grandfather clause' for all existing workers so that only new practitioners employed from a certain date require the qualification. Another would be to require existing workers to have a competency-based assessment that recognises prior on-the-job learning. This would enable them to have their skills and competencies accredited rather than having to complete a degree. This option combines respect for practitioners' experience and the need for consistency.

Other options would also need to be considered in moving towards a fully tertiary-qualified specialist family violence workforce. These will be important questions for the industry plan.

Regardless of how this is achieved, a transition period will be required to enable the current workforce to gain the requisite qualification, or have their existing qualification or skills and competencies recognised as equivalent. It is highly likely that many, if not most practitioners already have tertiary qualifications, but without comprehensive data on the workforce profile it is difficult to determine how many people in the current workforce this would affect.

... if we are talking about putting standards onto an existing system what that will do is place an additional undue burden on the services who are already trying to meet and struggling and not actually able to meet demand. So if we say that everyone from now on needs to be social worked trained or qualified, whatever that is, I think it is important to consider the realities of that and have a kind of extensive and a longer term strategy for supporting that. But I think in principle it is absolutely necessary.²⁹⁴

The Commission heard evidence about the 'grassroots culture' and practice wisdom that exists in the specialist family violence sector.²⁹⁵ This is of value and should be rewarded—including by utilising this skill in the delivery of family violence-related subjects in tertiary and vocational courses, as well as by providing advance standing in such courses when practitioners seek a formal qualification.

Encouraging talent—attracting the best and the brightest into family violence practice

The remaining question is how to encourage existing workers to seek a formal qualification or competency-based assessment equivalent where this is required and how to attract new people into the family violence workforce.

One way of encouraging talented people to specialise in family violence would be to establish a scheme under which graduates receive an amnesty from HECS-HELP repayments if they enter employment in a specialist family violence service within two years of completing their degree, and stay within the community family violence sector for a defined period of time. Potentially this could also apply to lawyers working in family violence legal services.

Examples of this approach already exist for some professions internationally and domestically. For example, in the United States various loan forgiveness schemes operate, including the 'Public Service Loan Forgiveness' scheme for employees of government or not-for-profit organisations.²⁹⁶ There is also a loan forgiveness program that is specific to teachers. Under this program, where the graduate teaches full-time for five complete and consecutive academic years in certain low income primary and secondary schools (and educational service agencies that serve low-income families), and meets certain other criteria, they may be eligible for forgiveness of up to a combined total of US\$17,500 on their student loans.²⁹⁷

An analogous program exists here in Australia: the HECS-HELP Benefit, under which graduates of particular courses receive a reduction in their compulsory HELP repayments if they take up related occupations or work in specified locations. However, this scheme is less generous and applies to a limited range of professions and courses, including graduates in mathematics, statistics, science, education, early childhood, nursing or midwifery.²⁹⁸ The person can apply each financial year (for a maximum of 260 weeks or five years) for a reduction in their HECS-HELP repayments, to a maximum (for the 2015–16 financial year) of \$1,918.39 for early childhood workers and \$1,798.48 for mathematics, statistics or science or education, nursing or midwifery graduates.²⁹⁹

It should also be remembered that education costs and entry level remuneration are only one part of the picture. Specialist family violence services will continue to struggle to attract and retain staff unless the issues with greater remuneration, professional development, career pathways and action around vicarious trauma, workplace stress and reducing demand are addressed.

Recommendation 208

The Australian Association of Social Workers amend the Australian Social Work Education and Accreditation Standards to require that a 'working with family violence' subject be required as a component of the core curriculum in all social work undergraduate degrees [within two years].

Recommendation 209

The Victorian Government include in the 10-year industry plan for family violence prevention and response a staged process for the introduction of mandatory qualifications for specialist family violence practitioners, so that no later than 31 December 2020 all funded services must require family violence practitioners to hold a social work or equivalent degree [within five years].

Recommendation 210

The Victorian Government encourage the Commonwealth Government to extend the HECS-HELP benefit scheme to graduates employed in specialist family violence services and associated services (such as community legal services that provide legal services to victims of family violence) [within 12 months].

Working with diversity

The industry plan should ensure that the workforce understands how race, age, gender, disability and sexual and gender diversity intersect with family violence, and knows how to respond accordingly. The workforce should be diverse, including Aboriginal people and people with disabilities in leadership positions and be skilled in working with different cohorts. This applies equally to specialist family violence practitioners, those working with perpetrators, police, magistrates, lawyers, court staff and workers in universal services. Other specialists (including drug and alcohol, mental health, family services, Child Protection) also need to improve their practice with diverse clients who are at risk of, are experiencing or are using violence.

Chapter 26 discusses the over-representation of Aboriginal and Torres Strait Islander people as victims of family violence, and how family violence intersects with a history of dispossession and trauma in those communities. On the basis of that evidence, and the strong arguments made on the importance of those communities leading the response and prevention efforts locally, we believe that attracting, retaining and developing Aboriginal and Torres Strait Islander practitioners needs particular attention. This applies for Aboriginal community controlled organisations and also non-Aboriginal family violence service providers who should also be employing Aboriginal people, along with the courts and Victoria Police.

Accordingly we recommend that a long-term strategy to increase the Aboriginal workforce in the family violence service system—including in front-line and leadership positions in the public and community sectors—should be a central feature of the family violence industry plan. This should build on existing effort in the public sector, for example the Koori Tertiary Scholarship Program, Indigenous Cadetship Program, Koori Graduate Recruitment and Development Scheme under the Department of Justice and Regulation Koori Employment Strategy.³⁰⁰ The Commission also notes that a Certificate IV in Aboriginal Family Violence Work was available at Swinburne University from 2009–2011 and in 2012–13.³⁰¹

The Commission also notes positive work by the Department of Justice and Regulation in offering a small number of university scholarships for people with disabilities to facilitate pathways into working in justice-related fields. Potentially such schemes could be extended across government departments and to areas of family violence specialisation, including social work, psychology and counselling and working with children affected by family violence. These need not be large-scale programs but could assist to diversify the range of people working as specialist family violence practitioners across disciplines.

Facilitating integration of family violence and family services

The plan to deliver on family violence workforce needs over the next ten years will need to accommodate the Commission's recommendations in Chapter 13. That chapter noted that a significant proportion of Integrated Family Services clients are affected by family violence.

For this and other reasons described in that chapter the Commission considers that the family violence sector and Child FIRST-Integrated Family Services need to work together as effectively as possible, so that the full range of a family's needs can be addressed. In other words, family violence needs to be core business of family services. This does not mean that family services would replace specialist family violence services as each service does different work. We do believe, that however, they can and should collaborate in responding to women and children affected by family violence.

To achieve this, in Chapter 13 we recommend establishing Support and Safety Hubs in the 17 local Department of Health and Human Services areas by 1 July 2018. The hubs would provide:

These hubs would create a new, consolidated intake into family violence services and Integrated Family Services, consolidating the current L17 police referral points and the Child FIRST intake.

Transitioning to the hubs with a combined intake system has implications for workforce planning. As such, the transition and the revised service model for the hubs must be a primary consideration in the industry plan.

The Commission noted earlier in this chapter that there are anomalies between funding and assumed remuneration rates between the specialist family violence and integrated family services workforces. It is unreasonable that colleagues in one setting, with the same level of responsibility, should be paid different amounts. These inequities will need to be resolved in the new funding arrangements for the hubs, and across the two sectors more broadly.

Short-term actions while the industry plan is finalised

Developing an effective plan will take time. In the meantime there are important actions that could be implemented in the short term to forge stronger relationships; build capability across legal, family violence, universal services and other specialisations; and align service delivery in a more seamless way for victims and perpetrators. These can form part of the industry plan but do not need to be delayed. We discuss these below.

Promoting a career pathway, leading practice and supporting secondary consultation

In the Commission's recommendations to establish Support and Safety Hubs, we also recommended that the minimum resource requirements for each hub include funding new positions for advanced family violence practitioners. This role would include providing secondary consultation to local GPs and health practitioners, schools and other service providers who have clients experiencing or at risk of family violence. They would also assist their colleagues at the hubs on complex cases and provide a point of additional expertise.

The Commission recognises that many family violence workers already undertake these activities. The differences would be that:

- ▷ the role is formalised and funded to a level commensurate with the knowledge and practice experience necessary to undertake this advanced level of practice
- ▷ there is a defined role of secondary consultation and capability building with non-family violence services
- ▷ it would provide a career pathway for specialist family violence practitioners who do not wish to be people managers.

In considering this recommendation, the Commission was persuaded by evidence across human services in Australia and internationally that a career pathway for those who wish to focus on advanced practice is an effective way to attract and retain quality practitioners. In larger organisations such pathways may already exist. But for smaller specialist family violence providers this may not be possible with current funding models that assume a relatively low level of remuneration.

One option for government would be to establish these advanced practitioner roles across specialist family violence services as part of a more realistic funding formula and increased allocation. At a minimum, however, we consider that having an advanced practitioner is a necessary pre-requisite for the success of the Support and Safety Hubs and so must be incorporated in that reform.

Given that it will take some time to establish the hubs, roles should be funded, until the hubs are established, in current L17 referral points and given the responsibility to articulate and strengthen secondary consultation with universal services. This function would transfer to the hubs once they are in operation.

Recommendation 211

The Victorian Government ensure advanced family violence practitioner positions are established at each of the 17 recommended Support and Safety Hubs [by 1 July 2018]. As an immediate measure additional resources should be provided to existing services, so that they can provide additional secondary consultation to universal services until the practitioner positions are established.

Ensuring family violence literacy across universal and other specialist systems

An effective response to family violence will depend on a cohesive coordinated approach across diverse disciplines. Victims of family violence may report family violence to, or prefer to be supported by, any number of services, or they or the perpetrator may have co-existing problems. When victims choose not to access specialist services, services assisting with other issues may be in the best position to provide support.

At the very least those delivering the other services need to understand how family violence interacts with their service. This requires a significant increase in capability across various service systems, such as education and health (including community health staff, GPs, hospital staff, ambulance and paramedics, maternal and child health nurses, midwives and dentists), family lawyers and others, so they are better able to identify family violence risk and respond accordingly. Equally, specialist family violence services need to understand the practice of other service systems and some of the other issues their clients may present with that affect their safety and wellbeing.

It is clear that professional responses to family violence for those working in universal and other specialist service systems need to be consistent, informed by a strong understanding of the nature and dynamics of family violence and reflective of its multi-dimensional nature.

We propose three key actions to facilitate this approach. These are:

- ▷ establishing a delivery mechanism for comprehensive workforce development and inter-sectoral learning (discussed below)
- ▷ creating family violence principal practitioner roles in the major service delivery departments—that is the Department of Health and Human Services, the Department of Justice and Regulation and the Department of Education and Training (discussed below)
- ▷ establishing specialist family violence advisors in major mental health and drug and alcohol services (as recommended in Chapter 19).

Family violence education

Victoria has made important attempts to educate workers in relevant areas about family violence. These include the training of maternal and child health nurses on family violence risk assessment (CRAF training), work in some hospitals, the introduction of family violence content into child protection professional development and efforts by the professional college and others to guide and support GPs. In other cases, family violence content is offered to clinicians as part of broader learning around working with trauma or vulnerable clients, or as part of induction training for service delivery roles.

However, the approach to date has been piecemeal and largely left to champions inside and outside government to drive the learning agenda about family violence. There has not been a system-wide approach for specialist family violence practitioners to learn and collaborate with their colleagues in other service systems. This is a lost opportunity.

The next step for Victoria, therefore, is to enhance family violence learning in universal and specialist systems and create greater opportunities for collaboration and co-learning.

One option would be to expand the family violence education and training that Domestic Violence Resource Centre Victoria is contracted to deliver, to make it more comprehensive and achieve greater reach. At present most education is provided through short courses, which are unlikely to meet the ongoing learning needs of most practitioners.

Although this would go some way towards improving understanding of family violence it would be unlikely to deliver the scale of workforce learning required.

Another option would be to establish a unit in government to oversee the delivery of education on family violence across departments, agencies and funded community service organisations. Domestic Violence Resource Centre Victoria or other organisations could be contracted to provide some or all of that education. A unit of this kind would be similar to the Education Centre Against Violence in NSW and could interact with and support the work of the family violence principal practitioner (described below) in the Department of Health and Human Services.

The unit could take a consolidated view of family violence education, and as in NSW, also coordinate learning on child abuse and sexual assault alongside family violence.

The advantage of this approach is that the unit could encourage and, in the case of employees, require participation in such training across the health and human services systems. It could also support other government departments and agencies including Corrections Victoria, emergency services and others, to achieve family violence literacy in their key workforces.

This would overcome the current piecemeal approach and provide a set of consistent learning and development resources and training courses, which a range of practitioners, including clinicians, could access without having to do the development work themselves. This would not duplicate effort at a hospital or other service level but would support practitioners to learn across disciplines by linking family violence with other areas of clinician learning.

Although this might require greater expenditure than simply boosting funding for existing programs, the Commission considers it is likely to deliver a more robust and comprehensive approach. For example, it could support a whole of health system approach to family violence from inside, rather than outside government, and engage a broad range of registered training providers, tertiary bodies and others with family violence practice knowledge.

The Commission found the insights of the NSW Education Centre Against Violence enlightening. In particular Ms McNamara's evidence that:

Any education program which seeks to improve industry wide, long-term change needs to be accompanied by embedded systems change, supported by policy and funding commitments. If there is a real intention to change the culture and practice of a service sector then a range of tools are required to ensure that this is delivered, and maintained, over time.³⁰²

The Commission notes that while some of ECAV's functions are mirrored in Victoria, Victoria does not have an equivalent unit in government. Ms McNamara stated that the location of ECAV within the NSW Department of Health ECAV provides it with the 'necessary influence, perspective and funding to identify and close capability gaps across the system.'³⁰³ Such a unit could also identify and have conversations about limitations and problems across agencies and services; and participate in policy development.³⁰⁴

Such a unit could potentially be in the Department of Health and Human Services as this department has either direct or funding responsibility for the key service systems that intersect with family violence including sexual assault, Child Protection and Integrated Family Services and health.

The Commission recognises, however, that the Victorian Government will wish to consider where these functions are best placed. As a result, rather than being prescriptive about how this should be done, we recommend that the Victorian Government should consider the best means of delivering these functions,

In doing so it should take account of the expertise and participation of non-government family violence practitioners and Domestic Violence Resource Centre Victoria in delivering learning across disciplines.

Recommendation 212

The Victorian Government determine the best means of delivering comprehensive workforce development and interdisciplinary learning about family violence across the health, human services and justice sectors. This should include consideration of the New South Wales Education Centre Against Violence model [within two years].

Family Violence Principal Practitioners in key departments

The Commission notes the positive gains made in child protection practice since the role of Principal Practitioner in the Children, Youth and Families Division of the Department of Health and Human Services was created and subsequently incorporated into the Office of Professional Practice. This role has provided statewide practice leadership, working in front-line practice with the most complex families, and leading policy and service development in child protection and associated areas, including family violence.

There are now a total of 12 clinically trained and experienced principal practitioners in Child Protection in Victoria. They are placed in all divisions of DHHS and have a regular presence in every office around the state.³⁰⁵ This welcome development reflects the value of practice leadership at all points of the child protection system.

There are valuable lessons to learn from this experience, as enhancing practice and leadership across a major department is also key issue in family violence. While the principal practitioners have promoted positive child protection practice and helped improved family violence knowledge generally, it is clear that further work is required. Improved clinical and professional practice when family violence is present needs to be embedded across other areas in the department, such as mental health, housing and youth justice. This would also help the department to shift its focus from viewing family violence mainly through the prism of child protection.

Family violence is different from Child Protection as family violence services are delivered by non-government organisations, rather than solely by statutory services. We note, however, that disability services are similarly provided by a mix of departmental and non-government providers and that the regulatory and advice functions of the Senior Practitioner—Disability straddle both sectors.

We further note Ms Beaton's evidence that in some cases the Office of Professional Practice has worked cooperatively with non-government providers of out-of-home care and Integrated Family Services where they have shared clients. This suggests that while the principal practitioner role is correctly focused on departmental staff, opportunities exist for effective collaboration and partnerships with non-statutory providers.

We are therefore of the view that a Principal Practitioner—Family Violence with a department-wide brief would be of substantial benefit. Whilst DHHS will wish to determine the appropriate location of this role within the departmental structure, such a position could potentially sit alongside the existing Principal Practitioner and the Senior Practitioner—Disability in the Office of Professional Practice. Their role would be to advise on family violence practice issues across the department, including in health services and in consultation with the Chief Psychiatrist. Liaison with the Family Violence and Sexual Assault Team would also be required.

The key functions of the family violence principal practitioners would be to:

- ▷ support the work of DHHS practitioners and programs in areas that intersect with family violence, including on complex casework
- ▷ monitor and review practice
- ▷ provide practice research and evaluation on intersections of family violence and departmental service delivery
- ▷ promote professional development and training on family violence
- ▷ be the expert spokesperson on professional practice on intersections between family violence in the casework and policy undertaken by DHHS.

Two other departments where establishing these positions would be of substantial benefit, are the Department of Education and Training and the Department of Justice and Regulation.

In the justice area, practice leadership is particularly important within Corrections Victoria, because community corrections is relevant to many perpetrators of family violence. It is also important to focus on perpetrators who are serving prison sentences. These would be key areas of focus for a principal practitioner.

The Department of Justice and Regulation has a dedicated policy unit for sexual and family violence. This is very positive and should continue to do its valuable work. The family violence principal practitioners should be attached to, or work closely with, that unit. The Commission also notes that Corrections Victoria has positions known as principal practitioners (parole) however these appear to be operational supervisory roles rather than a exercising a whole-of-organisation practice leadership function.³⁰⁶

The Department of Education and Training does not have a family violence unit. We consider that practice leadership and resource development for government schools, early childhood education and vocational and higher education are both necessary and strategic. In the case of schools, having such practice leadership would reinforce and support the roll-out of respectful relationship education, which we recommend elsewhere. The success of this program depends on a whole-of-school approach, including responding to disclosures of family violence by students and staff. Supportive practice leadership from the department on these and other family violence issues is vital for success.

Recommendation 213

The Victorian Government establish family violence principal practitioner positions in the Department of Health and Human Services, the Department of Education and Training and the Department of Justice and Regulation [by 31 December 2016].

Supporting police work in family violence

As noted in Chapter 14, the Commission supports the Victoria Police proposal to establish a faculty-style Centre for Learning for Family Violence in People Development Command. The centre, together with Family Violence Command, should complete a family violence education and training needs assessment across Victoria Police. The needs assessment should be used to develop and deliver a comprehensive education and training strategy with a mix of classroom-based, flexible and on-the-job training.

This strategy should cover all ranks and include a focus on training for promotion, investigative training and leadership training. It should also cover learning and development for police in the early stages of their career, who carry out the bulk of the daily response to family violence. In developing content, supporting materials and delivery mechanisms for the training strategy, Victoria Police should work closely with the specialist family violence sector and use co-design and delivery approaches as much as possible.

Recommendations on this are made in Chapter 14.

A clear focus on judicial and legal sector capability

Because family violence is a core part of the magistrates' court jurisdiction, it is essential that the magistracy has the skills and aptitude to preside over matters involving family violence. The people the Commission consulted emphasised how critical a magistrate's skill and approach are to the outcome of a hearing, the victim's safety, and a perpetrator's level of accountability.

While many magistrates hearing family violence matters are highly experienced at this type of work, some are not. Given the demand of family violence work on magistrates' courts in Victoria, the Commission believes that aptitude for undertaking family violence work should be a core part of all magistrates' skill sets. Although it will continue to be important for some magistrates to be highly specialised in family violence work, it is not feasible to expect that family violence matters can or should always be allocated to those particular magistrates.

In addition to ongoing training, therefore, the Commission recommends that, when appointments to the magistracy are recommended to Cabinet, the Attorney-General should consider the knowledge, experience and aptitude of candidates in relation to family violence, including aspects of federal family law. Magistrates are drawn from a pool of people with different practice and professional backgrounds, and not all appointees will have worked directly in the area of family violence. The expression of interest form for judicial appointments could be amended to invite applicants to provide information about their legal practice experience in the area of family violence.

The Judicial College of Victoria could also publish information about the skill set required to undertake family violence matters—for example, to complement the existing Framework of Judicial Abilities and Qualities published by the College.

It is clear that judicial officers, court staff, legal representatives, police and non-legal family violence support workers need ongoing training and professional development to foster expertise and specialisation in family violence, including knowledge and experience of family law and child protection. This includes training on identifying family violence risk factors and responding appropriately.

To support judicial members we recommend that the Judicial College of Victoria should continue offering regular programs on family violence to magistrates and include material on the dynamics and complexities of family violence in appropriate programs offered to judicial officers or Victorian Civil and Administrative Tribunal members. Examples could include sexual assault in the family violence context, family violence in lesbian, gay, bisexual, transgender and intersex communities and older people and family violence. We further consider that the National Judicial College's orientation program for newly appointed judges should include material to educate judicial officers on the dynamics and complexities of family violence.

We also support the development of comprehensive family violence learning and development for court staff, the development and delivery of which should be supported by the Victorian Government.

The Australian Law Reform Commission and the New South Wales Law Reform Commission recommended that tertiary institutions offering legal qualifications should review their curriculums to ensure that legal issues concerning family violence are appropriately addressed, and that legal professional bodies should do the same for their ongoing professional development requirements. The Law Institute of Victoria and the Victorian Bar should show leadership by working with their colleagues in other jurisdictions and the university sector to develop curriculums on family violence as part of undergraduate qualifications in law.

The Victorian legal profession would also show national leadership by working with professional bodies in other Australian jurisdictions, the Law Council, legal aid authorities and state and Commonwealth Attorneys-General to pursue opportunities for an amnesty scheme for HECS repayments for lawyers who, upon graduating in law, enter practice as a family violence specialist in a community legal centre or legal aid body. This is consistent with our recommendation above for a HECS-HELP amnesty for social work and other graduates in specialist family violence services.

Finally, we noted above that the Commonwealth Government has asked the Australasian Institute of Judicial Administration to work with the University of Queensland TC Beirne School of Law to develop a National Family Violence Bench Book. This is a welcome development and an excellent opportunity to improve the quality and consistency of the approach of judicial officers in each state and territory to family violence matters. Given that Victoria has already developed a Family Violence Bench Book, we assume that the views of the Judicial College of Victoria and other stakeholders, and the substance of the Victorian Bench Book, will be considered in the course of developing the Commonwealth Bench Book. Correspondingly, the Judicial College of Victoria should consider whether the Victorian Family Violence Bench Book needs to be revised in light of the development of the Commonwealth Bench Book.

Recommendation 214

The Victorian Attorney-General consider, when recommending appointments to the magistracy, potential appointees' knowledge, experience, skills and aptitude for hearing cases involving family violence, including their knowledge of relevant aspects of federal family law [within 12 months].

Recommendation 215

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

Recommendation 216

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

Endnotes

- 1 Transcript of Maguire, 13 October 2015, 3405 [22]–[30].
- 2 Ibid 3406 [3]–[11].
- 3 Ibid 3397 [12]–3398 [18].
- 4 Ibid 3397 [14]–[20].
- 5 Ibid 3397 [21]–[28].
- 6 Ibid 3397 [21]–3398 [8].
- 7 Ibid 3398 [9]–[13].
- 8 Ibid 3411 [27]–3412 [3].
- 9 Ibid 3405 [28]–[30].
- 10 Ibid 3406 [11]–[14].
- 11 Domestic Violence Victoria—02, Submission 943, 43.
- 12 KPMG Management Consulting, 'Survey of the Community—Managed Housing and Support Workforce: Final Report' (Department of Human Services, September 2007) 11.
- 13 Transcript of Maguire, 13 October 2015, 3427 [13]–[16].
- 14 Transcript of Jenkins, 13 October 2015, 3532 [16]–3534 [5]. Exceptions are contained in the *Equal Opportunity Act 2010* (Vic) s 60. The Victorian Equal Opportunity and Human Rights Commission advises that based on existing jurisprudence it appears unlikely that a family violence service established for women would be considered a 'special measure' under section 12 of the Act, citing *Georgina Martina Inc (Anti-Discrimination Exemption)* 2012 VCAT 1384. See letter from Kate Jenkins, Commissioner, Victorian Equal Opportunity and Human Rights Commission to The Hon Marcia Neave AO, Commissioner, Royal Commission into Family Violence, 1 December 2015, 2.
- 15 KPMG Management Consulting, above n 12, 9–10, 79.
- 16 Ibid 17–18.
- 17 Domestic Violence Victoria—02, Submission 943, 43.
- 18 Ibid.
- 19 Ibid 17–18.
- 20 See, eg, Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 40–41.
- 21 See, eg, Women's Health West Inc, Submission 239, 21–22.
- 22 Knox City Council, Submission 227, 15.
- 23 KPMG Management Consulting, above n 12, i.
- 24 Ibid 14–15, 79.
- 25 Ibid 32–33.
- 26 Chisholm Institute, Submission 803, 1, 9.
- 27 Transcript of Maguire, 13 October 2015, 3399 [10]–[22]. See also Domestic Violence Resource Centre Victoria, Submission 945, 24.
- 28 For example, the Youth Affairs Council of Victoria recommended that the Victorian Government Develop a Victorian Government workforce strategy that ensures all workers supporting young people, including DHS Services Connect case management staff, are familiar with the Victorian Code of Ethical Practice and undertake training in cultural competence in working with Aboriginal, refugee and migrant young people and their families. The Council submitted that '[t]hey should also undertake disability competence training, including planning for accessibility, working directly with young people with a disability, and involving young people with disabilities in decision making. (Cultural competence training has been embraced by many workers in the out-of-home care and family services sector, but should be more comprehensively available to all workers with young people.): Youth Affairs Council of Victoria Inc, Submission 938, 37.
- 29 See, eg, Indigenous Men's Resource and Advisory Service, Submission 771, 22; Hume Indigenous Family Violence Regional Action Group; Regional Aboriginal Justice Advisory Committee, Submission 465, 2; Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 6–7.
- 30 Transcript of Turfrey, 20 July 2015, 880 [16]–[27]. See also Commission for Children and Young People, Submission 790, 20.
- 31 Domestic Violence Victoria—02, Submission 943, 43.
- 32 Chisholm Institute, Submission 803, 3. The Graduate Certificate of Social Science: Male Family Violence course is convened by No To Violence, in conjunction with Swinburne University of Technology at their Melbourne Campus. There is also a course titled 'In Telephone Counselling: Male Family Violence' (which is run by No To Violence, in conjunction with Swinburne University of Technology): No To Violence; Men's Referral Service, Submission 944, 8–9.
- 33 Chisholm Institute, Submission 803, 3.
- 34 Transcript of Robinson, 13 October 2015, 3413 [10]–[24].
- 35 Berry Street, Submission 834, 21.
- 36 Chisholm Institute, Submission 803, Appendix 4.
- 37 Domestic Violence Victoria—02, Submission 943, 43.
- 38 The survey collected data from those programs that receive a mix of voluntary and mandated referrals. Of 34 locations, fully or nearly completed surveys were provided by 28 locations: No To Violence Male Family Violence Prevention Association Inc, 'Men's Behaviour Change Programs in Victoria—a Sector Snapshot' (April 2011) 14.
- 39 Ibid 36.
- 40 Bethany Community Support, Submission 434, 8.
- 41 Transcript of Turfrey, 20 July 2015, 884 [19]–[27].
- 42 Australian Services Union—Victorian and Tasmanian Authorities and Services Branch, Submission 482, 22. See also Domestic Violence Victoria—02, Submission 943, 43.
- 43 Australian Services Union—Victorian and Tasmanian Authorities and Services Branch, Submission 482, 9, 20. The submission states that overall 515 employees participated in the survey. The number of managers who participated, and who answered this question, is not provided.
- 44 KPMG Management Consulting, above n 12, 48–49, 79.
- 45 Bethany Community Support, Submission 434, 8.
- 46 Family Life, Submission 758, 6.
- 47 Ibid.
- 48 *Equal Remuneration Case—Australian Municipal, Administrative, Clerical and Services Union and others* [2012] FWA 5184 (22 June 2012) 8; *Equal Remuneration Case—Australian Municipal, Administrative, Clerical and Services Union and others*, Order PR525485 (22 June 2012).
- 49 *Equal Remuneration Case—Australian Municipal, Administrative, Clerical and Services Union and others*, Order PR525485 (22 June 2012).
- 50 Australian Services Union—Victorian and Tasmanian Authorities and Services Branch, Submission 482, 20; Domestic Violence Victoria—02, Submission 943, 42.
- 51 Australian Services Union—Victorian and Tasmanian Authorities and Services Branch, Submission 482, 22.

- 52 Department of Health and Human Services, 'DHHS Response to Items 10-14 and 18', 5, produced by the State of Victoria in response to the Commission's Notice to Produce dated 13 October 2015.
- 53 Ibid 4.
- 54 Ibid.
- 55 Ibid 4-5.
- 56 Ibid 5.
- 57 The assumed family violence caseworker salary is set at employee classification level 5, pay point 3 of the *Social, Community, Home Care and Disability Services Industry Award 2010* and the majority of the assumed family service caseworker salaries are set at employee classification level 6, pay point 2 of the *Social, Community, Home Care and Disability Services Industry Award 2010*: Department of Health and Human Services, above n 52, 6. As at 1 December 2015, the assumed family violence caseworker's hourly rate (in accordance with the funding model) was \$32.98 (which on a standard 38 hour week would be approximately \$65,168 per annum) compared to \$34.91 per hour for family services caseworkers (which on a standard 38 hour week would be approximately \$68,982 per annum): Fair Work Ombudsman, *Pay Guide: Social, Community, Home Care and Disability Services Industry Award 2010 [MA0001000] and Social and Community Services—Victoria—Award 2000 [AP796561]* (30 November 2015) 15 and 18 <<https://www.fairwork.gov.au/ArticleDocuments/872/social-and-community-services-victoria-award-ap796561-pay-guide.pdf.aspx>>.
- 58 The assumed team leader salary for family services is set at employee classification level 8, pay point 2 of the *Social, Community, Home Care and Disability Services Industry Award 2010* and the assumed team leader salary for family violence counselling services is set at employee classification level 6, pay point 3 of the *Social, Community, Home Care and Disability Services Industry Award 2010*: Department of Health and Human Services, above n 57, 6. As at 1 December 2015, the assumed team leader's hourly rate for family services (in accordance with the funding model) was \$39.51 (which on a standard 38 hour week would be approximately \$78,071 per annum) and the hourly rate for a family violence counselling service team leader was \$35.72 (which on a standard 38 hour week would be approximately \$70,582): Fair Work Ombudsman, above n 57. This equates to a lesser salary of approximately \$7489 per annum for family violence counselling services.
- 59 The assumed salary for a family violence counselling service program manager, who runs the service, is set at employee classification level 8, pay point 2 of the *Social, Community, Home Care and Disability Services Industry Award 2010*: Department of Health and Human Services, above n 57. As at 1 December 2015, the hourly rate applicable to that classification and pay point was \$39.51 (which on a standard 38 hour week would be approximately \$78,071 per annum): Fair Work Ombudsman, above n 57. This is between \$8422 and \$26,579 less than the salary of a team leader or senior practitioner in child protection: Department of Health and Human Services, *Position Description—Child Protection Team Manager* <http://childprotectionjobs.dhs.vic.gov.au/CPP5_Team_Manager.pdf>.
- 60 Australian Services Union—Victorian and Tasmanian Authorities and Services Branch, Submission 482, 9, 20.
- 61 The sector-wide benefit which is most frequently offered is salary packaging: KPMG Management Consulting, above n 12, 35.
- 62 Australian Services Union—Victorian and Tasmanian Authorities and Services Branch, Submission 482, 20.
- 63 KPMG Management Consulting, above n 12, 18, 79.
- 64 No To Violence, above n 38, 14, 54-55.
- 65 Transcript of Jaffe, 13 October 2015, 3414 [9]-[16].
- 66 At least two of these activities must be seminars or forums run by No To Violence: No To Violence, 'Men's Behaviour Change Group Work: Minimum Standards and Quality Practice' (February 2005) 51.
- 67 See, eg, Community consultation, Geelong 2, 28 April 2015; Chisholm Institute, Submission 803, 9; Domestic Violence Resource Centre Victoria, Submission 945, 24; Transcript of Jaffe, 13 October 2015, 3400 [3]-[10].
- 68 Women's Health Loddon Mallee, Submission 772, 3.
- 69 Domestic Violence Resource Centre Victoria, Submission 945, 29.
- 70 Ibid 39-41.
- 71 Transcript of Maguire, 13 October 2015, 3405 [3]-[12].
- 72 Transcript of Jaffe, 13 October 2015, 3427 [1]-[9]. See also Community consultation, Maryborough 2, 21 April 2015; Gippsland Integrated Family Violence Service Reform Steering Committee, Submission 691, 7; Kara House Inc, Submission 618, 5.
- 73 Australian Services Union—Victorian and Tasmanian Authorities and Services Branch, Submission 482, 22.
- 74 Transcript of Beaton, 13 October, 3402 [19]-3403 [1].
- 75 Statement of Miller, 14 July 2015, 25 [93]; Statement of Beaton, 12 October 2015, 9 [35], 10-11 [38].
- 76 Statement of Miller, 14 July 2015, 25 [93].
- 77 Statement of Beaton, 12 October 2015, 12 [42].
- 78 Ibid 9 [35], 10 [37].
- 79 Domestic Violence Victoria—02, Submission 943, 43.
- 80 Ibid.
- 81 Ibid.
- 82 KPMG Management Consulting, above n 12.
- 83 Ibid 24, 58, 66.
- 84 WRISC Family Violence Support, Submission 260, 6-7.
- 85 See, eg, Community consultation, Melbourne, 30 April 2015; Australian Services Union—Victorian and Tasmanian Authorities and Services Branch, Submission 482, 21; Bethany Community Support, Submission 434, 8; Gippsland Centre against Sexual Assault, Submission 638, 10; Victorian Council of Social Service, Submission 467, 44; Safe Futures Foundation, Submission 228, 80; The Police Association of Victoria, Submission 636, 26.
- 86 Bethany Community Support, Submission 434, 8.
- 87 Court Services Victoria, Submission 646, 13.
- 88 'Clinical supervision is one of the major self-care strategies used by counsellors. It is also known to improve job performance and satisfaction': South Eastern Centre Against Sexual Assault and Family Violence, *Professional services* <<http://www.secasa.com.au/services/professional-services/>>.
- 89 Gippsland Centre Against Sexual Assault, Submission 638, 10.
- 90 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 55.
- 91 Court Services Victoria, Submission 646, 13.
- 92 Cobaw Community Health, Submission 396, 5; Women's Health West Inc, Submission 239, 37. See also Centre for Rural Regional Law and Justice—Deakin University, Submission 511, 11-12.
- 93 Australian Services Union—Victorian and Tasmanian Authorities and Services Branch, Submission 482, 21.
- 94 Barwon Area Integrated Family Violence Committee, Submission 893, 13.
- 95 Domestic Violence Resource Centre Victoria, Submission 945, 24.
- 96 No To Violence; Men's Referral Service, Submission 944, 17.
- 97 Domestic Violence Resource Centre Victoria, Submission 945, 19.
- 98 Ibid 24.

- 99 Australian Services Union—Victorian and Tasmanian Authorities and Services Branch, Submission 482, 24. See also Bethany Community Support, Submission 434, 16; Domestic Violence Victoria—02, Submission 943, 44; Domestic Violence Resource Centre Victoria, Submission 945, 27.
- 100 Domestic Violence Victoria—02, Submission 943, 44.
- 101 Domestic Violence Resource Centre Victoria, Submission 945, 31.
- 102 Ibid.
- 103 KPMG Management Consulting, above n 12, iii.
- 104 Ibid i.
- 105 Nine Signatory Organisations, Submission 351, 9.
- 106 The nine organisations are: CASA Forum (Victorian Centres Against Sexual Assault); Domestic Violence Victoria; Multicultural Centre for Women's Health; No To Violence; Our Watch; Victorian Equal Opportunity and Human Rights Commission; Women with Disabilities Victoria; Women's Health Association of Victoria; Women's Health Victoria: Nine Signatory Organisations, Submission 351, 9. See also CASA Forum, Submission 828, 4; Domestic Violence Victoria—02, Submission 943, 42; Centre for Multicultural Youth, Submission 452, 9; No To Violence; Men's Referral Service, Submission 944, 29; Our Watch—02, Submission 922, 32–33; Women with Disabilities Victoria, Submission 924, 9–10; Women's Health Association of Victoria, Submission 509, 5.
- 107 Drummond Street Services, Submission 685, 14.
- 108 Loddon Campaspe Integrated Family Violence Services Consortium, Submission 914, 3.
- 109 Helen M Eigenberg, Victor E Kappeler and Karen McGuffee, 'Confronting the Complexities of Domestic Violence: A Social Prescription for Rethinking Police Training' (2012)(2) *Journal of Police Crisis Negotiations* 122, 122; Kristin Diemer et al, 'Review of the Victoria Police Code of Practice for the Investigation of Family Violence: Final Report' (December 2013), 17, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.
- 110 Centre Against Violence, Submission 760, 2–3; Darebin Community Legal Centre, Submission 931, 9; Law Institute of Victoria, Submission 832, 15; Australian Women Against Violence Alliance, Submission 838, 24; Safe Steps Family Violence Response Centre, Submission 942, 30. See also Diemer et al, above n 109, 16; 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) 406.
- 111 Safe Steps Family Violence Response Centre, Submission 942, 30. See also Australian Law Reform Commission and New South Wales Law Reform Commission, above n 110, 409.
- 112 Seniors Rights Victoria, Submission 915, 31; Law Institute of Victoria, Submission 832, 6; Eastern Elder Abuse Network, Submission 379, 9.
- 113 InTouch Multicultural Centre Against Family Violence, Submission 612, 45; Victorian Arabic Social Services, Submission 474, 9; Women's Legal Service Victoria—01, Submission 940, 59; Whittlesea Community Connections, Submission 375, 22; JK Diversity Consultants, Submission 890, 11.
- 114 Women's Mental Health Network Victoria Inc, Submission 417, 10.
- 115 Victorian Gay & Lesbian Rights Lobby, Submission 684, 6; No To Violence; Safe Steps Family Violence Response Centre, Submission 933, 24.
- 116 Diemer et al, above n 109, 13.
- 117 Ibid.
- 118 Women's Legal Service Victoria—01, Submission 940, 38. See also Centre for Rural Regional Law and Justice—Deakin University, Submission 511, Attachment 1, 89–90; Mallee Family Violence Executive, Submission 617, 2.
- 119 See, eg, Community consultation, Werribee 2, 11 May 2015; Christine Craik, Submission 437, 6–7; Women's Legal Service Victoria—01, Submission 940, 38; Anonymous, Submission 373, 1–3; Nexus Primary Health, Submission 781, 4; Community consultation, Melbourne, 30 April 2015; Community consultation, Bendigo 1, 5 May 2015; Community consultation, Echuca 2, 7 May 2015; Peninsula Community Legal Centre, Submission 447, 18; Centre for Rural Regional Law and Justice—Deakin University, Submission 511, Attachment 1, 90, Attachment 2, 24–26; Statement of Field, 31 July 2015, 10 [40].
- 120 Centre for Rural Regional Law and Justice—Deakin University, Submission 511, 19 citing Amanda George and Bridget Harris, 'Landscapes of Violence: Women Surviving Family Violence in Regional and Rural Victoria' (Deakin University School of Law Centre for Regional Law and Justice, 2014) 92–96.
- 121 Loddon Campaspe Community Legal Centre, Submission 236, 9 [20.16].
- 122 Gay and Lesbian Health Victoria; Australian Research Centre in Sex, Health & Society—La Trobe University, Submission 821, 19; Opportunity Knocks—EDVOS; Safe Futures Foundation; Safe Steps; WISHIN; Victorian Women's Trust, Submission 898, 25–26; Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 60–61; Seniors Rights Victoria, Submission 915, 42. See also InTouch Multicultural Centre Against Family Violence, Submission 612, 37.
- 123 For example, in the United States the Greenbook Initiative includes education materials on 'cultural competence': Annabel Taylor et al, 'Domestic and Family Violence Protection Orders in Australia: An Investigation of Information Sharing and Enforcement: State of Knowledge Paper' (Landscapes Issue 16, Australia's National Research Organisation for Women's Safety, December 2015) 25, 36; Shellee Wakefield and Annabel Taylor, 'Judicial Education for Domestic and Family Violence' (Landscapes: State of Knowledge Paper 02, Australian National Research Organisation for Women's Safety, June 2015) 22. 'Equality benchbook' resources are available for judicial members in New South Wales, Queensland and the United Kingdom. See, eg, Judicial Commission of New South Wales, *Equality Before the Law Bench Book* (June 2014) <http://www.judcom.nsw.gov.au/publications/benchbks/equality/benchbook.pdf/at_download/file>. The Victorian Equal Opportunity and Human Rights Commission will also be working with the Judicial College of Victoria to produce a resource for judicial members regarding accessibility for people with disabilities: Victorian Equal Opportunity and Human Rights Commission, *Beyond doubt: the experiences of people with disabilities reporting crime* <<http://www.humanrightscommission.vic.gov.au/index.php/our-projects-a-initiatives/item/619-experiences-of-people-with-disabilities-reporting-crime#next-steps>>.
- 124 Wakefield and Taylor, above n 123, 22.
- 125 Australian Law Reform Commission and NSW Law Reform Commission, above n 110, 46–47.
- 126 Wakefield and Taylor, above n 123.
- 127 Ibid 38.
- 128 Ibid 22–23.
- 129 Ibid 25–26.
- 130 Judicial College of Victoria, *Family Violence Bench Book* (11 November 2014) <<http://www.judicialcollege.vic.edu.au/publications/family-violence-resources>>. See also Judicial College of Victoria, Submission 536, 11; Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 55.
- 131 Judicial College of Victoria, Submission 536, 5.
- 132 Senator The Hon George Brandis QC and Senator The Hon Michaelia Cash, 'National Family Violence Bench Book' (Media Release, 9 June 2015); Australian Law Reform Commission and NSW Law Reform Commission, above n 110, 46.
- 133 Senator The Hon George Brandis QC and Senator The Hon Michaelia Cash, above n 132.
- 134 Ibid.
- 135 Judicial College of Victoria, Submission 536, 11.

- 136 Magistrates' Court of Victoria and Children's Court Victoria, 'Magistrates' and Children's Courts—Information Request Response', 9, provided in response to the Commission's request for information dated 5 June 2015.
- 137 Judicial College of Victoria, *2016 Season of Learning* <http://www.judicialcollege.vic.edu.au/sites/default/files/jcv_prospectus_2016_web_lr.pdf>.
- 138 These evening events have been developed with the Judicial Officers' Aboriginal Cultural Awareness Committee, chaired by Justice Stephen Kaye AM: *ibid*.
- 139 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 30. 'The first of three, two day courses, focusing on the social context of family violence was held in February 2015. The remaining programs will run in August 2015 and February 2016': *ibid*.
- 140 *Ibid*.
- 141 Judicial College of Victoria, Submission 536, 4.
- 142 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, viii.
- 143 *Ibid*.
- 144 Magistrates' Court of Victoria, 'Court Services Victoria, Position Description: Registrar—Magistrates' Court', 1, produced by the Magistrates' Court of Victoria in response to the Commission's request for information dated 5 June 2015.
- 145 *Ibid*.
- 146 George and Harris, above n 120, 77.
- 147 Community consultation, Echuca 1, 7 May 2015.
- 148 Statement of Field, 31 July 2015, 9–10 [38].
- 149 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 29 [6.1.2]–[6.1.3].
- 150 See, eg, Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, vi; Ovens Murray Goulburn Integrated Family Violence Services, Submission 444, 6; Goulburn Valley Community Legal Centre, Submission 495, 7 [19.10]. See also Transcript of Hawkins, 4 August 2015, 1857 [19]–1858 [17].
- 151 See, eg, Magistrates' Court of Victoria, *Careers in the Court* <<https://www.magistratescourt.vic.gov.au/about-us/careers-court>>.
- 152 This qualification replaces the Certificate IV in Government (Court Services) which was delivered by several Registered Training Organisations between 2003 and 2015: Magistrates' Court of Victoria, 'General Induction For All New Staff', 1, produced by the Magistrates' Court of Victoria in response to the Commission's request for information dated 5 June 2015.
- 153 *Ibid* 2.
- 154 Magistrates' Court of Victoria and Children's Court Victoria, above n 136, 9.
- 155 Magistrates' Court of Victoria, above n 152, 2. See also *ibid*.
- 156 Magistrates' Court of Victoria, above n 152, 2; Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 30.
- 157 Magistrates' Court of Victoria, *Career as a Court Registrar FAQ* (6 October 2015) <<https://www.magistratescourt.vic.gov.au/faqs/frequently-asked-questions/career-court-registrar-faq>>.
- 158 Magistrates' Court of Victoria, above n 144, 1.
- 159 Magistrates' Court of Victoria, 'Court Services Victoria, Position Description: Family Violence Registrar—Magistrates' Court', 1, produced in response to the Commission's request for information dated 5 June 2015.
- 160 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 9.
- 161 Magistrates' Court of Victoria, above n 159, 2; Magistrates' Court of Victoria, 'Court Services Victoria, Position Description: Family Violence Respondent Support Worker—Frankston Magistrates' Court', 2, produced in response to the Commission's request for information dated 5 June 2015. See also Statement of Davies, 29 July 2015, 1 [2], 2 [8].
- 162 Magistrates' Court of Victoria and Children's Court Victoria, above n 136, 9.
- 163 Magistrates' Court of Victoria and Children's Court of Victoria, Submission 978, 29.
- 164 Statement of Newman, 28 July 2015, 1 [3].
- 165 Magistrates' Court of Victoria, above n 152, 1. See also Statement of Newman, 28 July 2015, 1 [3].
- 166 Magistrates' Court of Victoria, above n 152, 2.
- 167 Anonymous, Submission 100, 2.
- 168 Anonymous, Submission 264, 3.
- 169 See, eg, Community consultation, Benalla 1, 19 May 2015; Community consultation, Melbourne 3, 24 April 2015; Anonymous, Submission 414, 3.
- 170 See, eg, Anonymous, Submission 739, 2.
- 171 See, eg, Statement of Jones, 7 August 2015, 11 [44]; Anonymous, Submission 263, 3.
- 172 Anonymous, Submission 583, 2.
- 173 Law Institute of Victoria, Submission 832, 5.
- 174 Statement of Fatouros, 6 August 2015, 7 [31].
- 175 Federation of Community Legal Centres, Submission 958, 32.
- 176 *Ibid* 7.
- 177 Transcript of Matthews, 7 August 2015, 2320 [23]–[24].
- 178 Chisholm Institute, Submission 803, Appendix 4.
- 179 Law Institute of Victoria, 'Family Violence Education for Family Lawyers' (19 January 2016), 1, provided by the Law Institute of Victoria to the Commission, 19 January 2016.
- 180 *Ibid*.
- 181 The College of Law, *Practical Legal Training Subject Outlines* <<http://www.collaw.edu.au/what-we-offer/law-students-and-graduates/practical-legal-training-subject-outlines/>>.
- 182 Leo Cussen Centre for Law, *Course Structure of the Practical Training Course (Graduate Diploma in Legal Practice)* <http://www.leocussen.edu.au/cb_pages/ptc_course_structure.php>.
- 183 Australian National University, *Graduate Diploma of Legal Practice* <<https://legalworkshop.law.anu.edu.au/gdlp>>.
- 184 Law Institute of Victoria, above n 179, 1–2.
- 185 As part of the 2015 program, the LIV hosted sessions with panellists having expertise in family violence, children, police and criminal law: Law Institute of Victoria, above n 179, 3.
- 186 *Ibid* 4.
- 187 Transcript of Counsel, 7 August 2015, 2320 [17]–[19].
- 188 Law Institute of Victoria, above n 179, 4.
- 189 *Ibid*.
- 190 Victoria Legal Aid, *Information package: Family Violence Panel 2014* (28 May 2014) 3–4. <<http://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-information-package-family-violence-panel-20141209.pdf>>.
- 191 Statement of Sinclair, 3 August 2015, 2 [9].
- 192 Victoria Legal Aid, *Training helps lawyers walk the talk in dealing with family violence* (19 August 2015) <<https://www.legalaid.vic.gov.au/about-us/news/training-helps-lawyers-walk-talk-in-dealing-with-family-violence>>.

- 193 Victoria Legal Aid, 'VLA Practice Essentials', provided by Victoria Legal Aid in response to the Commission's Notice to Produce dated 5 June 2015; Victoria Legal Aid, 'New Lawyers Program' (2014), provided by Victoria Legal Aid in response to the Commission's Notice to Produce dated 5 June 2015.
- 194 See, eg, Victoria Legal Aid, 'Training in Family Violence and Child Protection Guidelines— Description of Video Lecture', provided by Victoria Legal Aid in response to the Commission's Notice to Produce dated 5 June 2015.
- 195 Transcript of Matthews, 7 August 2015, 2320 [30]–2321 [12].
- 196 Women's Legal Service Victoria, 'Presenter's Manual: A Workshop on Assisting Traumatized Clients—When Justice Takes its Toll', 1, provided by Women's Legal Service Victoria, 11 February 2016.
- 197 Women's Legal Service Victoria, 'Safer Families Program Description', 1, provided by Women's Legal Service Victoria, 11 February 2016. See also, Emma Pritchard, 'Safer Families Program Evaluation' (September 2014) provided by Victoria Legal Aid in response to the Commission's Notice to Produce dated 5 June 2015.
- 198 Law Institute of Victoria, above n 179, 3.
- 199 Ibid.
- 200 Ibid 4.
- 201 Family Law Section—Law Council of Australia, Submission 863, 10–12. For information regarding the Detection of Overall Risk Screen tool see The Family Law DOORS <<http://www.familylawdoors.com.au/>>.
- 202 AVERT Family Violence, *What is AVERT Family Violence?* <<http://www.avertfamilyviolence.com.au/about-avert/>>.
- 203 Ibid.
- 204 Law Institute of Victoria, above n 179, 4.
- 205 Ibid.
- 206 No To Violence; Men's Referral Service, Submission 944, 40.
- 207 The Royal Women's Hospital, Submission 356, 2.
- 208 Ibid 7.
- 209 Melbourne Research Alliance to end violence against women and their children (Prof Kelsey Hegarty et al), Submission 885, Briefing Paper 1, 3.
- 210 The Royal Women's Hospital, Submission 356, 7.
- 211 The Royal Australian and New Zealand College of Obstetricians and Gynaecologists, *Medical Responses to Adults Who Have Experienced Sexual Assault* (5 June 2012) <<https://www.ranzcog.edu.au/sexual-assault-module.html>>.
- 212 Royal Australian College of General Practitioners, Submission 486, 2.
- 213 Ibid.
- 214 Ibid 3.
- 215 Ibid.
- 216 Ibid.
- 217 Ibid 4.
- 218 Ibid 3.
- 219 Royal Australian and New Zealand College of Psychiatrists, Submission 395, 11–12.
- 220 Ibid 13.
- 221 Transcript of Callister, 10 August 2015, 2459 [13]–[16]. The module is entitled 'Protecting Children—Mandatory Reporting and other Obligations': Department of Premier and Cabinet, 'Table of items where no relevant documents or data identified/available under Notice to Produce dated 5 June 2015' (21 October 2015), 8–11, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.
- 222 Statement of Callister, 4 August 2015, 39 [168], Attachment 16. Ms Callister also gave evidence that an adapted version of the module will be developed for early childhood teachers who were required to be registered with the Victorian Institute of Teaching from 30 September 2015 and who will therefore also become 'mandatory reporters': Statement of Callister, 4 August 2015, 39 [168].
- 223 Ibid Attachment 16, screen [21].
- 224 Department of Premier and Cabinet, above n 221, 8–11.
- 225 Transcript of Callister, 10 August 2015, 2458 [28]–[30].
- 226 Victorian Council of Social Service, Submission 467, 10; Melbourne Research Alliance to end violence against women and their children (Prof Cathy Humphreys et al)—01, Submission 840, Briefing Paper 4, 7; Federation of Community Legal Centres, Submission 958, 8; Australian Association of Social Workers, Submission 388, 4. See also Community consultation, Bendigo 2, 5 May 2015.
- 227 Confidential transcript of 'Ryan', 23 July 2015, C66 [1]–[8], C68 [15]–[17]; Confidential, Submission 38, 3–4; Confidential, Submission 883, 4; Anonymous, Submission 534, 21.
- 228 See, eg, Victorian Aboriginal Child Care Agency, Submission 947, 12; Aboriginal Family Violence Prevention and Legal Service Victoria, Submission 941, 23.
- 229 See, eg, Bethany Community Support, Submission 434, 13–14; Integrated Family Violence Partnership—Southern Melbourne, Submission 224, 4; Domestic Violence Victoria—04, Submission 943, 11–13.
- 230 Melbourne Research Alliance to end violence against women and their children (Prof Cathy Humphreys et al)—01, Submission 840, 7; Federation of Community Legal Centres, Submission 958, 8–9.
- 231 Statement of Allen, 13 July 2015, 26 [125]–[126].
- 232 Department of Health and Human Services, 'Child Protection Learning and Development Strategy 2014-15' (2014), 8, produced in response to the Commission's Notice to Produce dated 5 June 2015.
- 233 Statement of Beaton, 12 October 2015, 6 [26]–[27].
- 234 Jenny Dwyer and Robyn Miller, 'Working with Families Where an Adult is Violent: Best Interests Case Practice Model' (Specialist Practice Resource, Department of Human Services, 2014).
- 235 Statement of Beaton, 12 October 2015, 8–9 [33].
- 236 Ibid 9 [35], 10 [37].
- 237 Ibid; State of Victoria, '2015–16 Budget Paper No 3: Service Delivery' (Department of Treasury and Finance, 2015) 5, 7.
- 238 Statement of Beaton, 12 October 2015, 2–3 [14].
- 239 Ibid 3 [15]–[16]. By October 2013 there were principal practitioners placed in every DHHS division across Victoria and they had a regular presence in every Child Protection office across the state: Statement of Miller, 14 July 2015, 25 [93].
- 240 Statement of Beaton, 12 October 2015, 3 [17].
- 241 Ibid 4 [20].
- 242 Ibid 4 [21].
- 243 Ibid 5 [23].
- 244 Ibid 3 [19].
- 245 Ibid 6 [24]–[25].

246 'As Chief Practitioner, I was very focussed on the knowledge from family violence services being well understood by child protection practitioners and trying to share the knowledge from child protection with the family violence sector and the family support sector': Statement of Miller, 14 July 2015, 22 [84].

247 Department of Justice and Regulation, 'Request #161', produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.

248 Department of Premier and Cabinet, above n 221, 20.

249 Department of Education and Training, 'Royal Commission into Family Violence - Notice to Produce 5 June 2015—Department of Education and Training Response', produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.

250 See, eg, Domestic Violence Resource Centre Victoria, Submission 945, 23; Seniors Rights Victoria, Submission 915, 31; Victorian Council of Social Service, Submission 467, 68. Family violence training, including risk assessment by Correction Victoria staff, is discussed in Chapters 18 and 34.

251 Victorian Alcohol and Drug Association, Submission 581, 18. See also Victorian Council of Social Service, Submission 467, 69.

252 Statement of Gruenert, 8 July 2015, 5 [31]; Statement of Abbott, 14 July 2015, 19 [72]. See also Department of Health and Human Services, 'The Adult AOD Screening and Assessment Instrument: Clinician Guide' (June 2013), 12–14, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.

253 Statement of Abbott, 14 July 2015, 19 [73.3].

254 See, eg, Gippsland Integrated Family Violence Service Reform Steering Committee, Submission 691, 12.

255 Cobaw Community Health, Submission 396, 3.

256 Department of Health and Human Services, 'Request for information for the Royal Commission into Family Violence', 1, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.

257 Department of Health and Human Services, 'Introduction to Disability Practice' (28 April 2015), 74, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.

258 Department of Health and Human Services, 'Ready4work Disability Support Work Induction Resource Kit' (2014), 77–80, produced by the State of Victoria in response to the Commission's Notice to produce dated 5 June 2015.

259 Department of Health and Human Services, 'Beginning Practice in Youth Justice: Practice Clinic 3, Day 2', 17–23, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.

260 Victorian Council of Social Service, Submission 467, 69.

261 See, eg, NorthWestern Mental Health, Submission 993, 2.

262 The Royal Women's Hospital, Submission 356, 12; InTouch Multicultural Centre Against Family Violence, Submission 612, 20.

263 Grampians Community Health, Submission 520, 8. In regard to training required, see Justice Connect Homeless Law, Submission 889, 6, 40–41.

264 Transcript of Maguire, 13 October 2015, 3407 [15]–[28].

265 Domestic Violence Resource Centre Victoria, Submission 945, 22.

266 Ibid.

267 Transcript of McNamara, 12 August 2015, 2828 [2]–[9]. See also Statement of McNamara, 12 August 2015, 8–9 [44].

268 Statement of McNamara, 12 August 2015, 8–9 [45].

269 Ibid 3–4 [23].

270 Ibid 4 [25].

271 Ibid 3 [21].

272 Ibid 18 [88].

273 Transcript of McNamara, 12 August 2015, 2825 [7]–[9].

274 Ibid 2826 [7]–[15].

275 Statement of McNamara, 12 August 2015, 10 [52]–[53].

276 'For example a 'highly skilled and experienced domestic violence employee might co-facilitate with someone who is highly skilled and experienced in working with drug and alcohol issues': *ibid* 6 [34].

277 Ibid 17–18 [87].

278 Ibid 2 [9].

279 Ibid 18 [90].

280 Statement of Diver, 3 August 2015, 22 [85].

281 Transcript of Diver, 12 August 2015, 2868 [23]–2869 [6].

282 Domestic Violence Resource Centre Victoria, Submission 945, 19–20.

283 Domestic Violence Resource Centre Victoria, Submission 945.

284 Ibid 19–20.

285 Ibid 20.

286 Ibid 20–1.

287 Ibid 29.

288 Department of Health and Human Services 'Family Violence Risk Assessment and Risk Management Framework Training: Final Report Nov 2011–Dec 2013' (prepared by Swinburne University of Technology in partnership with Domestic Violence Resource Centre Victoria and No To Violence), 3–5, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.

289 Domestic Violence Resource Centre Victoria, Submission 945, 22.

290 Domestic Violence Resource Centre Victoria, *eLearning, The Lookout* <<http://www.thelookout.org.au/training-events/craf/elearning>>.

291 In 2007 the then Department of Human Services allocated \$2.1 million over three years as part of a strategy to develop an industry plan for the community managed housing and support sector, of which specialist family violence services form a part. The Commission understands the workforce strategy and industry plan did not proceed, however a workforce survey was conducted. This survey is referred to throughout this chapter: see KPMG Management Consulting, above n 12, 17–18.

292 Australian Association of Social Workers, Submission 388, 2.

293 Department of Health and Human Services, 'Victorian Centres Against Sexual Assault: Standards of Practice' (2008), 109, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.

294 Transcript of Maguire, 13 October 2015, 3404 [18]–[27].

295 Transcript of Jaffe, 13 October 2015, 3399 [28]–[31].

296 Federal Student Aid, *An Office of the US Department of Education, Public Service Loan Forgiveness* <<https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/public-service>>.

297 Federal Student Aid, *An Office of the US Department of Education, Teacher Loan Forgiveness* <<https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/teacher>>.

298 HECS-HELP Benefit Guidelines No 1 made under section 238–10 of the *Higher Education Support Act 2003* (Cth), Chapter 2.

299 Australian Government, *HECS-HELP Benefit, Study Assist*, <<http://studyassist.gov.au/sites/studyassist/payingbackmyloan/hecs-help-benefit/pages/hecs-help-benefit>>. The maximum amount will be indexed for later years.

- ³⁰⁰ Department of Justice and Regulation, *Koori employment* <<http://www.justice.vic.gov.au/utility/careers/koori+employment>>. See also Department of Premier and Cabinet, 'Karreeta Yirramboi—Victorian Aboriginal Public Sector Employment and Career Development Action Plan 2010–2015' <<http://www.dpc.vic.gov.au/index.php/aboriginal-affairs/aboriginal-affairs-policy/victorian-aboriginal-economic-priorities>>.
- ³⁰¹ See Department of Health and Human Services, 'Certificate IV in Aboriginal Family Violence Work 22040VIC: Pilot Course evaluation—November 2009–May 2011', produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015; Department of Health and Human Services, 'Delivery of Certificate IV Aboriginal Family Violence 2012–13', produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.
- ³⁰² Statement of McNamara, 12 August 2015, 8 [42].
- ³⁰³ *Ibid* 3 [22].
- ³⁰⁴ Transcript of McNamara, 12 August 2015, 2833 [25]–2834 [8].
- ³⁰⁵ Statement of Miller, 14 July 2015, 25 [93].
- ³⁰⁶ See Corrections Prisons and Parole, *Careers* <<http://www.corrections.vic.gov.au/utility/careers/>>.

41 Investment

Introduction

This chapter considers current funding levels for programs aimed at preventing and responding to family violence. The Commission heard that funding is inadequate to meet existing demand and that further investment will be required to meet increasing levels of demand in the future.

We know that family violence affects physical health, mental wellbeing and financial security. Beyond the personal harm that family violence causes, it also has a significant economic cost at a societal level. This arises from the direct costs of preventing and responding to family violence (for example, policing, courts and crisis services) and also the indirect costs associated with its effects (for example, health costs or work absences).

Identifying the economic costs of family violence to individuals, government and the community as a whole is important when considering arguments for increasing government investment to prevent such violence and reduce its long-term impact on victims.

In this chapter, we outline recent efforts to estimate the overall economic cost of family violence. Different reports have different assumptions underpinning their estimates; however, all studies suggest that family violence imposes a large economic burden on individuals, government and the whole community. The most recent report estimates the cost of violence against women in Australia in 2014–15 at \$21.6 billion.

The Victorian Government estimated that it spent \$80.6 million in 2014–15 on family violence initiatives; however, this figure does not capture broader justice and health and human services costs and does not represent total family violence expenditure. Current state government budget structures and departmental funding processes make it difficult to quantify expenditure on family violence. This restricts the Victorian Government's capacity to determine the costs and benefits of particular interventions and plan for the future.

The Commission was told that existing funding arrangements obscure family violence costs—with homelessness funding highlighted as a key example. In addition, funding is currently heavily weighted to crisis responses, with prevention, early intervention and long-term recovery receiving only modest funding. The inadequacy of funding to keep pace with significant spikes in demand, compounded by funding fragmentation and a lack of statewide coordination, is placing significant pressure on service providers and failing to meet the needs of those experiencing family violence.

The Commission recommends additional investment to meet the significant costs associated with family violence. Increased investment in prevention and early intervention initiatives is critical to reducing these costs in the long term. Other proposed changes (including defining specific family violence-related performance measures) will help make family violence expenditure more transparent and make it easier to forecast demand, gauge the success of government policies and measure the performance of service providers and the system as a whole.

A more coordinated and strategic investment framework, that places victims' needs at its centre, is required to meet the enormous challenges of this serious social problem.

Context and current practice

Understanding the economic costs of family violence on society as a whole is an important starting point when considering further investment in policies and systems to prevent and respond to family violence. It assists in determining the appropriate level of investment, as well as demonstrating the economic benefits of investing to reduce rates of violence. In its submission, Good Shepherd Australia New Zealand observed:

Family violence comes at a financial cost to every Australian citizen ... Not discounting the fact that the prevention of family violence may well be a financially costly endeavour, without such investments, family violence will continue to erode our community and diminish the lives, security and independence, of thousands within it.¹

This section examines how both the economic cost on family violence and current government expenditure are measured. Three recent reports that seek to measure the societal costs of family violence and other violence against women are described. The most recent report by PwC found that the cost of violence against women in Australia in 2014–15 was \$21.6 billion.

The discussion on government expenditure highlights the fact that the Victorian Government does not currently measure the full cost of family violence on its budget. The figure provided to the Commission of \$80.6 million relates only to funding for specialist family violence services and does not take into account the many other services accessed by people experiencing family violence. These include Victoria Police, the court system and universal services, such as health services, as well as Child Protection and associated family services expenditure. The Commission requested that the Victorian Government undertake the process of measuring this total cost for 2013–14 and 2014–15. The result shows that while the overall expenditure by the Victorian Government cannot be precisely quantified, it is substantial.

Measuring the overall economic costs of family violence

The approach to estimating the economic burden imposed by family violence is similar to epidemiological approaches that model the economic costs of particular diseases in order to demonstrate the case for public health interventions. Researchers in New Zealand, Canada, the United Kingdom, the United States² and Australia³ have tried to measure the costs in this way.

Since the early 2000s three Australian reports on the economic costs of intimate partner violence have been commissioned by government and non-government organisations. The estimates they contain are based on assumptions about the prevalence of family violence and the particular effects such violence is likely to have on individual victims (including children) and perpetrators.⁴

Access Economics study

The federal Office of the Status of Women (now the Office for Women) commissioned Access Economics to conduct a study in order to raise community awareness of the costs of domestic violence and assist government policy makers in the allocation of resources.⁵ The study was based on 2002–03 data and estimated the economic costs of all forms of intimate partner violence—including violence in same-sex relationships. Domestic violence covered physical and sexual violence, threats and intimidation, and emotional and social abuse.⁶

In its report Access Economics cautioned that there are severe problems associated with ‘obtaining accurate estimates of many of the detailed components of costs’ and stated that ‘a considerable margin of uncertainty surrounded [the] estimates, many of which were based on limited data and parameters reflecting a large element of judgement’. The study team was particularly cautious about estimating the cost of a victim’s pain and suffering.⁷ Nevertheless, Access Economics estimated that in Australia in 2002–03 the total annual cost of domestic violence (as defined) was \$8.1 billion,⁸ of which \$3.5 billion was said to relate to pain, suffering and premature death.⁹

KPMG study

In 2009, the *National Council to Reduce Violence against Women and their Children* prepared a study to guide the development of the National Plan to Reduce Violence against Women and their Children 2010–2022.¹⁰ The study, undertaken by KPMG, provided an estimate of the costs of violence by 2021–22 and the costs that could be avoided by reducing the levels of violence. Unlike the Access Economics study, the KPMG study included violence that is outside the scope of the Commission's work, for example, assault by strangers.¹¹

The KPMG study was a desk-top analysis that focused mainly on updating the Access Economics study. In contrast with the Access Economics study, it did not include the economic costs of violence by women against men. Using a methodology similar to that used by Access Economics, KPMG estimated the total cost of violence against women in 2008–09 in Australia (including violence by strangers) to be \$13.6 billion.¹² The KPMG report said:

Without appropriate action to address violence against women and their children, an estimated three-quarters of a million Australian women will experience and report violence in the period 2021–22, costing the Australian economy an estimated \$15.6 billion.¹³

The study referred to the proposed plan to reduce violence against women and children and said its 'estimates of cost savings were not based on specific proposals' in the National Plan to Reduce Violence against Women and their Children but that these 'could be considered as part of a detailed business case for investment'.¹⁴

PwC Australia report

The most recent examination of the economic costs of family violence to the Australian community was conducted by PwC Australia under a contract with Our Watch and VicHealth.¹⁵ Its report was published in November 2015 (PwC report). Like the KPMG study, it covers both intimate partner violence against women and violence by strangers.¹⁶

The PwC report arrives at an economic cost of violence against Australian women by updating the Access Economics estimates and using more recent Australian Bureau of Statistics data on the prevalence of this violence.¹⁷ It estimates that the 2014–15 cost of all violence against Australian women¹⁸ was \$21.7 billion, of which \$12.6 billion was related to violence by a partner.¹⁹

The PwC report takes account of the costs borne by children in the care of a woman when violence was inflicted, but it does not estimate the cost of the long-term effects that children might suffer as a result of family violence against their mother.²⁰ It tries to measure the benefits of preventing violence against women through community mobilisation and individual and group participation programs directed at helping people 'sustain equal, respectful, non-violent relationships'.²¹ Using assumptions about the reductions that would be achieved by implementing these programs, it produced various estimates of the costs that would be avoided. The estimates of cost savings in both the KPMG and the PwC reports do not relate to savings in government expenditure: they are estimated reductions in the overall cost of family violence.

As noted, the scope of the Access Economics, KPMG and PwC studies differs, although each uses the same categories to estimate costs and allocate the proportion of the costs borne by victims, perpetrators, children, employers and government. Table 41.1 summarises the findings of each of the studies.

Table 41.1 Australian studies' estimates of the costs of reported violence against women and family violence

| Study | Scope | Year | Estimate (A\$) |
|------------------|---|---------|-------------------------|
| Access Economics | Domestic violence (male and female victims) | 2002–03 | 8.1 billion |
| KPMG | Domestic violence against women and children (excludes male victims) and non-domestic sexual assault (excludes male victims) | 2007–08 | 13.6 billion |
| | | 2021–22 | 15.6 billion (forecast) |
| PwC | Partner violence—physical violence, sexual violence or emotional abuse by current or previous partner perpetrated against women (excludes male victims) | 2014–15 | 12.6 billion |
| | All violence against women—physical violence, sexual violence, emotional abuse (by a partner) or stalking by any person perpetrated against women (excludes male victims) | 2014–15 | 21.6 billion |

Like the previous studies, the PwC report found that victims bear the greatest proportion of the overall cost: PwC's estimate was 31 per cent.²² The proportion of costs allocated to others includes 26 per cent to the Commonwealth Government, 14 per cent to society and the community, and 10 per cent to state and territory governments. Children accounted for seven per cent of the costs and perpetrators six per cent.²³ Appendix H provides the estimates and definitions for each of the cost categories in the study.

The PwC report found that pain, suffering and premature mortality accounted for about 48 per cent (\$10.4 billion) of the cost associated with all violence against women (and 38 per cent of partner violence costs).²⁴ It stated, 'It [pain, suffering and premature mortality] represents a conceptual (rather than direct or indirect) cost of violence associated with the loss in quality of life either due to morbidity or premature death following violence.'²⁵ Excluding the cost of pain and suffering, the largest category of costs is described as 'consumption-related' costs, which the PwC report defines as 'the cost to repair or replace damaged or destroyed property and lost economies of scale' when women separate from violent partners and maintain separate households.²⁶

Application of estimates to Victoria

All three reports produce Australia-wide estimates.²⁷ The Victorian Government's submission arrived at a figure of \$3.4 billion for Victoria.²⁸ This is derived from the KPMG report's Australia-wide estimate for 2007–08 and is calculated by reference to the proportion of the Australian population living in Victoria. Like the KPMG report, it includes violence committed against women by strangers, as well as intimate partners.

Differences in victims' circumstances—for example, higher Aboriginal and Torres Strait Islander populations in some states—and in state-based responses to family violence, may affect the accuracy of the calculations. Assuming, however, that a calculation based on the population of Victoria is appropriate, that amount should now reflect the more recent Australia-wide figure calculated by PwC.

Applying the same methodology to apportion the cost estimate on a population-share basis of the PwC estimates indicates that the cost of intimate partner violence in Victoria was \$3.1 billion in 2014–15.²⁹

Measuring government expenditure on family violence

The output budgeting process

The Commission heard that the Victorian Government uses 'output' budgeting processes. Under this process the government allocates a budget for each of a number of outputs, each of which is comprised of many programs and services.³⁰

A budget output consists of programs, initiatives and services designed to deliver a set of common objectives. Examples of budget outputs are policing services, child protection and family services, housing assistance, and mental health community support services.

Ms Melissa Skilbeck, Deputy Secretary of the Department of Treasury and Finance, told the Commission:

Outputs are the final products, or goods and services produced or delivered by, or on behalf of, a Department or public body and include products and services delivered to the community (e.g. education, health services), or products and services provided to other Departments (e.g. services provided by the Victorian Public Sector Commission to support the public sector).³¹

Through this process, responsibility is devolved to individual portfolio ministers and departments that manage a global budget to deliver agreed outputs, in line with departmental objectives.³²

The annual state budget shows the government's allocation of funding and the performance measures for each output. A department's budget is made up of the funding allocated to each of its outputs.

The Commission was informed:

Output performance measures specify a Department's expected service delivery performance. They are used to demonstrate the efficiency and effectiveness of output delivery (quantity, quality and timeliness) and the achievement of value for money (cost). As such they must be selected on the basis of their capacity to measure the extent and standard of output delivery.³³

The following are examples of output performance measures:

- ▷ the number of clients receiving case-management services—the Disability output³⁴
- ▷ the number of family services cases provided to Aboriginal families—the Child Protection and Family Services output³⁵
- ▷ the number of households assisted with crisis and transitional accommodation—the Housing Assistance output³⁶
- ▷ the case clearance rate (for example, Family Division matters disposed of in the Children's Court)—the Courts output.³⁷

Budget papers include both the target for each output performance measure for that budget year and performance against each measure's target. They also include the expected result for the year preceding the budget year and the actual result for the year before that.³⁸

The Commission was told that the main purpose of outputs and associated performance measures is to make state budget commitments visible to the public and to ensure that government is held financially accountable to Parliament each year.³⁹

There is no family violence output in the budget. Instead, family violence-related programs and activities form part of several outputs. For example, crisis (including refuge) accommodation⁴⁰ and specialist family violence case-management and outreach services,⁴¹ which are important components of the specialist family violence service system, come within the housing assistance output, while family violence counselling services are part of the child protection and family services output.⁴²

Of the estimated 1000 performance measures applicable to all outputs delivered by government, only three relate to family violence. Two of these are in the policing services output.⁴³ There are no output performance measures relevant to family violence in the housing assistance or child protection and family services outputs, or any of the numerous health-related outputs.⁴⁴

Victorian government expenditure on family violence

The Victorian Government's submission advised the Commission that the total budget for Victorian government-funded family violence services and programs was \$80.6 million in 2014–15, consisting of \$77.6 million for family violence-specific initiatives and \$3 million for two non-specialist programs that have a significant family violence component.⁴⁵

Appendix J shows a full list of the programs that make up the \$80.6 million total. The government's submission did not define family violence-specific initiatives, and the breakdown provided did not always make it clear what is covered. It appears, however, that this expenditure relates largely to specialist family violence services and includes some prevention costs. Because of the overlap between family violence and sexual assault, some of the \$40 million provided for sexual assault services is also relevant to family violence. These figures are shown in Table 41.2.

Table 41.2 The Victorian Government's budget for family violence, 2014–15

| Service/program | Funding (\$ million) |
|--|----------------------|
| Programs with significant family violence component ^a | 3.0 |
| Family violence-specific services | 77.6 |
| Total family violence services | 80.6 |

a. This comprises two initiatives—the Homelessness Innovation Action Project (Family Violence), called Families at Home (\$1 million), and Reducing Violence against Women and Their Children grants (\$2 million).

Note: Subtotals do not add to total due to rounding.

Source: Based on State of Victoria, Submission 717, Appendix B.

The submission advises that a further \$35.3 million is allocated for sexual assault programs services.⁴⁶

The figure of \$80.6 million does not capture all expenditure on family violence-specific programs.⁴⁷ For example, it omits some programs delivered through Corrections Victoria and the cost of responding to male victims, which is delivered as part of the Victims Support Agency program administered by the Department of Justice and Regulation.⁴⁸

Table 41.3 shows how the \$80.6 million is allocated between departments. The majority of the funded programs are administered through the Department of Health and Human Services, accounting for 88 per cent of all such funding.

Table 41.3 The Victorian Government's budget for family violence-specific services, by department, 2014–15

| Government department/agency | Funding (\$ million) | Percentage |
|---|----------------------|------------|
| Department of Health and Human Services | 71.6 | 88.8 |
| Court Services Victoria | 5.4 | 6.7 |
| Department of Justice and Regulation | 2.2 | 2.7 |
| Department of Premier and Cabinet—Office for Women's Policy | 1.4 | 1.7 |
| Total | 80.6 | 100 |

Note: Percentages do not add to 100 due to rounding.

Source: Based on State of Victoria, Submission 717, Appendix B.

Additional funding for family violence services in 2015–16

Both the previous and the current Victorian governments have committed considerable additional funding to dealing with family violence.⁴⁹

The 2015–16 Victorian State Budget allocated an additional \$81.3 million over five years for measures related to family violence.⁵⁰ A full list of the programs and services is provided in Appendix J. The Commonwealth Government also allocated additional funding in late 2015 for a range of measures. At the time of writing the exact allocation to Victoria had not been finalised.⁵¹

As far as the Commission can determine, the 2015–16 Victorian State Budget allocated an additional \$15.7 million for 2015–16 for specialist family violence services. This is shown in Table 41.4.⁵² Assuming that the \$80.6 million related to specialist family violence services in 2014–15 was maintained into 2015–16, this would result in the total Victorian government allocation to specialist family violence services growing to \$96.3 million for 2015–16.

The state budget also allocated a further \$9 million in 2015–16 to programs and services that, although not specific to family violence, would nonetheless contribute to the response to people experiencing family violence, for example, legal assistance.⁵³

Table 41.4 Additional investment in specialist family violence services and services that contribute towards addressing family violence funded from the 2015–16 Victorian State Budget⁵⁴

| Service | (\$ million) | | | |
|--|--------------|---------|---------|---------|
| | 2015–16 | 2016–17 | 2017–18 | 2018–19 |
| Specialist family violence services | 15.7 | 2.4 | 0.4 | 0.4 |
| Services that contribute to family violence response (e.g. legal assistance) | 9.0 | 1.4 | 0.4 | 0.4 |

Source: See Appendix J. This sets out a full list of initiatives that comprises the categories.

Note: Includes \$2 million for the Family Violence Access Workers initiative, which provides additional staff to specialist family violence services to respond to L17 referrals and which was reported in the Budget as funded from the Family Violence Fund. State of Victoria, '2015–16 Budget Paper No 3: Service Delivery' (Department of Treasury and Finance, 2015), 6

As Table 41.4 shows, the majority of the additional investment is for one year only (2015–16). Considerable additional funding would need to be allocated from 2016–17 onwards to maintain this level of investment. The Commission understands that the Victorian Government will consider the recommendations made in this report as part of the 2016–17 budget process.

The importance of homelessness funding

Most specialist family violence services, including women's refuges and outreach services, are funded from homelessness funding as part of the housing assistance output in the state budget.⁵⁵ Homelessness funding was the main source of funding for the embryonic family violence service that began in the late 1970s with the establishment of women's refuges.⁵⁶ Homelessness funding was later extended to fund other specialist family violence support services.⁵⁷

The Housing Assistance output

Budget Paper No. 3 describes the Housing Assistance output as follows:

The Housing Assistance output, through the provision of homelessness services, crisis and transitional accommodation and long-term adequate, affordable and accessible housing assistance, coordinated with support services where required, home renovation assistance and the management of the home loan portfolio, aims to make a positive difference for Victorians experiencing disadvantage by providing excellent housing and community services to meet clients' needs.

This output provides:

- housing assistance for low-income families, older people, singles, young people and other households. It responds to the needs of clients through the provision of appropriate accommodation, including short-term and long-term properties that assist in reducing and preventing homelessness;
- housing support services to people who are homeless or at risk of homelessness and are in short-term housing or crisis situations. Support will assist clients in accessing and maintaining tenancies in appropriate accommodation. Services provided will assist in the prevention and overall reduction of homelessness and decrease demand for social housing.

This output supports the Department of Health and Human Services' immediate support and quality-of-life objectives.⁵⁸

Homelessness funding is administered by the Victorian Government, although both the Victorian and Commonwealth governments provide funds for this purpose. There are two main sources of funding:

- ▷ the National Affordable Housing Agreement (NAHA), under which the Commonwealth provides funding to states and territories as a contribution towards the provision of affordable, safe and sustainable housing. The funds are directed towards both social housing and homelessness assistance programs.⁵⁹ The Victorian Government also contributes funding.
- ▷ the National Partnership Agreement on Homelessness (NPAH), which is a joint Commonwealth–state agreement focusing on people who are experiencing homelessness or are at risk of homelessness. NPAH includes prevention and early intervention services, and women escaping family violence are a primary target group. In 2015–16 the total value of the NPAH in Victoria was \$53.2 million, comprising \$22.8 million from the Commonwealth and \$30.4 million from the Victorian Government.⁶⁰

The contributions made under these agreements, as well as the State's funding of social housing and homelessness programs that assist women and their children experiencing family violence, come under the housing assistance output.⁶¹

The NPAH was initially a four-year agreement (from July 2009 to June 2013) but it has been extended a number of times. At this stage, the Victorian Government has made its commitment under the NPAH until 2018.⁶² The Commonwealth commitment expires in June 2017.⁶³

Although NPAH-funded services are not restricted to family violence, \$9.7 million from this source went to support the family violence programs that are set out in Table 41.5 in 2014–15.

Table 41.5 Family violence programs funded through the National Partnership Agreement on Homelessness which lapse in June 2017, 2014–15

| Program | Funds (\$ million) |
|--|--------------------|
| Safe at Home | 1.8 |
| Extended after-hours response | 1.9 |
| Indigenous family violence support responses (including two Indigenous refuge facilities, in Mallee and Inner Gippsland) | 2.5 |
| Aboriginal legal assistance | 0.2 |
| Men's case management (mainstream) | 0.5 |
| Men's case management (Indigenous) | 0.6 |
| Intensive case management | 2.2 |
| Total | 9.7 |

Note: The value of the NPAH-funded initiatives shown here is an estimate at 2014–15 funding levels.

Source: Based on Department of Health and Human Services, 'Department of Health and Human Services—Response to Notice to Produce 20 August 2015 items 2(a)(ii) and 2(a)(iii)' produced by the State of Victoria in response to the Commission's Notice to Produce dated 14 August 2015 (as varied on 20 August and 20 October 2015).

Funding for these family violence services will lapse in June 2017 (Commonwealth contribution) or June 2018 (Victorian contribution) unless the current financial commitments under the NPAH are extended. This uncertainty makes it difficult for providers to plan services for people experiencing family violence.

Overall government expenditure on family violence

As noted, the Victorian Government submitted a figure of \$80.6 million as the budget for specialist family violence services in 2014–15. This figure does not, however, include many other services relevant to family violence.

The costs incurred by the police and the courts in dealing with family violence are high (as discussed later) and should be included in the overall cost. They can be described as follows:

- ▷ *Victoria Police costs.* These are costs incurred in responding to family violence—for attending incidents and processing police-initiated intervention orders, for criminal investigations and prosecutions, and for specialist staffing resources dedicated to redressing family violence.

- ▷ *Court costs.* These are the costs arising from hearing:
 - ▷ family violence intervention order applications in the Magistrates' Court
 - ▷ family violence–related family, youth and child protection matters in the Magistrates' and Children's Courts
 - ▷ criminal matters arising from contraventions (breaches) of family violence intervention orders and family violence that constitutes criminal offending (for example, physical and sexual assault and homicide).

Also included are court services such as the Victims of Crime Assistance Tribunal, the Coroners Court, and the Victorian Civil and Administrative Tribunal.

Additionally, the \$80.6 million does not include the cost of Child Protection, including out-of-home care and the cost of Integrated Family Services that offer parenting assistance and early intervention for families, to the extent that these services are relevant to children affected by family violence.⁶⁴

An accurate estimate of expenditure should also account for the costs to government of other mainstream services used by victims of family violence, among them the following:

- ▷ hospitals and maternal and child health services
- ▷ mental health services provided to victims (and possibly perpetrators)
- ▷ generalist homelessness services—both accommodation and associated support
- ▷ sexual assault services, to the extent that the assaults occur in the context of family violence
- ▷ drug and alcohol services for victims or perpetrators, or both
- ▷ legal assistance provided through Victoria Legal Aid and community legal centre services
- ▷ corrections—both custodial and community-based services
- ▷ education services relating to prevention of family violence.

In August 2015 the Commission served a notice to produce asking that the Victorian Government provide information about the overall cost of family violence.⁶⁵ On 7 October 2015 the Commission met with representatives of the Departments of Premier and Cabinet, Treasury and Finance, Health and Human Services, Justice and Regulation and Education and Training and Victoria Police to discuss ways in which that information could be provided in comparable form.

The Victorian Government provided detailed spreadsheets outlining the total annual expenditure for a range of programs and the proportion of that expenditure estimated to be attributable to family violence—for example, hospital emergency department services. This material is summarised in Table 41.6. The government was not, however, able to provide an overall cost.

The Department of Premier and Cabinet provided information relating to costs incurred by particular programs prepared by several departments and agencies. It prefaced the information with the following remarks:

In preparing this information for the Commission the State has multiple challenges in compiling the data. Whilst the State provides services to people who experience or use family violence across a wide range of portfolios, there is no accepted and universal manner in which the information about this use is captured.

The difficulty in capturing this information is for a number of reasons. Primary amongst these is the way that data is captured and used by various services, programs or areas of Government. These difficulties include that some services do not inquire into the presence of family violence; others may inquire into the presence of family violence, but do not have a mechanism for flagging its existence in their data collection system; and others again do record the presence of family violence, but have case management systems which do not allow the mining of that data.

Ultimately, the State has compiled the attached information on the cost to the Government of family violence. However, there are strong reasons why this information should not be aggregated and presented as the total cost to the Government of family violence. These include:

- the different methodologies of the departments and agencies in collating this data, and associated costs;
- the clear gaps in the data provided; and
- the strong caveats attached to this information.

In addition, departments and agencies have applied [different] approaches to the cost of service provision including, the inclusion in some instance of 'back of house' support.

This exercise has served to reinforce what the Commission has heard through evidence and submissions, that the State does not currently have a way of collecting and using data on its service users consistently across services, programs and areas. The Government is pursuing reforms to change the way that data is captured, stored and used across agencies and departments. In particular, it anticipates that the Commission will make recommendations on the necessity of flagging the presence of family violence across the databases of services that assist people who experience and use family violence.

Further, scoping work is currently being undertaken, led by the Department of Premier and Cabinet, on information sharing in response to recommendations from the findings of the Coroner into the death of Luke Batty. Part of this work will look at how that information is gathered and stored, as well as shared.⁶⁶

Table 41.6 shows the individual estimates provided to the Commission. In the case of Victoria Police, which gave a range, the lowest cost is included. The cost estimates attributed to family violence are likely to be underestimates because some databases do not record, or under-record, whether the case is family violence-related.

A full list of the cost estimates and methodologies, caveats and qualifications can be found at www.rcfv.com.au.

Table 41.6 Estimates of the cost of family violence for programs funded or delivered by the Victorian Government, by department or agency, 2013–14 and 2014–15

| (\$ million) | | | | |
|--|--------------|---------------------------------|--------------|---------------------------------|
| Department/agency | 2013–14 | | 2014–15 | |
| | Total budget | Attributable to family violence | Total budget | Attributable to family violence |
| Department of Education and Training | | | | |
| Schools | | | | |
| Student Support Officers—social workers and psychologists | 19.3 | n.p. | 20.4 | n.p. |
| Primary School Nursing Program | 6.7 | 0.2 | 7.3 | 0.2 |
| Secondary School Nursing Program | 9.2 | n.a. | 9.9 | n.a. |
| Early childhood | | | | |
| Maternal and Child Health—universal (state government share of budget) | 35.0 | 1.8 | 36.2 | n.a. |
| Maternal and Child Health—enhanced | 13.0 | 0.1 | 13.4 | 0.1 |
| Department of Health and Human Services | | | | |
| Community Services | | | | |
| Child FIRST | 9.7 | 3.9 | 10.1 | 4.3 |
| Family Services | 78.7 | 26.6 | 84.1 | 27.8 |

| (\$ million) | | | | |
|--|--------------|---------------------------------|--------------|---------------------------------|
| Department/agency | 2013-14 | | 2014-15 | |
| | Total budget | Attributable to family violence | Total budget | Attributable to family violence |
| Sexual assault support services | 24.5 | 0.9 | 27.5 | 0.7 |
| Child Protection | n.p. | 84.9 | n.p. | 108.8 |
| Out-of-home Care | 283.7 | 136.4 | 316.3 | 166.4 |
| Youth Justice (custodial) | n.p. | n.p. | n.p. | n.p. |
| Disability | | | | |
| Disability services | n.p. | n.p. | n.p. | n.p. |
| Housing and Homelessness | | | | |
| Homelessness | n.a. | n.a. | n.a. | n.a. |
| Public housing | 843.3 | 58.4 | 780.6 | 54.0 |
| Health | | | | |
| Hospitals—in-patient | n.p. | 3.3 | n.p. | 4.1 |
| Hospitals—emergency | n.p. | 0.3 | n.p. | 0.3 |
| Community Health Services—general counselling and casework | n.p. | 0.1 | n.p. | 0.1 |
| Community Health—community nursing, primary health and allied health | n.p. | 0.0 | n.p. | 0.0 |
| Ambulance—emergency | n.p. | 7.8 | n.p. | 8.9 |
| Ambulance—non-emergency | n.p. | n.p. | n.p. | n.p. |
| Ambulance—treat not transport | n.p. | n.p. | n.p. | n.p. |
| Drug and alcohol treatment services | 136.0 | 27.0 | 145.5 | 29.1 |
| Mental Health—clinical services, community care | 364.5 | 19.7 | 364.3 | 19.7 |
| Mental Health—community support services | 114.0 | 6.2 | 119.0 | 6.4 |
| Department of Justice and Regulation | | | | |
| Child Witness Service | n.p. | n.p. | 0.8 | 0.4 |
| Victims Assistance Program | 8.5 | 2.9 | 9.4 | 3.8 |
| Magistrates' Court of Victoria | n.p. | n.p. | 126.1 | 43.5 |
| Corrections Victoria | | | | |
| Community-based | n.p. | 9.2 | n.p. | 10.5 |
| Custodial | n.p. | 27.9 | n.p. | 39.5 |
| Office of Public Prosecutions | 57.8 | 7.1 | 60.0 | 8.4 |
| Victoria Police | | | | |
| Policing services | 2.3 billion | 704.4 | 2.5 billion | 779.0 |

n.p. Not provided.

n.a. Not available.

All figures rounded to one decimal place.

Source: Based on data provided by the State of Victoria.⁶⁷

There is no other public information showing how much the Victorian Government spends on services relevant to family violence.⁶⁸

Challenges and opportunities

Many submissions argued that it is necessary to make changes to the funding levels and arrangements that guide family violence expenditure. Comments and criticisms related to the following:

- ▷ the absence of a discrete funding stream for family violence in the state budget
- ▷ the lack of transparency in relation to overall state expenditure on family violence
- ▷ the failure to ensure that funding arrangements are suitable for family violence.

Various proposals for resolving this situation were advanced. There was some support for the establishment of a specific family violence funding stream.⁶⁹ There was also support for funding arrangements that are tailored to respond to family violence.⁷⁰

Budget structures emphasise homelessness funding

Some submissions argued that reliance on housing and homelessness funding limits the development of family violence-related policy:⁷¹

By positioning family violence policy and funding under housing and homelessness streams, family violence remains restricted by the limitations of a policy and funding environment dominated by public housing, tenancy management and chronic homelessness.⁷²

The Department of Health and Human Services funds homelessness services, including refuges and outreach family violence services, delivered by non-government agencies. These agencies receive funding to provide 'episodes of support'.⁷³ The primary performance measure is '[t]he number of new support periods provided to address and prevent homelessness'.⁷⁴ This emphasises accommodation needs, or 'shelter', rather than safety. Some criticised this approach:

Most specialist family violence organisations are funded through homelessness funding streams. The focus of this funding is naturally on reducing homelessness and supporting people into secure accommodation. However this focus on accommodation does not adequately recognise the importance of safety for victims of family violence.⁷⁵

The key challenge ... that it presents is that all of the emphasis is on finding accommodation for women and not on providing safety to women. So the focus of safety is not central to the targeted funding that is available. It's all about providing beds and accommodation for women.⁷⁶

Some submissions also argued that the focus on the Housing Assistance output affects the visibility and costs of specialist family violence services:

The funding for family violence services – the 'system' is funded as though family violence is incidental and temporary, primarily buried within state homelessness budget programs and other community service funding streams.⁷⁷

The Commission was informed that relying on this funding source might also not take into account children's unique needs:

The current funding model for family violence services based on the prevention of homelessness rather than comprehensive family violence support services ensures that children are not considered as service clients in their own right.⁷⁸

Domestic Violence Victoria submitted:

Funding through budget programs that are not family violence-specific results in funding agreements on outputs – and therefore, most importantly, collected data – does not match the work family violence specialist services actually do. Funding and service agreements based on homelessness measure outcomes against preventing women and children from becoming homeless but do not address the range of other resource-intensive service supports women and children experiencing family violence need. Failure to adequately capture this need through the data results in the continuation of inadequate funding and system overload.⁷⁹

Some submissions supported the idea of a separate funding stream solely for family violence programs:

A new funding channel for family violence services is required to proactively drive a holistic approach, enable comprehensive data collection, and set out clear outcome measures, about a range of family violence interventions.⁸⁰

DHHS delink domestic/family violence funding model from the homelessness sector because their outcomes do not focus on safety, education and domestic violence support or perpetrator accountability.⁸¹

The Royal Commission [should] investigate the benefits of a separate funding stream for specialist family violence services that is focused on safety and support as well as accommodation outcomes.⁸²

The Commission heard that South Australia considered separating funding for homelessness from family violence funding but decided not to do so. Instead, South Australia decided to establish performance indicators that were more sensitive to the goals of preventing family violence, keeping victims safe and providing necessary support:

It was recognised that there were some real limitations for domestic violence services being funded under the homelessness banner, however it was decided that would not be changed. Instead we focused on shifting the Key Performance Indicators ... for the sector. We noted, for example, that under homelessness, a repeat user is seen as a negative outcome, whereas for domestic violence, that is actually a good outcome. It means that the woman is connecting with us and it gives us the opportunity to work with them to develop safety plans, to conduct risk assessments and to ensure that the appropriate services are wrapped around that family.⁸³

In response to questions from the Commission during hearings, departmental secretaries addressed the option of establishing a separate family violence output in each of the relevant departments.⁸⁴ For example, funding for Victoria Police could include an output that captured the full range of activities, services and programs and the cost of responding to family violence.

The Commission has also considered the possibility of retaining the existing output structure but adding output performance measures that reflected various aspects of family violence to relevant outputs—particularly Housing Assistance, Child Protection and Family Services, and Policing Services. For example, these could include measures relating to the proportion of women seeking refuge accommodation who are admitted within a specific period or women’s and children’s waiting times for family violence counselling. Ms Kym Peake, Acting Secretary of the Department of Health and Human Services (now Secretary), said ‘it would signal very strongly the priority that is given to family violence to have clear performance measures in the budget papers’.⁸⁵ Such measures would then guide departmental contracting arrangements with service providers.

Another option put forward by Mr Chris Eccles, Secretary of the Department of Premier and Cabinet, involves funding being structured to support a whole-of-system outcomes model.⁸⁶ While noting benefits such as ‘build[ing] coalitions that are motivated by a shared purpose’,⁸⁷ he acknowledged that robust data would be required and this approach would be inhibited by data limitations. He cautioned that there were risks associated with moving to an outcomes approach without assurance mechanisms that provided assurance to ensure funding was properly and efficiently expended.⁸⁸

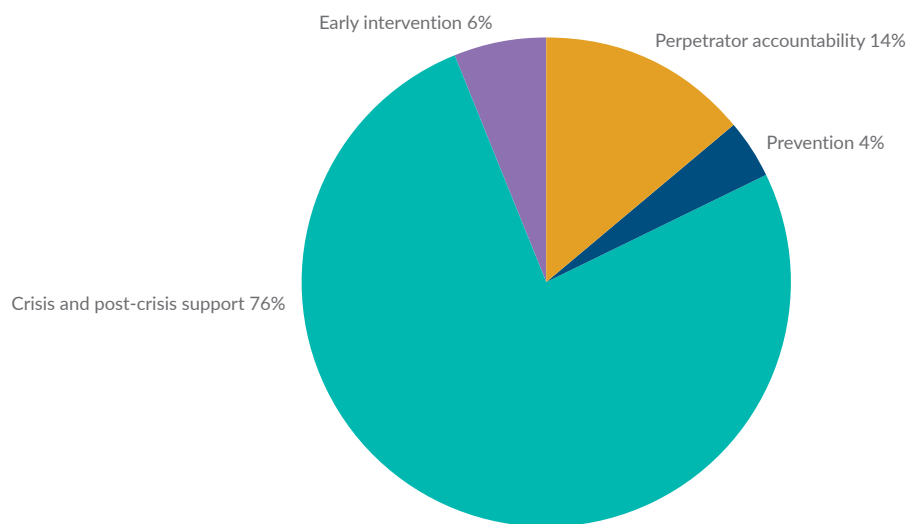
A focus on crisis response

The bulk of Victorian government funding is directed towards meeting the needs of family violence victims when they are in crisis. In comparison, relatively small amounts are directed towards prevention, early intervention or the longer term recovery of victims. Figure 41.1 shows how the \$80.6 million the Victorian Government spent on specialist family violence services in 2014–15 is split between prevention, early intervention, crisis and post-crisis support, and perpetrator accountability. Seventy-six per cent is allocated to services classified in the Victorian Government’s submission as ‘Crisis response and post-crisis support’. The Commission assumes these support services are largely directed towards victims, since the Victorian Government’s submission identifies perpetrator accountability as a separate service category.⁸⁹

Prevention and early intervention account for four per cent and six per cent respectively. This imbalance would be even greater if the resources expended on the police and courts were taken into account. This is consistent with evidence the Commission received suggesting that prevention and the longer-term recovery of victims are poorly funded.⁹⁰

A similar pattern was evident in the New Zealand examination of government expenditure on family violence.⁹¹ The New Zealand situation is further examined later in this chapter, under the heading ‘The way forward’.

Figure 41.1 Victorian government budget for family violence, by service category, 2014–15



Source: Based on State of Victoria, Submission 717, Appendix B.

Demand exceeding supply

Submissions demonstrated that current funding levels for services for victims, perpetrators and children are inadequate to meet demand.⁹² The Victorian Government submission acknowledged there is ‘significant unmet demand’ in the family violence system:

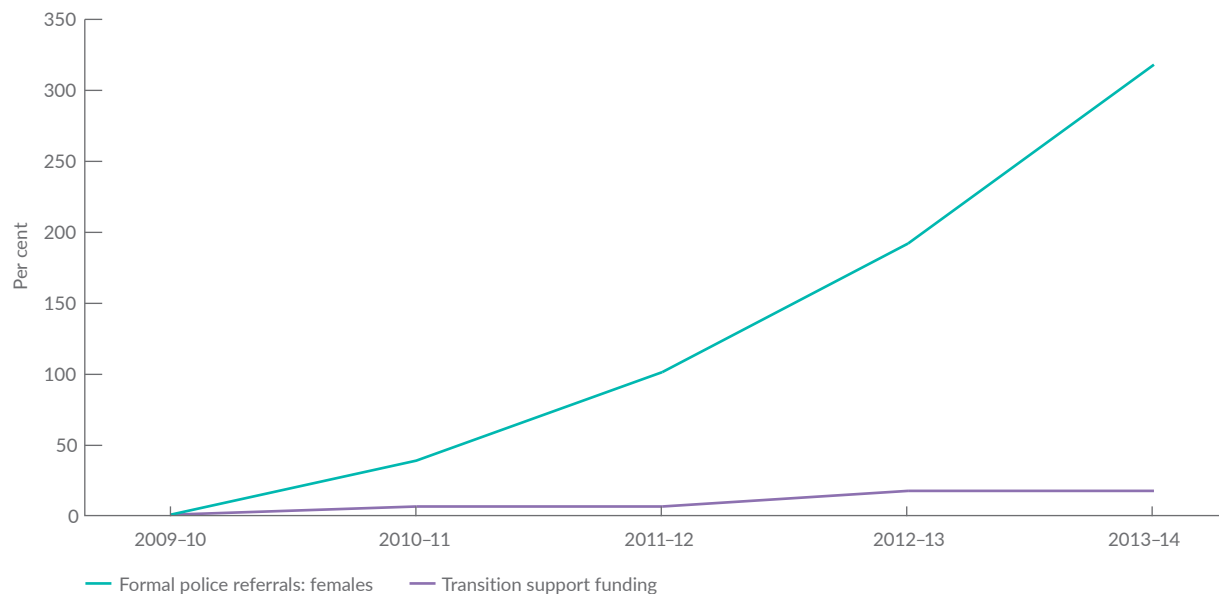
Despite recent investment, there is still significant unmet demand for family violence service response for victims. This is particularly the case for early intervention and crisis responses (including services handling referrals from Victoria Police), but it has also been raised in relation to prevention and perpetrator accountability initiatives, too.⁹³

A number of specialist family violence services informed the Commission they have difficulty balancing their response to police L17 referrals with the need to provide support to victims who seek it.⁹⁴ The Commission was also told that few women who need refuge accommodation are able to secure it immediately. Instead, they are placed in ad hoc interim accommodation such as motels and boarding houses.⁹⁵ The Commission was told by Safe Steps that every night about 35 per cent of beds available remain empty because women and families do not ‘match’ the provider’s criteria.⁹⁶

Perpetrators of violence against their female partners also have to wait for access to behaviour change programs.⁹⁷ In addition, these programs are designed mainly for men responsible for intimate partner violence, so there is little support for people who are responsible for other forms of family violence.⁹⁸

Figures 41.2 and 41.3 illustrate the relationship between the demand for services and funding for services. They use formal police referrals for female victims and perpetrators as indicators of demand for family violence services. They plot the growth in these referrals against the primary specialist family violence services provided to female victims and men’s services.

Figure 41.2 Cumulative percentage increase in formal police referrals for female affected family members and funding for specialist family violence services for women and their children, 2009–10 to 2013–14



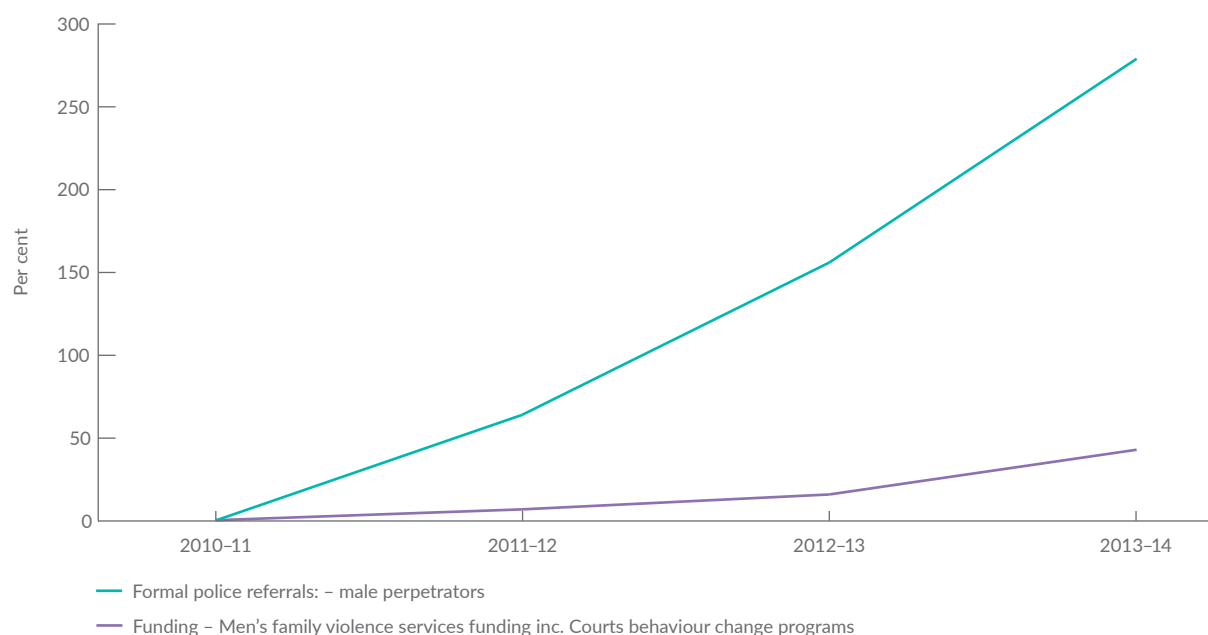
Notes: ‘Specialist family violence services’ includes funding for refuges (crisis supported accommodation for family violence services), specialist family violence support services (transition support for family violence services) and family violence counselling.

Sources: Based on Crime Statistics Agency, *An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14* (January 2016), Tab 31, Table 31: Referrals made by Victoria Police by police region and gender of affected family member, July 2009 to June 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015; Department of Health and Human Services, ‘Royal Commission into Family Violence SAMS Data Request (2009–2014)’ (1 January 2014), Department of Health and Human Services, ‘Query 70’, Tab Q70(94671_FamViolenceStage2), and Department of Health and Human Services, ‘Query 66 MASTER 1 July—sent to RC’, produced by the State of Victoria in response to the Commission’s Notice to Produce dated 5 June 2015.

It is evident that supply has not kept pace with demand. Formal police referrals for female victims rose by 317 per cent between 2009–10 and 2013–14,⁹⁹ while funding for specialist family violence services for women and their children increased by only 17 per cent during the period.

Funding for men’s family violence services—including voluntary men’s behaviour change programs—grew by 34 per cent (not including funding allocated by the Magistrates’ Court of Victoria for mandated men’s behaviour change programs), while formal police referrals for perpetrators grew by 592 per cent between 2009–10 and 2013–14.

Figure 41.3 Cumulative percentage increase in formal police referrals for perpetrators and funding for men's family violence services, 2009–10 to 2013–14



Notes: Men's Family Violence services, funded by the Department of Health and Human Services, include Men's Referral Service, and voluntary men's behaviour change programs which includes funding for the Enhanced Service Intake.

Source: Based on Crime Statistics Agency, 'An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14' (January 2016), Tab 31, Table 31: Referrals made by Victoria Police by police region and gender of affected family member, July 2009 to June 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015; Department of Health and Human Services, 'Query 66 MASTER 1 July—sent to RC', produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.

Formal referrals have an impact on services as they require an action, including triaging and follow-up. However, the Commission notes that referrals require the services that receive L17s to attempt to contact victims and perpetrators and advise them they can seek support. The Commission was unable to ascertain the proportion of victims and perpetrators who actually sought and received further help from the service that received the L17. Some people decline offers of assistance or cannot be contacted. Nevertheless, the scale of the growth in demand is significant, and may well have had a sizeable flow on effect in terms of the number of people requiring assistance.

Additional funding for core services was provided in the 2015–16 State Budget, but it was for that year alone.¹⁰⁰ As Table 41.4 shows, the amounts allocated in forward estimates for the ensuing years are very small.

Inadequate planning to meet demand

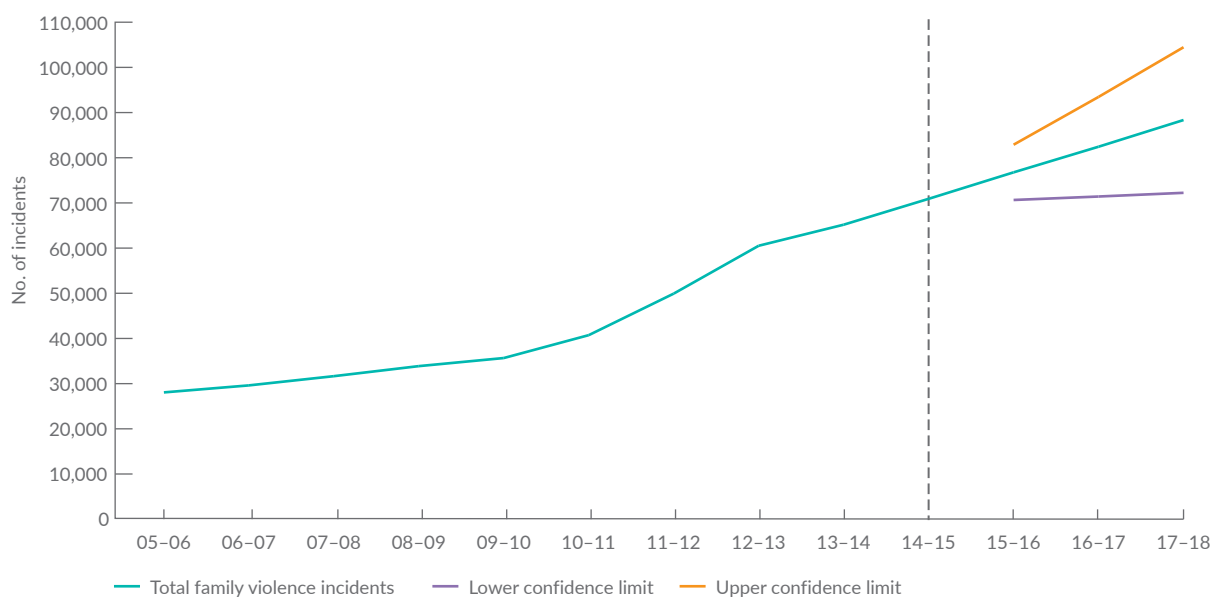
The Commission heard that there is no whole-of-government process for systematically and regularly forecasting the demand and resource requirements for family violence services. Individual departments and agencies generally measure the growth and, in many cases, seek to anticipate the future growth as part of considering how best to respond.

Both Victoria Police and DHHS prepare forecasts of police family violence incidents using the crime statistics produced by the Crime Statistics Agency, which are compiled from information recorded in the Victorian Police Law Enforcement Assistance Program, or LEAP, database.¹⁰¹ DHHS advised the Commission that its 'forecasts do not make any assumptions about specific demand drivers—the purpose is to accurately predict the volume of family violence incidents into the future based on the trends and patterns evident in the time series data.'¹⁰² The methodology involves a number of forecast models.

At the request of the Commission, DHHS updated its forecasts using the most recent data until June 2015.¹⁰³

Figure 41.4 shows the forecast until 2017–18, including the upper and lower confidence levels at 95 per cent. The graph predicts a steadily increasing number of incidents in the three years from 2015–16 to 2017–18. The number of incidents is predicted to rise to 88,347 by 2017–18; a 25 per cent increase on 2014–15.¹⁰⁴

Figure 41.4 Family violence incidents attended by Victoria Police: 2005–06 to 2014–15 and forecast to 2017–18



Note: Figure includes lower and upper 95 per cent confidence limits.

Source: Department of Health and Human Services, 'Total Family Violence Incidents Forecast for Victoria prepared for the Royal Commission into Family Violence', 4, produced by the State of Victoria in response to the Commission's Notice to Produce dated 2 September 2015.

Funding arrangements for family violence services

The Commission also heard criticisms of administrative arrangements that determine the way departments and agencies purchase services and oversee the performance of contractual requirements relating to family violence services. Because the budget structure and processes influence internal departmental practices, these criticisms are discussed here.

The main concerns expressed relate to the following:

- ▷ the lack of funding for coordination between services
- ▷ fragmentation of service delivery
- ▷ a lack of focus on outcomes for victims and perpetrators
- ▷ a short term rather than strategic focus
- ▷ the need for better measurement of what is delivered.

The Commission notes that a number of these criticisms are not confined to responses to family violence but instead apply more broadly to human services. They have often been the subject of earlier studies and attempted reforms.¹⁰⁵

Lack of funding for coordination activities

The Commission was told of the need for collaboration and coordination between services to achieve the best results for victims of family violence.¹⁰⁶ Many submissions noted that this requires staff specifically funded for such activities:

Government expects these services and their employees to be able to work in an integrated way – within and across sectors – on complex solutions for vulnerable people yet fails to adequately resource programs or recognise the obstacles such as limited time, opportunity and sometimes goodwill for this to be effectively achieved.¹⁰⁷

Any initiative to coordinate, collaborate or co-deliver with other agencies must therefore come from a re-prioritisation of agency funds (i.e. taking people, time and resources from one activity to give to another).¹⁰⁸

In the development of the Go Goldfields Project, there have been barriers to implementation due to insufficient resources and capacity to promote integration and co-ordination.¹⁰⁹

The Commission was also told that a lack of diversity among service providers in rural communities can severely hamper the responsiveness and effectiveness of services.¹¹⁰ This is discussed in Chapter 33.

Fragmentation of service delivery

As discussed in Chapter 8 and 13, there are a large number of service providers offering various combinations of programs but few providers who deliver a full suite of services. Ms Peake remarked, 'It is absolutely the case currently that we have a proliferation of small programs that have very prescriptive description of what is to be delivered'.¹¹¹ Ms Peake told the Commission that funding at the departmental or program level has been shaped by historical arrangements that hinder the holistic delivery of services for people with complex needs:

We have a system which is really devised according to historical programmatic interventions. If I just give you a bit of a picture of that, within child and family and community services there are over 5,000 activity level service agreements across more than 200 programs. Each of those programs is designed around historical groupings of clients and doesn't reflect, as this report highlights, the complex needs of both disadvantaged people and their communities, and doesn't really enable there to be service responses that cross over program boundaries.¹¹²

Multiple discrete allocations mean that service providers need to go to considerable lengths to bring together multiple different funding sources in order to construct a service response that is viable.

The Commission was also informed that this approach results in uneven service provision—adversely affecting service users and posing difficulties for service providers—which must often meet multiple reporting requirements. This creates a heavy administrative burden associated with reporting and accounting for multiple disparate sets of funding.¹¹³ For example, Mr Rudolph Kirby, Chief Executive Officer of Mallee District Aboriginal Services, said that up to 30 per cent of funded time is spent on reporting and accounting for funding.¹¹⁴

Similar weaknesses were identified in the New Zealand social service system in a recent review by the New Zealand Productivity Commission. Mr David Heatley from the New Zealand Productivity Commission demonstrated how multiple funding lines can result in fragmentation:

This was a case study of one provider that received – the numbers are from memory but they are approximately right – had approximately 12 funders, ran about 30 programs, and for them when faced with a client their problem was how to match the client to the programs they were funded for. They represented it as 30 jam jars and each jam jar has a sticker on it with a bunch of eligibility criteria and they are trying to work out which pot they can dip into to get some funding and resources to apply to that client.

The rules around spending from each jam jar were different. The reporting requirements around each jam jar were different. They estimated they spent around 25 per cent of their total time just on reporting and contract management. So that's a pretty high administrative load.¹¹⁵

The Commission's research shows that, of the 28 agencies that provide specialist family violence support services, nine receive funding for between 10 and 13 different programs—such as outreach case management, Safe at Home, private rental brokerage, crisis accommodation and court support—and a further 10 provide between five and nine programs. The details of this are in Appendix K.

As a consequence of these arrangements, people affected by family violence cannot expect to receive the same services or the same level of services in different parts of Victoria. The situation has other consequences too:

- ▷ Service users must contact many different service providers in order to receive the combination of services that best meets their needs.
- ▷ People must tell their story repeatedly.
- ▷ Services might not be delivered in the right combination or sequence because each service provider has different offerings and priorities.

The level of fragmentation is even greater among Aboriginal community controlled organisations. Unlike mainstream services, most Aboriginal agencies receive funding for only one or two programs and there are only two such agencies funded to deliver three programs from eight funding streams.¹¹⁶

In Chapter 38 the Commission recommends that the Victorian Secretaries Board oversee the implementation of the proposed Statewide Family Violence Action Plan, to facilitate development of a whole-of-government response to family violence. In the Commission's view, this plan should explore ways of consolidating service provision, ensuring more even access to services throughout Victoria and reducing the need for service providers to account for expenditure in many different funding streams.

Contractual arrangements not focusing on outcomes

The Department of Health and Human Services purchases specialist family violence services, such as refuges and men's behaviour change programs from community service organisations.¹¹⁷ The Victorian Government argued that departmental arrangements should place more emphasis on outcome monitoring:

Current performance-monitoring arrangements encourage community service organisations to deliver against agreed target outputs. There is a requirement that community service providers funded by government will adhere to documented standards. Monitoring service delivery outcomes is limited within existing frameworks. This has been affirmed by the recent VAGO audit of early intervention services for vulnerable children and families which concluded that Child FIRST and Integrated Family Services had limitations in service performance data and a lack of outcomes monitoring at the system level.¹¹⁸

Many agreed that current processes do not focus on the outcomes.¹¹⁹ Submissions to the Commission suggested that the outcomes should capture the goal for the client, rather than measuring what is provided by the service.¹²⁰ It was noted by Safe Steps, however, that outcomes-focused funding requires agreed objectives as the basis of performance measurement.¹²¹ Chapter 38 notes that currently there are no cohesive and agreed whole-of-government objectives to guide the prevention of and responses to family violence.

The focus of submissions on outputs rather than outcomes largely relates to services funded by DHHS, which is the department responsible for a high proportion of the funded services delivered to people affected by family violence. Comments generally related to contractual agreements with funded providers. Some of the comments discussed here are, however, also relevant to services delivered directly by the Victorian Government, such as police and court services.

Poor measurement of what is purchased

The Victorian Government provided the Commission with data about the level of services it had purchased across a range of programs as well as the level of services actually delivered. However, it told the Commission it was not able to provide actual performance data against the level of service purchased for those family violence services funded through the homelessness stream, which takes in refuges and specialist family violence services such as support for women, Stay at Home, Private Rental Brokerage and Intensive Case Management.¹²² This is because the way the Victorian Government buys its services does not align with the data-collection system.¹²³

A national data-collection system exists for all homelessness-funded services, including those for women experiencing family violence. The Australian Institute of Health and Welfare administers this system, which produces annual reports on service activity that includes both national and jurisdictional data.¹²⁴ It is not clear what, if any, data is provided directly by the AIHW to the Victorian Government to enable it to measure and monitor performance at either an individual provider level or across particular sectors such as specialist family violence services funded through homelessness.

Short-term funding

The Commission heard that family violence funding is often allocated on a short-term basis, and it was submitted that this approach inhibits effective responses to family violence:

Funding uncertainty means that services divert limited time and staff resources to chasing funding through tenders and philanthropy. Programs are often short-term and project-based with insufficient time for proper evaluation or the capacity of successful programs to be continued, frustrating and demoralising both clients and workers.¹²⁵

Some argued that uncertainty associated with short-term funding inhibits recruitment and retention of staff, makes it difficult to build relationships with clients over time, and affects planning for the future.¹²⁶ This was a strong message from the Indigenous Family Violence Regional Action Groups:

In the northern region the IFVRAG receive \$59,000 for small Aboriginal family violence projects such as [W]hite [R]ibbon promotions, educational programs for youth and women/men's camps. Limitations of both the amount of funding and the one off projects funded through the IFVRAGS pose real risks for sustainable change in the Aboriginal community.¹²⁷

Short funding windows means that [the] community are regularly engaged with a project and then disengaged with when funding runs out. This can leave communities disenchanting.¹²⁸

This issue is considered further in Chapter 26.

It was also argued that short-term funding prevents effective evaluation:

Much energy, time and resource is spent by organisations navigating funding opportunities to complement base SHS [Specialist Homelessness Service] funding with bizarre partnership tendering for 'one of' [sic] projects that include a natural sunset clause as they are only funded for [a] limited period. Rarely are they long enough to collect any real research and evidence and before long they end and the money dries up.¹²⁹

The long term nature of prevention activities means that organisations such as ANROWS and Our Watch need to know that they have access to funding over many years if they are going to achieve the results we anticipate they can. Such funding would also enable the development of a dedicated and skilled workforce of practitioners who can lead this work over the next decades and the development of appropriate evidence and resources to drive this work.¹³⁰

Additionally, the Commission was informed that this approach limits the Victorian Government's ability to move towards funding and measuring outcomes, rather than outputs and inputs:

[F]unding acquittals are increasingly focussing on the notion of 'outcomes' that are inherently difficult, if not impossible, to demonstrate in the current funding model. Essentially, MonashLink is being asked to prove its service's efficacy without the capacity to do so.¹³¹

The way forward

The Royal Commission's terms of reference emphasise the importance of establishing a culture of non-violence. This culture needs to be promoted both within families and throughout the broader community.

The Commission considers that further investment is necessary to prevent family violence and to improve early intervention to support families where there is a risk of violence occurring. Investment is also required to keep victims safe, to help them recover from the emotional and economic effects of past violence and, wherever possible, to help perpetrators stop using violence.

The current economic costs of and state expenditure on family violence are substantial. Reforms that meet the objectives just stated should, in the long term, reduce violence and enable former victims and perpetrators to become productive members of society. It is the Commission's view that the Victorian community would support increased Victorian government expenditure on family violence in order to achieve these purposes.

Later in this chapter we recommend that the Victorian Government should identify revenue sources to support that investment. Alterations to funding processes should be made to help to bring about these changes. These include the following:

- ▷ making the costs associated with family violence more transparent
- ▷ introducing family violence performance measures in the state budget
- ▷ giving greater emphasis to prevention, early intervention (including family support) and recovery
- ▷ stabilising the service system
- ▷ forecasting service demand
- ▷ changing the way departments and agencies fund and monitor service provision
- ▷ investigating the possibility of partnership agreements with the Commonwealth.

Making family violence expenditure more transparent

Although it is not possible to ascertain the overall costs family violence imposes on the community, there is no doubt that they are substantial. Using the PwC report's estimate of the cost of intimate partner violence in Australia, the overall cost in Victoria would have been \$3.1 billion in 2014–15.¹³²

The three studies discussed earlier in the chapter—the Access Economics, KPMG and PwC reports—also demonstrate that a major portion of these costs is borne by individual victims, particularly when pain and suffering are included.

Because of the caveats on the accuracy and usefulness of the figures provided to it, the Commission did not attempt to estimate total Victorian government expenditure on family violence. Nevertheless, all the evidence suggests that both the overall economic costs of family violence and Victorian government expenditure on responding to it are likely to increase in the absence of adequate government funding for programs to prevent violence, support victims and hold perpetrators to account. In the Commission's view, the Victorian community could reasonably accept the argument that further government investment in this area is necessary and would support such an investment.

Unfortunately, however, the fact that there is inadequate information on family violence expenditure inhibits the development of whole-of-government policies aimed at preventing such violence and helping those who are affected by it. At present it is difficult, if not impossible, for the Victorian Government to do a number of things:

- ▷ consider areas in which services could be provided more effectively and efficiently. For example, a better understanding of the costs of policing related to family violence could result in the development of more effective models for policing that make victims safer by preventing an escalation of family violence
- ▷ compare the cost–benefits of particular interventions, especially those delivered by a mainstream service such as a hospital
- ▷ ascertain the resources that could be released for other purposes if there was a reduction in the prevalence of family violence or an increase in the effectiveness and efficiency of services
- ▷ identify particular areas where expenditure is inadequate to meet the needs of people affected by family violence, so as to allow decisions to be made about whether additional funding is needed
- ▷ set a baseline against which changes over time could be measured
- ▷ identify areas where workforce increases are required in order to support workforce planning.

Having faced a similar situation in 2014, the New Zealand Government embarked on an exercise to determine its expenditure on family violence, child abuse and sexual violence services—including courts, police and support services. It concluded that annual expenditure is about NZ\$1.4 billion a year. Because New Zealand is a unitary state rather than a federation, the NZ\$1.4 billion estimate includes costs that would be met by the Commonwealth Government in the Australian system.¹³³

The New Zealand exercise found that most government expenditure is for services delivered to respond to the immediate impact of a violent incident, going to generalist services—specifically prisons for perpetrators and hospitals and general practitioner services for victims. Only a small proportion of total spending is directed to specialist services, with those responding to child abuse and neglect accounting for the largest proportion in this category. Similarly, only a small proportion of the funding is spent on primary prevention and screening.¹³⁴

The fact that generalist services absorbed the largest proportion of government expenditure on family violence in New Zealand reinforces the case that Victoria needs to understand how much family violence costs all service systems. It is important that this includes expenditure on family violence–related child abuse and neglect. The New Zealand Government demonstrated that it is possible to conduct an exercise of this kind.

The Victorian Government acknowledges that family violence makes up much of the work of mainstream services. When the Victorian Government knows how much it spends on family violence, it will be easier to determine the value of particular interventions. The Commission considers it imperative for Victoria to embark on this process. It might not be possible or appropriate to replicate the New Zealand methodology, but lessons can be learnt from the experience there. There is a need to establish a system for continuing identification of family violence–related costs within Victorian government departments. This will significantly assist with evaluating the costs and benefits of particular programs.

The Commission believes that the Victorian Government should know the explicit cost of family violence to its budget, beyond the funding it provides for specialist family violence services. To put this beyond doubt, we propose that the Victorian Government develop a methodology for measuring the cost of family violence across services and programs that respond to family violence—for example, the costs of policing-related responses to family violence, or the cost of hospital emergency departments in treating victims of family violence. We propose that the Victorian Government publicly report data pertaining to the cost of family violence regularly.

The Commission agrees that a reduction in the incidence of family violence through greater expenditure on prevention and early intervention will, in time, reduce costs to government (both state and federal) and to the community as a whole. However, robust research is required, so that we know which programs, services and interventions achieve their objectives. Cost–benefit analyses could help determine whether the value of the benefits outweighs the costs incurred to achieve the desired results. This information could contribute to policy and funding decision makers' deliberations about which interventions, programs and services provide the best return on investment.

Although there is emerging evidence that governments can intervene in ways that will generate social and economic benefits, further research is needed in order to understand what works. ANROWS (the Australian National Research Organisation for Women's Safety) has noted the need for such research.¹³⁵ In Chapter 38 the Commission proposes the establishment of an independent Family Violence Agency. Such an agency could provide advice to the Victorian Government on how to cost the impacts of family violence across government and the effect of initiatives to reduce or prevent family violence.

Family violence-related performance measures

As explained, the lack of performance measures in budget outputs relevant to family violence makes it difficult for the Victorian Government to assess whether current expenditure is being suitably directed.

The Commission agrees with the argument that the provision of a significant proportion of family violence funding under the aegis of homelessness contributes to the lack of transparency about the funding of family violence services. But, despite the possible symbolic value of providing a separate stream of family violence funding for specialist family violence services, it is doubtful that this approach would make it easier to identify family violence expenditure throughout the Victorian Government. There are ways of resolving this problem without altering the existing budget output structure.

The Commission also rejects the approach of creating a family violence output for each relevant department. One risk of doing this would be that departments without such an output would not consider they had a role in relation to family violence, and this would be inconsistent with the Commission's view that there should be a whole-of-government approach to preventing and responding to family violence. We also note the warning in the evidence of Ms Peake about the possible unintended effects of such an approach:

... pulling out the specialist services to have a particular output would just be the risk of sending a signal that for all the rest of the services that are funded—health services, the rest of the child protection—the whole of the child protection system, the whole of the housing system—that there is a suggestion that it's only the small part that is specifically funded for specialist family services that is relevant to tackling family violence.¹³⁶

Instead, the Commission favours the introduction of additional output performance measures in the budget so as to capture all aspects of the Victorian Government's response to family violence. This would increase the visibility of family violence in the budget papers and demonstrate how various outputs, such as indications of performance over time, contribute to resolving the problem of family violence. Introducing more output performance measures will also reflect the priority government attaches to the area. As Ms Skilbeck told the Commission:

[Performance measures] should reflect the priorities of the government and the department of the day. They are able to be adjusted to those changed priorities, and certainly additional output performance measures can be added too. With the focus on family violence I would expect that that would change accordingly.¹³⁷

The Commission understands that the inclusion of family violence performance measures in existing budget outputs would be administratively straightforward and could be accomplished as part of an ongoing review process. Ministers are able to propose changes before publication of the budget.¹³⁸ The Commission heeds, however, the advice given in evidence by Ms Skilbeck—that new output performance measures will need to ensure they are meaningful and the data exists so that reporting performance is possible within the cycle of budget publication.¹³⁹ Further, we expect that the new performance measures will be informed by the proposed Statewide Family Violence Action Plan. For this reason the Commission suggests that the measures should be introduced in the 2017–18 budget.

The Commission expects that the introduction of family violence–related performance measures in the budget will influence the way departments and agencies allocate resources so that investment is sufficient in particular programs to meet the targets attached to any new performance measures, for example, timeliness of access to crisis accommodation by women escaping family violence. Departments and agencies' contracts with service providers may also need to be amended so that the performance expected from funded providers aligns with any new family violence-related performance measures in the budget, although at the contract level there may be further measures that are specific to the type of service being funded. Measuring achievement of performance measures at both the budget and service contract levels will necessitate appropriate data collection. This is discussed further in Chapter 39.

Recommendation 217

The Victorian Government introduce in the 2017–18 State Budget additional output performance measures relating to the prevention of family violence and the assistance provided to victims and perpetrators in order to increase the visibility of family violence in budgetary processes.

Recommendation 218

The Victorian Government, in preparing the Statewide Family Violence Action Plan, consider whether further changes should be made to budget systems to better reflect the central role of government in preventing and responding to family violence [within 12 months].

Recommendation 219

The Victorian Government [within 12 months]:

- ▷ commission or itself perform rigorous and consistent measurement of the cost of family violence to government, the community and individuals
- ▷ require departments and agencies to establish consistent methods of collecting data—including data on costs incurred by generalist services—on activities relating to family violence prevention and response and include that information in their annual reports.

Greater emphasis on prevention, early intervention and recovery

There should be greater emphasis on prevention and early intervention. There should also be greater investment in helping victims recover from family violence, so that their need for long-term services is reduced and they can enjoy good health, genuine safety, connection with their community and full social and economic participation.

Prevention is discussed in Chapter 36; it deals with community awareness activities conducted at the general and local levels, respectful relationship education in schools, and support programs for individuals and families—for example, programs designed to support families after the birth of a child. Policies aimed at supporting the emotional and economic recovery of victims are discussed in Chapters 9, 20 and 21; this includes the provision of individualised packages to provide support in obtaining employment and housing.

A focus on prevention, early intervention and recovery could in the long term reduce the costs borne by individuals, as well as future budgetary costs—including costs associated with children’s experience of family violence.

Although the Commission supports greater investment in these activities, this is not an argument for redirecting funds currently allocated to crisis intervention. For the reasons explained below, expenditure on prevention should not come at the expense of providing adequate funding to services so that they can support victims at a time of crisis and help perpetrators change their behaviour.

Recommendation 220

The Victorian Government ensure that the recommended Statewide Family Violence Action Plan emphasises prevention, early intervention and supporting the long-term recovery of victims. It should also identify the funding that will be required to pursue these goals [within 18 months].

Resolving immediate pressures and stabilising the service system

The demand for family violence services is high and increasing and cannot be met from existing resources. Some organisations provide services to a level beyond that for which they are funded, but this cannot be sustained indefinitely. The lack of reliable data makes it difficult to determine the overall extent of the shortfall in service funding.

Specialist family violence services, homelessness services, the police and the courts are struggling to deal with the increasing number of victims seeking help. Recent publicity about the pervasiveness of family violence and its long-term effects on families will probably lead to increased reporting and might well have done so already.

In order to maintain existing service delivery levels, the additional investment in family violence provided for in the 2015–16 State Budget needs to be extended since most of it was for one year only. As part of maintaining current service levels, the Victorian Government must urgently pursue the extension of the National Partnership Agreement on Homelessness with the Commonwealth Government, so that the funding continues beyond June 2017.

Reforms such as the proposed integrated intake system (discussed in Chapter 13) will require additional funding for extra capacity to make safety and needs assessments and ensure that referrals can flow properly. In the longer term, this system should reduce costs by giving priority to early intervention with perpetrators and helping victims recover.

The recommendations the Commission makes will, however, be undermined if service systems lack the capacity to do the work asked of them. This justifies an injection of additional funds to stabilise the system and ensure that it can meet the increased demand that has arisen in the past five years. The opacity of current funding arrangements and the limited time available to the Commission make it impossible to estimate the precise amount required. In future, determining the level of investment will be guided by the modelling work discussed in the next section.

Recommendation 221

In the 2016–17 State Budget the Victorian Government give priority to:

- ▷ providing an immediate funding boost to increase the capacity of specialist family violence services and Integrated Family Services to respond to existing demand
- ▷ implementation of the Commission's recommendations that relate to that budget period.

Recommendation 222

The Victorian Government treat the extension of the National Partnership Agreement on Homelessness as a matter of urgency and pursue it immediately with the Commonwealth Government [within 12 months].

Demand forecasting

The lack of resources to meet demand is in part a consequence of inadequate planning. The Commission understands that Victorian government agencies do not systematically forecast demand for family violence services in various parts of the service system or use such forecasts to determine whether funding needs to be increased to respond to anticipated demand.

The Commission notes that both Victoria Police and DHHS prepare forecasts of family violence incidents using the crime statistics produced by the Crime Statistics Agency. Although the Commission welcomes the forecast as a step in the right direction, the forecast remains focused on the projected number of Victoria Police family violence incidents. There is limited systematic forecasting of demand for family violence response services that individual departments and agencies deliver or fund, or for determining the impact of growth in demand for future funding requirements.

DHHS advised the Commission that its family violence forecasts have been used to guide policy and strategy development as well as assist area managements as 'internal business intelligence'.¹⁴⁰ However, forecasts of family violence incidents do not appear to be used in forecasting the demand for family violence specialist services. For example, a recent forecast of future demand of homelessness, commissioned by DHHS, factored in Victoria Police family violence incident data as one of four key drivers of homelessness demand, yet the projections regarding the number of people experiencing homelessness were not disaggregated in terms of family violence.¹⁴¹

Without an agreed methodology for forecasting demand for family violence services that applies across the entire government, the Victorian Government cannot effectively plan for and respond to future needs. It is unable to anticipate the scale and nature of demand. It cannot know what level of resourcing is likely to be required.

In the Commission's view, the Victorian Government should develop a robust demand-modelling tool or set of indicators so that it can better plan how departments and agencies respond to family violence and predict any associated funding requirements. This modelling tool or set of indicators should take into account the interdependencies between various parts of the service system; for example, it should consider the effect of increased police activity on the demand for legal assistance and court services.

Furthermore, such a model must capture the dynamic nature of the family violence service system, particularly in view of the fact that the Commission recommends a number of reforms. Some of the proposed reforms should reduce demand; for example, a stronger focus on prevention and on recovery might reduce the number of victims who need support in the future. Other reforms might lead to increased demand for support services—for example, by providing referrals from the proposed Support and Safety Hubs.

In Chapter 38, the Commission recommends the development of a Statewide Family Violence Action Plan to guide government efforts in responding to family violence. Modelling future demand will be an important element of the plan.

Recommendation 223

The Victorian Government develop a demand-modelling tool or set of indicators to be used for planning how government as a whole and relevant departments and agencies themselves (including those providing or funding universal services) respond to family violence [within two years]. Budget processes should take account of the cost of forecast demand.

Funding and monitoring service provision

In this section the discussion moves away from budget-level decision making to briefly discuss the administrative processes that affect the way departments and agencies fund and monitor service provision.

In broad terms, the Commission agrees with the following remark:

Uncertain, inadequate and short-term funding promotes fragmented, localised service responses rather than a consistent, comprehensive and best practice response that supports statewide system integration.¹⁴²

Such criticism is not specific to family violence: it is voiced about funding processes for community-based services generally. The Commission accepts that there are problems with current arrangements relating to the following:

- ▷ lack of funding for coordination between services
- ▷ fragmentation of service delivery
- ▷ a short-term rather than strategic focus
- ▷ a lack of focus on outcomes for victims
- ▷ measuring results of perpetrator interventions.

The Commission is persuaded that there is a need for reform of the contractual arrangements departments make with service providers and how they measure their performance.

Further work should be done in this regard. The Commission expects that this would be done by a sub-committee of the Victorian Secretaries Board, the creation of which would be expected to consult with the Statewide Advisory Committee on Family Violence which is recommended in Chapter 38.

In the meantime, however, the Commission considers the Victorian Government should require departments to make contractual arrangements that encourage the building of links between service providers, including funding the work done to improve these links.

Reform of contractual arrangements should extend to putting in place performance measures that are tailored to the requirements of family violence victims and perpetrators. In the Commission's view, performance measures should include a focus on reducing and managing risks to victims. Earlier the Commission recommended the inclusion of additional family violence-specific budget output performance measures in the budget papers. We would expect that measures in service providers' contracts for the delivery of services relevant to family violence would align with these output budget-level measures and include further measures that reflect that purpose of the funding.

Lack of support for collaborative activities

An effective family violence system requires collaboration and coordination between services. Elsewhere in this report the Commission makes recommendations aimed at ensuring that, as far as possible, victims and perpetrators can approach a single source for assistance and receive warm referrals to other services. One of the important roles of workers in the proposed Support and Safety Hubs will be to help people find their way through the service system.

There is also a need to encourage liaison between services in order to resolve problems beyond the needs of particular clients. When services struggle to meet increasing demand, they can be forced to choose between responding to immediate client needs and liaising with other services. Funding should take account of the costs incurred in service planning and the collaboration required for that purpose.

Further, the Victorian Government should foster collaboration between potential providers when contracting for service provision, emphasising consultation and collaborative relationships rather than competition.

Short-term funding

The Commission was alerted to the difficulties caused by short-term funding of projects. Projects should be funded for a period that provides some stability for service providers and allows sufficient time for evaluation and adaptation based on experience.

When funding is provided for a service innovation, it should include some funding for determining whether the project has achieved its goals. The Commission does not want to set an arbitrary time limit, but it considers it would normally be difficult to justify funding for periods shorter than three years. It is also important that departments and agencies have mechanisms for identifying projects and services that are not performing well, so that a decision can be made about whether an initiative should be withdrawn or supported in making changes.

As part of that work, the Victorian Secretaries Board should establish a set of principles to guide contractual arrangements for the provision of family violence-related services. The purpose of these principles would be to ensure that funding for service providers:

- ▷ covers costs related to coordination between services and, where relevant, evaluation of programs
- ▷ encourages the collapsing of multiple small allocations where appropriate, to enable clients to receive a broader range of services
- ▷ simplifies accountability and reporting requirements
- ▷ is based on best-practice research into the duration and intensity of services, so that assistance achieves sustainable outcomes
- ▷ is accompanied by a robust data-allocation and performance-management regime
- ▷ lasts for a period sufficient to enable pilot programs to be evaluated and, if necessary, to adapt during the course of the program.

This approach is in keeping with evidence provided about the need to aggregate some programs and increase the funding certainty for providers:

... moving to a model where there are fewer programs, so some broadbanding of programs, with more certainty in the duration of the funding agreement and clearer ... definition of the outcomes that are to be achieved and the evidence-based interventions that will achieve them is certainly where we need to go.¹⁴³

The Commission also proposes that departments establish processes for regular overview and evaluation of services and programs—both departmental programs and funded services—based on the principles adopted by the Victorian Secretaries Board. That process should involve independent experts, including academics, as well as departmental staff.

A focus on outcomes for victims and perpetrators

The Commission has already recommended that budget outputs include performance measures relevant to family violence.

Similarly, service contracts should include requirements that are tailored to meeting the needs of victims and perpetrators such as safety planning and moves towards stability. Elsewhere we also recommend updating guidance material that will be reflected in service contracts, better guiding the practice and focus of services.

Beyond better measuring the work of contracted services through improved performance measures, the Commission agrees that there should also be a greater focus on outcomes for victims (including children) and perpetrators of family violence. This needs to be across the range of services that respond to family violence, both funded services and those delivered by government departments and agencies. This would require both a clear idea of what outcomes are to be pursued and how these will be measured, noting that we make recommendations about the need to address the current data limitations in Chapter 39. The proposed Statewide Family Violence Action Plan will be a good starting point as it will specify the specialist family violence service system's goals and inform the development of appropriate outcomes. The Commission urges the Victorian Government, in partnership with the service sector, to explore the design of funding arrangements, including contracts with providers, so that working towards such outcomes is encouraged and measurement of performance is possible.

Recommendation 224

The Victorian Secretaries Board develop and promulgate principles for purchasing services that will contribute to achieving the goals of the Statewide Family Violence Action Plan [within 18 months]. These principles should include:

- ▶ measures to encourage service providers to collaborate in order to enable clients to receive a broader range of services
- ▶ ways of simplifying pathways of support
- ▶ ensuring victims and their children have access to a comprehensive range of services, regardless of where they live in Victoria
- ▶ allowing sufficient time for piloting, evaluation and adaptive management of new programs.

Recommendation 225

The Victorian Government require departments and agencies to introduce measures of contractual performance by service providers that more accurately reflect the objectives of ensuring victims' safety, preventing family violence and supporting those affected by it, and keeping perpetrators accountable [within 12 months].

Recommendation 226

Victorian government departments and agencies establish processes for regular overview and evaluation of funded services and programs, based on the recommended principles adopted by the Victorian Secretaries Board. The processes should involve independent experts as well as departmental staff [within 12 months].

Funding options

In the Commission's view, investing in family violence prevention and earlier intervention and improving services that respond to victims and perpetrators could well reduce demands on the state budget in the long term. At least in the short to medium term, however, some increase in funding will be required to support family violence prevention and the delivery of services for victims and perpetrators.

The pervasive and damaging effects of family violence require prevention and support to be assigned high priority. It is encouraging that this has been accepted by the Victorian Government.

It is for the Victorian Government to determine how finite resources should be allocated between areas of competing need. Arguably, it is beyond the Commission's terms of reference to nominate specific sources of revenue or possible savings in other non-family violence related programs that could be used to fund family violence programs and services. Even if that is not the case, making such recommendations would require a detailed analysis of the viability of creating new sources of tax revenue and of the amounts that could be raised by doing so or by relying on existing revenue sources. The Commission is not in a position to undertake the tasks necessary to make such judgments.

Some new funding sources were proposed to the Commission as potential options for funding family violence services. One was to establish a Family Violence Tenancy Fund funded through the interest earned on tenants' bond monies held by the Residential Tenancies Bond Authority to finance the economic costs of losses sustained as a result of family violence, such as the cost of property damage.¹⁴⁴ Another, suggested by the Chief Commissioner of Victoria Police, Graham Ashton AM APM, was the opportunity to use proceeds of crime funds for some family violence initiatives, such as preventative and research work.¹⁴⁵

In the Commission's view it is likely that these sources alone would be insufficient to meet the urgent demand for additional funding required for investment in family violence prevention and support. Another option, which the Commission has not considered in detail, would be to identify new sources of revenue, including a broad-based tax or levy, to fund all or part of the family violence system. The community may well support tangible actions that recognise the urgent need to address the serious social problem of family violence, including the possibility of introducing a new revenue source. Any new revenue source would have to be sufficiently broad based to meet the funding demand, sustainable over time to give certainty to funders and service providers and structured to distribute its impact fairly across the community.

A partnership agreement with the Commonwealth

Another possibility is to seek funding through Commonwealth–state agreements. In recent years the Commonwealth and state and territory governments have reached multilateral and bilateral agreements for reform in circumstances where greater quality and efficiency can be achieved through partnerships in such areas as health, disability and education. The National Partnership Agreement on Homelessness is an example. As noted, however, Commonwealth involvement in that program is uncertain beyond June 2017.

Agreements of this kind are intended to deliver nationally significant reforms and are supported by the adoption of mutually agreed objectives, outcomes and performance measures. In the case of family violence, the following are some of the areas that could be covered by such agreements:

- ▷ rapid rehousing initiatives through rental subsidies for victims who have to leave their home because of family violence
- ▷ expansion of individualised funding to support recovery
- ▷ provision of increased support for people involved in family law disputes—for example, increased funding of child contact centres
- ▷ funding for magistrates' courts to exercise their jurisdiction under the *Family Law Act 1975* (Cth) (see Chapter 16)
- ▷ Centrelink changes that take account of the need for people leaving a violent relationship to receive support quickly
- ▷ establishment of systems for recording information relevant to both Commonwealth and state and territory bodies—for example, court orders
- ▷ co-location of specialist family violence or child protection workers in family courts and of Family Court registrars in some magistrates' courts (see Chapter 24)
- ▷ sharing of data—for example, funding the Australian Institute of Health and Welfare to provide more detailed and informative data from the specialist homelessness data collection to assist in planning services for family violence victims and to assess the effectiveness of those services.

Agreements of this nature could enable cost sharing in some areas and also increase collaboration between relevant state and territory and federal bodies in areas where previously suggested reforms have not been implemented—for example, the interaction between family law courts and state courts. However, such agreements also have their risks. They should not detract from the need for the Victorian Government to increase investment to prevent and respond to family violence. It would also be important to ensure that the possibility of making such agreements does not delay the changes that should be made immediately and that such agreements last for a reasonable period.

The Commission considers that Victoria should explore opportunities to work with the Commonwealth Government to improve collaboration between systems.

Recommendation 227

The Victorian Government investigate options for increasing its capacity to invest in preventing and responding to family violence, including by:

- ▷ redirecting existing revenue sources towards family violence expenditure
- ▷ identifying new revenue sources
- ▷ exploring the possibility of entering into a partnership agreement with the Commonwealth Government in areas of overlapping responsibility.

Endnotes

- 1 *Good Shepherd Australia New Zealand, Submission 836, 25.*
- 2 *For New Zealand see Suzanne Snively, 'The New Zealand Economic Cost of Family Violence' (1995) 4 Social Policy Journal of New Zealand; for Canada see Lorraine Greaves, Olena Hankivsky and JoAnn Kingston-Riechers, 'Selected Estimates of the Costs of Violence against Women' (Centre for Research on Violence Against Women and Children, 1995) 7; Tanis Day, 'The Health Related Costs of Violence Against Women: The Tip of the Iceberg' (University of Western Ontario, Centre for Research on Violence Against Women and Children, 1995) 34; for the United Kingdom see Sylvia Walby, 'The Cost of Domestic Violence' (Department of Trade and Industry, Women and Equality Unit, September 2004); for the United States see Julie Gerberding et al, 'Costs of Intimate Partner Violence Against Women in the United States' (Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, March 2003).*
- 3 For an overview of the Australian studies see Access Economics, 'The Cost of Domestic Violence to the Australian Economy: Part 1' (Office of the Status of Women, 2004) 11–12.
- 4 The Commission notes that these estimates do not include the long-term effects on children.
- 5 Access Economics, above n 3, VI.
- 6 *Ibid* 3.
- 7 *Ibid* VI–VIII.
- 8 *Ibid* VI–VII.
- 9 *Ibid*.
- 10 At the request of the then federal Department of Families, Housing, Community Services and Indigenous Affairs (now the Department of Social Security): National Council to Reduce Violence Against Women (Cth), 'The Cost of Violence Against Women and their Children' (Department of Families, Housing, Community Services and Indigenous Affairs (Cth), March 2009) ('KPMG study').
- 11 *Ibid* 65.
- 12 *Ibid* 4.
- 13 *Ibid*.
- 14 *Ibid* 5.
- 15 PricewaterhouseCoopers Australia, 'A High Price to Pay: The Economic Case for Preventing Violence Against Women' (prepared for Our Watch and VicHealth, November 2015).
- 16 *Ibid* 5.
- 17 *Ibid* 9.
- 18 Although the report refers to violence against women it also took account of the indirect effects of violence on children. It did not include direct abuse of children.
- 19 PricewaterhouseCoopers Australia, above n 15, 11.
- 20 *Ibid* 13–14.
- 21 *Ibid* 24. It looked at the effects of three programs: one, Stepping Stones, was a South African Study that has been evaluated. This was considered relevant because the South African experience was 'relatively the most applicable to Australia' (see Appendix 57); the other two were in Uganda and India.
- 22 PricewaterhouseCoopers Australia, above n 15, 13.
- 23 *Ibid*.
- 24 In the health context pain, suffering and mortality is typically measured using Disability Adjusted Life Years (DALY) which is a measure of overall disease burden expressed as the number of years lost due to ill-health, disability or early death.
- 25 PricewaterhouseCoopers Australia, above n 15, 12.
- 26 *Ibid*.
- 27 PwC did include a Victorian figure for costs avoided by individual or group participation programs.
- 28 State of Victoria, Submission 717, 19. The cost estimate reflects 2007–08 dollars and was not adjusted to 2015–16 value.
- 29 Based on Victoria's population being 24.9 per cent of Australia's population at the end of the June quarter 2015: see Australian Bureau of Statistics, 'Australian Demographic Statistics, June 2015' (Catalogue No 3101.0, Australian Bureau of Statistics, December 2015). Using the same methodology, the cost of all violence against women in Victoria would be \$5.4 billion in 2014–15.
- 30 Statement of Skilbeck, 12 October 2015, 4 [12], [15], 5 [20], [22].
- 31 *Ibid* 4 [15].
- 32 *Ibid* 4 [12].
- 33 *Ibid* 5 [16].
- 34 State of Victoria, '2015-16 Budget Paper No 3: Service Delivery' (Department of Treasury and Finance, 2015) 250.
- 35 *Ibid* 253.
- 36 *Ibid* 260.
- 37 *Ibid* 347.
- 38 *Ibid* 113.
- 39 Statement of Skilbeck, 12 October 2015, 5 [18].
- 40 Department of Health and Human Services, 'Crisis Supported Accommodation 20081', 1, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.
- 41 Department of Health and Human Services 'Transition Support 20082', 1, 2, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.
- 42 Department of Health and Human Services, 'Family Violence Support Services 31233', 1, produced by the State of Victoria in response to the Commission's Notice to Produce dated 5 June 2015.
- 43 The three output measures are: Crimes against property – excluding family violence-related crime (rate per 100,000 population); and Crimes against property – family violence-related crime (rate per 100,000 population); and Women and the Prevention of Family Violence projects and programs which support the prevention of family violence and the social and economic participation of women are delivered on time (Women and Equality Policy and Programs Output). Refer to State of Victoria, above n 34, 271, 272 and 304.
- 44 Key health-related outputs include: Admitted Services, Non Admitted Services, Emergency Services, Ambulance Emergency Services, Ambulance Non Emergency Services, Community Health, Clinical Care (Mental Health) and Mental Health Community Support Services. Refer to *ibid* 225–228; 230–234.
- 45 State of Victoria, Submission 717, Appendix B.
- 46 *Ibid* Appendix B, 3.

- 47 The government submission noted that the \$80.6 million does not include the following: Addressing Family Violence in Acute Health program (\$0.25 million in 2014–15); lapsed programs funded by the Office for Women for which funding was allocated in 2013–14 but implementation delayed until 2014–14; Victoria Police, Legal Aid or Koori and CALD support agency funding; funding for Magistrates' Court of Victoria's Koori Family Support program which is funded internally by the Magistrates' Court of Victoria and does not have specific funding; funding for Forensicare Problem Behaviour Program which provides treatment for people with problem behaviours associated with offending such as physical violence, sexual offending and stalking. Ibid Appendix B, 15.
- 48 The cost of these programs was not provided to the Commission.
- 49 Funding of \$109.8 million for services and programs between 2014–15 and 2017–18, and \$8.3 million for capital projects was allocated in Pre-Election Budget Update, November 2014. The Commission understands that some of this funding was replaced by the subsequent Government's election commitments related to family violence, while other funding continued to be implemented as committed. State of Victoria, '2014 Pre-Election Budget Update' (Department of Treasury and Finance, November 2014) 77, 88.
- 50 State of Victoria, above n 34, 5. This includes \$36 million for the Commission.
- 51 Prime Minister of Australia, The Hon. Malcolm Turnbull, 'Women's Safety Package to Stop Violence' (Media Release, 24 September 2015) 1.
- 52 This figure represents the additional funding allocated to specialist family services that were comparable to those included in the State Government's submission which comprised the \$80.6 million budget for 2014–15. Appendix K contains the full list of the funded initiatives and the attribution as specialist family violence services or other programs contributing to addressing family violence. To ensure consistency with the 2014–15 figures we have not added amounts for purposes not included in the \$80.6 million figure.
- 53 See Table 41.4. The \$9 million was not included in the aggregate figure since the purpose was to compare the funding for specialist family violence services in 2014–15 (\$80.6 million) and the impact of additional funding provided for these services in 2015–16; the \$80.6 million did not include broader programs that contributed towards addressing family violence, so inclusion would nullify the value of the comparison between years.
- 54 Excludes funding allocated for the Royal Commission into Family Violence and for the State Government's engagement with the Commission.
- 55 Domestic Violence Victoria—02, Submission 943, 7.
- 56 Suellen Murray, 'The Origins and Development of the Australian Women's Refuge Movement', 19(10) *PARITY* 11.
- 57 Department of Health and Human Services, 'Attachment 10: Transitional support—20082', 1, produced in response to the Commission's Notice to Produce dated 13 October 2015.
- 58 State of Victoria, above n 34, 260.
- 59 Council of Australian Governments, 'National Affordable Housing Agreement' (2009) 3.
- 60 Council of Australian Governments, 'National Partnership Agreement on Homelessness 2015–2017' (September 2015) 9; State of Victoria, 'Victorian Budget 2014–2015: Building a Better Victoria—Service Delivery Budget Paper No 3' (Department of Treasury and Finance, 2014) 28.
- 61 Department of Health and Human Services, 'Department of Health and Human Services Policy and Funding Guidelines 2015: Volume 3—Human Services Policy and Funding Plan 2015–18', Chapter 4—Activity Descriptions (Family Violence Support Services 31233, July 2015).
- 62 State of Victoria, above n 60, 31.
- 63 Council of Australian Governments, above n 60, 3.
- 64 State of Victoria, above n 34, Appendix B, 4.
- 65 Commission's Notice to Produce dated 14 August 2015 (as varied on 20 August 2015 and 20 October 2015).
- 66 Department of Premier and Cabinet, 'Narrative for Cost to Government of Family Violence', 1, produced by the State of Victoria in response to the Commission's Notice to Produce dated 20 August 2015.
- 67 Department of Education and Training data based on Department of Education and Training, 'Table 1: Apportionment of the cost of key services and programs to family violence' (17 December 2015) 1–2; Department of Health and Human Services data based on Department of Health and Human Services, 'Table 1: Apportionment of the cost of key services to family violence, Tranche 1, 2013–14' (17 December 2015), 1, Department of Health and Human Services, 'Table 2: Apportionment of the cost of key services to family violence', Tranche 1, 2014–15' (17 December 2015), 1, Department of Health and Human Services, 'Table 1: Apportionment of the cost of key services to family violence: Extended Information' (18 November 2015); Department of Justice and Regulation data based on Department of Justice and Regulation, 'Table 1. Apportionment of the cost of key services to family violence' (Victims Assistance Program) (1 December 2015), 1, 'Table 1. Apportionment of the cost of key services to family violence' (Child Witness Service) (1 December 2015), 1; Magistrates' Court of Victoria data based on Department of Justice and Regulation, 'Family Violence Related Effort Summary Magistrates' Court', 1; Corrections Victoria data based on Department of Justice and Regulation, 'Cost of Family Violence to the corrections system – indicative estimate' (22 October 2015), 1–2; Office of Public Prosecution data based on Department of Justice and Regulation, 'Office of the Public Prosecutions - costs of family violence' (29 October 2015), 1; Victoria Police data based on Victoria Police, 'Modelling of Victoria Police Global expenditure for Family Violence 2013–14 and 2014–15' (1 December 2015) 1–4; Victoria Police, 'Modelling of Costs' (1 December 2015), 1, produced by the State of Victoria in response to the Commission's Notice to Produce dated 14 August 2015 (as varied on 20 August and 20 October).
- 68 The Australian Government Productivity Commission's annual report on government services provides information on each jurisdiction's government services, including expenditure, but expenditure on family violence is not separately reported: see, eg, Productivity Commission (Cth), *Report on Government Services* (January 2016) <<http://www.pc.gov.au/research/ongoing/report-on-government-services>>.
- 69 Barwon Area Integrated Family Violence Committee, Submission 893, 25; Transcript of Smith, 15 October 2015, 3750 [21]–[26]; Safe Steps Family Violence Response Centre, Submission 942, i; Domestic Violence Victoria—02, Submission 943, 8. This submission proposed there should be a designated Commonwealth budget stream.
- 70 Australian Women Against Violence Alliance, Submission 838, 5.
- 71 See, eg, Transcript of Cumberland, 13 July 2015, 59 [8]–[15]; Domestic Violence Victoria—02, Submission 943, 7; Statement of Gillespie, 10 July 2015, 6 [29]–[31].
- 72 Safe Steps Family Violence Response Centre, Submission 942, 10.
- 73 Transcript of Rogers, 21 July 2015, 1050 [18]–[19]. An 'episode of support', also known as a 'support period' is the period of time during which a client receives assistance from a service. A support period starts on the day the client first receives a service and ends when the relationship with the service end, the client has reached the maximum amount of support that the service can offer, or the client has not received any services for a whole calendar month and there is no ongoing relationship: Australian Institute of Health and Welfare, *Specialist Homelessness Services Collection manual* (July 2013) 10 <www.aihw.gov.au/shsc-resources/>.
- 74 Safe Steps Family Violence Response Centre, Submission 942, 10.
- 75 Victorian Council of Social Service, Submission 467, 53.
- 76 Transcript of Gillespie, 21 July 2015, 967 [1]–[6].
- 77 Australian Women Against Violence Alliance, Submission 838, 20.
- 78 Domestic Violence Victoria—04, Submission 943, 10.
- 79 Domestic Violence Victoria—02, Submission 943, 7.
- 80 Good Shepherd Australia New Zealand, Submission 836, 44.
- 81 Deborah McCormick Consulting, Submission 496, 5.
- 82 Victorian Council of Social Service, Submission 467, 9.
- 83 Statement of Hagias, 7 July 2015, 9 [34].

- 84 Transcript of Skilbeck, Peake and Eccles, 16 October 2015, 3936 [3]–3943 [11].
- 85 Transcript of Peake, 16 October 2015, 3939 [1]–[3].
- 86 Transcript of Eccles, 16 October 2015, 3955 [2]–[24].
- 87 Ibid 3955 [18].
- 88 Ibid 3956 [5]–[8].
- 89 See State of Victoria, Submission 717, 10.
- 90 See, eg, ibid 39; Transcript of Gregory, 12 October 2015, 3226 [6]–[22], 3247 [1]–[8]; Barwon Area Integrated Family Violence Committee, Submission 893, 13, 20.
- 91 Cabinet Social Policy Committee, 'Progress Report on the Work Programme of the Ministerial Group on Family Violence and Sexual Violence' (Ministry of Justice (NZ), 28 July 2015) 4 [27].
- 92 See, eg, Berry Street, Submission 834, 11; Barwon Area Integrated Family Violence Committee, Submission 893, 9, 15; Opportunity Knocks—EDVOS; Safe Futures Foundation; Safe Steps; WISHIN; Victorian Women's Trust, Submission 898, 23; Women's Health West Inc., Submission 239, 16–17, 18; Whitehorse Community Health Service, trading as Carrington Health, Submission 777, 2; WRISC Family Violence Support, Submission 260, 6–7.
- 93 State of Victoria, Submission 717, 42.
- 94 See, eg, Berry Street, Submission 834, 27–30; Opportunity Knocks—EDVOS; Safe Futures Foundation; Safe Steps; WISHIN; Victorian Women's Trust, Submission 898, 23; Women's Health West Inc., Submission 239, 16–17, 18, 19.
- 95 See, eg, Opportunity Knocks—EDVOS; Safe Futures Foundation; Safe Steps; WISHIN; Victorian Women's Trust, Submission 898, 14, 15, 23; WISHIN, Submission 446, 5; Berry Street, Submission 834, 42; Transcript of Smith, 21 July 2015, 901 [6]–[18].
- 96 Transcript of Gillespie, 21 July 2015, 969 [27]–[29].
- 97 See, eg, Transcript of Vlasis, 24 July 2015, 1436 [12]–1437 [19]; Transcript of Brandenburg, 24 July 2015, 1495 [30]–[31]; Transcript of Reaper, 24 July 2015, 1533 [8]–[10]; Barwon Area Integrated Family Violence Committee, Submission 893, 16.
- 98 Transcript of Vlasis, 24 July 2015, 1440 [1]–[23].
- 99 During that same period the number of Victoria Police Family Violence incidents increased from 35,666 (2009–10) to 65,154 (2013–14), an increase of 83 per cent: Crime Statistics Agency, 'An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14' (January 2016), Victoria Police data source, Tab 1, Table 1: Family incidents recorded and family incident rate per 100,000 population, July 2009 to June 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015..
- 100 State of Victoria, above n 34, 5.
- 101 Victoria Police, 'Criminal Justice Steering Committee—Family Violence—Current Trends and Changes over the Last 12 Months', 4, produced in response to the Commission's Notice to Produce dated 5 June 2015; Department of Health and Human Services, 'DHS Family Violence Incidents Demand Forecasting Factsheet (26 June 2014), 1, produced in response to the Commission's Notice to Produce dated 5 June 2015.
- 102 Department of Health and Human Services, above n 101, 1.
- 103 Department of Health and Human Services, 'Total Family Violence Incidents Forecast for Victoria prepared for the Royal Commission into Family Violence', 1, produced in response to the Commission's Notice to Produce dated 2 September 2015.
- 104 Ibid.
- 105 See, eg, Peter Shergold, 'Service Sector Reform: A Roadmap for Community and Human Services Reform—Final Report' (Victorian Council of Social Service, July 2013), 12; Department of Health and Human Services, 'Options Paper for the Minister for Housing: Reform of the Victorian Homelessness Service System', 35, produced in response to the Commission's Notice to Produce dated 14 August 2015 (as varied on 20 August 2015 and 20 October 2015); Victoria, Inquiry into Protecting Victoria's Vulnerable Children, *Full Report* (2012) 469–70.
- 106 Domestic Violence Victoria—02, Submission 943, 32–38.
- 107 EACH Social and Community Health, Submission 569, 53.
- 108 Victoria Police, Submission 923, 30.
- 109 Loddon Campaspe Integrated Family Violence Services Consortium, Submission 914, 27.
- 110 Community consultation, Traralgon, 13 May 2015; Community consultation, Maryborough 1, 21 April 2015.
- 111 Transcript of Peake, 16 October 2015, 3952 [14]–[16].
- 112 Ibid 3853 [29]–3854 [8].
- 113 Domestic Violence Victoria—02, Submission 943, 7.
- 114 Transcript of Kirby, 13 August 2015, 2915 [12]–[22].
- 115 Transcript of Heatley, 15 October 2015, 3771 [21]–3772 [5].
- 116 See Appendix K.
- 117 Domestic Violence Victoria—02, Submission 943, 51.
- 118 State of Victoria, Submission 717, 28.
- 119 Domestic Violence Victoria—02, Submission 943, 52.
- 120 Victoria Police, Submission 923, 30; Domestic Violence Victoria—03, Submission 943, 7, 9; Grampians Integrated Family Violence Committee, Submission 399, 4.
- 121 Safe Steps Family Violence Response Centre, Submission 942, 11.
- 122 Department of Health and Human Services, 'DHHS Response to Request Items 2–9', 1, produced by the State of Victoria in response to the Commission's Notice to Produce dated 13 October 2015.
- 123 Ibid.
- 124 See, eg, Australian Institute of Health and Welfare (AIHW), 'Specialist Homelessness Services 2013–2014' (Cat. no. HOU 276, 2014).
- 125 Domestic Violence Victoria—02, Submission 943, 8.
- 126 See, eg, Barwon Area Integrated Family Violence Committee, Submission 893, 14; Domestic Violence Victoria—02, Submission 943, 8, 43–44.
- 127 Victorian Aboriginal Community Services Association Limited, Submission 837, 5.
- 128 Mallee Family Violence Executive, Submission 617, 20.
- 129 Anonymous, Submission 195, 1.
- 130 Young Men's Christian Association of Victoria, Submission 196, 9.
- 131 MonashLink Community Health Services Ltd, Submission 121, 11.
- 132 Based on Victoria's population being 24.9 per cent of Australia's population at the end of the 2015 June quarter: see Australian Bureau of Statistics, 'Australian Demographic Statistics, June 2015' (Catalogue no. 3101.0, Australian Bureau of Statistics, December 2015). This was applied to PWC's report estimate of \$12.6 billion cost of violence against women in intimate relationships nationally: PricewaterhouseCoopers Australia, above n 15, 11. Using the same methodology, the cost of all violence against women in Victoria would be \$5.4 billion.
- 133 Cabinet Social Policy Committee, above n 91, 2 [7], Attachment 2.
- 134 Ibid 4 [27].
- 135 Australian National Research Organisation for Women's Safety, 'ANROWS Research Program 2014–16: Part 1' (2015) 21.
- 136 Transcript of Peake, 16 October 2015, 3939 [1]–[3].
- 137 Transcript of Skilbeck, 16 October 2015, 3938 [23]–[29].
- 138 Ibid 3945 [20]–[26].

- ¹³⁹ Ibid 3946 [14]–[18].
- ¹⁴⁰ Department of Health and Human Services, above n 101, 1.
- ¹⁴¹ Department of Health and Human Services, 'VHAP System Reform Project—Projecting the Demand for Services by People Experiencing Homelessness in Victoria—Final Report', 13, produced by the State of Victoria in response to the Commission's Notice to Produce dated 14 August 2015 (as varied on 20 August 2015 and 20 October 2015). In relation to this report, the Department of Health and Human Services notes that while regression analysis undertaken as part of the study demonstrated a link between the increase in reports of family violence incidents and experiences of homelessness, the methodology and base data did not allow forecasts of the number of people who will experience homelessness as a direct result of family violence.
- ¹⁴² Domestic Violence Victoria—02, Submission 943, 7.
- ¹⁴³ Transcript of Peake, 16 October 2015, 3952 [17]–[23].
- ¹⁴⁴ Fitzroy Legal Service Inc, 'Submission of Fitzroy Legal Service: Residential Tenancies Act Review', 11 <<http://fairersaferhousing.vic.gov.au/public-submissions/documents>>.
- ¹⁴⁵ Transcript of Ashton, 16 October 2015, 3969 [16]–3970 [15].

Appendix H Cost categories of PwC report

The table below shows the annual cost to the Australian economy of violence against women, 2014–15, by cost category and stakeholders incurring the costs according to PwC.

| Cost category | Cost (\$ million) | | Description | Stakeholder(s) |
|---|-------------------|----------------------------|---|---|
| | Partner violence | All violence against women | | |
| Pain, suffering and premature mortality | 4,783.3 | 10,405.6 | Lost quality of life. | <ul style="list-style-type: none"> ▷ Women ▷ Children ▷ Perpetrators |
| Health costs | 617.2 | 1,355.6 | Costs to deliver health services to victims. Covers the costs associated with the extended health effects of violence, not just the treatment of the initial trauma—for example, costs associated with the treatment of depression and anxiety. | <ul style="list-style-type: none"> ▷ Women ▷ Commonwealth Government ▷ State and territory governments ▷ Society/community ▷ Private insurance providers ▷ Perpetrators |
| Production-related costs | 926.1 | 2,031.9 | Lost productivity through absenteeism, being late or attending court. Includes lost productivity from unpaid/voluntary work. | <ul style="list-style-type: none"> ▷ Women ▷ Employers ▷ Society/community ▷ Perpetrators |
| Consumption-related costs | 4,316.9 | 4,316.9 | In the immediate short-term, costs cover the damage to property and belongings but this also covers the lost economies of scale that victims of domestic violence would experience due to being less likely to be in further relationships in the future. In calculating costs for non-partner violence, it was assumed that this cost is not applicable. | <ul style="list-style-type: none"> ▷ Women ▷ Children ▷ Society/community ▷ Perpetrators |
| Second-generation costs | 883.9 | 1,721.8 | For children who were in households experiencing violence but are not necessarily the target of violence themselves, there would be costs associated with their care or government intervention. It was also assumed that this cost will not be incurred by those experiencing violence by non-partners. | <ul style="list-style-type: none"> ▷ Women ▷ State and territory governments |
| Administrative and other costs | 300.7 | 300.7 | This category largely consists of the criminal justice costs for police, the courts, and incarceration of indicted perpetrators. Also includes the costs of other services such as interpreters, funerals and temporary accommodation. | <ul style="list-style-type: none"> ▷ Women ▷ Friends/family ▷ State and territory governments ▷ Commonwealth Government ▷ Society and community ▷ Perpetrators |

| Cost category | Cost (\$ million) | | Description | Stakeholder(s) |
|----------------|-------------------|----------------------------|--|--|
| | Partner violence | All violence against women | | |
| Transfer costs | 811.9 | 1,515.6 | Costs such as income support, victim compensation and lost taxes are not lost costs to society per se but are instead shifts in the economic powers of consumption from one part of society to another. Following violence against women this results in a loss of economic efficiency, which is known as a deadweight loss. It can also be thought of as the cost of the excess burden of taxation. | <ul style="list-style-type: none"> ▷ Women ▷ Friends/family ▷ State and territory governments ▷ Commonwealth Government ▷ Society/community |
| Total | 12,595.0 | 21,648.0 | | |

Notes: To enable comparison, the cost categories are the same as those used in previous costings of violence against women, those being Access Economics' *The Cost of Domestic Violence to the Australian Economy: Parts I and II* (2004) and KPMG's *The Cost of Violence against Women and their Children* (2009).

The PwC report assumed that consumption costs and second-generation costs are not applicable to nonpartner violence, which is the same approach used in the KPMG report.

Source: PricewaterhouseCoopers Australia, 'A High Price to Pay: The Economic Case for Preventing Violence Against Women' (prepared for Our Watch and VicHealth, November 2015).

Appendix I The Victorian Government's budget for specialist family violence services, 2014–15

| Government-funded program or service | 2014–15 funding (\$ million) |
|---|------------------------------|
| Crisis response and post-crisis support | 61.0 |
| Crisis support and accommodation | 13.4 |
| Family Violence Regional Service Integration | 2.0 |
| Family violence support | 5.8 |
| High-risk family violence response | 8.6 |
| Homeless services support (peak organisations) | 0.7 |
| Indigenous Family Violence | 3.3 |
| National Partnership Agreement on Homelessness—family violence initiatives | 7.5 |
| National Partnership Agreement on Homelessness—family violence stage 2 | 2.2 |
| Seniors Rights Victoria | 0.6 |
| Telephone information and referral | 1.7 |
| Transition support | 15.1 |
| Early intervention response | 4.8 |
| Addressing family violence and sexual assault in acute health | 0.5 |
| Adolescent family violence | 0.6 |
| Family Violence Risk Assessment and Risk Management Framework | 0.8 |
| Homelessness Innovation Action Project (Family Violence)—Families at Home | 1.0 |
| Strengthening Hospitals Responses to Family Violence Project—Our Watch | 0.3 |
| The Identifying and Responding to Family Violence project | 0.9 |
| Women's Information and Referral Exchange | 0.7 |
| Perpetrator accountability | 11.2 |
| Expansion of specialist family violence response to all headquarter courts | 2.1 |
| Family Violence Counselling Orders Program—men's behaviour change programs at Moorabbin and Frankston | 0.8 |
| Magistrates' Court, Family Violence Court Intervention program—men's behaviour change programs at Heidelberg and Ballarat | 0.8 |
| Magistrates' Court, Family Violence Court Divisions | 1.1 |
| Magistrates' Court, Specialist Family Violence Services | 0.7 |
| Men's Family Violence—including men's behaviour change programs, Men's Referrals Service | 5.6 |
| No To Violence | 0.1 |
| Prevention | 3.6 |
| Community of Practice—reducing violence against women and their children | 0.04 |
| Elder Abuse Prevention Online—professional education training | 0.1 |
| Engaging local government in the prevention of violence against women | 0.2 |
| Prevention of Violence against Women and Children in CALD communities—Our Watch | 0.6 |
| Raising Awareness of Elder Abuse in CALD communities | 0.2 |
| Respectful Relationships Education in Schools—Our Watch | 0.6 |
| Reducing violence against women and their children grants | 2.0 |
| Total | 80.6 |

a. These programs were shown as broader initiatives with a significant family violence component.

Note: Totals may not add due to rounding.

Source: Based on State of Victoria, Submission 717, Appendix B.

Appendix J Funding in the Victorian Government 2015–16 Budget for family violence initiatives

The following table reflects the initiatives funded in the 2015–16 Budget for 2015–16 to 2018–19 and the amounts in each of those years as applicable. The key purpose of this table is to establish an update on the Victorian Government submission's advice of what it allocated in 2014–15. As such, the Commission undertook the task of attributing each initiative to one of the following categories:

- ▷ Specialist family violence initiatives comparable to those in the Victorian Government submission's budget estimate for 2014–15 (to ensure comparability with the 2014–15 figure)
- ▷ Initiatives that contribute towards responding to family violence
- ▷ Royal Commission into Family Violence.

| (\$ million) | | | | |
|--|-------------|------------|------------|------------|
| Service/program | 2015–16 | 2016–17 | 2017–18 | 2018–19 |
| Specialist family violence initiatives comparable to those in the Victorian Government submission's budget estimate for 2014–15 | | | | |
| Boost to Domestic Violence Victoria | 0.4 | 0.4 | 0.4 | 0.4 |
| Crisis support and transport for women and children | 2.5 | – | – | – |
| Counselling services for women and children | 2.5 | – | – | – |
| Culturally and linguistically diverse family violence response | 1 | 1 | – | – |
| Men's behaviour change programs—Corrections Victoria | 1 | 1 | – | – |
| Men's behaviour change programs—Courts | 0.5 | – | – | – |
| Men's family violence services | 1 | – | – | – |
| Personal safety | 0.9 | – | – | – |
| Pet welfare ^a | – | – | – | – |
| Prevention of violence against women and children | 2 | – | – | – |
| Reducing Aboriginal family violence | 1.3 | – | – | – |
| Responses for Aboriginal people | 0.6 | – | – | – |
| Family violence access workers ^b | 2.0 | – | – | – |
| Subtotal | 15.7 | 2.4 | 0.4 | 0.4 |
| Programs contributing towards responding to family violence | | | | |
| Family violence duty lawyers at community legal centres | 1.2 | – | – | – |
| Child protection flexible responses | 3.9 | – | – | – |
| Community Legal Centre assistance fund | 1.0 | 1.0 | – | – |
| Coroners Court Death Review Unit | 0.3 | 0.3 | 0.3 | 0.3 |
| Family violence legal assistance | 2.1 | – | – | – |
| Victorian court safety audit | 0.1 | – | – | – |
| Sexual assault services demand | 0.3 | – | – | – |
| Support for Ballarat Centre Against Sexual Assault | 0.1 | 0.1 | 0.1 | 0.1 |
| Subtotal | 9.0 | 1.4 | 0.4 | 0.4 |

| (\$ million) | | | | |
|--|-------------|------------|------------|------------|
| Service/program | 2015-16 | 2016-17 | 2017-18 | 2018-19 |
| Royal Commission into Family Violence | | | | |
| Family Violence Royal Commission engagement | 1.2 | - | - | - |
| Royal Commission into Family Violence ^c | 20 | - | - | - |
| Subtotal | 21.2 | - | - | - |
| Family Violence Fund ^d | 12.0 | - | - | - |
| Total | 57.9 | 3.8 | 0.8 | 0.8 |

Notes:

- = zero.

a. Funding is \$25,000 each year but does not show due to rounding.

b. This initiative was funded from the Family Violence Fund.

c. Funding of \$16 million was allocated in 2014-15 to the Royal Commission into Family Violence.

d. The Family Violence Fund, created to deal with urgent and unforeseen demand for services arising from the Royal Commission, was allocated \$16 million in 2015-16 but \$2 million was for family violence access workers, which is included in the list of specialist family violence initiatives.

Source: Based on State of Victoria, Submission 717, 10; 5-6, State of Victoria, '2015-16 Budget Paper No 3: Service Delivery' (Department of Treasury and Finance, 2015) 5-6.

Appendix K List of the activities and activity sub-elements for family violence service providers who receive funding

Table begins on next page.

| | Refuges | | Outreach/Specialist Family Violence Services | | | | | | | | | | High-Risk Responses | | Counselling | |
|--|--|-------------------------|--|---------------------------|--------------------------|---------------------|--------------------|-----------------------------------|---------------------------------|--------------------|--|--|--|------------------------------------|---|-------------------------|
| Activity | Crisis support and accommodation | Transition support | Transition support | Transition support | Transition support | Transition support | Transition support | Transition support | Transition support | Transition support | National Partnership Agreement on Homelessness—family violence initiatives | National Partnership Agreement on Homelessness—family violence initiatives | National Partnership Agreement on Homelessness—Family Violence Stage 2 | High risk family violence response | High risk family violence response | Family violence support |
| Activity Element | Refuges and crisis accommodation designated for family violence. | Refuge re-establishment | Outreach | Intensive case management | Access to private rental | After hours service | Court support | Emergency accommodation for women | Emergency accommodation for men | Safe at Home | Extended after hours response | Intensive case management | Case management | RAMP coordination | Women and children's counselling, including Court Network | |
| Aboriginal Community Elders Services Inc. (Conference funding) | | | | | | | | | | | | | | | | |
| Aboriginal Family Violence Prevention & Legal Service (Victoria) | | | | | | | | | | | | | | | | |
| Aboriginal & Torres Strait Islander Corporation Family Violence Prevention & Legal Service (Vic) | | | | | | | | | | | | | | | | |
| Aborigines Advancement League | | | | | | | | | | | | | | | | |
| Anglicare Victoria | | | | | | | | | | | | | | | | ✓ |
| Annie North | ✓ | ✓ | | | | | | | | | | | | | | |
| Austin Health | | | | | | | | | | | | | | | | |
| Australian Childhood Foundation | | | | | | | | | | | | | | | | ✓ |
| Ballarat and District Aboriginal Co-operative Ltd. | | | | | | | | | | | | | | | | |
| Ballarat CASA | | | | | | | | | | | | | | | | |
| Barwon CASA | | | | | | | | | | | | | | | | |
| Bass Coast Health | | | | | | | | | | | | | | | | ✓ |
| Berry Street Inc | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Bethany Community Support | | | ✓ | | | ✓ | | ✓ | ✓ | | ✓ | | | ✓* | | |
| Brophy Family and Youth Services | | | | | | | | | | | | | | | | ✓ |
| Casey City Council | | | | | | | | | | | | | | | | |
| Centre Against Violence | ✓ | ✓ | ✓ | | | | | | | ✓ | | | ✓ | ✓ | | |
| Centre for Non-Violence | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Child & Family Services Ballarat | | | | | | | | ✓ | | | | | | | | |
| Children's Protection Society | | | | | | | | | | | | | | | | |
| Colac Area Health | | | ✓ | | | | | | | | | | | | | |

| | Refuges | | Outreach/Specialist Family Violence Services | | | | | | | | | | High-Risk Responses | | Counselling | |
|--|--|-------------------------|--|---------------------------|--------------------------|---------------------|--------------------|-----------------------------------|---------------------------------|--------------------|--|--|--|------------------------------------|---|-------------------------|
| Activity | Crisis support and accommodation | Transition support | Transition support | Transition support | Transition support | Transition support | Transition support | Transition support | Transition support | Transition support | National Partnership Agreement on Homelessness—family violence initiatives | National Partnership Agreement on Homelessness—family violence initiatives | National Partnership Agreement on Homelessness—Family Violence Stage 2 | High risk family violence response | High risk family violence response | Family violence support |
| Activity Element | Refuges and crisis accommodation designated for family violence. | Refuge re-establishment | Outreach | Intensive case management | Access to private rental | After hours service | Court support | Emergency accommodation for women | Emergency accommodation for men | Safe at Home | Extended after hours response | Intensive case management | Case management | RAMP coordination | Women and children's counselling, including Court Network | |
| Community Housing (Vic) Ltd | | | | | | | | ✓ | ✓ | | | | | | | |
| Connections UnitingCare | | | | | | | | | | | | | | | | |
| Connections UnitingCare Southern | | | | | | | | | | | | | | | | ✓ |
| Djerriwarrh Health | | | | | | | | | | | | | | | | |
| Doncaster Community Care and Counselling Centre | | | | | | | | | | | | | | | | ✓ |
| EACH | | | | | | | | | | | | ✓ | | | | ✓ |
| EACH (Auspicing Boorndawan William Healing Service) | | | | | | | | | | | | | | | | |
| Eastern Domestic Violence Service | | ✓ | ✓ | ✓ | ✓ | ✓ | | | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Eastern Health | | | | | | | | | | | | | | | | ✓ |
| Elizabeth Morgan House Aboriginal Women's Services (previously known as Elizabeth Hoffman House) | ✓ | ✓ | ✓ | | | | ✓ | | | | | | | | | ✓ |
| Emerge Women & Children's Support Network | ✓ | ✓ | ✓ | | | | | | | | | | | | | |
| Emma House Domestic Violence Services | ✓ | ✓ | ✓ | ✓ | ✓ | | | ✓ | | ✓ | | ✓ | ✓ | ✓ | | |
| Gatehouse Centre | | | | | | | | | | | | | | | | |
| Gateway Community Health Service | | | ✓ | | | | | | | | | | | | | ✓ |
| Georgina Collective | ✓ | ✓ | | | | | | | | ✓ | ✓ | | | | | |
| Gippsland and East Gippsland Aboriginal Cooperative Limited | ✓ | ✓ | | | | | | | | | | | | | | |
| Gippsland CASA | | | | | | | | | | | | | | | | |
| Gippsland Lakes Community Health | | | ✓ | ✓ | | | | | | ✓ | | ✓ | ✓ | ✓ | ✓ | ✓ |

| | Refuges | | Outreach/Specialist Family Violence Services | | | | | | | | | | High-Risk Responses | | Counselling | |
|--|--|-------------------------|--|---------------------------|--------------------------|---------------------|--------------------|-----------------------------------|---------------------------------|--------------------|--|--|--|------------------------------------|---|-------------------------|
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| Gippsland Lakes Community Health (Auspicing Yoowinna Wuranlong Healing and Time Out Service) | | | | | | | | | | | | | | | | |
| Gippsland Women's Health Service | | | | | | | | | | | | | | | | |
| Good Shepherd Youth and Family Service | ✓ | ✓ | ✓ | ✓ | | ✓ | | ✓ | | ✓ | | ✓ | ✓ | ✓ | ✓ | ✓ |
| Goolum-Goolum Aboriginal Co-operative | | | | | | | | | | | | | | | | |
| Goulburn Valley Aboriginal Education Consultative Inc. | | | | | | | | | | | | | | | | |
| Goulburn Valley Health | | | | | | | | | | | | | | | | |
| Grampians Community Health | | | ✓ | | ✓ | | | | | ✓ | | ✓ | | ✓ | | |
| Gunditjmara Aboriginal Co-operative | | | ✓ | | | | | | | | | ✓ | | | | |
| Hanover Welfare Services | | | | | | | | | ✓ | | | | | | | |
| Haven | | | | | | | | | ✓ | | | | | | | |
| HomeGround Services | | | | | | | | | ✓ | | | | | | | |
| Inner South Community Health Service | | | | | | | | | | | | | | | | ✓ |
| InTouch | | | ✓ | | | | ✓ | | | | | ✓ | | | | ✓ |
| Junction Support Services | | | | ✓ | | | | | | | | | | | | ✓ |
| Kara House | 1 | ✓ | | | | | | | | | | | | | | |
| Kildonan UnitingCare | | | | | | | | | | | | | | | | |
| Lake Tyers Health and Childrens Services Association Inc. | | | | | | | | | | | | | | | | |
| Latrobe Community Health Service | | | | | | | | | | | | | | | | ✓ |

| | Refuges | | Outreach/Specialist Family Violence Services | | | | | | | | | | High-Risk Responses | | Counselling | |
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| Lifeworks Relationship Counselling and Education Services | | | | | | | | | | | | | | | | |
| Loddon Mallee Housing Services Limited | | | | | | | | | | | | | | | | |
| Loddon-Campaspe CASA | | | | | | | | | | | | | | | | |
| Mallee Family Care | | | | | | | | | | | | | | | | |
| Mallee Sexual Assault Unit | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | ✓ | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Mallee District Aboriginal Service | | | | | | | | | | | | | | | | |
| McAuley Community Services for Women | ✓ | | | | | | | | | ✓ | | | | | | |
| Mens' Referral Service | | | | | | | | | | | | | | | | |
| Migrant Information Centre (Eastern Melbourne) Ltd. | | | | | | | | | | | | | | | | ✓ |
| Mildura Aboriginal Corporation | | | | | | | | | | | | | | | | |
| Minerva Community Services | ✓ | ✓ | ✓ | | | | | | | ✓ | | | ✓ | | | |
| Mitchum Community House Inc. | | | | | | | | | | | | | | | | ✓ |
| Monash Health | | | | | | | | | | | ✓ | | | | | ✓ |
| MonashLink Community Health Service Ltd. | | | | | | | | | | | | | | | | ✓ |
| Mungabareena Aboriginal Cooperation | | | | | | | | | | | | | | | | |
| Murray Valley Aboriginal Cooperative | | | | | | | | | | | | | | | | |
| Nexus Primary Health | | | ✓ | ✓ | | | | | | | | | | | | ✓ |
| Ngwala Willumbong Co-operative Ltd. | | | | | | | | | | ✓ | | | | | | |
| Njernda Aboriginal Corporation | | | ✓ | | | | | | | | | | | | | |

| | Refuges | | Outreach/Specialist Family Violence Services | | | | | | | | | | High-Risk Responses | | Counselling | |
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| Peninsula Health Community Health | | | | | | | | | | | | | | | | |
| Plenty Valley Community Health | | | | | | | | | | | | | | | | |
| Primary Care Connect | | | ✓ | | | | | | | | | | ✓ | ✓ | | |
| Quantum Support Services | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | | | ✓ | ✓ | ✓ | ✓ | ✓ | | |
| Ramahyuck | | | | | | | | | | | | | | | | |
| Ranges Community Health | | | | | | | | | | | | | | | | ✓ |
| Relationships Australia (Victoria) | | | | | | | | | | | | | | | | ✓ |
| Rights Information and Advocacy Centre | | | | | | | | | | | | | | | | |
| Royal Women's Hospital | | | | | | | | | | | | | | | | |
| Rumbalara Aboriginal Co-operative Ltd. | | | | | | | | | | | | ✓ | | | | |
| Rural Housing Network Limited | | | | | ✓ | | | ✓ | ✓ | | | | | | | |
| Safe Futures Foundation | ✓ | ✓ | ✓ | ✓ | | | | ✓ | | ✓ | ✓ | | | | | |
| Safe Steps Family Violence Response Centre (Statewide Service Response) | ✓ | ✓ | ✓ | | | | | | | ✓ | ✓ | | | | | |
| Salvation Army (Victoria) Property Trust - Barwon Region | | ✓ | | ✓ | ✓ | | | | ✓ | | | | | | | |
| Salvation Army (Victoria) Property Trust | | | | | | | | | | ✓ | | ✓ | | | | |
| Salvation Army (Victoria) Property Trust - Gippsland Region (Gippscare) | | | ✓ | ✓ | | | | | ✓ | ✓ | | | | | | |
| Salvation Army (Victoria) Property Trust - Western (Mary Anderson Family Violence Service) | ✓ | ✓ | | | | | | | | | | | | | | |

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| Salvation Army (Victoria) Property Trust - Southern | | | ✓ | ✓ | ✓ | ✓ | | ✓ | | ✓ | ✓ | | ✓ | | | | |
| Shekinah Homeless Services Inc. | | | | | | | | | | ✓ | | | | | | | |
| South Eastern CASA | | | | | | | | | | | | | | | | | |
| South West CASA | | | | | | | | | | | | | | | | | |
| Southern Family Life Service Association | | | | | | | | | | | | | | | | ✓ | |
| Southern Health | | | | | | ✓ | | | | | | | | | | | |
| Springvale Indo-Chinese Mutual Assistance Association | | | | | | | | | | | | | | | | ✓ | |
| Sunbury Community Health | | | | | | | | | | | | | | | | | |
| Sunrasia Community Health | | | | | | | | | | | | | | | | | |
| Time for Youth | | | | | | | | | | | | | | | | | |
| UnitingCare Gippsland | | | | | | | | | | | | | | | | ✓ | |
| Upper Murray CASA | | | | | | | | | | | | | | | | | |
| Victoria University | | | | | | | | | | | | | | | | | |
| Victorian Aboriginal Child Care Agency Co-operative Ltd. (OG) | | | | | | | | | | | | ✓ | | | | | |
| Victorian Aboriginal Community Services Association Ltd. | | | | | | | | | | | | | | | | | |
| Victorian Aboriginal Health Service | | | | | | | | | | | | | | | | | |
| Victorian Institute for Forensic Mental Health | | | | | | | | | | | | | | | | | |
| VincentCare Victoria (including Marion House) | ✓ | ✓ | | | | ✓ | | | | ✓ | ✓ | ✓ | | | | | |
| Wathaurong Aboriginal Co-operative Ltd. | | | | | | | | | | | | | | | | | |
| WAYSS Limited | ✓ | | ✓ | ✓ | ✓ | ✓ | | ✓ | | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | |

| | Refuges | | Outreach/Specialist Family Violence Services | | | | | | | | | | High-Risk Responses | | Counselling | |
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| Wesley Mission Victoria | ✓ | | | | | | | | ✓ | | | | | | | |
| West CASA | | | | | | | | | | | | | | | | |
| West Gippsland Healthcare Group | | | | | | | | | | | | | | | | ✓ |
| Whitehorse Community Health Service Ltd. | | | | | | | | | | | | | | | | ✓ |
| Windermere Child and Family Services | | | | | | | | | | | | | | | | ✓ |
| Winda-Mara Aboriginal Corporation Ltd. | | | | | | | | | | | | | | | | |
| Women with Disabilities Victoria | | | | | | | | | | | | ✓ | | | | |
| Women's Health Goulburn North-East | | | | | | | | | | | | | | | | |
| Women's Health Loddon Mallee Inc. | | | | | | | | | | | | | | | | |
| Women's Health in the North | | | | | | | | | | | | | | | | ✓ |
| Women's Health West | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | | ✓ | | ✓ | ✓ | ✓ | ✓ | ✓ | | |
| Women's Information and referral exchange | | | | | | | | | | | | | | | | |
| Women's Liberation Halfway House | ✓ | ✓ | | | | | | | | | | | | | | |
| WRISC Family Violence Support | | | ✓ | | ✓ | | ✓ | | | ✓ | | ✓ | | | | |
| Total providers funded | 23 | 22 | 28 | 16 | 13 | 12 | 4 | 12 | 11 | 24 | 14 | 20 | 14 | 13 | 35 | |

Based on: Department of Health and Human Services, 'Attached Mapping of FV providers by funded activity DHHS comments', Sheet 1, produced by the State of Victoria in response to the Commission's Notice to Produce dated 21 September 2015.

*Funded through NPAH in 2014-15 but did not specify which element of NPAH

**From Bumbalara Aboriginal Co-operative Ltd.

^The Male Centre

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. |
| Crimonogenic | 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 (Vic)</i> . 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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The Hon. Marcia Neave AO – Commissioner
Patricia Faulkner AO – Deputy Commissioner
Tony Nicholson – Deputy Commissioner

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In addition to relying on the work of its research team, the Royal Commission into Family Violence commissioned two specific pieces of research—a report on family violence trends in Victoria from 2009–10 to 2013–14 and a report on the impact of family violence proceedings in the Magistrates’ Court of Victoria.

Both reports are included in this volume in full.

Contents

| | |
|---|-----|
| An overview of family violence in Victoria: findings from the Victorian Family Violence Database 2009–10 to 2013–14 | 1 |
| Understanding family violence court proceedings: the impact of family violence on the Magistrates’ Court of Victoria | 161 |

An overview of family violence in Victoria: findings from the Victorian Family Violence Database 2009–10 to 2013–14

The Victorian Family Violence Database operated between 1999 and 2010 and was the repository for data from a range of sources—Victoria Police, the Magistrates’ and Children’s Courts, the Magistrates’ Court Family Violence Division Courts and specialist family violence courts, the Victims of Crime Helpline and the Victims Assistance and Counselling Program, the Department of Health and Human Services Integrated Risk Information database, the Victorian Supported Accommodation Assistance Program (now the Specialist Homelessness Services Collection), Victorian public hospital emergency departments, the Victorian Civil and Administrative Tribunal, and Victoria Legal Aid.

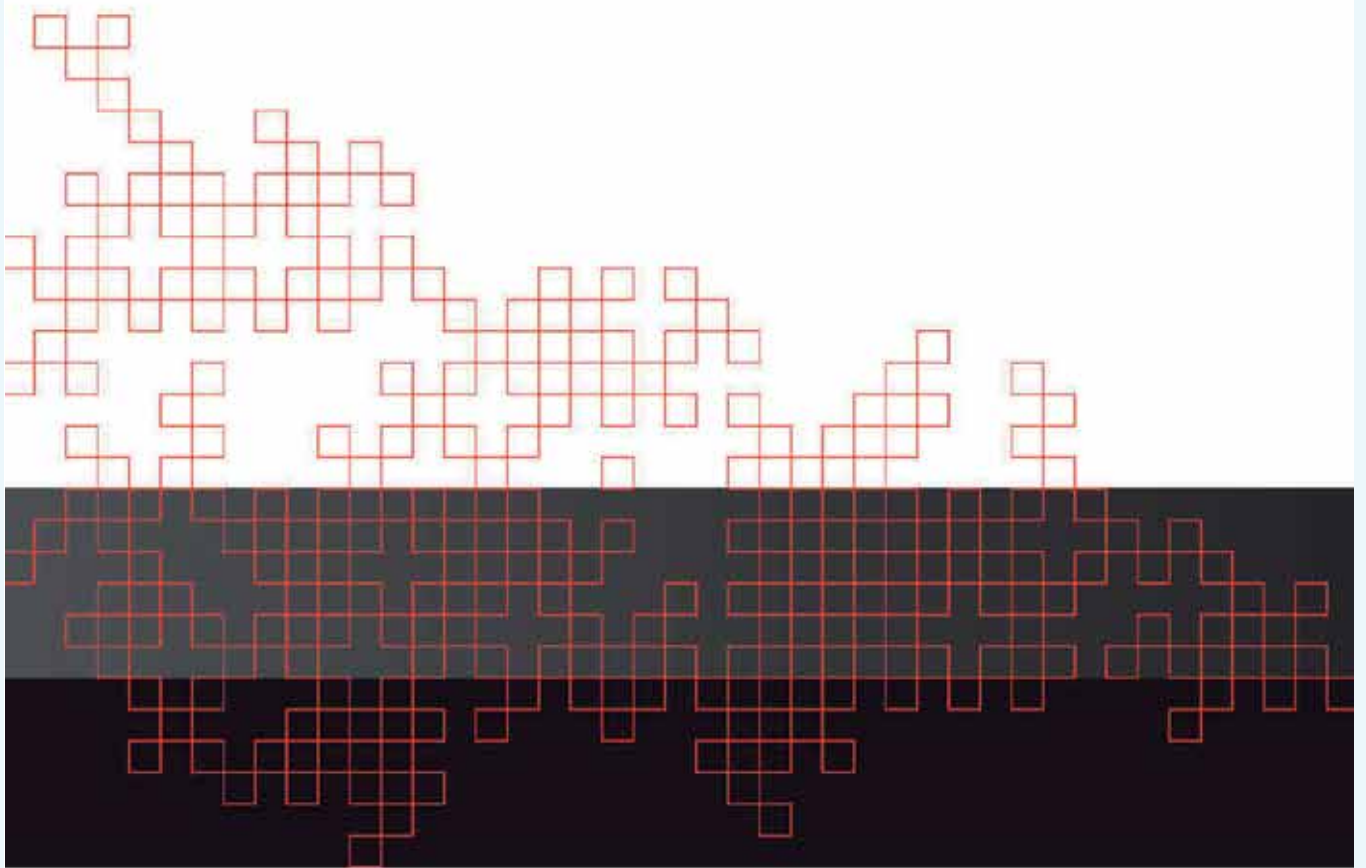
The most recent publication from the database, covering the period 1999 to 2010, was released in 2012, which means there has been no publicly available compilation of trend data for a number of years. Although the database had many limitations, its cessation has been a major loss for effective policy-making. During this time data has continued to be collated, but information has generally been reported separately by each department and agency. Even within the same department or agency there is often more than one database and limited capacity for linking the information held in each source. For example, the Magistrates’ Court holds data in separate civil and criminal law databases that are not linked.

To overcome this problem, the Commission sought data from departments under notices to produce and from Victoria Police, agencies, and the Magistrates’ and Children’s courts. We then engaged the Crime Statistics Agency to analyse the data and report on family violence trends for the five years from July 2009 to June 2014. This data appears throughout the Commission’s report.

The Commission thanks the Crime Statistics Agency for performing this complex task in a very short time. We would also like to thank the Australian Institute of Health and Welfare for its contribution to the CSA’s work. We note that the Victims Support Agency is working towards the production of more regular and focused data reports from the Family Violence Database (collated by the CSA). This is a positive development.

An overview of family violence in Victoria

Findings from the Victorian Family Violence Database 2009-10 to 2013-14



Produced on behalf of the Royal Commission into Family
Violence by the Crime Statistics Agency



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For further information or additional copies, please contact:
Crime Statistics Agency

121 Exhibition Street, Melbourne, VIC 3000

Tel 03 8684 1808

Acknowledgements

This report, updating in part the Victorian Family Violence Database, has involved the work of representatives of many agencies to make data collection, analysis and production possible.

We would like to acknowledge the Royal Commission into Family Violence, who commissioned the Crime Statistics Agency to produce this work. We would also like to acknowledge all the agencies who provided data and expertise supporting this iteration of the database: Victoria Police, the Magistrates' Court of Victoria, Victoria Legal Aid, the Victims Support Agency in the Department of Justice and Regulation, the Department of Health and Human Services and the Australian Institute of Health and Welfare.

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Contents

| | |
|---|----|
| Acknowledgements..... | 3 |
| Authors..... | 3 |
| List of tables..... | 6 |
| List of figures..... | 9 |
| 1. Key themes..... | 12 |
| Prevalence of family violence in Victoria..... | 12 |
| Gender of victims of family violence..... | 12 |
| Gender of perpetrators of family violence..... | 13 |
| Relationships of victims to perpetrators..... | 13 |
| Children as victims of family violence..... | 13 |
| Children as perpetrators of family violence..... | 14 |
| Family violence recidivism recorded by Victoria Police..... | 14 |
| Specific population groups..... | 14 |
| Culturally and Linguistically Diverse (CALD)..... | 14 |
| Aboriginal and Torres Strait Islander..... | 15 |
| Disability..... | 15 |
| Family violence across the regions..... | 15 |
| 2. Introduction..... | 16 |
| Purpose and uses of the Victorian Family Violence Database..... | 16 |
| What the Victorian Family Violence Database Does..... | 16 |
| Challenges in collating the Database..... | 17 |
| Comparisons over time..... | 17 |
| Past, present and future of the Victorian Family Violence Database..... | 17 |
| In this report..... | 19 |
| 3. Victorian Family Violence Database: 2009-10 to 2013-14..... | 20 |
| Data sources..... | 20 |
| Victoria Police..... | 20 |
| Magistrates' and Children's Courts..... | 20 |
| Specialist Family Violence Court Services..... | 20 |
| Department of Health and Human Services – Integrated Reports and Information System (IRIS)..... | 21 |
| Department of Health and Human Services – Victorian Emergency Minimum Dataset (VEMD)..... | 21 |
| Victims Assistance Program (VAP)..... | 21 |
| Victims of Crime (VoC) helpline..... | 21 |
| Victoria Legal Aid (VLA)..... | 22 |
| Specialist Homelessness Services Collection (SHSC)..... | 22 |
| Supported Accommodation Assistance Program (SAAP)..... | 22 |

| | |
|---|-----------|
| 4. Victoria Police | 24 |
| Family incidents recorded..... | 24 |
| Family incidents across Victoria..... | 25 |
| Demographics of affected family members and other parties | 26 |
| Age and sex of affected family members | 26 |
| Age and sex of other parties | 27 |
| Relationship between affected family members and other parties | 29 |
| Parent-Child relationships in family incidents..... | 31 |
| Children affected family members to parent other parties | 31 |
| Adult parent affected family members to youth children other parties | 32 |
| Adult children as the other party to adult parent affected family members..... | 33 |
| Domestic partner and spousal relationships in family incidents..... | 33 |
| Family incidents involving current partners | 33 |
| Family incidents involving former partners | 34 |
| Children present at family incidents | 35 |
| Fear level of affected family member at time of the incident..... | 35 |
| Risk factors recorded on L17 Risk Assessment and Risk Management Report..... | 36 |
| Actions taken by Victoria Police | 39 |
| Family Violence Intervention Orders and Family Violence Safety Notices sought by police | 40 |
| Referrals made by police | 40 |
| 5. Magistrates' Court | 41 |
| Applications for Family Violence Intervention Orders | 41 |
| Types of applications..... | 42 |
| Mode of issue | 42 |
| Application complainant | 43 |
| Outcome of applications | 44 |
| Demographic characteristics of affected family members and respondents | 45 |
| Gender and age of affected family members..... | 45 |
| Gender and age of respondents..... | 46 |
| Relationship between affected family members and respondents | 47 |
| Children as affected family members..... | 49 |
| Affected family members across Victoria | 50 |
| Interpreter requirements..... | 51 |
| Applications heard in the Family Violence Court Division | 51 |
| 6. Children's Court | 52 |
| Applications for Family Violence Intervention Orders | 52 |
| Types of applications..... | 53 |
| Mode of issue | 53 |

| | |
|---|-----------|
| Application complainant | 54 |
| Outcome of applications | 55 |
| Demographic characteristics of affected family members and respondents | 56 |
| Gender and age of affected family members..... | 56 |
| Gender and age of respondents..... | 57 |
| Affected family members under 17 years old..... | 58 |
| Affected family members over 18 years old | 59 |
| Relationship of affected family member to respondents | 60 |
| Parent/step-parent affected family members of a young respondent | 61 |
| Affected family members across Victoria | 62 |
| 7. Specialist Family Violence Courts Services | 63 |
| Applicants and respondents accessing a specialist court support worker | 63 |
| Applicants accessing a support worker..... | 63 |
| Respondents accessing a support worker | 64 |
| Demographics of applicants and respondents accessing a support worker | 65 |
| Applicants accessing a support worker..... | 65 |
| Respondents accessing a support worker | 66 |
| Source of referrals to support worker..... | 67 |
| Specialist courts across Victoria | 69 |
| Disability status of applicants and respondents accessing a support worker | 70 |
| Interpreter requirements of clients accessing a support worker..... | 70 |
| Applicants with children in their care | 71 |
| 8. Integrated Reporting Information System (IRIS) – Department of Health and Human Services | 72 |
| Cases and issues recorded by IRIS agencies..... | 72 |
| Source of referral for family violence related cases..... | 73 |
| Point of closure..... | 74 |
| Safety plans & risk assessment completed..... | 75 |
| Intervention order at referral..... | 75 |
| Clients presenting to IRIS agencies | 76 |
| Family violence related clients accessing men’s behaviour change programs and women and children’s family violence services | 76 |
| Clients accessing men’s behaviour change programs across Victoria..... | 77 |
| Clients accessing women and children’s family violence services across Victoria..... | 78 |
| Age of men accessing men’s behaviour change programs..... | 79 |
| Demographics of clients accessing women and children’s family violence services..... | 80 |
| Country of birth | 80 |
| Indigenous status..... | 81 |

| | | |
|-----|--|-----|
| 9. | Victorian Emergency Minimum Dataset (VEMD)..... | 82 |
| | Demographic characteristics of VEMD patients..... | 83 |
| | Gender and age of family violence patients | 83 |
| | Indigenous status..... | 84 |
| | Country of birth | 84 |
| | VEMD patients across Victoria | 85 |
| | Cause of injury | 86 |
| | Nature of main injury | 87 |
| 10. | Victims Assistance Program (VAP) | 88 |
| | Victims of family violence..... | 88 |
| | Demographic characteristics of family violence related victims..... | 89 |
| | Gender and age of victims..... | 89 |
| | Indigenous status..... | 89 |
| | Cultural background | 90 |
| | Victims of family violence across Victoria | 90 |
| 11. | Victims of Crime Helpline (VoC)..... | 91 |
| | Victims of family violence..... | 91 |
| | Demographic characteristics of victims | 91 |
| 12. | Victoria Legal Aid (VLA) | 92 |
| | Victoria Legal Aid services..... | 92 |
| | Referrals to Victoria Legal Aid | 93 |
| | Demographics of clients accessing Victoria Legal Aid services | 93 |
| | Gender and age of clients | 93 |
| | Culturally and linguistically diverse clients..... | 95 |
| | Disability status of clients | 96 |
| | Outcomes of duty lawyer services | 97 |
| 13. | Specialist Homelessness Services Collection (SHSC)..... | 98 |
| | Support periods for clients seeking housing assistance in Victoria..... | 98 |
| | Demographics of clients seeking assistance for family violence reasons | 99 |
| | Main reason clients sought housing assistance..... | 100 |
| | Young people seeking assistance on their own..... | 101 |
| | Indigenous status | 101 |
| | Country of birth..... | 102 |
| | Clients with mental health issues | 102 |
| | Main source of income..... | 103 |
| 14. | Further analysis: police recorded family violence recidivism..... | 104 |
| | Introduction | 104 |

4 Contents

| | |
|---|------------|
| Background | 105 |
| Methodology | 108 |
| Data | 109 |
| Statistical analysis | 110 |
| Findings | 110 |
| Perpetrator characteristics | 110 |
| Perpetrators' recorded family violence histories | 113 |
| Index incident characteristics | 114 |
| Police actions | 118 |
| Overall recidivism rates | 119 |
| Recidivism by perpetrator and index incident characteristics | 120 |
| Final recidivism model | 127 |
| Time between index incident and recidivism incident | 129 |
| Discussion | 134 |
| 15. Gaps and opportunities to improve the family violence database | 136 |
| Introduction | 136 |
| About the datasets | 137 |
| Overview of data collection activities | 137 |
| Improving the family violence evidence base in Victoria | 139 |
| Inclusion of additional data sources | 140 |
| A Victorian family violence data framework | 140 |
| Application of common identifiers | 141 |
| Data consistency and quality | 142 |
| Data Governance | 142 |
| Information sharing across government | 144 |
| High priority data items | 144 |
| Conclusion | 145 |
| 16. Conclusion | 146 |
| 17. Explanatory notes | 147 |
| Reference periods | 147 |
| Rates per 100,000 population | 147 |
| Regional statistics | 147 |
| Confidentialisation | 149 |
| 18. Glossary | 150 |
| 19. References | 152 |

List of tables

| | |
|--|----|
| Table 1. Previous major iterations and products of the Victorian Family Violence Database | 18 |
| Table 2. Overview of data sources | 23 |
| Table 3. Family incidents recorded and family incident rate per 100,000 population – Victoria Police, July 2009 to June 2014 | 24 |
| Table 4. Family incidents by police region – Victoria Police, July 2009 to June 2014 | 25 |
| Table 5. Sex of other party by age group of associated affected family member, July 2009 to June 2014 | 27 |
| Table 6. Children affected family members aged 17 years and under where the other party is a parent – Victoria Police, July 2013 to June 2014 | 31 |
| Table 7. 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 | 32 |
| Table 8. Parents as affected family member where the other party is 18 years and older by gender and age of AFM and age of OTH – Victoria Police, July 2009 to June 2014 combined | 33 |
| Table 9. Former partner relationships where both affected family member and other party are over 18 years by gender of AFM and age group of other party – Victoria Police, July 2009 to June 2014 combined | 34 |
| Table 10. Number of family incidents where a child/children were present – Victoria Police, July 2009 to June 2014 | 35 |
| Table 11. Proportion of incidents where each risk factor relating to the affected family member was recorded at the time of the incident – Victoria Police, July 2009 to June 2014 | 36 |
| Table 12. Proportion of incidents where each risk factor relating to the other party was recorded at the time of the incident – Victoria Police, July 2009 to June 2014 | 37 |
| Table 13. Proportion of incidents where other risk factors were recorded at the time of the incident – Victoria Police, July 2009 to June 2014 | 38 |
| Table 14. Incidents by type of action taken by police – Victoria Police, July 2009 to June 2014 | 39 |
| Table 15. Number of family incidents where FVIO or FVSN sought – Victoria Police, July 2009 to June 2014 | 40 |
| Table 16. Total referrals made following a family incident – Victoria Police, July 2009 to June 2014 | 40 |
| Table 17. Proportion of finalised applications by mode of issue – Magistrates' Court, July 2009 to June 2014 | 42 |
| Table 18. Affected family members by region of residence – Magistrates' Court, July 2009 to June 2014 | 50 |
| Table 19. Finalised original applications heard in the Family Violence Court Division, by final court location – Magistrates' Court, July 2009 to June 2014 | 51 |
| Table 20. Proportion of finalised applications by mode of issue – Children's Court, July 2009 to June 2014 | 53 |
| Table 21. Number of family violence intervention order applications by complainant – Children's Court, July 2009 to June 2014 | 54 |
| Table 22. Affected family members who were a parent/step-parent to a respondent aged 17 years or younger, by gender of the respondent – Children's Court, July 2009 to June 2014 | 61 |
| Table 23. Affected family members by region – Children's Court, July 2009 to June 2014 | 62 |
| Table 24. Applicants accessing a specialist court support worker by court location – Specialist Family Violence Courts, July 2009 to June 2014 | 63 |

| | |
|--|-----|
| Table 25. Respondents accessing a specialist court support worker by court location – Specialist Family Violence Courts, July 2009 to June 2014 | 64 |
| Table 26. Applicants who accessed a specialist court support worker by region of residence and court where they saw the support worker – Specialist Family Violence Courts, July 2009 to June 2014 | 69 |
| Table 27. Cases recorded by IRIS agencies by issue recorded – IRIS, July 2009 to June 2014 | 72 |
| Table 28. Issues presented to men’s behaviour change programs and women and children’s family violence services – IRIS, July 2009 to June 2014 | 73 |
| Table 29. Source of referral for cases with at least one family violence issue – IRIS, July 2009 to June 2014 | 73 |
| Table 30. Number of family violence related cases by point of closure – IRIS, July 2009 to June 2014 | 74 |
| Table 31. Clients accessing men’s behaviour change programs by client’s region of residence – IRIS, July 2009 to June 2014 | 77 |
| Table 32. Clients accessing women and children’s family violence services by client’s region of residence – IRIS, July 2009 to June 2014 | 79 |
| Table 33. Patients by region of residence – VEMD, July 2009 to June 2014 | 85 |
| Table 34. Gender of VAP clients who were victims of family violence – VAP, July 2009 to June 2014 | 89 |
| Table 35. Number of victims of family violence by region – VAP, July 2009 to June 2014 | 90 |
| Table 36. Victims by the type of crime – Victims of Crime, July 2010 to June 2014 | 91 |
| Table 37. Services provided by VLA where primary matter is family violence related – Victoria Legal Aid, July 2009 to June 2014 | 92 |
| Table 38. Gender and age group of clients applying for substantive grants – Victoria Legal Aid, July 2009 to June 2014 | 94 |
| Table 39. Top 5 main reasons for clients seeking assistance by gender – SHSC, July 2011 to June 2014 | 100 |
| Table 40. Young people seeking assistance on their own, by gender – SHSC, July 2011 to June 2014 | 101 |
| Table 41. Support periods of clients seeking assistance for family violence reasons by main source of income at first contact – SHSC, July 2011 to June 2014 | 103 |
| Table 42. Number and proportion of incidents recorded for perpetrators who committed 1, 2, 3, 4, and 5 or more incidents between 2004-05 and 2013-14 | 106 |
| Table 43. Proportion of unique perpetrators per year who committed 1, 2, 3, and 4 or more incidents within that year | 107 |
| Table 44. Existing, new and total family violence perpetrators each year, 2005 – 2014 | 108 |
| Table 45. Data items | 109 |
| Table 46. Age and sex of perpetrators | 111 |
| Table 47. Relationship type by perpetrator sex | 112 |
| Table 48. Victim and relationship risk factors present at index incidents | 114 |
| Table 49. Perpetrator risk factors present at index incidents | 115 |
| Table 50. Number of risk factors by relationship between perpetrator and victim | 117 |
| Table 51. Actions recorded by police at index incidents | 118 |
| Table 52. Relationships between perpetrator characteristics and recidivism | 121 |

7 An overview of family violence in Victoria

| | |
|---|-----|
| Table 53. Relationships between index incident characteristics and recidivism | 123 |
| Table 54. Bivariate relationships between victim and relationship risk factors and recidivism | 124 |
| Table 55. Bivariate relationships between perpetrator risk factors and recidivism | 125 |
| Table 56. Bivariate relationships between police recorded | 126 |
| Table 57. Logistic regression model comparing odds of recidivism versus no recidivism | 128 |
| Table 58. Proportion of perpetrators recorded for recidivism incidents at 6, 12 and 24 months post-index incident | 130 |
| Table 59. Overview of family violence datasets | 138 |
| Table 60. Date variable used in each data source to determine the relevant reference period | 147 |
| Table 61. Department of Health and Human Services Regions | 148 |
| Table 62. Victoria Police Regions | 149 |

List of figures

| | |
|--|----|
| Figure 1. Number of recorded family incidents – Victoria Police, July 2009 to June 2014 | 24 |
| Figure 2. Family incident rate per 100,000 population by Local Government Area – Victoria Police, July 2013 to June 2014 | 25 |
| Figure 3. Affected family members by sex – Victoria Police, July 2009 to June 2014 | 26 |
| Figure 4. Sex and age of affected family members – Victoria Police, July 2013 to June 2014 | 27 |
| Figure 5. Sex and age of other parties – Victoria Police, July 2013 to June 2014 | 28 |
| Figure 6. Relationship of affected family member to other party where AFM is male – Victoria Police, July 2009 to June 2014 | 29 |
| Figure 7. Relationship of affected family member to other party where AFM is female – Victoria Police, July 2009 to June 2014 | 30 |
| Figure 8. Proportion of incidents where a child/children were present – Victoria Police, July 2009 to June 2014 | 35 |
| Figure 9. Finalised applications for family violence intervention orders – Magistrates' Court, July 2009 to June 2014 | 41 |
| Figure 10. Proportion of finalised applications by type of application – Magistrates' Court, July 2009 to June 2014 | 42 |
| Figure 11. Proportion of finalised applications by complainant – Magistrates' Court, July 2009 to June 2014 | 43 |
| Figure 12. Proportion of finalised applications by outcome of application – Magistrates' Court, July 2009 to June 2014 | 44 |
| Figure 13. Affected family members by gender and age – Magistrates' Court, July 2013 to June 2014 | 45 |
| Figure 14. Respondents on original applications by gender and age – Magistrates' Court, July 2013 to June 2014 | 46 |
| Figure 15. Relationship between the primary AFM and Respondent where the AFM is female – Magistrates' Court, July 2009 to June 2014 | 47 |
| Figure 16. Relationship between the primary AFM and Respondent where the AFM is male – Magistrates' Court, July 2009 to June 2014 | 48 |
| Figure 17. Children as affected family members on original applications by age group – Magistrates' Court, July 2009 to June 2014 | 49 |
| Figure 18. Affected family members by region of residence – Magistrates' Court, July 2013 to June 2014 | 50 |
| Figure 19. Finalised applications for family violence intervention orders – Children's Court, July 2009 to June 2014 | 52 |
| Figure 20. Proportion of finalised applications by type of application – Children's Court, July 2009 to June 2014 | 53 |
| Figure 21. Proportion of finalised applications by complainant – Children's Court, July 2009 to June 2014 | 54 |
| Figure 22. Proportion of finalised applications by outcome of application – Children's Court, July 2009 to June 2014 | 55 |
| Figure 23. Affected family members by gender and age – Children's Court, July 2013 to June 2014 | 56 |
| Figure 24. Respondents on finalised original FVIO applications by gender – Children's Court, July 2009 to June 2014 | 57 |
| Figure 25. Gender and age of respondents – Children's Court, July 2013 to June 2014 | 58 |
| Figure 26. Age of respondents on applications where the affected family member was 18 years or older, Children's Court, July 2009 to June 2014 | 59 |

| | |
|---|----|
| Figure 27. Relationship between primary AFM and respondent where the AFM is male – Children’s Court, July 2009 to June 2014 | 60 |
| Figure 28. Relationship between the primary AFM and respondent where the AFM is female, Children’s Court – July 2009 to June 2014 | 61 |
| Figure 29. Affected family members by region – Children’s Court, July 2013 to June 2014 | 62 |
| Figure 30. Age of female applicants accessing a support worker – Specialist Family Violence Courts, July 2013 to June 2014 | 65 |
| Figure 31. Age of male respondents accessing a support worker – Specialist Family Violence Courts, July 2013 to June 2014 | 66 |
| Figure 32. Proportion of applicants accessing a specialist court support worker by referral source – Specialist Family Violence Courts, July 2009 to June 2014 | 67 |
| Figure 33. Proportion of respondents by referral source – Specialist Family Violence Courts, July 2009 to June 2014 | 68 |
| Figure 34. Proportion of applicants who had a child/children in their care during their session with a support worker – Specialist Family Violence Courts, July 2013 to June 2014 | 71 |
| Figure 35. Proportion of cases in which a safety plan was completed – IRIS, July 2009 to June 2014 | 75 |
| Figure 36. Clients presenting to IRIS agencies by type of program – IRIS, July 2009 to June 2014 | 76 |
| Figure 37. Clients accessing men’s behaviour change programs by client’s region of residence – IRIS, July 2013 to June 2014 | 77 |
| Figure 38. Clients accessing women and children’s family violence services by client’s region of residence – IRIS, July 2013 to June 2014 | 78 |
| Figure 39. Age of men accessing men’s behaviour change programs – IRIS, July 2013 to June 2014 | 79 |
| Figure 40. Gender and age of clients accessing women and children’s family violence services – IRIS, July 2009 to June 2014 | 80 |
| Figure 41. Patients presenting with injuries caused by a family member – VEMD, July 2009 to June 2014 | 82 |
| Figure 42. Patients presenting with injuries caused by a family member by gender and age – VEMD, July 2009 to June 2014 | 83 |
| Figure 43. Patients by DHHS region of residence – VEMD, July 2013 to June 2014 | 85 |
| Figure 44. Proportion of total causes of injury by gender – VEMD, July 2009 to June 2014 combined | 86 |
| Figure 45. Proportion of the nature of main injury by gender – VEMD, July 2009 to June 2014 combined | 87 |
| Figure 46. Proportion of Victims Assistance Program clients that were victims of family violence – VAP, July 2009 to June 2014 | 88 |
| Figure 47. Gender and age of victims of family violence – VAP, July 2013 to June 2014 | 89 |
| Figure 48. Victims of family violence by gender and age – Victims of Crime, July 2013 to June 2014 | 91 |
| Figure 49. Services provided by VLA where primary matter is family violence related – Victoria Legal Aid, July 2009 to June 2014 | 92 |
| Figure 50. Gender and age of clients accessing duty lawyer services – Victoria Legal Aid, July 2009 to June 2014 | 93 |
| Figure 51. Proportion of clients who required an interpreter by type of service – Victoria Legal Aid, July 2009 to June 2014 | 95 |

List of figures 10

| | |
|--|-----|
| Figure 52. Proportion of clients who identified as having a disability by type of service – Victoria Legal Aid, July 2009 to June 2014 | 96 |
| Figure 53. Outcome of duty lawyer services by gender of client – Victoria Legal Aid, July 2009 to June 2014 | 97 |
| Figure 54. Proportion of support periods for clients seeking assistance for family violence reasons – SHSC, July 2011 to June 2014 | 98 |
| Figure 55. Clients seeking assistance for family violence reasons by gender and age – SHSC, July 2013 to June 2014 | 99 |
| Figure 56. Proportion of support periods for clients experiencing family violence by indigenous status and gender – SHSC, July 2011 to June 2014 | 101 |
| Figure 57. Number of incidents per perpetrator, 2004-05 to 2013-14 | 105 |
| Figure 58. Proportion of unique perpetrators per year who committed 1, 2, 3, and 4 or more incidents | 106 |
| Figure 59. Existing, new and total family violence perpetrators each year, 2005 – 2014 | 107 |
| Figure 60. Methodology for identification of index and recidivism incidents | 109 |
| Figure 61. Relationship type by perpetrator sex | 111 |
| Figure 62. Number of prior family violence incidents recorded | 113 |
| Figure 63. Total number of risk factors recorded at index incident | 116 |
| Figure 64. Number of risk factors recorded at index incident by relationship between perpetrator and victim | 117 |
| Figure 65. Types of recorded offences arising from index incidents | 119 |
| Figure 66. Number of repeat incidents perpetrated | 120 |
| Figure 67. Recidivism by age group at time of index incident | 122 |
| Figure 68. Recidivism by relationship type between perpetrator and victim | 122 |
| Figure 69. Overall proportion recorded for a recidivism incident over time | 129 |
| Figure 70. Proportions of perpetrators recorded for a recidivism incident over time by sex | 131 |
| Figure 71. Proportions of perpetrators recorded for a recidivism incident by age at index incident | 131 |
| Figure 72. Proportions of perpetrators recorded for a recidivism incident over time by relationship type | 132 |
| Figure 73. Proportions of perpetrators recorded for a recidivism incident over time by incident history | 132 |
| Figure 74. Proportions of perpetrators recorded for a recidivism incident over time by recorded breach of family violence orders history | 133 |

1. Key themes

Prevalence of family violence in Victoria

In the five years from July 2009 to June 2014, the incidence of family violence has increased across all aspects of the family violence system represented within the Victorian Family Violence Database. The number of family incidents recorded by Victoria Police increased by 82.7% from 35,666 incidents in the 2009-10 financial year to 65,154 in 2013-14. This increase has resulted in a family incident rate of 1,115.3 per 100,000 people in Victoria in 2013-14.

The number of finalised applications heard in the Magistrates' and Children's court increased in the five years from July 2009. The number of applications heard in the Magistrates' Court increased by 34.5% to 35,147 in 2013-14 while the number of applications heard in the Children's Court increased by 33.0% to 1,872 in 2013-14. These increases in applications have largely been driven by an increase in the number of police initiated applications.

In the five year period the number of people accessing family violence services has risen, with 4,425 people accessing women and children's family violence services in 2013-14, an increase of 11.7%, and 20,624 men presenting to behaviour change programs in 2013-14, up 446.9% from 2009-10. In addition, there were 16,240 people who accessed the Victims Assistance Program as victims of family violence in 2013-14.

Family violence was identified as a key factor contributing to homelessness, with just under 40% of all people seeking assistance from Specialist Homelessness Services in 2013-14 doing so for family violence reasons.

The total number of services provided by Victoria Legal Aid where the primary matter was family violence related has also increased in the five years from July 2009. In 2013-14 21,172 services were provided by Victoria Legal Aid for family violence matters, up 8.5% from 2009-10. This increase has largely been driven by increases in in-house duty lawyer services and legal help services.

Gender of victims of family violence

In the five years from July 2009, the proportion of female and male victims of family violence has remained stable across all of the agencies. In family incidents attended by police, three quarters of affected family members were female and one quarter were male.

On applications for family violence intervention orders made in the Magistrates' Court and Children's Court in 2013-14, the proportion of male and female affected family members is almost the same across both courts. On applications heard in the Magistrates' Court in 2013-14, 64% of affected family members were female and 36% were male. Similarly on applications heard in the Children's Court, 65% of affected family members were female and 35% were male. However, when children are removed from the analysis the proportion of female affected family members is higher.

In 2013-14, two-thirds of the patients presenting to emergency departments for family violence reasons were female while a third were male and, similarly, 69% of family violence victims accessing the Victims Assistance Program were female and 31% were male.

Gender of perpetrators of family violence

The proportion of male and female perpetrators across relevant agencies has also remained relatively stable over the five year period. In family incidents recorded by Victoria Police, 77% of other parties with a known sex were male and 23% were female. There was a similar proportion of respondents on applications for family violence intervention orders in the Magistrates' Court, with male respondents making up 78% and females making up 22% of all respondents.

There was a slightly different breakdown in the Children's Court, with 69% of respondents on family violence intervention orders being male and 31% female.

Relationships of victims to perpetrators

Across each of the relevant datasets, the relationship of the victim to the perpetrator varied depending upon the gender of the victim.

In family incidents recorded by police, female affected family members were more likely to be a current or former partner of the other party, as opposed to male affected family members who were more likely to be a family member of the other party.

In 2013-14, 68% of female affected family members were a current or former partner of the other party and 31% were a family member of the other party. This is in comparison to male affected family members, of which 52% were either a child, parent or other family member to the other party and 33% were a current partner of the other party.

Similarly, on applications for family violence intervention orders heard in the Magistrates' Court, female victims were more likely to be in a current/former partner relationship with the respondent than male victims.

73% of female victims were in a current/former partner relationship, and 10% were a parent of the respondent. 52% of male victims were in a current/former partner relationship, 14% were the parent/step-parent of the respondent and 10% were a sibling.

In the Children's Court, 51% of female affected family members in 2013-14 were a parent/step parent of the respondent while 36% of male affected family members were the parent/step-parent of the respondent.

Children as victims of family violence

In 2013-14, 3,341 family violence incidents recorded by Victoria Police had children listed as victims. Forty-four percent of these child victims were male and 56% were female. Children aged between 12 and 17 made up the greatest proportion of child victims. Incidents where male children were recorded as victims were perpetrated by males 63% of the time. Those incidents where female children were recorded as victims were perpetrated by males 55% of the time. In addition, children were present in around one third of all family violence incidents in 2013/14. This proportion has not changed significantly over the past five years.

The number of children listed as victims on intervention order applications to the Magistrates' Court increased by 20.6% between 2009-10 and 2013-14, from 19,353 to 23,332. Younger children aged under 13 made up the greatest proportion of child victims listed on these applications. Children also made up the largest proportion of victims on applications for intervention orders to the Children's Court in 2013-14, and the number of child victims increased by 20.3% over the past five years, from 1,222 in 2009-10 to 1,470 in 2013-14. The majority of perpetrators listed on intervention order applications to the Children's Court with child victims were male (84%). 1,559 clients who accessed women and children's family violence services between 2009 and 2014 were aged 17 or less.

Children as perpetrators of family violence

In 2013-14, people aged under 18 made up relatively small proportions of the overall number of perpetrators recorded by Victoria Police on family violence incident reports. Over the past five years, 11,861 family violence incidents were recorded by police with child perpetrators and adult parent victims. Sixty-four percent of perpetrators on these incidents were male and 36% were female.

A very small number of intervention order applications to the Magistrates' Court in 2013-14 listed perpetrators aged under 18 (n=72). Two thirds of male perpetrators listed on intervention order applications to the Children's Court in 2013-14 were aged between 15 and 19 and 13% were aged between 10 and 14. Fifteen to 19 year olds made up 57% of female perpetrators on these applications, and 10 to 14 year olds made up 16% of female perpetrators. In 2013-14, 744 parent/step-parents were listed on applications where the perpetrator was under 18.

Family violence recidivism recorded by Victoria Police

Police recorded family violence data was used to analyse patterns of recidivism over the past ten years. Overall, 63% (n=125,044) of family violence perpetrators had only one family violence incident recorded by police over that time and the remaining 37% (n=72,778) were recidivist perpetrators. Nine percent (n=16,914) of all perpetrators had five or more incidents recorded, yet this group accounted for 34% (n=136,349) of all incidents. The analysis revealed that recidivist perpetrators were more likely to:

- be male than female.
- be younger at the time of their first incident.
- perpetrate violence against a current or former partner as opposed to another family member.
- have a history of family violence incidents and/or offences for breaches of family violence orders.

In addition, police were more likely to record the following factors at the time of recidivist perpetrators' index family violence incidents: presence of children; perpetrator unemployed; perpetrator depression/mental health issue; victim pregnancy or new birth; recent escalation/increase in severity or frequency of violence; perpetrator drug use possible or definite; and/or victim alcohol use possible or definite. Recidivist perpetrators were more likely to have recorded offences arising from their index incident, and were more likely to have a police recorded action at the index incident of criminal charges pending for a breach of family violence.

Specific population groups

Culturally and Linguistically Diverse (CALD)

Where country of birth information was recorded across datasets, a large proportion of people were born in Australia. In Victorian Legal Aid records, the top five countries of birth of clients born outside of Australia were India, New Zealand, England, Vietnam and Sudan. Of clients seeking housing assistance for family violence reasons who had a known country of birth in 2013-14, 3% were born in North Africa & the Middle East and 2% were born in South-East Asia.

In the Magistrates' Court, on average 1.8% of all affected family members required an interpreter while 1.6% of all respondents required one. The languages required most frequently by respondents across the five years were Vietnamese, Mandarin and Arabic, including Lebanese. In 2013-14, 5% of applicants in the Specialist Family Violence Courts were recorded as requiring an interpreter when seeing the support worker.

Aboriginal and Torres Strait Islander

Aboriginal and Torres Strait Islander data were only available for in the VEMD, VAP and SHSC datasets, with data either not recorded or of low quality amongst the other contributing datasets.

In the five years from July 2009, the proportion of recorded indigenous status across these three datasets has remained relatively stable. In 2013–14, 5% of patients in the VEMD and VAP datasets identified as Indigenous, and in the three years to July 2011, on average 10% of SHSC clients identified as Indigenous.

Disability

Identification of victims with a disability in police data has remained stable in the last five years, with the proportion of family incidents recorded where there was the presence of a disability remaining between 2 and 3 per cent each year.

In the five years from July 2009, the proportion of Specialist Family Violence Court applicants who identified as having a disability fluctuated between 9% and 12% of all applicants who had accessed a support worker. Victorian Legal Aid data showed that in 2013-14, the proportion of applicants for a substantive grant who identified as having a disability was 19%, while the proportion of clients accessing a duty lawyer or legal advice service who had a disability was 22% and 25% respectively.

Family violence across the regions

Over the past 12 months, family incidents recorded by police have increased across all regions in Victoria. The North West Metro and Eastern regions have increased by the greatest proportion, up by 10.4% and 10% respectively in 2014–15. The North West Metro region now has the highest recorded proportion across the state, comprising 31.6% of all family incidents recorded.

In the five years from July 2009 to June 2014 in the Magistrates' Court, the highest proportion of affected family members lived in the North & West Metropolitan and Southern Metropolitan regions, on average making up 32% and 22% respectively. These regions also recorded the highest proportions of affected family members in the Children's Courts during the same period.

Of the 2,337 applicants who accessed a support worker from the Specialist Family Violence Courts Services 2014–15, almost half (44%) lived in the North and West Metropolitan regions. In addition, of the 31% of applicants who lived in the Southern Metropolitan region, three quarters of these applicants accessed a support worker at the Frankston Magistrates' Court.

2. Introduction

Family violence has been identified as the most significant law and order issue confronting the State of Victoria, and a national emergency (State Government of Victoria, 2015a). The impacts of family violence across the community are profound, complex and present many challenges for individuals, communities and service providers (State of Victoria, 2015b).

The Terms of Reference for the Royal Commission into Family Violence invite the Royal Commission to explore issues relating to “systems and mechanisms to identify and appropriately prevent and respond to family violence, including information sharing and data systems” (State of Victoria, 2015b). The Victorian Family Violence Database (FVDB) is a long-standing project in the State of Victoria focused upon the collation of data relating to family violence from across a range of responding services and government agencies. This report presents a range of findings from this database to support the considerations of the Royal Commission and provides a picture of what can be gleaned from the available information about family violence in the state of Victoria. It follows on from five previous reports, which in totality represent 15 years of research and analysis into family violence trends.

Purpose and uses of the Victorian Family Violence Database

What the Victorian Family Violence Database Does

The Victorian Family Violence Database is a repository for a range of different datasets relating to family violence clients and service use, extracted from the data holdings of a variety of government agencies. The Database has expanded since its inception to include a broader range of datasets, as robust information has become available.

By collating these various different datasets in one place, the Database enables complementary analysis of disparate datasets, which would otherwise be a challenging exercise. Volume 5 of the database sets out its purpose clearly:

“The Victorian Family Violence Database (the Database) was developed because access to reliable and meaningful statistics on family violence is essential for the development of effective policy responses to family violence.

“The Database contributes to a more comprehensive picture of family violence in Victoria, and has the capacity to improve future planning and coordination of resources and responses. It is an important tool for government and stakeholders developing evidence-based policy for family violence.

“The ability to identify and advise on trends, gaps and system weaknesses through cross-sector data analysis and reporting allows for assessment of the impact of legislation, policy and programs, improvement in programs service delivery and measurement of current family violence patterns of demand.”

(Department of Justice, 2012)

While there are limitations (discussed below), the database provides a valid and useful picture of the demand for family violence related service recorded by responding agencies, and the trends and characteristics of those seeking help over time.

Challenges in collating the Database

All forms of administrative by-product data used for statistical purposes have limitations, and the data contained within the Victorian Family Violence Database is no exception. In order for a record to be made in the recording systems of the various agencies which can then be forwarded to the Database, a report or call for service must first be made to the responding agency. As a result, statistics held in this Database will not contain information relating to all incidences of family violence which may be experienced within the community, and will only contain a subset of this broader population of incidents. If not reported or recorded, the family violence incident will not be captured within the Database.

Unless the service is one dedicated to family violence cases only, the data will also usually require a flag or other variable to be recorded indicating that it does, in fact, relate to family violence. For a variety of reasons, this may not be disclosed to the person making the record. The client may not be asked or relevant family violence information may not be recorded. This contributes to a potential undercount of family violence related events covered by the Database. Additionally, simple data entry error may create false positives and false negatives in the datasets, impacting upon the quality of the information in the Database. Some variables are also subject to high levels of missing or unknown data, which may impact on the ability to draw firm conclusions based upon the remaining completed data.

The scope of data collected is often less than may be desirable or useful for research purposes, as the data is sourced from systems which have primarily been designed to meet business requirements, rather than statistical or research purposes. Additionally, as the Database contains data provided separately by each contributing agency, it is possible that individuals may appear in more than one dataset. The Database does not include any linked or integrated data to identify where individuals appear in more than one dataset. Therefore, figures from different sources cannot be summed to create a total representative figure for the prevalence of family violence seen by service agencies in Victoria. It should also be noted that not all agencies in Victoria who respond to family violence victims or perpetrators are currently contributors to the Victorian Family Violence Database.

Data relating to family violence collected by the agencies contributing to the Database is collected according to counting rules and classifications unique to each service. Details about each data source contained in the Database are provided in Chapter 2. For a broader discussion about the gaps relating to standardisation and governance of family violence data, please see Chapter 4.

Comparisons over time

While the Victorian Family Violence Database has now covered a period of 15 years, it should be highlighted that the significant cultural, legislative, policy and practice changes that have occurred during that period of time can impact upon the data that is collected by different agencies. In this report, where there have been significant known changes to business or recording practices impacting upon major counts, these have been noted and should be taken into account when drawing conclusions from these data. However, there will have been a wide range of more subtle changes which may have impacted upon the comparability of data over time and which are less obvious or not as well documented. As such, it is recommended that readers keep this in mind when reviewing data over the period of the database (especially between data held in this publication and previous volumes produced from the database) and treat the time series with caution.

Past, present and future of the Victorian Family Violence Database

The development of the Victorian Family Violence Database was initially funded in 2000 by Partnerships Against Domestic Violence, an Australian Government initiative. The database was conceived as a solution to the fragmented data collection often found across agencies with involvement in family violence, bringing together information

collated from a range of sources to provide a single, statewide repository of data relating to family violence (Department of Justice & Regulation, 2012). In 2007, management of the Victorian Family Violence Database moved to the Victims Support Agency within the then Department of Justice.

Five previous iterations of the Victorian Family Violence Database have been produced and resulting reports published in five separate volumes. These volumes have been produced and published by the Victorian Community Council Against Violence (volumes 1 and 2) and the Department of Justice & Regulation's Victims Support Agency (volumes 3, 4 and 5). The reports generated from the Database remain the only comprehensive source of patterns and trends about family violence reporting in Victoria in the context of family violence initiatives at the present time.

Table 1. Previous major iterations and products of the Victorian Family Violence Database

| Years covered | Major outputs | Year published |
|---------------|---|----------------|
| 1999 to 2001 | Victorian Family Violence Database: First Report (Volume 1) | 2002 |
| 1999 to 2004 | Victorian Family Violence Database: Five Year Report 1999–2004 (Volume 2) | 2005 |
| 1999 to 2006 | Measuring Family Violence in Victoria: Victorian Family Violence Database: Seven Year Trend Analysis 1999-2006 (Volume 3) | 2008 |
| 1999 to 2008 | Measuring family violence in Victoria : Victorian family violence database: nine year trend analysis 1999-2008 (Volume 4) | 2009 |
| 1999 to 2010 | Measuring Family Violence in Victoria - Victorian Family Violence Database: Eleven Year Trend Analysis (Volume 5) | 2012 |

The last published report was released in 2012, when the then Victorian Department of Justice published a trend analysis report entitled 'Measuring Family Violence in Victoria – Victorian Family Violence Database: Eleven Year Trend Analysis'. The report drew on data contained in the Database that was recorded by a variety of agencies between 1999 and 2010. It provided an overview of the recorded prevalence of family violence, characteristics of perpetrators and victims, justice system responses and other services provided to perpetrators and victims of family violence.

To support the work of the Royal Commission into Family Violence, the Crime Statistics Agency was asked to produce an updated set of family violence statistics for the five years from July 2009 to June 2014 based on analysis of all of the existing data sources contained within the FVDB. Information was provided to the Royal Commission into Family Violence by agencies as part of the processes of the Royal Commission, and subsequently collated by the Crime Statistics Agency on their behalf. This report, and the accompanying set of data spreadsheets comprise the outputs of this supporting work. Data has been validated by agencies contributing their information to ensure accuracy and representativeness of the final findings.

Since 2014, the Victorian Family Violence Database has been collated by the Crime Statistics Agency and continues to be administered by the Community Operations and Victims Support Agency in the Department of Justice & Regulation. Operation of the Database is supported and guided by a Technical Data Working Group and represents a significant collaboration across the Victorian Government.

In this report

The following sections of this report provide findings from the Victorian Family Violence Database, a further exploratory analysis of family violence recidivism and a summary of gaps and opportunities to improve the database.

The overview of the Victorian Family Violence Database for the 2009-10 to 2013-14 period (Chapter 2) describes the data sources contained within the database, highlights in particular the current snapshot of family violence in Victoria, and summarises key changes visible in the database in the years since 2009-10. This section of the report updates findings since the last report was produced (Volume 5) for the following data sources:

- The Law Enforcement Assistance Program (Victoria Police)
- Lizard (Court Services Victoria)
- Courtlink (Court Services Victoria)
- Victorian Emergency Management Dataset (Department of Health and Human Services)
- Victorian Legal Aid datasets
- Victims Assistance Program and Victims of Crime helpline (Department of Justice and Regulation)
- Integrated Reporting Information System
- Supported Accommodation Assistance Program/Specialist Housing Services Collection (Department of Health and Human Services and the Australian Institute of Health and Welfare)

The findings include information on the number of clients of these agencies, their characteristics, services provided to clients, and trends in the data over the time. These sections of the report summarise and complement the 'Family Violence Data Tables' produced in conjunction with this report.

Chapter 14 explores recidivism within a cohort of alleged family violence perpetrators (other parties to family incidents) using their reappearance in Victoria Police's recorded crime data to explore the factors contributing to reappearance and patterns of recidivism. This further analysis demonstrates the value of datasets which can allow the robust identification of individual people and show information about their involvement in family violence over time.

In Chapter 15 we describe some of the gaps that limit the utility of the Victorian Family Violence Database and outline opportunities to strengthen the database to support an improved evidence base for family violence policy and practice.

Chapter 16 summarises the findings from across this report.

3. Victorian Family Violence Database: 2009-10 to 2013-14

Data sources

This report includes data from 11 data sources, extracted from 6 different agencies. Each data source uses different counting units and methodology to collect and report on family violence. This section outlines each of the data sources contained within the report and table 1 provides an overview of the agency or department who provided the data, the scope and reference period of the dataset requested for the analysis, as well as the counting units used in the analysis of this report.

Victoria Police

The Victoria Police data included in this report was extracted from the Law Enforcement Assistance Program (LEAP) on 18 April 2015. LEAP is a live database, and the data included in the report is subject to change over time. The primary source of family violence data from Victoria Police is the information collected on the L17 Risk Assessment and Risk Management report. Victoria Police are required to complete the L17 report after they have attended a family incident. It includes information on the incident itself, the affected family member and other party, risk factors present at the time of the incident and any actions taken by Victoria Police following the incident. The quantity and accuracy of the data collected by Victoria Police on family violence is dependent upon the recording of information by police members at the time of the incident.

Magistrates' and Children's Courts

The Magistrates' and Children's Courts data included in this report was extracted from the Courtlink database. The data includes all finalised applications for Family Violence Intervention Orders in which the final hearing took place between 1 July 2009 and 30 June 2014. This includes original applications as well as applications for variation, extension and revocation.

The analysis of the courts data looks at the number of applications heard in the Magistrates' and Children's Courts, the affected family members on the application and the person responding to the order. On each application there is one associated respondent, however, there can be multiple affected family members.

For the purposes of analysing the demographic characteristics of affected family members and respondents, the report focuses on those on original applications for family violence intervention orders. This ensures that affected family members and respondents are not double counted if subsequent applications for variation, extension or revocation were made.

Specialist Family Violence Court Services

The data included in this report on applicants and respondents who accessed a support worker at a Specialist Family Violence Service is extracted from the Lizard database. During the reference period, support workers operated at Melbourne, Frankston, Ballarat, Werribee, Sunshine, Heidelberg and Moorabbin Magistrates' Courts.

The Lizard database allows for the collection of demographic information on the applicants and respondents seeking assistance from a support worker, some location based information and data on children associated with the clients. Data contained within Lizard is collected by the support worker at the time of the session with a client.

Department of Health and Human Services – Integrated Reports and Information System (IRIS)

The Integrated Reports and Information System is a data collection system used by service organisations that are funded by the Department of Health and Human Services. For the purposes of this report, the data extracted from IRIS relates to women and children accessing family violence services and men accessing behaviour change programs.

The data extracted from IRIS includes information on the cases presented to agencies, demographic information of clients and issues that they present with.

Department of Health and Human Services – Victorian Emergency Minimum Dataset (VEMD)

The Victorian Emergency Minimum Dataset (VEMD) contains information detailing presentations at Victorian public hospitals with designated Emergency Departments. For the purposes of this report, patients presenting for family violence reasons are identified by the 'human intent' data item.

At the Emergency Department, the clinician assesses the most likely human intent in the occurrence of the injury or poisoning (Department of Health and Human Services, 2015). Patients presenting for family violence reasons are those that presented with a human intent injury of either 'Child neglect, maltreatment by parent, guardian' or 'Maltreatment, assault by domestic partner'.

The VEMD information in this report focuses on the demographic characteristics of the patients as well as the nature and cause of their injuries.

Victims Assistance Program (VAP)

The Victims Assistance Program (VAP), which operates under the Victims Support Agency in the Department of Justice & Regulation, is a network of agencies across Victoria providing services to victims of crime.

Data collected from the VAP includes demographic information of the victim, location data, information on the crime type and how the client was referred to the agency.

In the years prior to 2012-13, family violence related victims were identified by generic family violence crime types. In the 2012-13 financial year, a family violence indicator was introduced which allowed specific crime types to be recorded and then flagged if it was family violence related.

Victims of Crime (VoC) helpline

The Victims of Crime (VoC) helpline is an anonymous telephone support line, which operates under the Victims Support Agency in the Department of Justice & Regulation. The helpline assists victims by providing information and advice about reporting a crime and provides referrals to other services that can assist victims. The data provided from the VoC helpline for this report covers the period from 2010-11 to 2013-14.

Data collected by the VoC helpline is limited as it is an anonymous service. This means that not every client provides demographic information, however, there is some data collected on the age, sex, disability and language spoken by the client.

In the 2012-13 financial year, a family violence indicator was introduced to identify any victims of crime that were family violence related.

21 An overview of family violence in Victoria

Victoria Legal Aid (VLA)

Victoria Legal Aid (VLA) operates across the state and aims to assist Victorians by providing free legal information, services and education. The VLA data analysed in this report includes services provided to individuals where the primary matter was recorded as family violence related. These services include; legal advice, legal help, in-house duty lawyer services, minor work and substantive grants.

It is important to note that within the data collected by VLA, we are unable to determine whether the client was an applicant/victim or respondent/perpetrator. Therefore, the information contained in this report only represents the services provided by VLA but not the type of client.

It should also be noted that in the Victorian Family Violence Database: Volume 5, Substantive grants were referred to as Casework, while Legal help was previously called Telephone support.

Specialist Homelessness Services Collection (SHSC)

The Specialist Homelessness Services Collection (SHSC) began on 1 July 2011, replacing the Supported Accommodation Assistance Program (SAAP). The SHSC is operated by the Australian Institute of Health and Welfare and is designed to collect data from SHSC agencies providing homelessness services across Australia.

The data provided by AIHW for the purposes of this report covers information on the support periods provided by the agencies and the clients accessing these services. Information was also provided on the clients' reasons for seeking assistance and this is used to identify clients seeking homelessness services for family violence reasons.

Supported Accommodation Assistance Program (SAAP)

The Supported Accommodation Assistance Program (SAAP) was replaced by the SHSC on 1 July 2011. Data in this report for the SAAP covers the period from July 2009 to June 2011 and looks at basic demographic information about the clients accessing homelessness services as well as their main reason for seeking these services.

Table 2. Overview of data sources

| Agency/Department | Scope of dataset provided by agency/department | Reference period | Counting units |
|--|--|--------------------|--|
| Victoria Police | <ul style="list-style-type: none"> - Data collected on L17 Family Violence Risk Assessment and Risk Management Report - Offences recorded in Law Enforcement Assistance Program (LEAP) - Finalised applications for family violence intervention order extracted from Courtlink | 2009-10 to 2013-14 | Family incident Affected family member Other party |
| Magistrates' and Children's Court | <ul style="list-style-type: none"> - Applicants and respondents accessing family violence support worker at a Specialist Family Violence Court extracted from Lizard | 2009-10 to 2013-14 | Application Affected family member Respondent |
| Specialist Family Violence Courts | <ul style="list-style-type: none"> - Men accessing behaviour change programs - Women and children accessing family violence services | 2009-10 to 2013-14 | Session Applicant Respondent |
| Department of Health and Human Services – Integrated Reports and Information System (IRIS) | <ul style="list-style-type: none"> - Patients presenting at Victorian public hospitals with designated Emergency Departments with human intent injury classified as either 'Child neglect, maltreatment by parent, guardian' or 'Maltreatment, assault by domestic partner' | 2009-10 to 2013-14 | Client |
| Department of Health and Human Services – Victorian Emergency Minimum Dataset (VEMD) | <ul style="list-style-type: none"> - Victims of crime accessing the Victims Assistance Program - Victims of crime accessing the Victims of Crime helpline - Duty lawyer services, Legal advice services, Legal help services, Minor work, Substantive grants where the primary matter was family violence related | 2009-10 to 2013-14 | Patient |
| Victims Assistance Program (VAP) | <ul style="list-style-type: none"> - Support periods provided to people seeking assistance from homelessness agencies for family violence reasons | 2009-10 to 2013-14 | Victim |
| Victims of Crime (VoC) helpline | <ul style="list-style-type: none"> - Support periods provided to people seeking assistance from homelessness agencies for family violence reasons | 2010-11 to 2013-14 | Victim |
| Victoria Legal Aid | <ul style="list-style-type: none"> - Support periods provided to people seeking assistance from homelessness agencies for family violence reasons | 2009-10 to 2013-14 | Client |
| Specialist Homelessness Services Collection (SHSC) | <ul style="list-style-type: none"> - Support periods provided to people seeking assistance from homelessness agencies for family violence reasons | 2011-12 to 2013-14 | Support periods provided by agency |
| Supported Accommodation Assistance Program (SAAP) | <ul style="list-style-type: none"> - Support periods provided to people seeking assistance from homelessness agencies for family violence reasons | 2009-10 to 2010-11 | Support periods provided by agency |

23 An overview of family violence in Victoria

4. Victoria Police

Family incidents recorded

In the five years from July 2009 the number of family incidents recorded by Victoria Police has increased by 82.7%, from 35,666 incidents in 2009-10 to 65,154 in 2013-14.

In the same five years, the family incident rate per 100,000 people increased by 70.8% to 1,115.3 incidents per 100,000 people in 2013-14.

Figure 1. Number of recorded family incidents – Victoria Police, July 2009 to June 2014

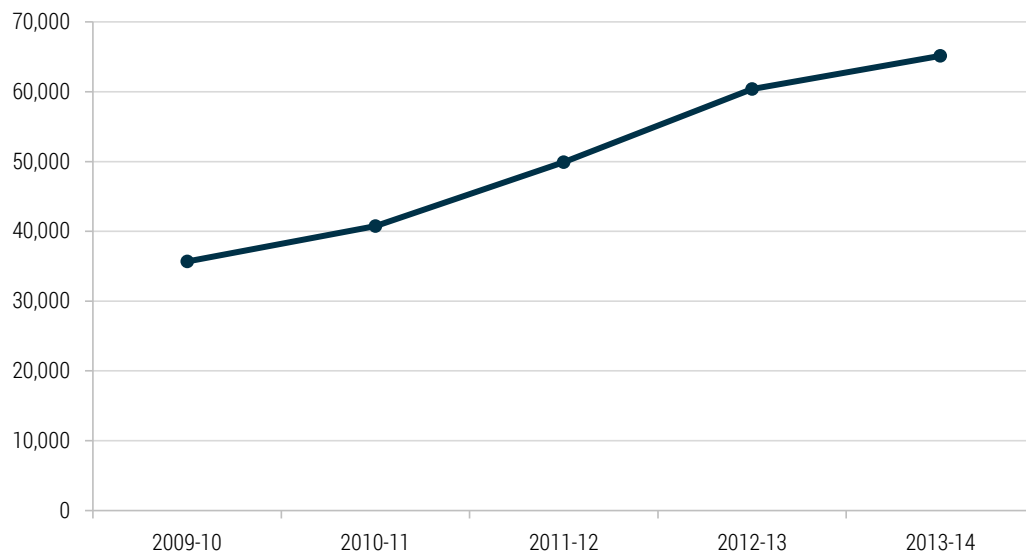


Table 3. Family incidents recorded and family incident rate per 100,000 population – Victoria Police, July 2009 to June 2014

| | 2009 – 10 | 2010 – 11 | 2011 – 12 | 2012 – 13 | 2013 – 14 | % change 2013-2014 |
|----------------------------------|-----------|-----------|-----------|-----------|-----------|--------------------|
| Number of family incidents | 35,666 | 40,733 | 49,927 | 60,408 | 65,154 | 7.9% |
| Family incident rate per 100,000 | 653.1 | 735.5 | 886.4 | 1,052.5 | 1,115.3 | 6.0% |

The data used in this section can be found in table 1 of the Victoria Police data tables.

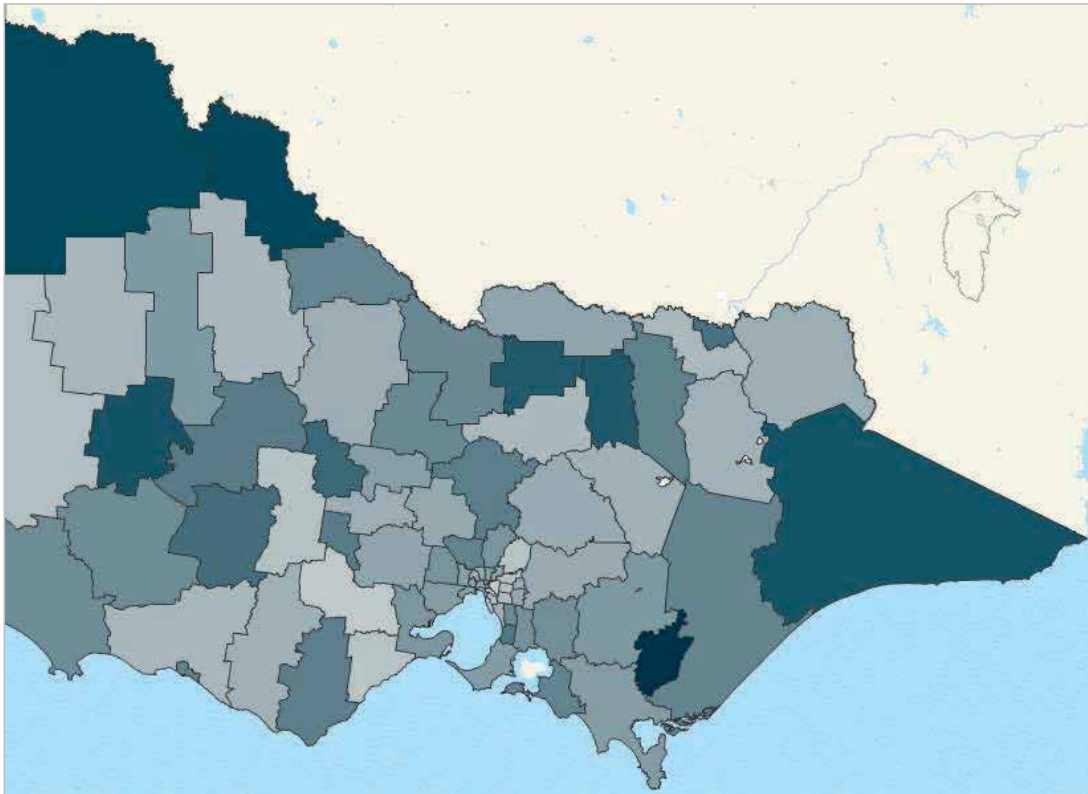
Family incidents across Victoria

The increase in recorded family incidents over the five years from 2009-10 to 2013-14 was distributed across Victoria. The number of incidents in the Eastern and Western regions doubled in the five years to 2013-14, while the number of incidents in the North West Metro and Southern Metro regions increased by 80% and 62% respectively.

Table 4. Family incidents by police region – Victoria Police, July 2009 to June 2014

| | 2009 – 10 | 2010 – 11 | 2011 – 12 | 2012 – 13 | 2013 – 14 | % change 2012-13 to 2013-14 |
|-------------------------|-----------|-----------|-----------|-----------|-----------|-----------------------------------|
| North West Metro region | 11,426 | 12,921 | 15,377 | 18,672 | 20,619 | 10.4% |
| Eastern region | 8,525 | 9,842 | 12,571 | 14,968 | 16,468 | 10.0% |
| Southern Metro region | 9,379 | 10,468 | 12,453 | 14,797 | 15,195 | 2.7% |
| Western region | 6,335 | 7,500 | 9,511 | 11,963 | 12,855 | 7.5% |

Figure 2. Family incident rate per 100,000 population by Local Government Area – Victoria Police, July 2013 to June 2014



When the variation in population levels across the state are taken into account, the Local Government Areas with the highest incident rate per 100,000 were La Trobe (2,769.7 per 100,000), Swan Hill (2,463.6 per 100,000), Mildura (2,458.7 per 100,000), Horsham (2,285.3 per 100,000) and East Gippsland (2,280.0 per 100,000).

The data used in this section can be found in tables 2 and 3 of the Victoria Police data tables.

Demographics of affected family members and other parties

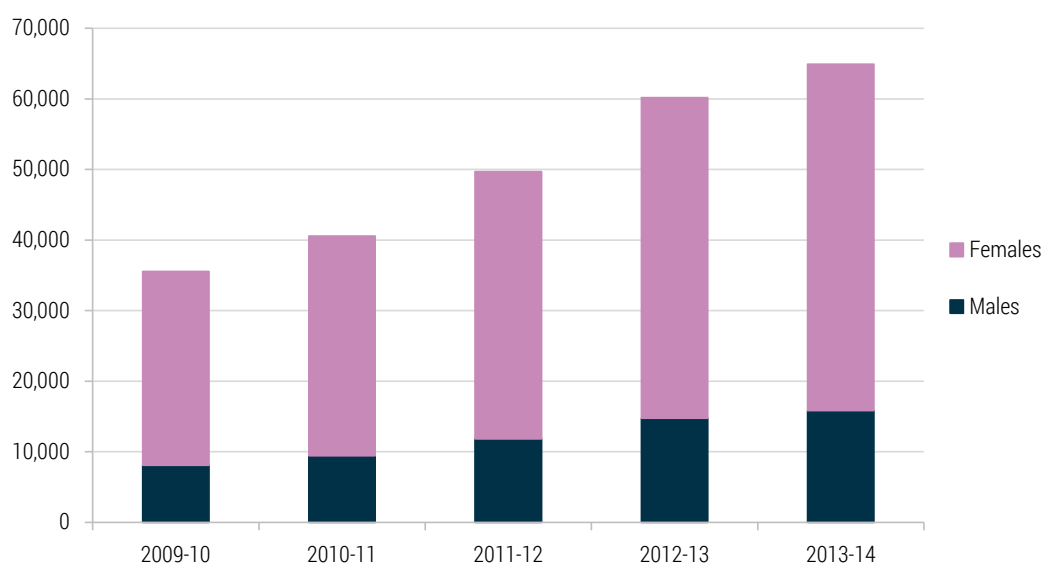
An 'affected family member' (AFM) is the individual who is deemed to be affected by events occurring during the family incident. Where an affected family member has been in an incident with more than one other party, they will be counted for each involvement.

The other individual involved in a family incident is referred to as the 'other party'. The other party could be a current partner, former partner or a family member. Where the other party is involved with multiple affected family members in an incident, they will be counted for each involvement.

Age and sex of affected family members

In 2013-14, three quarters (75%, n=49,082) of the 65,157 affected family members were female. In the five years from July 2009 the proportion of male and female AFMs has remained relatively stable, with on average 76% female and 24% male affected family members.

Figure 3. Affected family members by sex – Victoria Police, July 2009 to June 2014

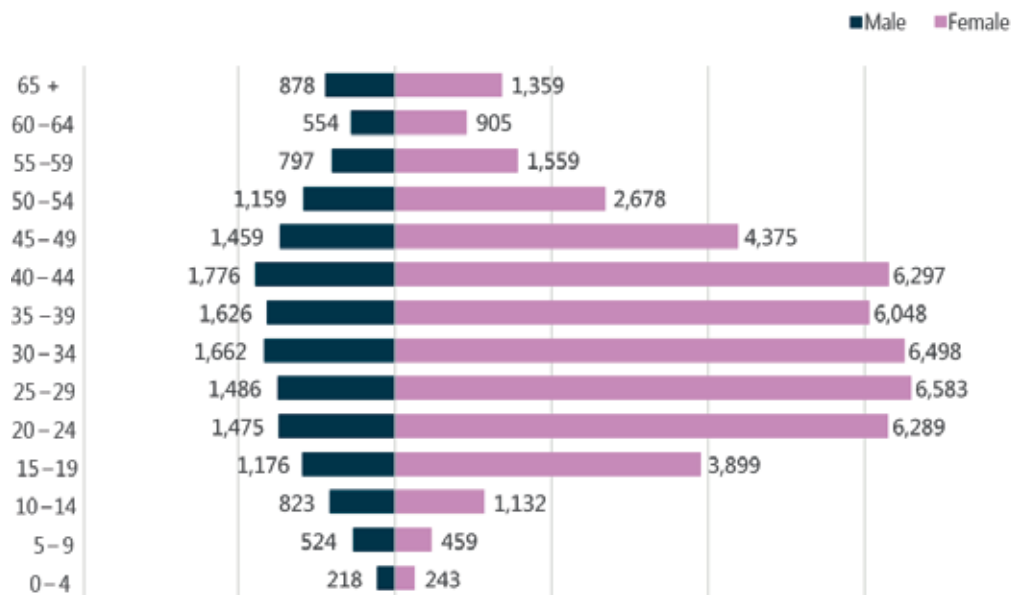


In 2013-14 there were 49,082 female affected family members. Approximately 65% (n=31,715) of those were aged between 20 and 44 years at the time of the incident. The largest age group of female affected family members was 25 – 29 years (n=6,583).

In the same year there were 15,828 male affected family members, of which 51% (n=8,025) were between 20 and 44 years of age. The largest age group of male affected family members was 40 – 44 years (n=1,776).

Approximately 1 in 10 of all affected family members recorded in 2013-14 were 17 years or younger (9%, n=5,781). Of these AFMs, 62% were female and 38% male.

Figure 4. Sex and age of affected family members – Victoria Police, July 2013 to June 2014



The data used in this section can be found in table 4 and 5 of the Victoria Police data tables.

Age and sex of other parties

In the five years from July 2009 to June 2014, the proportion of male and female other parties has remained stable, with an approximate split of 22% female and 78% male other parties.

The proportion of male and female other parties changes depending on the age group of the associated affected family member. For example, where the affected family member is 17 years or younger, the proportion of female other parties increased to approximately a third (32%, n=1,850) of all relevant other parties.

The gender split of other parties, where the affected family members were aged 18 years and older, is in line with that of the total population of other parties.

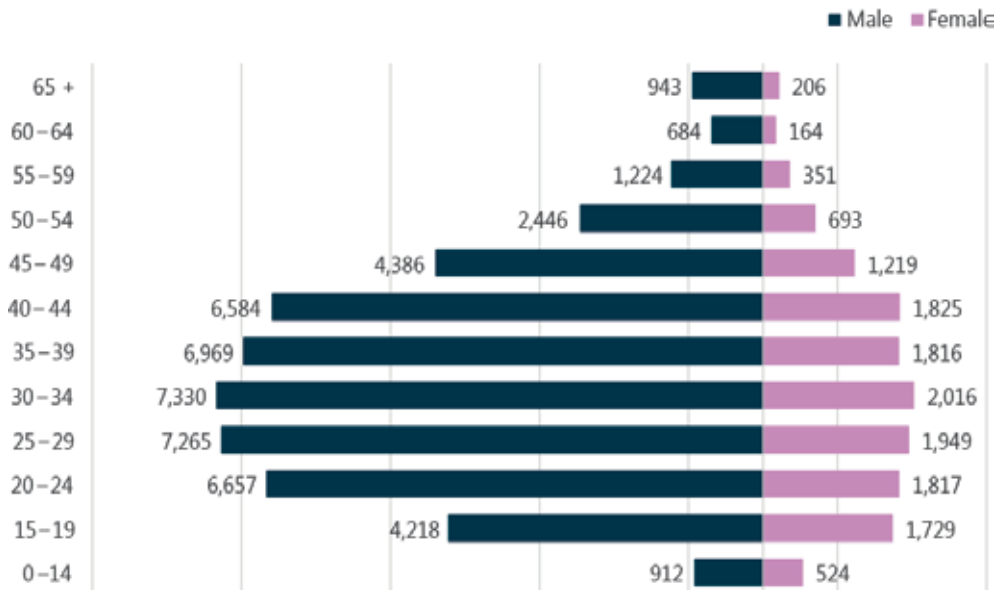
Table 5. Sex of other party by age group of associated affected family member, July 2009 to June 2014

| | | 2009 – 10 | 2010 – 11 | 2011 – 12 | 2012 – 13 | 2013 – 14 |
|--|--------|-----------|-----------|-----------|-----------|-----------|
| Sex of other party where affected family member is 17 years or younger | Male | 65.3% | 66.9% | 67.0% | 66.7% | 66.6% |
| | Female | 34.1% | 32.3% | 32.0% | 32.0% | 32.0% |
| Sex of other party where affected family member is 18 years or older | Male | 79.6% | 78.8% | 78.7% | 77.9% | 78.1% |
| | Female | 20.0% | 20.7% | 20.8% | 21.6% | 21.4% |
| Sex of all other parties | Male | 78.5% | 77.8% | 77.6% | 76.9% | 77.0% |
| | Female | 21.1% | 21.6% | 21.9% | 22.5% | 22.4% |

In 2013-14, there were 50,165 male other parties recorded, of which a third were between the age of 20 and 29 years at the time of the incident.

In 2009-10 and 2010-11 the largest age group of male other parties was 35 – 39 years, however, between 2011-12 and 2013-14, the largest age group was 30 – 34 years. Similarly, between 2009-10 and 2011-12 the largest age group of female other parties was 35 – 39 years, but in more recent years has been 30 – 34 years, indicating a slight shift in the age of other parties.

Figure 5. Sex and age of other parties – Victoria Police, July 2013 to June 2014



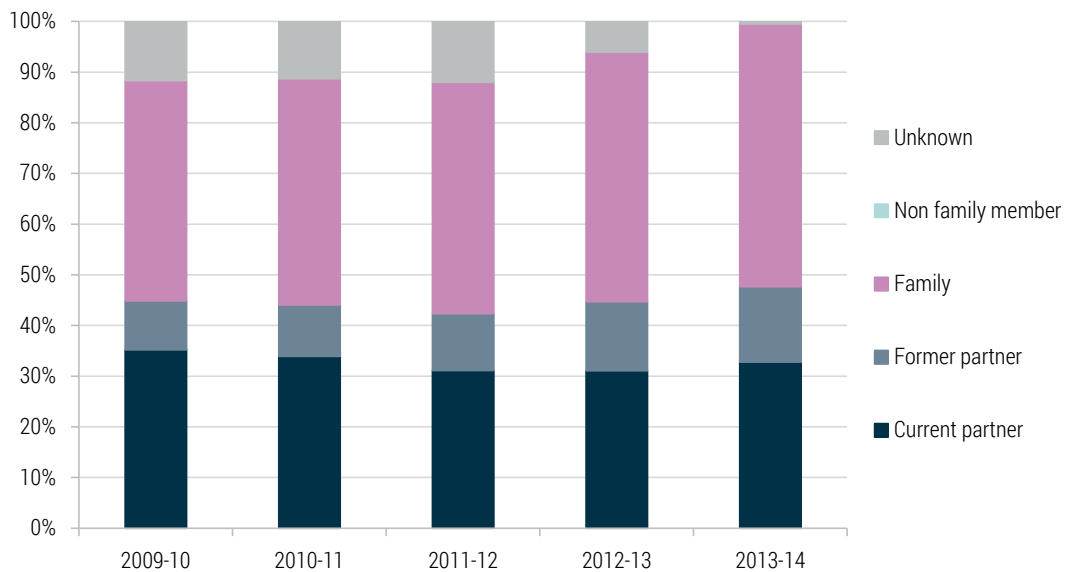
The data used in this section can be found in tables 6 and 7 of the Victoria Police data tables.

Relationship between affected family members and other parties

The proportion of relationship types between an affected family member and other party differs depending on the gender of the affected family member.

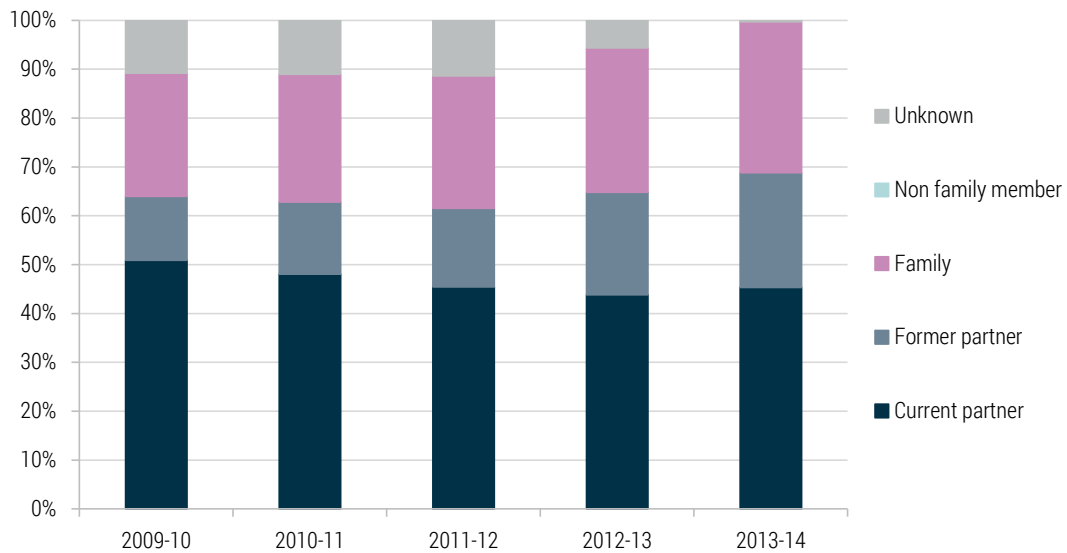
Of the 15,829 male affected family members in 2013-14, just over half (52%, n=8,216) were a family member of the other party. This means they were either a child, parent or other family member to the other party. One third (33%, n=5,185) of the male affected family members were a current partner of the other party, while the remainder (15%, n=2,360) were a former partner of the other party.

Figure 6. Relationship of affected family member to other party where AFM is male – Victoria Police, July 2009 to June 2014



The proportion of relationships is quite different where the affected family member is female, with 45% (n=22,233) of females recorded as a current partner of the other party at the time of the incident, 31% (n=15,175) a family member and 23% (n=11,533) a former partner of the other party.

Figure 7. Relationship of affected family member to other party where AFM is female – Victoria Police, July 2009 to June 2014



The data used in this section can be found in table 12 of the Victoria Police data tables.

Parent-Child relationships in family incidents

This section of the report highlights the affected family members and other parties involved in parent-child relationships at the time of the family incident. The following focuses on incidents where young children were the affected family member of their parent, as well as where young children were the other party towards their parent and where older parents were the victim in a family incident.

Children affected family members to parent other parties

In 2013-14, there were 3,341 affected family members 17 years and under who were the child of the other party. Of the 3,341 children, 44% (n=1,481) were male while 56% (n=1,860) were female.

In 63% (n=927) of incidents where the affected family member was a male child, the other party was a male parent and in the other 37% (n=554) of incidents, the parent was female. The largest age groups of male child affected family members were 12 – 14 years and 15 – 17 years.

In 55% (n=1,019) of incidents where the affected family member was a female child, the other party was a male parent and in the other 45% (n=841) the parent was female. As with male children, the largest age groups of female affected family members were 12 – 14 years and 15 – 17 years, making up 66% (n=670) of incidents where the parent was male and 68% (n=574) of incidents where the parent was female.

Table 6. Children affected family members aged 17 years and under where the other party is a parent – Victoria Police, July 2013 to June 2014

| | | Male parent other party | Female parent other party |
|-------------------------------------|-------------------------|-------------------------|---------------------------|
| Male child affected family member | 0 – 4 years | 92 | 71 |
| | 5 - 8 years | 200 | 110 |
| | 9 - 11 years | 165 | 101 |
| | 12 - 14 years | 241 | 150 |
| | 15 - 17 years | 229 | 122 |
| | Total male child AFMs | 927 | 554 |
| Female child affected family member | 0 – 4 years | 100 | 68 |
| | 5 - 8 years | 129 | 93 |
| | 9 - 11 years | 120 | 106 |
| | 12 - 14 years | 331 | 277 |
| | 15 - 17 years | 339 | 297 |
| | Total female child AFMs | 1,019 | 841 |

The data used in this section can be found in table 13 of the Victoria Police data tables.

Adult parent affected family members to youth children other parties

In the five years from July 2009 to June 2014, there were a total of 11,861 incidents that involved an adult parent affected family member and a child other party who was under 17 years old. 64% (n=7,608) involved a male other party while 36% (n=4,253) involved a female other party.

Of the 9,542 incidents that involved a female affected family member, 54% (n=5,148) of those were aged 35 – 44 years at the time of the incident and 31% (n=2,991) were between 45 – 54 years. In 2013-14, there were 3,200 incidents that involved a male other party under 17 years and a female parent aged 35 – 44 years.

Of the 2,319 incidents that involved a male parent affected family member, 85% (n=1,964) were between 35 – 54 years old. In the five years from 2009-10 to 2013-14 there were also 150 incidents that involved a male parent over 65 years and a male other party aged 17 years and under.

Table 7. 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

| | | Male other party | Female other party |
|---------------------------------------|-------------------|------------------|--------------------|
| Male parent affected family members | 18 - 24 years | ≤ 3 | ≤ 3 |
| | 25 - 34 years | 55 | 21 |
| | 35 - 44 years | 629 | 252 |
| | 45 - 54 years | 799 | 284 |
| | 55 - 64 years | 150 | 68 |
| | 65 + | 43 | 14 |
| | Total male AFMs | 1,678 | 641 |
| Female parent affected family members | 18 - 24 years | 13 | ≤ 3 |
| | 25 - 34 years | 645 | 409 |
| | 35 - 44 years | 3,200 | 1,948 |
| | 45 - 54 years | 1,872 | 1,119 |
| | 55 - 64 years | 183 | 121 |
| | 65 + | 17 | 13 |
| | Total female AFMs | 5,930 | 3,612 |

Note: In order to maintain confidentiality, person-based counts with a value less than 3 are displayed as ≤ 3 and are given a value of 2 to calculate totals

The data used in this section can be found in table 14 of the Victoria Police data tables.

Adult children as the other party to adult parent affected family members

In the five years from July 2009 to June 2014, there were 21,716 recorded incidents that involved an adult parent affected family member and an adult child other party. 31% (n=6,625) involved a male affected family member and 69% (n=15,091) involved a female affected family member.

The largest group of affected family members was females aged 45 – 54 years where the other party was between 18 and 34 years. This group made up over a quarter of all incidents (27%, n= 5,922). Of those 5,922 incidents, 73% involved a male other party.

Table 8. Parents as affected family member where the other party is 18 years and older by gender and age of AFM and age of OTH – Victoria Police, July 2009 to June 2014 combined

| | | Age of other party | | | | | Total |
|-------------------------------------|--------------------|--------------------|---------------|---------------|---------------|--------------------|-------|
| | | 18 - 34 years | 35 - 44 years | 45 - 54 years | 55 - 64 years | 65 years and older | |
| Adult male affected family member | 18 - 34 | 41 | 0 | 0 | 0 | 0 | 41 |
| | 35 - 44 | 567 | 6 | 0 | 0 | 0 | 573 |
| | 45 - 54 | 2,128 | 21 | 6 | 0 | 0 | 2,155 |
| | 55 - 64 | 1,905 | 339 | 8 | 4 | 0 | 2,256 |
| | 65 years and older | 562 | 749 | 250 | 37 | 2 | 1,598 |
| Adult female affected family member | 18 - 34 | 101 | 0 | 0 | 0 | 0 | 101 |
| | 35 - 44 | 2,954 | 19 | 0 | 0 | 0 | 2,973 |
| | 45 - 54 | 5,922 | 77 | 9 | 0 | 0 | 6,008 |
| | 55 - 64 | 2,912 | 978 | 33 | 5 | 0 | 3,928 |
| | 65 years and older | 330 | 994 | 623 | 123 | 11 | 2,070 |

The data used in this section can be found in table 15 of the Victoria Police data tables.

Domestic partner and spousal relationships in family incidents

Family incidents involving current partners

In the five years from July 2009 to June 2014, there were 101,606 incidents involving adult affected family members and other parties in a current partner relationship.

Of those incidents, 82% (n=83,555) involved a male other party and 18% (n=18,051) involved a female other party.

Parties of similar age contributing largest number of incidents

- Incidents involving a female affected family member aged 25 – 34 and a male other party aged 25 – 35 accounted for 16% (n=16,461) of all current partner incidents.
- Incidents involving a female affected family member aged 35 – 44 and a male other party aged 35 – 44 accounted for 13% (n=13,279) of all current partner incidents
- Incidents involving a female affected family member aged 18 – 24 and a male other party aged 18 – 24 accounted for 9% (n=9,495) of all current partner incidents

The data used in this section can be found in table 16 of the Victoria Police data tables.

Family incidents involving former partners

In the five years from July 2009 to June 2014, there were 41,012 incidents that involved adult affected family members and other parties in a former partner relationship. This includes those who were recorded as 'divorced', 'separated' or 'previously defacto'.

Incidents where the other party was a male between 25 – 34 years made up over a quarter (27%, n=11,037) of all incidents involving a former partner.

Over the five years, there were 6,895 incidents that involved a female affected family member aged 25 – 34 years and a male other party aged 25 – 34 years. There were also 6,782 incidents involving a female affected family member aged 35 – 44 years and a male other party in the same age group.

Table 9. Former partner relationships where both affected family member and other party are over 18 years by gender of AFM and age group of other party – Victoria Police, July 2009 to June 2014 combined

| | Age of other party | | | | | |
|--------------------------------------|--------------------|---------------|---------------|---------------|---------------|--------------------|
| | 18 - 24 years | 25 - 34 years | 35 - 44 years | 45 - 54 years | 55 - 64 years | 65 years and older |
| Adult male affected family members | 1,115 | 2,378 | 2,437 | 957 | 168 | 37 |
| Adult female affected family members | 3,998 | 11,040 | 12,224 | 5,250 | 1,094 | 314 |
| Total former partner incidents | 5,113 | 13,418 | 14,661 | 6,207 | 1,262 | 351 |

The data used in this section can be found in table 17 of the Victoria Police data tables.

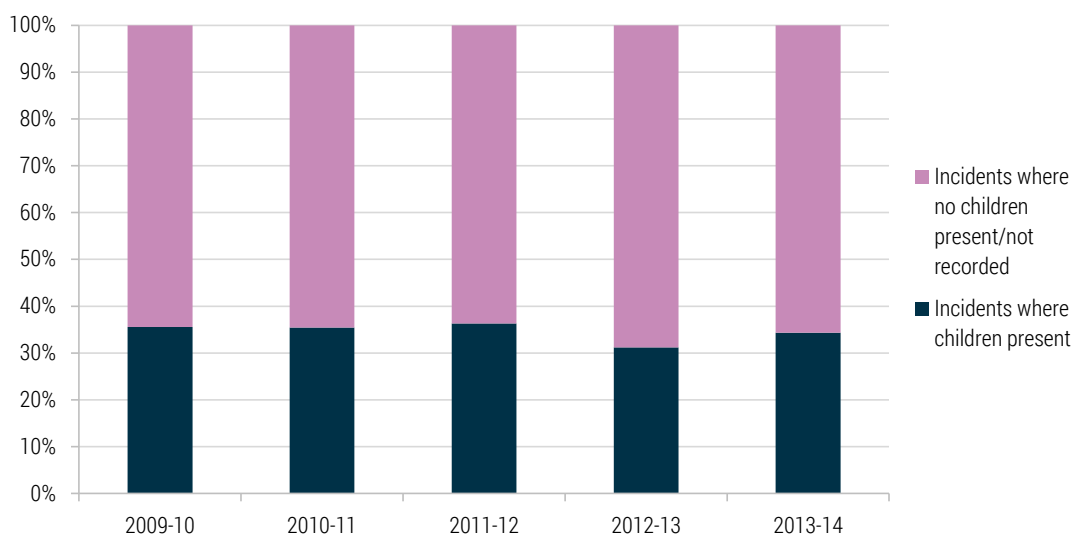
Children present at family incidents

Table 10. Number of family incidents where a child/children were present – Victoria Police, July 2009 to June 2014

| | 2009 – 10 | 2010 – 11 | 2011 – 12 | 2012 – 13 | 2013 – 14 |
|--|-----------|-----------|-----------|-----------|-----------|
| Incidents where child/children were present | 12,688 | 14,448 | 18,127 | 18,861 | 22,376 |
| Incidents where no children present/not recorded | 22,978 | 26,285 | 31,800 | 41,547 | 42,778 |
| Total family incidents | 35,666 | 40,733 | 49,927 | 60,408 | 65,154 |

Victoria Police record the number of children present at the time of a family incident. In approximately a third (34%, n=22,376) of all incidents recorded in 2013-14, there was at least one child present. Over the past five years the proportion of incidents where children have been present has remained relatively constant.

Figure 8. Proportion of incidents where a child/children were present – Victoria Police, July 2009 to June 2014



The data used in this section can be found in table 21 of the Victoria Police data tables.

Fear level of affected family member at time of the incident

On the L17 Risk Assessment and Risk Management Report, the level of fear felt by the affected family member is collected at the time of the incident. In 2013-14, 99.8% of incidents had this data item collected.

Of the 65,157 incidents recorded in 2013-14, 60% (n=39,219) of affected family members were recorded as not fearful at the time of the incident while 34% (n=22,346) reported feeling fearful and 5% (3,433) felt very fearful.

In 2013-14 there were 49,081 incidents that involved a female affected family member. Of these affected family members, 39% (n=18,907) reported feeling fearful and 6% (n=3,115) felt very fearful. In the same year there were 15,827 incidents that involved a male affected family member, of which 21% (n=3,350) felt fearful and 2% (n=306) very fearful.

The data used in this section can be found in table 27 of the Victoria Police data tables.

Risk factors recorded on L17 Risk Assessment and Risk Management Report.

The following three tables outline the proportion of each risk factor that was identified and recorded on all L17 Risk Assessment and Risk Management Reports from July 2009 to June 2014.

The first table looks at risk factors that relate to the affected family member, the second looks at risk factors that relate to the other party and the third shows other factors present in the relationship between the parties.

Table 11. Proportion of incidents where each risk factor relating to the affected family member was recorded at the time of the incident – Victoria Police, July 2009 to June 2014

| | | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 |
|----------------------|--------------|---------|---------|---------|---------|---------|
| AFM Pregnancy/Birth | Not recorded | 94% | 94% | 94% | 97% | 100% |
| | Recorded | 6% | 6% | 6% | 3% | 0% |
| AFM Mental Health | Not recorded | 91% | 90% | 90% | 89% | 85% |
| | Recorded | 9% | 10% | 10% | 11% | 15% |
| AFM Suicidal | Not recorded | 99% | 99% | 99% | 99% | 99% |
| | Recorded | 1% | 1% | 1% | 1% | 1% |
| AFM Isolation | Not recorded | 98% | 97% | 97% | 96% | 94% |
| | Recorded | 2% | 3% | 3% | 4% | 6% |
| AFM Alcohol Possible | Not recorded | 87% | 86% | 85% | 87% | 89% |
| | Recorded | 13% | 14% | 15% | 13% | 11% |
| AFM Alcohol Definite | Not recorded | 83% | 85% | 87% | 89% | 89% |
| | Recorded | 17% | 15% | 13% | 11% | 11% |
| AFM Drugs Possible | Not recorded | 90% | 89% | 88% | 89% | 88% |
| | Recorded | 10% | 11% | 12% | 11% | 12% |
| AFM Drugs Definite | Not recorded | 98% | 98% | 98% | 97% | 97% |
| | Recorded | 2% | 2% | 2% | 3% | 3% |
| AFM Other Substance | Not recorded | 100% | 100% | 100% | 99% | 99% |
| | Recorded | 0% | 0% | 0% | 1% | 1% |

The risk factors relating to the affected family member that are most often recorded appear to be drug and alcohol related with 11% of all incidents possibly involving alcohol and another 11% definitely involving alcohol in 2013-14.

In the same year, in 12% of incidents, Victoria Police identified that it was possible drugs were a factor at the time of the incident.

It should be noted that the AFM risk factor for pregnancy/birth was replaced by a relationship pregnancy for pregnancy/new birth in June 2012.

Table 12. Proportion of incidents where each risk factor relating to the other party was recorded at the time of the incident – Victoria Police, July 2009 to June 2014

| | | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 |
|------------------------|--------------|---------|---------|---------|---------|---------|
| OTH Harm Threat | Not recorded | 83% | 82% | 82% | 82% | 82% |
| | Recorded | 17% | 18% | 18% | 18% | 18% |
| OTH Choke | Not recorded | 97% | 97% | 96% | 97% | 97% |
| | Recorded | 3% | 3% | 4% | 3% | 3% |
| OTH Threat/Kill | Not recorded | 95% | 95% | 94% | 95% | 96% |
| | Recorded | 5% | 5% | 6% | 5% | 4% |
| OTH Harm/Threat Child | Not recorded | 99% | 99% | 98% | 99% | 99% |
| | Recorded | 1% | 1% | 2% | 1% | 1% |
| OTH Harm/Threat Family | Not recorded | 98% | 98% | 98% | 98% | 97% |
| | Recorded | 2% | 2% | 2% | 2% | 3% |
| OTH Harm/Threat Pets | Not recorded | 100% | 100% | 100% | 100% | 100% |
| | Recorded | 0% | 0% | 0% | 0% | 0% |
| OTH Suicidal | Not recorded | 97% | 97% | 96% | 97% | 96% |
| | Recorded | 3% | 3% | 4% | 3% | 4% |
| OTH Stalking | Not recorded | 98% | 98% | 98% | 98% | 98% |
| | Recorded | 2% | 2% | 2% | 2% | 2% |
| OTH Sexual Assault | Not recorded | 99% | 99% | 98% | 98% | 98% |
| | Recorded | 1% | 1% | 2% | 2% | 2% |
| OTH Controlling | Not recorded | 84% | 84% | 84% | 84% | 81% |
| | Recorded | 16% | 16% | 16% | 16% | 19% |
| OTH Unemployed | Not recorded | 90% | 90% | 89% | 88% | 87% |
| | Recorded | 10% | 10% | 11% | 12% | 13% |
| OTH Mental Health | Not recorded | 86% | 85% | 85% | 84% | 80% |
| | Recorded | 14% | 15% | 15% | 16% | 20% |
| OTH History Violence | Not recorded | 92% | 91% | 91% | 96% | 100% |
| | Recorded | 8% | 9% | 9% | 4% | 0% |
| OTH Alcohol Possible | Not recorded | 85% | 84% | 82% | 83% | 84% |
| | Recorded | 15% | 16% | 18% | 17% | 16% |
| OTH Alcohol Definite | Not recorded | 74% | 75% | 78% | 80% | 81% |
| | Recorded | 26% | 25% | 22% | 20% | 19% |
| OTH Drugs Possible | Not recorded | 84% | 83% | 80% | 81% | 79% |
| | Recorded | 16% | 17% | 20% | 19% | 21% |
| OTH Drugs Definite | Not recorded | 95% | 95% | 94% | 93% | 91% |
| | Recorded | 5% | 5% | 6% | 7% | 9% |
| OTH Other Substance | Not recorded | 99% | 99% | 99% | 99% | 98% |
| | Recorded | 1% | 1% | 1% | 1% | 2% |
| OTH Suicide Attempted | Not recorded | 100% | 100% | 100% | 100% | 100% |
| | Recorded | 0% | 0% | 0% | 0% | 0% |

The proportion of incidents where each of the other party risk factors were identified has remained relatively stable over the five years from July 2009. As with those relating to the affected family member, the proportion of incidents with risk factors associated with drug and alcohol use have increased in the five years.

In 2013-14, Victoria Police identified that in 16% of incidents it was possible that alcohol was an issue for the other party, while in 19% it was identified that alcohol was definitely present at the time of the incident.

Table 13. Proportion of incidents where other risk factors were recorded at the time of the incident – Victoria Police, July 2009 to June 2014

| | | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 |
|--|--------------|---------|---------|---------|---------|---------|
| Recent separation | Not recorded | 74% | 74% | 74% | 79% | 84% |
| | Recorded | 26% | 26% | 26% | 21% | 16% |
| Escalation – increase in severity and/or frequency | Not recorded | 93% | 92% | 91% | 89% | 86% |
| | Recorded | 7% | 8% | 9% | 11% | 14% |
| Presence of a disability | Not recorded | 98% | 97% | 97% | 98% | 97% |
| | Recorded | 2% | 3% | 3% | 2% | 3% |
| Financial difficulties | Not recorded | 90% | 90% | 91% | 90% | 89% |
| | Recorded | 10% | 10% | 9% | 10% | 11% |
| Pregnancy/New birth | Not recorded | 100% | 100% | 100% | 97% | 94% |
| | Recorded | 0% | 0% | 0% | 3% | 6% |

In the five years from July 2009 the proportion of incidents where recent separation was identified as a risk factor has decreased from 26% to 15% of all incidents, while the proportion of incidents where financial difficulties were identified as an issue has remained stable over the five years at on average 10% of all incidents.

It should be noted that pregnancy/new birth was introduced as a relationship risk factor in June 2012, replacing the pregnancy/birth factor associated with the affected family member.

The data used in this section can be found in table 23 of the Victoria Police data tables.

Actions taken by Victoria Police

On the L17 Risk Assessment and Risk Management Report, Victoria Police indicate all actions that are taken to protect the affected family member and any children from risks and criminal behaviour at the time of the incident. The four types of action that can be taken are:

- Criminal action, including; charges pending (breach & other), charges pending (breach FVIO/FVSN), charges pending (other only), perpetrator bailed with conditions and perpetrator remanded in custody.
- Civil action, including; exclusion conditions used, FVSN issued, police applying via arrest & warrant, police applying via arrest & summons, police applying for FVIO, police applying for FVIO, AFM applying for FVIO, FVIO variation required
- Referral action, including; recommended high risk client, WDVCS (immediate assistance 24/7), formal referral AFM, formal referral perpetrator, informal referral AFM, informal referral perpetrator, child protection, child FIRST
- Other action, including; holding powers (direction), holding powers (detention), firearms seized, weapons seized, revoked f/a license pending

The following table outlines the actions recorded by Victoria Police in each incident over the five years from July 2009 to June 2014. The table shows where no action was taken, where one type of action was taken and where multiple types of action were taken.

Table 14. Incidents by type of action taken by police – Victoria Police, July 2009 to June 2014

| | 2009 – 10 | 2010 – 11 | 2011 – 12 | 2012 – 13 | 2013 – 14 |
|---|-----------|-----------|-----------|-----------|-----------|
| No action taken | 2,594 | 2,688 | 3,089 | 3,412 | 2,494 |
| Civil only | 1,279 | 1,032 | 835 | 574 | 146 |
| Criminal only | 610 | 777 | 865 | 1,560 | 1,008 |
| Referral only | 20,001 | 22,785 | 26,913 | 28,434 | 27,801 |
| Other only | 14 | 9 | 9 | 9 | 7 |
| Civil and Criminal | 410 | 371 | 385 | 453 | 154 |
| Civil and Criminal and Referral | 2,686 | 3,343 | 5,016 | 8,222 | 11,457 |
| Civil and Criminal and Other | 37 | 34 | 40 | 48 | 17 |
| Civil and Other | 125 | 80 | 75 | 59 | 7 |
| Civil and Referral and Other | 744 | 936 | 1,159 | 1,540 | 1,742 |
| Civil and Referral | 4,574 | 4,957 | 5,690 | 5,719 | 5,822 |
| Criminal and Other | 9 | 6 | 8 | 20 | 5 |
| Criminal and Referral and Other | 41 | 66 | 94 | 233 | 307 |
| Criminal and Referral | 2,021 | 2,885 | 4,584 | 7,671 | 10,746 |
| Referral and Other | 71 | 93 | 113 | 149 | 145 |
| Civil and Criminal and Referral and Other | 450 | 671 | 1,052 | 2,305 | 3,296 |
| Total family incidents | 35,666 | 40,733 | 49,927 | 60,408 | 65,154 |

The data used in this section can be found in table 32 of the Victoria Police data tables.

Family Violence Intervention Orders and Family Violence Safety Notices sought by police

In 17% (n=11,091) of the 65,154 family incidents recorded in 2013-14, Victoria Police indicated that a Family Violence Intervention Order would be sought. Victoria Police record this on the L17 Family Violence Risk Assessment Report as an indicator that they intend to seek a FVIO. This doesn't represent where an intervention order was actually applied for or where an order was applied for by the affected family member.

Table 15. Number of family incidents where FVIO or FVSN sought – Victoria Police, July 2009 to June 2014

| | 2009 – 10 | 2010 – 11 | 2011 – 12 | 2012 – 13 | 2013 – 14 |
|--|-----------|-----------|-----------|-----------|-----------|
| Incidents where Family Violence Intervention Orders sought by Victoria Police (FVIO) | 5,841 | 6,699 | 8,667 | 10,433 | 11,091 |
| Incidents where Family Violence Safety Notice issued by Victoria Police (FVSN) | 3,378 | 3,793 | 4,610 | 6,163 | 8,288 |

The data used in this section can be found in table 19 of the Victoria Police data tables.

Referrals made by police

The following table outlines all referrals made by Victoria Police at a family incident, by the type of referral. Multiple referrals can be made at the one family incident for all parties involved. The most common referrals made in the 2013-14 financial year were a formal referral for the AFM, followed by a formal referral for the perpetrator.

Table 16. Total referrals made following a family incident – Victoria Police, July 2009 to June 2014

| | 2009 – 10 | 2010 – 11 | 2011 – 12 | 2012 – 13 | 2013 – 14 |
|--|-----------|-----------|-----------|-----------|-----------|
| Formal referral for AFM | 11,445 | 16,356 | 23,980 | 35,528 | 51,628 |
| Formal referral for perpetrator | 6,297 | 11,499 | 18,897 | 29,453 | 43,578 |
| Notify child protection | 4,811 | 5,967 | 8,382 | 9,985 | 11,042 |
| Informal referral for perpetrator | 11,837 | 14,258 | 16,327 | 15,300 | 9,031 |
| Informal referral for AFM | 18,965 | 19,350 | 20,737 | 17,399 | 7,407 |
| Recommended high risk client | 0 | 0 | 0 | 1,190 | 3,311 |
| Child first | 0 | 0 | 0 | 618 | 1,901 |
| Women's Domestic Violence Crisis Service | 467 | 584 | 734 | 805 | 945 |

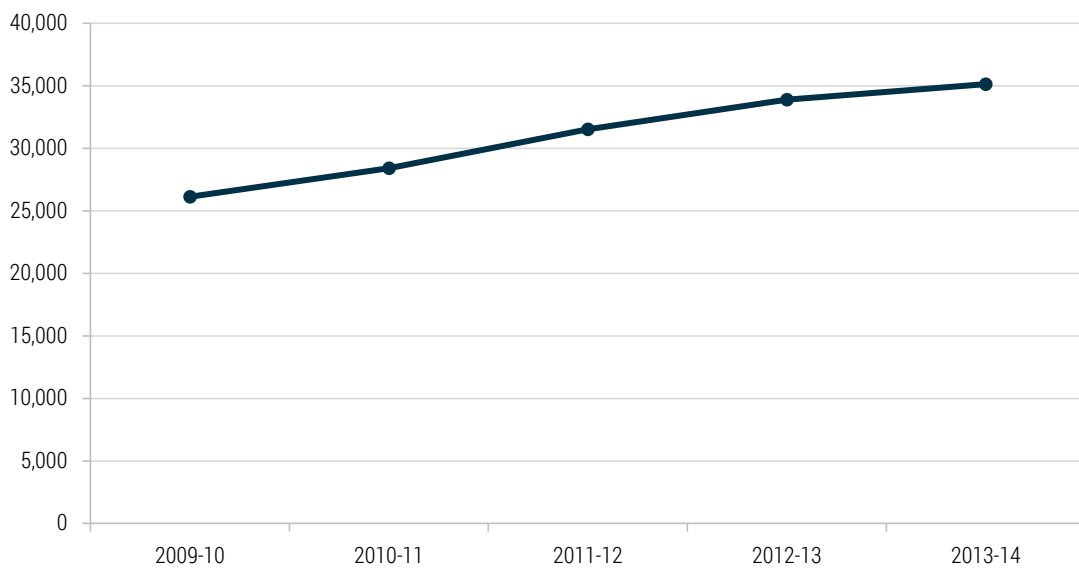
The data used in this section can be found in table 31 of the Victoria Police data tables.

5. Magistrates' Court

Applications for Family Violence Intervention Orders

From July 2009 to June 2014, the number of finalised applications for a family violence intervention order in the Magistrates' Court increased by 34.5%, from 26,124 in 2009-10 to 35,147 in 2013-14. The number of applications has been steadily increasing over the five years.

Figure 9. Finalised applications for family violence intervention orders – Magistrates' Court, July 2009 to June 2014

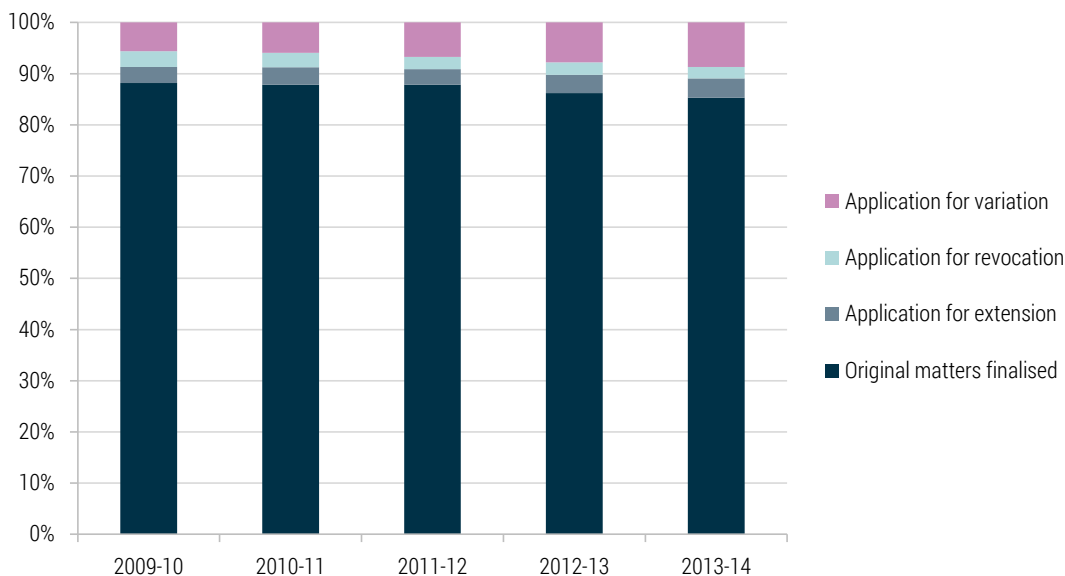


The data used in this section can be found in table 1 of the Magistrates' Court data tables.

Types of applications

Of the 35,147 applications finalised in 2013-14, 85% (n=29,987) of these were for original matters and 9% (n=3,048) were applications for variation. Overall, the number of original applications increased by 30.2% in the five years from July 2009, however, the proportion of original matters has slightly decreased and has been replaced by a small increase in applications for variation.

Figure 10. Proportion of finalised applications by type of application – Magistrates’ Court, July 2009 to June 2014



The data used in this section can be found in table 1 of the Magistrates’ Court data tables.

Mode of issue

In 2013-14, 53% (n=18,704) of finalised applications were issued by a Complaint and Summons, while 29% (n=10,309) were issued by a Family Violence Safety Notice (FVSN) and 17% (n=6,134) from a Warrant. Since 2009-10, there has been an increase in the proportion of finalised applications that were issued by a FVSN and a decrease in the proportion that were issued by a Complaint and Summons and Warrant.

Table 17. Proportion of finalised applications by mode of issue – Magistrates’ Court, July 2009 to June 2014

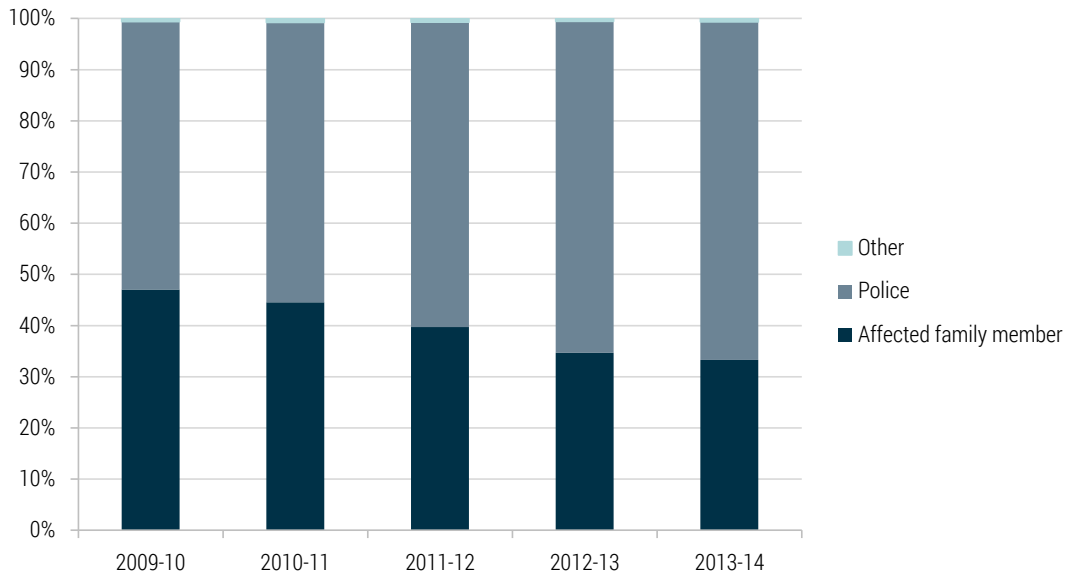
| | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 |
|-------------------------------|---------|---------|---------|---------|---------|
| Complaint and Summons | 57% | 55% | 52% | 51% | 53% |
| Family Violence Safety Notice | 21% | 22% | 23% | 26% | 29% |
| Warrant | 22% | 23% | 25% | 23% | 17% |

The data used in this section can be found in table 2 of the Magistrates’ Court data tables.

Application complainant

In 2013-14, 66% (n=23,216) of all finalised applications were initiated by police, while 33% (n=11,690) were initiated by the affected family member. In the five years from July 2009, the proportion of applications initiated by the police has increased from 52% (n=13,670) to 66% (n=23,216). There was a corresponding decrease in the proportion that were initiated by the affected family member.

Figure 11. Proportion of finalised applications by complainant – Magistrates' Court, July 2009 to June 2014

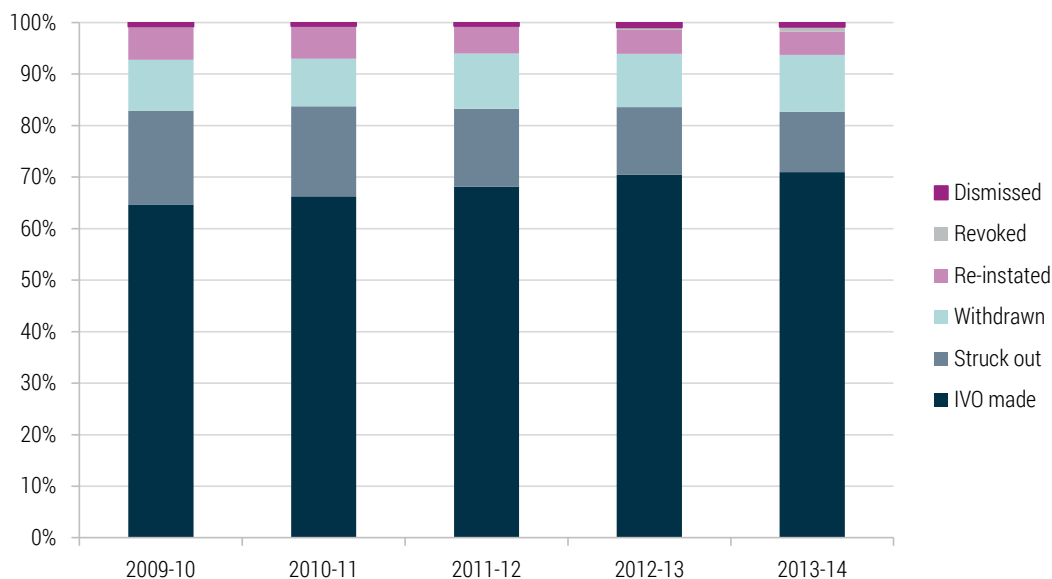


The data used in this section can be found in table 3 of the Magistrates' Court data tables.

Outcome of applications

In the five years from July 2009, the proportion of family violence intervention order applications resulting in an IVO increased from 65% (n=16,899) in 2009-10 to 71% (n=24,947) in 2013-14. This was accompanied by a decrease in the proportion of applications that were struck out, which dropped from 18% (n=4,764) of all applications in 2009-10 to 12% (n=4,111) in 2013-14.

Figure 12. Proportion of finalised applications by outcome of application – Magistrates’ Court, July 2009 to June 2014



The proportion of outcomes of FVIO applications differs slightly depending on the gender of the respondent on the application.

Of the 27,989 applications finalised in 2013-14 where the respondent was male, 75% (n=20,981) resulted in the intervention order being made while 10% (n=2,926) were struck out and another 10% (n=2,683) were withdrawn. Where the respondent was female (n=7,159), only 56% (n=3,966) of applications resulted in an intervention order while 17% (n=1,185) were struck out and another 17% (n=1,202) were withdrawn.

The data used in this section can be found in tables 4 and 5 of the Magistrates’ Court data tables.

Demographic characteristics of affected family members and respondents

For the purposes of analysing the demographic characteristics of affected family members and respondents, this part of the report focuses on those parties to original applications for family violence intervention orders. This ensures that affected family members and respondents are not double counted if they made subsequent applications for variation, extension or revocation

Gender and age of affected family members

In the 2009-10 financial year, there were 42,333 affected family members on original applications. In the five years since then the number of affected family members increased by 24.7% to 52,777 in 2013-14. This is a lower rate than the increase in original applications which rose by 30.2% in the same five years.

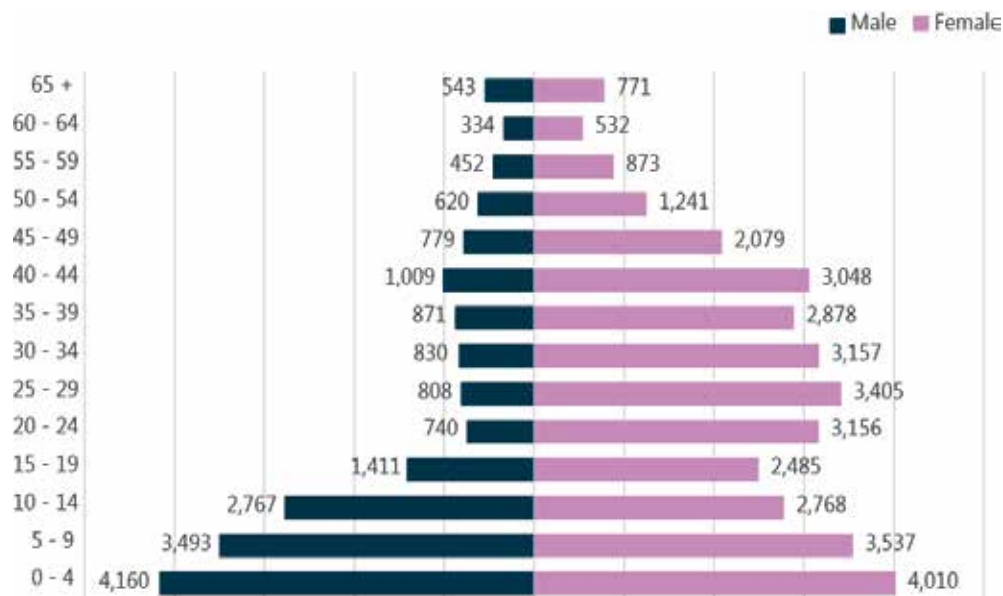
In 2013-14, 36% (n=18,826) of affected family members were male while 64% (n=33,951) were female. In the five years from 2009-10 the proportion of male and female affected family members has remained stable.

For both male and female affected family members the largest age groups were 0 – 4 years and 5 – 9 years, together making up 29% (n=15,200) of all affected family members. There can be multiple children on the same application and this results in a large number of child affected family members.

Females between 20 and 44 years made up 46% (n=15,644) of female affected family members. The same ages accounted for 23% (n=4,258) of male affected family members.

In 2013-14 there were 1,314 affected family members aged 65 years or older on original family violence intervention order applications.

Figure 13. Affected family members by gender and age – Magistrates' Court, July 2013 to June 2014



The data used in this section can be found in table 8 of the Magistrates' Court data tables.

Gender and age of respondents

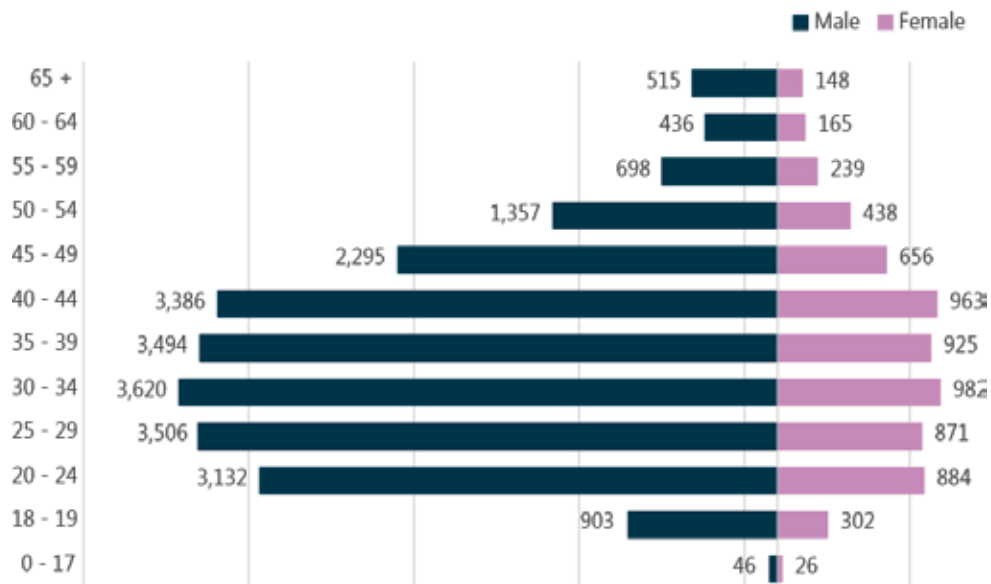
Each application for an intervention order is made against one respondent. This means there is a one-to-one ratio between the number of applications and the number of respondents.

In 2013-14 there were 29,987 respondents on an original application, an increase of 30.2% from 2009-10. Of the total respondents, 78% (n=23,388) of them were male and 22% (n=6,599) were female. The proportion of male and female respondents has remained stable over the five years from 2009-10.

Of the 23,388 male respondents in 2013-14, 73% (n=17,138) were between 20 and 44 years of age, with the largest age group being those between 30 – 34 years.

Of the 6,599 female affected family members, 70% (n=4,625) were between 20 and 44 years of age. In the four years from 2009-10 to 2012-13, the largest age group of female affected family members was 35 – 39 years. In 2013-14, the largest age group was 30 – 34 years.

Figure 14. Respondents on original applications by gender and age – Magistrates' Court, July 2013 to June 2014



The data used in this section can be found in table 6 of the Magistrates' Court data tables.

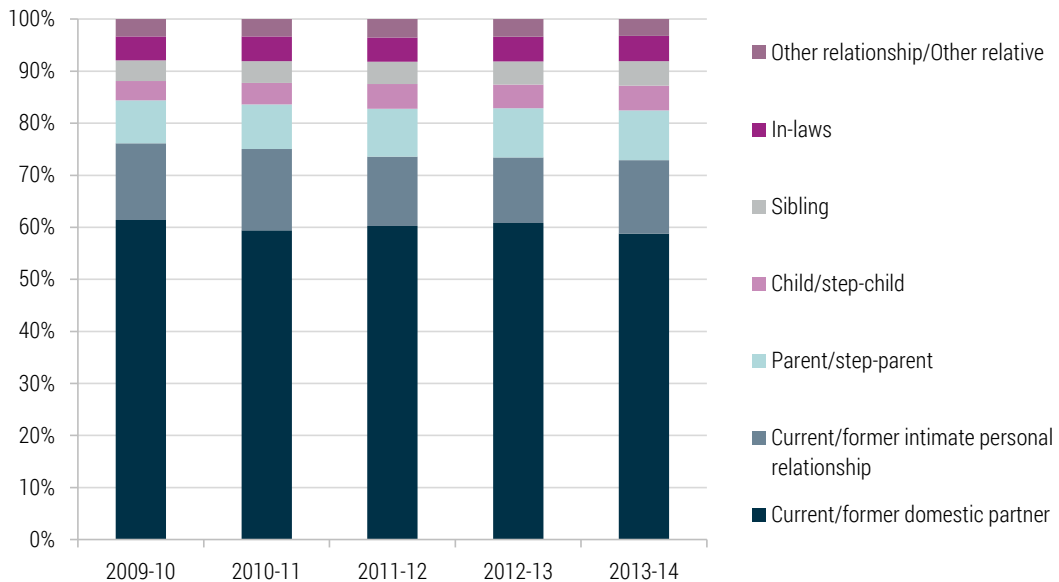
Relationship between affected family members and respondents

The relationship between an affected family member and the related respondent is taken from the primary affected family member on an application. This means that where there are multiple affected family members on an application, the primary affected family member's relationship with the respondent will be represented.

The proportion of relationship types between a primary affected family member and respondent differs considerably depending on the gender of the affected family member.

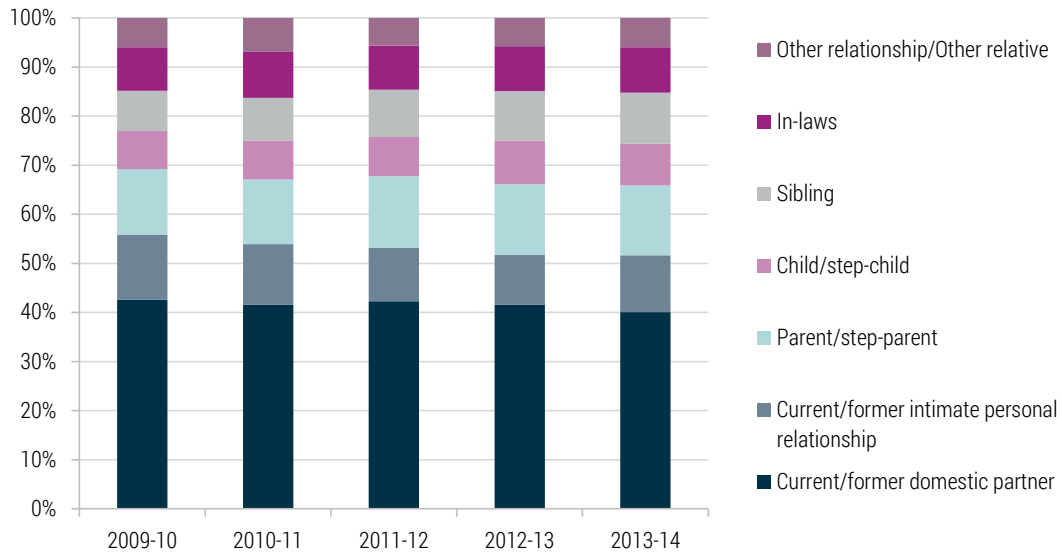
In 2013-14, 73% (n=16,465) of female affected family members were a current/former domestic partner of the respondent or were in a current/former intimate personal relationship with the respondent, while 10% (n=2,155) were a parent of the respondent.

Figure 15. Relationship between the primary AFM and Respondent where the AFM is female – Magistrates' Court, July 2009 to June 2014



This is in contrast to applications where the primary affected family member was male. In 2013-14, 52% (n=3,819) of male affected family members were a current/former domestic partner of the respondent or were in a current/former intimate personal relationship with the respondent. In 14% (n=1,051) of applications, the affected family member was a parent/step-parent and in 10% (n =769) they were a sibling of the respondent.

Figure 16. Relationship between the primary AFM and Respondent where the AFM is male – Magistrates’ Court, July 2009 to June 2014

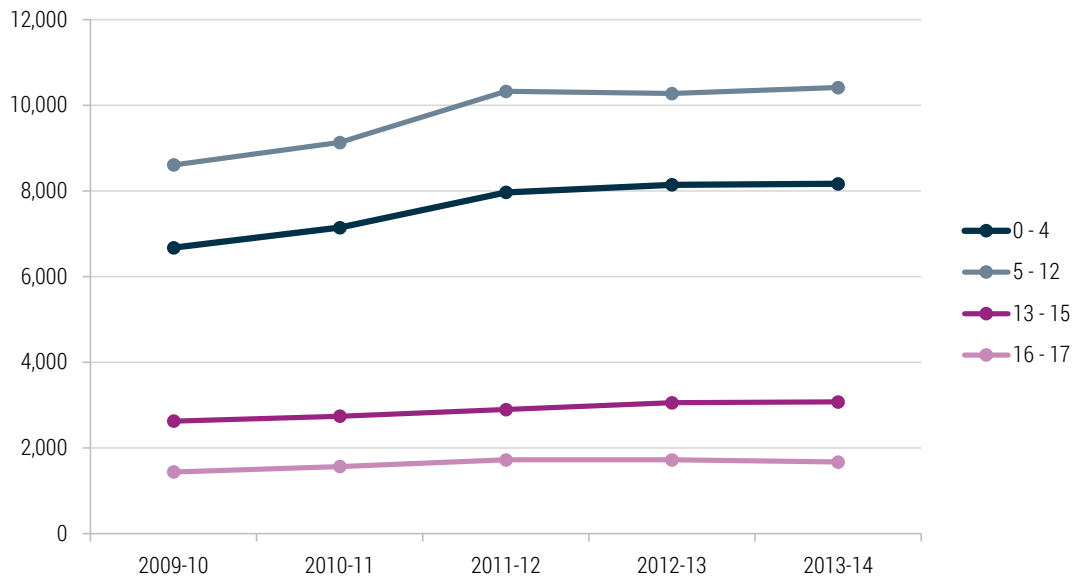


The data used in this section can be found in table 9 of the Magistrates’ Court data tables.

Children as affected family members

In the five years from July 2009, the number of affected family members aged 17 years and younger increased by 20.6% from 19,353 in 2009-10 to 23,332 in 2013-14. Of these 23,332 young affected family members, 50% (n=11,574) were male and 50% (n=11,758) were female.

Figure 17. Children as affected family members on original applications by age group – Magistrates' Court, July 2009 to June 2014



The largest age group of young affected family members was 5 – 12 years, making up 35% (n=10,417) of young affected family members, followed by 0 – 4 years (35%, n=8,170), 13 - 15 years (13%, n=3,074) and 16 – 17 years (7%, n=1,671).

On applications where the affected family member was under 17 years, the related respondent was most likely between 30 – 44 years of age. In 2013-14, of the 23,332 young affected family members, 56% (n=13,047) of their related respondents were between 30 – 44 years. Of these respondents, 84% (n=10,941) were male and 16% (n=2,106) were female.

The data used in this section can be found in table 15 of the Magistrates' Court data tables.

Affected family members across Victoria

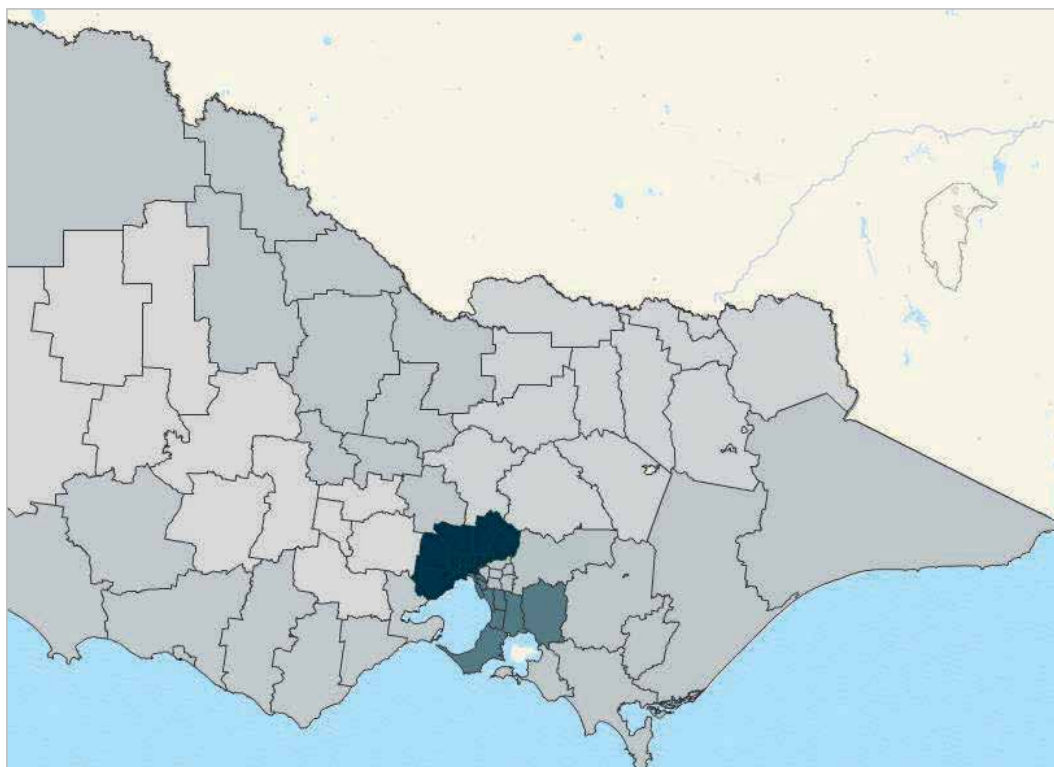
The residential postcode of the affected family member is used to determine the region in which they live.

Table 18. Affected family members by region of residence – Magistrates' Court, July 2009 to June 2014

| | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 |
|----------------------------------|---------|---------|---------|---------|---------|
| Barwon South Western Region | 3,284 | 3,157 | 3,807 | 3,893 | 4,093 |
| Eastern Metropolitan Region | 3,948 | 4,331 | 4,558 | 4,648 | 4,588 |
| Gippsland Region | 3,342 | 3,590 | 4,358 | 4,214 | 4,350 |
| Grampians Region | 2,283 | 2,403 | 2,788 | 2,694 | 2,989 |
| Hume Region | 2,555 | 2,829 | 2,774 | 3,402 | 3,357 |
| Loddon Mallee Region | 3,678 | 3,707 | 4,442 | 4,450 | 4,336 |
| North & West Metropolitan Region | 13,794 | 15,113 | 15,822 | 16,616 | 17,097 |
| Southern Metropolitan Region | 9,006 | 9,853 | 10,949 | 11,440 | 11,194 |

In the five years from July 2009 to June 2014, the numbers of affected family members who lived in the Gippsland, Grampians and Hume regions have increased the most, rising by 30.8% on average since 2009-10. Across the five years, the regions with the highest proportion of affected family members were the North & West Metropolitan and Southern Metropolitan regions, on average making up 32% and 22% respectively.

Figure 18. Affected family members by region of residence – Magistrates' Court, July 2013 to June 2014



The data used in this section can be found in table 17 of the Magistrates' Court data tables.

Interpreter requirements

For the purposes of this analysis, the interpreter requirements of the primary affected family member on an original application have been used as a culturally and linguistically diverse (CALD) indicator. In the five years from 2009-10 to 2013-14, on average 1.8% of all affected family members required an interpreter while 1.6% of all respondents required one. The languages required most frequently by respondents across the five years were Vietnamese, Mandarin and Arabic, including Lebanese. Of the 2,124 respondents requiring an interpreter, these languages made up 19% (n=83), 11% (n=56) and 10% (n=42) respectively. Of the 4,229 applicants who required an interpreter, the top languages required were Vietnamese (17%, n=736), Arabic, including Lebanese (10%, n=433) and Mandarin (8%, n=339).

The data used in this section can be found in table 18 and 19 of the Magistrates' Court data tables.

Applications heard in the Family Violence Court Division

The Family Violence Court Division of the Magistrates' Court of Victoria specialises in hearing family violence cases and operates in Heidelberg and Ballarat Magistrates' Courts (Magistrates' Court of Victoria, 2012)

Since 2009-10, the number of applications that were heard in the Family Violence Court Division has increased by 30.6% from 2,738 to 3,575 in 2013-14. This is in line with the 30.2% increase in the total number of original family violence intervention order applications made in the Magistrates' Courts.

Table 19. Finalised original applications heard in the Family Violence Court Division, by final court location – Magistrates' Court, July 2009 to June 2014

| | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 |
|--|---------|---------|---------|---------|---------|
| Heidelberg Magistrates' Court | 1,882 | 1,886 | 2,085 | 2,223 | 2,572 |
| Ballarat Magistrates' Court | 721 | 736 | 908 | 835 | 933 |
| Other Courts | 135 | 200 | 121 | 107 | 70 |
| Total applications heard in the Family Violence Court Division | 2,738 | 2,822 | 3,114 | 3,165 | 3,575 |

Note: All family violence intervention order applications heard at the Heidelberg and Ballarat Magistrates' Court are heard in the Family Violence Court Division. An application that has been heard at a Family Violence Court Division and then had the final hearing elsewhere is included in 'Other Courts'

The data used in this section can be found in table 21 of the Magistrates' Court data tables.

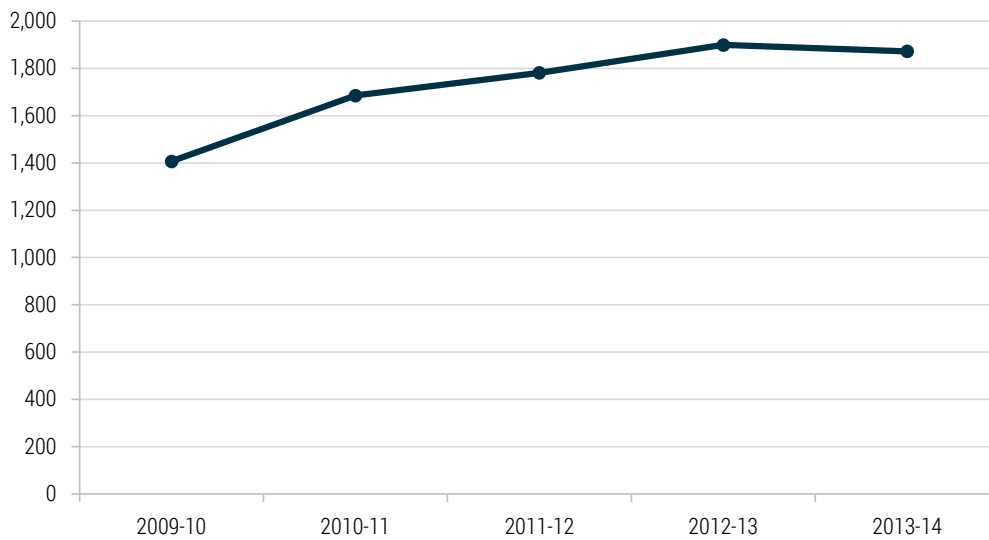
6.Children’s Court

Applications for Family Violence Intervention Orders

Applications for family violence intervention orders can be heard in the Children’s Court when either the affected family member or the respondent is under 18 years of age. An application for an intervention order can also be heard in the Children’s Court if both affected family member and respondent are adults but there is a related child protection proceeding (Children’s Court of Victoria, 2015)

From July 2009 to June 2014, the number of finalised applications for a family violence intervention order in the Children’s Court increased by 33.0%, from 1,407 in 2009-10 to 1,872 in 2013-14. The number of applications steadily increased from 2009-10 to 2012-13 before slightly dropping off in 2013-14.

Figure 19. Finalised applications for family violence intervention orders – Children’s Court, July 2009 to June 2014

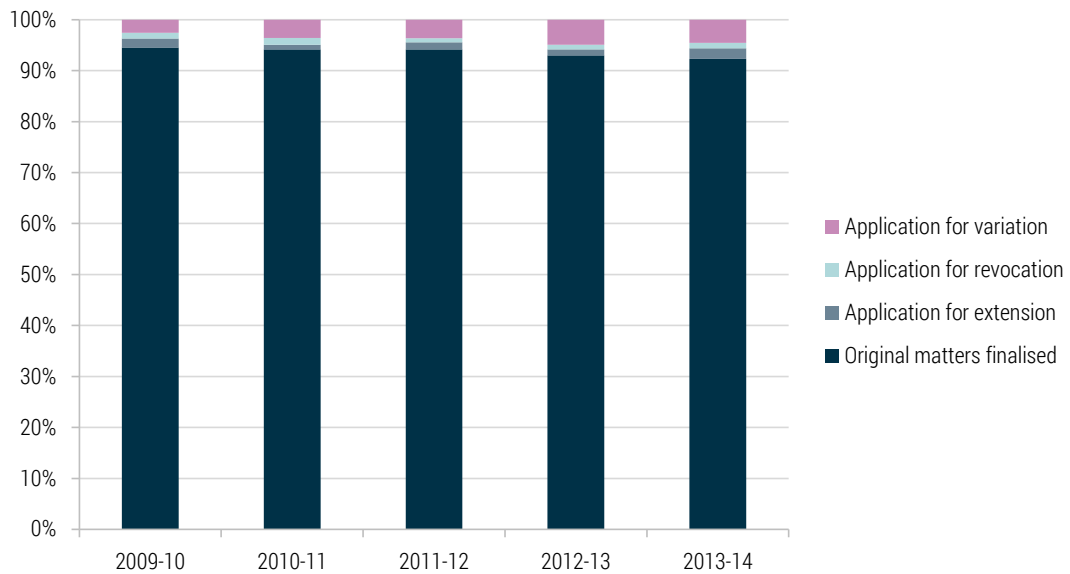


The data used in this section can be found in table 1 of the Children’s Court data tables.

Types of applications

Of the 1,872 applications finalised in 2013-14, 92% (n=1,728) were for original matters while only 5% (n=85) were applications for variation. Since 2009-10 the proportion of applications that were original matters has declined, while the proportion of applications for variation has risen slightly.

Figure 20. Proportion of finalised applications by type of application – Children’s Court, July 2009 to June 2014



The data used in this section can be found in table 1 of the Children’s Court data tables.

Mode of issue

In 2013-14, 97% (n=1,822) of finalised applications were issued by a Complaint and Summons and only 3% (n=50) were issued by a Warrant.

Table 20. Proportion of finalised applications by mode of issue – Children’s Court, July 2009 to June 2014

| | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 |
|-------------------------|---------|---------|---------|---------|---------|
| Complaint and Summons | 92% | 94% | 94% | 96% | 97% |
| Warrant | 8% | 6% | 6% | 4% | 3% |
| Total FVIO applications | 100% | 100% | 100% | 100% | 100% |

The data used in this section can be found in table 2 of the Children’s Court data tables.

Application complainant

In 2013-14, 75% (n=1,395) of all finalised applications were initiated by police, while 15% (n=279) were initiated by the affected family member and 8% (n=152) by a parent. In the five years from July 2009, the proportion of applications initiated by police increased, from 55% (n=773) of applications in 2009-10 to 75% (n=1,395) in 2013-14. There was a corresponding decrease in the proportion of applications initiated by an affected family member or a parent.

Figure 21. Proportion of finalised applications by complainant – Children's Court, July 2009 to June 2014

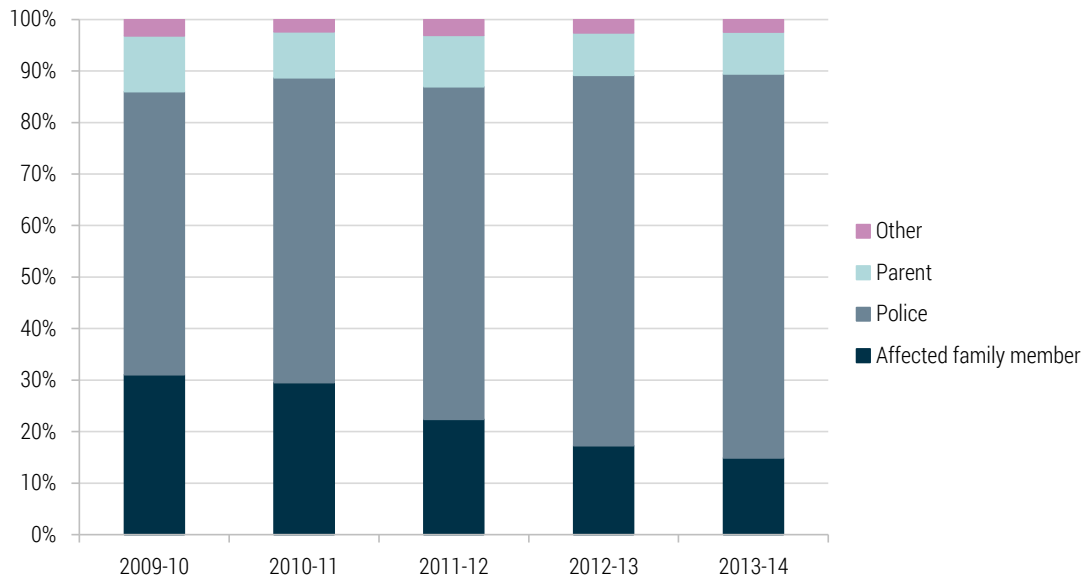


Table 21. Number of family violence intervention order applications by complainant – Children's Court, July 2009 to June 2014

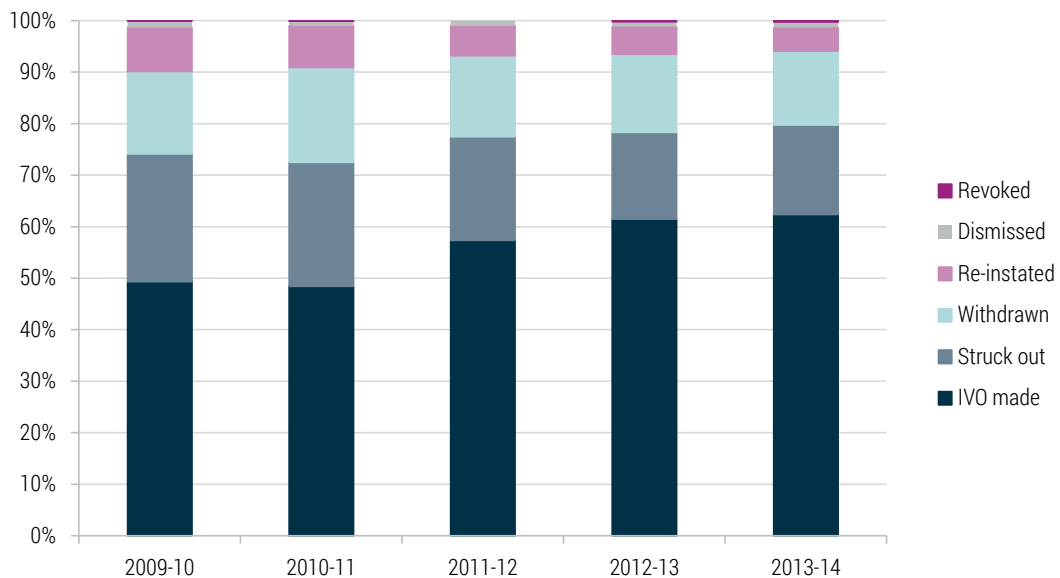
| | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 |
|---|---------|---------|---------|---------|---------|
| Affected family member | 437 | 497 | 399 | 328 | 279 |
| Police | 773 | 997 | 1,149 | 1,365 | 1,395 |
| Parent | 152 | 151 | 178 | 157 | 152 |
| Other | 45 | 40 | 55 | 49 | 46 |
| Total Family Violence Intervention Order applications | 1,407 | 1,685 | 1,781 | 1,899 | 1,872 |

The data used in this section can be found in table 3 of the Children's Court data tables.

Outcome of applications

In the five years from July 2009, the proportion of family violence intervention order applications, that resulted in an intervention order, increased from 49% (n=694) in 2009-10 to 62% (n=1,167) in 2013-14. The proportion of applications that were struck out decreased from 25% (n=349) in 2009-10 to 17% (n=325) in 2013-14.

Figure 22. Proportion of finalised applications by outcome of application – Children’s Court, July 2009 to June 2014



The proportion of outcomes of FVIO applications differs slightly depending on the gender of the respondent on the application.

Of the 1,310 original applications finalised in 2013-14 where the respondent was male, 65% (n=852) resulted in an intervention order being made, while 16% (n=211) were struck out and 14% (n=182) were withdrawn.

Where the respondent was female (n=562), 56% (n=315) of applications resulted in an intervention order, while 20% (n=114) were struck out and 15% (n=87) were withdrawn.

The data used in this section can be found in tables 4 and 5 of the Children’s Court data tables.

Demographic characteristics of affected family members and respondents

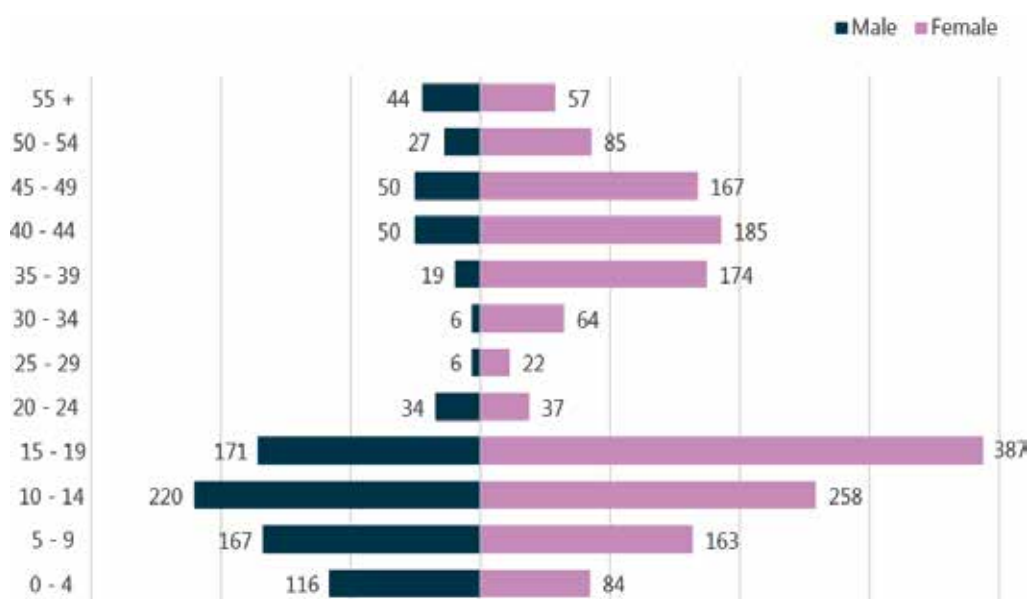
For the purposes of analysing the demographic characteristics of affected family members and respondents, this part of the report focuses on those on original applications for family violence intervention orders. This ensures that affected family members and respondents are not double counted if they had subsequent applications for variation, extension or revocation.

Gender and age of affected family members

In 2009-10 there were 2,013 affected family members on finalised original applications. In the five years since then the number of affected family members has increased by 28.8% to 2,593 in 2013-14. This is a slightly lower increase than the rise in total applications, but like both the original and total number of applications, showed the same trends. The number of affected family members increased between 2009-10 and 2012-13 before dropping slightly in 2013-14.

The proportion of male and female affected family members has remained relatively stable across the five years with an average of 35% male and 65% female affected family members. In 2013-14, there were 910 male and 1,683 female affected family members.

Figure 23. Affected family members by gender and age – Children’s Court, July 2013 to June 2014



Of the 910 male affected family members, the largest age group was 10 – 14 (n=220), years followed by 15 – 19 (n=171) years. Only 7% (n=65) of male affected family members were between the ages of 20 and 39, while those aged 40 years and older made up 19% (n=171).

Of the 1,683 female affected family members, the largest age group was 15 – 19 years (n=387). Those aged between 5 and 19 years made up 48% (n=808) of all female affected family members, while only 7% (n=123) were aged between 20 and 34 years. In the same year there were 526 female affected family members between the age of 35 and 49 years, making up 31% of all female affected family members.

The data used in this section can be found in table 9 of the Children’s Court data tables.

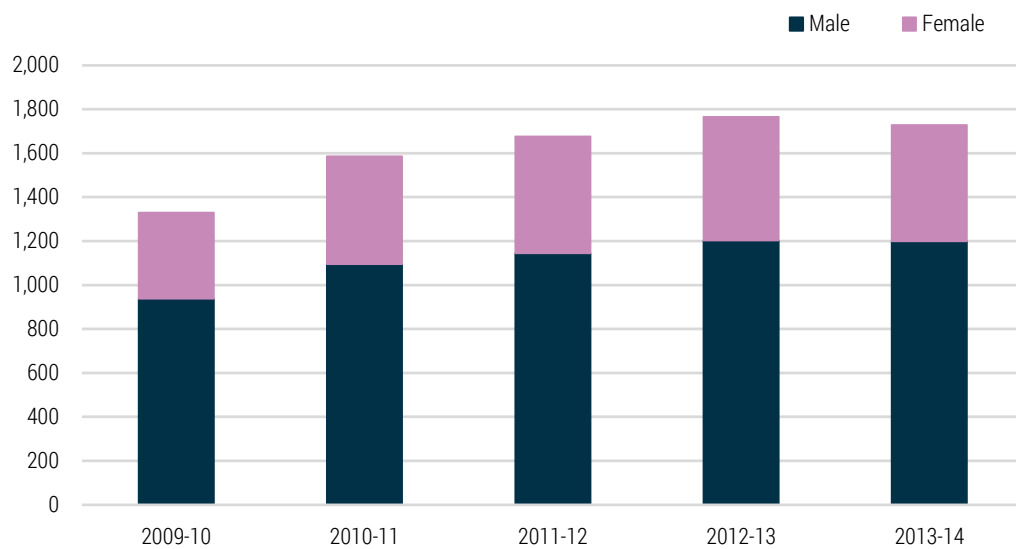
Gender and age of respondents

Each application has one corresponding respondent which means there is a one-to-one ratio between the number of applications and the number of respondents.

In 2009-10 there were 1,330 respondents on original FVIO applications. In the five years to 2013-14, this increased by 29.9% to 1,728 respondents.

Over the five years the proportion of male and female respondents has remained stable and in 2013-14, 69% (n=1,199) were male and 31% (n=529) were female.

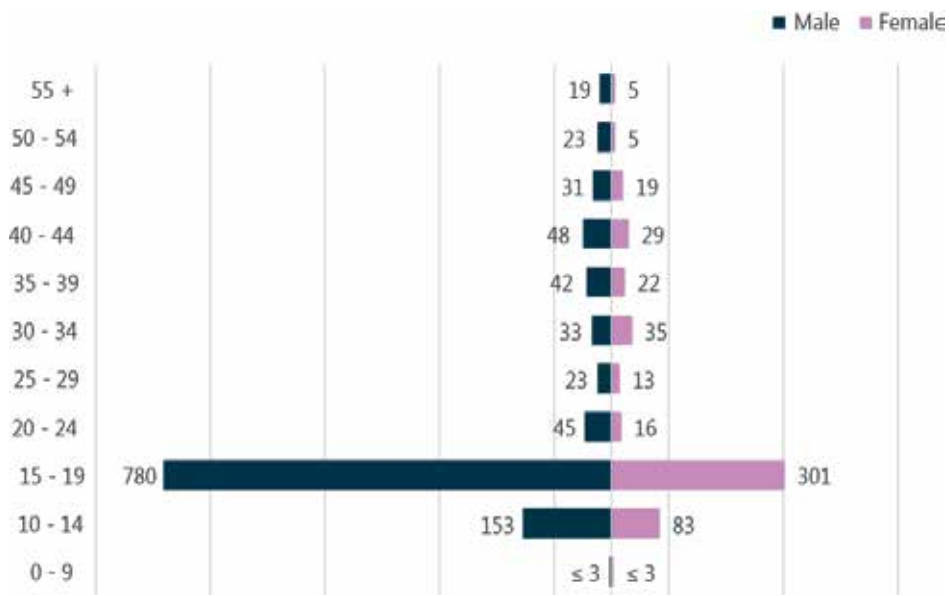
Figure 24. Respondents on finalised original FVIO applications by gender – Children’s Court, July 2009 to June 2014



Of the 1,199 male respondents on original applications in 2013-14, approximately two thirds (65%, n=780) were between 15 – 19 years old, while 13% (n=153) were 10 - 14 years old.

Similarly, the largest age groups of female respondents were 15 – 19 years and 10 – 14 years making up 57% (n=301) and 16% (n=83) respectively.

Figure 25. Gender and age of respondents – Children’s Court, July 2013 to June 2014



The data used in this section can be found in table 7 of the Children’s Court data tables.

Affected family members under 17 years old

In the five years from July 2009, the number of affected family members aged 17 years or younger increased by 20.3%, from 1,222 in 2009-10 to 1,470 in 2013-14.

Of the 1,470 young affected family members in 2013-14, 70% (n=1,028) applied for an intervention order against a male respondent while 30% (n=442) applied for an intervention order against a female respondent. The largest age groups of respondents on applications of a young affected family member were 13 – 15 years and 16 – 17 years, making up 26% (n=828) of all applications by a young affected family member.

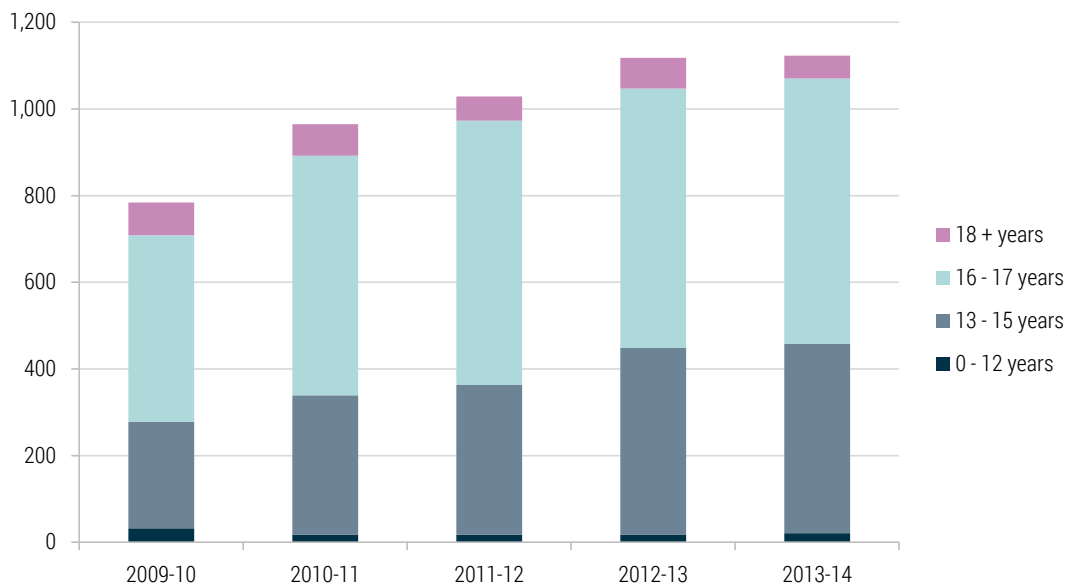
The data used in this section can be found in table 12 of the Children’s Court data tables.

Affected family members over 18 years old

In 2013-14 there were 1,123 applications with affected family members aged 18 years or older. 69% (n=778) of these applications had a male respondent, of which 298 were between 13 – 15 years old and 430 were 16 – 17 years old.

Of the 31% of applications where the respondent was female, 139 were aged 13 – 15 years and 182 were 16 – 17 years.

Figure 26. Age of respondents on applications where the affected family member was 18 years or older, Children's Court, July 2009 to June 2014



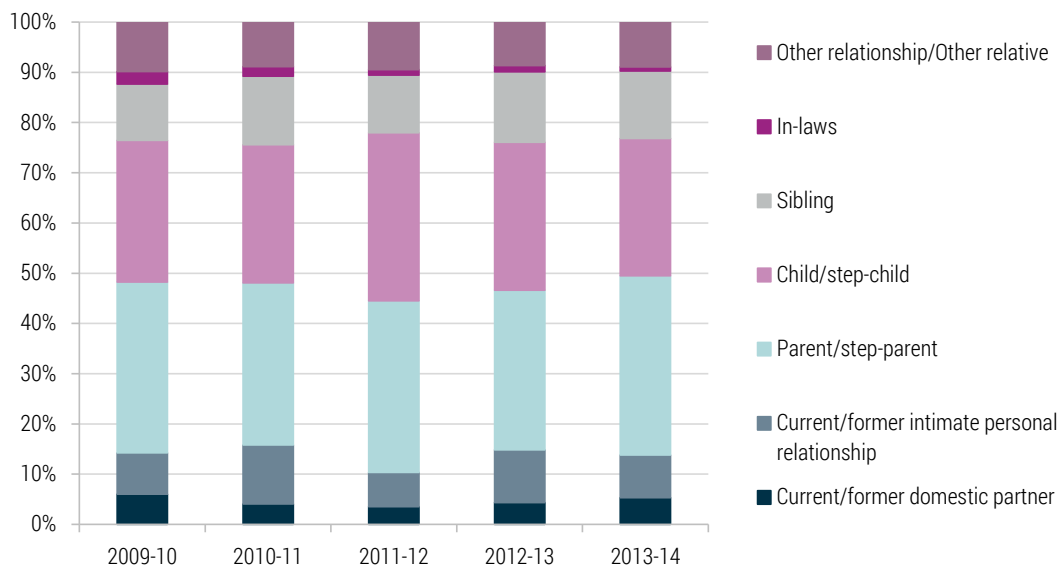
The data used in this section can be found in table 11 of the Children's Court data tables.

Relationship of affected family member to respondents

The relationship of the affected family member to the respondent is taken from the primary affected family member on an application. This means that where there are multiple affected family members on an application, the primary affected family member's relationship with the respondent will be represented.

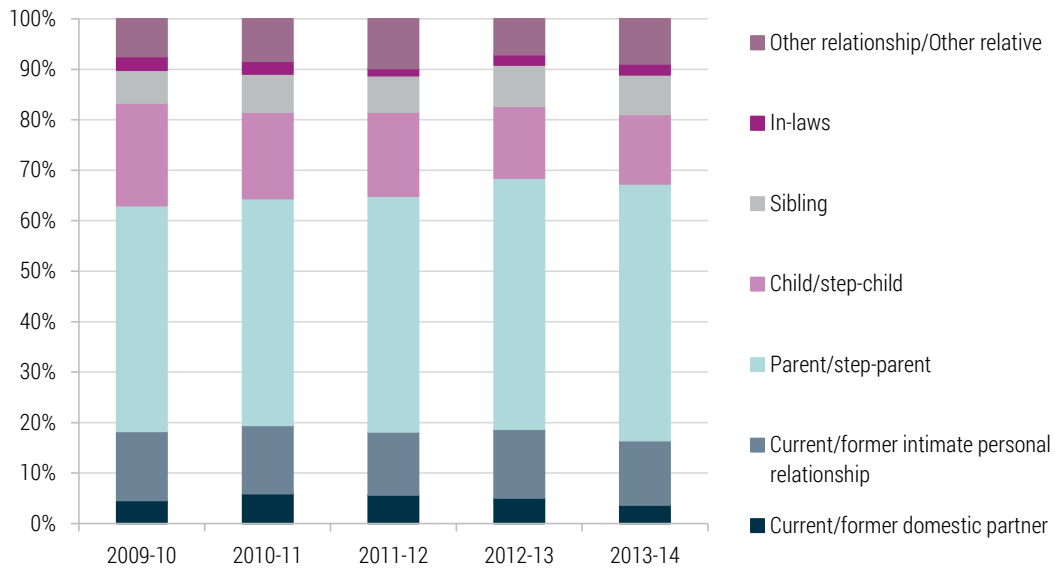
The proportion of relationship types between a primary affected family member and respondent differs depending on the gender of the affected family member.

Figure 27. Relationship between primary AFM and respondent where the AFM is male – Children's Court, July 2009 to June 2014



In 2013-14, 36% (n=168) of male affected family members were the parent/step-parent of the respondent. In 27% (n=129) of applications they were the child/step-child of the respondent and 13% (n=63) they were a sibling.

Figure 28. Relationship between the primary AFM and respondent where the AFM is female, Children's Court – July 2009 to June 2014



Where the affected family member was female, the proportion of applications where they were the parent/step-parent to the respondent is much higher than for male affected family members. In 2013-14, 51% (n=638) of female affected family members were the parent/step-parent of the respondent, and 14% (n=172) were the child/step-child of the respondent.

In 13% (n=160) of applications the female affected family member was in a current/former intimate personal relationship with the respondent.

The data used in this section can be found in table 10 of the Children's Court data tables.

Parent/step-parent affected family members of a young respondent

In 2013-14, there were 774 affected family members who were a parent/step-parent to a respondent aged 17 years or younger. On 72% (n=555) of these applications the respondent was male, while 28% (n=219) were female.

Table 22. Affected family members who were a parent/step-parent to a respondent aged 17 years or younger, by gender of the respondent – Children's Court, July 2009 to June 2014

| | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 |
|--|---------|---------|---------|---------|---------|
| Male respondent | 382 | 455 | 487 | 537 | 555 |
| Female respondent | 128 | 171 | 200 | 209 | 219 |
| Total parent/step-parent affected family members | 510 | 626 | 687 | 746 | 774 |

The data used in this section can be found in table 13 of the Children's Court data tables.

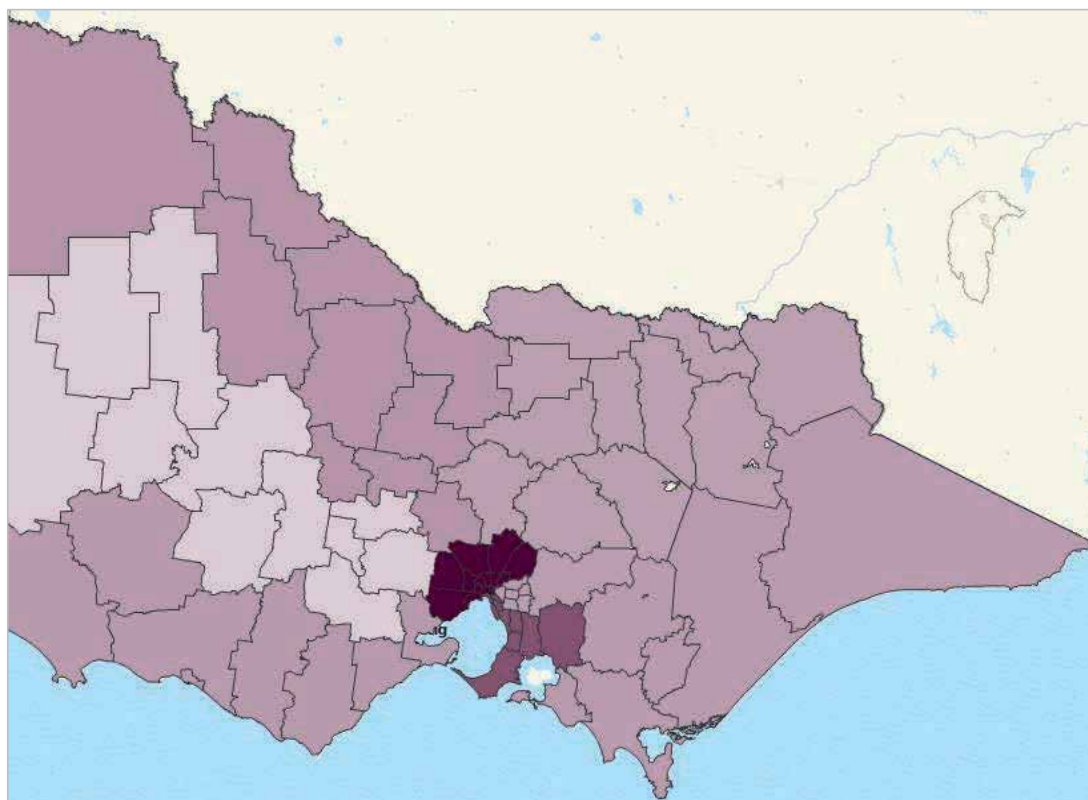
Affected family members across Victoria

Table 23. Affected family members by region – Children’s Court, July 2009 to June 2014

| | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 |
|----------------------------------|---------|---------|---------|---------|---------|
| Barwon South Western Region | 211 | 228 | 243 | 244 | 264 |
| Eastern Metropolitan Region | 198 | 203 | 203 | 224 | 254 |
| Gippsland Region | 171 | 180 | 224 | 249 | 260 |
| Grampians Region | 110 | 115 | 169 | 203 | 135 |
| Hume Region | 91 | 173 | 174 | 215 | 248 |
| Loddon Mallee Region | 212 | 229 | 249 | 262 | 276 |
| North & West Metropolitan Region | 598 | 750 | 795 | 755 | 644 |
| Southern Metropolitan Region | 415 | 481 | 472 | 488 | 470 |

In 2013-14, the regions with the highest proportion of affected family members were the North & West Metropolitan and Southern Metropolitan regions, making up 25% (n=644) and 18% (n=470) respectively.

Figure 29. Affected family members by region – Children’s Court, July 2013 to June 2014



The data used in this section can be found in table 14 of the Children’s Court data tables.

7. Specialist Family Violence Courts Services

Applicants and respondents accessing a specialist court support worker

Both applicants and respondents are given the opportunity to access a specialist family violence court support worker. The following section focuses on clients who have accessed a specialist court support worker in the five years from July 2009 to June 2014.

It should be noted that although there are specific support workers for applicants and respondents, it is possible for an applicant to see a respondent support worker and vice versa.

Applicants accessing a support worker

Between 2009-10 and 2011-12 the number of applicants accessing a support worker almost doubled (increase of 98.1%), from 1,238 in 2009-10 to 2,453 in 2011-12. Since then, the number of applicants who saw a support worker dropped in 2012-13 to 2,188 and then increased again in 2013-14 to 2,337.

Table 24. Applicants accessing a specialist court support worker by court location – Specialist Family Violence Courts, July 2009 to June 2014

| | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 |
|------------------|---------|---------|---------|---------|---------|
| Ballarat | 198 | 349 | 480 | 413 | 461 |
| Frankston | 317 | 497 | 572 | 608 | 555 |
| Heidelberg | 6 | 390 | 358 | 281 | 350 |
| Melbourne | 322 | 553 | 693 | 572 | 605 |
| Sunshine | 308 | 367 | 298 | 244 | 259 |
| Other courts | 88 | 74 | 53 | 70 | 106 |
| Total applicants | 1,238 | 2,229 | 2,453 | 2,188 | 2,337 |

Note: Other courts includes Moorabbin and Werribee

Of those 2,337 applicants in 2013-14, 26% (n=605) accessed a support worker at the Melbourne Magistrates' Court, 24% (n=555) accessed a support worker at the Frankston Magistrates' Court and 20% (n=461) accessed a support worker at the Ballarat Magistrates' Court.

The data used in this section can be found in table 1 of the Specialist Family Violence Courts Services data tables.

Respondents accessing a support worker

The number of respondents who accessed a specialist court support worker increased considerably between 2009-10 and 2011-12, from 47 respondents in 2009-10 to 708 in 2011-12. Prior to this period, the number of respondent support workers and the recording of clients who had seen them was quite low. This is reflected in the large increase in the years following. The number of respondents who accessed a support worker then dropped off in 2012-13, before increasing to 715 in 2013-14.

Table 25. Respondents accessing a specialist court support worker by court location – Specialist Family Violence Courts, July 2009 to June 2014

| | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 |
|-------------------|---------|---------|---------|---------|---------|
| Ballarat | 40 | 220 | 324 | 296 | 342 |
| Heidelberg | 2 | 282 | 322 | 254 | 346 |
| Melbourne | 2 | 2 | 47 | 36 | 8 |
| Other courts | 4 | 10 | 15 | 9 | 19 |
| Total respondents | 47 | 516 | 708 | 594 | 715 |

Note: Other courts includes Moorabbin, Sunshine and Werribee

Of those 715 respondents, 48% (n=342) accessed a support worker at the Ballarat Magistrates' Court, while another 48% (n=346) accessed one at the Heidelberg Magistrates' Court.

The data used in this section can be found in table 2 of the Specialist Family Violence Courts Services data tables.

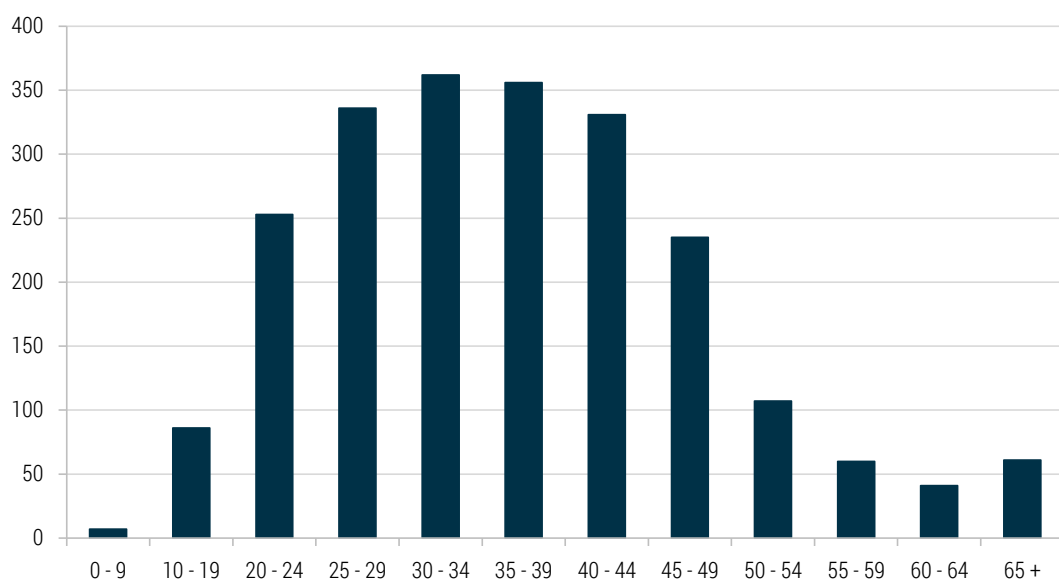
Demographics of applicants and respondents accessing a support worker

Applicants accessing a support worker

In 2013-14, there were 2,337 applicants who accessed a support worker at a Specialist Family Violence Court. Of those applicants, 97% (n=2,257) were female and 3% (n=80) were male.

Of the female applicants who accessed a support worker, the largest age groups were between 25 and 44 years old, making up 62% (n=1,385) of all female applicants. In the same year there were 93 applicants under 19 years of age and 102 over 60 years of age.

Figure 30. Age of female applicants accessing a support worker – Specialist Family Violence Courts, July 2013 to June 2014



Of those applicants in 2013-14 who were male (n=80), the largest age group was 60 years and over (n=19), followed by 30 – 39 years (n=15) and 40 – 49 years (n=14).

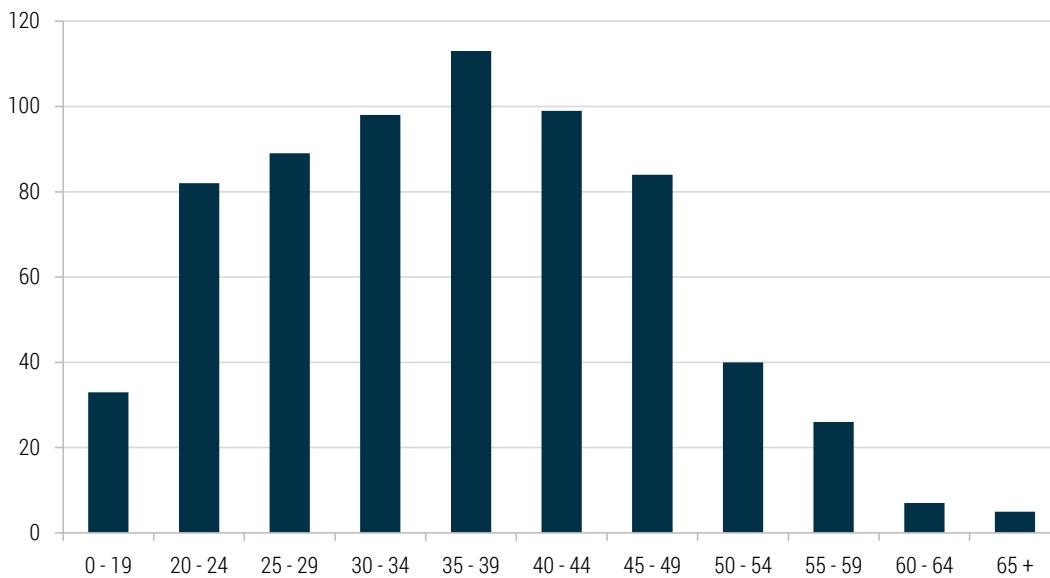
The data used in this section can be found in table 3 of the Specialist Family Violence Courts Services data tables.

Respondents accessing a support worker

In 2013-14, there were 714 respondents who accessed a support worker, of which 95% (n=677) were male and 5% (n=37) were female.

The largest age group of male respondents, who accessed a support worker in 2013-14, was 35 – 39 years, making up 17% (n=113) of total male respondents. This was followed by those aged 40 – 44 years (15%, n=99) and 30 – 34 years (15%, n=98). In the same year, there were 33 male respondents under 19 years of age.

Figure 31. Age of male respondents accessing a support worker – Specialist Family Violence Courts, July 2013 to June 2014



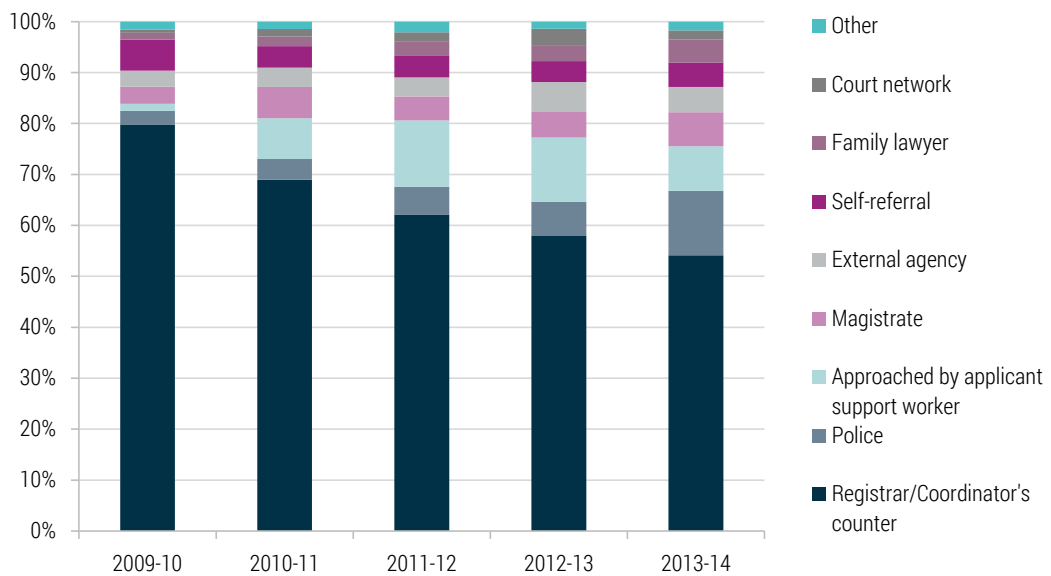
The data used in this section can be found in table 4 of the Specialist Family Violence Courts Services data tables.

Source of referrals to support worker

The majority of applicants were referred to the specialist court support worker from the registrar/coordinator's counter. 54% (n=1,265) of all applicants were referred from the registrar/coordinator's counter.

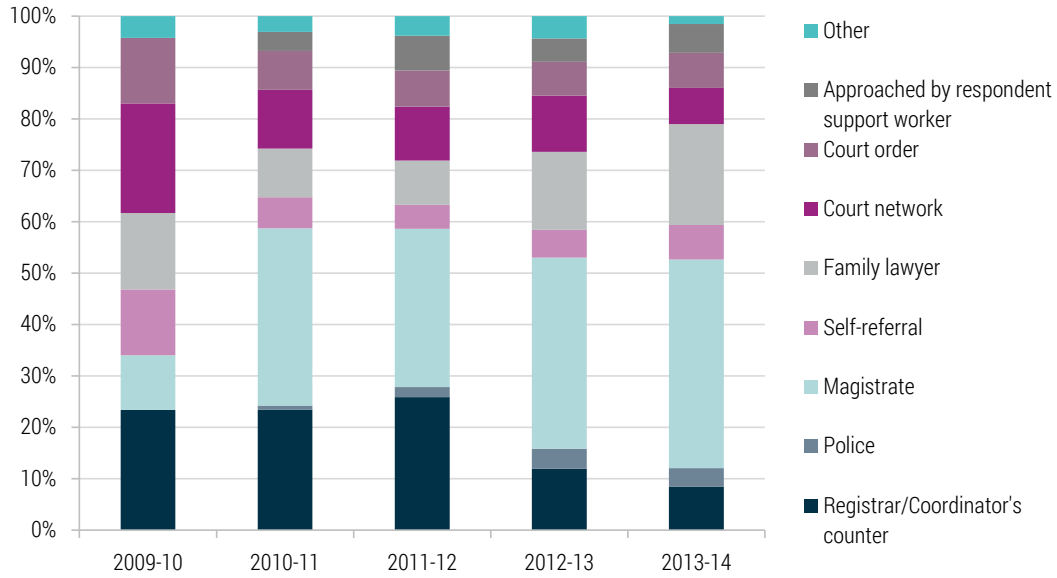
13% (n=296) of applicants who saw a support worker were referred by police, 9% (n=204) were approached by a support worker, 7% (n=156) were referred from a magistrate and 5% (n=116) were referred from an external agency.

Figure 32. Proportion of applicants accessing a specialist court support worker by referral source – Specialist Family Violence Courts, July 2009 to June 2014



The referral source of respondents was quite different to that of applicants in 2013-14, with 41% (n=290) referred by a magistrate and 20% (n=140) referred to the support worker by a family lawyer. Only 8% (n=60) were referred from the registrar/coordinator's counter.

Figure 33. Proportion of respondents by referral source – Specialist Family Violence Courts, July 2009 to June 2014



The data used in this section can be found in tables 5 and 6 of the Specialist Family Violence Courts Services data tables.

Specialist courts across Victoria

Of the 2,337 applicants who accessed a support worker in 2013-14, almost half (44%, n=1,032) lived in the North & West Metropolitan region. Of these applicants, 339 accessed the support worker at the Melbourne Magistrates' Court, 329 at the Heidelberg Magistrates' Court and 250 at Sunshine Magistrates' Court.

31% of applicants (n=718) lived in the Southern Metropolitan region, and the majority of these applicants (75%, n=540) accessed a support worker at the Frankston Magistrates' Court and 23% (n=162) accessed a support worker at the Melbourne Magistrates' Court.

In 2013-14 there were 23 applicants with an unknown residential postcode.

Table 26. Applicants who accessed a specialist court support worker by region of residence and court where they saw the support worker – Specialist Family Violence Courts, July 2009 to June 2014

| | | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 |
|----------------------------------|-----------------------|--------------|--------------|--------------|--------------|--------------|
| Barwon South Western Region | Melbourne | 42 | 89 | 98 | 82 | 79 |
| | Heidelberg | 0 | 24 | 17 | 15 | 13 |
| | Other court locations | 4 | 7 | 2 | 4 | 4 |
| | <i>Sub total</i> | <i>46</i> | <i>120</i> | <i>117</i> | <i>101</i> | <i>96</i> |
| Grampians Region | Ballarat | 187 | 336 | 466 | 391 | 442 |
| | Other court locations | 6 | 8 | 4 | 3 | 8 |
| | <i>Sub total</i> | <i>193</i> | <i>344</i> | <i>470</i> | <i>394</i> | <i>450</i> |
| North & West Metropolitan Region | Melbourne | 148 | 259 | 327 | 268 | 339 |
| | Heidelberg | 4 | 359 | 337 | 258 | 329 |
| | Sunshine | 296 | 353 | 293 | 238 | 250 |
| | Werribee | 86 | 71 | 51 | 68 | 99 |
| | Other court locations | 4 | 9 | 10 | 9 | 15 |
| | <i>Sub total</i> | <i>538</i> | <i>1,051</i> | <i>1,018</i> | <i>841</i> | <i>1,032</i> |
| Southern Metropolitan Region | Frankston | 316 | 488 | 559 | 595 | 540 |
| | Melbourne | 123 | 187 | 239 | 188 | 162 |
| | Other court locations | 4 | 5 | 4 | 13 | 16 |
| | <i>Sub total</i> | <i>443</i> | <i>680</i> | <i>802</i> | <i>796</i> | <i>718</i> |
| Eastern Metropolitan Region | All court locations | 6 | 6 | 4 | 3 | 7 |
| Hume Region | All court locations | 1 | 5 | 6 | 5 | 3 |
| Loddon Mallee Region | All court locations | 7 | 8 | 5 | 7 | 5 |
| Gippsland Region | All court locations | 1 | 4 | 2 | 4 | 3 |
| <i>Total</i> | | <i>1,238</i> | <i>2,229</i> | <i>2,453</i> | <i>2,188</i> | <i>2,337</i> |

Note: Total figures include affected family members without a recorded postcode

The data used in this section can be found in table 9 of the Specialist Family Violence Courts Services data tables.

Disability status of applicants and respondents accessing a support worker

In the five years from July 2009, the proportion of applicants who identified as having a disability fluctuated between 9% and 12% of all applicants who had accessed a support worker. In 2013-14, just under a quarter of applicants (23%, n=541) did not disclose whether they had a disability, while 11% (n=264) identified as having a disability and 66% (n=1,532) said they did not have a disability.

Between July 2009 and June 2014, the proportion of respondents who identified as having a disability has also fluctuated, between 17% and 29% of all respondents who accessed a specialist family violence court support worker. In 2013-14, 6% (n=46) of respondents did not disclose their disability status, while 22% (n=155) identified as having a disability and 72% (n=513) did not have a disability.

The data used in this section can be found in table 11 of the Specialist Family Violence Courts Services data tables.

Interpreter requirements of clients accessing a support worker

In the five years from July 2009, the proportion of applicants who required an interpreter ranged between 3% and 6% of all applicants accessing a support worker. In 2013-14, 5% (n=118) of applicants were recorded as requiring an interpreter when seeing the support worker.

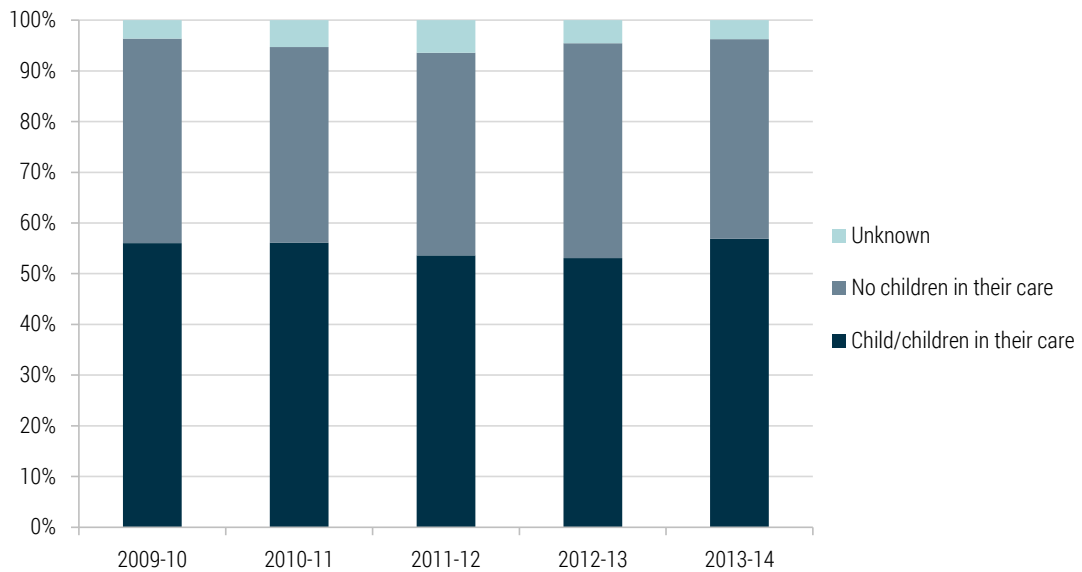
Between 2009-10 and 2013-14, the proportion of respondents who needed an interpreter fluctuated between 0% and 4%. In 2013-14, just 3% (n=24) of respondents required an interpreter.

The data used in this section can be found in tables 12 and 13 of the Specialist Family Violence Courts Services data tables.

Applicants with children in their care

The proportion of applicants who had a child or children in their care at the time of their session with a support worker has remained relatively stable over the five years from July 2009 to June 2014. In 2013-14, 57% (n=1,329) of applicants had at least one child in their care at the time of their session, while 39% (n=920) did not have a child in their care.

Figure 34. Proportion of applicants who had a child/children in their care during their session with a support worker – Specialist Family Violence Courts, July 2013 to June 2014



The data used in this section can be found in table 14 of the Specialist Family Violence Courts Services data tables.

8. Integrated Reporting Information System (IRIS) – Department of Health and Human Services

Data in this section is extracted from the Integrated Reporting Information System (IRIS) and includes information on women and children receiving family violence services as well as men accessing a behaviour change program. Other agencies that report through IRIS are excluded from this analysis. This analysis includes all cases that have been recorded by the agency. A case may be closed at any time from when the client presents or is referred to an agency, and they may not complete all service activities.

In the 2013-14 financial year, 25,786 individual clients presented to a men's behaviour change program or women and children's family violence service agency. These 25,786 clients generated 26,268 cases for these agencies and presented with 30,933 separately identified issues. In the five years from July 2009, there has been a substantial increase in the number of family violence clients accessing these services.

Cases and issues recorded by IRIS agencies

The number of cases recorded by IRIS agencies increased by 218.0% from 8,229 in 2009-10 to 26,168 in 2013-14. Of these cases, 97% (n=25,357) had at least one family violence issue recorded. 1% (n=251) of cases did not have a specific family violence issue recorded and 2% (n=560) had no recorded issue.

Those cases that presented without a specific family violence issue had other relevant issues recorded including, financial, housing & gambling issues, medical, alcohol & drug issues, disability & mental health issues, child protection issues, sexual assault and sexual abuse issues, adult pregnancy and other issues.

Table 27. Cases recorded by IRIS agencies by issue recorded – IRIS, July 2009 to June 2014

| | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 |
|---|---------|---------|---------|---------|---------|
| Cases where at least one family violence issue was recorded | 7,827 | 18,131 | 21,278 | 21,670 | 25,357 |
| Cases where no family violence issue was recorded | 98 | 169 | 257 | 280 | 251 |
| Cases where no issue was recorded | 304 | 287 | 295 | 301 | 560 |
| Total cases | 8,229 | 18,587 | 21,830 | 22,251 | 26,168 |

From the 26,168 cases in 2013-14, there were a total of 30,933 issues recorded by IRIS agencies. The following table outlines the number of issues recorded in the five years from July 2009 by the type of issue.

Table 28. Issues presented to men's behaviour change programs and women and children's family violence services – IRIS, July 2009 to June 2014

| | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 |
|---------------------------------------|---------|---------|---------|---------|---------|
| Family violence issue | 9,279 | 22,074 | 25,650 | 26,904 | 30,301 |
| Medical, alcohol or drug issues | 117 | 298 | 303 | 170 | 157 |
| Financial, housing, gambling issues | 8 | 21 | 116 | 141 | 154 |
| Disability and mental health issue | 195 | 280 | 264 | 179 | 132 |
| Child protection issue | 118 | 169 | 169 | 77 | 99 |
| Sexual assault and sexual abuse issue | 30 | 69 | 55 | 58 | 48 |
| Other issues | 3 | 20 | 84 | 47 | 42 |
| Total issues | 9,750 | 22,931 | 26,641 | 27,576 | 30,933 |

Of the 26,168 cases recorded by IRIS agencies in 2013-14, just 2% (n=560) did not have an issue recorded, while 85% (n=22,180) had only one issue recorded, 9% (n=2,380) had two issues recorded and 4% (n=1,048) had more than 3 issues recorded.

The data used in this section can be found in tables 1, 2 and 3 of the IRIS data tables.

Source of referral for family violence related cases

The majority of cases recorded by IRIS agencies were referred to an agency through the Men's Behavioural Change central intake – L17 form which made up 69% (n=17,522) of all referral sources in 2013-14. 8% (n=2,038) of cases in 2013-14 were self-referred or referred by a family member or friend. 7% (n=1,742) were referred from a community welfare or local government welfare service and 6% (n=1,471) were referred from police.

Table 29. Source of referral for cases with at least one family violence issue – IRIS, July 2009 to June 2014

| | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 |
|--|---------|---------|---------|---------|---------|
| Men's Behavioural Change central intake - L17 form | 181 | 7,704 | 13,369 | 14,261 | 17,522 |
| Self, family friend | 2,078 | 2,228 | 2,151 | 2,044 | 2,038 |
| Community welfare and local government welfare | 1,575 | 1,817 | 1,752 | 1,740 | 1,742 |
| Police | 2,375 | 4,456 | 2,114 | 1,419 | 1,471 |
| DHHS | 716 | 706 | 692 | 718 | 843 |
| Courts | 281 | 312 | 323 | 430 | 407 |
| Corrections | 4 | 9 | 135 | 250 | 270 |
| Men's Referral Service | 39 | 144 | 81 | 216 | 482 |
| Medical and hospital agencies | 70 | 106 | 109 | 104 | 96 |
| School (primary and secondary) | 46 | 70 | 57 | 85 | 88 |
| Other referral source | 451 | 569 | 487 | 392 | 379 |
| Not stated | 11 | 10 | 8 | 11 | 19 |
| Total family violence related cases | 7,827 | 18,131 | 21,278 | 21,670 | 25,357 |

The data used in this section can be found in table 4 of the IRIS data tables.

Point of closure

In 2013-14, 70% (n=17,741) of cases were closed at intake, 8% (n=2,084) were closed at the completion of all service plan activities, 7% (n=1,807) were closed prior to assessment and 5% (n=1,354) were closed after assessment but before the service plan was complete.

Table 30. Number of family violence related cases by point of closure – IRIS, July 2009 to June 2014

| | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 |
|--|---------|---------|---------|---------|---------|
| After assessment, before service plan complete | 1,702 | 1,857 | 1,577 | 1,590 | 1,354 |
| At assessment | 415 | 409 | 346 | 247 | 295 |
| At completion of all service plan activities | 1,944 | 2,387 | 2,597 | 2,452 | 2,084 |
| At intake | 2,096 | 9,650 | 13,806 | 14,228 | 17,741 |
| Not required for this case | 14 | 64 | 156 | 256 | 267 |
| Not stated | 539 | 1,866 | 1,017 | 1,378 | 1,809 |
| Prior to assessment | 1,117 | 1,898 | 1,779 | 1,519 | 1,807 |
| Total family violence related cases | 7,827 | 18,131 | 21,278 | 21,670 | 25,357 |

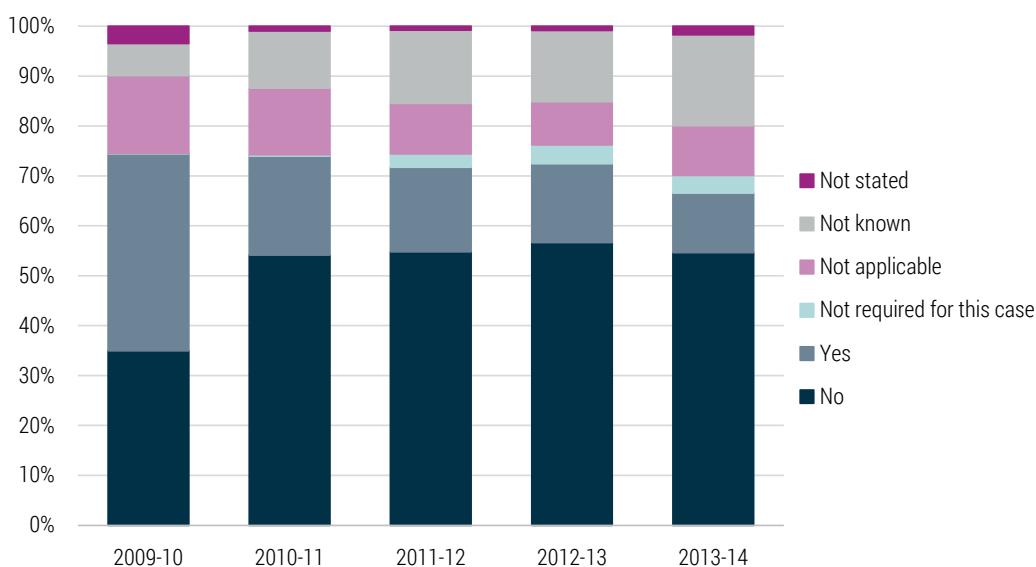
The data used in this section can be found in table 5 of the IRIS data tables.

Safety plans & risk assessment completed

In the 2013-14 financial year, just 12% (n=3,025) of family violence related cases had a safety plan completed. This is a much lower proportion than in 2009-10, when 40% (n=3,093) of cases had one completed. In 2013-14, 10% (n=2,524) were not applicable for a safety plan and in 18% (n=4,613) of cases it was not known whether a plan was completed.

Since 2009-10, the proportion of cases in which a safety plan was completed has decreased each year from 2009-10 to 2013-14.

Figure 35. Proportion of cases in which a safety plan was completed – IRIS, July 2009 to June 2014



In 83% (n=20,939) of cases in 2013-14, the level of risk was unable to be determined by the agency. In 8% (n=1,935) of cases it was determined that there was a low level of risk, in 4% (n=993) there was a medium level and in 3% (n=831) of cases there was deemed to be a high level of risk.

The data used in this section can be found in tables 6 and 7 of the IRIS data tables.

Intervention order at referral

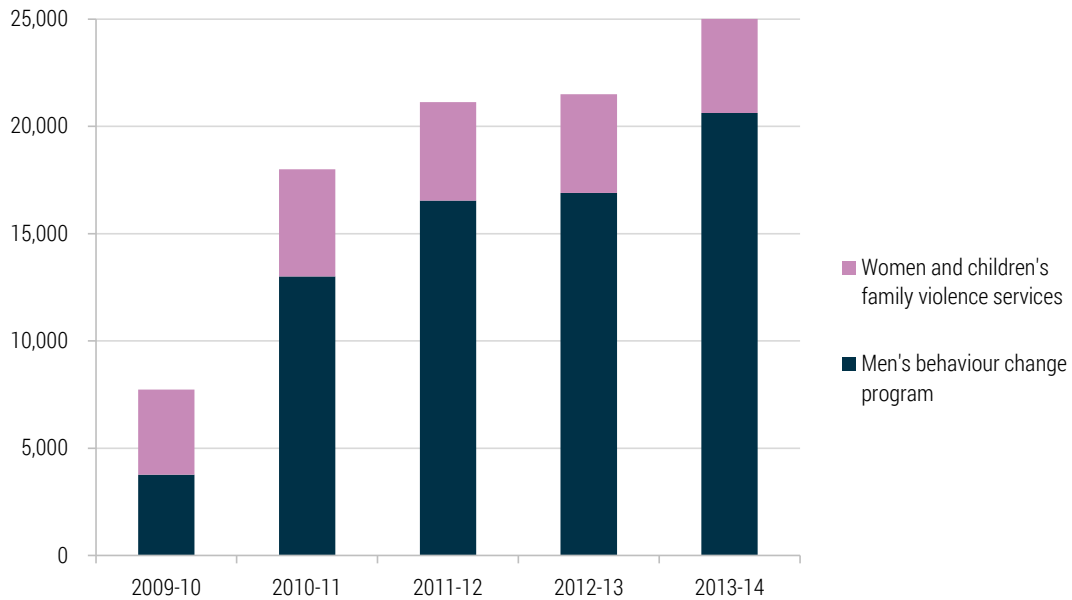
Of the 25,357 family violence related cases in 2013-14, only 1% (n=369) of them were recorded as having an intervention order in place at referral. 98% (n=24,743) of the cases did not state whether there was an intervention order in place at referral.

The data used in this section can be found in table 8 of the IRIS data tables.

Clients presenting to IRIS agencies

Family violence related clients accessing men's behaviour change programs and women and children's family violence services

Figure 36. Clients presenting to IRIS agencies by type of program – IRIS, July 2009 to June 2014



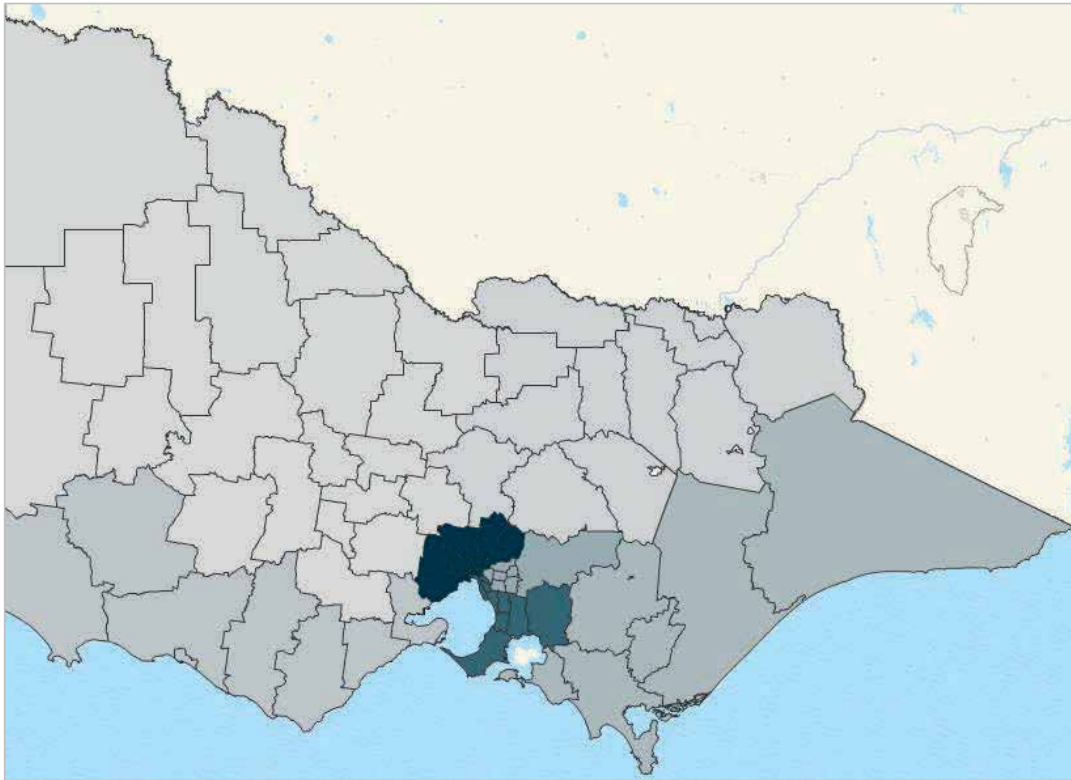
In the five years from July 2009, the number of clients accessing men's behaviour change programs has increased by 446.9%, from 3,771 in 2009-10 to 20,624 in 2013-14.

The number of clients accessing women and children's family violence services has also increased in the five years by 11.7%, from 3,963 in 2009-10 to 4,425 in 2013-14.

The data used in this section can be found in table 9 of the IRIS data tables.

Clients accessing men's behaviour change programs across Victoria

Figure 37. Clients accessing men's behaviour change programs by client's region of residence – IRIS, July 2013 to June 2014



Across Victoria, the number of clients accessing a men's behaviour change program is highest in the metropolitan regions, with 33% (n=6,831) of clients in 2013-14 residing in the North & West Metropolitan region, 25% (n=5,080) in the Southern Metropolitan region and 11% (n=2,333) in the Eastern Metropolitan region.

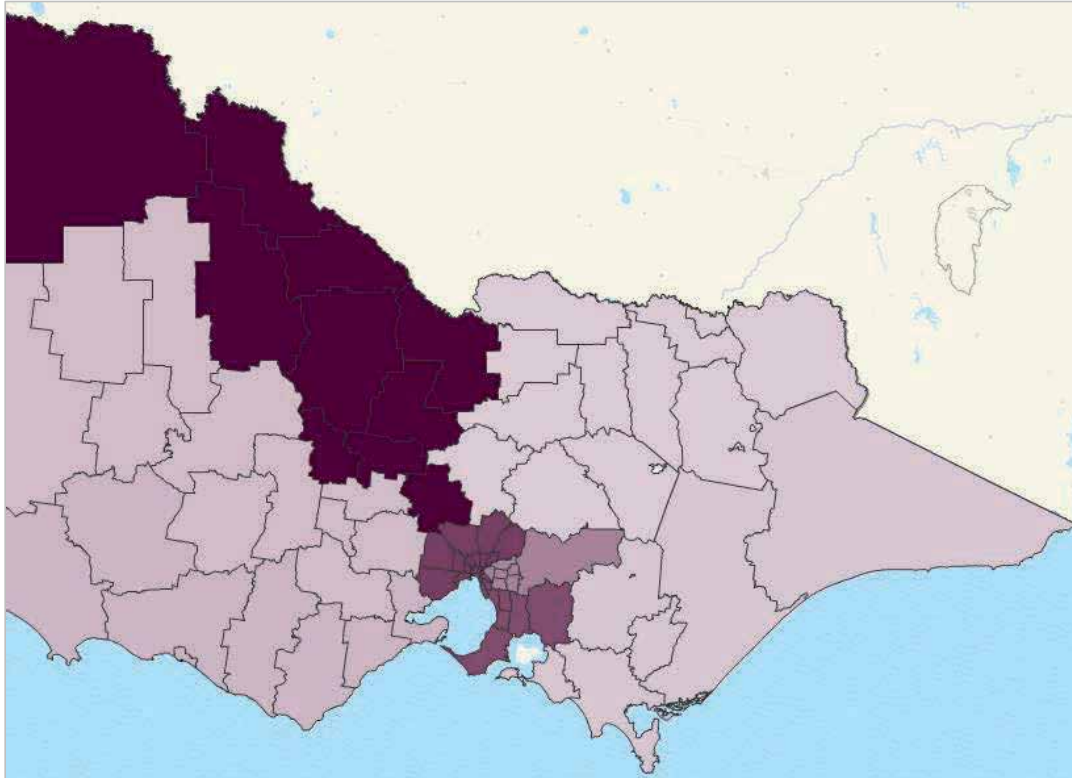
Table 31. Clients accessing men's behaviour change programs by client's region of residence – IRIS, July 2009 to June 2014

| | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 |
|----------------------------------|---------|---------|---------|---------|---------|
| Barwon South Western Region | 179 | 740 | 670 | 640 | 1,363 |
| Eastern Metropolitan Region | 282 | 1,016 | 1,100 | 1,459 | 2,333 |
| Gippsland Region | 587 | 1,228 | 1,894 | 1,685 | 1,842 |
| Grampians Region | 502 | 804 | 748 | 598 | 713 |
| Hume Region | 172 | 708 | 860 | 768 | 929 |
| Loddon Mallee Region | 257 | 982 | 1,353 | 1,111 | 774 |
| North & West Metropolitan Region | 602 | 4,315 | 5,621 | 6,196 | 6,831 |
| Southern Metropolitan Region | 1,153 | 3,012 | 4,050 | 4,120 | 5,080 |

The data used in this section can be found in table 15 of the IRIS data tables.

Clients accessing women and children's family violence services across Victoria

Figure 38. Clients accessing women and children's family violence services by client's region of residence – IRIS, July 2013 to June 2014



In the 2013-14 financial year, just under a quarter (24%, n=1,041) of all clients accessing a women and children's family violence service lived in the Loddon Mallee region. Approximately half of all clients lived in a metropolitan region with 19% (n=843) in the North & West Metropolitan region, 18% (n=789) in the Southern Metropolitan region and 12% (n=549) in the Eastern Metropolitan region.

The number of clients accessing a women and children's family violence service in the Gippsland and Southern Metropolitan regions has decreased in the five years between 2009-10 and 2013-14. In the same period, the number of clients in the Hume region increased from 172 in 2009-10 to 929 in 2013-14.

Table 32. Clients accessing women and children's family violence services by client's region of residence – IRIS, July 2009 to June 2014

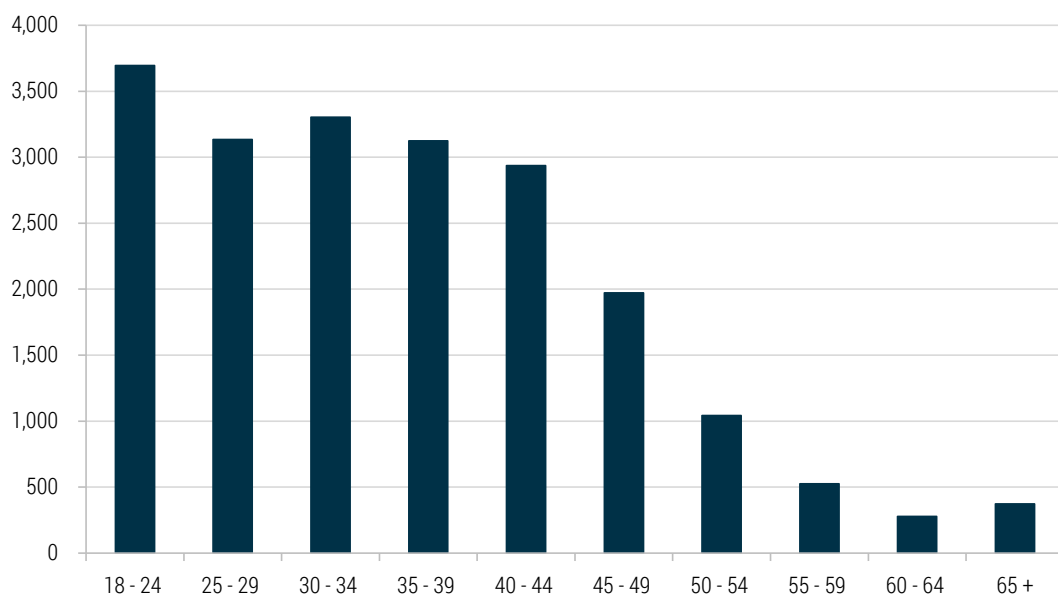
| | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 |
|----------------------------------|---------|---------|---------|---------|---------|
| Barwon South Western Region | 179 | 740 | 670 | 640 | 1,363 |
| Eastern Metropolitan Region | 282 | 1,016 | 1,100 | 1,459 | 2,333 |
| Gippsland Region | 587 | 1,228 | 1,894 | 1,685 | 1,842 |
| Grampians Region | 502 | 804 | 748 | 598 | 713 |
| Hume Region | 172 | 708 | 860 | 768 | 929 |
| Loddon Mallee Region | 257 | 982 | 1,353 | 1,111 | 774 |
| North & West Metropolitan Region | 602 | 4,315 | 5,621 | 6,196 | 6,831 |
| Southern Metropolitan Region | 1,153 | 3,012 | 4,050 | 4,120 | 5,080 |

The data used in this section can be found in table 16 of the IRIS data tables.

Age of men accessing men's behaviour change programs

Of the 20,624 clients accessing a behaviour change program in 2013-14, 99% (n=20,383) had a recorded age. The largest age group of men was 18 – 24 years, making up 18% (n=3,695) of clients, followed by those aged 30 – 34 years, which made up 16% of clients.

Figure 39. Age of men accessing men's behaviour change programs – IRIS, July 2013 to June 2014



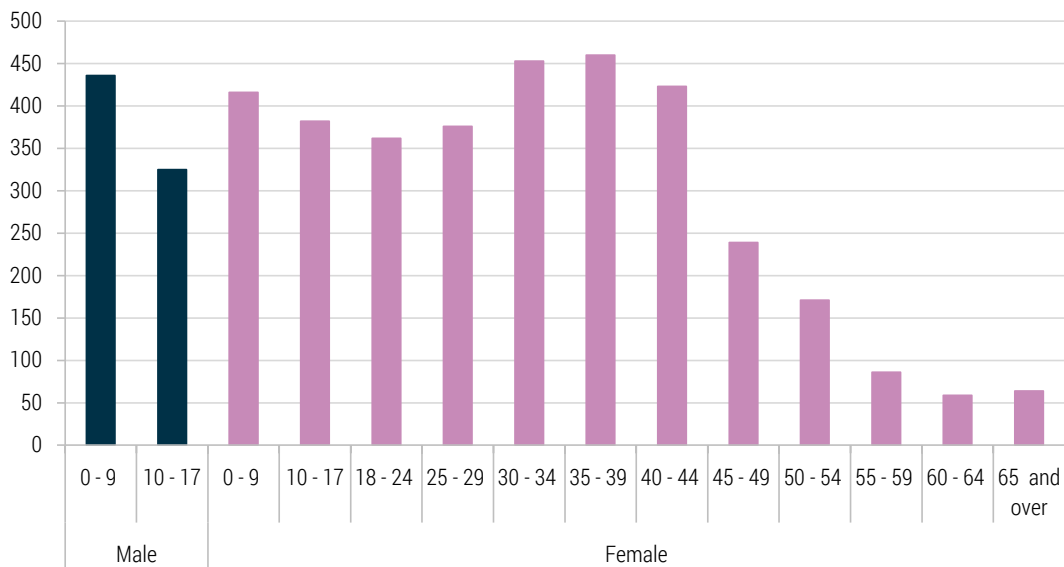
The data used in this section can be found in table 11 of the IRIS data tables.

Demographics of clients accessing women and children's family violence services

In 2013-14, there were 2,693 female adult clients who accessed a women and children's family violence service. Of these clients, the largest age groups were 30 – 34, 35 – 39 and 40 – 44 years. Together these age groups made up half (50%, n=1,336) of all female adult clients.

In the same year there were 1,559 clients under 17 years of age, of which, 49% (n=761) were male and 51% (n=798) were female.

Figure 40. Gender and age of clients accessing women and children's family violence services – IRIS, July 2009 to June 2014



The data used in this section can be found in table 10 of the IRIS data tables.

Country of birth

In 2013-14, the country of birth of 77% (n=15,892) of men accessing a behaviour change program could not be ascertained as the client did not meet with the agency. 20% (n=4,166) of clients identified that they were born in Australia and just 3% (n=562) identified that they were born in another country.

Of the 4,425 clients accessing a women and children's family violence service in 2013-14, 84% (n=3,731) identified that they were born in Australia, while 13% (n=570) identified that they were born in another country. Only 3% (n=120) of clients' country of birth could not be ascertained.

The data used in this section can be found in table 13 of the IRIS data tables.

Indigenous status

In 2013-14, the indigenous status of 58% (n=11,940) of clients accessing a men's behaviour change program could not be ascertained. 40% (n=8,223) of clients identified as neither Aboriginal nor Torres Strait Islander, 2% (n=417) identified as Aboriginal but not Torres Strait Islander and only 0.1% identified as Torres Strait Islander but not Aboriginal or both Aboriginal and Torres Strait Islander.

In the same year, 83% (n=3,688) of clients accessing women and children's family violence services identified as neither Aboriginal nor Torres Strait Islander and 8% (n=356) identified as Aboriginal but not Torres Strait Islander, and another 8% (n=356) of clients' indigenous status could not be ascertained.

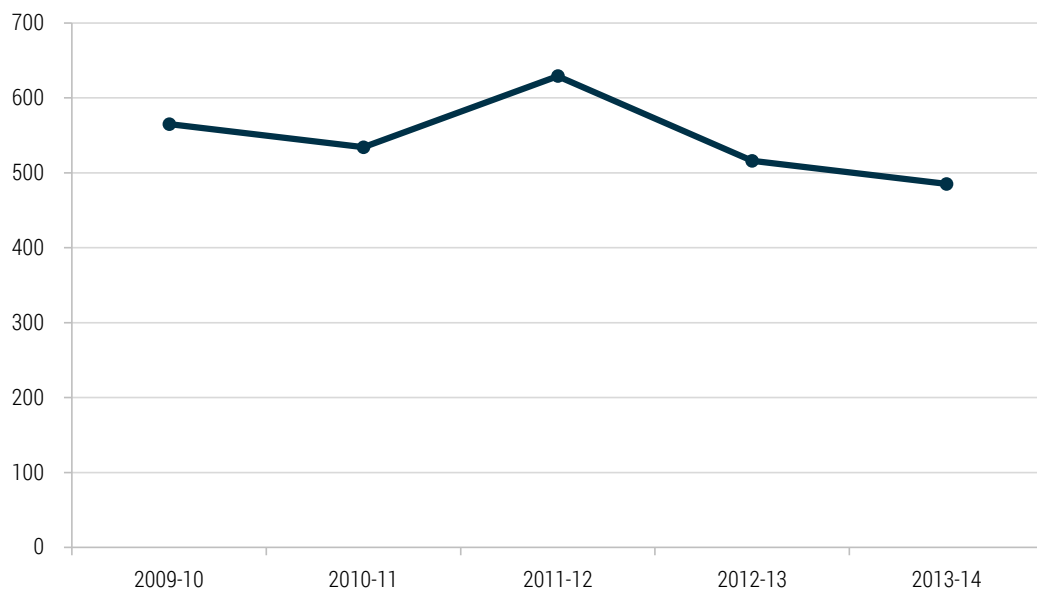
The data used in this section can be found in table 12 of the IRIS data tables.

9. Victorian Emergency Minimum Dataset (VEMD)

For the purposes of identifying patients presenting for family violence reasons, this report focuses on those patients who presented with a human intent injury of either; 'Child neglect, maltreatment by parent, guardian' or 'Maltreatment, assault by domestic partner'.

Since July 2009, the number of patients presenting to emergency departments for family violence reasons has fluctuated between 485 and 629 per year.

Figure 41. Patients presenting with injuries caused by a family member – VEMD, July 2009 to June 2014



The data used in this section can be found in table 1 of the VEMD data tables.

Demographic characteristics of VEMD patients

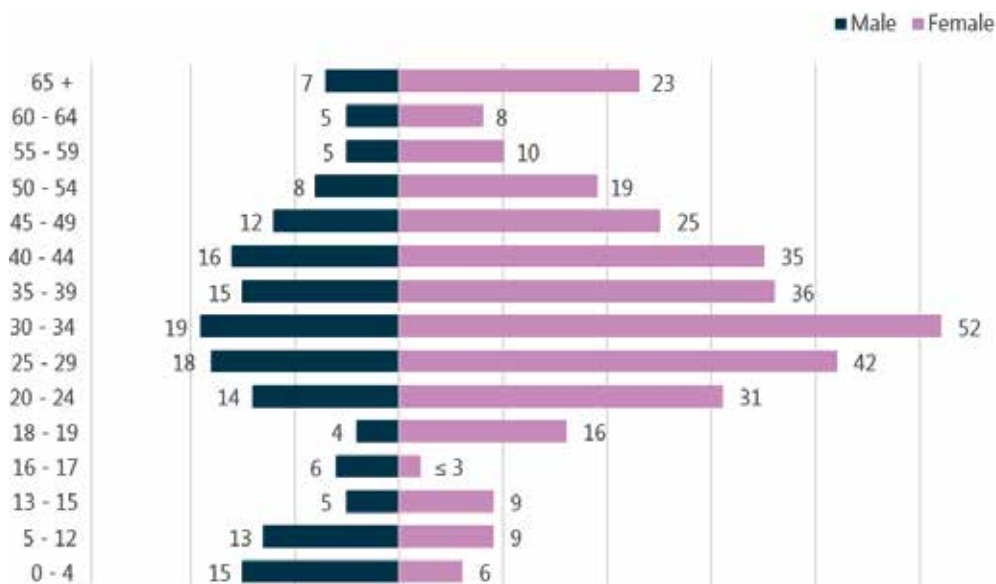
Gender and age of family violence patients

In 2013-14, 485 patients presented to the emergency department with a human intent injury of either 'Child neglect, maltreatment by parent, guardian' or 'Maltreatment, assault by domestic partner'. Two thirds of these patients (67%, n=323) were recorded as female and one third (33%, n=162) male.

Of the male patients that presented with a human intent injury, approximately 50% (n=82) of them were aged between 20 and 44 years. This age group accounted for 60% (n=196) of female patients.

The proportion of males and females in each age group has fluctuated across the five years, however, the numbers are quite small and variations can be expected in such a small group.

Figure 42. Patients presenting with injuries caused by a family member by gender and age – VEMD, July 2009 to June 2014



The data used in this section can be found in table 1 of the VEMD data tables.

Indigenous status

In the five years from July 2009, the proportion of recorded indigenous status has remained relatively stable. In 2013-14, 93% (n=455) of patients identified as Neither Aboriginal nor Torres Strait islander while 5% identified as Aboriginal but not Torres Strait Islander. Less than 3 patients identified as Both Aboriginal and Torres Strait Islander.

The data used in this section can be found in table 4 of the VEMD data tables.

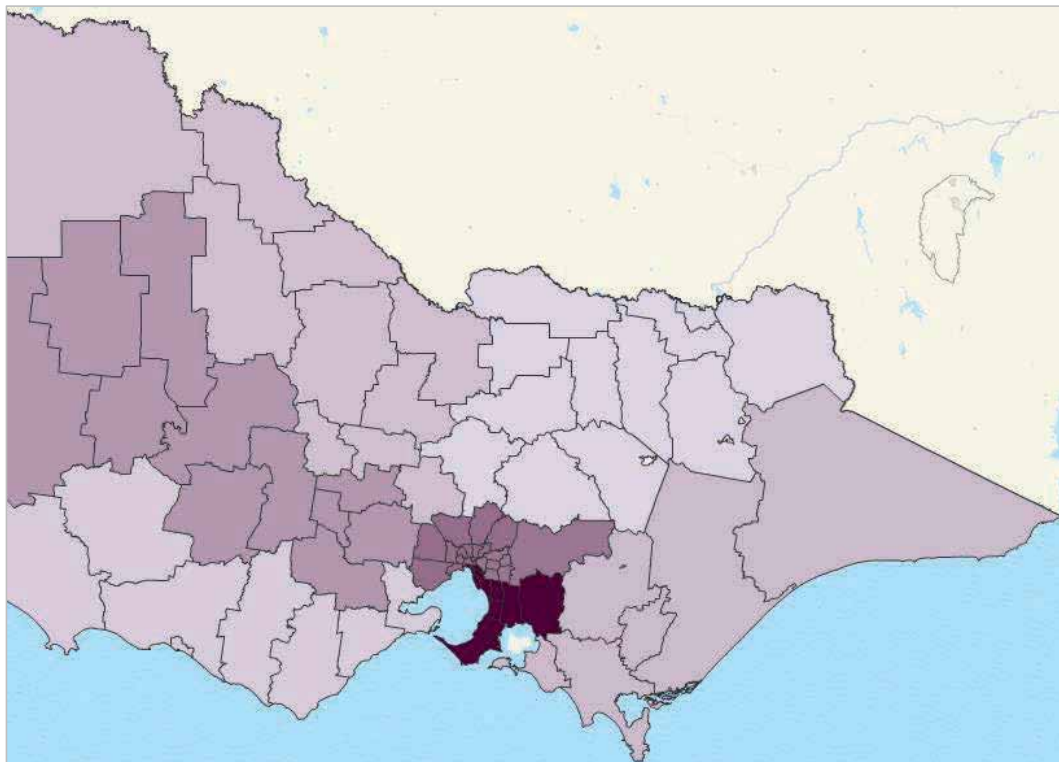
Country of birth

The proportion of patients who identified a country of birth outside of Australia has remained stable over the five years from July 2009. In 2013-14, approximately 80% (n=390) of patients were born in Australia, 18% (n=85) were born outside of Australia and 2% (n=10) of patients did not state a country of birth. Of those patients born outside of Australia, 15 were born in North West Europe, 14 in Oceania, 13 in South East Asia.

The data used in this section can be found in table 3 of the VEMD data tables.

VEMD patients across Victoria

Figure 43. Patients by DHHS region of residence – VEMD, July 2013 to June 2014



Based on the residential postcode of the patient, the largest number of patients lived in the metropolitan regions, with 28% (n=135) of patients in 2013-14 residing in the Southern Metro region, 18% (n=84) in the North and West Metropolitan region and 16% (n=77) in the Eastern Metropolitan region.

It is also the metropolitan regions that differ the most in the split between male and female patients. A greater proportion of female patients lived in the North & West and Eastern Metropolitan regions, and a greater proportion of male patients lived in the Southern Metropolitan region.

Table 33. Patients by region of residence – VEMD, July 2009 to June 2014

| | 2009 – 10 | 2010 – 11 | 2011 – 12 | 2012 – 13 | 2013 – 14 |
|----------------------------------|-----------|-----------|-----------|-----------|-----------|
| Barwon South Western Region | 41 | 30 | 41 | 28 | 27 |
| Eastern Metropolitan Region | 54 | 43 | 62 | 61 | 77 |
| Gippsland Region | 26 | 31 | 37 | 36 | 37 |
| Grampians Region | 113 | 119 | 141 | 82 | 57 |
| Hume Region | 13 | 19 | 26 | 21 | 23 |
| Loddon Mallee Region | 30 | 30 | 26 | 28 | 34 |
| North & West Metropolitan Region | 116 | 116 | 132 | 101 | 84 |
| Southern Metropolitan Region | 158 | 131 | 147 | 146 | 135 |

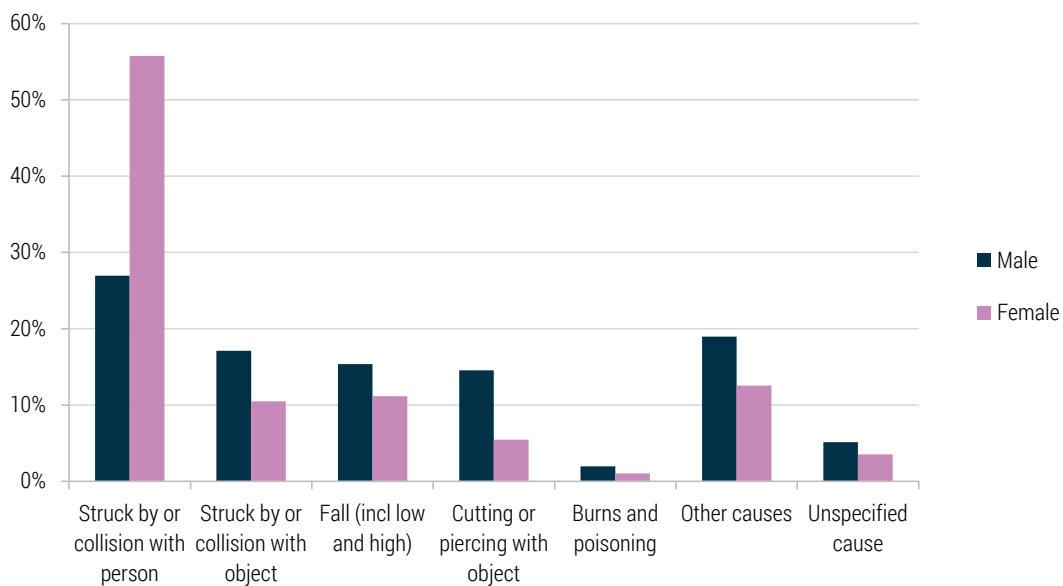
The data used in this section can be found in table 2 of the VEMD data tables.

Cause of injury

The cause of injury is self-reported by patients at the time they present to an emergency department. Looking at the five years from July 2009, there is a marked difference in the cause of injury reported depending on the gender of the patient.

Female patients were more likely to present with an injury from being struck by or colliding with a person than any other cause (56%). Whereas males were more likely to present with every other cause of injury.

Figure 44. Proportion of total causes of injury by gender – VEMD, July 2009 to June 2014 combined



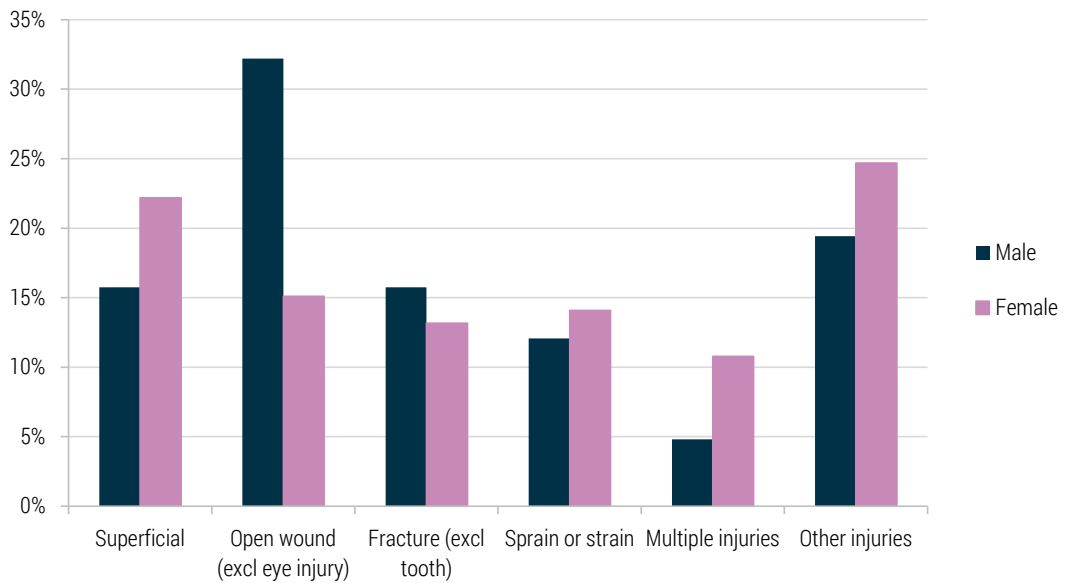
The data used in this section can be found in table 5 of the VEMD data tables.

Nature of main injury

Similar to the cause of injury, the nature of the main injury that females present with was very different to the nature of injury that a male was likely to present with.

Male patients were more likely to present with an open wound and fractures, whereas females were more likely to present with superficial injuries, sprains or strains and other injuries.

Figure 45. Proportion of the nature of main injury by gender – VEMD, July 2009 to June 2014 combined



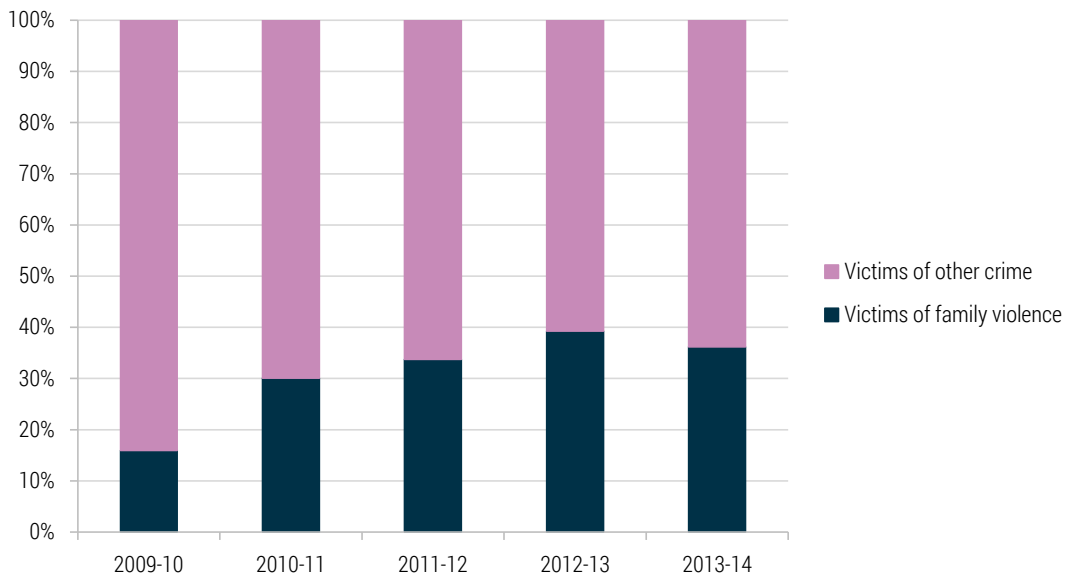
The data used in this section can be found in table 7 of the VEMD data tables.

10. Victims Assistance Program (VAP)

Victims of family violence

In 2013-14, the proportion of Victims Assistance Program (VAP) clients that were victims of a family violence crime was 36% (n=16,240) of total clients. This is up from 2009-10 when the proportion of family violence victims was 16% (n=5,133). In the 2012-13 financial, the recording of family violence crimes changed from recording specific family violence crimes to identifying all family violence related crimes with a flag.

Figure 46. Proportion of Victims Assistance Program clients that were victims of family violence – VAP, July 2009 to June 2014



The data used in this section can be found in table 1 of the Victims Support Agency data tables.

Demographic characteristics of family violence related victims

Gender and age of victims

Over the five years from July 2009, the proportion of male victims has increased and in 2013-14 male victims made up 31% (n=5,052) of total victims of family violence. The largest age group of male victims was 0 – 14 years (n=1,402) followed by 40 – 54 years (n=1,122).

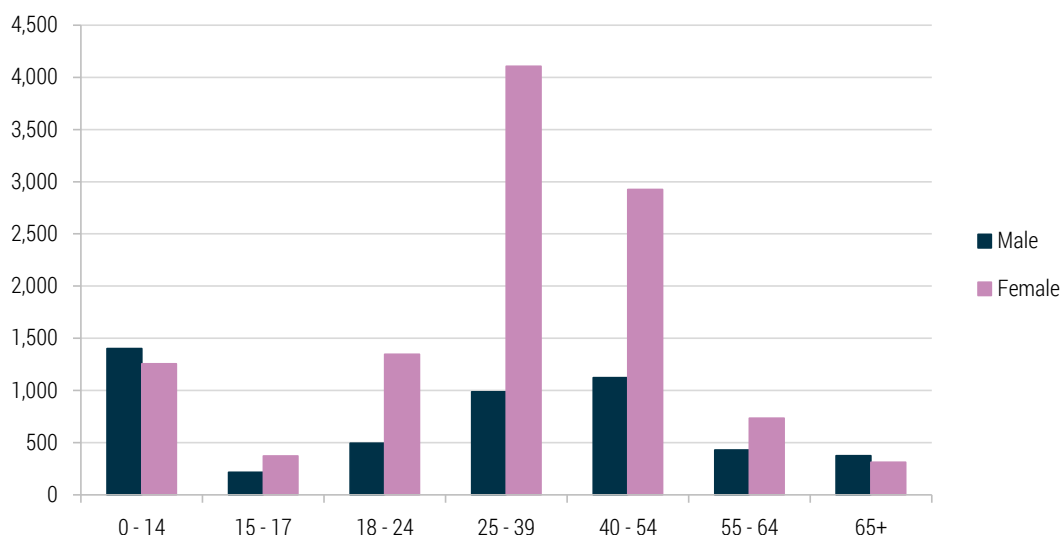
In the 2013-14 financial year, there were 11,141 female victims, of which the largest age group was 25 – 39 years. This accounted for 37% (4,106) of total female victims.

Table 34. Gender of VAP clients who were victims of family violence – VAP, July 2009 to June 2014

| | 2009 – 10 | 2010 – 11 | 2011 – 12 | 2012 – 13 | 2013 – 14 |
|----------------|-----------|-----------|-----------|-----------|-----------|
| Male victims | 23% | 24% | 31% | 36% | 31% |
| Female victims | 77% | 76% | 69% | 63% | 69% |

In the same period there were more female victims than male victims in all age groups, except for 0 – 14 years and 65 years and over.

Figure 47. Gender and age of victims of family violence – VAP, July 2013 to June 2014



The data used in this section can be found in table 2 of the Victims Support Agency data tables.

Indigenous status

In 2013-14, the indigenous status of 5% (n=780) of family violence related VAP clients was unknown. Another 5% (n=847) were recorded as Aboriginal and 90% (n=14,582) were recorded as neither Aboriginal nor Torres Strait Islander. Only 31 clients identified as Torres Strait Islander.

The data used in this section can be found in table 3 of the Victim Support Agency data tables.

Cultural background

Cultural background is not indicative of the client's country of birth but is a broader indicator of the culture that they identify with. In the five years from July 2009, the recording of cultural background of VAP family violence clients greatly increased. In 2013-14, the proportion of clients who identified their cultural background as Australia accounted for 81% (n=13,190) of all family violence clients. This was followed by New Zealand (2%, n=283), then Greece (1.2%, n=190), India (1.1%, n=179) and Vietnam (1%, n=159).

The data used in this section can be found in table 5 of the Victims Support Agency data tables.

Victims of family violence across Victoria

Table 35. Number of victims of family violence by region – VAP, July 2009 to June 2014

| | 2009 – 10 | 2010 – 11 | 2011 – 12 | 2012 – 13 | 2013 – 14 |
|------------------------|-----------|-----------|-----------|-----------|-----------|
| Barwon South West | 455 | 1,190 | 1,497 | 1,760 | 2,128 |
| Gippsland | 1,414 | 870 | 1,325 | 1,795 | 1,654 |
| Grampians | 373 | 677 | 898 | 962 | 1,034 |
| Hume | 705 | 1,210 | 1,258 | 923 | 1,438 |
| Loddon-Mallee | 223 | 657 | 913 | 939 | 1,010 |
| Metropolitan - East | 532 | 820 | 1,089 | 1,480 | 2,101 |
| Metropolitan - North | 271 | 1,437 | 1,359 | 1,185 | 1,626 |
| Metropolitan - South | 1,027 | 1,913 | 2,380 | 3,585 | 2,755 |
| Metropolitan - Western | 133 | 1,595 | 1,518 | 1,474 | 2,494 |

In 2013-14 the southern metropolitan and western metropolitan regions had the highest number of family violence clients with 2,755 and 2,494 respectively. Loddon-Mallee and the Grampians regions had the lowest number of family violence clients with 1,010 and 1,034. It should be noted that these figures are dependent on the number and location of service agencies in each of these regions.

The data used in this section can be found in table 6 of the Victims Support Agency data tables.

11. Victims of Crime Helpline (VoC)

The Victims of Crime helpline is a telephone support service for victims of crime in Victoria. The helpline is a program within the Victim Support Agency in the Department of Justice & Regulation. In 2012-13, the VSA introduced a field to identify where a client had been a victim of family violence as opposed to another type of crime. Data for the period 2009-10 is not available from the Victims of Crime helpline.

Victims of family violence

Table 36. Victims by the type of crime – Victims of Crime, July 2010 to June 2014

| | 2010 – 11 | 2011 – 12 | 2012 – 13 | 2013 – 14 |
|--|--------------|--------------|--------------|---------------|
| Clients identified as victims of family violence | 0 | 0 | 260 | 1,143 |
| Clients identified as victims of other crime | 0 | 0 | 1,054 | 4,205 |
| Unknown crime type | 4,311 | 8,035 | 7,509 | 15,157 |
| Total VoC Helpline clients | 4,311 | 8,035 | 8,823 | 20,505 |

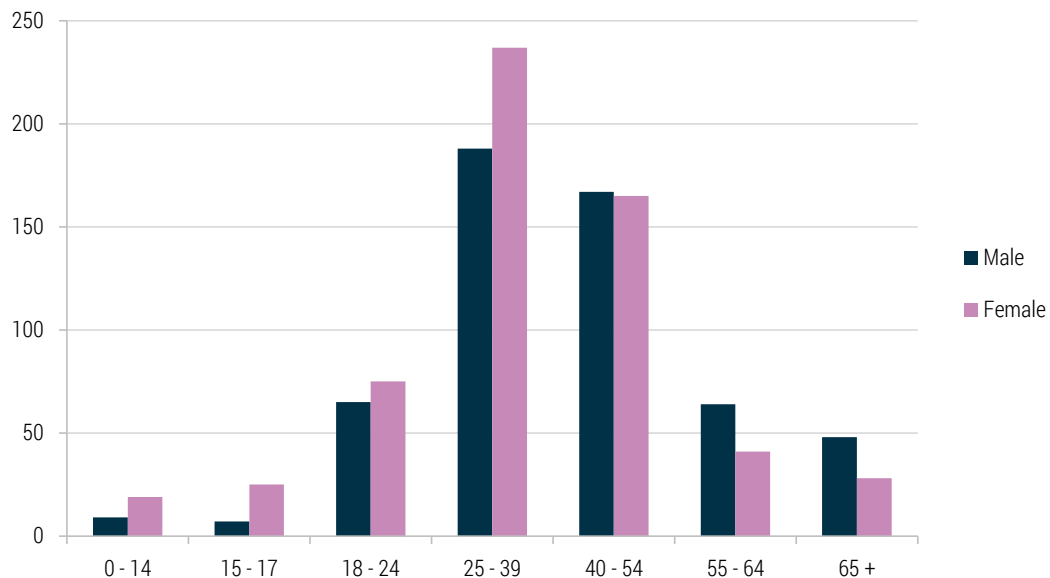
The data used in this section can be found in table 7 of the Victims Support Agency data tables.

Demographic characteristics of victims

Of the 1,143 victims who identified themselves as a victim of family violence in the 2013-14 financial year, 48% (n=548) were male and 52% (n=590) were female.

The largest age group of victims in 2013-14 was 25 – 39 years, accounting for 34% (n=188) of male victims and 40% (n=237) of female victims. In 2013-14, there were more female victims recorded between the age of 0 and 39 years, whereas there were more male victims aged 40 years and older.

Figure 48. Victims of family violence by gender and age – Victims of Crime, July 2013 to June 2014



The data used in this section can be found in table 8 of the Victims Support Agency data tables.

12. Victoria Legal Aid (VLA)

This section focuses on the services provided by Victoria Legal Aid (VLA), where the primary matter was recorded as family violence related. The data looks at the number of services provided as well as the demographics of the clients accessing these services. The data collected by VLA does not identify whether a client was accessing a service as an affected family member/victim or other party/respondent/perpetrator.

Victoria Legal Aid services

In the five years from July 2009, the number of services provided by VLA where the primary matter was family violence related has increased by 8.5% from 19,511 in 2009-10 to 21,172 in 2013-14. In those five years, there was a decline in the number of legal advice services and substantive grants.

It should be noted that a change in the counting methodology of minor work services has resulted in a large drop in the number of services from years prior to 2009-10.

Figure 49. Services provided by VLA where primary matter is family violence related – Victoria Legal Aid, July 2009 to June 2014

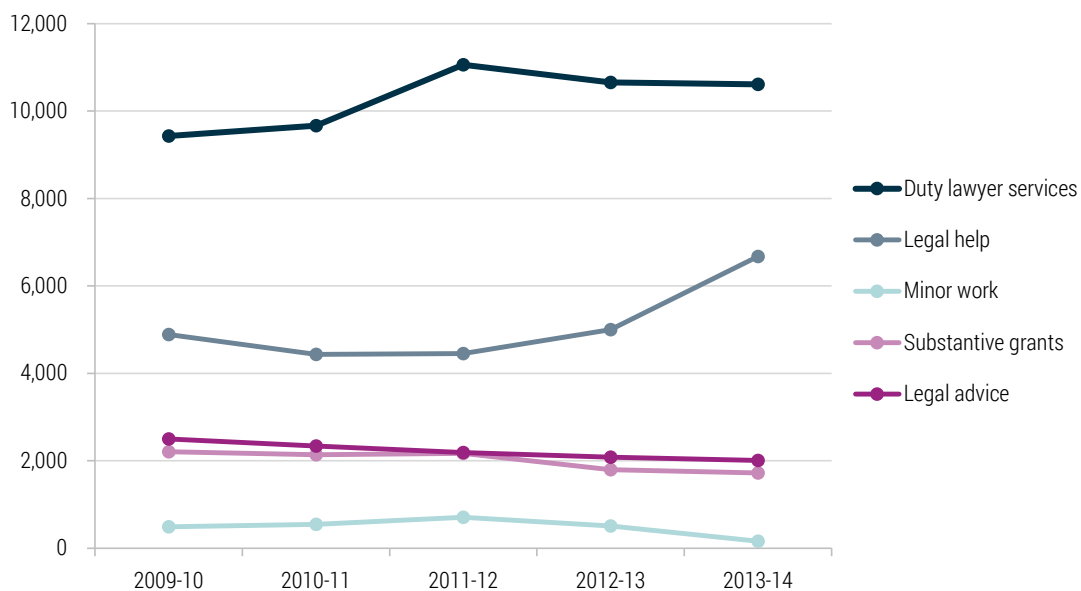


Table 37. Services provided by VLA where primary matter is family violence related – Victoria Legal Aid, July 2009 to June 2014

| | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 |
|----------------------|---------|---------|---------|---------|---------|
| Duty lawyer services | 9,427 | 9,664 | 11,061 | 10,655 | 10,610 |
| Legal help | 4,890 | 4,435 | 4,452 | 4,998 | 6,672 |
| Minor work | 491 | 546 | 706 | 506 | 161 |
| Substantive grants | 2,204 | 2,139 | 2,169 | 1,793 | 1,722 |
| Legal advice | 2,499 | 2,340 | 2,188 | 2,081 | 2,007 |
| Total services | 19,511 | 19,124 | 20,576 | 20,033 | 21,172 |

The data used in this section can be found in table 1 of the Victoria Legal Aid data tables.

Referrals to Victoria Legal Aid

VLA began collecting the client's referral source in 2010-11. Over the four years to 2013-14, the recording of this data item has continually improved in quality.

In 2013-14, 48% (n=4,843) of duty lawyer clients were referred to VLA from the courts, 42% (n=4,263) were self-referred and 6% (n=625) were an existing or previous client of VLA.

66% (n=4,404) of legal help clients were self-referred or no referral was made, while 5% (n=310) were referred from police and 4% (n=244) from the courts.

The data used in this section can be found in tables 2 and 14 of the Victoria Legal Aid data tables.

Demographics of clients accessing Victoria Legal Aid services

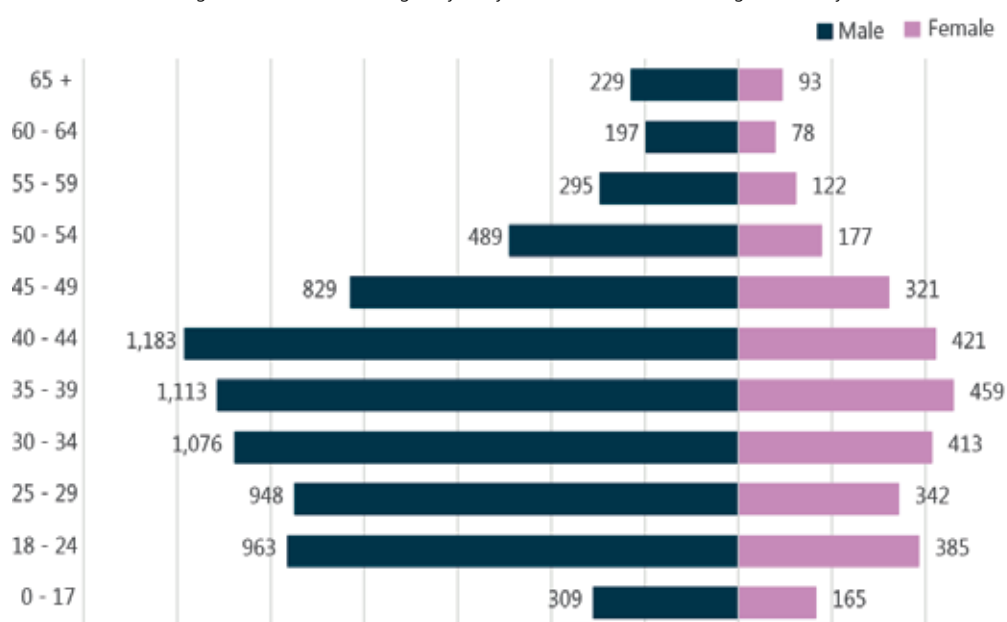
Gender and age of clients

Gender and age of clients accessing duty lawyer services

In 2013-14, there were 10,610 clients accessing duty lawyer services, of which 72% (n=7,631) were male and 28% (n=2,976) female.

The largest age group of male clients was 40 – 44 year olds, of which there were 1,183 in 2013-14. Those aged between 30 and 44 years accounted for 44% (n=3,372) of all male clients.

Figure 50. Gender and age of clients accessing duty lawyer services – Victoria Legal Aid, July 2009 to June 2014



The data used in this section can be found in table 3 of the Victoria Legal Aid data tables.

Gender of clients accessing legal advice services

In 2009-10, the proportion of clients accessing legal advice services who were male was 51% (n=1,278) and the proportion who were female was 49% (n=1,219). In 2013-14, the proportion of male clients had decreased to 46% (n=921) and the proportion of female clients had increased to 54% (n=1,086).

Of the 921 male clients in 2013-14, the largest age group was 30 – 34 years (n=166) with those aged 30 – 44 making up 49% (n=448) of all male clients.

The age breakdown of the 1,086 female clients in 2013-14 was very similar to that of male clients with 48% (n=521) aged between 30 – 44 years of age. A quarter (25%, n=272) of all female clients were between the ages of 18 – 29 years.

The data used in this section can be found in table 10 of the Victoria Legal Aid data tables.

Gender and age of clients applying for substantive grants

In 2013-14, 56% (n=964) of clients who applied for a substantive grant were female, while 44% (n=755) were male. Of the 1,722 applicants, 1,485 were 18 years or older while 237 were under 17 years old.

Table 38. Gender and age group of clients applying for substantive grants – Victoria Legal Aid, July 2009 to June 2014

| | | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 |
|--------|------------------------------|---------|---------|---------|---------|---------|
| Male | Child (17 years and younger) | 224 | 253 | 209 | 151 | 135 |
| | Adult (18 years and older) | 718 | 714 | 740 | 686 | 620 |
| | Subtotal | 942 | 967 | 949 | 837 | 755 |
| Female | Child (17 years and younger) | 207 | 197 | 155 | 108 | 102 |
| | Adult (18 years and older) | 1,051 | 975 | 1,065 | 848 | 862 |
| | Subtotal | 1,258 | 1,172 | 1,220 | 956 | 964 |
| Total | Child (17 years and younger) | 431 | 450 | 364 | 259 | 237 |
| | Adult (18 years and older) | 1,773 | 1,689 | 1,805 | 1,534 | 1,485 |
| | Total | 2,204 | 2,139 | 2,169 | 1,793 | 1,722 |

The data used in this section can be found in tables 19 and 20 of the Victoria Legal Aid data tables.

Culturally and linguistically diverse clients

Country of birth of clients accessing duty lawyer services

In the five years from July 2009, the recording of a client's country of birth has considerably increased in quality. In 2013-14, only 3% (n=330) of clients accessing a duty lawyer had an unknown country of birth compared to 44% (n=3,894) in 2009-10.

Of those clients with a known country of birth in 2013-14 (n=9,806), 70% (n=6,884) were born in Australia and 30% (2,922) were born overseas.

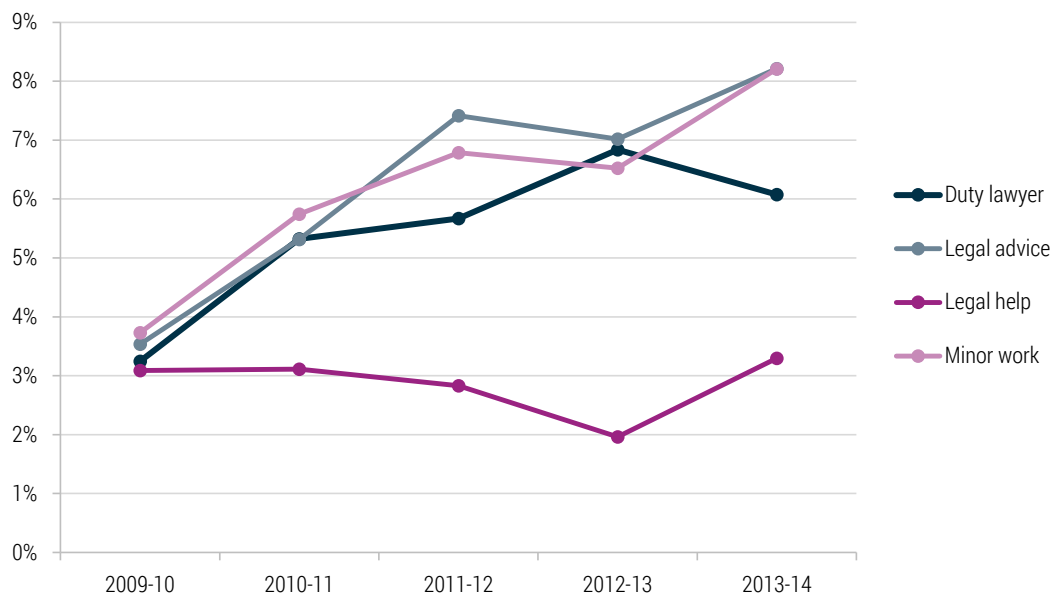
The top five countries of birth for those clients born outside of Australia were India (n=265), New Zealand (n=244), England (n=170), Vietnam (n=160) and Sudan (n=135).

The data used in this section can be found in table 8 of the Victoria Legal Aid data tables.

Interpreter requirements of Victoria Legal Aid clients

Between July 2009 and June 2014, the proportion of clients who required an interpreter while accessing a VLA service has fluctuated between 2% and 8% of clients, depending on the service type. In 2013-14, 8% of clients accessing either a legal advice service (n=161) or minor work service (n=11) required an interpreter while 6% (n=616) of those accessing a duty lawyer required one and just 3% (n=220) of legal help clients required an interpreter.

Figure 51. Proportion of clients who required an interpreter by type of service – Victoria Legal Aid, July 2009 to June 2014



The data used in this section can be found in tables 7, 12, 15 and 17 of the Victoria Legal Aid data tables.

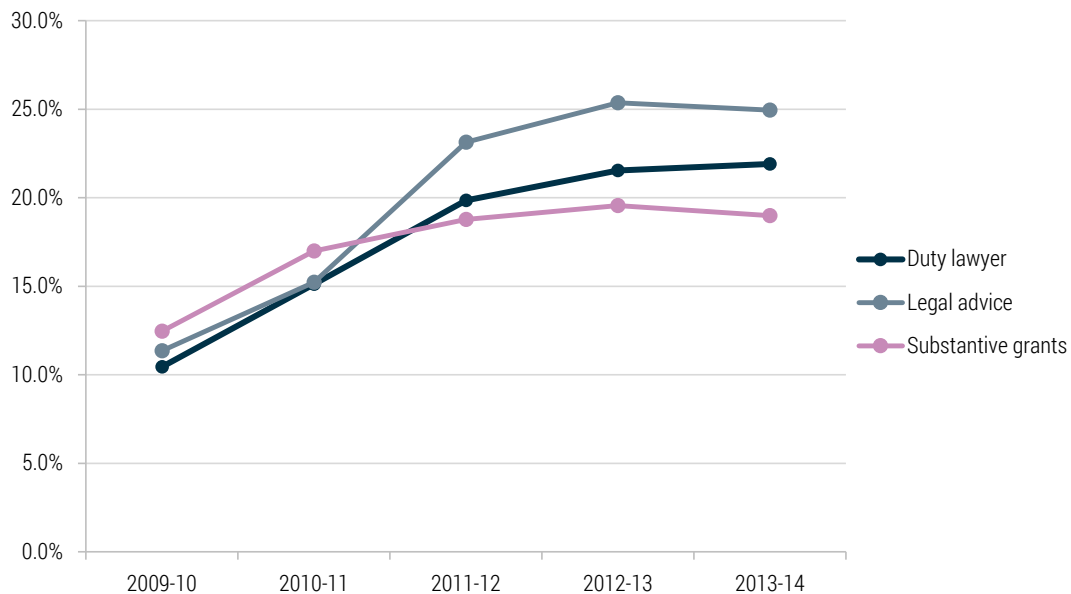
Disability status of clients

The proportion of clients who identified as having a disability has steadily increased across all VLA services since July 2009. In 2013-14, the proportion of applicants for a substantive grant who identified as having a disability was 19% (n=282), while the proportion of clients accessing a duty lawyer or legal advice service who had a disability was 22% (n=2,220) and 25% (n=489) respectively.

Of the 489 clients accessing legal advice services who identified as having a disability, just over half (51%, n=247) had a mental health issue, while 28% (n=136) had a physical disability.

Of the 2,220 duty lawyer clients who identified as having a disability, 46% (n=1,022) identified as having a mental health issue, and 27% (n=605) had a physical disability.

Figure 52. Proportion of clients who identified as having a disability by type of service – Victoria Legal Aid, July 2009 to June 2014



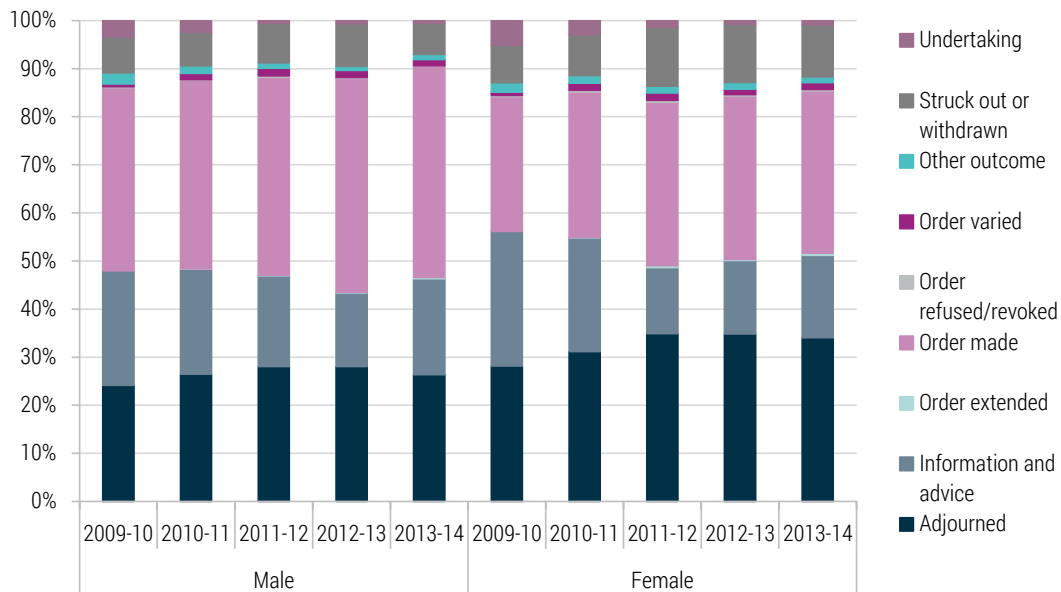
The data used in this section can be found in tables 6, 11 and 21 of the Victoria Legal Aid data tables.

Outcomes of duty lawyer services

In 2013-14, where the client was male, 44% (n=3,211) of matters resulted in an order being made, while 26% (n=1,929) resulted in an adjournment and in 20% (n=1,464) of cases only information and advice was obtained.

Where the client was female, 34% (n=957) of matters were adjourned, another 34% (n=950) resulted in an order being made and 17% (482) of clients only received information and advice.

Figure 53. Outcome of duty lawyer services by gender of client – Victoria Legal Aid, July 2009 to June 2014



In the five years from July 2009, there has been a shift in the outcomes of duty lawyer services where clients were 17 years or younger. In 2009-10, the proportion of services that resulted in an adjournment was 37% (n=220), compared to 2013-14 where 29% (n=139) resulted in an adjournment.

There was also a drop in the proportion of services that resulted in the matter being struck out or withdrawn. In 2009-10, 18% (n=104) were struck out or withdrawn and in 2013-14, this was down to 9% (n=45).

Conversely, there was an increase in the proportion of matters that resulted in an order being made, increasing from 25% (n=149) in 2009-10 to 48% (n=229) in 2013-14.

The data used in this section can be found in tables 4 and 5 of the Victoria Legal Aid data tables.

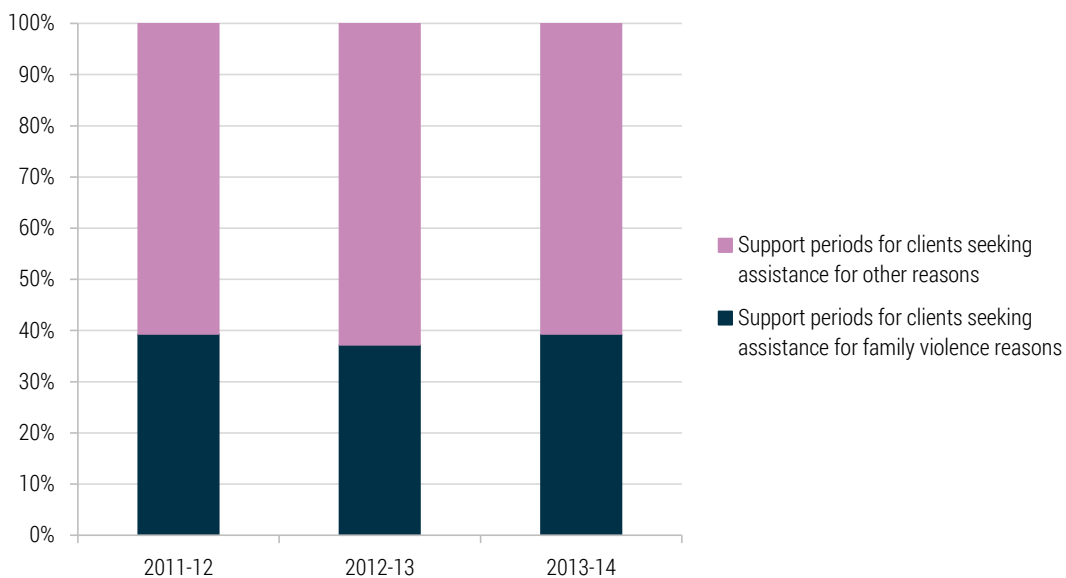
13. Specialist Homelessness Services Collection (SHSC)

Support periods for clients seeking housing assistance in Victoria

Since July 2011, when the Specialist Homelessness Services Collection (SHSC) replaced the Supported Accommodation Assistance Program (SAAP), the number of support periods provided to clients seeking assistance in Victoria has increased by 46.7% from 128,694 in 2011-12 to 188,775 in 2013-14.

The proportion of support periods for clients seeking assistance for family violence reasons has remained relatively stable over those three years and in 2013-14, 39% (n=74,292) of all support periods were family violence related.

Figure 54. Proportion of support periods for clients seeking assistance for family violence reasons – SHSC, July 2011 to June 2014



The data used in this section can be found in table 1 of the Specialist Homelessness Services Collection data tables.

Demographics of clients seeking assistance for family violence reasons

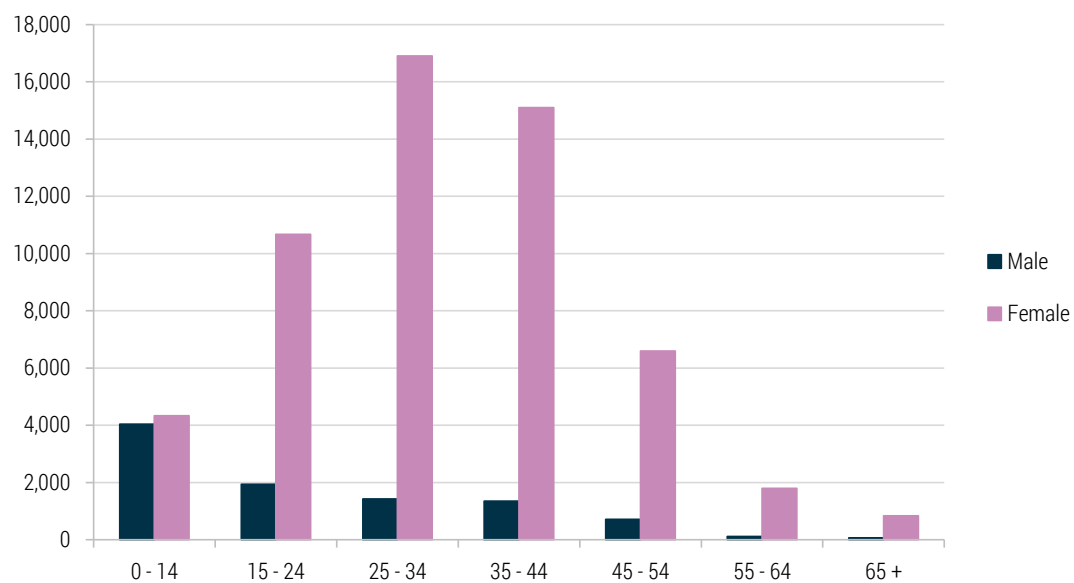
In the three years from July 2011, the proportion of male and female clients has remained relatively stable. On average, 83% of clients seeking assistance for family violence reasons were female and 17% were male.

In 2013-14, there were 62,174 female clients and 12,118 male clients. Due to confidentialisation, there were 2,459 male clients with an unknown age and 5,854 female clients with an unknown age.

Of the female clients with a known age (n=56,246) the largest age group was 25 – 34 years, making up 30% (n=15,098) of female clients, followed by 35 – 44 years (n=16,904) and 15 – 24 years (n=10,668).

Of the male clients with a known age (n=9,659), the largest age group was 0 – 14, of which there were 4,038 clients seeking assistance. In the same age group there were 4,337 female clients seeking assistance in 2013-14 for family violence reasons.

Figure 55. Clients seeking assistance for family violence reasons by gender and age – SHSC, July 2013 to June 2014



The data used in this section can be found in table 2 of the Specialist Homelessness Services Collection data tables.

Main reason clients sought housing assistance

When a client presents to an SHSC service provider they are asked to identify all reasons why they are seeking housing assistance. They are also asked to identify the main reason they are seeking assistance. Table 39 outlines the five main reasons for clients seeking housing assistance.

In 2013-14, the proportion of support periods for male clients where the main reason was domestic and family violence was 35% (n=4,283), while for female clients 61% (n=37,879) identified their main reason as domestic and family violence. 15% (n=1,855) of male clients and 9% (n=5,497) of female clients identified their main reason as a housing crisis

Table 39. Top 5 main reasons for clients seeking assistance by gender – SHSC, July 2011 to June 2014

| Male | 2011-12 | 2012-13 | 2013-14 |
|---|---------------|---------------|---------------|
| Domestic and family violence | 2,724 | 3,051 | 4,283 |
| Housing crisis (e.g. recently evicted) | 1,074 | 1,818 | 1,855 |
| Inadequate or inappropriate dwelling conditions | 335 | 604 | 799 |
| Relationship/family breakdown | 497 | 581 | 723 |
| Financial difficulties | 331 | 645 | 569 |
| All other reasons | 1,678 | 2,005 | 2,085 |
| Unknown | 2,059 | 2,393 | 1,804 |
| <i>Sub total</i> | <i>8,703</i> | <i>11,097</i> | <i>12,118</i> |
| | | | |
| Female | 2011-12 | 2012-13 | 2013-14 |
| Domestic and family violence | 25,445 | 31,580 | 37,879 |
| Housing crisis (e.g. recently evicted) | 3,010 | 4,277 | 5,497 |
| Financial difficulties | 1,478 | 2,604 | 2,984 |
| Inadequate or inappropriate dwelling conditions | 1,516 | 2,564 | 2,972 |
| Relationship/family breakdown | 1,216 | 1,901 | 2,171 |
| All other reasons | 3,619 | 4,903 | 5,588 |
| Unknown | 5,599 | 6,693 | 5,083 |
| <i>Sub total</i> | <i>41,883</i> | <i>54,522</i> | <i>62,174</i> |

The data used in this section can be found in table 3 of the Specialist Homelessness Services Collection data tables.

Young people seeking assistance on their own

In the three years from July 2011, the number of young clients seeking assistance on their own increased by 39.3%, from 9,812 in 2011-12 to 13,665 in 2013-14. Of the 13,665, 17% (n=2,383) were male and 83% (n=11,282) were female.

Table 40. Young people seeking assistance on their own, by gender – SHSC, July 2011 to June 2014

| | 2011-12 | 2012-13 | 2013-14 |
|--------------|--------------|---------------|---------------|
| Male | 1,728 | 2,370 | 2,383 |
| Female | 8,084 | 10,951 | 11,282 |
| Total | 9,812 | 13,321 | 13,665 |

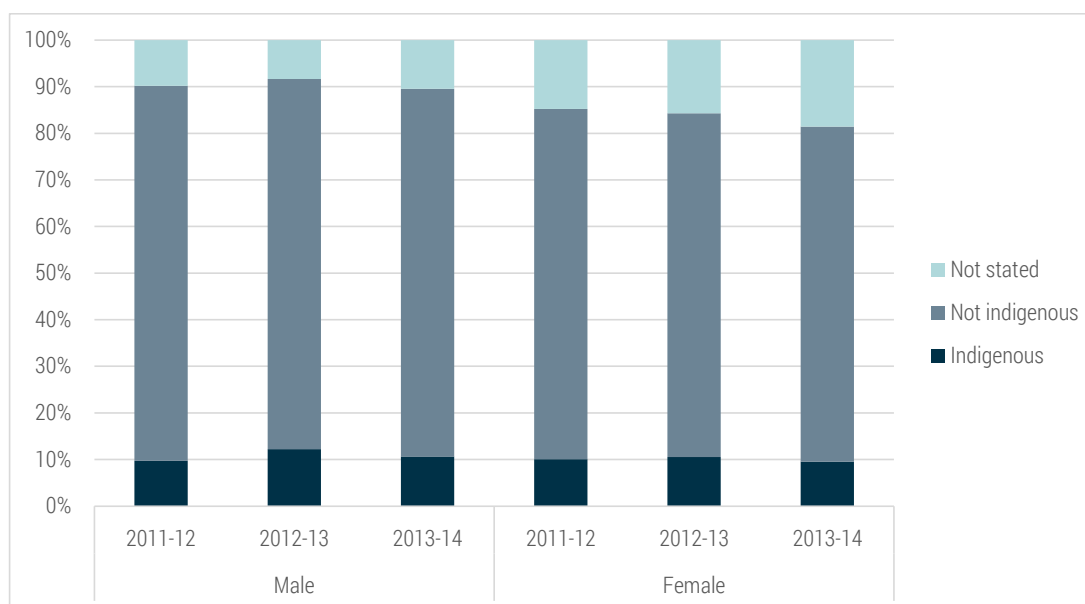
The data used in this section can be found in table 4 of the Specialist Homelessness Services Collection data tables.

Indigenous status

In the three years from July 2011, the proportion of support periods for indigenous clients has remained relatively stable, with on average 10% of clients identifying as indigenous. In the three years the proportion of clients who did not state an indigenous status has increased from 14% (n=7,033) in 2011-12 to 17% (n=12,790) in 2013-14.

The proportion of female clients who identified as indigenous is almost the same as that of male clients, with 10% (n=5,940) of female clients and 11% (n=1,293) of male clients identifying as indigenous.

Figure 56. Proportion of support periods for clients experiencing family violence by indigenous status and gender – SHSC, July 2011 to June 2014



The data used in this section can be found in table 6 of the Specialist Homelessness Services Collection data tables.

Country of birth

In 2013-14, 51,602 of clients seeking assistance for family violence reasons had a known country of birth. Of these clients, 89% (46,175) were born in Australia, 3% (n=1,447) were born in North Africa & Middle East and 2% (n=1,122) were born in South-East Asia.

The proportion of clients who had an unknown, or missing country of birth, has slightly increased in the three years from July 2011 from 11% (n=5,326) of clients in 2011-12 to 15% (n=10,853) in 2013-14.

The data used in this section can be found in table 7 of the Specialist Homelessness Services Collection data tables.

Clients with mental health issues

At the time a client presents to an SHSC agency they are asked to identify whether they have ever been diagnosed with a mental health issue. In the three years from July 2011, the proportion of clients who identified as ever having a mental health issue increased from 32% (n=16,171) in 2011-12 to 37% (n=27,414) in 2013-14

The data used in this section can be found in table 9 of the Specialist Homelessness Services Collection data tables.

Main source of income

The main source of income reported by the client on their first contact with an agency differs considerably depending on the gender of the client. Of the 12,118 male clients, the main source of income reported by the client was the Newstart allowance (n=1,724) followed by the Disability support pension (n=1,377) and Youth allowance (n=766).

Of the 62,174 female clients, the main source of income was a Parenting payment, with 10,210 clients identifying this as their main source of income. This was followed by the Newstart allowance (n=5,235) and the Disability support pension (n=4,414).

Table 41. Support periods of clients seeking assistance for family violence reasons by main source of income at first contact – SHSC, July 2011 to June 2014

| Male | 2011-12 | 2012-13 | 2013-14 |
|------------------------------|---------------|---------------|---------------|
| Newstart allowance | 1,280 | 1,938 | 1,724 |
| Disability support pension | 959 | 1,326 | 1,377 |
| Youth allowance | 555 | 626 | 766 |
| Employee income | 238 | 266 | 326 |
| Parenting payment | 122 | 144 | 154 |
| All other income sources | 207 | 384 | 280 |
| Nil income | 288 | 1,286 | 2,179 |
| Unknown | 1,473 | 2,890 | 2,204 |
| Not applicable | 3,581 | 2,237 | 3,108 |
| <i>Sub total</i> | <i>8,703</i> | <i>11,097</i> | <i>12,118</i> |
| Female | 2011-12 | 2012-13 | 2013-14 |
| Parenting payment | 7,624 | 9,322 | 10,210 |
| Newstart allowance | 2,764 | 3,827 | 5,235 |
| Disability support pension | 3,116 | 3,927 | 4,414 |
| Employee income | 2,501 | 2,493 | 3,195 |
| Youth allowance | 1,471 | 1,728 | 2,100 |
| All other income sources | 1,585 | 1,891 | 2,589 |
| Nil income | 1,276 | 2,544 | 3,469 |
| Unknown | 18,285 | 26,883 | 27,973 |
| Not applicable | 3,261 | 1,907 | 2,989 |
| <i>Sub total</i> | <i>41,883</i> | <i>54,522</i> | <i>62,174</i> |
| Total support periods | 50,586 | 65,619 | 74,292 |

The data used in this section can be found in table 8 of the Specialist Homelessness Services Collection data tables.

14. Further analysis: police recorded family violence recidivism

Introduction

A detailed understanding of the characteristics and behavioural patterns of family violence perpetrators is vital for ensuring that intervention policies and practices are appropriately targeted. Publicly available information about levels of recidivism and the characteristics and behaviours of perpetrators over time in Victoria could not be located by the CSA. A key component of the work undertaken by the CSA to support the Royal Commission into Family Violence (RCFV) sought to begin to address this gap in the existing evidence base by conducting a research study to statistically analyse the levels and predictors of recidivism amongst family violence perpetrators in Victoria.

Victoria Police data was used for the research because it is the most comprehensive source of information available within the Victorian Family Violence Database that can be drawn upon to examine recidivism across Victoria. Unique identifiers within the police data enable longitudinal tracking of individuals over time. As such, the research presented in this chapter also serves as a case study example of what improvements in the evidence base would be possible if comprehensive family violence data was consistently collected over time across agencies, and analysed using rigorous research methods. Where feasible, the possibilities for improved evidence would be further strengthened if linkages were made across different sources of Victorian family violence data. Some examples of research that could be conducted where linkage between datasets is feasible are outlined at the end of this chapter.

Though this analysis draws only on Victoria Police data, it is acknowledged that many family violence incidents do not come to the attention of police. There are also a wide range of contextual factors that are not systematically recorded by police, but that impact on the frequency and seriousness of family violence incidents. Further, it should be noted that police recorded recidivism is just one of a variety of outcome indicators associated with family violence intervention policy and practice. While recidivism incidents are an adverse outcome to the extent that they indicate repetition of violent behaviour towards victims, they can also be interpreted as an indicator of increased victim willingness to contact police and/or police follow-up and involvement where there are ongoing concerns for victims' safety.

Specifically, this research discussed aimed to answer the following research questions:

1. How many family violence perpetrators are recorded for more than one family violence incident?
2. How often are they recorded for family violence incidents, and what is the time between incidents?
3. What are the differences between recidivist and non-recidivist perpetrators in terms of their characteristics, family violence histories and other risk factors?
4. Is it possible to predict which perpetrators will have a recorded recidivism incident based on their characteristics or risk factors recorded by police at the first incident?
5. Are differences in police responses related to differences in re-perpetration outcomes?

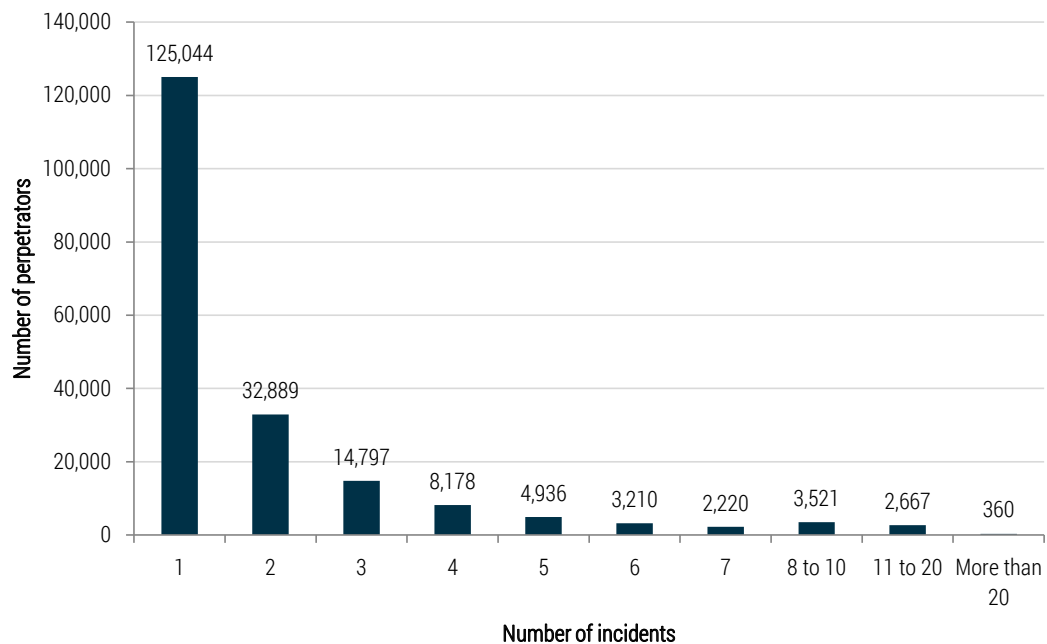
This chapter begins by outlining the results of some background analysis on overall rates of family violence recidivism in Victoria over the past ten years. Next, a detailed summary of the method and results of the recidivism analyses conducted to answer the research questions is provided. Finally, the study limitations and opportunities for further work in this area are discussed.

Background

This section provides information about the overall number of incidents, alleged perpetrators, and recidivist incidents recorded by Victoria Police over the past ten years. This information is intended to provide context for the analysis presented throughout the rest of the chapter, which examines a specific cohort of perpetrators in more detail.

Between 1 July 2004 and 30 June 2014, 403,991 family violence incidents were recorded against 197,822 alleged perpetrators¹. Over the ten year period, the majority of perpetrators had only a single family violence incident recorded by police (63% or 125,044 perpetrators), as shown in Figure 57. Seventeen percent (n=32,889) of perpetrators had two incidents recorded, 7% (n=14,797) had three incidents recorded and the remaining 13% (n=25,092) had four or more incidents recorded. Seven perpetrators had more than 50 incidents recorded over the ten year period.

Figure 57. Number of incidents per perpetrator, 2004-05 to 2013-14



As shown in Table 42, the 125,044 perpetrators who were recorded for a single incident over the ten year period accounted for 31% of all family violence incidents. Though they only represented 9% of all unique perpetrators, the 16,914 recidivist perpetrators who were recorded for five or more incidents accounted for 34% of all incidents.

¹ A family violence incident is an incident recorded by police on an L17 form. 'Perpetrators' are alleged rather than proven perpetrators, and are defined as those individuals recorded by police as the 'Other Party' (OTH) or other parties to a family violence incident on an L17 form.

Table 42. Number and proportion of incidents recorded for perpetrators who committed 1, 2, 3 and 4 or more incidents between 2004-05 and 2013-14

| Number of incidents recorded per perpetrator | Perpetrators | | Incidents | |
|--|--------------|-----|-----------|-----|
| | n | % | n | % |
| 1 incident | 125,044 | 63% | 125,044 | 31% |
| 2 incidents | 32,889 | 17% | 65,778 | 16% |
| 3 incidents | 14,797 | 7% | 44,391 | 11% |
| 4 incidents | 8,178 | 4% | 32,712 | 8% |
| 5 or more incidents | 16,914 | 9% | 136,349 | 34% |

Figure 58 and Table 43 show the proportion of family violence incidents recorded for each unique perpetrator per financial year over the ten year period. In this figure and table perpetrators may be counted more than once over the ten year period. They are counted as a unique perpetrator for each year in which they were recorded for one or more incident(s). The majority of perpetrators were recorded for a single incident each year. However, the proportion that were recorded for more than one family violence incident within a year has increased over the past ten years, from 18% (or 4,157 perpetrators) in the year ending June 30 2005 to 25% (or 11,160) in the year ending June 30 2014.

Figure 58. Proportion of unique perpetrators per year who committed 1, 2, 3, and 4 or more incidents

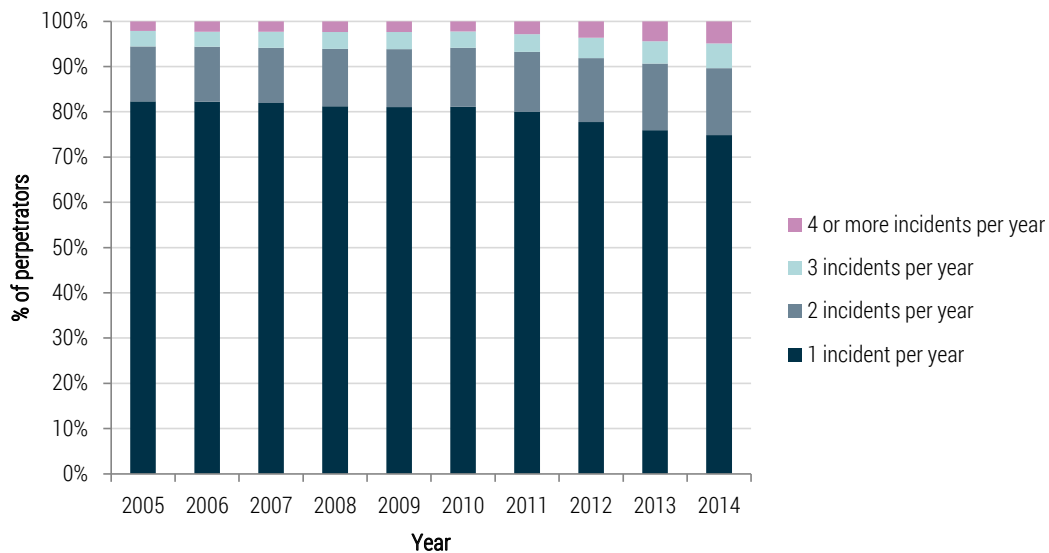


Table 43. Proportion of unique perpetrators per year who committed 1, 2, 3, and 4 or more incidents within that year

| Financial year ending | 1 incident per year | | 2 incidents per year | | 3 incidents per year | | 4 or more incidents per year | |
|-----------------------|---------------------|-----|----------------------|-----|----------------------|----|------------------------------|----|
| | n | % | n | % | n | % | n | % |
| 2005 | 19,333 | 82% | 2,856 | 12% | 801 | 3% | 500 | 2% |
| 2006 | 18,218 | 82% | 2,687 | 12% | 727 | 3% | 514 | 2% |
| 2007 | 18,728 | 82% | 2,792 | 12% | 805 | 4% | 534 | 2% |
| 2008 | 19,787 | 81% | 3,092 | 13% | 899 | 4% | 583 | 2% |
| 2009 | 21,098 | 81% | 3,331 | 13% | 981 | 4% | 622 | 2% |
| 2010 | 22,353 | 81% | 3,589 | 13% | 989 | 4% | 621 | 2% |
| 2011 | 24,551 | 80% | 4,073 | 13% | 1,199 | 4% | 882 | 3% |
| 2012 | 28,107 | 78% | 5,121 | 14% | 1,625 | 4% | 1,309 | 4% |
| 2013 | 32,105 | 76% | 6,223 | 15% | 2,065 | 5% | 1,878 | 4% |
| 2014 | 33,217 | 75% | 6,566 | 15% | 2,419 | 5% | 2,175 | 5% |

Figure 59 and Table 44 show the number of additional or ‘new’ unique perpetrators (i.e., those who have not appeared in any previous year of the ten year period) recorded for family violence incidents each year as a proportion of the total number of unique perpetrators recorded each year. The initial years presented in this graph should be interpreted with caution as those represented as ‘new perpetrators’ may have been recorded for incidents prior to the starting point for this dataset in 2004/05. Nevertheless, the number of new perpetrators recorded increased gradually between 2008 and 2011, increased to a greater extent between 2011 and 2013, and appears to have plateaued somewhat between 2013 and 2014.

Figure 59. Existing, new and total family violence perpetrators each year, 2005 – 2014

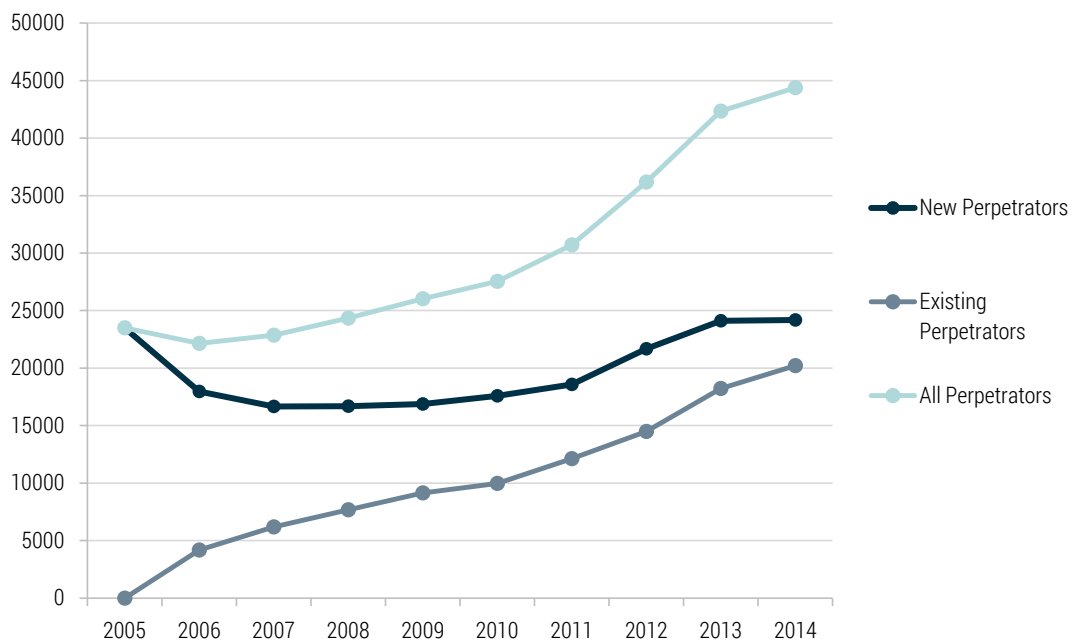


Table 44. Existing, new and total family violence perpetrators each year, 2005 – 2014

| Financial year ending | Existing unique perpetrators | | New unique perpetrators | | All unique perpetrators | |
|-----------------------|------------------------------|-----|-------------------------|------|-------------------------|------|
| | n | % | n | % | n | % |
| 2005 | 0 | 0% | 23,490 | 100% | 23,490 | 100% |
| 2006 | 4,176 | 19% | 17,970 | 81% | 22,146 | 100% |
| 2007 | 6,196 | 27% | 16,663 | 73% | 22,859 | 100% |
| 2008 | 7,678 | 32% | 16,682 | 68% | 24,360 | 100% |
| 2009 | 9,144 | 35% | 16,888 | 65% | 26,032 | 100% |
| 2010 | 9,977 | 36% | 17,575 | 64% | 27,552 | 100% |
| 2011 | 12,130 | 40% | 18,575 | 60% | 30,705 | 100% |
| 2012 | 14,478 | 40% | 21,683 | 60% | 36,161 | 100% |
| 2013 | 18,224 | 43% | 24,109 | 57% | 42,333 | 100% |
| 2014 | 20,201 | 46% | 24,187 | 54% | 44,388 | 100% |

Methodology

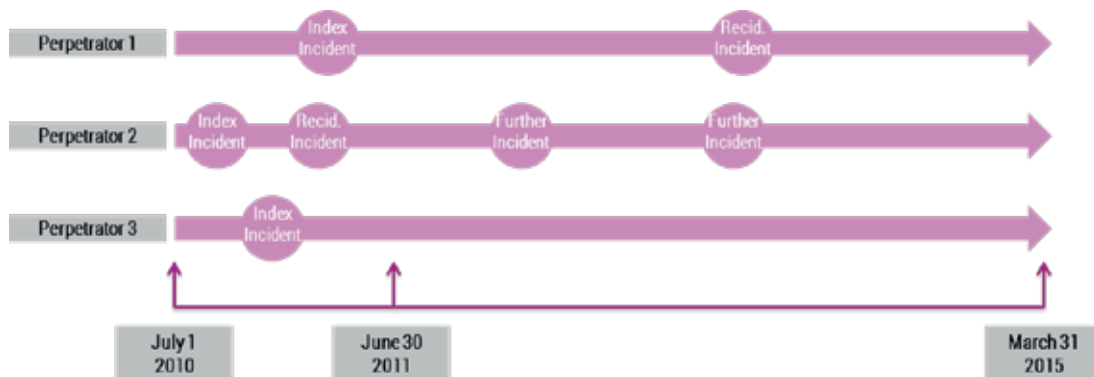
This study used data about family violence incidents recorded by police from the 2004/05 financial year to the 30th of March 2015. This data includes all information recorded by police on the L17 Risk Assessment and Risk Management Report form (the L17 form) and lodged on Victoria Police's Law Enforcement Assistance Program (LEAP) database. The Victoria Police Code of Practice for the Investigation of Family Violence states that police complete the form for all family violence incidents, interfamilial-related sexual offences and instances of child abuse reported to them, and that prior to leaving the scene of a family violence incident, police officers must collect 'all the information needed to complete the Family Violence Risk Assessment and Risk Management Report (Victoria Police, 2014: p.10).

To identify patterns and predictors of recidivism in more detail, a cohort of perpetrators whose behaviour could be tracked over time within the dataset was selected. The cohort of all individuals who were recorded by police as perpetrating at least one family violence incident in the 2010/11 financial year was selected for the purpose of this analysis. These are individuals who were recorded by police as "Other Parties" on at least one L17 form in 2010/11. This cohort was selected because it enabled analysis of recidivism behaviour for a minimum of three years and nine months for each perpetrator to the end of March 2015. In addition, selecting this cohort meant that the analysis could examine whether a perpetrator's recorded historical family violence behaviour in prior years (between July 2004 and June 2010), impacted on their propensity to reappear in the dataset as a recidivist perpetrator.

In this study a perpetrator's *index incident* was defined as the first time they were recorded for a family violence incident by police on or after 1 July 2010. If a perpetrator was recorded for a further incident after their index incident but prior to 31 March 2015, they were considered to be a recidivist perpetrator, and this second incident was defined as their *recidivism incident*. Any incidents recorded against perpetrators after their recidivism incident but prior to 31 March 2015 were defined as *further incidents*. Figure 60 provides examples of how this methodology could apply to individual perpetrators.

For the purpose of this report, references to perpetrators and incidents refer to alleged rather than proven perpetrators and incidents. References to recorded offences arising from family violence incidents also refer to alleged rather than proven offences as the CSA does not hold court outcome data regarding whether offences recorded by police went on to be proven in court.

Figure 60. Methodology for identification of index and recidivism incidents



Data

The dataset used for the recidivism analysis included perpetrator characteristics, items related to perpetrators' family violence histories, characteristics of perpetrators' index incidents as recorded by police, and data relating to recidivism outcomes. A summary of all of the data items included is provided in Table 45.

Table 45. Data items

| Category | Data items |
|--|--|
| Perpetrator characteristics | <ul style="list-style-type: none"> Sex Age at time of index incident Relationship between perpetrator and victim |
| Perpetrator family violence incident history | <ul style="list-style-type: none"> Total number of recorded family violence incidents prior to July 1 2010 Total number of breaches of family violence orders prior to July 1 2010 |
| Characteristics of index incident | <ul style="list-style-type: none"> Risk factors recorded by police at index incident Police assessment of overall risk of future violence (unlikely, likely) Victim fear level (not fearful, fearful, very fearful) Whether children were present at the index incident Whether presence of a disability was recorded at the index incident Actions recorded by police on the L17 form (including criminal, civil and referral actions) Recorded offences arising from the family violence incident |
| Recidivism outcomes | <ul style="list-style-type: none"> Whether a perpetrator was recorded for a further incident Total number of recorded recidivism and further incidents Time between index and recidivism incidents |

Statistical analysis

Chi-square analyses (indicated by the symbol: χ^2) were used to examine whether there were bivariate relationships between potential predictors of recidivism (including perpetrators' characteristics, perpetrators' recorded family violence histories and/or the characteristics of their index incident), and whether or not they were recorded for a recidivism incident. Where the significance level (indicated by the symbol p) is less than .05, this indicates that there was a statistically significant relationship between the predictor variable being tested and recidivism. The closer the significance level is to zero, the less likely it is that the results of the statistical test presented could have occurred by chance, or conversely, the more likely it is that the results represent true relationships between factors tested and recidivism in the population, as opposed to random variation in the data.

Following these initial chi-square analyses, potential predictors that had a statistically significant bivariate relationship with recidivism (at the $p < .05$ level) were included in a logistic regression model. This overall model was used to determine which combination of explanatory factors is most useful in determining whether or not someone will be recorded for a recidivism incident, and how likely it is that this combination of factors will correctly identify recidivist and non-recidivist perpetrators.

Kaplan-Meier estimates were used to determine the proportion of perpetrators who were recorded for recidivism incidents at various points in time following their index incidents. Log-rank tests were used to identify whether there were differences in time to a recidivism incident based on perpetrators' characteristics or recorded family violence histories.

Findings

Perpetrator characteristics

A total of 30,695 unique perpetrators were recorded by police for at least one family violence incident in 2010/11, though not all data items were recorded for every perpetrator or every index incident. Of those where sex of the perpetrator was recorded ($n=30,562$), 77% ($n=23,427$) were male and 23% ($n=7,135$) were female. The median age of perpetrators at the time of their index incident was 34 years old, and the mean age was 34.29 ($SD=12.52$).

Within the cohort, sex and age group at time of index incident were statistically associated ($p < .01$), with female perpetrators more likely to fall into younger age categories: 4% of females compared with 2% of males were aged 10 to 14; 13% of females compared with 9% of males were aged 15 to 19; and 14% of females compared with 13% of males were aged 20 to 24 at the time of their index incident. On the other hand, male perpetrators more likely to fall into slightly older age categories at the time of their index incident: 13% of males compared with 11% of females were aged 25 to 29; 15% of males compared with 13% of females were aged 30 to 34; and 15% of males compared with 14% of females were 35 to 39 years old. The proportions and numbers of male and female perpetrators that fell into each age category are detailed in Table 46.

Table 46. Age and sex of perpetrators

| Age group at index incident | Male perpetrators | | Female perpetrators | | All perpetrators | |
|-----------------------------|-------------------|-------------|---------------------|-------------|------------------|-------------|
| | n | % | n | % | n | % |
| 10 to 14 | 428 | 2% | 266 | 4% | 694 | 2% |
| 15 to 19 | 2,031 | 9% | 900 | 13% | 2,931 | 10% |
| 20 to 24 | 3,020 | 13% | 975 | 14% | 3,995 | 13% |
| 25 to 29 | 3,111 | 13% | 803 | 11% | 3,914 | 13% |
| 30 to 34 | 3,378 | 15% | 880 | 13% | 4,258 | 14% |
| 35 to 39 | 3,440 | 15% | 1,011 | 14% | 4,451 | 15% |
| 40 to 44 | 3,025 | 13% | 916 | 13% | 3,941 | 13% |
| 45 to 49 | 2,020 | 9% | 573 | 8% | 2,593 | 9% |
| 50 to 54 | 1,186 | 5% | 325 | 5% | 1,511 | 5% |
| 55 to 59 | 644 | 3% | 169 | 2% | 813 | 3% |
| 60 to 64 | 371 | 2% | 89 | 1% | 460 | 2% |
| 65 to 69 | 220 | 1% | 42 | 1% | 262 | 1% |
| 70 to 79 | 187 | 1% | 44 | 1% | 231 | 1% |
| 80 or older | 45 | 0.2% | 5 | 0.1% | 50 | 0.2% |
| Total | 23,106 | 100% | 6,698 | 100% | 30,104 | 100% |

Relationship between perpetrator and victim was recorded for the majority (89% or 27,422) of index incidents. Overall, for 65% of those incidents the type of relationship between perpetrator and victim was current or former partner and for 35% the type of relationship was other family member. Figure 61 and Table 47 show the proportion and number of index incidents by relationship type according to whether the perpetrator was male or female.

Figure 61. Relationship type by perpetrator sex

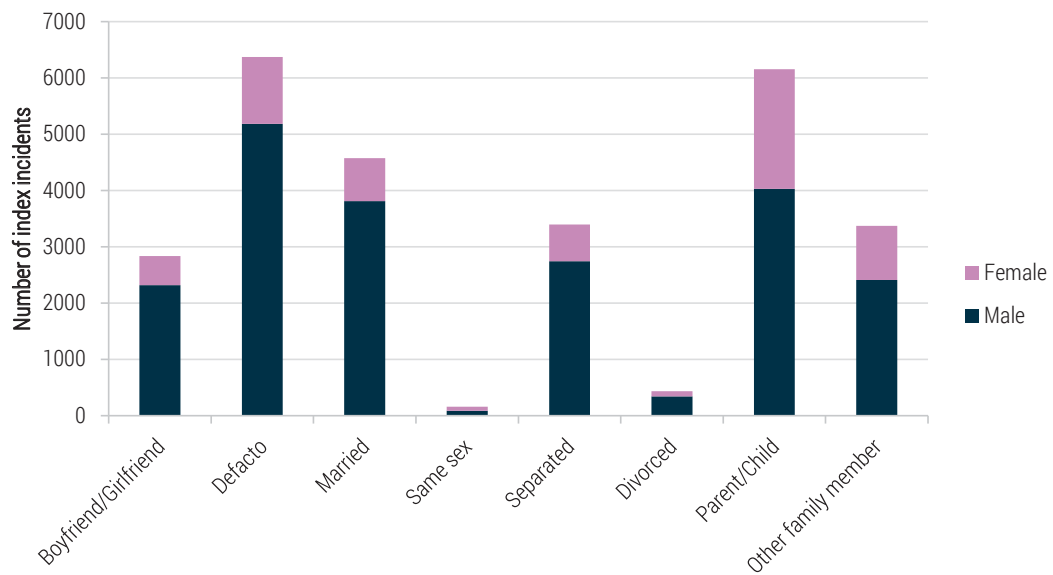


Table 47. Relationship type by perpetrator sex

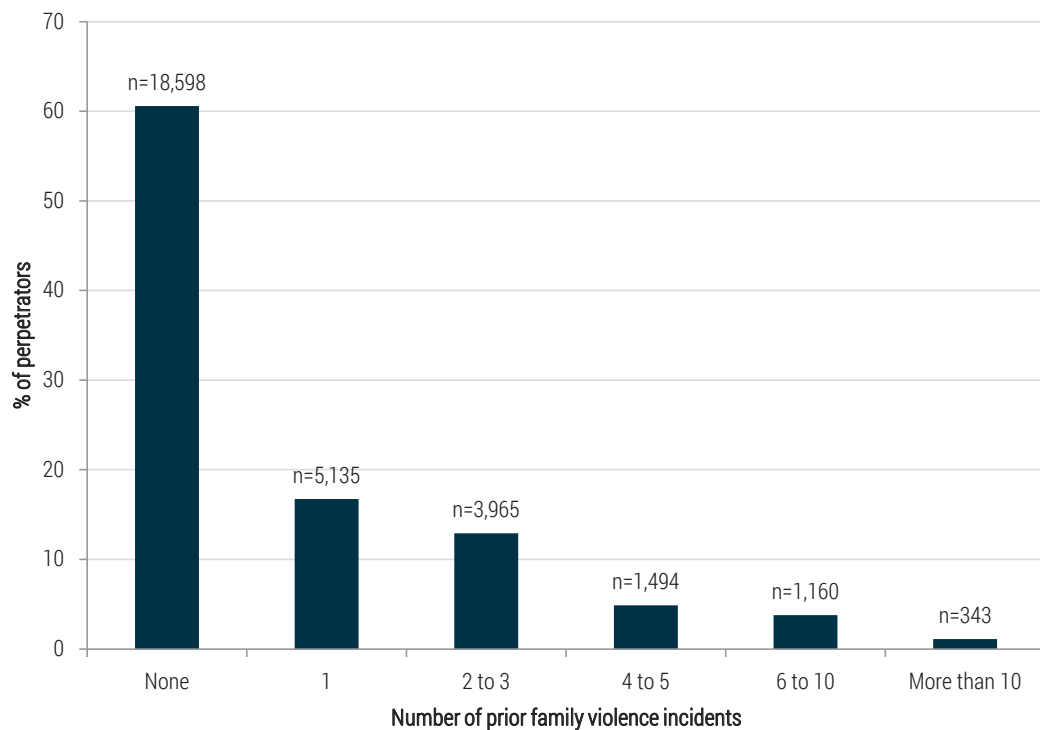
| Relationship Type | Male perpetrators | | Female perpetrators | | All perpetrators | |
|--|-------------------|-------------|---------------------|-------------|------------------|-------------|
| | n | % | n | % | n | % |
| Boyfriend/ Girlfriend | 2,316 | 10% | 518 | 7% | 2,834 | 9% |
| De facto | 5,185 | 22% | 1,187 | 17% | 6,372 | 21% |
| Married | 3,812 | 16% | 765 | 11% | 4,577 | 15% |
| Same sex | 86 | 0% | 71 | 1% | 157 | 1% |
| Separated | 2,745 | 12% | 653 | 9% | 3,398 | 11% |
| Divorced | 343 | 2% | 90 | 1% | 433 | 1% |
| <i>Subtotal – Current or Former Partner</i> | <i>14,487</i> | <i>62%</i> | <i>3,284</i> | <i>46%</i> | <i>17,771</i> | <i>58%</i> |
| Parent/Child | 4,030 | 17% | 2,125 | 30% | 6,155 | 20% |
| Other family member | 2,411 | 10% | 959 | 13% | 3,370 | 11% |
| <i>Subtotal – Other family relationships</i> | <i>6,441</i> | <i>27%</i> | <i>3,084</i> | <i>43%</i> | <i>9,525</i> | <i>31%</i> |
| Relationship type not recorded | 2,499 | 11% | 767 | 11% | 3,266 | 11% |
| Total | 23,427 | 100% | 7,135 | 100% | 30,562 | 100% |

Perpetrators' recorded family violence histories

Data was extracted to determine perpetrators' number of prior recorded family violence incidents. As shown in Figure 62, the majority of perpetrators (60%, n=18,598) did not have a prior family violence incident recorded by police. However, 17% (n=5,135) had one prior incident recorded and a further 13% (n=3,965) had two or three prior incidents recorded. These prior incidents did not necessarily relate to the same victims.

Data relating to recorded offences for breaches of family violence intervention orders (dating back to the 2004/05 financial year) prior to the date of their index incident was also extracted. Again, these orders were not necessarily related to the victim involved in the index incident. Nevertheless, 91% (n=27,843) of perpetrators had no prior recorded breaches of family violence orders, 7% (n=2,087) had one prior breach of a family violence order and 2% (n=765) had two or more breaches of family violence orders.

Figure 62. Number of prior family violence incidents recorded



Index incident characteristics

In 2010/11 the risk factors recorded on the L17 were similar but not identical to those outlined in the Common Risk Assessment Framework (CRAF; Department of Human Services, 2012). Both the L17 and the CRAF include risk factors that are relevant to victims, perpetrators and relationships between victims and perpetrators. Tables 48 and 49 show the risk factors that are included on the CRAF, the equivalent risk factors that were included on the L17 in 2010/11 and the proportion and number of index incidents where these risk factors were recorded as being present by police. As shown, most risk factors were only recorded for a very small proportion of index incidents. It should be noted, however, that while a number of CRAF risk factors in fact relate to the perpetrator's entire history of family violence behaviour, the equivalent L17 risk factors in 2010/11 appear to be related only to the current family violence incident police were recording at the time. For example, the CRAF indicates an escalated risk if the perpetrator 'has ever tried to choke victim', and the equivalent L17 risk factor seems to indicate escalated risk if the perpetrator 'choked AFM' in the current incident.

Table 48. Victim and relationship risk factors present at index incidents

| CRAF risk factor description | L17 Risk Factor(s) description | Police recorded initial incidents in 2010/11 with risk factor present | |
|---|--|---|-------|
| | | % | n |
| Victim risk factors | | | |
| Pregnancy/new birth | Pregnancy/new birth | 5.5 | 1,685 |
| Depression/ mental health issue | Depression/mental health issue | 9.5 | 2,912 |
| Drug/alcohol misuse | Alcohol use possible | 13.1 | 4,012 |
| | Alcohol use definite | 14.9 | 4,578 |
| | Drug use possible | 9.5 | 2,918 |
| | Drug use definite | 1.7 | 522 |
| Suicidal ideas/attempted suicide | Suicidal ideas/ attempted suicide | 1.0 | 300 |
| Social isolation | Isolation | 2.9 | 876 |
| Relationship risk factors | | | |
| Recent separation | Recent separation | 24.7 | 7,593 |
| Escalation/increase in severity/frequency | Escalation – increase in severity or frequency | 6.7 | 2,046 |
| Financial difficulties | Financial difficulties | 9.5 | 2,918 |

Table 49. Perpetrator risk factors present at index incidents

| CRAF risk factor description | L17 Risk Factor(s) description | Police recorded index incidents in 2010/11 with risk factor present | |
|--|---|---|-------|
| | | % | n |
| Perpetrator risk factors | | | |
| Use of weapon in most recent event | Firearms threatened/ used | 0.7 | 210 |
| | Weapons (not firearms) used | 1.3 | 411 |
| Access to weapons | Perpetrator has firearms license | 1.5 | 451 |
| | Firearm(s) present at address | 0.5 | 149 |
| Has ever harmed/threatened to harm victim | Harmed/threatened to harm AFM | 15.1 | 4,642 |
| Has ever tried to choke victim | Choked AFM | 2.8 | 852 |
| Has ever threatened to kill victim | Threatened to kill AFM | 4.2 | 1,283 |
| Has ever harmed/threatened to harm/kill children | Harmed or threatened harm/kill children | 1.2 | 360 |
| Has ever harmed/threatened to harm/kill other family members | Harmed or threatened harm/kill family | 1.5 | 453 |
| Has ever harmed/threatened to harm/kill pets | Harmed or threatened harm/kill pets | 0.4 | 138 |
| Has ever threatened/ attempted suicide | Suicidal ideas/attempted suicide | 3.0 | 918 |
| Stalking of the victim | Stalked AFM | 1.5 | 457 |
| Sexual assault of the victim | Sexual assault of AFM | 1.2 | 367 |
| Previous/current breach of intervention order | Breach of current/previous IO | 3.5 | 1,064 |
| Drug/alcohol misuse | Alcohol use possible | 15.2 | 4,658 |
| | Alcohol use definite | 24.0 | 7,354 |
| | Drug use possible | 15.4 | 4,723 |
| | Drug use definite | 4.5 | 1,368 |
| Obsession/jealous behaviour towards victim | No L17 equivalent | - | - |
| Controlling behaviour | Controlling behaviours | 15.4 | 4,719 |
| Unemployment | Unemployed | 8.5 | 2,618 |
| Depression/ mental health issue | Depression/mental health issue | 13.5 | 4,154 |
| History of violent behaviour | History violent behaviour | 7.1 | 2,165 |

Of the 33 risk factors listed in Table 49 above, the maximum number recorded at any incident was 20. Figure 63 shows the total number of risk factors recorded at each incident and Figure 64 shows the number of risk factors recorded by police by relationship type between perpetrator and victim. As shown, the majority of incidents across all relationship types had between one and four risk factors recorded and a slightly higher proportion of incidents between those who were separated or in a de facto relationship had five or more risk factors recorded at the index incident.

Figure 63. Total number of risk factors recorded at index incident

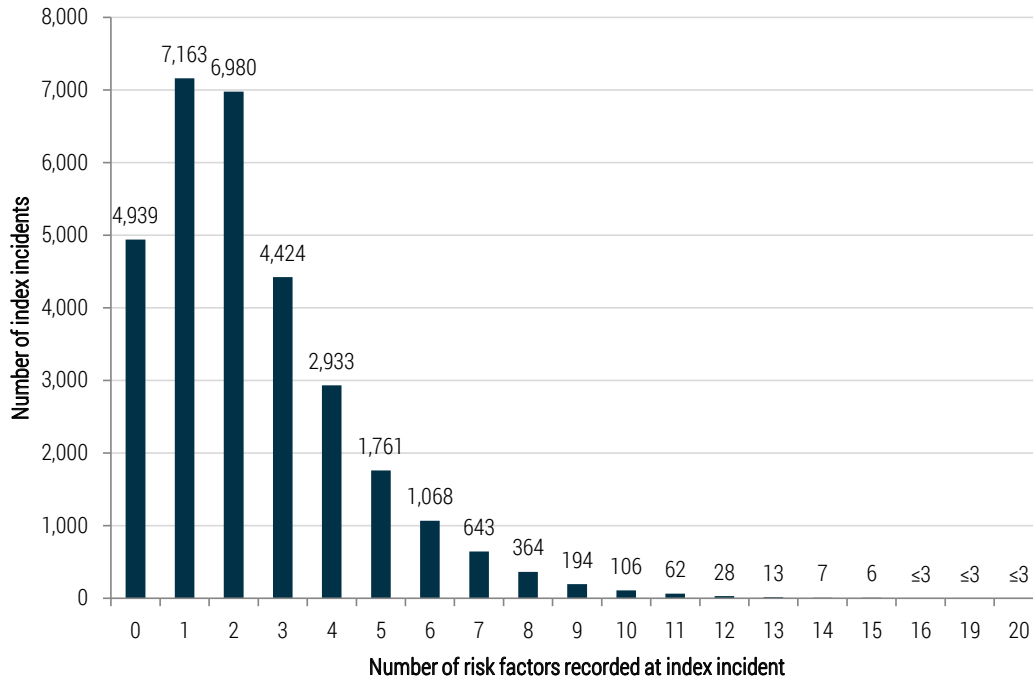


Figure 64. Number of risk factors recorded at index incident by relationship between perpetrator and victim

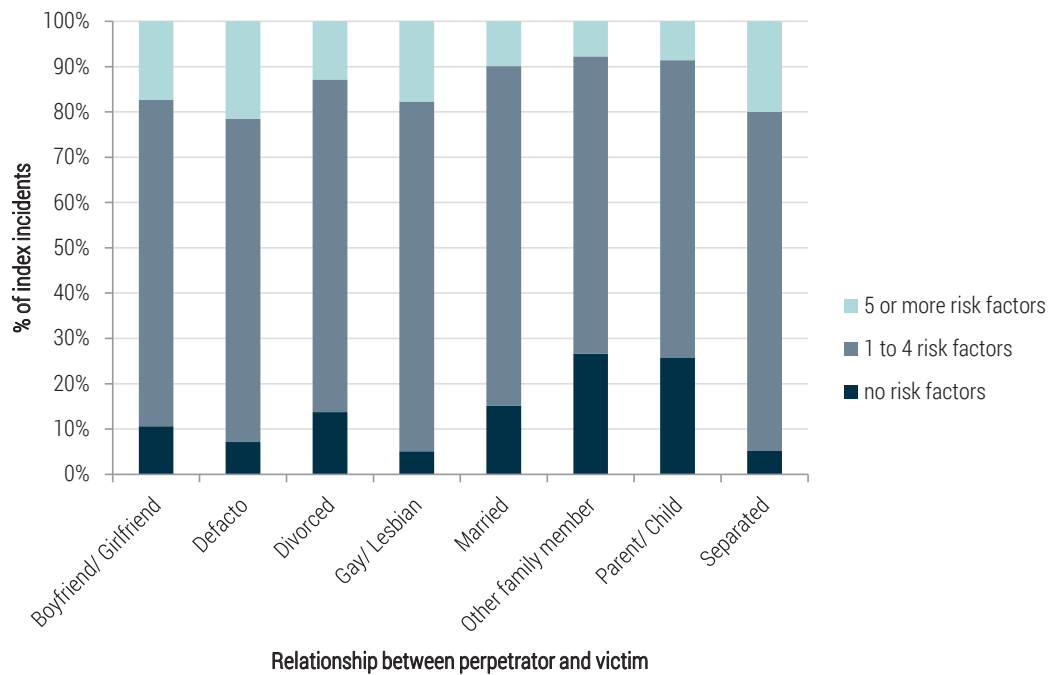


Table 50. Number of risk factors by relationship between perpetrator and victim

| Relationship Type | No risk factors | | 1 to 4 risk factors | | 5 or more risk factors | |
|--------------------------------|-----------------|-----|---------------------|-----|------------------------|-----|
| | n | % | n | % | n | % |
| Boyfriend/ Girlfriend | 301 | 11% | 2,050 | 72% | 492 | 17% |
| De facto | 455 | 7% | 4,562 | 71% | 1,373 | 21% |
| Married | 699 | 15% | 3,462 | 75% | 457 | 10% |
| Same sex | 8 | 5% | 122 | 77% | 28 | 18% |
| Separated | 177 | 5% | 2,559 | 75% | 683 | 20% |
| Divorced | 60 | 14% | 321 | 73% | 56 | 13% |
| Parent/Child | 1,585 | 26% | 4,059 | 66% | 529 | 9% |
| Other family member | 901 | 27% | 2,221 | 66% | 262 | 8% |
| Relationship type not recorded | 753 | 23% | 2,144 | 66% | 376 | 11% |

Children were recorded by police as being present at 36% (n=10,945) of index incidents, and police noted the presence of a disability in 3% (n=761) of incidents, though the L17 form did not require police officers to specify whether the victim, the perpetrator or a child present at the time of the incident had a disability. Victim fear level at the time of the incident was recorded for the majority of index incidents (94% or 28,962) incidents. Where this was recorded, 61% (n=17,652) were recorded as 'not fearful', 29% (n=8,299) were recorded as 'fearful', and 10% (n=3,011) were recorded as 'very fearful'. Police also provided an overall risk assessment for 65% (n=19,901) of all index incidents. They assessed the overall risk of further violence as likely for 48% (n=9,465) of those index incidents and as unlikely for the remaining 52% (n=10,436) of incidents.

Police actions

In addition to indicating which risk factors were present at an incident, police officers can record which criminal, civil, referral or other actions they took or intended to take as a result of the family violence incident on the L17 form.

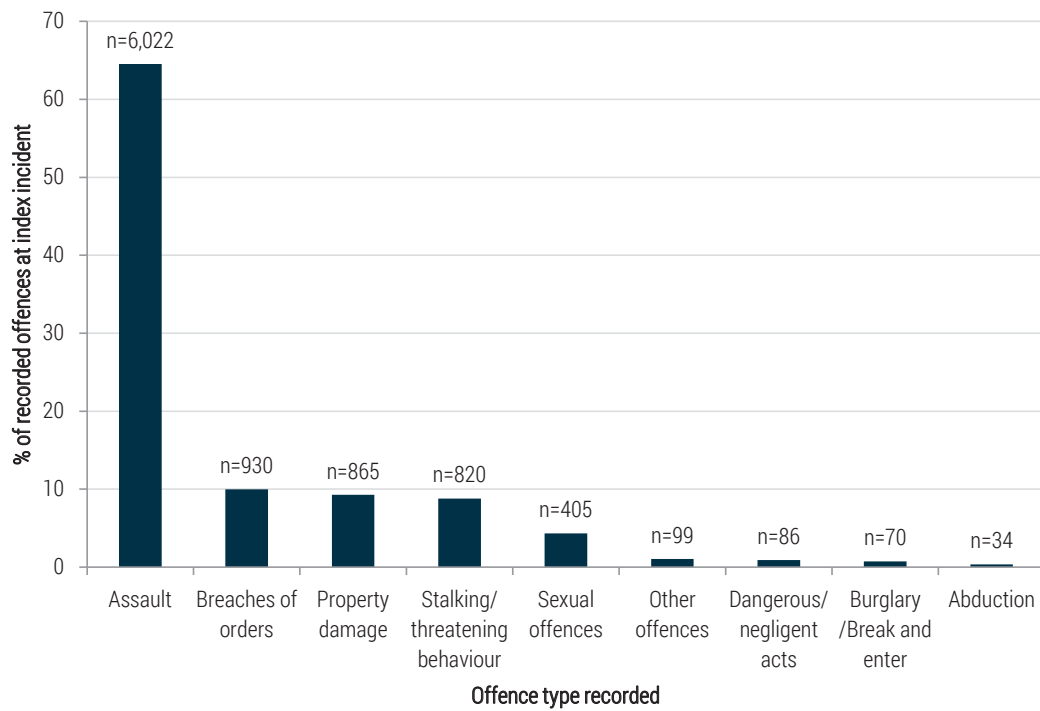
Table 51 shows which police actions were recorded on the L17 for the 30,695 index incidents. In total, 7% (n=2,049) of index incidents did not have any police action recorded. Referral actions were most frequently recorded, with 88% (n=27,058) of incidents recorded as having at least one referral action. Though police recorded taking criminal action for only 17% (n=5,163) of incidents, police offence records arising from these index incidents indicate that criminal offences were actually recorded as a result of 30% (n=9,331) of incidents. While these criminal offences are alleged rather than proven, this may indicate that police criminal actions arising as a result of this cohorts' index incidents were underreported on the L17 form.

Table 51. Actions recorded by police at index incidents

| Action Type | Action | Police recorded initial incidents in 2010/11 with action recorded | |
|---|---|---|---------------|
| | | % | n |
| Criminal | Charges pending (breach and other) | 1.7 | 513 |
| | Charges pending (breach only) | 2.1 | 641 |
| | Charges pending (other only) | 11.8 | 3,617 |
| | Perpetrator bailed with conditions | 3.1 | 947 |
| | Perpetrator remanded in custody | 0.5 | 162 |
| <i>Sub-total of incidents with one or more criminal actions</i> | | 16.8 | 5,163 |
| Civil | FVSN issued | 9.8 | 3,010 |
| | FVIO application and warrant | 10.9 | 3,350 |
| | FVIO application and summons | 4.2 | 1,286 |
| | Police applying for FVIO | 2.4 | 742 |
| | AFM applying for FVIO | 2.9 | 905 |
| <i>Sub-total of incidents with one or more civil actions</i> | | 28.6 | 8,771 |
| Referral | Women's Domestic Violence Crisis Centre | 1.4 | 439 |
| | Formal referral AFM | 39.1 | 12,004 |
| | Formal referral perpetrator | 27.7 | 8,488 |
| | Informal referral AFM | 48.8 | 14,981 |
| | Informal referral perpetrator | 36.3 | 11,123 |
| | Child protection (DHS) | 14.4 | 4,419 |
| <i>Sub-total of incidents with one or more referral actions</i> | | 88.2 | 27,058 |
| Other | Holding direction | 2.7 | 826 |
| | Holding detention | 1.9 | 579 |
| | Weapons seized | 0.4 | 122 |
| | Revoke firearm license | 0.2 | 51 |
| <i>Sub-total of incidents with one or more other actions</i> | | 4.7 | 1,449 |

Figure 65 shows the principal offence for the 30% of family violence index incidents that resulted in offences being recorded. The principal offence is the most serious offence recorded for the incident, as defined by the CSA's offence index (Crime Statistics Agency, 2015). As shown, assault offences were by far the most commonly recorded offences (65% or 6,022 of all recorded offences).

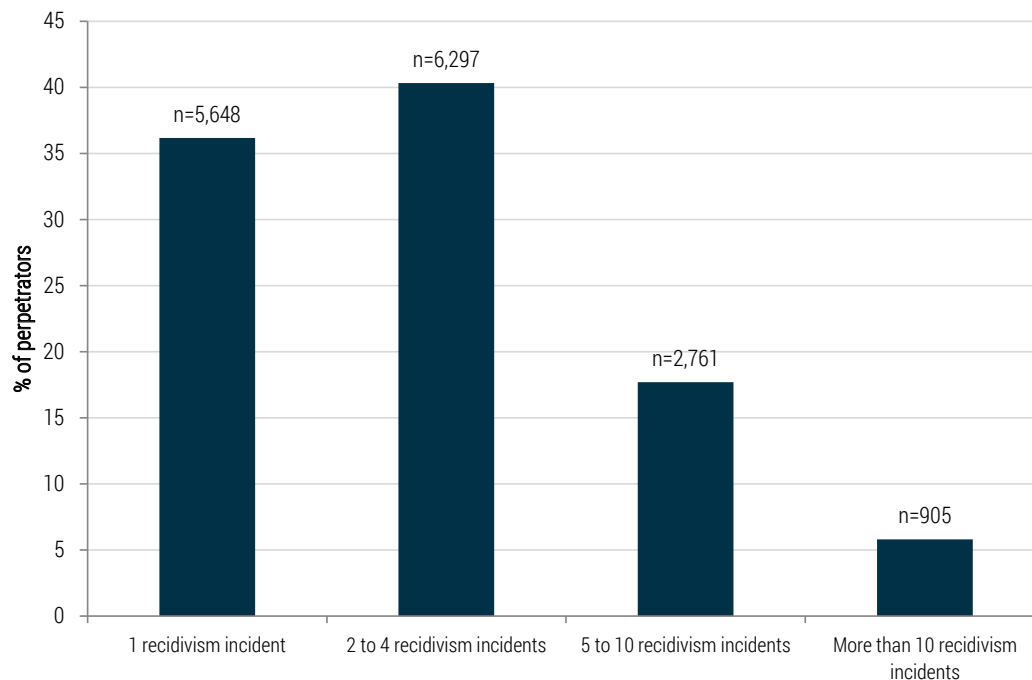
Figure 65. Types of recorded offences arising from index incidents



Overall recidivism rates

Overall, just over half (51%, n=15,611) of all perpetrators recorded for at least one incident in 2010/11 were recorded for a further family violence incident between the time of their index incident and the end of March 2015, and 49% (n=15,084) were not recorded for a further incident. Figure 66 shows the number of incidents recorded per perpetrator for all recidivist perpetrators. The median number of re-incidents amongst recidivist perpetrators who did have a recidivism incident was two and the mean number of re-incidents was 3.35 (SD=3.43).

Figure 66. Number of repeat incidents perpetrated



Recidivism by perpetrator and index incident characteristics

Table 52 presents the results for the analyses of the bivariate relationships between perpetrator characteristics and history factors, and whether or not perpetrators were recorded for a recidivism incident. Significant relationships were found between all of the perpetrator characteristics analysed and recidivism. Specifically, the nature of these relationships was that:

- Males were more likely to be recorded for a recidivism incident: they made up 81% of those recorded for a recidivism incident were males compared with only 72% of those not recorded for a recidivism incident.
- People aged younger than 34 at the time of their index incident were more likely to be recorded for a recidivism incident, whereas people aged 45 or older were less likely to be recorded for a recidivism incident.
- A higher proportion of perpetrators were recorded for recidivism incidents where the relationship type between perpetrator and victim was de facto (24% of recidivist perpetrators compared to 17% of non-recidivist perpetrators) or boyfriend/girlfriend (10% of recidivist perpetrators compared to 8% of non-recidivist perpetrators). Where the relationship was divorced, married or other family member, perpetrators were less likely to be recorded for a recidivism incident.
- Perpetrators who had previously been recorded for family violence incidents were more likely to be recorded for a recidivism incident. Those recorded for one or two prior incidents made up 31% of recidivist perpetrators compared with 19% of non-recidivist perpetrators, and those recorded for three or more prior incidents made up 23% of recidivist perpetrators compared with just 6% of non-recidivist perpetrators. On the other hand those with no prior recorded incidents made up 76% of non-recidivist perpetrators and 46% of recidivist perpetrators.
- Perpetrators who were recorded for a breach of a family violence order prior to their index incident were more likely to be recorded for a recidivism incident. They made up 14% of recidivist perpetrators compared with just 4% of non-recidivist perpetrators.

Further analysis: police recorded family violence recidivism 120

Table 52. Relationships between perpetrator characteristics and recidivism

| | Perpetrators not recorded for further incidents | | Recidivist perpetrators | | Significance <i>p</i> |
|---|---|------|-------------------------|------|--------------------------|
| | <i>n</i> | % | <i>n</i> | % | |
| Sex (n=30,562) | | | | | <.0001 |
| Male | 10,740 | 72 | 12,687 | 81 | |
| Female | 4,206 | 28 | 2,929 | 19 | |
| Age at index incident (n=30,221) | | | | | <.0001 |
| 10 to 14 | 278 | 1.9 | 418 | 2.7 | |
| 15 to 19 | 1,267 | 8.5 | 1,668 | 10.9 | |
| 20 to 24 | 1,785 | 11.9 | 2,215 | 14.5 | |
| 25 to 29 | 1,719 | 11.5 | 2,202 | 14.4 | |
| 30 to 34 | 1,970 | 13.2 | 2,306 | 15.1 | |
| 35 to 39 | 2,119 | 14.2 | 2,350 | 15.4 | |
| 40 to 44 | 2,033 | 13.6 | 1,926 | 12.6 | |
| 45 to 49 | 1,491 | 10.0 | 1,119 | 7.3 | |
| 50 to 54 | 948 | 6.3 | 575 | 3.8 | |
| 55 to 59 | 574 | 3.8 | 249 | 1.6 | |
| 60 to 64 | 339 | 2.3 | 124 | 0.8 | |
| 65 to 69 | 199 | 1.3 | 63 | 0.4 | |
| 70 to 79 | 170 | 1.1 | 61 | 0.2 | |
| 80 or older | 44 | 0.3 | 9 | 0.1 | |
| Relationship between victim and perpetrator (n=27,422) | | | | | <.0001 |
| Boyfriend/girlfriend | 1,288 | 8.4 | 1,555 | 10.1 | |
| De facto | 2,569 | 16.8 | 3,821 | 24.8 | |
| Divorced | 266 | 1.7 | 171 | 1.1 | |
| Gay/lesbian | 91 | 0.6 | 67 | 0.4 | |
| Married | 2,746 | 18.0 | 1,872 | 12.1 | |
| Separated | 1,639 | 10.7 | 1,780 | 11.6 | |
| Parent/child | 3,160 | 20.7 | 3,013 | 19.6 | |
| Other family member | 1,896 | 12.4 | 1,488 | 9.7 | |
| Perpetrator's number of recorded prior FV incidents (n=30,695) | | | | | <.0001 |
| None | 11,540 | 75.5 | 7,058 | 45.8 | |
| 1 to 2 | 2,891 | 18.9 | 4,769 | 30.9 | |
| 3 or more | 853 | 5.6 | 3,584 | 23.3 | |
| Whether perpetrator has prior recorded breaches of FV orders (n= 30,695) | | | | | <.0001 |
| No | 14,652 | 95.9 | 13,191 | 85.6 | |
| Yes | 632 | 4.1 | 2,220 | 14.4 | |

The relationships between age group at time of index incident and recidivism and relationship type and recidivism are also depicted graphically in Figures 67 and 68 below.

Figure 67. Recidivism by age group at time of index incident

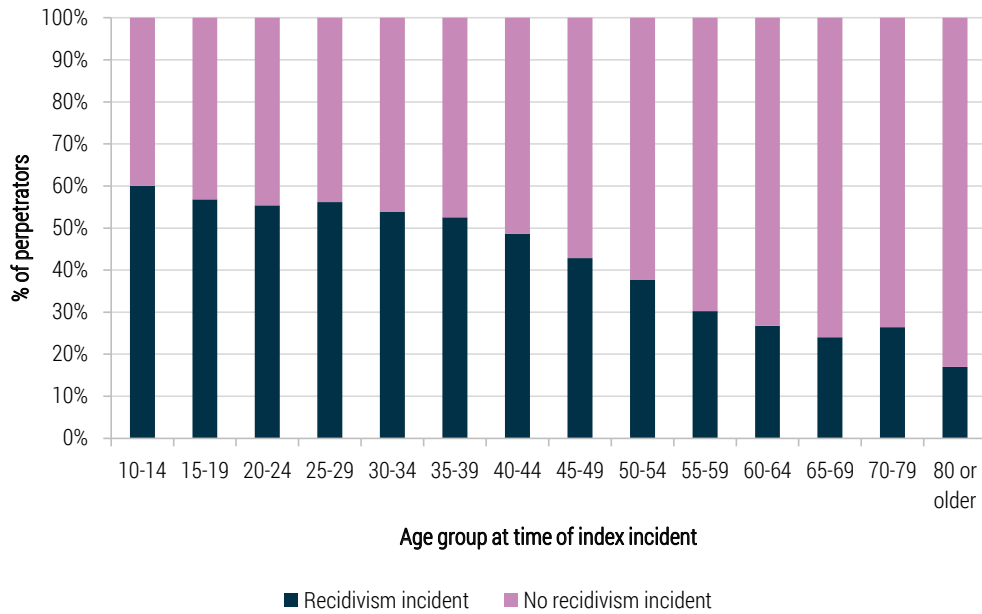


Figure 68. Recidivism by relationship type between perpetrator and victim

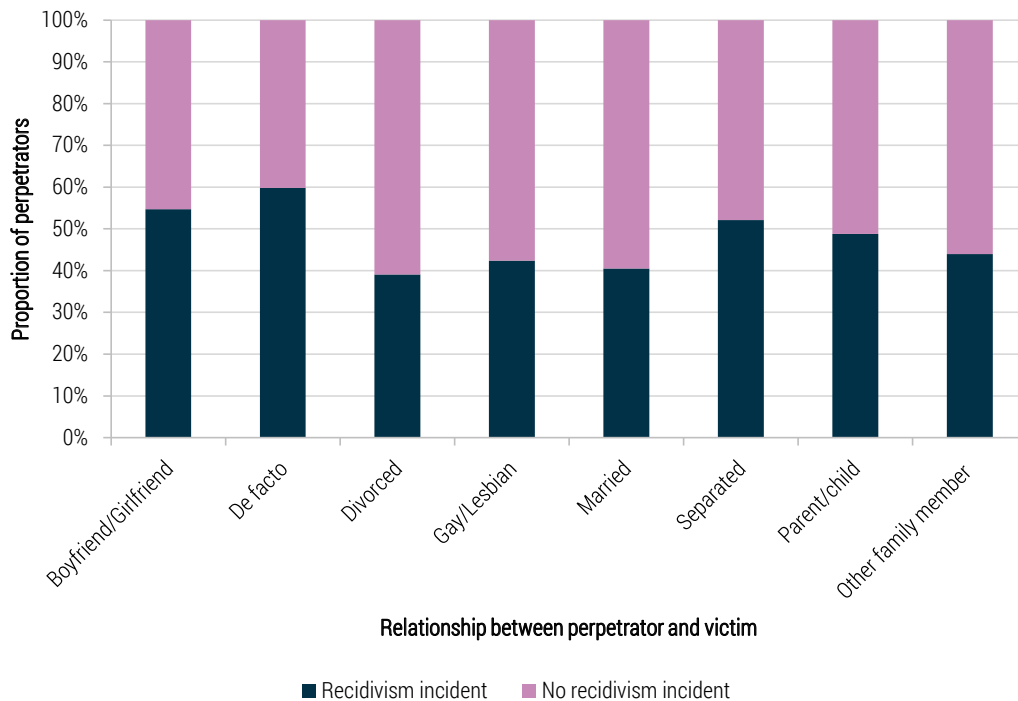


Table 53 shows the relationship between recorded index incident characteristics and recidivism. Again, all of these characteristics had significant relationships with recidivism. Where victim fear level was recorded as 'not fearful' at the index incident, perpetrators were less likely to be recorded for a recidivism incident. These perpetrators made up 58% of recidivist perpetrators compared with 64% of non-recidivist perpetrators. On the other hand, where victim fear level was 'fearful' or 'very fearful' perpetrators were more likely to be recorded for a recidivism incident. They made up 30% of recidivist compared with 27% of non-recidivist perpetrators where victims were 'fearful', and 11% of recidivist compared with 9% of non-recidivist perpetrators where victims were 'very fearful'.

Where police made an assessment of future risk of violence, they assessed the risk as 'unlikely' for 45% of recidivist perpetrators and as 'likely' for the remaining 55%. Conversely, they assessed the risk as 'unlikely' for 60% of non-recidivist perpetrators, and as 'likely' for the remaining 40%. Overall, the police officer's assessment of further violence was 'correct' (to the extent that further incidents did or did not come to the attention of police within the analysis window) in 57% (n=11,369) of index incidents, indicating that their assessments were slightly better than chance at predicting recidivism over this timeframe. Recorded presence of children and presence of a disability at the index incident were both associated with a slightly increased likelihood of recidivism.

Table 53. Relationships between index incident characteristics and recidivism

| | Perpetrators not recorded for further incidents | | Recidivist perpetrators | | Significance <i>P</i> |
|---|---|------|-------------------------|------|--------------------------|
| | <i>n</i> | % | <i>n</i> | % | |
| Victim fear level (n=28,962) | | | | | <.0001 |
| Not fearful | 9,007 | 63.6 | 8,645 | 58.3 | |
| Fearful | 3,836 | 27.1 | 4,463 | 30.2 | |
| Very fearful | 1,319 | 9.4 | 1,692 | 11.4 | |
| Police overall assessment of risk of further violence (n=19,901) | | | | | <.0001 |
| Unlikely | 5,837 | 59.7 | 4,599 | 45.3 | |
| Likely | 3,933 | 40.3 | 5,532 | 54.7 | |
| Whether children were present at index incident (n=30,695) | | | | | <.0001 |
| No | 10,132 | 66.3 | 9,618 | 62.4 | |
| Yes | 5,152 | 33.7 | 5,793 | 37.6 | |
| Whether disability was present at index incident (n=30,695) | | | | | .02 |
| No | 14,937 | 97.7 | 14,997 | 97.3 | |
| Yes | 347 | 2.3 | 414 | 2.7 | |

Tables 54 and 55 show the bivariate relationships between recidivism and each of the risk factors recorded by police at the index incident. These tables provides slightly different information to the previous tables in this section. They present both the number and proportion of recidivist perpetrators who did not have a specific risk factor recorded at their index incident compared to those that did have the risk factor recorded. Where the 'significance level' column indicates a significant relationship, and the proportion of recidivists that did have the risk factor present is larger than the proportion that did not, this indicates a positive relationship between presence of the risk factor and recidivism.

As shown, the analyses indicated that there were significant associations between the majority of risk factors and recidivism. Risk factors that did not have an association with recidivism included: victim depression/mental health

issue; victim suicidal ideas/attempted suicide; recent separation; perpetrator use of weapons (not firearms); perpetrator harmed or threatened to harm/kill children; and, perpetrator stalked victim.

Table 54. Bivariate relationships between victim and relationship risk factors and recidivism

| L17 form risk factors | Perpetrators without risk factor present who had a recidivism incident | | Perpetrators with risk factor present who had a recidivism incident | | Significance <i>p</i> |
|--|--|------|---|------|--------------------------|
| | <i>n</i> | % | <i>n</i> | % | |
| Victim risk factors | | | | | |
| Pregnancy/new birth | 14,323 | 49.4 | 1,088 | 64.6 | <.001 |
| Depression/mental health issue | 13,949 | 50.2 | 1,462 | 50.2 | Not Significant |
| Alcohol use possible | 13,155 | 49.3 | 2,256 | 56.2 | <.001 |
| Alcohol use definite | 12,876 | 49.3 | 2,535 | 55.4 | <.001 |
| Drug use possible | 13,556 | 48.8 | 1,855 | 63.6 | <.001 |
| Drug use definite | 15,060 | 49.9 | 351 | 67.2 | <.001 |
| Suicidal ideas/attempted suicide | 15,249 | 50.2 | 162 | 54.0 | Not Significant |
| Social isolation | 15,011 | 50.3 | 400 | 45.7 | .01 |
| Relationship risk factors | | | | | |
| Recent separation | 11,617 | 50.3 | 3,794 | 50.0 | Not Significant |
| Escalation – increase in severity or frequency | 14,238 | 49.7 | 1,173 | 57.3 | <.001 |
| Financial difficulties | 13,815 | 49.7 | 1,596 | 54.7 | <.001 |

Table 55. Bivariate relationships between perpetrator risk factors and recidivism

| L17 form risk factors | Perpetrators without risk factor present who had a recidivism incident | | Perpetrators with risk factor present who had a recidivism incident | | Significance level |
|---|--|------|---|------|--------------------|
| | <i>n</i> | % | <i>n</i> | % | <i>p</i> |
| Perpetrator risk factors present | | | | | |
| Firearms threatened/used | 15,322 | 50.3 | 89 | 42.4 | .02 |
| Weapons (not firearms) used | 15,187 | 50.1 | 224 | 54.5 | Not Significant |
| Perpetrator has firearms license | 15,245 | 50.4 | 166 | 36.8 | <.001 |
| Firearms present | 15,356 | 50.3 | 55 | 36.9 | <.001 |
| Harmed/threatened to harm AFM | 12,663 | 48.6 | 2,748 | 59.2 | <.001 |
| Choked AFM | 14,927 | 50.0 | 484 | 56.8 | <.001 |
| Threatened to kill AFM | 14,657 | 49.8 | 754 | 58.8 | <.001 |
| Harmed or threatened harm/kill children | 15,213 | 50.1 | 198 | 55.0 | Not Significant |
| Harmed or threatened harm/kill family | 15,136 | 50.0 | 275 | 60.7 | <.001 |
| Harmed or threatened harm/kill pets | 15,328 | 50.2 | 83 | 60.1 | <.001 |
| Suicidal ideas/attempted suicide | 14,887 | 50.0 | 524 | 57.1 | <.001 |
| Stalked AFM | 15,166 | 50.2 | 245 | 53.6 | Not significant |
| Sexual assault of AFM | 15,272 | 50.4 | 139 | 37.9 | <.001 |
| Breach of current/previous Intervention Order | 14,676 | 49.5 | 735 | 69.1 | <.001 |
| Alcohol use possible | 12,805 | 49.2 | 2,606 | 55.9 | <.001 |
| Alcohol use definite | 11,295 | 48.4 | 4,116 | 56.0 | <.001 |
| Drug use possible | 12,372 | 47.6 | 3,039 | 64.3 | <.001 |
| Drug use definite | 14,498 | 49.4 | 913 | 66.7 | <.001 |
| Controlling behaviours | 12,902 | 49.7 | 2,509 | 53.2 | <.001 |
| Unemployment | 13,744 | 49.0 | 1,667 | 63.7 | <.001 |
| Depression/mental health issue | 13,098 | 49.4 | 2,313 | 55.7 | <.001 |
| History of violent behaviour | 13,994 | 49.1 | 1,417 | 65.7 | <.001 |

Finally, analyses were conducted to determine whether there were bivariate relationships between police actions recorded on the L17 and whether a perpetrator goes on to be recorded for a recidivism incident. The results of these analyses are presented in Table 56. All actions taken by police that had significant relationships with recidivism were associated with a slightly increased likelihood of recidivism, with the exception of informal referrals for both perpetrators and victims, and revocation of firearms licenses. For example, of all perpetrators where police recorded the criminal action 'charges pending (breach and other)', 68% were recorded for a recidivism incident, whereas when police did not record this action, 50% went on to be recorded for a recidivism incident.

A significant relationship was found between whether recorded criminal offences arose from the index incident and recidivism, though the size of the relationship was very small. Where offences were recorded, 51% (n=4,800) of perpetrators were recorded for a recidivism incident, whereas where no offences were recorded 50% (n=10,611) were recorded for a recidivism incident.

Table 56. Bivariate relationships between police recorded

| Action | Recidivism following index incidents where action was not recorded | | Recidivism following index incidents where action was recorded | | Significance level |
|---|--|------|--|------|--------------------|
| | n | % | n | % | |
| Criminal Actions | | | | | |
| Charges pending (breach and other) | 15,062 | 49.9 | 349 | 68.0 | <.001 |
| Charges pending (breach only) | 14,993 | 49.9 | 418 | 65.2 | <.001 |
| Charges pending (other only) | 13,555 | 50.1 | 1,856 | 51.3 | Not Significant |
| Perpetrator bailed with conditions | 14,867 | 50.0 | 544 | 57.4 | <.001 |
| Perpetrator remanded in custody | 15,310 | 50.1 | 101 | 62.3 | .002 |
| Civil Actions | | | | | |
| FVSN issued | 13,785 | 49.8 | 1,626 | 54.0 | <.001 |
| FVIO application and warrant | 13,564 | 49.6 | 1,847 | 55.1 | <.001 |
| FVIO application and summons | 14,745 | 50.1 | 666 | 51.8 | Not Significant |
| Police applying for FVIO | 15,022 | 50.2 | 389 | 52.4 | Not Significant |
| AFM applying for FVIO | 14,944 | 50.2 | 467 | 51.6 | Not Significant |
| Referral Actions | | | | | |
| Women's Domestic Violence Crisis Centre | 15,178 | 50.2 | 233 | 53.1 | Not Significant |
| Formal referral AFM | 9,088 | 48.6 | 6,323 | 52.7 | <.001 |
| Formal referral perpetrator | 10,966 | 49.4 | 4,445 | 52.4 | <.001 |
| Informal referral AFM | 8,045 | 51.2 | 7,366 | 49.2 | <.001 |
| Informal referral perpetrator | 9,948 | 50.8 | 5,463 | 49.1 | .004 |
| Child protection (DHS) | 13,035 | 49.6 | 2,376 | 53.8 | <.001 |
| Other Actions | | | | | |
| Holding direction | 14,955 | 50.1 | 456 | 55.2 | .004 |
| Holding detention | 15,063 | 50.0 | 348 | 60.1 | <.001 |
| Weapons seized | 15,356 | 50.2 | 55 | 45.1 | Not Significant |
| Revoke firearm license | 15,393 | 50.2 | 18 | 35.3 | .03 |

Final recidivism model

All of the factors that were identified as having significant bivariate relationships with likelihood of recidivism in the previous section were included in a logistic regression model to explore which combination of these variables had the most predictive validity in determining who, following their index incident, went on to be recorded for a recidivism incident. The final model excludes any variables that do not have any relationship with recidivism, when the effects of all other possible predictor variables are taken into account.

Note that this technique excludes perpetrators who had missing data on one or more of the variables included in the model. The final model was based on 17,792 perpetrators. The majority of perpetrators excluded were missing data on police assessment of risk of future violence at the index incident.

The overall adequacy of the model was assessed according to its ability to discriminate between those perpetrators who went on to be recorded for a recidivism incident and those who were not, using the ROC Area Under the Curve statistic (AUC). In other words, this statistic can be interpreted as the likelihood that the model will produce a higher predicted probability of recidivism for recidivist perpetrators compared with non-recidivist perpetrators. The better the model's overall ability to discriminate between recidivist and non-recidivist perpetrators, the more accuracy the model, (and the information on factors included in the model as recorded by police at the index incident), have in predicting recidivism. An AUC of 0.5 indicates the model has no ability to discriminate, an AUC between 0.7 and 0.8 indicates acceptable ability to discriminate, an AUC between 0.8 and 0.9 is considered to have excellent ability to discriminate, and an AUC greater than 0.9 is considered to have outstanding discrimination (Hosmer and Lemeshow, 2000). The AUC for the final model presented here was 0.72 (95% Confidence Interval: 0.71, 0.73), indicating that there is a 72% chance that the final recidivism model will produce a higher probability of recidivism for recidivist perpetrators in the 2010/11 cohort, and the model has acceptable ability to discriminate between those who will and will not go on to be recorded for a recidivism incident.

The final predictor variables included in the model are presented in Table 57. These are the factors that contribute significantly to predicting recidivism, taking into account the effects of all other variables included in the model. The odds ratio column can be interpreted as the likelihood that a perpetrator with that characteristic will go on to be recorded for a recidivism incident. For example, males were 1.53 times more likely to be recorded for a recidivism incident than females.

In summary, the odds ratios presented in Table 57 indicate that:

- Perpetrators recorded for a recidivism incident are more likely to be male than female.
- For every year of increase in age at time of incident, the likelihood of being recorded for a recidivism incident decreases slightly.
- Perpetrators whose index incident is against a current or former partner are more likely to be recorded for a recidivism incident than those whose index incident is against another type of family member.
- Perpetrators with one to two prior recorded family violence incidents are 2.26 times more likely to be recorded for a recidivism incident than those with no prior recorded incidents, and perpetrators with three or more prior recorded incidents are 4.5 times more likely to be recorded for a recidivism incident.
- Perpetrators with a prior recorded offence for a breach of a family violence incident are more likely to be recorded for a recidivism incident.
- Where police assess future risk of violence as 'likely' at the index incident, perpetrators are more likely to be recorded for a recidivism incident.
- If recorded criminal offences arose from the index incident, perpetrators were slightly less likely to be recorded for a recidivism incident.

- Recidivist perpetrators were more likely to have the following risk factors recorded by police at the time of their index incident: perpetrator unemployed; perpetrator depression/mental health issue; victim pregnancy or new birth; escalation – increase in severity or frequency; perpetrator drug use possible or definite; and/or victim alcohol use possible or definite.
- Perpetrators were less likely to be recorded for a recidivism incident when police recorded victim social isolation or perpetrator possession of a firearms license at the index incident.
- Presence of children at the index incident was associated with a higher likelihood of recidivism.
- The only police recorded action on the L17 form at the index incident that contributed significantly to predicting recidivism in the final model was for criminal charges pending for a breach of a family violence order. Where this action was recorded, it was associated with an increased likelihood of recidivism.

Table 57. Logistic regression model comparing odds of recidivism versus no recidivism

| Predictor | Odds Ratio | 95% Confidence Interval of the Odds Ratio | Significance level (<i>p</i>) |
|--|------------|---|---------------------------------|
| Sex (male vs female) | 1.53 | 1.42, 1.65 | <.001 |
| Age at time of index incident (per additional year of age) | 0.98 | 0.97, 0.98 | <.001 |
| Relationship between perpetrator and victim (current or former partner vs other family member) | 1.12 | 1.04, 1.20 | .002 |
| Number of prior incidents | | | |
| 1-2 prior incidents | 2.26 | 2.09, 2.43 | <.001 |
| 3 or more prior incidents | 4.50 | 4.00, 5.06 | <.001 |
| Prior breach of FV order | 1.47 | 1.27, 1.69 | <.001 |
| Police risk assessment (likely vs unlikely) | 1.33 | 1.24, 1.43 | <.001 |
| Whether recorded offences arose from index incident | 0.81 | 0.76, 0.88 | <.001 |
| Perpetrator unemployed | 1.20 | 1.06, 1.35 | .003 |
| Perpetrator depression/mental health issue | 1.56 | 1.35, 1.80 | .002 |
| Perpetrator has firearms license | 0.68 | 0.52, 0.88 | .004 |
| Victim pregnancy or new birth | 1.83 | 1.53, 2.19 | <.001 |
| Victim isolation | 0.78 | 0.65, 0.94 | .009 |
| Escalation – increase in severity or frequency | 1.15 | 1.02, 1.31 | .03 |
| Children present at index incident | 1.15 | 1.07, 1.22 | <.001 |
| Perpetrator – drug use possible | 1.49 | 1.36, 1.64 | <.001 |
| Perpetrator – drug use definite | 1.37 | 1.16, 1.61 | .001 |
| Victim – alcohol use possible | 1.19 | 1.08, 1.31 | <.001 |
| Victim – alcohol use definite | 1.21 | 1.10, 1.32 | <.001 |
| Criminal charges pending for breach of family violence order | 1.37 | 1.07, 1.76 | .01 |

Time between index incident and recidivism incident

The final part of this study explored the time in number of days between index incidents and any recidivism incidents perpetrated, and what factors at the index incident might impact on how long it takes a perpetrator to be recorded for a recidivism incident. Overall for the 2010/11 perpetrator cohort, as the number of incidents they perpetrated increased the time between the incidents decreased. The median number of days between an index and a recidivism incident was 275. For those recorded for a further incident (a third incident), the median number of days between their recidivism and third incident was 156, and for those recorded for a fourth incident, the median number of days between their third and fourth incident was 109 days.

Preliminary analyses were conducted using the Kaplan-Meier procedure to estimate the cumulative proportion of perpetrators who were recorded for a recidivism incident over time. Figure 69 and the final row in Table 58 show the overall proportions of perpetrators who committed a recidivism incident over time. At the six month point around 21% of all perpetrators had been recorded for a recidivism incident, which increased to 39% at 24 months post index incident. Log rank tests were used to examine whether there were differences in these proportions across key groups of perpetrators and the results of these tests are presented in Table 58 and Figures 70 through 74. In summary, these tests showed that recidivism incidents occurred more quickly following the index incident for perpetrators who: were male, fell into a younger age category at the time of their index incident, perpetrated violence against a current or former partner at the index incident, had a history of recorded violence incidents, and/or had previously recorded offences for breaches of family violence orders. In particular, those with a recorded incident and/or breach history were much more likely to have had a recidivism incident six months after their index incident. At the six month point, 40% of those with three or more prior recorded family violence incidents compared with just 14% of those with no prior recorded incidents had been recorded for a recidivism incident, and 39% of those with a prior breach compared to 19% of those with a prior breach had been recorded for a recidivism incident. The differences in time to a recidivism incident based on the relationship between perpetrator and victim were small but still statistically significant.

Figure 69. Overall proportion recorded for a recidivism incident over time

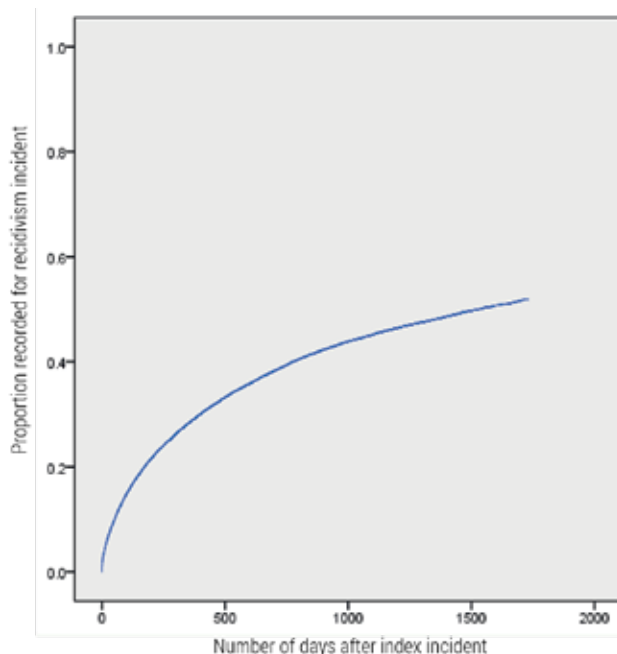


Table 58. Proportion of perpetrators recorded for recidivism incidents at 6, 12 and 24 months post-index incident

| Grouping variable | Proportion recorded for a recidivism incident at 6 months post-index incident | Proportion recorded for a recidivism incident at 12 months post-index incident | Proportion recorded for a recidivism incident at 24 months post-index incident | Significance level for difference between groups (<i>p</i>) |
|---|---|--|--|---|
| Sex | | | | <.001 |
| Male | 22.2% | 31.0% | 41.9% | |
| Female | 15.9% | 22.0% | 29.9% | |
| Age at index incident | | | | <.001 |
| Younger than 18 | 25.2% | 34.9% | 45.4% | |
| 18 to 34 | 22.6% | 31.3% | 43.0% | |
| 35 to 49 | 20.0% | 28.4% | 37.8% | |
| 50 or older | 13.3% | 18.0% | 25.1% | |
| Relationship between perpetrator and victim | | | | <.001 |
| Current or former partner | 21.7% | 30.2% | 40.9% | |
| Other family member | 18.8% | 26.2% | 35.8% | |
| Number FV incidents recorded prior to index incident | | | | <.001 |
| None | 14.0% | 19.7% | 27.8% | |
| 1 to 2 | 25.5% | 36.3% | 48.7% | |
| 3 or more | 40.0% | 54.0% | 69.1% | |
| Whether a prior breach of an FV order was recorded prior to index incident | | | | <.001 |
| No | 18.8% | 26.5% | 36.2% | |
| Yes | 38.7% | 51.9% | 66.3% | |
| Overall recidivism rate | 20.6% | 28.8% | 39.0% | |

Figure 70. Proportions of perpetrators recorded for a recidivism incident over time by sex

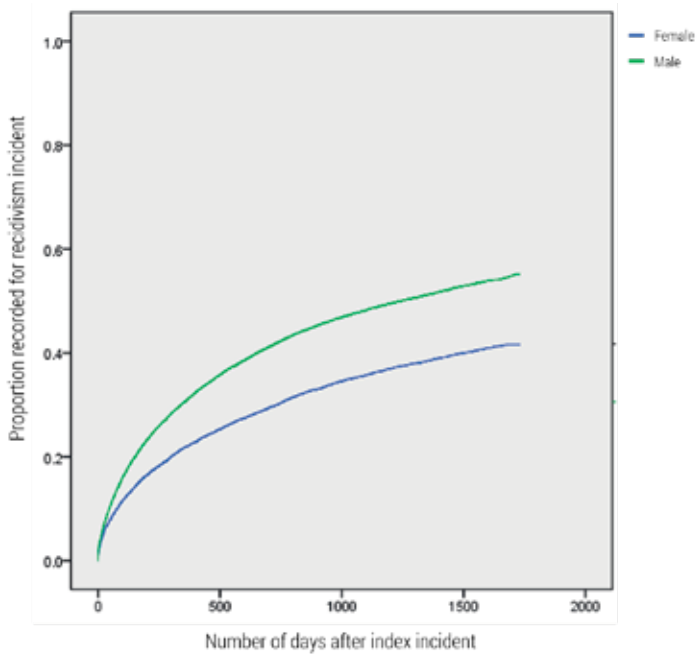


Figure 71. Proportions of perpetrators recorded for a recidivism incident by age at index incident

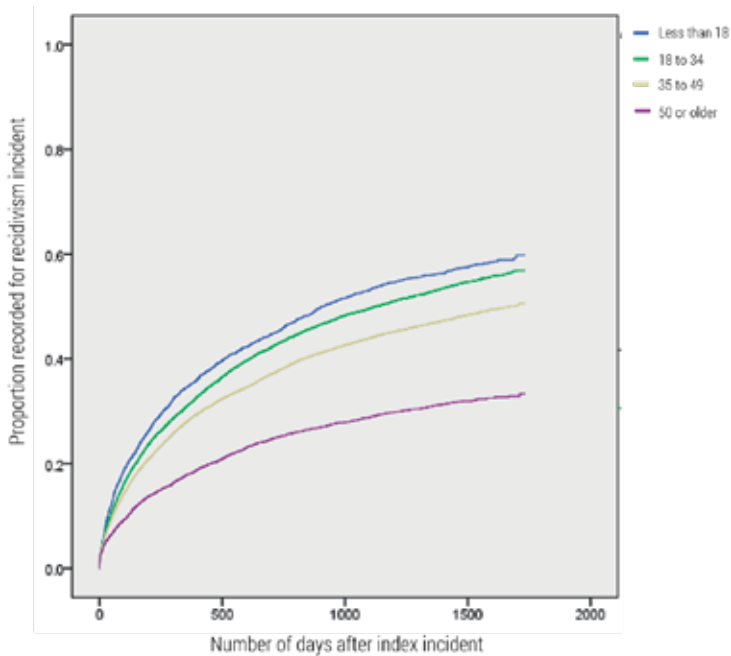


Figure 72. Proportions of perpetrators recorded for a recidivism incident over time by relationship type

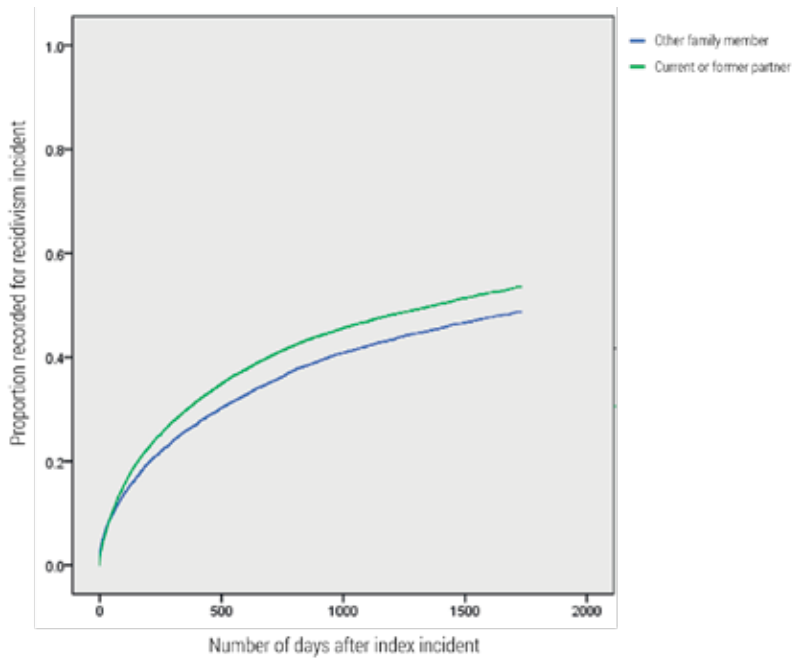


Figure 73. Proportions of perpetrators recorded for a recidivism incident over time by incident history

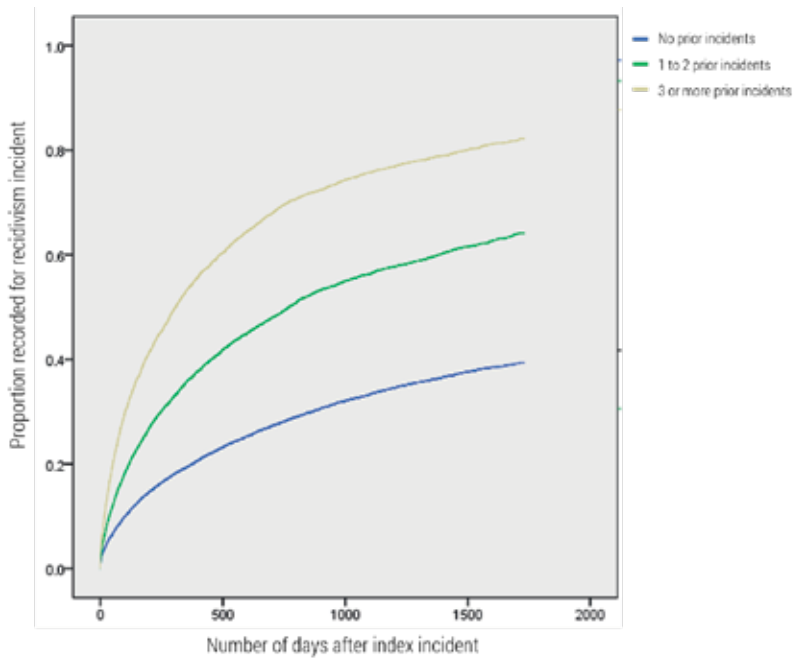
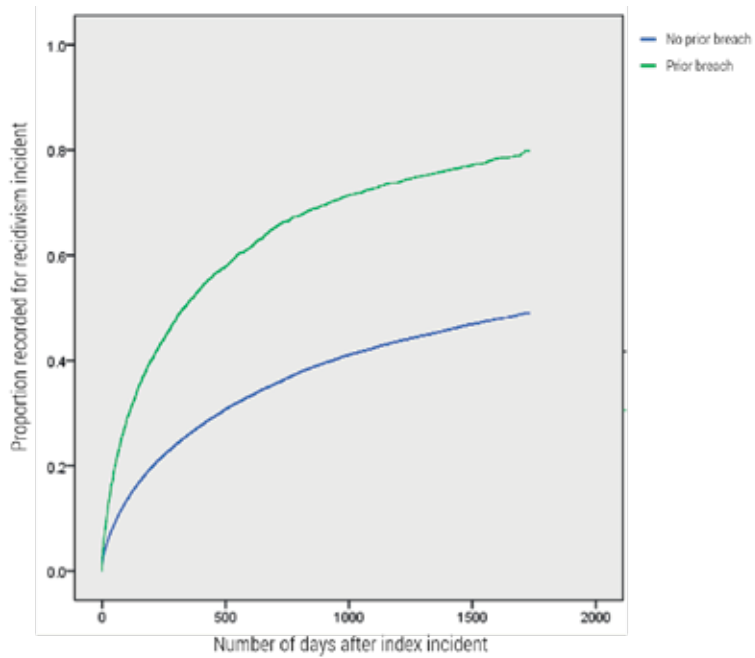


Figure 74. Proportions of perpetrators recorded for a recidivism incident over time by recorded breach of family violence orders history



Discussion

Between 2004/05 and 2013/14, 197,822 individuals were recorded by police as having perpetrated at least one family violence incident. Thirty-seven percent of family violence perpetrators were recorded by police for more than one family violence incident. Of those, 55% were recorded for two incidents, 25% were recorded for three incidents, 14% were recorded for four incidents and the remaining 6% were recorded for five or more incidents. Within the 2010/11 cohort of perpetrators whose recidivism behaviour was analysed in more detail for this research, just over half were recorded for at least one further family violence incident by 30 March 2015.

The median number of days between a first and second incident for recidivist perpetrators in the 2010/11 cohort was 275, and the time between incidents tended to decrease as the number of incidents a perpetrator was recorded for increased. However, a limitation of this study was that some perpetrators may have spent time in custody throughout the study period, reducing their 'free time' to perpetrate offences and data on this was not available to the CSA for inclusion in the study. The potential effect of this is that it could artificially inflate the results of analyses related to time between incidents. This research did not account for unequal 'free time' between perpetrators to commit incidents, which could also lead to imprecise estimations of the true proportions of recidivist perpetrators.

The overall recidivism model highlighted a number of perpetrator, family violence history, and index incident characteristics that contribute significantly to predicting who will go on to be recorded for a recidivism incident. Taken together, all of the information collected by police recorded at index incidents in 2010/11 could only be used to develop a model that, statistically, had 'acceptable' ability to discriminate between recidivist and non-recidivist perpetrators.

A number of L17 risk factors were identified that did not contribute significantly to predicting whether a perpetrator would be recorded for a further incident, though this information may have other value for police in the assessment and management of family incidents and harm arising from them. Perhaps it is the case, for example, that police make use of this information to assess the risk of increased seriousness or frequency, or to establish a risk management strategy for the perpetrator and/or victim. Some of the items that were non-significant predictors in the overall model related to potential harms to victims, information that is of potential relevance for referral agencies. Depending on the objectives of the L17 in terms of what, specifically, it is attempting to predict, this research could be extended to determine which perpetrator or index incident characteristics have validity in predicting seriousness or frequency of recidivism.

Where police recorded their intended actions on the L17 form these were, for the most part, associated with a slightly increased likelihood of recidivism. These results may be biased in the sense that police might be more likely to take action in response to a family violence incident where they perceive an elevated risk of recidivism. In other words, perpetrators involved in incidents where police record actions could already have a higher propensity to perpetrate further incidents before police take such action. A research method termed propensity score matching could be used to control for these existing differences in propensity to re-perpetrate, which would enable more precise evaluation of the true impact of actions taken by police on recidivism levels. Again, this could be an avenue for further analysis in the future.

A number of additional opportunities for further research were identified through the process of conducting the exploratory analysis presented here. First, refinement of the modelling presented here could be achieved by testing the validity of the model for other cohorts of perpetrators (for example, by defining the index incident based on a different year and re-running the modelling process).

Linking data from additional sources to the Victoria Police data used for this analysis could also improve the adequacy of the modelling. As noted above, this study did not include a measure of 'free time to offend'.

Incorporating correctional services data on any time that perpetrators spent in custody following their index incident would enable a more accurate comparison of who goes on to perpetrate further incidents and improved analysis of the time between an index and a recidivism incident. Further, incorporating courts data on whether family violence intervention orders were in place throughout the study period, and the start and end dates of these orders, would enable analysis of the impact of these orders, both on the propensity and time to perpetrate a recidivism incident. Linking these datasets would enable development of a more comprehensive 'time to recidivism' model, incorporating all potential predictors of recidivism.

Prior to the state wide rollout of any new or modified risk assessment tools, a piloting and evaluation process incorporating similar modelling methods to those presented here would assist in determining the validity of these tools in predicting recidivism (or other outcomes of interest). Ideally, any pilots undertaken would involve the identification and use of both control sites and pilot sites so that new tools can be adequately compared with existing practice. Identification of required evaluation data in the planning stage of any pilot would also be vital to ensure the success and rigour of the evaluation.

The background analysis presented in this chapter identified that the 9% of perpetrators that committed five or more family incidents between 2004/05 and 2013/14 were responsible for 34% of all family violence incidents. Statistical analysis to determine whether these perpetrators are significantly different from other perpetrators recorded for family violence could provide useful insights for targeting family violence policy and practice. It could also be instructive to analyse in detail the characteristics and family violence histories of those who perpetrate very serious family violence incidents.

This study did not consider the extent to which an individual perpetrator commits violence against one or multiple victims, though future research could examine this. Finally, analysis of the relationships between perpetrators' recorded family violence incidents and other recorded offence types, such as drug offences and non-family violence related assaults, could provide additional insights into the behaviours of family violence perpetrators over time.

15. Gaps and opportunities to improve the family violence database

Introduction

The Family Violence Database (FVDB) offers a rich source of information about the incidence and prevalence of family violence from a range of perspectives. The Database provides value by bringing together information from disparate datasets and providing an evidence base for understanding family violence in Victoria. While these datasets offer a useful overall picture, there are opportunities to amend and improve the FVDB.

The Crime Statistics Agency (CSA), as part of its work for the Royal Commission into Family Violence, conducted a data gap analysis exercise, in conjunction with the collection and production of the most recent statistics for the FVDB. This was conducted to ascertain how data that contributes to the Database is collected and whether data is collected consistently across agencies, to highlight any areas for improvement and to identify opportunities to implement best practice initiatives aimed at ensuring the FVDB is of maximum utility going forward.

This chapter outlines the data gap analysis conducted. The chapter:

- provides an overview of the datasets currently collected under the FVDB,
- summarises the common data items collected within each of the datasets,
- outlines the findings of data provider consultations conducted by the CSA,
- notes some of the challenges associated with collecting consistent, high-quality family violence information, and,
- identifies opportunities to improve the family violence evidence base in Victoria to support decision-making and service provision.

At a micro level, there are specific advantages and disadvantages associated with the way data is collected within each of the datasets included in the FVDB. However, the gap analysis presented here focuses on general themes and practices across the Database and provides recommendations based on its key overarching limitations. It also highlights agencies that undertake best practice data collection activities, with the aim of promoting consistency across datasets to ultimately improve the overall quality and efficacy of the data contained in the FVDB.

About the datasets

At present, the following datasets are included in the Victorian FVDB:

- The Law Enforcement Assistance Program (LEAP) – Victoria Police
- Lizard (Court Services Victoria)
- Courtlink (Court Services Victoria)
- Victorian Emergency Management Dataset (VEMD) – Department of Health and Human Services
- Victorian Legal Aid datasets (VLA)
- Victims Assistance Program (VAP) and Victims of Crime (VoC) helpline – Department of Justice and Regulation
- Integrated Reporting Information System (IRIS)
- Supported Accommodation Assistance Program(SAAP)/Specialist Housing Services Collection(SHSC) – Department of Health and Human Services and the Australian Institute of Health and Welfare

These datasets are described in more detail in Chapter 2. Datasets are derived from different systems, and the age and technological capacity of the systems used to generate the data varies greatly across agencies. This means that data collection activities are more difficult for some agencies than others.

Overview of data collection activities

In general, information collected by each agency was of a high quality, as all agencies reliably recorded the relevant family violence indicators and primary personal characteristics of people. Each of the 6 agencies (across 11 datasets) made family violence data collection a priority, and because of this, each of the data custodians interviewed were acutely aware of technical aspects of data collection activities, as well as the strengths and limitations of their datasets.

The following table provides an overview of information provided by agencies in relation to key characteristics of their datasets and variables collected. This information was obtained through interviews with FVDB data providers. Key demographic characteristics (e.g. age and sex variables) were consistently collected across datasets. However, there were differences across agencies because data items collected by some agencies were peripheral or irrelevant to another agency's core business needs, or because the circumstances under which an individual came into contact with a particular agency were not conducive to the collection or recording of specific data items.

Table 59. Overview of family violence datasets

| | LEAP | Lizard | Courtlink | VEMD | VLA | IRIS | VAP/ VoC | SAAP/ SHSC |
|---|------|--------|-----------|------|-----|------|-------------|---------------|
| Size of staff responsible for data entry (approx) | LGE | SML | LGE | LGE | MED | LGE | SML | LGE |
| Collection of specific variables: | | | | | | | | |
| Age | ✓ | ✓ | ✓* | ✓ | ✓ | ✓ | ✓ | ✓ |
| Sex | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Aboriginal/ Torres Strait Islander Status | P | P | P** | X | ✓ | P | ✓ | ✓ |
| CALD indicators | P | ✓ | P | P | ✓ | ✓ | P | ✓ |
| Disability status | X | P | X | X | ✓ | P | ✓ | P |
| Relationship between parties | ✓ | ✓ | ✓ | X | P | X | X | X |
| Geographic location | P | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Identifiers recorded that are used across other datasets | P | P | ✓ | X | X | X | X | X |
| Data can be linked to other datasets | P | ✓ | ✓ | X | P | X | X | X |
| Automated date fields generated and used | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| High priority data items are mandatory | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Data is compliant with relevant standards and classifications | P | P | P | ✓ | P | ✓ | ✓ | ✓ |
| Data quality processes in place to ensure data consistency | P | P | P | ✓ | P | P | ✓ | ✓ |

✓ - Yes; X - No; P- Partially collected or quality issues with data

* Courtlink collects approximate age where date of birth cannot be obtained

** Courtlink began collecting Indigenous status information since 2014

*** VEMD contains 4 options for recording sex but if the patient is unconscious staff assign a sex based on appearance

As noted, the overall quality of the data contained in the Database was of a good quality, with all datasets containing basic demographic characteristics recorded in similar ways. However, some data items contained less reliable information. These primarily included Aboriginal and Torres Strait Islander status, and CALD and LGBTI indicators. Only some datasets complied with relevant data standards and classifications. Data quality assurance processes differed between agencies and the existence of such processes was largely dependent upon the size and scale of the dataset, and the priority placed on data quality by the agency.

It should be noted that the CSA has not conducted full quality assurance audits on each of the datasets to assess the accuracy of recording and data input within each agency. Rather, the assessments in this section are based on information provided by data custodians through consultation, along with the CSA's assessment of the level of unknown or missing data in data provided to the FVDB.

Improving the family violence evidence base in Victoria

Through the course of the gap analysis, a series of potential enhancements emerged that would serve to ensure the Database is comprehensive. In turn, these improvements would help to ensure that the Database is of maximum utility as an evidence base to inform family violence related policy and service delivery. The identified enhancements include:

- inclusion of additional data sources
- application of common identifiers to be used for statistical linkage (if deemed feasible)
- more consistent and regular data collection and process audits across all family violence datasets, to improve or retain existing high levels of data quality
- introduction of a family violence data governance group, to facilitate further enhancement to the FVDB into the future, and to enable sharing of best practice amongst data custodians
- compilation of a family violence data framework, which utilises a nationally consistent set of common data items for collection
- clear articulation of whole of government information sharing protocols to reduce the challenges arising from sharing data relating to family violence between agencies for statistical purposes
- commitment to improving the data capture and quality of information in relation to Indigenous and CALD communities, mental health and those with a disability.

At the core of all current and potential future activities related to the Victorian Family Violence Database is an acknowledgment that any data relating to an individual's experience of family violence should be considered privileged and sensitive, and as such should be treated under the appropriate privacy and confidentiality principles outlined by the Victorian Commissioner for Privacy and Data Protection.

Each of these opportunities are discussed in more detail below.

Inclusion of additional data sources

While the current datasets included in the FVDB provide a broad base of information on the prevalence and incidence of family violence relative to specific services or programs delivered by participating agencies, other data holdings are potentially available that would further enhance the evidence available through the Database. Inclusion of additional data may serve to fill gaps identified in existing datasets. Examples of other datasets that may support the current data holdings include:

- Call and Dispatch (CAD) data, specifically related to police and ambulance callouts;
- Ambulance Victoria data;
- Child Protection data;
- Criminal courts data (currently only civil courts data are collected);
- Corrections Victoria data (relating to custodial and community corrections);
- Youth Justice (relating to custodial and community corrections).

Other ancillary datasets, for example, relating to the housing establishment fund, or to family violence identified through emergency responses to natural disasters, may also be useful inclusions. This is not necessarily a comprehensive list of potential datasets that may broaden the scope of the Database.

Additionally, it should be noted that the potential inclusion of further datasets is based on the assumption that family violence related incidents or events can be differentiated in some way from the general events contained in these datasets. This may be by way of an indicator that flags those records related to family violence, or by linking data with other datasets to identify an individual's experience of family violence. For example, police data may be used to identify which individuals under corrections supervision have been involved in a family incident prior to their corrections episode.

Inclusion of additional data sources would of course be dependent upon agreement of data custodians to provide their data in line with FVDB requirements. This may involve preliminary work by FVDB administrators and custodians to ensure their data is prepared appropriately for inclusion.

A Victorian family violence data framework

Although the FVDB incorporates a range of data sources from multiple agencies, the availability of data items and frequency with which this data is collected and disseminated varies. Further, the datasets included in the Database are collected and used independently, without cross-agency consideration of data recording practices or standards.

A family violence data framework could consolidate data activities under an overarching strategic plan that guides the collection, provision and output of timely and relevant family violence information. A framework would also assist in identifying and prioritising key data gaps, and providing a structured set of activities to address these gaps and further improve the FVDB.

The Australian Bureau of Statistics has produced a series of information papers about the collection of nationally consistent family violence data.

These papers could provide the basis for a similar data framework to be designed and implemented in Victoria. Of particular relevance are the following publications:

- Defining the data challenge for family, domestic and sexual violence, Australia, 2013 (Australian Bureau of Statistics, 2013a)
- Bridging the data gaps for family, domestic and sexual violence in Australia, 2013 (Australian Bureau of Statistics, 2013b); and
- Foundation for a National Data Collection and Reporting Framework for family, domestic and sexual violence, 2014 (Australian Bureau of Statistics, 2014a)

Defining the data challenge provides a conceptual framework for family, domestic and sexual violence information. *Bridging the data gaps* outlines an inventory of the current issues associated with data collection and highlights data gaps present at the national level. It presents priority family violence related policy and research questions that currently remain unanswered due to the lack of consistently available data, and offers strategies and actions required to address critical data gaps. This publication could be used to direct discussions about the utility of Victoria's current family violence data holdings, to align and prioritise current data gaps to those identified as a high priority at the national level, and to identify strategies to address these gaps.

The National Data Collection and Reporting Framework built on the gap analysis, and provides a systematic way of organising data about experiences of family, domestic and sexual violence into information units for statistical collection. It also provides a set of common variables and national standards relating to the person, event and transaction information units relevant to the collection of family violence data. The principles and concepts outlined in this publication could be used to as a foundation document for the compilation of a localised data framework for the consistent collection of high quality family violence data in Victoria.

The purpose of a Victorian family violence data framework document would be to provide a consolidated, single point of reference about the data collection activities and priorities for family violence data in Victoria, including frequency of information provision. A framework would also ensure that any additional dataset or data item inclusions were in line with agreed standards and definitions.

Application of common identifiers

One of the key drawbacks of the current database is the inability to use the same identifiers across the datasets to determine whether individuals are held in common across the datasets. This makes it difficult at present to use the various datasets together to better understand how an individual comes into contact, and interacts, with and across services in Victoria. With the exception of LEAP and Courtlink which share common identifiers in some cases, each of the other datasets contain identifiers that are specific to that dataset. This means that it is currently difficult, for example, to identify through the data which individuals who have come into contact with police, homelessness services and victim assistance programs, and which service they first contacted.

While it is impractical in the current service delivery and ICT environment to expect each agency to implement an identifier that is common amongst all services, and there is often difficulty in reaching agreement as to how the common identifier should be constructed, post-hoc statistical linkages between some datasets may be a feasible option to more effectively understand system pathways of affected family members and perpetrators.

Statistical linkage is a process by which a combination of a person's identifiable details (i.e. name, date of birth, sex for example) are combined to create a de-identified, unique key. Once created, this key can be applied and used across multiple datasets to link information from one dataset to another, through the use of probabilistic matching. As such, it is a way of connecting disparate datasets to create a more useful source of information without significant investments in system upgrades or significant data manipulation.

Linked family violence datasets would allow researchers and data analysts to better understand the lived experience of individuals experiencing family violence, to track their engagement with multiple services through the system and to identify where people are most likely to become disengaged or lose contact with service providers or support programs. Linkages also offer potential utility in terms of enabling identification of the characteristics of high-risk clients (such as those who come into contact with multiple services and programs over extended periods of time). Such information would likely add value to the evidence base for service planning and delivery.

Data consistency and quality

As noted above, the majority of data items currently collected within the FVDB are of a good quality. However, there are particular items that have high proportions of unknown or missing values, which means it is not necessarily possible to use these data items for decision-making.

The overall consistency and quality of the data included in the family violence database varies depending on the agency collecting the data, the demands of their core business and the number of staff responsible for data entry. The gap analysis found that those agencies that restrict data entry to a small number of staff (for example, courts clerks entering data on the Courtlink system, and victims support call takers in entering data into VAP and the victims of crime helpline) had higher levels of quality across their datasets than those agencies who had a large number of staff entering data (for example, Victoria Police).

There are some examples in Victoria of best practice initiatives that agencies have used to address data quality issues in order to ensure data are collected consistently over time. The data in the Victorian Emergency Management Dataset (VEMD), for example, is collected by a number of hospital emergency departments with a variety of IT systems and software. However, a systematic data audit is undertaken across each hospital once every three years, which assists in maintaining consistency and quality between systems and over time. The aim of the audit is to assess each hospital's business processes and data collection activities to ensure compliance with the requirements of the VEMD, and identify business process improvements where required. Such a process could be considered by other agencies collecting family violence related data and scaled relative to the size of the agency to ensure feasibility.

Other examples of quality assurance activities that could be implemented include making key data variables mandatory for completion and/or aligning responses to particular data items to set industry-specific, state, national or international standards.

Data Governance

A transparent governance structure is fundamental to successful implementation of any planned improvements to the FVDB. Data governance involves the overall management of the availability, usability, integrity and security of data assets to ensure that these assets are used appropriately and effectively.

Butler (2011) describes the main objectives of data governance, which are to:

- define, approve, and communicate data strategies, policies, standards, architecture, procedures, and metrics;
- track and enforce conformance to data policies, standards, architecture, and procedures;
- sponsor, track, and oversee the delivery of data management projects and services;
- manage and resolve data related issues; and
- understand and promote the value of data assets.

Senior level steering input is key to an effective data governance structure, in order to set strategic direction and provide an authorising environment for the overall management of data assets in a systematic and accountable way. Some centralisation and coordination of data management, improvement and output activities, and creation of standards and classifications for use across government can be beneficial in coordinating across portfolios and agencies.

At present, the FVDB is managed by two entities (the CSA and the Community Operations and Victims Support Agency) within the Department of Justice and Regulation. The CSA manages the data assets within the Database in line with general data management policies and procedures, and the Community Operations and Victims Support Agency utilise this data in order to create and publish external reports and publications. Under recent changes to FVDB custodianship arrangements, the CSA and the Community Operations and Victims Support Agency have established two working groups to assist in the delivery of data for the database, and to enable broad involvement in the development of content scheduled for output. The primary aim of these groups is to provide advice, comment and feedback to both agencies on outputs to ensure data are being accurately portrayed, and advise about areas where data quality issues may exist on an ongoing basis.

Functionally, these groups are intended to play a key role in the collection, maintenance and output of information from the Database. However, a high level steering committee whose role is to set strategic directions for coordinated family violence data activities across the state does not currently exist. High level leadership can be influential in ensuring coordination and alignment with cross-government needs. It is important for garnering commitment across government and helps to ensure efforts to improve Databases are afforded appropriate levels of authority and priority.

Information sharing across government

Historically, information sharing across government agencies for the purposes of collection, collation and release of findings has been challenging for the FVDB project. While agencies have supported the project and endorsed its value, lack of shared understanding about what data can and cannot be shared between agencies has resulted in lengthy negotiations and timeframes for the provision of data and release of reports summarising findings from the Database. Clarity for data owners about the appropriate processes for data sharing would smooth and speed the process for future iterations of the Database, enabling provision of broader and timelier data for use.

High priority data items

Other sections of this gap analysis have discussed overall data consistency and quality, and the promotion and use of data standards. However, it is worth discussing some specific data items with varying quality, which are collected by some agencies and are of high priority for decision-makers.

This particularly applies to data items collected in relation to the following:

- Aboriginal and Torres Strait Islander Status
- Culturally And Linguistically Diverse (CALD) indicators
- health and disability indicators

A key outcome of more consistently collected data in these areas would enable the development of more tailored and culturally appropriate services and programs. The following sections discuss these in more detail and outline considerations specific to each indicator.

Aboriginal and Torres Strait Islander status

Understanding the experience of family violence as it relates to those who identify as Aboriginal and/or Torres Strait islander is highly desirable information for policy making that informs operations and service planning. The collection of an individual's Aboriginal and Torres Strait Islander status has been standardised by the ABS, who suggest the following standardised question and series of responses be used to determine an individual's Aboriginal and/or Torres Strait Islander status:

Do you identify as Aboriginal or Torres Strait Islander?

- Yes, Aboriginal
- Yes, Torres Strait Islander
- Yes, both Aboriginal and Torres Strait Islander
- Neither Aboriginal nor Torres Strait Islander

According to the ABS, a person should be asked whether they identify as Aboriginal or Torres Strait Islander each time they come into contact with a service, as it is reasonable to assume that a person's Indigenous status and willingness to self-identify as Aboriginal or Torres Strait Islander may change over time. Hence, information should continue to be collected even if a person comes into repeat contact with a service, and should be stored appropriately so that a history of responses can be kept within the data.

It is acknowledged that it may not always be possible to record a person's Indigenous status for every incident where an individual comes into contact with an agency or service. However, there is significant room to improve the quality of Aboriginal and Torres Strait Islander data before coverage will be sufficient to enable robust statistical and research use across datasets within the FVDB.

Culturally and Linguistically Diverse (CALD) indicators

The extent to which information pertaining to family violence experienced by people from CALD backgrounds is available varies, and collection methodologies differ amongst data sources that comprise the FVDB. For example, some agencies collect information about an individual's country of birth or main language spoken at home, while others use operational information to estimate the number of people who come into contact with a service from CALD backgrounds. Most often this information relates to incidents or events where an interpreter is required, where the use of an interpreter is used as a proxy CALD indicator. As a result, there is an opportunity to increase the consistency of CALD data item collection across datasets (though this may be dependent on service context).

Health and disability indicators

Health and disability indicators relate to information collected on whether an individual has a health-related concern or disability that may require a service provider or support agency to provide other facilities or services to accommodate these needs. This relates not only to physical disabilities, but also to mental health.

This information needs to be collected with careful consideration and appropriate sensitivity, and could be collected as a voluntary data item as opposed to being a mandatory field for data collection. This area is a significant challenge from a data collection perspective, but should not be precluded from data enhancement activities.

Conclusion

Overall, the CSA's assessment of the FVDB identified significant value in the existing data holdings. However, there are a number of clear areas where the Database can be strengthened to provide a higher value evidence base to support policy development and operational decision-making. Consideration of the opportunities for improvement identified in this chapter is important in ensuring the continued relevance and utility of the Database going forward.

16. Conclusion

The Victorian FVDB has existed for 15 years, documenting family violence across an increasing range of datasets through a period of immense legislative, cultural, policy and procedural change. The Database remains the sole whole of government project providing a statistical overview of family violence demand and service provision recorded by key agencies involved in responding to family violence in the state. It provides information about the profiles and characteristics of victims and offenders, their service requirements and interactions.

This report has provided an overview of the period of time since the last significant findings from the Database were released, focusing on the 2009-10 to 2013-14 period. In this time increasing demand for family violence-related service has been visible across the datasets included in the Database and across all areas of the state.

The findings in this report indicate that family violence still remains a gendered crime, with the proportion of male and female victims of family violence stable across all agencies in the past 5 years. In 2013-14, three quarters of affected family members in family violence incidents attended by police, two-thirds of the patients presenting to emergency departments for family violence reasons and 69% of family violence victims accessing the Victims Assistance Program were female. In 2013-14, 77% of other parties in family violence incidents attended by police and 78% of respondents to intervention orders in the Magistrates' Court were male.

Family incidents recorded by police show family violence most likely to arise in the context of intimate partnerships for female affected family members, whereas male affected family members who were more likely to be a family member of the other party. The different picture arising for children as victims and witnesses of family violence and for parents and siblings as victims of family violence shows the complexity of the types of incidents the service system has been recording and responding to in the past 5 years.

For the first time in Victoria, the CSA has conducted a recidivism study of alleged family violence perpetrators using Victoria Police data, showing the high proportion of repeat incidents. The analysis revealed that recidivist perpetrators were more likely to be male, younger, perpetrate violence against a current or former partner and have a history of family violence incidents or offences recorded for breaching family violence orders. This study highlights factors predictive of future reappearance in Victoria Police data in relation to a family incident and highlights a range of further work which could shed more light on the factors correlating with recidivism.

The Victorian FVDB has a robust core of datasets and represents a valuable source of diverse information from across government relating to family violence. However, there are elements where the Database can be expanded and improved to ensure it can make an even more significant contribution to the evidence base relating to family violence for Victoria, informing policy, research and decision-making. This paper outlines key gaps and opportunities for enhancement of the Database.

17. Explanatory notes

Reference periods

The data contained within this report covers an annual breakdown of the period from July 2009 to June 2014. Each dataset uses a different date variable to determine which year each counting unit belongs to. The following table outlines the date that is used to determine the relevant year.

Table 60. Date variable used in each data source to determine the relevant reference period

| Data source | Date variable |
|---|--|
| Victoria Police | Create date – date incident was entered into LEAP |
| Magistrates' and Children's Court | Hearing date – date of the final hearing |
| Specialist Family Violence Services | First contact date – date of first contact with client |
| Integrated Reports and Information System | Referral date – referral date of the case |
| Victorian Emergency Minimum Dataset | Date patient presented at emergency department |
| Victims Assistance Program | |
| Victims of Crime | Date of phone call |
| Victoria Legal Aid | Date of service – date service was provided |
| Specialist Homelessness Services Collection | Date support period commenced |
| Supported Accommodation Assistance Program | Date support period commenced |

Rates per 100,000 population

Rates per 100,000 population are derived using the family incident count for the reference period and the most recent Estimated Resident Population (ERP) data.

The family incident rate per 100,000 is calculated using the following formulae:

$$\text{Family incident rate} = (\text{Family incident count} / \text{ERP count}) * 100,000$$

ERPs for both Victoria and Local Government Areas are based on populations provided by the Australian Bureau of Statistics. ERPs for the data in the current reference period are based on population projection estimates developed by the Department of Economic Development, Jobs, Transport and Resources 'Victoria in Future' program. For years prior to the current reference period, the ERP used to calculate offence rates comes from the Regional Population Growth (3218.0) publication.

Regional statistics

In order to produce statistics at a regional level based on a person's residential postcode a concordance was done to map the postcode to a Local Government Area and then to the relevant region.

The postcode to Local Government Area concordance was obtained from the Australian Bureau of Statistics publication, Australian Statistical Geography Standard (ASGS): Correspondences, July 2011 (1270.0.55.006). Where a postcode boundary crossed multiple Local Government Area the area that contained the largest proportion of the postcode was selected.

The regional statistics in this report do not include units that did not have a postcode or had a postcode outside of Victoria.

Table 61. Department of Health and Human Services Regions

| Eastern Metropolitan Region | Southern Metropolitan Region | Gippsland Region |
|----------------------------------|------------------------------|----------------------|
| Boroondara | Bayside | Bass Coast |
| Knox | Cardinia | Baw Baw |
| Manningham | Casey | East Gippsland |
| Maroondah | Frankston | Latrobe |
| Monash | Glen Eira | South Gippsland |
| Whitehorse | Greater Dandenong | Wellington |
| Yarra Ranges | Kingston | |
| | Mornington Peninsula | |
| | Port Phillip | |
| | Stonnington | |
| Grampians Region | Barwon South Western Region | Loddon Mallee Region |
| Ararat | Colac-Otway | Buloke |
| Ballarat | Corangamite | Campaspe |
| Golden Plains | Glenelg | Central Goldfields |
| Hepburn | Greater Geelong | Gannawarra |
| Hindmarsh | Moyne | Greater Bendigo |
| Horsham | Queenscliffe | Loddon |
| Moorabool | Southern Grampians | Macedon Ranges |
| Northern Grampians | Surf Coast | Mildura |
| Pyrenees | Warrnambool | Mount Alexander |
| West Wimmera | | Swan Hill |
| Yarriambiack | | |
| North & West Metropolitan Region | Hume Region | |
| Banyule | Alpine | |
| Brimbank | Benalla | |
| Darebin | Greater Shepparton | |
| Hobsons Bay | Indigo | |
| Hume | Mansfield | |
| Maribyrnong | Mitchell | |
| Melbourne | Moira | |
| Melton | Murrindindi | |
| Moonee Valley | Strathbogie | |
| Moreland | Towong | |
| Nillumbik | Wangaratta | |
| Whittlesea | Wodonga | |
| Wyndham | | |
| Yarra | | |

Table 62. Victoria Police Regions

| Eastern Region | Western Region | Southern Metro Region | North West Metro Region |
|--------------------|--------------------|-----------------------|-------------------------|
| Boroondara | Greater Geelong | Port Phillip | Melbourne |
| Manningham | Queenscliffe | Stonnington | Yarra |
| Monash | Surf Coast | Bayside | Hobsons Bay |
| Whitehorse | Colac-Otway | Glen Eira | Maribyrnong |
| Knox | Glenelg | Kingston | Wyndham |
| Maroondah | Southern Grampians | Cardinia | Brimbank |
| Yarra Ranges | Corangamite | Casey | Melton |
| Benalla | Moyne | Greater Dandenong | Hume |
| Mansfield | Warrnambool | Frankston | Moonee Valley |
| Mitchell | Ballarat | Mornington Peninsula | Moreland |
| Strathbogie | Pyrenees | | Banyule |
| Greater Shepparton | Golden Plains | | Darebin |
| Alpine | Hepburn | | Nilumbik |
| Moira | Moorabool | | Whittlesea |
| Wangaratta | Hindmarsh | | |
| Indigo | Horsham | | |
| Towong | West Wimmera | | |
| Wodonga | Ararat | | |
| Bass Coast | Northern Grampians | | |
| South Gippsland | Yarriambiack | | |
| Baw | Greater Bendigo | | |
| Latrobe | Campaspe | | |
| East Gippsland | Central Goldfields | | |
| Wellington | Loddon | | |
| | Macedon Ranges | | |
| | Mount Alexander | | |
| | Mildura | | |
| | Buloke | | |
| | Gannawarra | | |
| | Swan Hill | | |

Confidentialisation

Confidentialising data involves removing or altering information or collapsing detail (through application of statistical disclosure controls) to mitigate the risk that a person or organisation may be identified in the data (either directly or indirectly).

Where data contained in this report uses person-based variables and include demographics information the datasets are subject to confidentialisation to ensure the anonymity of individuals is protected. Where cells in a table are between 1 and 3 and there is a reasonable likelihood that a person may be identified from the data published the value is denoted by the figure " ≤ 3 ".

For the purpose of calculating row and column totals, each cell between 1 and 3 is assigned a value of 2, regardless of the true number of that cell. This methodology allows for totals to be calculated in tables with small cells, but does mean that totals for certain variables may not be the same across tables within a set of data tables.

18. Glossary

Family incident

An incident attended by Victoria Police where a Risk Assessment and Risk Management Report (also known as an L17 form) was completed. The report is completed when family violence incidents, interfamilial-related sexual offences, and child abuse are reported to police.

Family incident flag

A family incident flag is attached to any offence arising from an incident where Victoria Police completed a Risk Assessment and Risk Management Report (L17 form). The family incident flag allows the identification of offences that are related to a family incident.

Affected family member – Victoria Police

An 'affected family member' is the individual who is deemed to be affected by events occurring during the family incident. Where an affected family member has been affected by more than one other party within a family incident, they will be counted for each involvement.

Other party

The other individual involved in a family incident is referred to as the 'other party'. The other party could be a current partner, former partner or a family member. Where the other party is involved with multiple affected family members, they will be counted for each involvement.

Police region

A Police Region is a geographical area defined by Victoria Police for operational purposes. There are 4 regions across Victoria each contains a number of Police Service Areas.

L17 Victoria Police Risk Assessment and Risk Management Report

An L17 form refers to the Victoria Police Risk Assessment and Management Report that Victoria Police are required to complete after they have attended a family incident. The report is completed when family violence incidents, interfamilial-related sexual offences, and child abuse are reported to police.

Offence

Any criminal act or omission by a person or organisation for which a penalty could be imposed by the Victorian legal system.

For the purposes of this report, an offence is counted and included in the data where it:

- occurred in Victoria;
- was reported to or detected by Victoria Police; and,
- was first recorded in LEAP within the reference period.

Offences related to a family incident

Offences relating to a family incident refer to those offences that have been linked to a family incident by Victoria Police.

Hazards/Risk factors

The risk factors identified on the Risk Assessment and Risk Management Report are the evidence-based risk and vulnerability factors outlined in the Victoria Police Code of Practice for the Investigation of Family Violence. There are three types of hazards, those relating to the AFM, those relating to the perpetrator and those present in the relationship.

Applicant/Affected family member – Magistrates’ and Children’s Court/Specialist Family Violence Services

An applicant or affected family member is the person/people who have applied for a family violence and have applied for a family violence intervention order. There can be multiple affected family members on the one application.

Respondent

A respondent is the person responding to the application for a family violence intervention order. There is only one respondent on each application.

Duty lawyer services

Duty lawyers provide free legal information, advice and representation to clients. Duty lawyers do not represent everyone and VLA prioritise serious cases, including people who are in custody or at risk of going into custody and people who need intensive support

Legal advice services

Legal advice services include sessions over the telephone or face-to-face at Victoria Legal Aid offices or via outreach services. (Victoria Legal Aid, 2014)

Minor work

Minor work includes assistance and advice (including advocacy services) where there is a need for ongoing assistance and there is a tangible benefit for the client. (Victoria Legal Aid, 2014)

Legal help

Legal help is a service provider of VLA that can give legal advice over the telephone. (Victoria Legal Aid, 2014)

Substantive grants

VLA provide grants of legal assistance to people who are experiencing a legal problem and meet the agency’s eligibility criteria. Grants are provided for certain criminal, family and civil law matters. (Victoria Legal Aid, 2014)

Specialist family violence services

The Specialist Family Violence Service aims to simplify access for affected family members and affected children’s access to the justice system and enhance the safety of affected family members and affected children.

Support worker

Applicant and respondent support workers are available to adults who have experienced family violence and have a case in the Family Violence Court Division.

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Understanding family violence court proceedings: the impact of family violence on the Magistrates' Court of Victoria

In recent years there has been a big increase in the number and complexity of family violence-related matters initiated in the Magistrates' Court of Victoria. This has placed unprecedented pressure on the operations of the court and on court users. The Commission wanted to gain a better understanding of the substance and outcomes of particular hearings than could be understood from existing data, as well as of the daily impact of family violence cases on the court and its lists. As part of that, we sought to determine whether courts have sufficient capacity to give adequate time and attention to each matter, provide a considered and appropriate outcome, and ensure safety for victims. This information was used to inform many recommendations made by the Commission.

In collaboration with the Magistrates' Court, the Commission engaged Dr Karen Gelb, a researcher and criminologist, to conduct the research, which involved observation of a number of courts in metropolitan and regional locations and analysis of de-identified case data. Access to individuals' files was restricted to court personnel, so ethics approval was not required.

The courts were chosen on the basis of a 'typical' spread of family violence cases in each type of court. The locations chosen were as follows:

- ▶ Ballarat, Family Violence Division—a large regional court; the region's headquarter court; 1044 family violence intervention order applications finalised in 2014–15
- ▶ Geelong—a large regional court; the region's headquarter court; neither a Family Violence Division nor a specialist court; 1879 FVIO applications finalised
- ▶ Wangaratta—a mid-size regional court; neither a Family Violence Division nor a specialist court; 334 FVIO applications finalised
- ▶ Maryborough—a small regional court; neither a Family Violence Division nor a specialist court; 142 FVIO applications finalised
- ▶ Melbourne—a large metropolitan court; the region's headquarter court, with specialist family violence services; 2656 FVIO applications finalised
- ▶ Sunshine—a busy suburban court, with specialist family violence services; 2907 FVIO applications finalised
- ▶ Dandenong—a large suburban court; neither a Family Violence Division nor a specialist court but does have community-based family violence service providers; the busiest court for finalised FVIO applications in 2014–15, with 3228 finalised applications.

The research methodology included interviews with judicial officers, court staff, duty lawyers from Victoria Legal Aid and community legal services, police, representatives of specialist family violence services, Court Network volunteers and representatives of other services at each court. Applicant and respondent workers were also interviewed in locations where these services are provided. The Commission thanks participants—and, in particular, the Magistrates' Court of Victoria—for their cooperation and assistance.



UNDERSTANDING FAMILY VIOLENCE COURT PROCEEDINGS: THE IMPACT OF FAMILY VIOLENCE ON THE MAGISTRATES' COURT OF VICTORIA

**PREPARED FOR THE ROYAL COMMISSION
INTO FAMILY VIOLENCE BY**

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The views expressed in this report are entirely those of Dr Gelb.

CONTENTS

| | |
|--|-----------|
| Executive summary | IV |
| 1. Introduction | 01 |
| 1.1 Aim of the research | 01 |
| 1.2 Scope of the research | 01 |
| 1.3 Methodological approach | 02 |
| 1.4 Methodological limitations | 04 |
| 1.5 Structure of the report | 04 |
| 2. Characteristics of people who attend court for family violence matters | 05 |
| 2.1 Ballarat | 05 |
| 2.2 Geelong | 09 |
| 2.3 Melbourne | 11 |
| 2.4 Sunshine | 13 |
| 2.5 Dandenong | 15 |
| 2.6 Wangaratta | 16 |
| 2.7 Maryborough | 18 |
| 2.8 Neighbourhood Justice Centre | 19 |
| 2.9 Discussion: Understanding the characteristics of people who attend court for family violence matters | 22 |
| Police versus private applications | 23 |
| Presence of parties at court | 23 |
| Relationship between victim and perpetrator | 23 |
| History of family violence | 24 |
| Service provision | 24 |
| Demographic characteristics | 25 |
| 2.10 Implications for the family violence system | 26 |
| Presence of parties at court | 26 |
| History of family violence | 26 |
| Service provision | 26 |
| Demographic characteristics | 27 |
| 2.11 Issues for further consideration | 27 |
| 3. Outcomes of family violence matters | 28 |
| 3.1 Ballarat | 28 |
| 3.2 Geelong | 31 |
| 3.3 Melbourne | 32 |
| 3.4 Sunshine | 33 |
| 3.5 Dandenong | 34 |
| 3.6 Wangaratta | 35 |
| 3.7 Maryborough | 36 |
| 3.8 Neighbourhood Justice Centre | 37 |
| 3.9 Discussion: Understanding outcomes of family violence matters | 38 |
| Orders imposed | 40 |
| Adjournments | 40 |
| Conditions | 42 |
| Consent orders | 42 |
| Referrals to support services | 43 |

| | |
|---|-----------|
| 3.10 Implications for the family violence system | 44 |
| Adjournments | 44 |
| Conditions | 45 |
| Referrals to legal and support services | 45 |
| 3.11 Issues for further consideration | 46 |
| | |
| 4. Court processes in family violence matters | 47 |
| 4.1 Ballarat | 47 |
| 4.2 Geelong | 48 |
| 4.3 Melbourne | 49 |
| 4.4 Sunshine | 50 |
| 4.5 Dandenong | 51 |
| 4.6 Wangaratta | 51 |
| 4.7 Maryborough | 52 |
| 4.8 Neighbourhood Justice Centre | 53 |
| 4.9 Discussion: Understanding court processes in family violence matters | 53 |
| Processing of family violence cases | 55 |
| Consistent approaches to family violence matters | 55 |
| Inconsistent approaches to family violence matters | 55 |
| Addressing inconsistency in responses to family violence | 56 |
| Managing time constraints in family violence matters | 59 |
| Alternative legal responses to family violence | 63 |
| 4.10 Implications for the family violence system | 64 |
| 4.11 Issues for further consideration | 65 |
| | |
| Appendix A: Interview participants | 66 |
| | |
| Appendix B: Intervention order conditions: Clauses 1 through 8 | 68 |

EXECUTIVE SUMMARY

Recent years have seen a significant increase in the number of family violence-related matters initiated in the Magistrates' Court of Victoria. This increase has placed unprecedented pressure on the court and associated personnel such as court staff, duty lawyers and service providers.

In order to understand the impact of family violence on the court, the Magistrates' Court of Victoria has collaborated with the Royal Commission into Family Violence ('the Commission') in research to provide a better understanding of the family violence workload of the Magistrates' Court. In particular, the Commission's research aims to determine if there is sufficient capacity for dealing with cases properly, both in terms of dedicating adequate time and attention to each matter, and in providing a considered and appropriate outcome.

Analysis of data from the courtroom observations and the file reviews identified a number of key findings about the characteristics of people attending court for family violence matters, about the outcome of family violence cases, and about court processes in these matters. These key findings may be summarised as follows:

- Lists in the busier courts are very large, with two courts (Ballarat and Dandenong) hearing more than 40 matters in a day, while the average number of matters across all courts is 30.
- Applications in intervention order matters are brought by the police in just under two-thirds (64 per cent) of all matters.
- The vast majority of victims of family violence who appear in court are female (76 per cent), and the vast majority of perpetrators are male (82 per cent).
- Intervention orders are most commonly sought against former partners (35 per cent) and current partners (33 per cent).
- More than half of all matters (53 per cent) involve people with a history of prior family violence, but only one-quarter (25 per cent) had previously called police or sought an intervention order from the court, highlighting the significant attrition between experiencing family violence and seeking assistance from the police or the courts.
- Just over half (53 per cent) of all parties had some sort of private or legal aid representation, or representation by the local community legal centre, leaving 47 per cent unrepresented.
- In two-thirds of all matters (67 per cent) an order is imposed, but there are still many adjournments (14 per cent) where no order is made. These adjournments are commonly made due to lack of information, with the magistrate adjourning the matter for the police to follow up with further investigation.

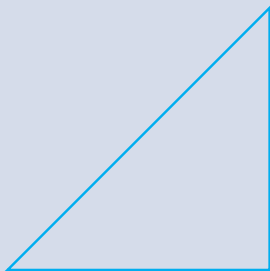
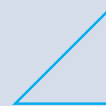
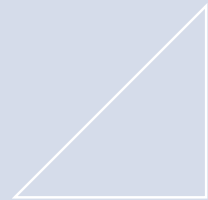
Analysis of the interviews uncovered several consistent themes that were discussed time and again by interview participants. Broadly, these may be summarised as follows:

- The **time pressures** imposed by the increase in family violence are felt throughout the system. The implications of these pressures may be felt both in court outcomes and in court processes. Court outcomes may be compromised if registry staff, support staff and duty lawyers are unable to elicit the complete story from a victim of family violence, so that the magistrate must make a decision with less than complete information. Court processes may be compromised if parties at court feel that they have not had the time to make themselves heard, or if support staff cannot spend sufficient time with a client to undertake assessments, create a safety plan, provide support at court or make proper referrals. This is the foundational issue in dealing with family violence matters: it underlies most of the issues identified in the research.
- Further **professional development** is needed for all people who deal with family violence matters. Participants identified a need for ongoing education about the nature and impact of family violence for magistrates, police, duty lawyers and court staff. Lack of experience and understanding was blamed for dismissive responses to victims and for continuing difficulty in securing protection from perpetrators. In particular, the data show significant inconsistencies among magistrates in the way they approach family violence matters and manage their interactions with the parties involved. For example, there is substantial variation in both magistrates' practices regarding the inclusion of children on intervention orders, and in the level of detail provided by magistrates in their explanations of intervention orders.
- Associated with education is the value of **specialisation**: magistrates, police, duty lawyers and court staff who have a deeper understanding of family violence are able to respond more appropriately and to provide a more efficient and effective service. In particular, specialist experience allows police, duty lawyers and court staff to elicit precisely the sort of information that the magistrate will require in order to make an informed decision, and specialist experience among magistrates enhances the court craft used to engage with parties and provide appropriately tailored responses to family violence. In addition, specialist units in the police provide better opportunities for engagement with affected family members, more effective investigation and better outcomes at court when a family violence court liaison officer is employed.

- Better **information** is needed in family violence matters. Police need to improve their collection of information from affected family members so that police prosecutors can be fully briefed about the circumstances of both the affected family member and the respondent, to be ready to answer the magistrates' questions at court. Arrangements need to be implemented to facilitate sharing of information between the Department of Health and Human Services and the courts, and among the courts, on matters involving child protection issues and family law issues. This would reduce the number of matters that need to be adjourned for follow-up investigation or for 'further and better particulars'.
- Improved **service provision** is needed to meet the demands of family violence matters. Part of an improved response is the installation of both applicant and respondent support workers (ASWs and RSWs) in more courts around Victoria. More broadly, inadequate funding for family violence services means that there are not enough workers available to support clients effectively. Duty lawyers are unable to provide legal representation to all parties, resulting in a high proportion of unrepresented people. Family violence service providers and behaviour change program providers also struggle to keep up with demand. The end result is that clients do not have enough time with their support workers, so many issues remain unresolved. This has potentially serious implications in terms of the capacity to reduce family violence and protect its victims.
- Better **coordination** is needed within the court to manage existing time constraints more effectively. Instituting morning coordination meetings would help to ensure that duty lawyers and registry staff identify who will be seen and the order in which this will happen, while additional staff would assist in seeing more people more quickly, rather than allowing some parties to wait all day before being seen. List management practices also need to be reviewed to identify possible ways to reduce the ever-increasing numbers of matters that need to be heard by a single magistrate in a single day.
- Improved **court structures** are needed to enhance the safety of victims of family violence when they attend court. Renovations to allow greater use of remote witness facilities, separate waiting areas and separate entrances would allow victims of family violence to feel more secure when attending court, and would improve their confidence in being able to seek the court's assistance. The current physical layout in some of the courts visited increases the risk of further intimidation and control.

“I think we have the skeleton
of a really effective service.
But it’s crushed by demand”.

Anonymous Magistrate



1. INTRODUCTION

Recent years have seen a significant increase in the number of family violence-related matters initiated in the Magistrates' Court of Victoria. In 2013–14 the Magistrates' Court finalised just over 35,000 applications.¹ Breaches of family violence intervention orders were the fifth most common criminal offence heard in the Magistrates' Court during the year, with 15,016 charges of contravention of a family violence intervention order in 2013–14.²

According to the Magistrates' Court itself, the 'significant increase in numbers and complexity of proceedings has placed unprecedented pressure on the operations of the Court and upon court users'.³ The Court seeks to ensure that community safety is not being compromised in this environment.

The Magistrates' Court of Victoria has collaborated with the Royal Commission into Family Violence ('the Commission') in research to provide a better understanding of the family violence workload of the Magistrates' Court. In particular, the Commission requires a better understanding of the daily impact of family violence cases on the court and its lists in order to determine if there is sufficient capacity for dealing with cases properly, both in terms of dedicating adequate time and attention to each matter, and in providing a considered and appropriate outcome.

1.1 AIM OF THE RESEARCH

The aim of this research was to gain a better understanding of the demands placed on the Magistrates' Court by family violence cases. In particular, the research aimed to identify the implications of these cases for courts and for their capacity to provide effective, appropriate and just responses to promote the safety of Victorian families.

The following issues were identified by the Magistrates' Court and the Commission as being priority areas for investigation in this research:⁴

- the characteristics of parties appearing for family violence matters
- the size of family violence court lists
- outcomes for family violence matters
- the prevalence of cross-applications and consent orders in family violence matters
- the way family violence orders are explained in court by the magistrate
- the duration of each matter in the family violence list and the duration of the court day as a whole
- the processing of family violence cases through the courts
- the use of services at court by alleged victims and perpetrators in family violence matters
- the amount of time available for parties to spend with services related to family violence matters.

1.2 SCOPE OF THE RESEARCH

The focus of this research was on understanding the impact of family violence on the workload of the Magistrates' Court as it currently stands. That is, the focus was on current court cases, rather than either broader historical patterns or future projections.

The bulk of the research was undertaken in the civil jurisdiction of the Magistrates' Court, although the criminal jurisdiction was included in those court locations where both civil and criminal matters share the list.⁵

1 Magistrates' Court of Victoria, *Annual Report 2013/2014* (Magistrates' Court of Victoria, 2014) 91. In 2013–14, 23,210 applications were made by Victoria Police (66 per cent of all applications) and 11,925 were private applications, for a total of 35,135 applications. This figure includes both family violence intervention orders that were granted and those that were not (for example, after being withdrawn or struck out or otherwise not being successful).

2 Ibid 84.

3 Memorandum from Magistrates' Court to the Royal Commission into Family Violence, 14 May 2015.

4 Memorandum from Magistrates' Court to the Royal Commission into Family Violence, 14 May 2015.

5 It is difficult to identify those cases in the criminal jurisdiction that involve some element of family violence from the court's Courtlink database. While Victoria Police has implemented a family violence flag in their LEAP database, this information has only been collected since December 2014 and has only been reliably transferred to the Magistrates' Court since about April 2015. Nonetheless, criminal matters involving family violence were identified during courtroom observations.

The research was designed to concentrate on proceedings within the courtroom itself. Processes and procedures outside the courtroom (such as time spent by registry staff preparing files for court, or time spent by service providers with clients) were not included in the observational data collection itself, although they were discussed with interview participants.⁶ That is, the research did not involve tracking individual matters from beginning to end to ascertain the time taken at each point. Where information about practices in the broader court was made available via the interviews, this is included in the report. As practices and processes outside the courtroom inevitably affect those within, the court could consider undertaking additional research in the future.

1.3 METHODOLOGICAL APPROACH

There were three main phases of this research, using three primary methodologies:

Phase 1: Courtroom observations

The only way to assess courtroom interactions is to observe actual matters appearing before the court. This approach, while time-consuming, allows for the collection of data that cannot be collected in any other way (such as the nature of the interaction between the magistrate and the parties) and allows for a more qualitative understanding of family violence matters in the court. The observations thus provide some measure of the court experience from the perspective of the court user.

For this phase, courtroom observations were conducted primarily in the civil jurisdiction⁷ of various Magistrates' Court locations, although criminal matters were also included in those courts where criminal and civil cases were heard in the same courtroom on the day.⁸ For each court location, all matters being heard in a given courtroom were observed over one or two days to build up a small sample of family violence cases. While this sample was not representative of every family violence-related matter to come before the courts, it may be considered broadly typical, and therefore informative to the Commission.

The courts that were observed were selected in such a way as to allow for a range of approaches to be observed—those with specialist lists, those without any specialisation, regional⁹ and metropolitan courts of varying size, and the family violence division of the court.

Following consultation with the Magistrates' Court, the court locations involved in this research were:

1. Ballarat—Family Violence Division (a large regional court—the region's headquarter court).
2. Geelong (a large regional court—the region's headquarter court—but neither a family violence division nor a specialist court).
3. Melbourne (a large metropolitan court—the region's headquarter court—with specialist family violence services).
4. Sunshine (a large suburban court, with specialist family violence services).
5. Dandenong (a large suburban court—not a Family Violence Division or specialist court but does have community-based family violence service providers).
6. Wangaratta (a mid-size regional court—neither a family violence division nor a specialist).
7. Maryborough (a small regional court—neither a family violence division nor a specialist).
8. The Neighbourhood Justice Centre (NJC) (chosen on the basis of its unique, problem-solving approach to justice more generally).

Table 1 shows the number of original intervention order applications finalised in each of these eight courts during 2013–14. An application is considered 'finalised' if it is struck out, withdrawn, refused, or if a final intervention order is made.¹⁰

⁶ This research in no way constitutes a process evaluation of the court.

⁷ As the intervention order process is the main entry point to the courts for most family violence cases, this represents an appropriate method for the research.

⁸ Criminal and civil matters were heard together in Ballarat, Wangaratta, Maryborough and the Neighbourhood Justice Centre.

⁹ Observations in a smaller regional court were considered important to allow assessment of both issues particular to regional areas and also those particular to Indigenous families. Indigenous status data are now collected in Courtlink for all private applicant intervention order (IVO) applications. However, given that these private applications comprise only about one-third of all IVO applications, Courtlink data on Indigenous status should not be considered complete, and findings from this research with regard to Indigenous parties in family violence matters should not be considered representative.

¹⁰ 'Original' applications exclude secondary applications for variation, extension or revocation. 'Finalised' applications exclude interim orders. These figures therefore do not represent the total family violence workload of the courts and do not reflect the total number of people coming before the court for family violence matters. A final intervention order is typically preceded by multiple appearances at court before being finalised.

TABLE 1: NUMBER OF ORIGINAL INTERVENTION ORDER APPLICATIONS FINALISED IN EACH COURT, 2013–14

| COURT | NUMBER OF IVOS 2013–14 |
|-------------|------------------------|
| Ballarat | 956 |
| Geelong | 1533 |
| Melbourne | 1988 |
| Sunshine | 2568 |
| Dandenong | 2738 |
| Wangaratta | 295 |
| Maryborough | 113 |
| NJC | 253 |

The days of courtroom observation were selected in such a way as to be able to assess a ‘typical’ spread of family violence cases in each court. For example, two days of observation were undertaken in Ballarat: one on the police application day and the other on the private applicant day. A single day of observation was undertaken at each of the other courts.

A detailed observation protocol was created in order to ensure that each observation resulted in the collection of the same set of information.¹¹ The observational data collection was conducted using this protocol.

Phase 2: File reviews

Phase 2 involved a review of court documents and associated data collected for each of the observed cases.¹²

In order to address ethical considerations associated with privacy issues, the Magistrates’ Court itself conducted this part of the research. The court was provided with the names of cases observed on each day, along with the observational data. The court then matched these data to the appropriate files, entered the data from the files, then de-identified the spread sheet to return it to the researcher for analysis.

A detailed coding guide was developed to ensure that each case was coded according to set standards and definitions.

Phase 3: Interviews with key personnel

The final phase of the research involved a series of 74 interviews with almost 100 key personnel who play a role in family violence matters in each of the court locations visited. The following types of people were identified as key personnel for this phase of the research:

- magistrates
- court registrars and registry staff
- duty lawyers
- community family violence service providers
- Victoria Police personnel
- applicant and respondent support workers
- interpreters
- security staff.

A full list of the organisations that participated in the interviews for this research is included at Appendix A.

Participants were interviewed about the nature of their family violence work, allowing them to reflect on how the demand on their time affected the quality of their services.

The observations and interviews were undertaken from 13 July 2015 to 20 August 2015. The file reviews were conducted from 21 July 2015 to 4 September 2015. This report thus reflects observations undertaken, comments received from interview participants and available Courtlink data during these periods.

¹¹ At least the potential was the same for each matter; given variation across matters and among magistrates, the exact nature of the data able to be collected varied considerably from court to court and matter to matter.

¹² ‘Court documents’ includes both hard copy files kept at each court location and also the court’s electronic Courtlink database.

1.4 METHODOLOGICAL LIMITATIONS

While every effort was made to record all required data from both the observations and the Magistrates' Court's Courtlink database, not all data were able to be collected reliably. In particular, the observations were not successful in identifying each person's Indigenous status, disability status, and whether people were from a culturally and linguistically diverse background. The observational data presented in this report on these factors are based on clear visual identification only, unless the issue was raised during courtroom discussions. Likewise, information from the Courtlink database was not always available for these factors. The numbers should therefore be considered an underestimate of the true numbers of Indigenous people, people with a disability and people from a culturally and linguistically diverse background who appeared at court for intervention order matters.

In addition, the one or two days of observation undertaken at each court do not necessarily reflect every single day in that court. The observation days should be broadly reflective of a typical day in that court, but there will be fluctuation on any given day in the number of matters listed, the nature and outcomes of the matters being heard and the characteristics of the people appearing in court.¹³

1.5 STRUCTURE OF THE REPORT

This report is structured around the original issues identified by the Commission and the Magistrates' Court as priority areas for investigation. Each of the issues is allocated its own chapter, in which discussion is presented based on the observational data, the file review data and the consultation process.

The issues are divided broadly into those relating to the people and matters appearing before the court, those relating to outcomes for family violence matters, and those relating to court processes in dealing with family violence matters.

Table 2 presents an overview of the contents of each chapter.

TABLE 2: REPORT STRUCTURE

| CHAPTER | SUBJECT | ISSUES |
|-----------|-----------|---|
| Chapter 2 | People | <ul style="list-style-type: none"> • the size of family violence court lists • the characteristics of parties appearing for family violence matters • the prevalence of cross-applications in family violence matters • the use of services at court by people appearing for family violence matters |
| Chapter 3 | Outcomes | <ul style="list-style-type: none"> • outcomes of family violence matters |
| Chapter 4 | Processes | <ul style="list-style-type: none"> • the processing of family violence cases through the courts • the way family violence orders are explained in court by the magistrate • the duration of each matter in the family violence list and the duration of the court day as a whole • the amount of time available for parties to spend with services related to family violence matters |

To account for variations across court types, the discussion is presented individually for each court, with a synthesis of the findings at the end of each chapter.

¹³ The focus of the report was on providing a descriptive overview of family violence court proceedings. More detailed analysis, such as examining interactions between various measures, is not included but may warrant consideration in future research.

2. CHARACTERISTICS OF PEOPLE WHO ATTEND COURT FOR FAMILY VIOLENCE MATTERS

This chapter draws on the courtroom observations and associated file reviews to examine the characteristics of people who attend court for family violence matters, and the characteristics of their matters. The findings are presented separately for each court location in order to identify potential differences in court communities across the state and to highlight variations that may exist based on the levels of family violence specialisation in each court.

2.1 BALLARAT

Two days of observation were undertaken in Ballarat: a day of police applications and a second day of private applications.

The police application day included 45 matters on the list, which was the largest list seen in any court included in the research. The 45 matters included eight family violence-related criminal matters and six that were actually private applications. The private applicant day included 23 matters on the list.

Tables 3A (police matters) and 3B (private matters) present the key data from Ballarat.

TABLE 3A: CHARACTERISTICS OF PEOPLE WHO ATTEND COURT FOR FAMILY VIOLENCE MATTERS—BALLARAT POLICE APPLICATION DAY (SUMMARY DATA)

| 45 MATTERS (37 IVO; 8 CRIMINAL)—(6 PRIVATE IVO; 31 POLICE IVO) | | | | |
|--|--------------------------------|------|---|-----|
| | Applicants (of 37 IVO matters) | | Respondents (of 45 police matters) ^a | |
| People present | 18 | 49% | 23 | 51% |
| People absent | 19 | 51% | 21 | 47% |
| | Applicants (of 37 IVO matters) | | Respondents (of 45 police matters) | |
| Average age | 35 | | 34 | |
| Gender | | | | |
| Female | 33 | 89% | 6 | 13% |
| Male | 4 | 11% | 39 | 87% |
| Respondent type (of 37 IVO matters) | | | | |
| Current partner | 14 | 38% | | |
| Former partner | 12 | 32% | | |
| Parent/child | 6 | 16% | | |
| Other family | 5 | 14% | | |
| Prior history of violence | | | | |
| Prior FV incident | 17 | 38% | | |
| Prior calls to police | 3 | 7% | | |
| Prior IVO sought | 1 | 2% | | |
| Prior IVO issued | 1 | 2% | | |
| | Applicants (of 18 present) | | Respondents (of 23 present) | |
| Legal representation | 2 | 11% | 19 | 83% |
| In-court service support | 8 | 44% | 2 | 9% |
| Referral to ASW/RSW | 7 | 39% | 8 | 35% |
| Access court FV services | 21 ^b | 100% | 18 | 78% |

Note: The numbers under 'people present/absent', 'gender' and 'respondent type' should sum to the number of matters but may not, due to missing data.

a The 45 police matters include both civil intervention order matters and criminal matters.

b Observational data indicate that 18 applicants were present in court but Courtlink data record

**TABLE 3B: CHARACTERISTICS OF PEOPLE WHO ATTEND COURT FOR FAMILY VIOLENCE MATTERS—
BALLARAT PRIVATE APPLICATION DAY (SUMMARY DATA)**

| 23 MATTERS (ALL PRIVATE) | | | | |
|----------------------------------|----------------------------|-----|-----------------------------|-----|
| | Applicants | | Respondents | |
| People present | 21 | 91% | 15 | 65% |
| People absent | 2 | 9% | 8 | 35% |
| | Applicants | | Respondents | |
| Average age | 41 | | 45 | |
| Gender | | | | |
| Female | 19 | 83% | 10 | 43% |
| Male | 4 | 17% | 13 | 57% |
| Respondent type | | | | |
| Current partner | 0 | 0% | | |
| Former partner | 10 | 43% | | |
| Parent/child | 2 | 9% | | |
| Other family | 10 | 43% | | |
| Prior history of violence | | | | |
| Prior FV incident | 21 | 91% | | |
| Prior calls to police | 2 | 9% | | |
| Prior IVO sought | 3 | 13% | | |
| Prior IVO issued | unknown | | | |
| | Applicants (of 21 present) | | Respondents (of 15 present) | |
| Legal representation | 16 | 76% | 12 | 80% |
| In-court service support | 2 | 10% | 2 | 13% |
| Referral to ASW/RSW | 0 | 0% | 1 | 7% |
| Access court FV services | 9 | 43% | 5 | 33% |

Note: The numbers under 'people present/absent', 'gender' and 'respondent type' should sum to the number of matters but may not, due to missing data.

On the police day, the applicant¹⁴ was present for 18 matters and absent for 19 (eight matters were criminal matters so it was not clear if the affected family member was present in court). The respondent was present for 23 matters (including six of the criminal matters) and absent for 21 matters (including two of the criminal matters).¹⁵ There were no children in the courtroom, although children were included as affected family members on the intervention order in two out of the 37 intervention order matters.¹⁶ It was not possible from the observations to identify the number of matters where there were children in the relationship but where they were not included on the intervention order.

¹⁴ The definition of 'applicant' is those people who are listed as applicants on the day. In some instances this may not be indicative of the broader story behind the matter. In particular, people who are respondents on an intervention order who then seek to vary the order become applicants on the day of the variation hearing. They are recorded as applicants for the purposes of this research as this is their defined role on the day of observation.

¹⁵ Note that the numbers do not always tally to the total as there are times when a definitive response to the observation question was unable to be determined. For example, it was not always clear if the affected family member was present in the courtroom when a police prosecutor was applying for the order.

¹⁶ Section 4L of the *Magistrates' Court Act 1989* (Vic) and ss 67 and 150 of the *Family Violence Protection Act 2008* (Vic) regulate the presence of children in family violence intervention order proceedings. The combined effect of these sections is that a child who is the affected family member or protected person, or is a child of an affected family member, protected person or respondent in a family violence intervention order matter, may not be present in the courtroom without the leave of the court. Thus the observed absence of children in these matters should be seen as standard. Across all the observation days there were only three matters in which a child was present in the courtroom. In one, the child was a very young infant who attended in his pram with his mother, while in another the magistrate ordered that an older child, of about four or five years of age, be removed from the courtroom (she was taken out by someone who appeared to be an older relative). Outside of the courtrooms, however, a number of children were observed in various court locations but were not counted in the observation process. The restrictions placed on the presence of children in court make the provision of appropriate childcare facilities at court essential.

On the private applicant day, the applicant was present for 21 matters and absent for two matters. The respondent was present for 15 matters and absent for eight matters. Children were included as affected family members on the intervention order in three of the 23 matters.

The average age of applicants across both days was 37, with respondents being slightly older (38). However, the average age was higher on the private applicant day (41 for applicants and 45 for respondents) than on the police day (35 for applicants and 34 for respondents). It is unclear why this difference exists. On both police and private applicant days, the vast majority of applicants or affected family members were female (in 33 out of 37 intervention order matters on the police day and 19 of the 23 matters on the private day), while the majority of respondents were male (39 out of 45 respondents/defendants on the police day and 13 of the 23 respondents on the private day).¹⁷

On the police day, three applicants and three respondents were identified by the observer as being from a culturally and linguistically diverse background, with two matters requiring a Farsi interpreter (both matters related to a single respondent, and the affected family members were his wife and sister). On the private applicant day, one applicant appeared to be from a culturally and linguistically diverse background, but no interpreter was required. This is based on visual identification only, so for many parties this was unclear.

Of the 37 intervention order matters on the police day, 14 were current intimate partners and 12 were former partners. A further six involved a parent-child relationship (including step children and in-laws) while five involved other family, including four sisters/sisters-in-law.

Of the 23 intervention order matters on the private applicant day, 10 matters were being sought against a former domestic/intimate partner and one against a former (unspecified) relative. Two matters involved parent-child relationships and one a cousin. A single family with eight matters across four people (all with cross-applications) involved four sisters and a niece.

Courtlink data indicated that one applicant had a mental health disability and two a physical disability, while four respondents had a mental health disability, two had a cognitive disability, one had both and two had a physical disability. However, given the amount of missing data, this should be interpreted with caution.

A prior history of family violence was common among parties appearing at Ballarat Magistrates' Court, especially on the private applicant day. Seventeen of the 45 police day matters (38 per cent) and 21 of the 23 private day matters (91 per cent) involved people with prior family violence incidents, some of them lasting as long as 15 years. The difference across the two days in the proportion of people with previous family violence incidents is notable, although the reasons for this discrepancy are unclear. Data showed that victims of family violence often did not call the police: only three of the people involved in police applications and two involved in private matters had previously called police, although most of the data were missing so these data should be treated with caution. Only one person from the police day and three from the private day seem to have previously applied for an order (all under either the *Family Violence Protection Act 2008* (Vic) or the *Crimes (Family Violence) Act 1987* (Vic)), although again there is much missing data.¹⁸ One person from the police day had four previous orders imposed under this act but no information was available on people from the private day.

Data on whether parties had a related matter in the court were not entirely clear from the courtroom observations, but it appears that 11 of the 37 intervention order respondents from the police day had criminal matters, one had a custody matter and one a child protection matter. One person from the 23 matters on the private applicant day seemed to have a related criminal matter (he was the respondent in one matter and the applicant in the cross-application). No data were available from Courtlink.¹⁹

There were two cross-applications recorded in Courtlink from the police day and 13 were observed on the private applicant day, all sought by respondents. There was a single family that had eight applications—three sisters and a niece had all sought an intervention order against a fourth sister, and she had sought an intervention order against each of the four.

¹⁷ The 10 female respondents out of 23 on the private applicant day is unusual when compared with the other courts. This is likely due to a single family in which four women sought an intervention order against a sister, and the sister sought an intervention order against each of the four. This single family accounted for 8 of the matters heard in the list that day.

¹⁸ Courtlink does not differentiate between the *Family Violence Protection Act 2008* (Vic) and the *Crimes (Family Violence) Act 1987* (Vic). Data on previous intervention orders sought and imposed thus can only be presented about the two acts combined.

¹⁹ Across all the courts visited, it was difficult to gather an accurate measure of the number of people with related criminal, custody or child protection matters. For the most part, this information was only available from observations if the magistrate specifically asked about related matters. Courtlink contained some limited data on related matters, but the data were not always reliable, with much missing information. Criminal matters that have not yet been initiated would not yet be recorded in Courtlink. The figures on the number of people with related matters are thus likely to represent a conservative estimate.

Given that Ballarat is a specialist family violence division court with a well-developed service model in place, there is extensive use of services within court and referrals to services outside of court. Observational data indicated that, on the police day, eight applicants and two respondents had support in court from a service provider.²⁰ The magistrate for the police day at Ballarat made frequent use of referrals to the in-court support services, particularly the applicant support workers.²¹ On that day, 16 people out of the 18 applicants and 23 respondents who were present were referred to services by the magistrate—eight to the respondent support worker and seven to the applicant support worker and Berry Street family violence services. One was encouraged to continue with a psychiatrist and ACSO (Australian Community Support Organisation) and another with counselling for alcohol abuse in addition to seeing the respondent support worker.

Even though there was a substantial use of referrals to services in Ballarat, the frequency of referrals may still reflect the limited capacity of support services to deal with the large number of people on the list. Magistrates are likely aware of the impact of large lists on service providers, so may undertake some level of triage in their referral process, only referring those parties deemed most in need of support. Nonetheless, the availability of support services in Ballarat is an important part of the local response to family violence.

On the private applicant day (under a different, non-specialist magistrate), one person out of the 21 applicants and 15 respondents who were present was referred to the respondent support worker. Observational data indicated that two applicants and two respondents had support in court from a service provider.

Courtlink data for Ballarat provide a more accurate and detailed picture of the use of services that may not always be evident from the courtroom discussions. The data showed that 21 applicants²² and 18 respondents from the police day and nine applicants and five respondents from the private applicant day had accessed specialist family violence services at court.²³ In addition, two applicants on the police day had seen a police prosecutor and one a civil advocate.²⁴ Five applicants on the police day had also been referred to services outside court: one to legal services, one to counselling, one to children's services/counselling and two to 'other' services. On the private day, two applicants were referred to welfare services. On the police day, four respondents had been referred to services outside court: one to drug and alcohol services, one to welfare, one to disability services and one to children's services/counselling. On the private day, three respondents were referred to services outside court: one to legal services, one to children's services and one to some other service. The Courtlink data do not record whether people accessed these services on the basis of a referral made by the magistrate in court or by one of the workers outside the courtroom (such as the applicant support worker or registry staff).

Even with the significant presence of service providers in Ballarat, the number of people accessing these services remains limited by the providers' capacity to cope with substantial demand.

Of the police day applications, two affected family members had legal representation (these were two of the six private applications that were heard on the police day). No affected family members had legal representation in addition to the police. Nineteen respondents of the 23 present in court had legal representation. On the private application day, of the 21 applicants present in court, 16 had legal representation. Of the 15 respondents present in court, 12 had legal representation. This pattern is replicated in the other courts: while most applicants on private days are represented by duty lawyers, it appears that affected family members in police matters are not receiving additional legal representation, but are being deemed to be 'represented' by the police. This may cause difficulties in those matters where the affected family member does not wish the matter to proceed, but the police prosecutor continues to seek an order nonetheless.

The amount of time people actually spend with the various services is highly constrained due to the number of matters coming before the court. This issue is discussed in Chapter 4, as part of a broader discussion of time pressures on the courts with regard to family violence matters.

20 Data were not collected on whether the service provider was the applicant support worker, the respondent support worker, a person from Court Network or someone from an external family violence service provider. In addition, the presence or absence of a support worker was not always easily determined, with observations relying on an obvious indication (such as a Magistrates' Court of Victoria lanyard or a Court Network identity card) that the person accompanying the party was indeed a support provider.

21 The magistrate for the police day at Ballarat was the same magistrate who was observed at Sunshine. At both locations, the magistrate frequently made referrals to in-court and community support services.

22 Observational data indicate that 18 applicants were present in court. It is possible that the observations were not able to identify every applicant in the courtroom, or that the applicant had accessed the services at court but had not attended the hearing itself.

23 While the data show whether a person accessed services, they do not provide information on what that access entailed—whether an extended discussion with appointments made for subsequent meetings, or a brief chat about court processes, or some other discussion. The data also do not record which specialist service was used or when the services were accessed (either on the hearing day, prior to or following the hearing day). Such nuanced information was not collected as part of the research.

24 Some people received multiple referrals to a number of different types of support service.

2.2 GEELONG

Of the 21 matters in the list in Geelong, there was a private applicant in 12 matters and a police applicant in the remaining nine.²⁵ Table 4 presents the key data from Geelong.

**TABLE 4: CHARACTERISTICS OF PEOPLE WHO ATTEND COURT FOR FAMILY VIOLENCE MATTERS—
GEELONG (SUMMARY DATA)**

| 21 MATTERS (12 PRIVATE; 9 POLICE) | | | | |
|---|----------------------------|-----|----------------------------|-----|
| | Applicants | | Respondents | |
| People present | 14 | 67% | 7 | 33% |
| People absent | 6 | 29% | 11 | 52% |
| | Applicants | | Respondents | |
| Average age | 34 | | 37 | |
| Gender | | | | |
| Female | 17 | 81% | 4 | 19% |
| Male | 4 | 19% | 17 | 81% |
| Respondent type | | | | |
| Current partner | 6 | 29% | | |
| Former partner | 6 | 29% | | |
| Parent/child | 8 | 38% | | |
| Other | 1 | 5% | | |
| Prior history of violence | | | | |
| Prior FV incident | 10 | 48% | | |
| Prior calls to police | 6 | 29% | | |
| Prior IVO/other order sought ^a | 5 | 24% | | |
| Prior IVO/other order issued | 3 | 14% | | |
| | Applicants (of 14 present) | | Respondents (of 7 present) | |
| Legal representation | 5 | 36% | 6 | 86% |

Note: The numbers under 'people present/absent', 'gender' and 'respondent type' should sum to the number of matters but may not, due to missing data.

a In some courts, prior orders sought or issued were not intervention orders but were some form of family law order. These are clearly identified in the text.

For 14 matters the applicant was present and for six the applicant was absent, while the respondent was present for seven matters and absent for 11.²⁶ Of the police applications, seven of nine applicants were present (78 per cent), compared with seven of 12 for the private applications (58 per cent).²⁷ Children were included as affected family members on the intervention order in seven matters.

The average age of applicants was 34, with respondents being slightly older (37), probably reflecting the fact that most applicants (17 out of 21) were women and most respondents (also 17 out of 21) were men. Although Courtlink data on Indigenous status should not be considered entirely reliable,²⁸ it appears that one respondent was Indigenous. No one was recorded as being from a culturally and linguistically diverse background, with no interpreters required.

Most of the applications were being made against current (six) or former (six) intimate partners, although there were also eight matters that involved parent/child relationships. One application involved a current partner's former partner.

²⁵ Geelong was observed on a Friday, which is notionally designated as a day for police applications for family violence intervention orders. However, private applications are also allowed, which is reflected in the data.

²⁶ Note that the numbers do not always tally to the total as there are times when a definitive response to the observation question was unable to be determined. For example, it was not always clear if the affected family member was present in the courtroom when a police prosecutor was applying for the order.

²⁷ For one private application, it was unclear whether the applicant was present.

²⁸ There was a large amount of missing information for this in Courtlink.

Courtlink recorded three applicants as having a disability (one cognitive, one mental health and one physical), while six respondents were recorded as having a disability (three mental health, two drug/alcohol and one combined).

About half of the matters (10) involved people with previous experience of family violence incidents, most of which involved ‘numerous’ individual incidents. In six of the cases someone had previously called police for a family violence incident, while in three someone had previously sought a family violence intervention order. In addition, two people had previously sought a Family Court order under the *Family Law Act 1975* (Cth). Finally, in three of the cases, a court order had previously been issued (two family law orders under the *Family Law Act 1975* (Cth) and one family violence intervention order under either the *Family Violence Protection Act 2008* (Vic) or the *Crimes (Family Violence) Act 1987* (Vic)).²⁹

Data on whether parties have a related matter in the court were not entirely clear from the courtroom observations, although Courtlink data indicated that two respondents and one applicant had a related criminal matter and one respondent had a related child protection matter. The observational data seemed to indicate that one respondent and three applicants also had another intervention order matter pending. There seemed to be only a single cross-application among matters heard on the day, although again this was difficult to determine from either observations or Courtlink, due to missing data.

Most people seem not to be accessing available services in Geelong, although as Geelong is neither a specialist division nor a specialist court, this is perhaps to be expected. The most common service accessed was the police prosecutor, with Courtlink data indicating that seven applicants spoke with the prosecutor, while five were recorded as having sought legal services. Of the seven respondents present at court, three accessed legal services (duty lawyers) at court. There are no data available in Courtlink on whether parties had accessed relevant services prior to attending court, although the reason for this omission is unclear. Given the large amount of missing data on the use of services in Geelong, these data are not included in the summary table.

Of the private applicants, five had legal representation, while none of the police applications also had legal representation in addition to the police. Of the seven respondents present in court, six had legal representation.

²⁹ 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.

2.3 MELBOURNE

Of the 32 matters in the list in Melbourne, there was a private applicant in six matters and a police applicant in 25, with one being unclear.³⁰ Table 5 presents the key data from Melbourne.

TABLE 5: CHARACTERISTICS OF PEOPLE WHO ATTEND COURT FOR FAMILY VIOLENCE MATTERS—MELBOURNE (SUMMARY DATA)

| 32 MATTERS (6 PRIVATE; 25 POLICE; 1 UNCLEAR) | | | | |
|--|----------------------------|-----|-----------------------------|-------|
| | Applicants | | Respondents | |
| People present | 17 | 53% | 15 | 47% |
| People absent | 9 | 28% | 15 | 47% |
| | Applicants | | Respondents | |
| Average age | 38 | | 39 | |
| Gender | | | | |
| Female | 25 | 78% | 4 | 12.5% |
| Male | 7 | 22% | 28 | 87.5% |
| Respondent type | | | | |
| Current partner | 16 | 50% | | |
| Former partner | 9 | 28% | | |
| Parent/child | 3 | 9% | | |
| Other family | 3 | 9% | | |
| Prior history of violence | | | | |
| Prior FV incident | 16 | 50% | | |
| Prior calls to police | 10 | 31% | | |
| Prior IVO sought | 8 | 25% | | |
| Prior IVO issued | 8 | 25% | | |
| | Applicants (of 17 present) | | Respondents (of 15 present) | |
| Legal representation | 6 | 35% | 7 | 47% |

Note: The numbers under 'people present/absent', 'gender' and 'respondent type' should sum to the number of matters but may not, due to missing data.

For 17 matters the applicant was present and for nine the applicant was absent, with the remaining six unclear. The respondent was present for 15 matters and absent for 15, with two being unclear. Of the police applications, 12 of 25 applicants were present (50 per cent), compared with five of the six private applications (83 per cent). Children were included as affected family members on the intervention order in 12 matters.

The average age of applicants was 38, with respondents being slightly older (39). Most applicants (25 out of 32) were women and most respondents (28 out of 32) were men. No one was recorded in Courtlink as being Indigenous and one respondent was recorded as pregnant. Courtlink data showed that 12 applicants and 16 respondents were from a culturally and linguistically diverse background, and two interpreters were required—one for an applicant (language unknown) and one for a respondent (in Japanese).

Most of the applications were being sought against current (16) or former (nine) intimate partners, although there were also three matters that involved parent/child relationships and three other family members.

³⁰ Melbourne was observed on a Monday, which is notionally designated as a day for police applications for family violence intervention orders. However, private applications are also allowed, which is reflected in the data.

Courtlink recorded one applicant with a cognitive disability, but there was a significant amount of missing data. The data were somewhat better for respondents: eight respondents had a disability (one cognitive, three mental health, three drug and alcohol and one physical disability).

Half of the matters (16) involved people with previous experience of family violence incidents, most of which involved 'numerous' individual incidents. The longest period over which family violence had occurred was 26 years. In 10 of the cases someone had previously called police for a family violence incident, while in eight someone had previously sought a family violence intervention order. Finally, in eight of the cases, a family violence intervention order had previously been issued under either the *Family Violence Protection Act 2008* (Vic) or the *Crimes (Family Violence) Act 1987* (Vic). In one of these matters a person had previously been issued a family law order under the *Family Law Act 1975* (Cth) as well.

Courtlink data indicated that one respondent and two applicants had another intervention order matter, while three respondents had a related criminal matter. There seemed to be only a single cross-application among matters heard on the day, although again this was difficult to determine from either observations or Courtlink, due to missing data.

Some of the people appearing at Melbourne had accessed available services. The most common service accessed was legal services, with Courtlink data indicating that 17 applicants spoke with legal services, as did 15 respondents. It appears that no one accessed family violence services at court, although it may be that, while services were accessed, the data were not recorded in Courtlink.³¹

Courtlink showed that six applicants had also already accessed other services: three legal services, one Court Network and two family violence specialists, while two respondents had accessed legal services. As Melbourne has both an applicant and a respondent support worker, it is possible that these were the family violence specialists accessed, although Courtlink data did not include such a fine level of classification. In addition, three applicants and three respondents were referred to counselling services outside court.

Of the private applicants, six had legal representation, while none of the police applications also had legal representation in addition to the police. Of the 15 respondents present in court, seven had legal representation.

³¹ Observational data indicate that only one person was supported in the courtroom by a family violence support worker, although there was too much missing data on this measure to make any definitive statement. Given the uncertainty around the data quality for these measures in Melbourne, they are not included in the summary table.

2.4 SUNSHINE

Sunshine had a large list on the day of the courtroom observation, with 35 matters. Of these, there was a police applicant in 26 matters and a private applicant in the remaining nine.³² Table 6 presents the key data from Sunshine.

TABLE 6: CHARACTERISTICS OF PEOPLE WHO ATTEND COURT FOR FAMILY VIOLENCE MATTERS—SUNSHINE (SUMMARY DATA)

| 35 MATTERS (9 PRIVATE; 26 POLICE) | | | | |
|-----------------------------------|----------------------------|-----|-----------------------------|-----|
| | Applicants | | Respondents | |
| People present | 18 | 51% | 22 | 63% |
| People absent | 17 | 49% | 13 | 37% |
| | Applicants | | Respondents | |
| Average age | 37 | | 36 | |
| Gender | | | | |
| Female | 29 | 83% | 7 | 20% |
| Male | 6 | 17% | 28 | 80% |
| Respondent type | | | | |
| Current partner | 17 | 49% | | |
| Former partner | 6 | 17% | | |
| Parent/child | 7 | 20% | | |
| Other family | 3 | 9% | | |
| Prior history of violence | | | | |
| Prior FV incident | 24 | 69% | | |
| Prior calls to police | 5 | 14% | | |
| Prior IVO sought | 6 | 17% | | |
| Prior IVO issued | 6 | 17% | | |
| | Applicants (of 18 present) | | Respondents (of 22 present) | |
| Legal representation | 10 | 56% | 12 | 56% |
| In-court service support | 2 | 11% | 1 | 5% |
| Referral to ASW/RSW | 1 | 6% | n/a | |
| Access court FV services | 3 | 17% | 0 | 0% |

Note: The numbers under 'people present/absent', 'gender' and 'respondent type' should sum to the number of matters but may not, due to missing data.

Applicants were present for about half the matters (18 present and 17 absent), while the respondent was present for 22 matters and absent for 13. Of the police applications, 12 of 26 applicants were present (46 per cent), compared with six of the nine private applications (67 per cent). Children were included as affected family members on the intervention order in 11 matters.

The average age of all parties was very similar, at 37 for applicants and 36 for respondents. Most applicants (29) were female, while most respondents (28) were male. Courtlink data showed that one respondent was Indigenous and one applicant was pregnant.

Court participants reflected the culturally diverse community that is found in the Sunshine area, with eight applicants and nine respondents being recorded as having a culturally and linguistically diverse background. Interpreters were required in three matters, for both applicant and respondent: two in Tamil and one in Urdu. This was the highest number of interpreters seen in any of the courts visited.

³² Sunshine was observed on a Wednesday, which is notionally designated as a day for police applications for family violence intervention orders. However, private applications are also allowed, which is reflected in the data.

Half of all applications (17) were being sought against current intimate partners, while six were against former partners. There were also seven matters that involved parent/child relationships and three involving siblings.

Courtlink recorded one applicant as having a mental health disability, while six respondents were recorded as having a drug and alcohol disability.

Two-thirds of the matters (24) involved people with previous experience of family violence incidents, most of which involved 'numerous' individual incidents. In five of the cases someone had previously called police for a family violence incident, while in six someone had previously (once or twice) sought a family violence intervention order under either the *Family Violence Protection Act 2008* (Vic) or the *Crimes (Family Violence) Act 1987* (Vic). In each of these six matters, an order had been issued.

Courtlink data indicated that five respondents had a related criminal matter, but observational data suggested that this was actually eight. There was also one child protection matter. There were two cross-applications among matters heard on the day, one by a private applicant and one by police.

Sunshine seems to have much greater use of services among people who attend court for family violence matters than most of the other courts. Courtlink indicated that 17 applicants accessed services at court: three family violence services only, two police prosecutor plus legal services, and 12 legal services only. Almost all applicants (32) accessed additional services: two a family violence specialist³³ and 30 a police prosecutor.³⁴ In addition to services accessed at court, eight applicants were referred to services outside court: two to children's services/counselling, two a family violence specialist, one to a legal/family law service and three 'other' (unspecified) services. Among respondents, 13 accessed legal services at court, while three respondents accessed other services and six referrals were made to services outside court: two legal/family law and four unspecified. Although the magistrate made an explicit referral to the applicant support worker as part of her decision in only one matter, in the vast majority of cases where the affected family member was present, early in the hearing the magistrate asked whether she had yet seen the applicant support worker. Thus the data for referrals do not represent the full conversation that was occurring in the courtroom and should be treated with caution.³⁵

Of the nine private applicants, six had legal representation,³⁶ while one of the 26 police applications also had legal representation in addition to the police. Of the 22 respondents present in court, 12 had legal representation.

33 Courtlink does not identify which type of family violence specialist service was accessed, just that a 'family violence specialist' was seen.

34 There were 26 police initiated matters in Sunshine but Courtlink records that 30 people had accessed 'other' additional services. These services include those accessed outside of court at different times, so are not expected to reflect directly the number of people at court on the observation day.

35 In most of the matters observed, the applicant support worker had already been visited. In those where the affected family member had not yet seen the applicant support worker, the magistrate would sometimes adjourn proceedings to allow her to do so, providing the opportunity for her to return to the courtroom having had this discussion. No data were collected on this form of referral.

36 It was not possible to identify whether the legal representatives were from Victoria Legal Aid or from the Western Community Legal Centre.

2.5 DANDENONG

Dandenong had the second largest list of all courts on the day of the courtroom observation, with 42 matters, including one criminal matter. Of the 41 intervention order matters, there was a police applicant in 39 matters and a private applicant in only two.³⁷ Table 7 presents the key data from Dandenong.

TABLE 7: CHARACTERISTICS OF PEOPLE WHO ATTEND COURT FOR FAMILY VIOLENCE MATTERS—DANDENONG (SUMMARY DATA)

| 42 MATTERS (41 IVO; 1 CRIMINAL)—(2 PRIVATE IVO; 39 POLICE IVO) | | | | |
|--|--------------------------------|-----|---------------------------------|-----|
| | Applicants (of 41 IVO matters) | | Respondents (of all 42 matters) | |
| People present | 15 | 37% | 17 | 40% |
| People absent | 26 | 63% | 24 | 57% |
| | Applicants (of 41 IVO matters) | | Respondents (of all 42 matters) | |
| Average age | 36 | | 33 | |
| Gender | | | | |
| Female | 34 | 83% | 3 | 7% |
| Male | 7 | 17% | 39 | 93% |
| Respondent type | | | | |
| Current partner | 15 | 36% | | |
| Former partner | 12 | 29% | | |
| Parent/child | 6 | 14% | | |
| Other family | 8 | 19% | | |
| Prior history of violence | | | | |
| Prior FV incident | 18 | 43% | | |
| Prior calls to police | 8 | 19% | | |
| Prior IVO sought | 11 | 26% | | |
| Prior IVO issued | 9 | 21% | | |
| | Applicants (of 15 present) | | Respondents (of 17 present) | |
| Legal representation | 1 | 7% | 2 | 12% |

Note: The numbers under 'people present/absent', 'gender' and 'respondent type' should sum to the number of matters but may not, due to missing data.

The applicant was present in 15 matters and absent in 26, while the respondent was present for 17 matters and absent for 24. Of the police applications (including both the 39 civil intervention order matters and the one criminal matter), 13 of 40 applicants were present (33 per cent) and one was unclear, compared with both of the private applicants being present (100 per cent). It is unclear why so many family violence victims were absent in Dandenong, but it is possible that police had told them that they were not required at court. Children were included as affected family members on the intervention order in 21 matters. This is the highest proportion of matters in which children were included (50 per cent); for most of the other courts, about one-third of matters included children on intervention orders.³⁸

³⁷ Dandenong was observed on a Thursday, which is notionally designated as a day for police applications for family violence intervention orders. However, private applications are also allowed, which is reflected in the data.

³⁸ This was not the case, however, in Ballarat, where children were included on intervention orders in two of the 37 intervention order matters on the police day and three of the 23 private matters. Maryborough also saw a small proportion of matters with children included on the order, in two out of the 10 intervention order matters heard that day. It is unclear whether there are any particular reasons for these disparities, or whether they are in fact artefacts of differential Courtlink recording practices.

The average age of applicants was 36, with respondents being somewhat younger (33). Most applicants (34) were female, with seven male applicants. Most respondents (39) were male, with three female respondents. Courtlink was not able to provide reliable data on Indigenous status, pregnancy status or culturally and linguistically diverse status, however observations suggested that eight applicants and seven respondents could be clearly classified (on the basis of visual identification only) as having a culturally and linguistically diverse background.³⁹ Five people needed interpreters: one applicant and one respondent in Farsi, one applicant in Dari, one respondent in Sinhalese and another respondent in Burmese.

Most of the applications were being sought against current (15) or former (12) intimate partners, although there were also six matters that involved parent/child relationships and eight that involved other family members.

While Courtlink data on disability were unreliable, observations suggested that one applicant had a cognitive disability and five respondents had a disability (one physical, one drug and alcohol, one cognitive, and two with a combination of mental health and drug and alcohol issues).

Almost half of the matters (18) involved people with previous experience of family violence incidents (although there was also a lot of missing data in Courtlink for this). In eight of the cases someone had previously called police for a family violence incident, while in 11 someone had previously sought a family violence intervention order (usually once or twice, but up to seven times), all of which were sought under either the *Family Violence Protection Act 2008* (Vic) or the *Crimes (Family Violence) Act 1987* (Vic). Finally, in nine of the cases, a family violence court order had previously been issued (usually once or twice), all of which were also issued under either the *Family Violence Protection Act 2008* (Vic) or the *Crimes (Family Violence) Act 1987* (Vic).

Courtlink data indicated that five applicants had a related proceeding: two family law, two another intervention order and one unknown. In addition, the observational data indicated one child protection matter as well. For respondents, 18 had related matters: 11 had additional intervention orders, eight had criminal matters and there were two family law matters (with some having more than one related matter). Observational data showed two additional child protection matters. There seemed to be only a single cross-application among matters heard on the day.

Courtlink data on service access are unreliable for Dandenong, due to missing data. While four applicants appeared to have support in the courtroom from a service provider, only one of the respondents appeared to have such support. A formal referral to a family violence support service was made in only one case, however in the vast majority of matters discussions with both the affected family member and the respondent included mention of the value of seeking assistance from Relationships Australia.⁴⁰ Indeed, the representative of this organisation entered court to answer the magistrate's questions at times. The limited data available from the observations indicated that legal representation was not used much in Dandenong: of the two private applicants, neither had legal representation, while one of the 39 police applications also had legal representation in addition to the police. Of the 17 respondents present in court, only two had legal representation. The reasons for this lack of use of legal services is not clear from the observational data, but may be due to the very large number of people in Dandenong Magistrates' Court generally. The proportion of parties—especially respondents—using duty lawyers in this court is significantly lower than in the other courts.

2.6 WANGARATTA

There were 11 intervention order matters and two family violence-related criminal matters on the list in Wangaratta. This is the second smallest list in the observational data, next to Maryborough, where there were 12 matters, including two family violence-related criminal matters.

Of the 11 intervention order matters, seven were private applicants (including one who was the parent of the affected family member) and four were police applications. Among all the courts observed, Wangaratta had the lowest proportion of all applications that were led by police (four of 11 intervention order matters, or 36 per cent), with only Geelong also having less than half (nine of 21 matters, or 43 per cent) of all matters being brought by the police. The small number of matters on the list in Wangaratta may mean that this proportion fluctuates substantially.

Table 8 presents the key data from Wangaratta.

³⁹ This is based on visual identification only, and might thus be missing a large number of people who identify as culturally and linguistically diverse but who do not immediately appear so. These data should therefore be treated with much caution.

⁴⁰ Data were not collected on the precise number of these mentions of Relationships Australia. Due to the lack of reliable data on referrals or services accessed at court, these measures are not included in the summary table.

**TABLE 8: CHARACTERISTICS OF PEOPLE WHO ATTEND COURT FOR FAMILY VIOLENCE MATTERS—
WANGARATTA (SUMMARY DATA)**

| 13 MATTERS (11 IVO; 2 CRIMINAL)—(7 PRIVATE IVO; 4 POLICE IVO) | | | | |
|--|---------------------------------------|-----|--|-----|
| | Applicants (of 11 IVO matters) | | Respondents (of all 13 matters) | |
| People present | 8 | 73% | 5 | 38% |
| People absent | 3 | 27% | 6 | 46% |
| | Applicants (of 11 IVO matters) | | Respondents (of all 13 matters) | |
| Average age | 33 | | 40 | |
| Gender | | | | |
| Female | 7 | 64% | 1 | 8% |
| Male | 4 | 36% | 12 | 92% |
| Respondent type (of 11 IVO matters) | | | | |
| Current partner | 1 | 9% | | |
| Former partner | 7 | 64% | | |
| Parent/child | 1 | 9% | | |
| Other | 1 | 9% | | |
| Prior history of violence (of all 13 matters) | | | | |
| Prior FV incident | 7 | 54% | | |
| Prior calls to police | unknown | | | |
| Prior IVO/other order sought | 5 | 38% | | |
| Prior IVO/other order issued | 4 | 31% | | |
| | Applicants (of 8 present) | | Respondents (of 5 present) | |
| Legal representation | 4 | 50% | 3 | 60% |

Note: The numbers under 'people present/absent', 'gender' and 'respondent type' should sum to the number of matters but may not, due to missing data.

The applicant was present for eight matters and absent for the remaining three. In three of the intervention order matters the respondent was present and in both criminal matters the defendant was present. The respondent was absent for six of the intervention order matters and the remaining two were unclear. Of the four police applications, the applicant was present in half, compared with six of the seven private applicants being present (86 per cent). Children were included as affected family members on the intervention order in four matters.

The average age of applicants was 33, with respondents being significantly older (40). This age gap is not seen in the other court locations. It is unlikely to be explained by the gender of the applicants and the respondents; while all but one of the respondents (and the two defendants) were male, the gender difference among the applicants was less stark, with seven females and four males. Courtlink data on Indigenous status, pregnancy status, culturally and linguistically diverse status and disability were too unreliable to be analysed, but on the basis of visual identification only, no parties were from a culturally and linguistically diverse background and no interpreters were required. This likely reflects the demographics of the local population in Wangaratta. Observational data suggest that no applicants had a disability but one respondent had a combination of cognitive, mental health and drug and alcohol issues.

Most of the applications (seven) were being sought against former intimate partners, with one against a current partner. One matter involved a parent/child relationship and one a former partner's new partner.

More than half of the matters (seven) involved people with previous experience of family violence incidents, although the data do not clearly identify the number who had previously called police. People in five matters had previously sought a family law order under the *Family Law Act 1975* (Cth) and orders had previously been issued under this act in four matters. According to Courtlink data, there were no previous family violence intervention order applications made or orders issued among the people appearing at Wangaratta Magistrates' Court on this day.

The observational data seemed to indicate that three respondents had related criminal matters and one had a related custody matter. While Courtlink identifies only a single cross-application among matters heard on the day, observational data suggest there may have been two.

Based on the observational data only, four of the eight applicants present and three of the five respondents/defendants present had legal representation (one of the criminal defendants and two of the intervention order respondents). There are no data available on whether parties had accessed relevant services prior to attending court and whether they had been referred to services.

2.7 MARYBOROUGH

Of the 10 intervention order matters in the list in Maryborough, there was a private applicant in four matters and a police applicant in the remaining six. Table 9 presents the key data from Maryborough.

TABLE 9: CHARACTERISTICS OF PEOPLE WHO ATTEND COURT FOR FAMILY VIOLENCE MATTERS—MARYBOROUGH (SUMMARY DATA)

| 12 MATTERS (10 IVO; 2 CRIMINAL)—(4 PRIVATE IVO; 6 POLICE IVO) | | | | |
|---|--------------------------------|-----|---------------------------------|-----|
| | Applicants (of 10 IVO matters) | | Respondents (of all 12 matters) | |
| People present | 6 | 60% | 7 | 58% |
| People absent | 2 | 20% | 2 | 17% |
| | Applicants (of 10 IVO matters) | | Respondents (of all 12 matters) | |
| Average age | 42 | | 38 | |
| Gender | | | | |
| Female | 6 | 60% | 4 | 33% |
| Male | 4 | 40% | 8 | 67% |
| Respondent type (of 10 IVO matters) | | | | |
| Current partner | 4 | 40% | | |
| Former partner | 3 | 30% | | |
| Parent/child | 3 | 30% | | |
| Other family | 0 | 0% | | |
| Prior history of violence (of all 12 matters) | | | | |
| Prior FV incident | 8 | 67% | | |
| Prior calls to police | 6 | 50% | | |
| Prior IVO sought | 4 | 33% | | |
| Prior IVO issued | 5 | 42% | | |
| | Applicants (of 6 present) | | Respondents (of 7 present) | |
| Legal representation | 4 | 67% | 2 | 29% |

Note: The numbers under 'people present/absent', 'gender' and 'respondent type' should sum to the number of matters but may not, due to missing data.

For six of the intervention order matters the applicant was present and for two the applicant was absent, while the respondent was present for seven matters (including one of the criminal matters) and absent for two. The remainder were unclear for both applicants and respondents. Of the six police applications, the applicant was present in two (33 per cent), although two were unclear, compared with all of the four private applicants being present (100 per cent). Children were included as affected family members on the intervention order in two matters.

The average age of applicants was 42, with respondents being somewhat younger (38). Of the applicants in the 10 intervention order matters, six were female and four male, while four of the respondents were female and six were male. Both defendants in the criminal matters were male. Courtlink data recorded no Indigenous people and no pregnant parties, but there was substantial missing data. No one was recorded as being from a culturally and linguistically diverse background, with no interpreters required.

Applications were being sought against current (four) or former (three) intimate partners, with three matters that involved parent/child relationships.

Courtlink recorded six respondents as having a disability (three with drug and alcohol issues, two with mental health problems and one with both). This is the highest proportion (50 per cent of respondents/defendants) found in all the courts.

Two-thirds of the matters (eight) involved people with previous experience of family violence incidents, all of which involved 'numerous' individual incidents. In six of the cases someone had previously called police for a family violence incident, while in four someone had previously sought a family violence intervention order, up to five times (under either the *Family Violence Protection Act 2008* (Vic) or the *Crimes (Family Violence) Act 1987* (Vic)). Finally, in five of the cases, a family violence court order had previously been issued (under either the *Family Violence Protection Act 2008* (Vic) or the *Crimes (Family Violence) Act 1987* (Vic)). The additional order imposed was possibly a police-led application, so may not have been recorded under 'previous applications'.

Courtlink data indicated that four out of the 10 intervention order respondents had a related criminal matter. Again, this is the highest proportion seen among the various courts.

There were two matters with cross-applications.

There is no information available in Courtlink of services accessed. From observations, all of the four private applicants had legal representation, while none of the police applications also had legal representation in addition to the police. Of the seven respondents present in court, two had legal representation, including in one of the criminal matters.

2.8 NEIGHBOURHOOD JUSTICE CENTRE

The Neighbourhood Justice Centre (NJC) heard both intervention order (16) and criminal matters (one that was family violence-related) on the day of observation. Of the intervention orders, half (eight) were sought by private applicants and half (eight) by police. Table 10 presents the key data from the Neighbourhood Justice Centre.

TABLE 10: CHARACTERISTICS OF PEOPLE WHO ATTEND COURT FOR FAMILY VIOLENCE MATTERS—NEIGHBOURHOOD JUSTICE CENTRE (SUMMARY DATA)

| 17 MATTERS (16 IVO; 1 CRIMINAL)—(8 PRIVATE IVO; 8 POLICE IVO) | | | | |
|---|--------------------------------|-----|---------------------------------|-----|
| | Applicants (of 16 IVO matters) | | Respondents (of all 17 matters) | |
| People present | 8 | 50% | 7 | 41% |
| People absent | 8 | 50% | 9 | 53% |
| | Applicants (of 16 IVO matters) | | Respondents (of all 17 matters) | |
| Average age | 34 | | 37 | |
| Gender | | | | |
| Female | 12 | 75% | 3 | 18% |
| Male | 4 | 25% | 14 | 82% |
| Respondent type (of 16 IVO matters) | | | | |
| Current partner | 5 | 31% | | |
| Former partner | 7 | 44% | | |
| Parent/child | 3 | 19% | | |
| Other family | 1 | 6% | | |
| Prior history of violence (of all 17 matters) | | | | |
| Prior FV incident | 6 | 35% | | |
| Prior calls to police | 5 | 29% | | |
| Prior IVO/other order sought | 5 | 29% | | |
| Prior IVO/other order issued | 4 | 24% | | |
| | Applicants (of 8 present) | | Respondents (of 7 present) | |
| Legal representation | 7 | 88% | 6 | 86% |

Note: The numbers under 'people present/absent', 'gender' and 'respondent type' should sum to the number of matters but may not, due to missing data.

The applicant was present in half of the matters, while the respondent was present for seven matters and absent for nine. Of the eight police applications, the applicant was present in only one (13 per cent), compared with seven of the eight private applicants being present (88 per cent). Children were included as affected family members on the intervention order in three matters.

The average age of applicants was 34, with respondents being slightly older (37). Most of the applicants (12 out of 16) were women and most respondents (14) were men. Courtlink data indicate that two applicants were Indigenous, although there is a substantial amount of missing data. Five applicants and seven respondents are recorded as being from a culturally and linguistically diverse background, with one interpreter required, for a Vietnamese applicant.

Most of the applications were being sought against former (seven) or current (five) intimate partners, although there were also three matters that involved parent/child relationships and one that involved extended family.

From the observational data, two respondents appeared to have a disability: one with a drug and alcohol issue and the other with a combined mental health and drug and alcohol problem.

Although there was substantial missing data in Courtlink, six matters seemed to involve people with previous experience of family violence incidents. In five of the cases someone had previously called police for a family violence incident and in five someone had previously sought a family law order under the *Family Law Act 1975* (Cth). In four of the cases, an order had previously been issued under this act. According to Courtlink data, there were no previous family violence intervention order applications made or orders issued among the people appearing at the Neighbourhood Justice Centre on this day.

Courtlink data indicated that three respondents and one applicant had another intervention order matter, while the observational data seemed to indicate that two respondents had a related criminal matter and one couple had a child protection matter. There were four cross-applications among matters heard on the day, two of which seemed to be police applications and two of which were unclear.

In contrast to all the other courts, most people at the Neighbourhood Justice Centre had accessed services at some point. On the day, seven of the eight private applicants present had legal representation, as did six of the seven respondents who were present. This is likely due to the higher level of service provision available at this court, with its focus on holistic, wrap-around support.

Courtlink data show nine applicants accessed services at court: four people saw a police prosecutor (all of these also saw a family violence service provider), one saw legal services only, one saw both legal services and a family violence service provider, and one saw a family violence service provider only. Other service types were accessed by seven applicants. A referral to a community-based service was made for eight applicants: four to a family violence service provider, two to a non-specialist service, two to counselling, and one to drug and alcohol services.⁴¹

Among respondents, seven accessed services at court—one accessed legal services and one spoke with Court Network plus legal services (data were not available on the other five respondents). These same seven respondents also had other legal services involved, while six of them were referred to services outside court: three to a family violence service provider, four to a non-specialist service, four to counselling, one to a drug and alcohol service provider and three to some other (unspecified) form of service.

The significant use of services among both applicants and respondents at the NJC reflects the unique approach of the Centre, which is to provide referrals and services to parties in a holistic, immediate fashion. The ability to link people with support on the day of court and beyond is one of the key characteristics of this more therapeutic approach to justice.

2.9 DISCUSSION: UNDERSTANDING THE CHARACTERISTICS OF PEOPLE WHO ATTEND COURT FOR FAMILY VIOLENCE MATTERS

To facilitate direct comparison across the eight courts visited, Table 11 compiles the data from Sections 2.1 to 2.8, and includes an overall average percentage on each measure.⁴²

⁴¹ Data allow for people to have accessed more than one type of service provider.

⁴² Only those measures that are relevant across all eight courts are included in the comparison table. Therefore, data are not included on the proportion of parties being supported in court by support workers, being referred to applicant or respondent support workers, or accessing court family violence services as these services are only available in some of the courts.

TABLE 11: CHARACTERISTICS OF PEOPLE WHO ATTEND COURT FOR FAMILY VIOLENCE MATTERS: SUMMARY

| | BALLARAT (2 DAYS) | GEELONG | MELBOURNE | SUNSHINE | DANDENONG | WANGARATTA | MARYBOROUGH | NJC | AVERAGE |
|--|----------------------|---------|-----------|----------|-----------|------------|-------------|-----|---------|
| Total number of FV matters | 68 | 21 | 32 | 35 | 42 | 13 | 12 | 17 | 30 |
| Number FV-related criminal matters | 8 | - | - | - | 1 | 2 | 2 | 1 | - |
| Private applicants | 43% | 57% | 19% | 26% | 5% | 54% | 33% | 47% | 35% |
| Police applicants | 57% | 43% | 78% | 74% | 95% | 46% | 67% | 53% | 64% |
| Applicant present | 65% | 67% | 53% | 51% | 36% | 73% | 60% | 50% | 57% |
| Applicant absent | 35% | 29% | 28% | 49% | 62% | 27% | 20% | 50% | 38% |
| Respondent present | 56% | 33% | 47% | 63% | 40% | 38% | 58% | 41% | 47% |
| Respondent absent | 43% | 52% | 47% | 37% | 57% | 46% | 17% | 53% | 44% |
| Female applicant | 87% | 81% | 78% | 83% | 81% | 64% | 60% | 75% | 76% |
| Male applicant | 13% | 19% | 22% | 17% | 17% | 36% | 40% | 25% | 24% |
| Female respondent | 24% | 19% | 12.5% | 20% | 7% | 8% | 33% | 18% | 18% |
| Male respondent | 76% | 81% | 87.5% | 80% | 93% | 92% | 67% | 82% | 82% |
| Respondent: Current partner | 23% | 29% | 50% | 49% | 36% | 9% | 40% | 31% | 33% |
| Respondent: Former partner | 37% | 29% | 28% | 17% | 29% | 64% | 30% | 44% | 35% |
| Respondent: Parent/child | 13% | 38% | 9% | 20% | 14% | 9% | 30% | 19% | 19% |
| Respondent: Other | 25% | 5% | 9% | 9% | 19% | 9% | 0% | 6% | 10% |
| Prior FV incident | 56% | 48% | 50% | 69% | 43% | 54% | 67% | 35% | 53% |
| Prior police call | 6% | 29% | 31% | 14% | 19% | - | 50% | 29% | 25% |
| Prior IVO/other order sought | 6% | 24% | 25% | 17% | 26% | 38% | 33% | 29% | 25% |
| Prior IVO/other order issued | 1% | 14% | 25% | 17% | 21% | 31% | 42% | 24% | 22% |
| Applicants represented (of those present) | 46% | 36% | 35% | 56% | 7% | 50% | 67% | 88% | 48% |
| Respondent represented (of those present) | 82% | 86% | 47% | 56% | 12% | 60% | 29% | 86% | 57% |

Note: The averages for each measure do not necessarily sum to 100 per cent, due to missing data. The averages for the three measures under 'prior family violence incident' are subsets of the proportion for which there was a prior incident, so should not sum to 100 per cent.

Police versus private applications

According to interview participants, about 70 per cent of all intervention order applications across Victoria are made by police rather than by individuals. This figure is generally supported by the data, which show that an average of 64 per cent of all applications on the observation days were brought by police. This ranged from a low of 43 per cent in Geelong to a high of 95 per cent in Dandenong.⁴³

Many participants felt that police should be the applicant in more intervention order matters than they are currently. There are still severe incidents of family violence in which affected family members are being told to seek their own court orders. In court, the role of the police was seen as more than a prosecutorial role, but serving an important symbolic role as well. Having a police officer in uniform at the table lends an air of authority to the situation and makes it clear that this is a matter with the State, not with the individual victim. This can send a powerful message to the abuser that may not exist in private applicant matters.

Presence of parties at court

In many cases the respondent did not appear in court: on average, respondents were present in less than half of all matters (47 per cent). This can be problematic, as without a respondent present there is no opportunity for the court to impart the seriousness of the order and the consequences of breach and to hold the perpetrator accountable. Respondent absence also raises concerns with regard to procedural justice:⁴⁴ if the respondent is absent, there is no opportunity for him (and the vast majority of respondents are men) to be heard at court.

Although affected family members were more likely to attend court than were respondents, there was still a sizeable number of matters where the affected family member (even when she was listed as the applicant) did not appear, with an average of 57 per cent of applicants being present. When comparing applicant presence for police versus private applications, however, there are significant differences: on average, applicants are present in 44 per cent of police applications compared with 84 per cent of private applications. While affected family members may not be attending court in police-led matters, as they believe that the police can represent them properly and have maintained good communication with them, their absence nonetheless raises concerns about the effectiveness of the court process, its impact on women's safety and procedural justice issues. It also raises issues of court structure, as some women may be too frightened to come to a court that cannot provide safe, separate entrances, exits and waiting areas for victims of family violence.

Without an affected family member present—or at least without her consent—the police are not able to seek a ‘comprehensive’ intervention order.⁴⁵ Instead, a ‘limited’ order may be sought, prohibiting the respondent from committing further family violence and damaging property. While these orders clearly still include the most important prohibition—no family violence—they may be less effective in promoting safety in that they are not able to prevent contact and surveillance and cannot exclude the respondent from where the affected family member resides or works.

The question of whether affected family members should be required to attend court is fraught. On the one hand, the legislative limit on the form of the order means that police prefer the affected family member to be present. Attending court allows a family violence victim to be heard and to feel that the law is working to protect her. This is important for procedural justice and confidence in the system. Attending court also allows a family violence victim to access support services and to be provided with specialist advice to facilitate making informed decisions. On the other hand, attending court can be a traumatic experience for victims of family violence, especially in those courts where safe facilities are limited and the court building itself places the victim in danger. For example, Dandenong Magistrates’ Court provides a single waiting area that is cramped and crowded, and where physical assaults have been known to occur. Maryborough Magistrates’ Court is a single room so people all have to wait out the front of the building until their matter is called, or else sit in the courtroom. Even at Ballarat Magistrates’ Court, where there are separate waiting areas for applicants (downstairs) and respondents (upstairs), there is still only one entrance and abusers can peer down on victims from the balcony.

Relationship between victim and perpetrator

The most common relationship seen between applicants and respondents was between former intimate partners, comprising an average of 35 per cent of all relationships. The second most common relationship was current intimate partners, comprising 33 per cent of all matters. There was a significant minority of parent/child relationships as well, accounting for 19 per cent of the relationships overall.

43 The visit to Dandenong was undertaken on a notionally dedicated police application day. Different courts have different approaches to managing their two lists.

44 Procedural justice refers to the idea of fairness of process in the administration of justice and legal proceedings. It relates to participants’ perceptions of fairness in the process itself (such as the opportunity to have one’s say in court), rather than in the outcome.

45 A ‘comprehensive’ intervention order is one that includes clauses 1 through 8 of the legislation. A ‘limited’ order is one that involves fewer conditions than the full list, typically clauses 1 (no family violence) and 2 (no damaging property) and perhaps 8 (no causing others to do so). See Appendix B for a list of conditions that may be attached to intervention orders.

There was substantial variation across the courts in the nature of relationships among family violence intervention order matters. Current partner relationships accounted for half of all matters in Melbourne and almost half (49 per cent) in Sunshine, but only nine per cent in Wangaratta, where former partner relationships were seen in 64 per cent of all matters. On the other hand, former partners were involved in only 17 per cent of matters at Sunshine. In Geelong, the most common relationship (in 38 per cent of matters) was between a parent and a child.

The reasons for this variation are unclear, but interview participants suggested that there has been an increase in the number of matters brought by parents against their adult children—particularly their sons—due to violence associated with drug use, especially methylamphetamine, or ‘ice’. The use of this drug had also resulted in an increase in the severity of family violence injuries.

History of family violence

Many of the parties were not new to family violence, with some having not only called police before but also having been involved with intervention orders previously. On average, just over half (53 per cent) of all matters involved people who had experienced family violence previously. This varied across the courts, from a low of 35 per cent at the Neighbourhood Justice Centre to a high of 69 per cent in Sunshine. Despite more than half of all matters involving prior family violence, only one quarter (25 per cent) involved prior calls to the police and prior intervention order applications (also 25 per cent). Intervention orders had previously been issued in 22 per cent of matters.

There is thus significant attrition in the figures between the prevalence of family violence in the observed sample and the prevalence of people seeking assistance from the police or the courts. This may indicate a lack of confidence in the system’s ability to respond effectively to family violence, or perhaps a level of fear on the part of the affected family member to report the violence to authorities. It may also be indicative of insufficient support for women who are seeking to take action against the perpetrator.

Courtlink data show that some people had been experiencing family violence for many years—up to 26 years in one instance in Melbourne. Data from Geelong, Sunshine and Maryborough show that people had experienced ‘numerous’ incidents over the years, and data from Dandenong show that one person had sought an intervention order on seven previous occasions. One applicant at Ballarat had been granted an intervention order on four previous occasions. The data on prior experiences thus indicate that victims of family violence are often repeat victims, but that they suffer multiple incidents of violence before calling police or coming to court.

This raises questions not only for the court but for the family violence system as a whole: why are we unable to break the cycle of family violence for some people? Although intervention orders are but one mechanism within the system for preventing family violence, the repeated use of these orders does raise the issue of the extent to which intervention orders are actually effective in preventing family violence.

In some of the locations included in this research, Victoria Police has a dedicated ‘family violence unit’.⁴⁶ While each station adopts its own approach to the work of the family violence unit, for some the focus is on these repeat offenders and high-risk families who appear time and again in family violence incidents. It would also be useful for the court and its associated services to have an understanding of its repeat clients, to identify what else may be done to stop the violence among this group.

Service provision

Despite there being a range of services available in some courts, the most common service that was accessed was legal in nature. That is, many people (an average of 48 per cent of applicants and 57 per cent of respondents, or an average of 53 per cent overall) had some sort of private or legal aid representation, or representation by the local community legal centre. Not all parties, however, were represented, with enormous variation across the courts in the proportion of respondents represented, ranging from a very low 12 per cent in Dandenong to a high of 86 per cent in Geelong⁴⁷ and at the Neighbourhood Justice Centre.

Self-represented parties often struggle to keep up with court processes. Their matters tend to take additional court time as the magistrate has to explain both substantive (content) issues and more administrative (procedural) ones. Where additional services were available—such as applicant or respondent support workers—they were frequently used, with both the magistrate and the registry staff making referrals. Not all of the courts observed, however, have these support workers: a respondent support worker is only available in Ballarat, while applicant support workers are available in Ballarat, Melbourne, Sunshine and Dandenong. Interview participants unanimously highlighted the value of these staff. For example, representatives from one community legal centre felt that support workers ‘make a big difference’, contributing to perceptions of fairness among respondents and to perceptions of having their voices heard among applicants. Courts Services Victoria has also identified their value, with respondent support workers currently being installed in all of the state’s headquarter courts.

⁴⁶ The family violence unit that has been established in some police stations typically comprises a small team of two or three people dedicated to investigation, follow-up and liaison with victims in family violence matters.

⁴⁷ The low proportion of legal representation in Dandenong may be partly due to the very high proportion of police applicants, with fully 95 per cent of all matters being led by police. In contrast, Geelong had the highest proportion of private applicants (57 per cent, despite the observation occurring on a notional police application day), which may partly explain the widespread use of legal representation at that court.

The only court where a greater range of services was accessed, and where most parties had accessed services at court and also in the community, was at the Neighbourhood Justice Centre. Given that the fundamental approach of the Centre revolves around holistic service provision, this is to be expected, but it would require significant input of resources and funding to allow this approach to be adopted elsewhere.

Demographic characteristics

Gender

Across all the court locations visited, the vast majority of applicants were female⁴⁸ (76 per cent) and respondents, male (82 per cent), with Dandenong having fully 93 per cent of respondents being male. This is consistent with the general understanding that in family violence, while both men and women may be victims, the vast majority of victims are women and the vast majority of perpetrators are men.

Compared with these overall figures, there was a higher proportion (28 per cent, or 14 out of 51 matters) of female respondents in cases involving non-intimate partner violence.⁴⁹ These cases typically involved a parent or parent figure (such as a step-parent) applying for an intervention order against an adult daughter (eight matters), although there were also a handful of cases (three matters) involving applications sought by one sister against another. In the 37 matters where an intervention order was sought against a male non-intimate partner, a similar pattern emerged, with most (24 matters) being sought by a parent or parent figure against an adult son and some (nine matters) being sought by a sibling against a brother.

Cultural and linguistic diversity

Although varying significantly by court location, the number of people of culturally and linguistically diverse background was small overall, with only a handful requiring interpreters. The most diverse court populations seemed to be in Dandenong and Sunshine, reflecting their local communities. This has implications for the family violence service providers in those areas, in that specialist providers need to ensure that they are able to provide services that are both culturally appropriate and linguistically suitable. For example, inTouch Multicultural Centre Against Family Violence—a service provider for people of non-English speaking backgrounds—provides assistance at both Dandenong and Sunshine Magistrates' Courts one day per week. There is also a dedicated South Asian men's behaviour change program that is designed specifically for perpetrators from this community.⁵⁰

While there were few Indigenous people identified in this research, a culturally appropriate response needs to be available for this community as well. Women's Resource Information and Support Centre (WRISC) Family Violence Support Service provides a service to Indigenous women one day a week at Ballarat Magistrates' Court in order to address issues particular to this community. For example, Indigenous women tend not to seek help or report family violence as readily as non-Indigenous women. By the time the police are notified or assistance is sought from WRISC, the violence has typically escalated to severe levels.

In both of these instances, it is clearly important not only for service providers to be able to provide a culturally sensitive response, but for the court itself to do so. In particular, magistrates must understand the subtleties of family violence in various communities in order to appreciate the dynamics of the violent situations and to tailor an appropriate response in the circumstance.

Disability

Given the difficulty of collecting data on disability status through observation (as the presence of a disability is not always obvious), and the paucity of reliable data in the court's Courtlink system, little may be determined about the prevalence of disability among parties in family violence matters. Where data are available, they indicate that, when there is a disability, it tends to co-exist with drug and alcohol abuse.

48 More than two-thirds (68 per cent) of the applicants were current or former intimate partners of the respondent.

49 The counts in this paragraph exclude the group of eight matters involving the single family of four women in Ballarat as they would substantially skew the data: this one family accounted for eight of the 23 matters (35 per cent) heard in Ballarat on the day of observation.

50 South Asian victims of family violence tend to experience significant pressure from their own families and those of their husbands to withdraw their applications for intervention orders. They are often subject to pressure via Facebook and telephone, with concerns about 'saving face' taking priority over concerns about the safety of women and their children.

2.10 IMPLICATIONS FOR THE FAMILY VIOLENCE SYSTEM

Presence of parties at court

Given the importance of affected family members attending court—both in terms of the type of order that may be imposed and in terms of having an opportunity to be heard—the court experience should be made as simple and safe as possible. All participants, even at the newest courts, bemoaned the lack of appropriate facilities for family violence matters. Court should be a safe environment for people to attend and have their matters heard. Instead, in most of the courts visited, there were obvious and significant problems with court layout and architecture that clearly could compromise people's safety.

One magistrate said that the physical structure of the court is a 'real issue'. In some courts there is no safe haven and people are in a confrontational situation where anxiety levels are high. In small regional courts where there is no waiting area, or even larger courts where the layout is poor and cramped, affected family members 'have to run the gauntlet at the courthouse when they go in to seek their orders'. At the very least, the availability of a separate family violence counter would seem a useful addition.

While the new court building under development at Shepparton is being built with precisely such safety considerations at the fore, the older and smaller buildings remain in dire need of renovation to provide a safe, secure and calm environment.

While a wholesale rebuilding of all courts to make them safer is unlikely to be possible, the Magistrates' Court may nonetheless be able to introduce changes that can help victims of family violence to feel more confident in attending court. These might include an improvement to (or installation of) remote witness facilities, as well as greater and easier use of such facilities. For example, there is a remote witness facility in Sunshine, but it is somewhat isolated from court staff and people waiting to be called can feel as if they have been forgotten. This sort of isolation is unlikely to help victims' feelings of safety.

A greater separation of spaces for applicants and respondents would also be helpful, with careful consideration being given to the location of associated services. Again Sunshine may be used to illustrate this point, as applicant support services are located at the far end of the waiting area, such that victims of family violence must walk past everyone (possibly including the perpetrator) to reach them.

Some of the courts make use of side entrances when there are safety concerns, allowing security personnel to escort women into and out of the building without risk being seen. This is only possible in those buildings that provide a side entrance, but thought could be given to installing additional entrances in those without them.

History of family violence

Given that more than half of all matters involved people with a history of family violence, a focus on repeat offenders and high-risk families might provide an effective way to address a substantial proportion of family violence incidents. Some of the dedicated family violence units within Victoria Police focus specifically on families with a history of family violence as a way of reducing repeat offending. Interview participants in those areas where a dedicated unit exists believe that it contributes significantly to the system's response to family violence, providing improved investigation, better communication with affected family members and better outcomes at court. A focus on high-risk families is consistent with research from other fields such as community treatment and supervision of offenders, which shows that more intensive interventions work better with higher-risk people.

The data also highlight the attrition in family violence matters, with only one-quarter of victims reporting their prior incidents to police or applying for orders in the courts. If this reticence is based on lack of trust in the authorities to respond appropriately or effectively, then both police and courts need to examine their processes and practices to ensure that obstacles are not being placed in the way of people reporting.

Service provision

Providing a broader range of services, and more staff from each provider, depends on the availability of funding. Legal services in particular should be sufficiently funded to ensure that all parties are represented at court, and having dedicated family violence support services is critical as well.

All interview participants were supportive of having, at the very least, applicant support workers at court, as well as respondent support workers where possible. The value of this sort of service lies in easing people through the court process and referring and linking them with support services.

In some courts, such as Ballarat, extensive referrals were made to local services. This is possibly due in part to a certain confidence that magistrates have in the service providers, likely based on a good relationship between the Magistrates' Court and the support services. The value of such a relationship means that magistrates can have confidence that the referrals they make will result in people being successfully linked in with support. Having support services attend court gives them a presence that undoubtedly contributes to fostering this relationship.

Demographic characteristics

Although the data were not able to provide an accurate picture of the prevalence among family violence matters of people from a culturally and linguistically diverse background or people with a disability, interview participants nonetheless identified a need for more targeted service provision, such as men's behaviour change programs in different languages, but also in terms of having more interpreters available at court. Service provision for Indigenous communities was also identified as requiring additional funding, especially given the reluctance of Indigenous women to seek help until the violence has become severe.

2.11 ISSUES FOR FURTHER CONSIDERATION

While some of the issues identified during the research were beyond the original remit of the work, they are included within this section in each chapter as a way of reflecting the full range of issues that were raised.

These issues for further consideration (and those throughout this report—in Chapter 3 and Chapter 4) are based primarily on the interviews, having been raised by various participants. The points raised were all supported by the observations.

Based on both the data and the interviews, the following issues offer opportunities for further consideration and discussion:

1. **Improve court structure:** Undertake a review of court facilities to determine if any improvements can be made to improve safety, thus facilitating the presence of affected family members at court.
2. **Focus on repeat offending:** Implement a permanent, dedicated family violence unit within Victoria Police stations to focus on high-risk families (but not to the exclusion of others) and to improve investigation of family violence matters, to enhance communication with family violence victims and to facilitate better outcomes at court.
3. **Address lack of trust in the family violence system:** Review police and court processes and practices to ensure that they do not present obstacles to people seeking help. For example, ensure that the Victoria Police Code of Practice is being adhered to as intended.
4. **Increase service provision at court:** Implement applicant and respondent support workers at additional courts, provide sufficient funding to legal services so that all parties can have representation, and provide funding to family violence support services so that they can be active both in the court and in the community.
5. **Provide culturally appropriate services:** Increase the funding available for culturally and linguistically appropriate support services, including those for Indigenous communities.

3. OUTCOMES OF FAMILY VIOLENCE MATTERS

This chapter draws on the courtroom observations and associated file reviews to examine the outcomes⁵¹ of family violence matters heard in the various court locations. As in Chapter 2, the findings are presented separately for each court location in order to allow for any differences among courts to become evident.

3.1 BALLARAT

Tables 12a (police matters) and 12b (private matters) present the key data on outcomes of family violence matters from Ballarat.⁵²

TABLE 12A: OUTCOMES OF FAMILY VIOLENCE MATTERS—BALLARAT POLICE APPLICATION DAY (SUMMARY DATA)

| 37 IVO MATTERS | |
|------------------------------|------------------------------------|
| Struck out/withdrawn | 4 |
| Adjourned with order | 2 |
| Adjourned no order | 1 |
| Interim order | 14 |
| Final order | 17 |
| Variations | 6 |
| Extensions | 1 |
| Revocations | 3 |
| Orders with conditions | 24 |
| Full (clause 1–8) conditions | 10 |
| Limited conditions | 10 |
| Other condition combinations | 4 |
| Referral to services | 17 |
| Orders of 12 months | 9 |
| Orders more than 12 months | 7 |
| Orders less than 12 months | 2 |
| Consent orders | 14 of 17 respondents present (82%) |

Note: The numbers indented under 'orders with conditions' should sum to the number of orders with conditions but do not necessarily, due to missing data. Generally, the numbers in the table do not sum to the number of matters due either to missing data or, in some instances, where more than one outcome was recorded for a particular case.^a The data in this table refer to intervention order matters only.

a Some matters included more than one outcome. For example, matters could be adjourned and then later in the day, struck out. There is also double counting of the 'adjourned with order' matters, which are also counted in the 'interim order' category as these matters were adjourned with an interim order in place. Thus the values in the tables in this chapter should not be expected to sum to the number of matters in each table.

⁵¹ Data on the number and nature of orders issued (interim versus final and whether a variation, extension or revocation) have largely been taken from Courtlink rather than from the courtroom observations, as these were not always clear on the day.

⁵² In each of the tables in this chapter, outcomes relating to criminal matters (that is, 'adjourned criminal proceedings' and 'sentence imposed') have been removed for the sake of clarity of focus on intervention order matter outcomes.

TABLE 12B: OUTCOMES OF FAMILY VIOLENCE MATTERS—BALLARAT PRIVATE APPLICATION DAY (SUMMARY DATA)

| 23 MATTERS | |
|------------------------------|------------------------------------|
| Struck out/withdrawn | 4 |
| Adjourned with order | 10 |
| Adjourned no order | 2 |
| Interim order | 14 |
| Final order | 3 |
| Variations | 1 |
| Extensions | 3 |
| Revocations | 0 |
| Orders with conditions | 17 |
| Full (clause 1–8) conditions | 16 |
| Limited conditions | 1 |
| Other condition combinations | 0 |
| Referral to services | 1 |
| Orders of 12 months | 2 |
| Orders more than 12 months | 0 |
| Orders less than 12 months | 10 |
| Consent orders | 12 of 15 respondents present (80%) |

Note: The numbers indented under 'orders with conditions' should sum to the number of orders with conditions but do not necessarily, due to missing data. Generally, the numbers in the table do not sum to the number of matters.

Of the 45 matters (37 intervention order and eight criminal matters) heard on the police application day, eight matters were adjourned with criminal proceedings on foot while in three criminal matters a sentence was imposed: one matter that included three breach charges and two resist emergency worker charges was sentenced to a community correction order (CCO) with judicial monitoring, including conditions to participate in mental health treatment and men's behaviour change program; one matter including assault, breach, recklessly causing injury charges was sentenced to a 12 month CCO with a Justice Plan (intellectual/cognitive impairment); the third criminal sentence was also given a CCO for breach of intervention order, with the full order remaining in place.⁵³ In one criminal matter of contravention of an intervention order the accused failed to appear, so an arrest warrant was issued.

One additional intervention order matter was adjourned with no intervention order in place and two were adjourned but with an interim variation made. Four matters were struck out or withdrawn, three of which had been applications for revocation.

Of the remaining police applications, 14 interim and 17 final orders were made, with 24 of the orders having conditions imposed. No conditions were imposed to attend a men's behaviour change program, but six people were ordered to be assessed for a men's behaviour change program order.⁵⁴ After assessment, according to the respondent support worker, one person did not require the program (reason not stated) but was being referred to additional services; two were eligible and would sign up for a program; one had already completed a men's behaviour change program so was receiving referrals only; and two would be assessed the next day (the matters finished too late to be assessed on the day).

⁵³ There were only five sentences imposed across all the courts: the three in Ballarat and two in Wangaratta. While the three in Ballarat were definitely CCOs, one of the two in Wangaratta was probably a CCO and the other was possibly a CCO. None was clearly a prison term. Based on the observations, it appears that imprisonment is not commonly imposed for a breach of an intervention order. While the very small sample of sentences imposed means that no definitive statement may be made on this issue, the observations do accord with interview participants' views that threats of imprisonment for breach that are made when the order is imposed are rarely followed through when the order is breached.

⁵⁴ Only the family violence division courts at Ballarat and Heidelberg may issue an order that a respondent attend a men's behavior change program.

Of the police-initiated intervention orders imposed, 10 orders had ‘full’ conditions, while 10 were clause 1 (no family violence) and 2 (no damaging property) or clauses 1, 2 and 8 (no causing others to act) orders.⁵⁵ Two orders had an additional condition—an exclusion order from the affected family member’s home or work. One order included clauses 1, 2, 8 and an exclusion, as well as conditions prohibiting surveillance or electronic publication of information about the affected family member. Finally, one order had only clause 1 as a condition. There was thus quite a bit of variation among conditions imposed, being tailored to the specific circumstances of each case.

In seven matters the affected family member was referred to the applicant support worker and/or Berry Street, while in 10 the respondent was referred to the respondent support worker.

Of the 31 orders made on the police day, nine were for 12 months, four were for five years, two were ‘until further order’, one was for 24 months, one was for six months and one was a three-week extension. The remainder were unclear. These orders were among the longest made in any of the courts.

Of the 23 private matters, four were struck out or withdrawn and two were adjourned with no order made. Fourteen interim orders and three final orders were made. All 17 of the orders had conditions imposed. No conditions were imposed to attend a men’s behaviour change program and no respondents were referred for men’s behaviour change program assessment.⁵⁶ One respondent was referred to the respondent support worker. All but one of the orders was a ‘full’ order (16), while one was a clause 1, 2 and 8 order.

Of the 17 orders made on the private application day, two were issued for 12 months. Ten short-term orders (eight weeks or shorter) were imposed ‘until the case is finalised’ and then adjourned—eight of them, involving a single family, for ‘further and better particulars’. The durations of the remainder were unclear, but overall they were far shorter than on the police application day.

Fourteen of the police matters and 12 of the private applicant matters were finalised by consent (17 of the intervention order respondents were present on the police day and 15 on the private applicant day).⁵⁷

⁵⁵ See Appendix B for a full description of conditions available under each clause.

⁵⁶ While six people from the police day were ordered to be assessed for a men’s behavior change program, none was on the private applicant day. It is unclear whether this is a function of the type of applicant (police versus private) or whether the difference reflects different approaches and preferences of the individual magistrates.

⁵⁷ This count—replicated in the Ballarat table in this section—excludes six of the defendants in the criminal matters who were also present at court. The number of respondents in Table 12a therefore differs from the number seen in Table 3a in Section 2.1 above, which includes the 17 intervention order respondents plus the six criminal defendants who were present.

3.2 GEELONG

Table 13 presents the key data on outcomes of family violence matters from Geelong.

TABLE 13: OUTCOMES OF FAMILY VIOLENCE MATTERS—GEELONG (SUMMARY DATA)

| 21 MATTERS | |
|------------------------------|----------------------------------|
| Struck out/withdrawn | 2 |
| Adjourned with order | 4 |
| Adjourned no order | 4 |
| Interim order | 7 |
| Final order | 7 |
| Variations | 3 |
| Extensions | 0 |
| Revocations | 2 |
| Orders with conditions | 14 |
| Full (clause 1–8) conditions | 4 |
| Limited conditions | 10 |
| Other condition combinations | 0 |
| Referral to services | 0 |
| Orders of 12 months | 5 |
| Orders more than 12 months | 0 |
| Orders less than 12 months | 4 |
| Consent orders | 3 of 7 respondents present (43%) |

Note: The numbers indented under 'orders with conditions' should sum to the number of orders with conditions but do not necessarily, due to missing data. Generally, the numbers in the table do not sum to the number of matters.

Of the 21 matters heard at Geelong, two of the matters were struck out or withdrawn, while eight were adjourned or stood down, with four having just an adjournment and four with both an adjournment and an order made. There were 15 orders made: seven interim orders and seven final orders with one unclear, three of which were variations, while two were revocations. Fourteen orders had conditions imposed, four of which included all eight of the main legislated clauses. None of the orders included a condition to attend a men's behaviour change program and none involved a referral to services.⁵⁸ Geelong was one of only two courts (in addition to Sunshine) to issue a condition to cancel or suspend a firearm license in one matter.

Of the 15 orders made, five were for 12 months, one was for one month, and three were until the next hearing or until the order would be finalised. The remainder were unclear. These orders are generally shorter than those seen on the police day at Ballarat.

Of the seven matters where the respondent was present, three were finalised by consent.

⁵⁸ While the power to issue a counseling order, requiring assessment of suitability to attend a men's behavior change program, is vested only in Ballarat, Heidelberg, Frankston and Moorabbin courts, magistrates at some other courts have the practice of imposing a condition to an intervention order that requires attendance at such a program. If the respondent consents to this condition, it is enforceable.

3.3 MELBOURNE

Table 14 presents the key data on outcomes of family violence matters from Melbourne.

TABLE 14: OUTCOMES OF FAMILY VIOLENCE MATTERS—MELBOURNE (SUMMARY DATA)

| 32 MATTERS | |
|------------------------------|------------------------------------|
| Struck out/withdrawn | 4 |
| Adjourned with order | 0 |
| Adjourned no order | 4 |
| Interim order | 6 |
| Final order | 16 |
| Substituted service | 1 |
| Variations | 3 |
| Extensions | 1 |
| Revocations | 0 |
| Orders with conditions | 22 |
| Full (clause 1–8) conditions | 7 |
| Limited conditions | 8 |
| Other condition combinations | 1 |
| Referral to services | 10 |
| Orders of 12 months | 7 |
| Orders more than 12 months | 2 |
| Orders less than 12 months | 5 |
| Consent orders | 10 of 15 respondents present (67%) |

Note: The numbers indented under 'orders with conditions' should sum to the number of orders with conditions but do not necessarily, due to missing data. Generally, the numbers in the table do not sum to the number of matters.

Of the 32 matters heard at Melbourne, four of the matters were struck out or withdrawn, while four were adjourned or stood down with no order made and one was adjourned with criminal proceedings on foot. There were 22 orders issued: six interim orders and 16 final orders, as well as one order made for substituted service. Three of the orders were variations. All of the 22 orders had conditions imposed, seven of which included all of the main legislated clauses and eight of which were 'limited' orders, with clause 1 and 2 or clause 1, 2 and 8. Of these 'limited' orders, two also included a condition of contacting the Men's Referral Service. One of the orders was more tailored, containing clauses 1, 2 and 8 as well as a specified distance condition and an exclusion condition. In addition, six people were referred to services: two to a victims' assistance program, one to the Department of Health and Human Services, one to ISIS Primary Care and one to mediation. Finally, two of the orders included a condition to attend a men's behaviour change program.⁵⁹

Only the family violence division courts at Ballarat and Heidelberg, and more recently the courts at Frankston and Moorabbin, may issue a counselling order that requires a respondent to be assessed for suitability to attend a behaviour change program. Those respondents ordered for assessment at Ballarat were typically assessed on the day and, upon returning to the courtroom immediately after assessment, were mandated to attend.⁶⁰ However, magistrates at other courts are being innovative in the way they craft their orders, attaching conditions to attend programs in place of orders. Hence the magistrate in Melbourne imposed conditions on two respondents to contact the Men's Referral Service and on two other respondents to attend a behaviour change program.

⁵⁹ In the summary table for Melbourne, 'referral to services' includes both a condition to contact a service provider and a referral to a service provider without a discrete condition being imposed.

⁶⁰ Only one person in Ballarat did not see the respondent support worker on the same day for assessment, due to the lateness of the hour when his matter was first heard. He was ordered to return the next day for assessment.

Of the 22 orders made, seven were for 12 months, three were for six months, two were until the next hearing or until the order is finalised, one was indefinite, one was for two years and four were unclear.

Of the 15 matters where the respondent was present, 10 were finalised by consent.

3.4 SUNSHINE

Table 15 presents the key data on outcomes of family violence matters from Sunshine.

TABLE 15: OUTCOMES OF FAMILY VIOLENCE MATTERS—SUNSHINE (SUMMARY DATA)

| 35 MATTERS | |
|------------------------------|------------------------------------|
| Struck out/withdrawn | 3 |
| Adjourned with order | 0 |
| Adjourned no order | 14 |
| Interim order | 5 |
| Final order | 13 |
| Variations | 3 |
| Extensions | 0 |
| Revocations | 1 |
| Orders with conditions | 18 |
| Full (clause 1–8) conditions | 8 |
| Limited conditions | 8 |
| Other condition combinations | 1 |
| Referral to services | 31 |
| Orders of 12 months | 7 |
| Orders more than 12 months | 1 |
| Orders less than 12 months | 3 |
| Consent orders | 14 of 22 respondents present (64%) |

Note: The numbers indented under 'orders with conditions' should sum to the number of orders with conditions but do not necessarily, due to missing data. Generally, the numbers in the table do not sum to the number of matters.

Of the 35 matters heard at Sunshine, three of the matters were struck out or withdrawn, while 14 were adjourned or stood down, apparently without orders made.⁶¹ There were 18 orders issued: five interim orders and 13 final orders, three of which were variations, while one was a revocation. All 18 of the orders had conditions imposed, nine of which included a condition to attend a men's behaviour change program. Of the 18 orders, eight could be classified as 'comprehensive' or 'full' orders while eight were a version of a 'limited' order, with just clause 1 (no family violence), clause 1 and 2 (no damage property), or clause 1, 2 and 8 (no causing others to do so). In addition, six orders involved a condition to contact the Men's Referral Service. Sunshine was the only other court (in addition to Geelong) to issue a condition to cancel or suspend a firearm license in one matter.

⁶¹ While these matters were clearly adjourned, it was unclear from observations whether an order was also made, and Courtlink did not have data on any orders. As such, these adjournments are counted as being with no orders made.

The magistrate at Sunshine made much use of referrals to specialist family violence services either within the court or in the community. Of all the parties at court, 13 were referred to services of some kind: one respondent was referred to both the Courts Integrated Services Program (CISP) for drug and alcohol assistance and to the mental health nurse, one matter involved respondent referrals to both CISP and a men's behaviour change program as well as applicant referral to the in-court applicant support worker, seven respondents were referred to the Men's Referral Service, one to both the South Asian men's behaviour change program and family violence services, two to both the South Asian men's behaviour change program and inTouch Multicultural Centre Against Family Violence, and one person was referred to Relationships Australia. In addition, every one of the 18 applicants or affected family members present at court was asked if she had spoken with the applicant support worker, whose role in Sunshine Magistrates' Court is clearly pivotal. The availability of comprehensive support services both within Sunshine Magistrates' Court and in the local community is obviously a valuable resource.

The extensive use of referrals to family violence services in Sunshine may also be partly due to the specialist family violence knowledge and experience of the magistrate, who also sat at Ballarat's Family Violence Court Division on one of the observation days.⁶²

Of the 18 orders made, seven were for 12 months, one was for six months, two were for one month or less and one was 'until further order'. Durations for the remainder of the cases were unclear.

Of the 22 matters where the respondent was present, 14 were finalised by consent, although many were unclear.

3.5 DANDENONG

Table 16 presents the key data on outcomes of family violence matters from Dandenong.

TABLE 16: OUTCOMES OF FAMILY VIOLENCE MATTERS—DANDENONG (SUMMARY DATA)

| 41 IVO MATTERS | |
|------------------------------|------------------------------------|
| Struck out/withdrawn | 4 |
| Adjourned with order | 4 |
| Adjourned no order | 0 |
| Interim order | 17 |
| Final order | 20 |
| Variations | 7 |
| Extensions | 3 |
| Revocations | 0 |
| Orders with conditions | 37 |
| Full (clause 1–8) conditions | 20 |
| Limited conditions | 12 |
| Other condition combinations | 0 |
| Referral to services | 7 |
| Orders of 12 months | 11 |
| Orders more than 12 months | 5 |
| Orders less than 12 months | 1 |
| Consent orders | 13 of 17 respondents present (77%) |

Note: The numbers indented under 'orders with conditions' should sum to the number of orders with conditions but do not necessarily, due to missing data. Generally, the numbers in the table do not sum to the number of matters. The data in this table refer to intervention order matters only.

⁶² Pursuant to s 4H(3) of the *Magistrates' Court Act 1989* (Vic), the Family Violence Court Division courts may only be constituted by magistrates assigned to the Division by the Chief Magistrate, who must have regard to the magistrates' knowledge and experience relating to family violence. As a 'gazetted' role, it is a defined position for which particular candidates are selected and in which they work for an indefinite period, rather than being a task that is allocated to different magistrates at different times as part of an ordinary magistrate's duties. In practice, this means that more highly specialised and experienced magistrates fill the role in the Family Violence Court Division courts, making the role part of a specific career path for those individuals.

Of the 42 matters (41 intervention order matters and one criminal matter) heard at Dandenong, four were struck out or withdrawn, one was adjourned with criminal proceedings on foot and four were adjourned or stood down but resulted in orders being issued. Altogether, there were 37 orders issued: 17 interim orders and 20 final orders, three of which were extensions, seven were variations, plus an additional one that was both an extension and a variation. All of the orders had conditions imposed. From observations, two matters included a condition to attend a men's behaviour change program. Of the 37 orders, 20 were 'full' orders, one was clause 1 only, while 11 were 'limited' orders, with clause 1, 2 and 8. The remainder were unclear.

There were a number of referrals made to Relationships Australia,⁶³ which had a support worker present on the day either in the courtroom itself (to answer questions directly from the magistrate) or in the building. Seven people were referred to services of some kind: two were referred to legal representation, one to both the Victims Register with regard to the release of her abuser from prison and to the applicant support worker to develop a safety plan, and five were referred to a combination of a men's behaviour change program, Relationships Australia and/or the Salvation Army.

Of the 37 orders made, 11 were for 12 months, four were for five years, one was 'until further order' and one was for 10 months. Durations for the remainder of the cases were unclear. The Dandenong orders, like those at Ballarat, thus tended to be long.

Of the 17 matters where the respondent was present, 13 were finalised by consent, although others were unclear.

3.6 WANGARATTA

Table 17 presents the key data on outcomes of family violence matters from Wangaratta.

TABLE 17: OUTCOMES OF FAMILY VIOLENCE MATTERS—WANGARATTA (SUMMARY DATA)

| 11 IVO MATTERS | |
|------------------------------|----------------------------------|
| Struck out/withdrawn | 3 |
| Adjourned with order | 1 |
| Adjourned no order | 2 |
| Interim order | 3 |
| Final order | 3 |
| Variations | 2 |
| Extensions | 0 |
| Revocations | 0 |
| Orders with conditions | 6 |
| Full (clause 1–8) conditions | 6 |
| Limited conditions | 0 |
| Other condition combinations | 1 |
| Referral to services | 0 |
| Orders of 12 months | 2 |
| Orders more than 12 months | 0 |
| Orders less than 12 months | 2 |
| Consent orders | 2 of 3 respondents present (67%) |

Note: The numbers indented under 'orders with conditions' should sum to the number of orders with conditions but do not necessarily, due to missing data. Generally, the numbers in the table do not sum to the number of matters. The data in this table refer to intervention order matters only.

⁶³ Relationships Australia is the men's referral service and men's behaviour change program provider for Dandenong Magistrates' Court.

Of the 13 matters (11 intervention order and two criminal matters) heard at Wangaratta, each of the two criminal matters received a sentence,⁶⁴ while three of the intervention order matters were struck out or withdrawn. One matter was adjourned with an interim order and two were adjourned with no order. Six orders were issued: three interim orders and three final orders, two of which were variations. All of the six orders had conditions imposed, none of which included a condition to attend a men's behaviour change program. All of these orders were 'full' orders. In one matter an additional condition was imposed relating to not hacking the other party's Facebook account and not stealing their identity. No referrals to services were made in court.

Of the six orders made, two were for 12 months, two for one month and the remainder were unclear.

There were three intervention order matters where the respondent was clearly present, six where the respondent was clearly absent and in two it was unclear.⁶⁵ Of the three matters where the respondent was clearly present, two were finalised by consent.

3.7 MARYBOROUGH

Table 18 presents the key data on outcomes of family violence matters from Maryborough.

TABLE 18: OUTCOMES OF FAMILY VIOLENCE MATTERS—MARYBOROUGH (SUMMARY DATA)

| 10 IVO MATTERS | |
|------------------------------|----------------------------------|
| Struck out/withdrawn | 0 |
| Adjourned with order | 0 |
| Adjourned no order | 2 |
| Interim order | 2 |
| Final order | 5 |
| Unknown order type | 1 |
| Variations | 2 |
| Extensions | 0 |
| Revocations | 0 |
| Orders with conditions | 8 |
| Full (clause 1–8) conditions | 3 |
| Limited conditions | 2 |
| Other condition combinations | 1 |
| Referral to services | 0 |
| Orders of 12 months | 4 |
| Orders more than 12 months | 0 |
| Orders less than 12 months | 2 |
| Consent orders | 5 of 6 respondents present (83%) |

Note: The numbers indented under 'orders with conditions' should sum to the number of orders with conditions but do not necessarily, due to missing data. Generally, the numbers in the table do not sum to the number of matters. The data in this table refer to intervention order matters only.

⁶⁴ In one matter involving an assault the defendant was to be assessed for a community correction order. The other matter involved multiple charges, including assault and recklessly causing injury. The defendant was already in prison on remand and had a long history of offending, as well as an acquired brain injury and bipolar disorder. He had a sentence indication that he was likely to receive a prison term, but he was also to be assessed for a community correction order. For both, courtroom observations suggested that the matters were adjourned pending the assessments, but Courtlink data recorded a sentence imposed for each. While the first matter would most likely have been a community correction order, it is not possible to deduce the sentence for the second matter.

⁶⁵ This count—replicated in the Wangaratta table in this section—excludes the defendants in the two criminal matters. The number of respondents in Table 17 therefore differs from the number seen in Table 8 in Section 2.6 above, which includes the three intervention order respondents plus the two criminal defendants who were present.

Of the 12 matters (10 intervention order and two criminal matters) heard at Maryborough, two matters were adjourned or stood down with no orders being issued, while two matters were adjourned with criminal proceedings on foot. Altogether, there were eight orders issued: two interim orders, five final orders and one that was unclear. All eight of the orders had conditions imposed: three were ‘full’ orders, two were ‘limited’ orders, with clause 1 and 2, and one order included clauses 1 and 2 plus a prohibition on electronic publication about the affected family member. No referrals were made to services (there are very limited services available in Maryborough) and no conditions were imposed to attend a men’s behaviour change program.

Of the eight orders made, four were for 12 months, one was for six months and one was for one month. The remainder were unclear.

Respondents were present for six of the intervention order matters and one of the criminal matters. Of the six intervention order matters where the respondent was present, five were finalised by consent, although the other was unclear.⁶⁶

3.8 NEIGHBOURHOOD JUSTICE CENTRE

Table 19 presents the key data on outcomes of family violence matters from the Neighbourhood Justice Centre.

TABLE 19: OUTCOMES OF FAMILY VIOLENCE MATTERS—NEIGHBOURHOOD JUSTICE CENTRE (SUMMARY DATA)

| 16 IVO MATTERS | |
|------------------------------|----------------------------------|
| Struck out/withdrawn | 2 |
| Adjourned with order | 1 |
| Adjourned no order | 0 |
| Interim order | 6 |
| Final order | 8 |
| Variations | 5 |
| Extensions | 0 |
| Revocations | 0 |
| Orders with conditions | 14 |
| Full (clause 1–8) conditions | 1 |
| Limited conditions | 4 |
| Other condition combinations | 1 |
| Referral to services | 8 |
| Orders of 12 months | 6 |
| Orders more than 12 months | 3 |
| Orders less than 12 months | 0 |
| Consent orders | 4 of 6 respondents present (67%) |

Note: The numbers indented under ‘orders with conditions’ should sum to the number of orders with conditions but do not necessarily, due to missing data. Generally, the numbers in the table do not sum to the number of matters. The data in this table refer to intervention order matters only.

Of the 17 matters (16 intervention order matters and one criminal matter) heard at the NJC, two of the matters were struck out or withdrawn, one was adjourned but an interim order was issued and one was adjourned with criminal proceedings on foot. There were 14 orders issued: six interim orders and eight final orders, five of which were variations. All 14 of the orders had conditions imposed: two with clause 1 only, two with clauses 1 and 2, one ‘full’ order and one with clauses 1, 8 and an exclusion clause. The remainder were unclear. No orders included a condition to attend a men’s behaviour change program.

⁶⁶ This count—replicated in the Maryborough table in this section—excludes the defendants in the two criminal matters. The number of respondents in Table 18 therefore differs from the number seen in Table 9 in Section 2.7 above, which includes the six intervention order respondents who were present plus the one criminal defendant who was present.

Courtlink data show that there were some referrals made to specialist family violence services either within the court or in the community. Of all the parties at court, eight were referred to services of some kind: six to CoHealth community health centre, three to the Salvation Army, six to Berry Street, four to Victoria Legal Aid, one to Court Network, one to Fitzroy Legal Service, and one to the Koori Justice worker.⁶⁷

Of the 14 orders made, six were for 12 months, two were for two years, one was indefinite and the remainder were unclear.

The defendant in the criminal matter was present in court, as were six of the respondents from intervention order matters. Of these six matters where the respondent was clearly present, four were finalised by consent.⁶⁸

3.9 DISCUSSION: UNDERSTANDING OUTCOMES OF FAMILY VIOLENCE MATTERS

To facilitate direct comparison across the eight courts visited, Table 20 compiles the data from Sections 3.1 to 3.8, and includes an overall average on each measure. The data in the table are proportions of the number of matters, except for the order duration data, which are proportions of the number of orders imposed.

⁶⁷ Some of the people were referred to more than one service.

⁶⁸ This count—replicated in the Neighbourhood Justice Centre table in this section—excludes the defendant in the criminal matter. The number of respondents in Table 19 therefore differs from the number seen in Table 10 in Section 2.8 above, which includes the six intervention order respondents who were present plus the one criminal defendant who was present.

TABLE 20: OUTCOMES OF FAMILY VIOLENCE INTERVENTION ORDER MATTERS—SUMMARY

| | BALLARAT (60 MATTERS) | GEELONG (21 MATTERS) | MELBOURNE (32 MATTERS) | SUNSHINE (35 MATTERS) | DANDENONG (41 MATTERS) | WANGARATTA (11 MATTERS) | MARYBOROUGH (10 MATTERS) | NJC AVERAGE (16 MATTERS) |
|---------------------------------|--|--|--|--|--|--|--|--|
| Struck out/ withdrawn | 13% | 10% | 13% | 9% | 10% | 27% | 0% | 13% |
| Adjourned with order | 20% | 19% | 0% | 0% | 10% | 9% | 20% | 11% |
| Adjourned no order | 5% | 19% | 13% | 40% | 0% | 18% | 20% | 14% |
| Interim order | 47% | 33% | 19% | 14% | 41% | 27% | 20% | 30% |
| Final order | 33% | 33% | 50% | 37% | 49% | 27% | 50% | 41% |
| Interim + Final | 80% | 71% | 69% | 51% | 90% | 55% | 80% | 73% |
| Variations | 12% | 14% | 9% | 9% | 17% | 18% | 20% | 16% |
| Extensions | 7% | 0% | 3% | 0% | 7% | 0% | 0% | 2% |
| Revocations | 5% | 10% | 0% | 3% | 0% | 0% | 0% | 2% |
| Orders with conditions | 68% | 67% | 69% | 51% | 90% | 55% | 80% | 71% |
| Full conditions | 43% | 19% | 22% | 23% | 49% | 55% | 30% | 31% |
| Limited conditions | 18% | 48% | 25% | 23% | 29% | 0% | 20% | 24% |
| Other condition combinations | 7% | 0% | 3% | 3% | 0% | 9% | 10% | 5% |
| Referral to services | 30% | 0% | 31% | 89% | 17% | 0% | 0% | 27% |
| Orders of 12 months | 23% | 33% | 32% | 39% | 30% | 33% | 50% | 35% |
| Orders more than 12 months | 15% | 0% | 9% | 6% | 14% | 0% | 0% | 8% |
| Orders less than 12 months | 25% | 27% | 23% | 17% | 3% | 33% | 25% | 19% |
| Consent orders | 26 of 32 respondents present (81%) | 3 of 7 respondents present (43%) | 10 of 15 respondents present (67%) | 14 of 22 respondents present (64%) | 13 of 17 respondents present (77%) | 2 of 3 respondents present (67%) | 5 of 6 respondents present (83%) | 4 of 6 respondents present (67%) |

Note: The figures for interim plus final orders for Geelong and Maryborough include one additional order of unknown type.

Orders imposed

Overall, the most common outcome in the court is for an order to be issued: in almost three-quarters of matters (73 per cent) an interim or final order was issued. Final orders were more common than interim orders (41 per cent of matters received a final order, compared with 30 per cent receiving an interim order). Depending on the progression of the matter through the court, an interim order was often imposed until a final order could be put in place.

Only a small proportion of matters were struck out or withdrawn (12 per cent), often in police matters where the affected family member had failed to appear multiple times. In one police application for variation from a safe contact order to a full no contact order, the affected family member did not appear. The magistrate did not want to grant the variation without her being at court, asking ‘why would I change the order if no one is here?’ before striking out the application. Matters were also struck out or withdrawn in private applications when the applicant failed to appear and had not contacted the court about her preferences, or when the court had been notified that the parties had reconciled or mediation had been successful. Applications for variation were generally struck out if the applicant did not appear at court.

Overall, 16 per cent of matters involved the variation of an existing order, although this varied substantially by court location, from nine per cent in Melbourne and Sunshine to 31 per cent at the Neighbourhood Justice Centre. Very few extensions or revocations were recorded, with each accounting for only two per cent of matters.

Adjournments

While the court most commonly issues an order in intervention order matters, there are still many adjournments being made. An adjournment without any order imposed was made in 14 per cent of matters overall, ranging from none in Dandenong and the Neighbourhood Justice Centre to 40 per cent in Sunshine. This significant variation may be a function of the ability of the local police prosecutor or civil advocate to provide the magistrate with the information needed to make an informed decision about the matter at hand; without adequate information, a matter is often adjourned for ‘further and better particulars’. A further 11 per cent of orders were adjourned, but with an interim order issued as well.

In some instances, matters are adjourned in order to synchronise with the hearing date for an associated criminal matter. In others, though, adjournments are made to allow police to undertake further discussions with the affected family member, to find out about related custody matters, or to provide more information on the precise circumstances of the incident. The use of adjournments for either purpose may be problematic, both for the court (in terms of requiring additional court resources when matters are relisted) and for the parties (especially the affected family member, who must return to court time and again).

Adjournments for criminal hearings

Although only occurring in five per cent of matters across the eight courts, interview participants were particularly concerned about adjourning intervention order matters until criminal matter hearings when there is a substantial delay in bringing a criminal matter before the court. Criminal matters can take months before they are heard, while intervention order matters can be brought to court within days. The delay in hearing a family violence-related criminal matter has implications for the affected family member in terms of the trauma involved with returning to court, and also for police, who find it more difficult to run a successful prosecution after a substantial delay. With the passing of time, affected family members may change their mind and request that charges or intervention orders be withdrawn, or they may refuse to provide a statement to police, or they may be pressured to change their minds about proceeding. The burden of proof required for a criminal charge contributes to this delay, in that police must spend more time on a criminal matter than a civil one, investigating it to a level of ‘beyond reasonable doubt’. This then becomes a resourcing issue, as more police time is required for the investigation.

To address this problem, Dandenong has recently implemented a ‘fast-track’ program that aims to reduce the time required to bring family violence-related criminal matters to court. Since 1 January 2015, police have prioritised family violence-related criminal matters, working to complete investigations on these matters as soon as possible. Anecdotally, this pilot program has been a great success, with defendants pleading guilty earlier in the process. According to police, the pilot has been having excellent results at court. They are having significantly more success in running a matter at contest because matters are coming to court faster and there are ‘significantly fewer withdrawals’. When a matter takes too long to come to court, affected family members typically lose confidence in the system, so this pilot has likely had broader positive consequences as well.

Adjournments for further information

Most of the adjournments, though, seemed to be needed to allow police to conduct additional investigation for the civil application.⁶⁹ At times this involved providing further and better particulars about the incident—perhaps when police had not had sufficient time with the victim to elicit the full details of what happened. Other times the police prosecutor or civil advocate was not able to inform the magistrate about the affected family member’s wishes with regard to the intervention order. For example, if the police informant had not spoken to the victim since the initial police report, then it could be unclear to the prosecutor if the conditions sought by police would be appropriate. In these circumstances, the matter was adjourned to allow the police to contact the victim to ascertain her or his wishes. One police prosecutor noted that these briefs tend, on the whole, not to contain as much information as criminal briefs, and suggested a mandatory checklist for police informants to complete when preparing briefs. There were also many adjournments to allow police to determine if any other orders were in place in a matter—orders such as family law orders or child protection orders.

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’.

Magistrates noted that there is no information sharing even within the courts environment. The Children’s Court Conciliation Conference, for example, includes an extensive risk assessment. None of this information, however, is available to magistrates hearing related family violence intervention order matters, with one magistrate lamenting that a lack of information sharing means she has no access to the valuable information therein. Part of this issue is the different court management systems used by the courts; while Magistrates’ Court clerks use Courtlink to enter their information, the Children’s Court uses LEX, to which the clerks only seem to have limited access.⁷⁰

Police prosecutors felt a similar sense of frustration. One police prosecutor sends a copy of the next day’s list to the Department of Health and Human Services (DHHS) to ask if any of the list people are also DHHS clients. But he is only able to do that as he has a personal relationship with the DHHS employee. According to this police prosecutor, a ‘big glitch in the system is I don’t know what DHHS is up to’. He suggests that DHHS should appear in court each week on intervention order list days, as ‘that’s the missing link’. Other prosecutors also suggested that DHHS be directly involved, sharing information more readily and participating in better coordination across agencies, allowing for a more collective approach to family violence.

With inadequate sharing of information across systems, the intersections among them can be obscured. Outcomes in related criminal matters, child protection matters or family law matters can affect both risk management and safety planning for victims of family violence. Decisions may be made that do not take into account all relevant circumstances. The consequences of lack of information sharing are thus potentially substantial. Instead, a magistrate suggested that a more holistic, integrated approach is needed, using a ‘public health model’ that allows proper information sharing. Family violence is not just a justice issue, but an issue for health, mental health, education, human services, homelessness, drug and alcohol services and youth support workers. Information sharing across fields is critical.

The RAMPS trial—adopting a multi-agency approach to developing risk assessment management plans for high-risk families—allows agencies to come together to discuss holistic approaches to particular families. It would be useful to expand this integrated model, but, according to one participant, ‘piecemeal silo funding causes significant issues for an integrated sector’. Without integration, a more holistic approach remains elusive.

⁶⁹ An exact count of these matters was not recorded.

⁷⁰ It is unclear how much access the Magistrates’ Court has to the Children’s Court case management system, as this was not discussed in interviews. Regardless, though, the court does not have time for the clerk to be looking up the name of every individual in every matter.

Conditions

In the majority of matters (71 per cent), an order was imposed with conditions that were clearly articulated by the magistrate. In every court except Ballarat and Geelong, every order imposed clearly included at least one condition.⁷¹ There are two main combinations of orders used: the ‘full’ or ‘comprehensive’ order that typically includes clauses 1 to 8 (with or without exceptions, as appropriate), and the ‘limited’ order that typically includes clauses 1 (no family violence) and 2 (no damaging property), with or without clause 8 (no causing others to do so).⁷² While occasionally additional conditions were attached to address specific circumstances of a family, these were uncommon. In addition, when children were included as affected family members on intervention orders, their conditions were the same as the parent’s conditions—they did not have a separate regime of conditions attached.

The absence of affected family members had a substantial impact on the conditions imposed, as police cannot seek to exclude the respondent from his home without the affected family member’s consent. In a number of matters, the affected family member was not present and so police, even though wanting a comprehensive order, had to be willing to seek a more limited order instead. In one interesting matter, the affected family member was adamant that she did not want an intervention order at all. She testified that she understood the consequences of this and that, as an articulate and thoughtful person, she appreciated police concern but did not want an order in place. This was an interesting example of how police interests are not always the same as those of the victims of family violence. Indeed, one police prosecutor recommended that every family violence victim should have her own legal representation, as police are not there to represent the victim but to represent the State.

Few conditions included referrals to men’s behaviour change programs, Men’s Referral Service or other providers. While magistrates may have mentioned such services in their remarks to the parties, the referrals seemed informal rather than a formal requirement of a condition. This may be a function of the availability of services in the local area, or else may be reflective of the general approach of each magistrate. Those who did impose conditions for a respondent to connect with a support service were being creative in attempting to tailor an appropriate response for people who seemed in need of access to such services.

Consent orders

Most of the orders where respondents were present were finalised by consent (69 per cent), with only a small proportion of matters being adjourned for contest. For example, only one matter was adjourned for a directions hearing at Geelong, Melbourne, the Neighbourhood Justice Centre, and Maryborough, with no such adjournments on the day of observation at Wangaratta. At Dandenong, three of the 41 matters were adjourned for a directions hearing, while at Sunshine there were four (although two of these were cross-applications, so matters were contested for two families). There were more such adjournments at Ballarat: on the police application day, one matter was adjourned for directions and two were adjourned to hear the intervention order matter and the criminal matter at the same time. On the private applicant day, there were 10 adjournments for preparing ‘further and better particulars’ for the directions hearing (this was the family of three sisters plus a niece, all of whom had cross-applications, and another family of two with cross-applications). A further one was adjourned to the criminal hearing date.⁷³

There seems to be no (observable) specific relationship between the nature of the conditions imposed and the willingness of the respondent to consent to the order.⁷⁴ Consent orders were observed in matters where limited conditions were imposed, in matters where comprehensive conditions were imposed and in matters where a men’s behaviour change program order or condition was included.

The most common duration for orders was 12 months (35 per cent of orders imposed were for 12 months), although 19 per cent were for less than 12 months, with some extremely short orders, such as a one-week adjournment with an interim order issued until the next hearing. Only eight per cent of orders were for more than 12 months, with some being extremely long (indefinite, or ‘until further order’).

⁷¹ In Ballarat, 41 out of the 48 orders imposed appeared to have conditions included. However, the inclusion of conditions was not always clear during courtroom observations. In Geelong, 14 out of 15 orders appeared to have conditions included. Given that every intervention order must include at least one condition, this finding is a function of the difficulty of observation rather than the nature of the orders imposed.

⁷² Many people used the terminology of ‘full’ and ‘limited’ orders during both the courtroom observations and the interviews. This is not to suggest that a ‘limited’ order is less adequate or effective in protecting victims of family violence. As one magistrate noted, it is clause 1—no family violence—that is the most important of all the conditions. The terminology is replicated here to provide an accurate representation of the information that was collected for this research.

⁷³ Although it is not uncommon for magistrates to adjourn an intervention order matter so that it can be heard alongside a criminal matter, a real problem arises when the police are unsure of the date of the criminal hearing. This occurred several times in Ballarat, such that the magistrate said it was a ‘waste of everyone’s time’ to be hearing matters with no parties present and with police unable to say when the criminal matter was listed.

⁷⁴ No specific relationship was observed in the courtroom: the nature of the conditions and the willingness of the respondent to consent to the order are both likely to be subject to negotiations outside the courtroom.

Referrals to support services

Another issue to become evident from the observational and file review data is the differential use of referrals to support services across the courts. In all courts there was little use of conditions to attend a men's behaviour change program or to contact the Men's Referral Service. Some courts made more use of local community or in-court services, such as the prolific referrals to Relationships Australia seen in Dandenong or the regular referral to the applicant support worker in Sunshine and the respondent support worker in Ballarat.

Although Ballarat, as the only family violence division court included in this research, was the only court able to order participation in a men's behaviour change program, the order was used less frequently than expected. On the police application day, six respondents were ordered to be assessed for a men's behaviour change program order. As part of her decision making, the magistrate checked whether respondents were eligible for the program, based initially on their postcodes (as the order is only available for respondents who live within nine postcodes around the Ballarat local area).⁷⁵ From observations, it seemed as though the postcode restriction disqualified a number of respondents from being considered for this order, which would have had implications for the magistrate's decisions about the nature of the order to be imposed.

A number of participants felt that the ability to order participation in a men's behaviour change program (to impose a counselling order) should be expanded. One magistrate suggested it would make 'a huge difference' to be able to do so. Participants at Ballarat were split on whether the ability to order program participation has an impact on consent rates. For some, respondents may be less likely to consent to an order if they think they will be made to undertake a program, but by the time they get to a directions hearing, they are likely to consent. For others, consent rates are not affected by these orders; the big issue in Ballarat is gun licensing, with people refusing to consent as they become 'prohibited persons' under law.⁷⁶ For these interviewees, the ability to order program participation should be expanded to other courts and should also be expanded to include same-sex and non-intimate partner relationships.⁷⁷

Referral to services does not take place in a vacuum. Magistrates seem well aware of the services available and do not refer people to non-existent services. In those parts of the state where services are limited, referrals are not used. But in those areas where services are good, referrals are common. The Neighbourhood Justice Centre is a good example of this, where the combination of community organisations and in-court wrap-around services mean that the magistrate can be confident that his referrals are acted upon. One legal service provider was proud to say that 'people get much more holistic service provision here than in other courts', with the Neighbourhood Justice Centre 'much better at making links between family violence and interrelated issues'.

Adequate resourcing of service providers was a common theme among interview participants. One community family violence service provider, whose organisation has been working at 60 per cent above capacity for the last year, says that staff cannot cope. She herself says that 'I don't feel I'm giving clients the best I can give'. As another support worker said, without additional resources, 'women are going to slip through the cracks and be left behind'. She felt that her service could be duplicated and still struggle to meet the demand. For her, the pressure of increasing demand has been felt acutely: 'it's just getting ridiculous', and 'calls are coming in all the time'.

The need for better resourcing for men's behaviour change programs was also noted. Some programs have wait lists of seven or eight months (one location reported that, as of April 2015, no places were available until February 2016). To address demand for these programs more generally (in the context of both family violence and criminal sentencing), Corrections Victoria is currently in the process of purchasing additional programs for men who have been sentenced and placed on a community correction order. In addition, the court is considering the option of purchasing additional places through the current arrangements of the court-mandated counselling programs.

Timely initiation in these programs is seen as critical. One magistrate noted that the research shows that the speed of responding to the action, certainty of consequences and monitoring of behaviour all work to reduce reoffending, but for this to work a program must be available in a timely fashion. If a respondent has to wait many months to join a program, the window of opportunity to involve him while he's open to intervention may close. As one community legal centre participant said, there is a need to ensure that 'everyone who wants to help themselves can help themselves'.

One of the solicitors interviewed suggested that there is an 'illusion of safety' in the court: magistrates feel that they are helping to protect the community by ordering men to complete programs, but programs are simply not available. The lack of availability of programs is a significant gap in responding to family violence.

⁷⁵ In addition to the postcode criterion, orders may only be imposed if the relationship is with a current or former intimate partner (not, for example, with a parent or sibling), if the respondent is male and the affected family member female (therefore not in same-sex intimate relationships), and if the respondent is over the age of 18.

⁷⁶ On the two observation days in Ballarat, none of the orders made included a condition to cancel or suspend a firearm license. Across all the courts observed, this condition was only imposed in two matters: one in Geelong and one in Sunshine.

⁷⁷ These cohorts would likely require a different program model, as men's behaviour change programs have been designed for addressing intimate partner violence in the context of heterosexual relationships.

Lack of availability of support services in court may have unforeseen but serious consequences. In those courts where support services are only present in court on family violence listing days, there may be differential court outcomes based on the day one's matter is heard. Assessment of risk levels will be affected by whether the person can be linked in with support; if the matter is heard on a day when support services are not present at court, the person may be assessed as presenting a greater risk. According to a police prosecutor, this 'changes the dynamic of how decisions are made' and is essentially a form of 'postcode justice'. The prosecutor called for more consistent availability of support services, so that their presence or absence does not differentially affect decision making.

As one magistrate said, 'if the court hasn't made a referral, what are we doing?'

Participants also noted the value of having an applicant support worker, and expressed a desire to have respondent support workers as well, as in Ballarat. Having specialist in-court support makes 'a massive difference' to people's perceptions that they are being supported. It facilitates the 'best possible outcome in court' and 'makes the process a lot smoother for everybody', as people feel 'less angry because they feel they're being heard'.

The applicant support worker is important in helping the applicant to understand court processes and outcomes. This is particularly important as applicants need to be fully informed about the conditions of the order and to participate in the tailoring of conditions to provide the best protection possible in the specific circumstances of the case. Some participants expressed concern that, at times, women do not understand what they are agreeing to, especially when they agree to accept an undertaking. An undertaking does not provide the protection of an *order*, and can seriously compromise safety.⁷⁸ Without dedicated support, victims who are confused, or who have a poor command of the language, or who are pressured by others may accept an undertaking when an intervention order would be more appropriate. And according to a family violence service provider, an undertaking is 'not worth the paper it's written on'. Even a police prosecutor said that he 'never agrees' to an undertaking as it simply cannot protect properly. Having an applicant support worker can therefore have implications for applicants' safety, as well as helping them through the difficult court process.

3.10 IMPLICATIONS FOR THE FAMILY VIOLENCE SYSTEM

Adjournments

There seems to be substantial value in reducing the time required to bring family violence-related criminal matters before the court. The fast-track pilot in Dandenong began on 1 December 2014.⁷⁹ It was implemented following recognition of research and experience both in Australia and internationally that lengthy delays in responding to family violence can lead to further, possibly more severe offending. Since its inception, the program has expanded to include Broadmeadows, Shepparton, Ringwood and Ballarat, with Frankston to join in 2016. It represents a significant investment of resources by both the Magistrates' Court and Victoria Police.

The fast-track program appears to be working well to bring matters before the court substantially faster, improving outcomes for police and, presumably, for affected family members as well, who are more likely to remain willing to take part in the court process. By facilitating participation in court, affected family members are less likely to lose confidence in the process. Indeed, the Magistrates' Court has seen a significant decrease in the number of cases being withdrawn in the fast-track courts, dropping dramatically from 30 per cent to just under four per cent.⁸⁰

This approach could be implemented in other locations around the state, with the support of the police, to expedite the progression of family violence matters through the courts. This would not only make the justice process easier on victims of family violence, but would also save the court time and resources with fewer contested matters.

There is clearly a need for better information sharing between the courts and DHHS. Magistrates are attempting to craft orders without access to compete information, which may have implications for the effectiveness of the intervention orders and ultimately for people's safety. Even within the courts environment itself, information sharing could be improved. Better flows of information between the Magistrates' Court and the Children's Court, for example, could provide magistrates with far better information on the family situation. While there would certainly be jurisdictional issues to be addressed before information could be shared more readily, the role of information in effective decision making renders this issue an urgent one.

There is also an argument for the police informants providing better information to police prosecutors or civil advocates, in order to reduce the need for adjournments to seek further and better particulars. Having complete information readily available at court would significantly reduce the work of the court in family violence matters.

⁷⁸ Police may still respond to criminal offences committed in the context of family violence, but they are not responding to the breach of an order per se.

⁷⁹ The pilot program was given effect under Practice Direction No. 10 of 2014.

⁸⁰ Documentation provided by the Magistrates' Court of Victoria, 30 September 2015.

Conditions

Given the restriction that a comprehensive order may not be imposed without the affected family member present, some of the police interviewed suggested that this requirement be removed. However, this may be a contentious issue, as in a handful of matters the affected family member did not appear because they objected to police intervention. Nonetheless, it may be worthy of further consideration.

On a related issue, some participants suggested that affected family members in police applications should have their own legal representation. This was rare in the matters observed, with only a handful of people in police applications being represented separately. While most of the time this arrangement may work, as police typically act in the best interests of the affected family member, there were several matters where the affected family member made it extremely clear that she did not want the application to proceed. This presented a difficulty to the magistrate when the affected family member was in court, as discussed in section 3.9 above.⁸¹

Referrals to legal and support services

One of the most consistent messages to come from this research is the need for service providers to be better funded, which would allow them to operate with more staff. While the number of family violence incidents both in the community and in the justice system has increased ‘exponentially’ over the last few years, there has been little or no concomitant increase in the amount of funding, meaning that service providers are being stretched ever more thinly. This applies both to in-court providers, such as community legal centres and Victoria Legal Aid, and to community-based organisations as well.

There are particular issues around funding for service provision in small regional areas such as Maryborough. Interview participants noted the unique nature of such towns that makes the need for local services more pressing. Services such as duty lawyers attend Maryborough Magistrates’ Court from Bendigo or Ballarat, but the local community maintains a certain disconnection from the work of outsiders. Maryborough residents tend to ‘look after their own stuff’, with a common attitude of ‘why would you go to the cops?’ In a community without trust in the justice system (or perhaps institutions more generally), a lack of local service providers adds an additional obstacle to people seeking help for family violence issues.

The implications of this are significant and worrying. Lack of sufficient service provision for respondents means that men are not able to access programs in a timely way, increasing the likelihood of subsequent violence. Lack of sufficient service provision for applicants means that women are more likely to find it difficult to deal with violent situations and to keep their children safe, having to manage violent partners without access to appropriate services or support. Lack of sufficient legal support in court means that applicants may accept orders that they do not fully understand and that do not fully protect them, and that respondents are unlikely to appreciate fully the consequences and terms of their orders.

Additionally, and perhaps less a matter of funding than organisational priorities, every participant at a court where the local police had a dedicated family violence court liaison officer was strongly supportive of the need for this position. The court liaison officer is critical in assisting negotiations, following up with affected family members both before and after hearings, and generally ensuring that court processes run far more smoothly. The need for permanent, gazetted court liaison officers within the police is clear.

Additional court resources dedicated to family violence would clearly be extremely valuable. For example, the placement of respondent support workers in every headquarter court has just commenced, which will make a substantial difference. With this worker in place, the door is opened for the possibility of expanding the ability of the court to order participation in a men’s behaviour change program; in Ballarat, the magistrate first orders an assessment with the respondent support worker and, if deemed suitable, will then order program participation. Although not all participants were sure of its influence on consent rates, and actual participation would of course be limited by the practical constraints on the availability of placements in these programs, the value of the order in pushing respondents to seek help seems undeniable.

With the obvious value that applicant and respondent support workers bring to parties in those courts where they are present, it is clear that their presence should be expanded as much as possible around the state. In small courts this is not necessarily practicable, but in the larger, busier courts, they could provide a valuable service indeed.

⁸¹ In those matters where the affected family member was not in court but had expressed her wishes not to have an order in place, her absence meant that the magistrate took the word of the police prosecutor and granted an interim order, albeit a ‘limited’ one, per legislative requirements.

As well as allocating additional court resources, one magistrate suggested that the court needs to focus more on what she called ‘trifecta men’—men who are subject to an intervention order, who are facing criminal charges and who have an associated child protection matter for the children to be removed. These men often have unresolved mental health issues and substance abuse problems, are unemployed and are angry. ‘Statistically, they produce the most amount of work for the court’: they appear in lots of variations (the applicant may have her own mental health and other issues), they often breach intervention orders and bail conditions, and they have many secondary child protection matters as the child is removed, then returned, then removed again, and so on. Adding to the complexity, the applicant may decide to reconcile, then change her mind, then change it once again. This magistrate has spent substantial time convincing both service providers and the court (via its therapeutic justice project) that a special focus is needed on these men: ‘If we provided a better level of service to his problems, the flow on for our throughput of work would be much more dramatic’.

If the court and services providers could make better use of triage processes based on risk assessment, then the small proportion of men who account for a large proportion of the workload of the court could be better serviced, potentially having a significant impact on reducing demand on the court across criminal, civil and child protection spheres.

3.11 ISSUES FOR FURTHER CONSIDERATION

Based on both the data and the interviews, the following issues offer opportunities for further consideration and discussion:

1. Fast-track family violence-related criminal matters: Consider expanding the program into other courts to reduce the delay in bringing family violence-related criminal matters to court. This will have substantial resource implications for both police and the court.
2. Improve information-sharing across agencies: Investigate mechanisms for allowing police and the courts to access information from, in particular, the Department of Health and Human Services, possibly by asking DHHS to attend court. This would facilitate the magistrate making a more informed decision and also a more integrated response to family violence.
3. Improve information-gathering within Victoria Police: Develop both a checklist of information for police officers to investigate and include in their briefs, as well as a training course on preparing briefs of evidence in family violence matters. Develop guidelines for the Police Code of Practice stipulating timelines for completion of follow-up investigations.
4. Review the need for affected family members to be at court: Consider the appropriateness of the requirement for affected family members to be present to be able to grant a comprehensive order. Enable affected family members to attend court via secure, remote video facilities that still allow them to participate in the process—with its potential to empower victims of family violence—while not compromising safety.
5. Review the counselling order: Expand the ability of courts beyond the family violence divisions to make counselling orders for men to attend behaviour change programs. Such programs must be sufficiently funded so that they may adopt best practice principles based on research about the effectiveness of programs of varying duration and intensity.⁸²
6. Institute family violence court liaison officers: Work with Victoria Police to insert a family violence court liaison officer in more court locations to negotiate between parties, assist police prosecutors and provide an additional specialist service to family violence victims.

⁸² See, for example, Durham University’s Project Mirabal research (available at <https://www.dur.ac.uk/criva/projectmirabal/>).

4. COURT PROCESSES IN FAMILY VIOLENCE MATTERS

This chapter draws primarily on the interviews conducted with key personnel to examine court processes in family violence matters heard in the various court locations. Once again, the findings are presented separately for each court location as differences in court specialisation are likely to have a profound effect on court processes.

4.1 BALLARAT

Ballarat is one of Victoria's two specialist family violence court divisions. As such, it has a high level of specialisation across all aspects of the court: specialist magistrates with significant family violence experience, a functionally and physically separate family violence registrar, separate waiting areas for applicants and respondents, both an applicant and a respondent support worker, a police family violence unit and family violence court liaison officer, and family violence service providers in the community that attend court.

Tables 21a (police matters) and 21b (private matters) present the key data on court processes in family violence matters for Ballarat.⁸³

TABLE 21A: COURT PROCESSES IN FAMILY VIOLENCE MATTERS—BALLARAT POLICE APPLICATION DAY (SUMMARY DATA)

| 45 MATTERS | |
|----------------------------------|------|
| Entering as IVO | 37 |
| Entering as criminal | 3 |
| IVO applicant present | 18 |
| IVO respondent present | 17 |
| Explanation given—total | 15 |
| Explanation given—terms only | 0 |
| Explanation given—penalties only | 3 |
| Explanation given—both | 12 |
| Average duration | 6:59 |

Note: The numbers in this table for how cases originally entered the court should sum to the number of matters but do not, due to missing data.

TABLE 21B: COURT PROCESSES IN FAMILY VIOLENCE MATTERS—BALLARAT PRIVATE APPLICATION DAY (SUMMARY DATA)

| 23 MATTERS | |
|----------------------------------|------|
| Entering as IVO | 23 |
| Entering as criminal | 0 |
| IVO applicant present | 21 |
| IVO respondent present | 15 |
| Explanation given—total | 0 |
| Explanation given—terms only | 0 |
| Explanation given—penalties only | 0 |
| Explanation given—both | 0 |
| Average duration | 7:10 |

Of the 45 matters listed on the police day, 37 entered the courts as intervention order matters, while there were three that originated as criminal matters. Five were unclear.⁸⁴ On the private applicant day, all 23 matters entered as intervention orders.

⁸³ Data on how matters entered court were taken from Courtlink. The remaining data in the tables are based on observations.

⁸⁴ While there were eight criminal matters heard in Ballarat Magistrates' Court on the day, it is not necessarily the case that they all entered the court system initially as criminal matters: some may have originated as intervention order matters. As Courtlink data for the remaining five matters are missing, the entry status has not been inferred but has been left as unknown.

The magistrate on the police day was a very experienced magistrate with significant specialisation in (and understanding of) family violence matters. Her knowledge and understanding were reflected in her efforts to explain her orders to those respondents who were present. In 12 of the 17 intervention order matters where the respondent was present, the magistrate explained both the terms of the order (going through each condition) and the consequences of failure to comply, including quite specific information about the maximum fine amount and the maximum prison term for first and subsequent breaches. In a further three matters the magistrate explained only the consequences of breach.⁸⁵

On the following day, with a magistrate who was filling in and does not specialise in family violence matters, orders were not explained.

Ballarat highlighted the differences in court processes that can happen when different magistrates hear family violence matters. Indeed, one family violence service provider noted that having a non-specialist magistrate makes it ‘very noticeable—the lack of understanding and awareness of family violence’. For this provider, lack of awareness causes problems for trust but is also disempowering, when coming to court should be an ‘empowering experience’: ‘it’s your chance to have a voice’. One participant saw this disparity particularly in differential responses to breach: if a breach is heard by a family violence division magistrate, the breach is usually taken seriously, but if there is a non-specialist on the bench, it becomes ‘flip a coin’.

The issue of specialisation and education is further discussed below in section 4.9, as it applies across all courts participating in this research.

The average duration for matters heard at Ballarat Magistrates’ Court on the police day was six minutes and 59 seconds, while for private matters the average was seven minutes and 10 seconds. The police list started at 9:45am and the last family violence matter was completed at 5:35pm. This was the longest sitting day of all courts observed. The private applicant list began at 10:06am and finished at 1:07pm.⁸⁶

The police list at Ballarat was extremely long, with 45 matters, and took almost seven hours to complete.⁸⁷ While other courts, such as Dandenong, had lists that were almost as long, none took as long to complete. Even with a shorter average duration for each matter, the Ballarat list, being so very long, brought with it a very long day for all concerned.

With such a full list, it quickly becomes apparent to the observer that there is insufficient time available for everyone in the court to be able to provide the best service that they can. Almost every participant in the consultations—both in Ballarat and in other courts—expressed frustration at the time constraints they face on a daily basis. While not all lists were as big as Ballarat’s, magistrates, court staff, solicitors and support services all felt the pressure of trying to see as many people as possible in too short a time.

This issue is also further discussed below in section 4.9, as it applies across all courts.

4.2 GEELONG

While Geelong is a large and busy regional court, it is neither a family violence division nor a specialist court. On the day of observation, 21 matters were listed.

Table 22 presents the key data on court processes in family violence matters for Geelong.

⁸⁵ In all the courts, magistrates explained the consequences of breach only when respondents were present as this information is arguably primarily relevant for the respondent, rather than the affected family member. In cases where the respondent was absent, magistrates did still tend to identify every condition that was being imposed, for the benefit of the affected family member. In some instances there was extensive discussion about the appropriateness of each condition in addressing the fears of the affected family member, while in other instances the magistrate provided a brief listing. Magistrates may be able to use their experience to identify whether the respondent understands the conditions being imposed and the consequences of non-compliance, and will typically tailor their explanations accordingly.

⁸⁶ The times recorded during observations do not necessarily reflect the total workload of the court for the day as criminal matters that were not related to family violence may have been heard before the first family violence matter or after the last family violence matter. Each of the eight courts observed included criminal matters that were not related to family violence or intervention order matters that were regarding personal safety (such as disputes between neighbours) rather than family violence.

⁸⁷ There was a one hour break for lunch.

TABLE 22: COURT PROCESSES IN FAMILY VIOLENCE MATTERS—GEELONG (SUMMARY DATA)

| 21 MATTERS | |
|----------------------------------|------|
| Entering as IVO | 21 |
| Entering as criminal | 0 |
| IVO applicant present | 14 |
| IVO respondent present | 7 |
| Explanation given—total | 1 |
| Explanation given—terms only | 0 |
| Explanation given—penalties only | 0 |
| Explanation given—both | 1 |
| Average duration | 3:43 |

Of the 21 matters heard at Geelong, all entered the court as intervention order applications.

Of the seven intervention order matters where the respondent was present, the magistrate explained the terms of the order and the consequences of failure to comply in one matter only.

The average duration for matters heard at Geelong Magistrates' Court on the day of observation was three minutes and 43 seconds, with the longest being eight minutes. The magistrate began working through the list starting at 9:34am and the last family violence matter was completed at 1:10pm.

4.3 MELBOURNE

Melbourne is not a family violence division court but it does provide specialist family violence services. With its central location, parties in Melbourne have access to a range of services that are not necessarily available in the less populated parts of the state.

Table 23 presents the key data on court processes in family violence matters for Melbourne.

TABLE 23: COURT PROCESSES IN FAMILY VIOLENCE MATTERS—MELBOURNE (SUMMARY DATA)

| 32 MATTERS | |
|----------------------------------|------|
| Entering as IVO | 30 |
| Entering as criminal | 2 |
| IVO applicant present | 17 |
| IVO respondent present | 15 |
| Explanation given—total | 7 |
| Explanation given—terms only | 0 |
| Explanation given—penalties only | 0 |
| Explanation given—both | 7 |
| Average duration | 6:23 |

Of the 32 matters heard at Melbourne, 30 entered the court as intervention order applications while the remaining two entered as criminal proceedings.⁸⁸

In the 15 intervention order matters in which the respondent was present, the magistrate explained the terms of the order and the consequences of failure to comply in seven of them.

⁸⁸ On the day of the Melbourne observations, there were no criminal hearings. However, two of the matters heard in the civil jurisdiction as intervention order matters had originally entered the court as criminal matters, according to Courtlink data. Both of these originating criminal matters were related to the respondent.

The average duration for matters heard at Melbourne Magistrates' Court on the day of observation was six minutes and 23 seconds. The magistrate began working through the list starting at 10:05am and the last family violence matter was completed at 4:14pm.

4.4 SUNSHINE

Sunshine is an extremely busy suburban court, with specialist family violence services. Although Sunshine is not formally a specialist court (but provides a number of specialist family violence services), it has developed a high level of specialisation across all aspects of the court: magistrates with significant family violence experience, a functionally and physically separate family violence registrar, an applicant support worker, a police family violence unit and family violence court liaison officer and family violence service providers in the community that attend court. Sunshine also has an on-site Court Integrated Services Program office that provides assessment and referral to treatment for drug and alcohol issues, acquired brain injury support services, accommodation services, disability support and mental health care.⁸⁹

Table 24 presents the key data on court processes in family violence matters for Sunshine.

TABLE 24: COURT PROCESSES IN FAMILY VIOLENCE MATTERS—SUNSHINE (SUMMARY DATA)

| 35 MATTERS | |
|----------------------------------|------|
| Entering as IVO | 34 |
| Entering as criminal | 1 |
| IVO applicant present | 18 |
| IVO respondent present | 22 |
| Explanation given—total | 12 |
| Explanation given—terms only | 2 |
| Explanation given—penalties only | 3 |
| Explanation given—both | 7 |
| Average duration | 8:16 |

Of the 35 matters heard at Sunshine, all but one entered the court as intervention order applications, with one entering as a criminal matter.⁹⁰

In the 22 intervention order matters where the respondent was present, the magistrate provided explanations in 12 matters: in seven, this was both the terms of the order and the consequences of failure to comply, in three the focus was on the consequences and in two the terms of the order were explained.

The average duration for matters heard at Sunshine Magistrates' Court on the day of observation was eight minutes and 16 seconds.⁹¹ With many services available both within the court and in the community in Sunshine, the magistrate was able to make heavy use of referrals. Indeed, the magistrate pointed out relevant pamphlets on the bar table to many of the parties and encouraged them to seek further assistance. The average duration, while not the longest observed among the different courts, may also be a function of the number of matters where people required interpreters (three matters), which slows down the progress of a hearing significantly.⁹²

The large number of matters on the list resulted in a slightly longer day than usual for the court, with the magistrate starting to work through the list at 10:09am and completing the last family violence matter at 4:14pm.

⁸⁹ CISP (the Court Integrated Services Program) is available at the Latrobe Valley, Melbourne and Sunshine Magistrates' Courts to provide accused people with access to services and support to reduce rates of reoffending. Referrals to CISP may be made by the police, lawyers, magistrates, court staff, support services or people may refer themselves.

⁹⁰ As with Melbourne, no criminal matters were heard in Sunshine on the day of observation. However, one intervention order respondent had a related criminal matter and was recorded in Courtlink as having entered the court system for that matter.

⁹¹ As this is an average, it is subject to particularly high or low values. One of the matters in Sunshine lasted for 32 minutes—more than twice the length of the next longest matter. This one value will have dragged up the average. Conversely, all the courts heard matters where neither the applicant nor the respondent appeared, and these tended to be dealt with very quickly—often in a matter of seconds, typically being struck out. Such low values will drag down the average. Average matter duration should therefore not be equated with either quality of decision or fairness of process.

⁹² However, the average duration for Sunshine without these three matters did not differ significantly from the overall average, reducing only slightly to seven minutes and 26 seconds.

4.5 DANDENONG

Like Sunshine, Dandenong is a large suburban court. Unlike Sunshine, it does not have specialist family violence services within the court, but it does have community-based family violence service providers. While Dandenong has some magistrates who are very experienced in family violence, it does not have a separate family violence registry (although on family violence listing days the regular registry counter becomes a de facto specialist family violence counter). An applicant support worker has recently started at Dandenong and there are dedicated police family violence units and court liaison officers.

The court building itself at Dandenong is highly problematic, with a small, cramped and crowded waiting area where the potential for intimidation and even physical assault is significant.

Table 25 presents the key data on court processes in family violence matters for Dandenong.

TABLE 25: COURT PROCESSES IN FAMILY VIOLENCE MATTERS—DANDENONG (SUMMARY DATA)

| 42 MATTERS | |
|----------------------------------|------|
| Entering as IVO | 41 |
| Entering as criminal | 1 |
| IVO applicant present | 15 |
| IVO respondent present | 17 |
| Explanation given—total | 7 |
| Explanation given—terms only | 0 |
| Explanation given—penalties only | 2 |
| Explanation given—both | 5 |
| Average duration | 6:09 |

Of the 42 matters heard at Dandenong, all but one entered the court as intervention order applications, with one entering as a criminal matter.

Of the 17 intervention order matters where the respondent was present, the magistrate provided explanations in seven matters: in five, this was both the terms of the order and the consequences of failure to comply, while in two the focus was on the consequences of breach.

There was one matter where safety was an issue, in that the court was warned before the matter was called that there was potential for aggression and danger. Security staff were posted nearby, outside the door of the courtroom, but no issues arose. The applicant was not present in this matter. This was the only instance of obvious safety issues throughout the courtroom observations.

The average duration for matters heard at Dandenong Magistrates' Court on the day of observation was six minutes and nine seconds. There were two applicants and three respondents who required interpreters, again potentially affecting the average duration of matters.⁹³ The magistrate starting to work through the list at 11:01am and the last family violence matter was completed at 4:40pm.⁹⁴

4.6 WANGARATTA

Wangaratta is a mid-size regional court without any specialisation. As a small building it has limited options for separating parties and very few options for private discussions.

Table 26 presents the key data on court processes in family violence matters for Wangaratta.

⁹³ The average duration excluding these matters was five minutes 32 seconds.

⁹⁴ Magistrates cannot begin hearing matters until there are matters that are ready to be heard. This delay is a function of the number of people who need to be dealt with outside the courtroom—people need to be seen by registry staff, need to have access to support workers and need to speak with legal representatives. The substantial amount of work that takes place outside the courtroom thus has a direct impact on the time required for each matter in the courtroom. However, data on time spent outside the courtroom was not collected as part of this research.

TABLE 26: COURT PROCESSES IN FAMILY VIOLENCE MATTERS—WANGARATTA (SUMMARY DATA)

| 13 MATTERS | |
|----------------------------------|-------|
| Entering as IVO | 11 |
| Entering as criminal | 2 |
| IVO applicant present | 8 |
| IVO respondent present | 3 |
| Explanation given—total | 3 |
| Explanation given—terms only | 0 |
| Explanation given—penalties only | 1 |
| Explanation given—both | 1 |
| Explanation given—other | 1 |
| Average duration | 10:17 |

Of the 13 matters heard at Wangaratta, two entered as criminal matters and the remaining 11 as intervention order matters.

There were three intervention order matters where the respondent was clearly present, six where the respondent was clearly absent and in two it was unclear. The magistrate provided explanations in the three matters in which the respondent was clearly present, explaining only the consequences of failure to comply in one instance, both the consequences and the terms of the order in a second, and the consequences of breach, order terms, and conditions of contact with children in the third.

The average duration for matters heard at Wangaratta Magistrates' Court on the day of observation was 10 minutes and 17 seconds, although there was significant variation across cases, as the shortest matter was less than one minute and the longest was over 45 minutes. This is the longest average duration of all the courts observed, and may be a function of the very small list alleviating some of the time pressures faced by magistrates hearing larger lists. The magistrate starting to work through the list at 9:59am and the last family violence matter was completed at 1:21pm.

4.7 MARYBOROUGH

Maryborough is the smallest of the courts visited, without any specialisation, although it is served by a police family violence court liaison officer. Its single room means that parties either wait outside or in the courtroom itself, and there are no options for separate, safe entry to and exit from the building.

Table 27 presents the key data on court processes in family violence matters for Maryborough.

TABLE 27: COURT PROCESSES IN FAMILY VIOLENCE MATTERS—MARYBOROUGH (SUMMARY DATA)

| 12 MATTERS | |
|----------------------------------|------|
| Entering as IVO | 11 |
| Entering as criminal | 1 |
| IVO applicant present | 6 |
| IVO respondent present | 6 |
| Explanation given—total | 4 |
| Explanation given—terms only | 0 |
| Explanation given—penalties only | 0 |
| Explanation given—both | 4 |
| Average duration | 9:13 |

Of the 12 matters heard at Maryborough, all but one entered the court as intervention order applications, with one entering as a criminal matter.⁹⁵

The magistrate defined family violence in every intervention order matter and provided explanations in four of the six matters where the respondent was present about both the terms of the order and the consequences of failure to comply.

The average duration for matters heard at Maryborough Magistrates' Court on the day of observation was nine minutes and 13 seconds. Once again, the longer average duration may be a function of the smaller list at Maryborough. In addition, taking the time to define family violence, as well as providing explanations of the order, took some time. The magistrate started to work through the list at 10:32am. The court's end time was not recorded, but it continued well past 3:30pm.

4.8 NEIGHBOURHOOD JUSTICE CENTRE

The Neighbourhood Justice Centre has a unique, problem-solving approach to justice more generally. Its on-site services allow parties to be linked into a range of services at the time of their court hearing, such that a wrap-around service can be provided.

Table 28 presents the key data on court processes in family violence matters for the Neighbourhood Justice Centre.

TABLE 28: COURT PROCESSES IN FAMILY VIOLENCE MATTERS—NEIGHBOURHOOD JUSTICE CENTRE (SUMMARY DATA)

| 17 MATTERS | |
|----------------------------------|------|
| Entering as IVO | 16 |
| Entering as criminal | 1 |
| IVO applicant present | 8 |
| IVO respondent present | 6 |
| Explanation given—total | 2 |
| Explanation given—terms only | 0 |
| Explanation given—penalties only | 2 |
| Explanation given—both | 0 |
| Average duration | 9:24 |

Of the 17 matters heard at the Neighbourhood Justice Centre, all but one entered the court as intervention order applications, with one entering as a criminal matter.

In the six intervention order matters where the respondent was clearly present, the magistrate provided explanations in two about the consequences of failure to comply.

The average duration for matters heard at the Neighbourhood Justice Centre on the day of observation was nine minutes and 24 seconds, although the longest matter—an extremely complicated one that was stood down several times—went for one hour 14 minutes. The presence of in-court support services and multiple solicitor services meant that most matters were able to be dealt with fairly quickly in court. The magistrate starting to work through the list at 10:22am and the last family violence matter was completed at 4:48pm.

4.9 DISCUSSION: UNDERSTANDING COURT PROCESSES IN FAMILY VIOLENCE MATTERS

To facilitate direct comparison across the eight courts visited, Table 29 compiles the data from Sections 4.1 to 4.8. The data in the table are numbers; percentages have not been included other than for the proportion of matters with a respondent present where an explanation was given, due to missing data in some instances and to very small numbers in many table cells.

⁹⁵ On the day of observation there were two criminal matters heard at Maryborough Magistrates' Court. Only one, however, originated in the court as a criminal matter, while the other originated as an intervention order matter.

TABLE 29: COURT PROCESSES IN FAMILY VIOLENCE MATTERS: SUMMARY

| | BALLARAT (45 POLICE MATTERS) | BALLARAT (23 PRIVATE MATTERS) | GEE LONG (21 MATTERS) | MELBOURNE (32 MATTERS) | SUNSHINE (35 MATTERS) | DANDENONG (42 MATTERS) | WANGARATTA (13 MATTERS) | MARYBOROUGH (12 MATTERS) | NJC (17 MATTERS) |
|-----------------------------------|------------------------------------|-------------------------------------|--------------------------|---------------------------|--------------------------|---------------------------|-----------------------------------|-----------------------------|---------------------|
| Entering as IVO | 37 | 23 | 21 | 30 | 34 | 41 | 11 | 11 | 16 |
| Entering as criminal | 3 | 0 | 0 | 2 | 1 | 1 | 2 | 1 | 1 |
| IVO applicant present | 18 | 21 | 14 | 17 | 18 | 15 | 8 | 6 | 8 |
| IVO respondent present | 17 | 15 | 7 | 15 | 22 | 17 | 3 | 6 | 6 |
| Explanation given: total (88%) | 15 out of 17 (88%) | 0 | 1 out of 7 (14%) | 7 out of 15 (47%) | 12 out of 22 (55%) | 7 out of 17 (41%) | 3 out of 3 ^a (100%) | 4 out of 6 (67%) | 2 out of 6 (33%) |
| Explanation given: terms | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 0 |
| Explanation given: penalties | 3 | 0 | 0 | 0 | 3 | 2 | 1 | 0 | 2 |
| Explanation given: both | 12 | 0 | 1 | 7 | 7 | 5 | 1 | 4 | 0 |
| Average duration | 6:59 | 7:10 | 3:43 | 6:23 | 8:16 | 6:09 | 10:17 | 9:13 | 9:24 |

a In addition to these two explanations, Wangaratta had a third 'other' explanation given that is not shown in this table.

Processing of family violence cases

Across all courts, the most common entry point for intervention order matters was the intervention order application itself. Some matters (11 of them) entered as criminal ones, but no other entry point was seen in any of the courts.

Consistent approaches to family violence matters

There were only two broad consistencies seen in all courts throughout the observations: magistrates are acutely aware of the time pressures they face and feel the need to talk quickly and keep the day progressing; and magistrates are reluctant to articulate in open court the nature of the family violence incident.

The first consistency—the pressure of time—is further discussed below. The second matter raises quite different issues.

The magistrate always began by reading the intervention order application silently. Subsequent questioning of either the applicant or the police prosecutor or civil advocate did not focus on the nature of the past incident, but instead was directed at finding the most appropriate order to protect the person into the future. At times the incident was mentioned if the magistrate was questioning the nature of the application being sought. For example, if the victim was seeking a revocation to allow contact due to reconciliation, the magistrate might express reluctance to revoke the order due to the ‘serious violence’ involved. While magistrates quite frequently referred to the severity of the violence in general terms, there were no more than a few matters in which the magistrate either read from the application or in some other way identified the specific acts involved.

This reticence to state aloud the details of the violent incident may reflect an effort to protect the victim from further trauma. It may also reflect the fact that, at that point, the respondent had not had an opportunity to be heard on the allegations. However, by not articulating what has actually occurred, the court is missing an opportunity to validate the victim and to hold the perpetrator to account. The power of the magistrate speaking about what has occurred is being forsaken. While encouraging magistrates to announce the details of the family violence in court may not be appropriate due to reasons of privacy and sensitivity, it is worth considering whether there might be times that such a statement could be of use.

Inconsistent approaches to family violence matters

Court processes vary according to the experience, understanding and personal preferences of the magistrate, and are influenced by external factors such as availability of services. There were four main ways in which magistrates varied in their approaches to family violence matters:

1. their choice of conditions to impose
2. their explanations of orders to respondents who were present in court
3. their attempts at applying a therapeutic justice approach
4. their referrals to support services.

Choice of conditions

Some magistrates seemed to have a standard response to applications of imposing comprehensive orders in most matters, unless a limited order was specifically sought (such as in instances involving a police application but with no affected family member present). Others made more use of limited orders, with only clause 1 (no family violence) or perhaps clauses 1 and 2 (no damaging property). Other magistrates, however, were more creative with their use of conditions. For example, one magistrate added a modified exclusion condition banning the respondent from the house only when he was affected by, or had been using, alcohol. Another magistrate was able to ensure that the respondent attended a men’s behaviour change program by adding it as a condition to the order, even in the absence of the ability to impose a counselling order. The flexibility currently afforded magistrates means that the more creative ones do not need any more options added to their conditions toolbox—they are able to use their court craft skills to tailor their orders more closely.

Explanations of orders

The quality of explanations of orders varied substantially.⁹⁶ Across all the courts, explanations of intervention orders—their terms or the consequences or breach or both—were provided in just under one-quarter (23 per cent) of all matters (51 of 224 intervention order matters). One magistrate made it a point to define family violence in every single matter, while another ensured that every matter with children involved included an explanation of the impact of family violence on children. In one court respondents were told the specifics of the consequences of breach—the fine amount and the maximum prison term for first and subsequent breaches. In another court, they were told that penalties involved a fine and possibly imprisonment, but without specific details.

⁹⁶ It is unclear why there was variation in the explanation of orders. It is likely that some of the variation may be explained by the magistrates’ perceptions of each respondent’s ability to understand what is being said in court. The presence or absence of legal representation, support workers or family members may also affect the explanations provided. The individual preferences of each magistrate are also likely to have play a role.

Magistrates with more specialised experience of family violence matters seemed to take more time to explain orders: while the time taken on each matter varied from three minutes 43 seconds in Geelong to 10 minutes and 17 seconds in Wangaratta, the average time per matter across all courts was seven minutes and 34 seconds. In interviews, a number of the magistrates expressed concern that respondents were not fully understanding what was being said in court and what they were agreeing to. Observations suggested that this might indeed be the case, as some respondents seemed rather dazed and confused by the whole process. For those with legal representation, this may not be an issue as the duty lawyer may have been able to provide better explanations during previous discussions. For those without legal representation, however, there is a real risk that the consequences of the order have not been fully appreciated and that the opportunity to provide clear messages about family violence has been missed.

Opportunities for therapeutic justice

One of the magistrates had a personal preference for applying some therapeutic intervention to the situation, seeking to engage the respondent in a deeper understanding of his behaviour. For example, in one matter she asked the respondent about his violent response to conflict, and whether there might be better ways to respond. She suggested alternatives for him, such as going for a walk when he felt angry. Although the discussion lasted only two or three minutes, she was able to raise with him the idea that there are more appropriate ways to manage conflict.

This was the only court at which this approach was adopted. Even so, this magistrate would have preferred to have more time to be able to have a more meaningful conversation, as she felt she could only just touch on a small fraction of the issues that were apparent.

Referrals to support services

There was substantial variation in magistrates' use of referrals to support services, either those present at the court or those in the community. This was not simply a function of whether services were available; even in locations where there were services in the local community, some magistrates simply did not refer very much. Overall, the use of referrals to support services was fairly low. This may be for a range of reasons that were not evident from the observations alone.

Even when there were referrals, they tended to differ. Some pointed out a support service that was located in an office in the court, gave the support worker's name and strongly suggested that the applicant or respondent make contact. Others pointed to leaflets that were located on the table and suggested that the person call the number listed. But overall, referrals were made in only about one-quarter of all matters.

Addressing inconsistency in responses to family violence

Two of the strongest messages arising from the interview process were the need for some level of specialisation in the response to family violence, and further education for all people dealing with family violence matters: magistrates, registry and other court staff, duty lawyers, police, support workers and security personnel. While all participants acknowledged that system responses to family violence have improved tremendously over the years, they all lamented that there remains more work to be done in ensuring that family violence is properly understood. In particular, both specialisation and further training on the nature and dynamics of family violence and the impact of family violence were seen as critical to improving the system's response.

The value of specialisation

Specialisation was seen by most respondents as a valuable approach to dealing with family violence. This did not necessarily mean having a specialist family violence division court (although a separate family violence court was suggested by one participant), but that people with specialised experience, understanding and knowledge in family violence matters be involved in all aspects of responding to family violence.

Specialisation is valuable in every role. For example, in every court where Victoria Police had a separate Family Violence Court Liaison Officer (FVCLLO), the value of this role was seen as significant. The FVCLLO facilitates negotiations, ensures affected family members have the opportunity to tell police what they wish to happen at court, and acts as a go-between, communicating between the police prosecutor or civil advocate and the affected family member. According to one magistrate, the FVCLLO makes things run more smoothly for the court, allowing the process to become 'more streamlined' and, by speaking with both parties to understand what they would like on the day, the magistrate is better able to tailor the order appropriately.

Having specialist police prosecutors or civil advocates makes an enormous difference to the court. With specialist experience, police are able to come to court prepared with all the necessary information that the magistrate is likely to seek: information on risk factors, prior violence, related orders (such as family law orders) and a clear understanding of the wishes of the affected family member. This ensures that the magistrate has the required information to make an efficient and appropriate decision. Without specialist experience in the prosecution role, there is evidently a lack of appreciation of the information needed by the magistrate. Courtroom observations revealed that, without this sort of experience, the answer to many of the questions from the bench is ‘I don’t know’. In some of the courts observed many of the matters were adjourned to allow police to undertake further investigations to provide ‘further and better particulars’, to speak with the victim to clarify her wishes, or to determine if and when criminal charges were to be heard. This clearly has implications for the smooth running of the court, as multiple adjournments due to lack of information is simply a waste of court time. On the observation days, a number of magistrates were obviously frustrated in court by the inability of a police prosecutor or civil advocate to provide answers to their questions.

Specialisation among duty lawyers is also valuable, allowing solicitors to elicit the most relevant information from people under significant time constraints. The same may be said of registry staff, for whom a specialist family violence registrar allows a more efficient, and also more effective, application process, where all relevant information is included.

Specialisation among magistrates means that they have a detailed understanding of the nature and impact of family violence, can quickly elicit required information on the key facts of a case, and can craft a tailored order that has the greatest chance of preventing family violence and enhancing safety. The courtroom observations showed how specialist experience can work to enhance courtroom outcomes. Although every magistrate worked under significant time pressures, with lengthy lists and the tension between efficiency and fairness, the most effective magistrates were able to communicate meaningfully with both respondents and affected family members. Victims of family violence were told that they were brave for coming to court to seek an order. They were reminded that they should contact police if there is any fear for their safety. They were reminded of the definition of family violence, and that family violence is harmful for children even if they are not directly physically abused themselves. Family violence perpetrators were also told the definition of family violence and were warned that their continued violence could see their own children ending up as abusers in the future. The conditions of the order were carefully and clearly explained to them, and they were asked if they understood. The consequences and penalties of breach were explained. One magistrate was even able to undertake some therapeutic lawyering, initiating discussion about the causes and consequences of angry outbursts. Although there was no single magistrate who combined all of these approaches into her or his work, most magistrates observed adopted at least one of these, in a genuine effort to engage with the parties and provide an effective response.

The value of specialisation and ongoing education was emphasised by every participant in the consultations. Representatives from a community legal centre felt that further training is essential for everyone working in the family violence sphere, but especially for magistrates and police.

Professional development for magistrates

Several magistrates noted that, as family violence is ‘pervasive’ throughout the courts, more judicial professional development is needed. In particular, according to one magistrate, there needs to be an understanding that the capacity of witnesses to communicate properly is compromised where there has been severe violence. A communication style that may be seen as apologetic or incongruent is often seen, such that there’s a disjunction between ‘what they’re saying and what we traditionally expect from a witness’. Magistrates need to understand ‘the impact of family violence on communication skills when we’re hearing evidence’. This is especially the case with inarticulate private applicants who are not represented, those with mental health issues and people with other disabilities.

Specialist magistrates can quickly identify risk factors in family violence applicants and respondents, and can address therapeutic and procedural justice concerns. Without specialisation, there are still those who do not appreciate the complexity and nuances in this space. For example, some magistrates are reluctant to include a child on an intervention order if there is no direct physical violence—they do not see exposure to violence as family violence. A health services provider felt that some magistrates still do not believe the applicant, leaving women to feel that they ‘didn’t have enough bruises’ for the allegations to be taken seriously.

The response to breaches of intervention orders was an area of particular concern for some participants, in particular for service providers. A health services provider has seen magistrates warn of the penalties of breach when an intervention order is granted, but on breach the offender is treated overly leniently. Others from a family violence service provider echoed this sentiment, feeling that the magistrates are saying the right things when the order is issued, but then sending the wrong message when the threatened response to breach does not happen.⁹⁷ The message that family violence will not be tolerated thus seems to be missing: ‘lots of good strong words are being spoken by magistrates to perpetrators, but [there’s] not a lot of action’. In these circumstances, the respondent ‘walks out with a smirk’, except, according to some interview participants, in the case of Indigenous men, when he is likely to be imprisoned.

With some community-based service providers there was much discussion about the differential response of the courts to Indigenous and non-Indigenous respondents. Indigenous men in particular were seen as being treated much more harshly and were more likely to be sent to prison for breach (and indeed, to be charged with breach in the first place). While the gross over-representation of Indigenous people throughout the justice system is beyond the scope of this report, these interviewees believed that there are substantial disparities in legal responses to family violence among Indigenous peoples.

Professional development for police

Although all participants acknowledged that the police have ‘come a long way’ in their responses to, and understanding of, family violence, many agreed that further training and professional development remains a priority. A family violence service provider said that it is still difficult to get the police to apply for an intervention order if there is no evidence of physical violence—bruises, cuts and the like. A community legal centre representative felt that police are applying for many intervention orders now but they are not enforcing them, failing to take action on breach. Thus the focus on immediate safety may be coming at the expense of follow-up of criminal incidents. This is seen as problematic in the message that is sent when the police do not enforce orders: ‘it’s easier for the offender to take it seriously if the police take it seriously’.

While the general police members still need to shift their attitudes and beliefs, the specialist family violence units within police are very good, as they understand that ‘emotional, cultural and spiritual violence’ can exist.

Many participants valued the presence of family violence units in police, as well as dedicated police family violence court liaison officers who have the time both to liaise with affected family members and to ensure that the material presented at court is of a high standard. According to registry staff, their presence ‘makes things run more smoothly...they know what they’re doing so things run smoothly in court’. This sort of specialisation means that people are more likely to have a good experience with the police and will have sufficient confidence to call them if needed. A representative of a community legal centre believed that this confidence in the police is critical: ‘an intervention order is not just a piece of paper if you make a phone call’.

Police themselves also acknowledge the need for further training. As a police prosecutor noted, they often become cynical and desensitised to family violence. Further training may assist with maintaining a certain level of empathy. It would also assist police to provide the best information possible to the court. For the magistrate to be able to make an informed decision, a quality narrative is needed, with strong evidence and information about the respondent’s prior history. According to a police civil advocate, police informants—those attending family violence incidents—need more training to be able to provide more detailed and relevant information: family violence incidents ‘need to be treated as seriously’ as criminal investigations. This benefits not only the magistrate but also the respondent, who is then able to determine whether to consent to an order or to contest it. According to the police civil advocate, ‘it’s all about information in this context’.

Police also need ongoing training around how to conduct risk assessments and proper interviews. Part of this issue is the associated issue of resourcing—with more police officers, a greater level of specialisation can be achieved.

An interpreter suggested that police responses to family violence can be particularly problematic with regard to areas with a high proportion of non-English speaking people. He provided the example of an incident where police attend and the only person who speaks English is the alleged offender. Under these circumstances, the abuser (typically the man) may manipulate the story told to police, resulting in the female victim being accused of family violence and having an intervention order taken out against her. The interpreter has seen such cases a number of times; it is only when the matter comes to court that the story is able to be accurately described with the assistance of the interpreter.

While the traditional role of the police was to find criminals—to ‘catch crooks’—it has evolved such that new skills are required to respond to family violence in an appropriate and skilled manner, suitable to an offence that typically occurs in the private rather than the public domain. This move from ‘an enforcement role to a welfare role’ needs to be acknowledged and incorporated into police training.

⁹⁷ Indeed, in the handful of matters where a breach of an intervention order was sentenced, the most common outcome was a community correction order, at times with the same conditions that were on the intervention order in the first place.

Managing time constraints in family violence matters

By far the biggest concern for interview participants was the lack of time available to provide the best possible service. Over recent years, the number of family violence matters in the courts has ‘increased exponentially’. Time constraints affect everyone in the courts, and with large lists, people end up having to rush through their work, like ‘chooks with no heads’, according to one family violence registrar.

Ultimately, the impact of insufficient time is that people can only provide a bare minimum service: registry staff, duty lawyers, police, support services and even magistrates have to limit their time to working on the bare necessities, foregoing the additional time that would be required to provide a more detailed, thorough and complete interaction. Despite this, it should be noted, every one of the people observed for this research is clearly passionate about the importance of their work in assisting people affected by family violence, making every effort to do the best possible job within existing constraints.

Pressures on registry staff

For family violence registry staff, ‘it’s just relentless, non-stop client engagement at the counter’, with some courts seeing up to 60 matters on the list on a family violence listing day.⁹⁸ Other registry work has to be foregone in order to deal with the demand, with many family violence days going past 4:00pm, sometimes even to 6:00pm. Some registries are considering a second day of listings for family violence to address this: ‘when do we say enough’s enough?’. One family violence registrar feels she is ‘not doing all the other stuff’ she should be doing in that role, such as community engagement work, as there is simply no time available. It is this broader engagement that is seen as critical to effective collaboration and integration within local family violence systems.

For many registry staff, time pressures mean that they have less time to listen. They used to have more time to help with applications and refer people to relevant services, but now are limited to finding out the few core facts that need to go into the narrative. Their approach used to be more therapeutic as they could listen more; there’s no time to do that now. Even with multiple registry staff, ‘You just feel like you’re spreading yourself very thin’.

Some courts have introduced caps on their family violence lists (at around 30) to allow space for extra matters that arise at the last minute. Once the list grows to more than 40, it becomes more difficult for all involved to deal with each matter well. Security can also become a concern, as more and more people have to wait longer and longer for their matter to be called.

Some courts have also introduced an appointment system for the lodging of intervention order applications, and Court Network can provide extra assistance to people in filling out the forms. Given how ‘cumbersome’ and ‘clunky’ the intervention order application form is, it is often very difficult for people to complete on their own, especially when they are experiencing emotional distress. The Neighbourhood Justice Centre’s online application form aims to address this problem, and is seen by the Centre’s staff as a potentially valuable contribution to making the whole court process easier and more accessible for victims of family violence.⁹⁹

Pressures on duty lawyers

The standard number of clients for a duty lawyer used to be about four or five a day, allowing them to negotiate broader issues such as parenting plans. Currently, however, it is not unusual for a duty lawyer to see 10 or 15 clients, allowing as little as five or six minutes with each client. One particularly busy community legal centre regularly has 30 to 35 cases on a police application day and 12 to 15 on a private applicant day. Another centre has had as many as 60 clients on a police application day. At the same time as the demand for legal services has increased, access to the Family Court has become ever more difficult. As a result, people are using the family violence list to try to resolve child access issues as well. This added complexity means that the lack of time available (about 10 to 15 minutes per client) has an even greater impact on the lawyers’ ability to address all the legal needs of their clients.

A lawyer at another court also talked about the increasing complexity of cases. The time pressure has become more pronounced as cases have become more complex. One lawyer felt that the court is ‘a bit like a sausage factory sometimes’, with people agreeing to things they do not necessarily understand. Another lawyer suggested that, in addition to a ‘huge increase in family violence intervention orders’ over the last 15 years, there has been an increase in methylamphetamine use and thus drug-related family violence. The increase in drug use means that he sees a ‘dramatically different type of family violence respondent than 10 years ago’—one who is more aggressive and more dangerous to families. Thus the increased volume, combined with the increased complexity and potential dangerousness of cases, is felt acutely in the time pressures faced by legal practitioners.

⁹⁸ There were no direct observations of processes that take place outside the courtroom, such as those occurring with registry staff, duty lawyers and support services. Instead, issues facing individuals in these sorts of roles were discussed during the interviews. Consideration could be given to undertaking research in the future on processes outside the courtroom.

⁹⁹ As the development of the online form is a relatively new initiative, it has yet to be formally evaluated.

According to one community legal centre representative, without adequate time legal service providers are not able to delve deeply into people's experiences so cannot receive optimal instructions, which has an impact on their ability to negotiate. Every one of the legal services providers suggested that they would like more time to spend with their clients—at least 30 minutes is required to get quality instructions and to have a proper discussion about the intervention order process and the person's wishes, and also to discuss additional issues such as family law concerns and referral to appropriate services. For clients who come from a culturally and linguistically diverse background, even more time is needed: ideally, an hour should be spent with these clients, not just to allow time for interpreters, but to explain the whole court process and culture. With only 10 to 15 minutes with each person, only the essential service is provided. 'You run everywhere', having to 'push things through' to get the job done. Duty lawyers 'can't go into all the details, which would take half an hour'; instead, they have to focus simply on 'the basics'. In private practice, getting proper instructions takes about an hour. With far less time on court days, duty lawyers may miss some of the key details; if that happens, they have to ask for the matter to be stood down so they can take instructions. And without proper instructions, the order cannot be tailored as effectively, which means that more matters are then contested.

The lack of time for duty lawyers was summarised by a lawyer from a community legal centre: 'To get an interim order you need to get proper instructions. That's the difference. If you've only spent 10 to 15 minutes, you've only got the bare bones'. While this does not necessarily compromise safety as in most cases the order is still granted, it does mean that applicants have to come back to court more often. In addition, if the affected family member has sought legal advice and has not been given enough time to have her voice heard, this may affect her future willingness to seek assistance from the police and the court.

Inadequate time to speak with clients also has implications for legal representatives' ability to undertake 'therapeutic lawyering'. That is, clients are less likely to feel that they have had a voice and been properly heard, instead feeling that their lawyer has had to rush off to another case. A perception may arise that the lawyer 'doesn't give a damn about me' as he dashes off to the next client. While the matter at hand might not be affected in such circumstances, there would surely be implications for people's confidence in the justice system.

Even at the Neighbourhood Justice Centre, where smaller lists, on-site services and multiple legal practitioners means that people have more time to spend with clients (around 30 to 60 minutes for average cases and one to two hours for complex ones), more time would still be useful to manage various family violence-related legal issues more comprehensively, such as family law and housing issues: 'The best practice model would be that legal services are better funded to deal with not only family violence legal issues but all the other legal issues intertwined'. The focus remains on the crisis of the day at court; the bigger issues behind it remain unresolved.

The inability to deal with broader issues was reiterated by representatives from Loddon Community Legal Centre. While the duty lawyers working at Maryborough Magistrates' Court do not face the same large lists as at other courts—typically seeing two to five clients in a day—they are still constrained in the service they can provide. They can 'do the basic job' and explain court processes to clients and assist them with their immediate matter, but they are not able to adopt the 'preferable model', which involves both contact with the client in the days prior to the hearing and follow-up with the client in the weeks and months after the hearing. For these duty lawyers, there are essentially two different services required: the basic duty service on the day of court and the ongoing legal casework that allows a more consistent and better quality response. While the former is manageable due to the smaller lists, they are unable to achieve the latter due to funding constraints. This is where external specialist family violence services can help to 'fill the gap' and provide valuable support services, when they are funded sufficiently to send their staff to court.

Insufficient time with a duty lawyer also means that some respondents do not fully understand the consequences of breach. This is where a respondent support worker is helpful, explaining the order and ensuring understanding of its terms.

Pressures on police

Police civil advocates and prosecutors are also under considerable time pressure, with some spending about five to 10 minutes with each affected family member, such that the discussion 'has to be done quite efficiently'. For one police civil advocate, this means that he must 'control the conversation' to get just the essential information. This might result in the person feeling that her voice has not been heard and that she has not been given enough time or attention, but it is all the time that he can afford.

Police stations that have a family violence court liaison officer are able to alleviate this pressure to some degree. The liaison officer will speak with affected family members about their wishes and conduct negotiations with respondents' legal representatives outside court. Some matters, such as where the respondent wants to consent to the order, can be resolved very quickly, in just five minutes. Other more complex matters, particularly those involving children, take far longer. With some courts hearing around 45 cases on a typical day, the time pressure is significant: as with duty lawyers, this potentially results in instructions that are not entirely accurate or complete.

In addition to a family violence court liaison officer, some police stations also have a dedicated family violence unit. While the police prosecutor has little time with individuals in court, the police family violence unit has primary responsibility for investigating family violence and providing a summary of agreed instructions to the prosecutor to use in court. Thus the police family violence unit takes substantial time to conduct the background work and liaise with the affected family member, providing the prosecutor with the relevant information required for a succinct and expeditious appearance in court. This system seems to work well for participants, who suggested that it combines the benefits of a detailed preparation process with a clear and concise appearance at court, alleviating the time pressures for the prosecutor while allowing the victims of family violence to feel they have had the opportunity to tell their story.

Pressures on support services

Service providers who support women in court have seen family violence ‘increase dramatically each year’, such that they sometimes need to send more than one worker to court to manage the list (if they have the resources to do so). Supporting more than three women at a time is too much: ‘it’s not a personal service’ if there are more than that. According to the service providers interviewed, one of the most concerning implications of support services not having enough time and attention for victims of family violence is that women may end up agreeing to something that they do not understand. In particular, a woman might agree to accept an undertaking rather than an intervention order, which is not as effective in keeping them safe. While service providers are used to managing with a lack of funding—‘we’re a crisis service, we’re used to stretching ourselves quite thin’—there are potentially serious implications if they are unable to do their job properly.

The lack of time ‘limits the depth of contact you can have’. The increase in matters means there is an ‘inevitable impact on what you can do as a single person’. More time would allow a more comprehensive risk assessment and full discussion of all legal issues, as well as linking in with services for the other ongoing issues.

The lack of sufficient time to speak with a victim of family violence at length about her needs is a particular concern in some courts with regards to Indigenous women, who tend not to seek help until they have become absolutely desperate, by which time the violence is severe and they become at high risk of serious injury. Responding appropriately to these women requires significant time.

For one service provider who attends court from an external service, the time spent with each person varies dramatically depending on the level of risk, whether the applicant is on her own and her individual needs. While this provider spends anywhere from 20 minutes to 90 minutes with a person, ideally she would like to have more time to be able to undertake a comprehensive risk assessment and fully discuss all the associated legal issues.

For the applicant support workers interviewed, the time required with each person is substantial. For one support worker, explaining the nature of family violence and the process of applying for an intervention order, making referrals to support services and assisting with completing the intervention order application requires about an hour with each person. Another applicant support worker requires about 40 minutes with each person to undertake a risk assessment, create a safety plan and provide referrals to the local external family violence support agencies. In addition, the applicant support workers may accompany women in the courtroom itself. While it would be ‘ideal’ to see only four people each day, one applicant support worker has previously seen as many as nine, while another generally sees about eight people each day, averaging about 20 to 30 minutes with each. For all the applicant support workers interviewed, the key to managing the demand is to work closely with others in the court, especially the police and services such as Court Network.

The demands on respondent support workers’ time may be even greater, with one worker seeing 12 to 15 men on a busy day. After spending 10 minutes with a respondent to explain court processes, briefly discuss his concerns and determine if he is eligible for assessment for a counselling order, a further 30 minutes is required to undertake the assessment itself.

One of the health service providers interviewed also expressed concerns about insufficient time with victims of family violence. Although only having about 20 minutes per client, discussions need to include explanations of the court process, safety planning, referrals to accommodation and counselling services and linking people with legal services. The provider acknowledged that more time would be valuable to be able to discuss these issues in greater depth.

Pressures on registry staff

For registry staff, the work at the counter is relentless, with dozens of people seeking assistance. Some of the registries have implemented an appointment system for new intervention order applications, with 10 or 12 half-hour appointments scheduled throughout the day. Applicants arrive with the form largely completed, allowing time for the staff to ask further questions to clarify the situation and to type up the application. This helps with managing the pressure imposed by new applications, but there can still be 60 or 70 people requiring attention through the day. Thus while the appointment system allows registry staff to manage new applications, it does nothing to alleviate the ongoing pressures created by the large number of matters on the list. As one registrar noted, with a list of 50 to 60 matters, there is the potential for more than 100 people to come to court and seek assistance from the registry.

Pressures on magistrates

One magistrate felt that family violence intervention orders have gone from being a small part of the court's work (five to seven per cent) to being a significant proportion (about 30 per cent). But it is 'only recently that people [in the courts] have seen it as a key component of Magistrates' Court work'.

According to one magistrate, court philosophy has traditionally been that 'a good magistrate is a fast magistrate'. But this makes it exceedingly difficult to do the job well—a magistrate needs to stand up to this sort of pressure and take the time to triage and elicit the information needed. Without sufficient time to elicit the whole story, underlying issues may be missed and orders may not be as effective in preventing future incidents of family violence as they may otherwise be. This is particularly important with some culturally and linguistically diverse communities, especially the South Asian ones, where family violence is seen as an issue to keep hidden within families and substantial pressure is exerted on women by both their in-laws and their own families to keep the matter quiet. Magistrates need to have this cultural understanding and background information in order to tailor orders appropriately, such as including prohibitions on shaming women on Facebook. Insufficient information from the duty lawyers—and lack of time to elicit the information in court—makes it more difficult to tailor orders optimally.

One magistrate reported that she spends an average of seven minutes on each case in court, but would prefer to have 15 to 20 minutes on each. The lack of time means that she is 'operating so fast in such a closed environment' that she does not have time to ask questions about what really happened. Another magistrate said she has to work 'quicker and smarter'—she starts reading cases as witnesses are being sworn in, as there is 'really limited time to capture as much information as possible'. She herself asks questions of witnesses or affected family members to make the process more efficient than when practitioners control the questioning; she knows what to ask and can 'cut to the chase'. This magistrate spends only a few minutes on each case, erring on the side of caution with interim orders by simply accepting the affected family member's evidence.

The time magistrates spend on each matter depends on the nature of the issues. According to one magistrate, straightforward matters in which the respondent does not appear are very quick, requiring only three to five minutes. If the respondent is present, more time is required. If he is not represented, magistrates must take the time to explain both processes and outcomes. If the matter is contested, it can take five to ten minutes for an interim order to be made and the matter adjourned to a later date. A directions hearing can take somewhere between 15 and 30 minutes. For this magistrate, a large list simply has to be managed: 'I'll sit until my list is done'.

Time pressures on magistrates mean that they may be unable to get a complete picture of the circumstances involved in a matter. At times this may compromise matters beyond the Magistrates' Court. For example, one magistrate said that she is aware that intervention order applications can be used strategically by perpetrators, for example in family law matters, where an intervention order being in place can have implications for child custody. Intervention order applications may also be used by perpetrators to continue to control victims of family violence. In such circumstances, according to the magistrate, intervention orders are being used 'as a sword, not a shield'. Without adequate time, the magistrate may not be able to identify such issues.

Even at directions hearings, magistrates do not 'have the opportunity to be proactive and encourage settlement' as it's a 'sausage factory'. One magistrate noted that she can only give people quick advice about getting a lawyer for the contest; she does not have the time to discuss the underlying issues and is therefore unable to attempt any therapeutic interventions. The whole process becomes more about administrative decisions than about dealing with content and seeking resolution, but 'we shouldn't be dealing with them in such a sausage factory way'.

These sentiments were echoed by another magistrate who always feels under pressure with matters and would like more time, but does not want to keep people waiting if they are ready. He would like to have more time to ensure that people are understanding his explanations, as he thinks there are many who are not: he still thinks 'am I getting through here?'. While this magistrate feels his decision-making is not compromised by the time pressure, he would like more time around explaining his decisions. It is this therapeutic part that is sometimes missing due to time pressures. Another magistrate agreed with this concern about how well respondents understand their orders, feeling that participants often leave court feeling 'bewildered' and not understanding the implications of the order (for example, that an intervention order makes a respondent a 'prohibited person' under the laws regulating firearm use and possession).

One of the key consequences, then, of lack of time for magistrates is that therapeutic interventions are missing and procedural justice is missing. This is problematic: procedural justice 'is not just a nice thing to do—it's part of the courts excellence framework'. Research has shown that there is more likely to be compliance with orders if there is perceived to be procedural justice, so this has significant implications for both immediate safety and reoffending. And with 45 matters on the list, there simply is no time for those cases that perhaps need a bit more effort: 'You've got to have space for the one that needs more intensive intervention'. A real concern for magistrates is that 'a Batty case will come up and you'll miss it' in the rush to keep the list progressing. This magistrate suggested that, while her court tries to keep its list at a maximum of around 45 matters per day, a list of about 30 would allow her to perform better.

The pressures faced by magistrates were illustrated poignantly by a magistrate who, on the day of observation, was rather unwell. Rather than stay home to recover and miss the dozens of matters she knew would be on her list, she chose instead to come to court to ensure that people would be heard. The demand creates a perception that magistrates cannot afford to be ill—they cannot afford to stay at home as there is simply too much work to be done.

It is also important for magistrates to have the time to make normative statements about family violence, to say that this is not acceptable. This is an important message for magistrates to impart, but they need time to be able to do that properly.

One magistrate summarised the situation thus: ‘I think we have the skeleton of a really effective service. But it’s crushed by demand’. She felt that the key issue was a lack of resources to manage it all properly. In an ideal world, each person would have at least 15 minutes with the magistrate for an interim order, plus time with a duty lawyer and a support worker. A mention hearing would have at least 10 to 15 minutes, with parties having had independent legal advice. Her ideal would be to have 25 mention matters per day on the list, plus 10 to 15 applications (interim applications, applications to vary, applications to revoke, etc.), for an absolute maximum of 40 matters per day. But that would be ‘a pragmatic figure—it’s not a perfect figure’.

Appropriate resourcing would make the job easier for this magistrate, who would like to ‘feel like I had done justice to each person, rather than shoving people through a cattle market. When the numbers get huge I don’t feel comfortable that that’s happened’.

She continued: ‘The greatest thing that I hope comes out of this Royal Commission is that the system isn’t broken—it’s a very good system—but it needs to be appropriately resourced... in order to appropriately deal with matters. I’m hoping this time and motion study will show the discord between the time that is actually given and what, in an ideal world, should be afforded to each person, and how much time that adds up to (and different resources) to guide a reasonable response’.

Clearly there are substantial and varied resources required in responding to family violence in the court. While time spent in the courtroom is one measure of the resources required, it is entirely interdependent with time spent outside the courtroom in preparation. The courtroom is the end point of an extensive court system that responds to family violence: registry staff, applicant and respondent support workers, court support services, community family violence and health service providers, duty lawyers, and police family violence liaison officers and prosecutors all play critical roles in ensuring that both the people and the matters are as ready as possible for their appearance in the courtroom. While the scope of the observational data collection in this research was limited to proceedings inside the courtroom, clearly there is significant time spent outside the courtroom as well.¹⁰⁰

Alternative legal responses to family violence

As part of the interviews, some participants suggested that there may be better ways for the law to respond to family violence. They offered two alternatives: for police to be able to issue intervention orders and for magistrates to be able to order formal mediation.

Police to issue intervention orders

One participant suggested that police should be able to issue intervention orders themselves: if this were possible, it might remove the need for affected family members to attend court when seeking an interim order. This would address the problem of applications being struck out due to the absence of the affected family member. This was quite a controversial idea when proposed in subsequent interviews, with most people expressing concern at taking the decision-making process (and the associated opportunities for making normative statements) out of the hands of the magistrate. It would also make the intervention order ‘feel like an infringement notice’, which is not appropriate. Some thought it might be useful to extend the duration of family violence safety notices instead, to allow a one-week order to be issued, potentially offering greater protection.

Magistrates to order mediation

A number of those who participated in interviews suggested that legal options and processes that are used in other areas could be expanded to include family violence. For example, a magistrate and a lawyer both suggested that the option to order formal mediation—as is available in the Family Court—would be a useful tool for family violence matters as well. They suggested that, in order to facilitate this, the current criterion for mediation—that it cannot be used if a person is violent—should be changed to allow family violence perpetrators to participate.

¹⁰⁰ As the scope of the research did not include tracking individual matters from start to finish to ascertain the time taken at each step in the complete court process, the actual time spent outside the courtroom is not known.

4.10 IMPLICATIONS FOR THE FAMILY VIOLENCE SYSTEM

Observations readily identified differences in approach between those magistrates with more experience in the family violence sphere, and with a greater understanding of family violence issues, and those whose main workload lies in other areas. These differences highlighted the need for ongoing education and training for members of the judiciary in family violence issues. Every magistrate interviewed supported the need for further training, regardless of the level of experience. Given that the Judicial College of Victoria already conducts training programs with the Magistrates' Court in family violence issues, it would likely not be overly onerous to develop further training, in conjunction with those magistrates and family violence specialists who can provide expertise input into designing further training programs. For example, the workshop run by the Women's Legal Service, in conjunction with a mock trial led by Magistrates Hawkins and Gleeson from Melbourne, was said by consultation participants to be of enormous value. This workshop could be expanded to be run with staff and judiciary from all over Victoria.

In addition to broader training, the issue of specialisation should also be considered. While some of the people interviewed advocated a fully separate family violence court, others suggested that it is not so much the formal specialisation that is required as the specialisation of experience, knowledge and understanding. For example, specialist family violence registrars undertake triage, identifying high-risk affected family members and referring them immediately to support services. Specialist magistrates have a proper understanding of the nature and complexities of family violence. Specialist legal representatives and police can quickly identify key aspects of the story that the magistrate will need to be in the narrative. Across all these roles, specialisation fundamentally allows a common understanding of the risk factors involved with family violence.

Specialisation—in terms of the development of a strong, cohesive and experienced team—was seen as an integral part of the court's response to family violence. Indeed, one magistrate praised the specialist experience and knowledge at her court, saying 'it's the local team that makes the difference'. Close teamwork is critical in this arena. For example, the morning meetings held in Ballarat—where the day's list can be divided among the solicitors and everyone can agree on how to tackle the day—were held up as critical components of their approach to managing an enormous number of matters. This integrated approach, ensuring that registry staff, solicitors and support workers work as a unified team in assisting people through the day, has been implemented in only some of the courts visited. It seems a simple mechanism to implement, but one that could significantly improve the court experience for all concerned, ameliorating the negative impact of severe time constraints.

At those courts where morning coordination meetings take place, successfully managing the demand imposed by family violence matters seems a more realistic goal. Participants from courts without these meetings knew about them and emphasised their value. They allow police prosecutors and duty lawyers to meet with clients in the same order, so that everyone from a particular matter is ready to proceed at the same time. Without them, police and solicitors meet with clients in a different order, so that one party may be ready early but the other party may not, requiring a lengthy wait. This also facilitates the optimal use of interpreters; as they tend to be booked until lunchtime, if both parties are not ready at the same time and the interpreter leaves, a matter tends to be adjourned. Morning coordination meetings also facilitate optimal use of magistrate time, reducing the time spent waiting for matters to be ready to be heard. Implementing these meetings would not be a difficult reform for the court to make, but seems to make a significant difference to managing daily time constraints.

In addition, though, there is clearly a need for more staff, particularly in the registry offices. All registry staff felt that they struggled to deal with the continual flow of family violence applications. Registrars were not able to fulfil their other job roles, and additional staff had to be brought in from other counters. The implications of this deficit may be profound. Information that should be included on the application might not be, meaning that the magistrate may not have complete information upon which to base a decision, potentially leading to less protection than there should be. The registrar may not have sufficient time to determine whether safety precautions need to be in place when the applicant attends court (such as use of the remote witness facility), potentially putting people at risk. The registrar may also not have sufficient time to explain the court process to the applicant, with a potential impact on aspects of procedural justice. With a relentless demand, this seems a priority area for the courts to address.

Specialisation, however, can be a 'double-edged sword' according to some registry staff: the experience, understanding and knowledge contributes to a better court experience for the parties involved, but it 'takes a toll emotionally—you wouldn't want to do it day in and day out'.

Several potential reforms were suggested by consultation participants to assist with managing the volume of matters. Many suggested changing list management practices: having morning and afternoon lists, adding an additional listing day, capping list sizes, or removing non-family violence-related criminal matters, or even all criminal matters, from the list. Even non-family violence intervention order matters (that is, personal safety intervention orders) could be removed as they ‘dilute the seriousness of the day’.¹⁰¹ As one participant said, ‘It’s indefensible in this day and age’ for people to have to wait all day for their matter to be called. Indeed, some people leave court and are absent for their hearings.¹⁰² Some suggested alternatives include having an appointment-based attendance system and allowing more than one courtroom to deal with family violence matters, or perhaps hearing police applications first, as they tend to be more succinct and streamlined, and therefore faster.

While staggered listing times seem logical in theory, a magistrate lamented that ‘our experience tells us people don’t turn up when they’re supposed to’. She suggested that pragmatism is needed: with lists being ‘so out of control at the moment, we can’t have efficient listing practices—we lose capacity to be efficient’. The problems are then compounded because ‘matters get adjourned that should have been resolved’. This magistrate is a ‘great advocate of capping lists’ so that they can be managed properly and allow sufficient time to be spent with each party. Other options such as docketing systems, or having magistrates designated to deal with family violence matters so that there is greater familiarity with each case, might also assist.

An improved information technology infrastructure would also assist with list management issues. In particular, having a unique identifier for each individual would allow the magistrate to have information about all the various cases in which the person is involved. This in turn would facilitate a more efficient and ‘much safer’ system. An updated or completely overhauled Courtlink system might also be able to provide information about orders from other courts, which is seen as a critical ‘missing link’ in the current system.

4.11 ISSUES FOR FURTHER CONSIDERATION

Based on both the data and the interviews, the following issues offer opportunities for further consideration and discussion:

1. Provide further professional development and training for all people involved in responding to family violence: Victoria Police, duty lawyers, court staff and magistrates could all benefit from additional and ongoing training about the nature and impact of family violence.
2. Increase the level of specialisation in family violence: In conjunction with further professional development, increasing the number of people who have a deeper understanding of, and greater experience with, family violence—including the placement of police family violence court liaison officers more widely—should both improve individuals’ experiences of the system and increase the efficiency and effectiveness of system responses.
3. Change practices to manage time constraints more effectively: Adopting a three-pronged approach should allow more efficient court practices, including a) introducing morning meetings to coordinate moving through the list; b) providing additional staff in key roles such as registry and duty lawyer positions, as well as applicant and respondent support workers; and c) examining listing practices to consider such options as having morning and afternoon lists, adding an additional listing day, capping list sizes, removing non-family violence-related criminal matters and personal safety intervention order matters from the list, and allowing more than one courtroom to deal with family violence matters.
4. Improve the information technology infrastructure: Implement a unique identifier into the Magistrates’ Court to allow magistrates access to all matters relating to any given person.

¹⁰¹ One participant even suggested a \$10 filing fee for personal safety intervention orders applications as a way to reduce petty neighbourhood disputes that take up valuable court time on ‘unnecessary and frivolous matters’. This might discourage more vexatious litigants from filing applications, opening up the court’s and lawyers’ time for the serious matter of family violence.

¹⁰² This is particularly the case as 3:00pm looms, as people have to pick up children from school or childcare.

APPENDIX A: INTERVIEW PARTICIPANTS

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|-----------|--|
| Ballarat | <ul style="list-style-type: none"> • Magistrates • Registry staff • Applicant and respondent support workers • Victoria Police family violence unit and prosecutor • Victoria Legal Aid • Central Highlands Community Legal Centre • Berry Street • WRISC |
| Geelong | <ul style="list-style-type: none"> • Magistrate • Registry staff • Court Network • Victoria Police family violence liaison officer and prosecutor • Victoria Legal Aid • Barwon Community Legal Centre |
| Melbourne | <ul style="list-style-type: none"> • Magistrate • Registry staff • Court Network • Applicant support worker • Interpreter • Women's Legal Service |
| Sunshine | <ul style="list-style-type: none"> • Magistrate • Registry staff • Applicant support worker • Interpreter • Courts Integrated Services Program • Court security staff • Victoria Police family violence court liaison officer and civil advocate • Victoria Legal Aid • Western Community Legal Centre • Women's Health West |
| Dandenong | <ul style="list-style-type: none"> • Magistrate • Registry staff • Applicant support worker • Victoria Police family violence court liaison officer and civil advocate • Victoria Legal Aid • Springvale Monash Legal Service |

| | |
|------------------------------|---|
| Wangaratta | <ul style="list-style-type: none"> • Magistrate • Registry staff • Court Network • Victoria Police family violence unit and prosecutor • Victoria Legal Aid • Hume Riverina Community Legal Centre • Centre Against Violence • Gateway Community Health |
| Maryborough | <ul style="list-style-type: none"> • Magistrates • Registry staff • Victoria Police family violence court liaison officer and prosecutor • Victoria Legal Aid • Loddon Community Legal Centre |
| Neighbourhood Justice Centre | <ul style="list-style-type: none"> • Magistrate • Director, NJC • Registry staff, project staff and program staff • Court support program staff • Court Network • Restorative Justice Pilot program staff • Yarra Family Violence Network • Victoria Police family violence court liaison officer and prosecutor • Victoria Legal Aid • Fitzroy Legal Service • Berry Street |

APPENDIX B: INTERVENTION ORDER CONDITIONS— CLAUSES 1 THROUGH 8

The respondent may not:

1. Commit family violence against the protected person.
2. Intentionally damage the protected person's property or threaten to do so.
3. Attempt to locate or follow the protected person or keep them under surveillance.
4. Publish on the internet or by email or other electronic communication any material about the protected person.
5. Contact or communicate with the protected person by any means.
6. Approach or remain within a certain distance of the protected person.
7. Go to or remain within a certain distance of where the protected person lives, works or attends school or childcare.
8. Get another person to do anything the respondent must not do under the order.

The term 'family violence' means harmful behaviour that is used to control, threaten, force or dominate a family member through fear. It includes sexual, psychological, emotional and financial abuse.¹⁰³

Other conditions are also possible, such as those relating to firearm possession or those requiring contact with a support service. Exceptions may also be made, typically relating to other orders already in place (primarily relating to child access), allowing contact via lawyers or for the purposes of mediation or counselling, and allowing contact in the presence of police for the purpose of collecting one's property. Magistrates may also create conditions specific to the circumstances of a particular matter. For example, in one matter with two sisters involved, a condition on each sister's order specified times during which each sister was allowed to visit the mother in her nursing home. Orders may thus be quite individually tailored.

¹⁰³ The wording used in this list of conditions is not the same as that found in the legislation itself. Rather, it is a plain English version, which, along with the definition of family violence, is taken from the Victoria Legal Aid website, at <https://www.legalaid.vic.gov.au/find-legal-answers/family-violence-intervention-orders> (last accessed 23 September 2015).

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