

## ROYAL COMMISSION OF ENQUIRY INTO FAMILY VIOLENCE 2015

Submission from Moreland Community Legal Centre Inc.

### **Introduction to Moreland Community Legal Centre Inc**

Moreland Community Legal Centre Inc ("MCLC") has been serving the Moreland district since 1981. Approximately 33% of our case work is family law including family violence. Our catchment has a wide ethnic diversity and higher than average numbers of older settled migrant groups as well as newly arrived migrant groups. We have previously been funded to provide bi-lingual pamphlets touching on grandparents and grandchildren and family law. We are a founding member of the Moreland Family Violence Network.

### **Summary**

This submission will focus on the family violence experiences of older women and of young people and will provide examples from our casework.

This submission will argue that:

1. Unresolved philosophical debate about the causes of family violence have served to impede the development of a coherent strategy to maintain the safety of families and have led to the development of ad hoc programs with immeasurable goals to support family safety.
2. The pre-dominant purpose of all government measures and programs supporting family safety should be the **prevention** of family violence. All funded programs and legislative reform should be measured against this goal. Legislative reform aimed at criminalizing behaviour, increasing sentences, or diminishing established forensic procedural rights will all generally fail this test, as these are all deployed after family violence has been committed.
3. the Family Violence Risk Assessment and Risk Management Framework, referred to as "the CRAF" and currently used for identifying risk of family violence has demonstrated shortcomings when it comes to predicting the risk of violence to older women.
4. The risk matrix employed by the CRAF should be re-evaluated and re-developed based on objective data drawn from forensic and psychiatric evidence concerning the determinants of family violence and the propensity of people to use family violence, particularly by persons with mental illness.
5. The current family violence response from front line agencies to the family violence experience of both older and younger cohorts needs resources that might assist those front line workers better identify risk in complex and conflicted families, particularly risks of family violence being committed by persons with mental illness.

### Question Three

*Which of the reforms to the family violence system introduced in the last ten years do you consider most effective? Why? How could they be improved?*

#### **Development of the current response - Assessing risk - the Family Violence Risk Assessment and Risk Management Framework, known as the Common Risk Assessment framework (“the CRAF”)**

In 2005 Victorians saw the emergence of the Integrated Family Violence system and over a period of years there was wide consultation about how to best prevent violence. Two developments from that period of activity were:

1. the development and rollout of the CRAF from 2007, and
2. the very much expanded Family Violence Prevention Act (2008)

Now after ten years it is timely to review the effectiveness of these features of the family violence prevention strategy. The plan was to co-ordinate the approach to assessing risk of violence across the agencies. All service agencies now should be assessing risk in the same way and based on the same factors. The aim was to minimise the trauma to victims and to prevent them from telling the same story over and over and to provide a standard approach to determining entitlement to assistance from agencies and the protection of court orders, and to promote individual safety planning.

The CRAF promotes the use of a standardised risk assessment system comprising three parts. The first part is the Victim’s assessment of risk, the second part is an evidence based list of risk factors, and the third part is professional judgment.

The 26 identified risk factors comprise 5 risk factors specific to the victim, 18 risk factors specific to the perpetrator and 3 risk factors specific to the relationship. Some of these are identified as being associated with potentially fatal violence.

This submission accepts that violence is gendered and that as a result the CRAF is modelled on risk factors for violence to women. Its biggest flaw is that it is modelled on the experience of intimate partner physical and sexual violence and the experiences of paradigmatic younger woman-with- children.

Some of the risk factors relating only to perpetrators are relevant to assessing risk to both older and younger cohorts, such as previous violence or the use of drugs and alcohol. However, some factors relevant to the victim such as “recent pregnancy” are clearly unhelpful. There seems a dearth of evidence available for the determinants for violence to older women to be applied in the risk matrix, and very little evidence of the prevalence of that type of family violence.

The family violence that may be experienced by older women in the form of threats, control, social isolation, and financial control bordering on neglect is widely misunderstood, even by older women themselves who might never identify or self-report themselves as abused.

#### Subjective assessment component

The importance of the subjective assessment made by the person at risk of family violence is that it is the victim who ultimately assumes the risk and decides whether support and protection is needed. So the CRAF is used to assist workers who work with people at risk of violence to make some assessment of risk, but the final decisions are often made by the women themselves, including decisions about potential risk to their children. The issue arises whether the decision about risk is most competently made by close family members, particularly when assessments are required of persons with mental illness.

Subjective decision making about safety includes an evaluation of a range of other factors. In older people these might be feelings of family loyalty and obligations of parenthood to support children whatever their age and mental state. In younger woman these might be a (possibly accurate) assessment that there is no practical alternative, a fear of retribution, or simply optimism combined with promises of change.

The philosophical basis for the assumption of risk is that women are adults and free agents and therefore in the exercise of the right of self –determination, they are free to make the decision about whether they need assistance and protection.

#### Mental Health as a risk factor

While mental health is described as a risk factor for both victims and perpetrators, it is not described as a factor associated with the risk of fatal violence, but the mental health services are described as a key entry point of the integrated system.

There is no reason to assume that family members are the best persons to make assessments about the risk of violence occurring when mental illness is a factor, whether they should leave or stay or permit time to be spent with children, when professional clinicians find it difficult to accurately predict that risk.

There seems to be an official reluctance to grapple with the unpalatable possibility that a person suffering from a mental illness might present as a risk to the safety of others. The Charter declares our rights to be equal and free of discrimination (which includes people with mental illness) and that we are entitled to have a private family life.

So the suggestion that mental illness as a risk factor for family violence should be further investigated is usually rejected as both discriminatory and met with the

assertion that mental illness is simply an excuse by men to avoid taking responsibility for their deliberate choice to use violence.

This assertion cannot be always true, particularly if we think of the tragic death of eight young children in Manoora in North Queensland in recent times. We submit that it is timely to consider whether risks associated with mental illness should be further investigated and our knowledge of the risks further refined.

Some forensic psychiatric investigation and research has been undertaken concerning the potential of persons with mental illness to resort to violence. It is true that most of the research has been in the context of trying to find a reliable way of assessing the risk of violence occurring or re-offending occurring on parole. It is our submission that that data if it exists should be fed into the risk assessment matrix and if it does not exist then research should be commissioned in order to find more reliable determinants for assessing risk, particularly to older people who take on the care of their adult children living with mental illness.

The approach to risk assessment that combines clinical judgment with actuarial evidence of risk factors and a subjective assessment is drawn from another field, that is the mental health setting<sup>1</sup>, in which the ability of mental health in-patient to subjectively determine their wellness in a hospital setting and their own risk of relapse of mental illness is considered along with other factors.

With respect to the authors and developers of the CRAF this is quite a different issue to the decision taken by a family member as to assessing their safety and the safety of their children. We submit it is also timely to question whether the “free agent” approach that posits that women are the best judges of their own safety and the safety of their children should continue to be supported.

## **Development of the response - Family Violence Protection Act 2008**

### Expansion of rights to seek protection and effect on customary procedural rights

The earliest response to family violence was the development of “shelters” and recognition of the practical support needed by people experiencing family violence. Legislative regulation lagged the development of the “shelter” movement by decades. This is partly because of philosophical uncertainty about whether family violence is a health problem or a legal/human rights issue. More recent focus on human rights resulted in the current Family Violence Prevention Act (“the FVPA”)

The FVPA was developed after much consideration and consultation, particularly with the Federation of Community Legal Centres. Argument even then ranged

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<sup>1</sup> Doyle and Dolan: Violence risk assessment: combining actuarial and clinical information to structure clinical judgements for the formulation and management of risk. In Journal of Psychiatric and mental health nursing ( 2002) 9 p 649-657

between whether family violence ought to be identified as a criminal or a civil wrong. Ultimately, it was thought better to use civil wrong approach as it was believed that the statement of the burden of proof of evidence “on the balance of probabilities” would make it easier to obtain orders for the protection of people experiencing family violence. In other words, it was thought that the criminal justice system focused too much of the procedural rights of Defendants than on victims of family violence.

This attitude has shaped the way FVPA emerged with evidentiary restrictions on cross-examination and requirements that certain types of witness may be removed from the physical proximity of alleged perpetrators. The FVPA also provides for a range of procedural measures to protect people experiencing family violence during the forensic process considered too daunting for them. (Yet more change is being promoted during this consultative process.) The FVPA also developed as a hybrid quasi-criminal jurisdiction with the application for an intervention order classified as a civil matter yet strangely it is often commenced by police, served by police and prosecuted by police and with a power of detention to secure an appearance somewhat but not exactly like remand. The initial dispute is defined as a civil matter but a breach of an order is prosecuted as a criminal offence.

In everyday experience it is not uncommon that in Family Violence cases, evidence in chief is presented in the form of an Affidavit, the credibility of which is simply assumed and sometimes evidence is given through a third party usually without demur.

Another feature of the FVPA was the very much expanded definition of family violence which now includes economic violence and psychological violence.

#### Philosophical uncertainty - Aspects of the “power struggle” approach

A political analysis of interpersonal violence posits that men use violence against women because they can. On this view, behaviours such as a determination to prevail or communicating through violence are not a manifestation of pathology but of a power struggle and of men acting on their belief in entitlement. Accordingly men should be held accountable for their actions.

Such arguments have influenced the shaping of the legislative definition of family violence to include controlling behaviour and the legislative requirement of changed evidentiary and procedural rules, which are promoted as an effort to “even up the odds” of a successful application.

However, this “power struggle” approach is at odds with the CRAF itself and with any structured assessment based on risk factors. For if we accept that family violence is entirely political struggle between oppressors and oppressed, we are constrained to observe the resultant violence as simply a manifestation of exploitation and the inevitable backlash that it creates. On this view, any efforts at prevention must be political in nature and take the form of privileging one part of society.

### Legal / rights based approach

Approaches to family violence can either be “front loaded’ or “back loaded”. One problem with looking to the legal system for some kind of redress is that it simply becomes new ground for arguments about privileging certain groups, in which the aim of safety becomes secondary and the goal of prevention completely lost. Legislative reform of this nature offers the political advantage of government being able to make a declaratory statement without providing a single cent of funding.

The worst aspect of the focus on the legal system for redress is that it is, quite simply, all too late. Court proceedings, no matter how promptly initiated, usually occur after family violence has taken place.

This commission will hear about and be asked to recommend a range of back-loaded forensic measures for change such as: making family violence a crime, increasing existing penalties for breach offences , creating a central register of family violence abusers, making suspects wear electronic ankle bracelets, prohibiting cross-applications, refusing bail on unrelated minor matters and more. All such measures should be measured against the goal of likely effectiveness in the reduction of family violence.

The Charter of Human Rights and responsibilities Act (2006) ( “The Charter”) declares the right to protection of families and children ( s. 17), recognition and equality before the law ( s. 8) and the right to privacy, that is the right not have to have our family and home arbitrarily interfered with (s.13).

If our legal system is to become the new battle-ground for the political struggle to even up the odds we should all be entitled to expect it should at least continue to ensure our rights to a fair hearing.

Undermining the rights of participants by means of refusing bail for an ulterior purpose, on minor matters such as warrants for failing to appear on summons, or refusing bail for any reasons other than those set down in the Bail Act not only breaches the person’s right to freedom, it diminishes us all in our expectation of a fair and impartial legal system.

### Gaps in co-ordinated response

The political /behavioural dichotomy continues today and it is still unsettled as to whether family violence is a health issue or a legal and rights issue. This has resulted in fractured approaches to prevention. Whereas the health funded agencies are working toward an integrated co-ordination approach, with access to practical assistance and emphasis on education programs, the legal and rights based agencies are separately funded and pursuing their own service delivery, advocacy and education programs largely independently.

One example of the successful health funded educational programs currently promoted to address family violence is the Respectful Relationships program, introduced in schools to reach young persons and change attitudes to family violence.

The amalgamation of a number of current organizations such as: Domestic Violence and Incest Resource Centre, Domestic Violence Victoria, Women's information and Referral service, and the Women's Legal Service could deliver both savings in efficiency and build the capacity for an co-ordinated single agency to collect data and develop a coherent plan for advocacy and service delivery in the prevention of family violence.

#### Investigation by police

Under the new FVPA police are able to give people a direction to leave the home by means of the service of a family violence notice. The police code of conduct in family violence matters mandates them to investigate in each reported instance of family violence, and to do a welfare check of occupants.

We all know television isn't real life. In real life Police rarely investigate a minor assault between parties to definitively determine "who started it". There is little or no forensic investigation in most assault cases. Suspects either make a confession or the victim of an assault makes a statement that identifies an offender. In cases where both parties make allegations of assault Police tend to choose the person most seriously injured and call that person the "victim".

In our case work experience and in a similar way Police sometimes apply a formulaic approach to family violence, and make an early decision as to who is the fomenter of conflict and who should be removed from the home. In a two person couple, this person is usually a male. In a family this person might be a loud mouthed teenager. In an older couple this person will be any younger person who does not live there all the time.

This sometimes formulaic approach fails to take account understand that some families are rent with conflict and one family member might persist in trying to protect another member from a third family member. It is also possible that all family members might be reluctant to tell police the truth about the level of conflict.

Police seem to fail to understand the dynamic of family violence and to fail to properly investigate allegations raised that one person is protecting another from violence. In such cases a referral and investigation should be made, rather than simply acting to remove the most agitated person. We have in our case work experience dealt with cases where police have, (and in one case in one such case persistently) "backed the wrong horse".

## Example 2

█████ was a █████ year old in conflict with his step father. Police sought and obtained an intervention order to expel him from the house at the behest of his step father. The step- father was present at court but not the mother. The boy explained that his mother was subjected to family violence by her husband and that she would contact him via telephone when she needed his help and protection and that he would go to the house to protect her from his step-father.

When it was explained to him that if he agreed to the intervention order that he would be prohibited from attending the house for any purpose even to protect his mother he indicated his intention to keep doing so if his mother called for aid.

When he was then advised that this mother should call the police he instructed that she would never do that because of fear of retaliation, to the extent that she lied about the violence occurring when directly asked by police. The police were satisfied that removing the boy from the situation would restore safety to the family and did not further investigate the mother's safety.

Our lawyer spoke directly with the step father in an effort to negotiate telephone contact between mother and son and was chilled by his presentation as he appeared to be aggressive and almost non- verbal, even in the court setting.

Three months later the step -father stabbed both mother and son, in the presence of the █████ younger children, exactly as the boy predicted he would.

### Inability of front line agencies to identify risks associated with mental illness and lack of practical assistance for people suffering a mental illness

Currently mental illness is listed as a risk factor for both Victims and Perpetrators of family violence in the CRAF, but front line workers sometimes fail to recognise aspects of risk of violence associated with mental illness and have no resources upon which to draw for reliable advice. Even those workers who are well informed and clearly understand the risks have no practical resources to use to support people suffering mental illness.

Police will freely admit that the most common resource called upon by police for advice is the Crisis Assessment Team ("CAT team"). The CAT team might be able to observe if a person's thinking is disordered, but the CAT team does not assess the risk of family violence. The CAT team makes an assessment of the mental health of the presenting person as to whether they are in need of medical treatment. Hospital is not a short term accommodation option. In all hospitalisations, only acutely unwell persons will be admitted for treatment and persons with chronic (opposed to acute) mental illness are discharged every day.



People with dual diagnoses of mental illness and drug and alcohol problems fare even worse and are typically refused admittance even if they are seeking it, as they are considered to have other means at their disposal to deal with their problems, such a rehabilitation programs for drug and alcohol use.

How can we tell if any person is at risk of committing violence? Those who cause disquiet in others might simply be panicked and distressed and might unnecessarily be accused of being violent. People who make threats of violence do not necessarily follow through with them. At other times persons; particularly non-verbal persons might never clearly articulate any type of threat in advance of taking violent action.

Forensic psychiatrists have grappled for years with the propensity for predicting violence and for re-offending for the purpose of considering parole applications. If the determinants can't be reliably identified right now let the investigatory work be commissioned for the purpose.

### Example 3

■■■■ was another ■■■■ year old boy in an intimate partner relationship with a woman aged ■■■■ years they had a baby aged ■■■■ months. The baby had been conceived at a time when sexual relationship would have been prohibited between them. Both were cannabis users and she introduced him to cannabis when he was ■■■■ years old. He was isolated from his own family who lived six hours drive away in a regional city. They lived with her own mother (the grandmother of the baby) who also trafficked cannabis. Police were called in he was involved in a fight that involved all family members, as a result of which he was injured. There was little doubt that his mental state was fragile and affected by the cannabis use and that they wanted him to leave. He refused to leave because he claimed that he had the day to day care of the baby and that the mother was inattentive to the baby's needs.

The police and DHS intervened by bringing both a protection application in respect of the baby and an application for an intervention order and criminal charges against him and he was remanded in custody. The boy was remanded to one suburban court on police charges and for an intervention order application at which the partner did not attend, because the Protection order in relation to the baby were listed at the Melbourne Children's court. The response was to remand the boy to one court and the list the protection application about the baby in another court.

The suburban Magistrate refused to adjourn to permit transportation of the boy to so that he might attend the protection hearing of his own child and to give evidence. He was remanded on the police charges. He was eventually bailed to another address, completely alone and with no prospects of restoring the relationship with his child. The assault on him was not investigated by police, the sexual exploitation of him was not investigated by protection workers on the basis that he was ■■■■■■ years old by the time it was reported.

The fact of the grandmother trafficking drugs, the injuries to him, his age when his own child was born: all of these things would have been known to Police. Nonetheless he was identified as the “trouble maker”, charged and remanded at the age of [REDACTED] years old.

#### Question Six

*What circumstances, conditions, situations or events, within relationships, families, institutions and whole communities, are associated with the occurrence or persistence of family violence?*

### **Family violence - older persons**

#### Family violence experienced by older persons

The subtle nature of family violence is not properly understood and the tendency of older parents to ignore their own safety and to continue living in proximity with potentially violent adult children due to feelings of obligation is simply not comparable with the paradigmatic approach in which younger women who can usually be persuaded to take protective action for the sake of their children. Older women often don't prioritise their own safety out of loyalty and support of their adult children. In our experience older clients often make statements like; “I am the only person who can handle him” when what they really mean is that no-one else is available.

Older parents typically present for legal assistance and other services not for themselves but for their adult children with mental illness, drug and alcohol problems, lack of accommodation (and many of them blame the no-fault divorce system). Older people will also often fail to identify themselves as potential victims of family violence, if the conduct falls short of physical violence. Some believe that it is an unfortunate aspect of marriage or culturally condoned.

Family violence in this cohort often takes the form of controlling behaviour. Examples of control are; threats to withdraw supports and services, threats to put a person in aged care, threats to harm a family member or pet that is dear to the older person.

In fact the most common form of abuse perpetrated on an older person is financial and is perpetrated by women, usually daughters, against their elderly parents.

Older women also experience intimate partner family violence in a different way. Physical violence can abate to a kind of continuous controlling behaviour such as yelling that carries with it promise of a recurrence of the physical violence so that it has the same effect of subduing the person. This behaviour becomes normalised over time and is not recognised as abuse by the victims. Often it becomes so entrenched that the victim and perpetrator have developed an unhealthy kind of co-dependency and any interference is rejected.

Older women are also more likely to suffer ill-health which makes them more likely to become dependant on a family member and less likely to have the energy to assert their rights and to seek assistance from an outside agency. This is a significant barrier when support agencies insist on self-referral and refuse to endanger their staff by making home visits.

Older people of both sexes are more likely to suffer form dementia, and this number is likely to increase rapidly given our ageing demographic. The CRAF associates this fact with an increased likelihood of risk of violence towards carers by affected persons. This stance does not consider the neglect and abuse experienced by persons affected by dementia and the forensic difficulties in identifying and investigating such abuse.

### Older persons and the Elder Abuse Prevention Strategy

Investigation into elder abuse in Victoria in 2006- 2007 resulted in the Elder Abuse Prevention Strategy ("EAPS") which commenced in 2008 and strategic planning now sits within the Victorian Health Priorities Framework.

Initially consideration was given to whether mandatory reporting of elder abuse should be enacted, similar to mandatory reporting of child abuse. Ultimately the guiding principle was that the free agent model should be adopted and that elder abuse should be countered by resort to the Family Violence Prevention Act.

While notionally Family Violence Protection orders are available to older persons, the reality falls far short. In the experience of our partner agencies and our own casework, it is almost impossible to obtain an FVPA intervention order for the protection of an older person on the grounds of financial abuse alone. Police and Magistrates fail to understand the type of experience of family violence of older people and the advocacy of adult children in an effort to obtain intervention orders is regarded by them as interference. Orders have been sought by police against an advocating party.

#### Example 1

██████ is a middle aged woman and is the only child of settled migrant parents. She initially sought legal assistance when her father agreed to his wife being discharged from hospital weighing only 37kg and with an open wound from a withdrawn PEG feeding tube. The hospital was complicit in this discharge planning because they needed the acute bed which she had occupied for too long.

Her mother was returned to home without services, wound care, or medicine. Her father had cognitive deficits due to alcohol consumption and was not capable of recognising or meeting his wife's care needs. After return to home, he cancelled all home cleaning services and refused to take her out for medical and dental appointments. He had always controlled the family finances by means of a single bank account into which both their aged pensions were paid. He refused to pay for

her medicine and special dietary supplements. Essentially her mother was subjected to neglect at his hands.

Her mother was not cognitively deficient, at least to the degree that would have supported a guardianship order, however she had over a period of fifty years been cowed into submission by her husband. She would not gainsay him on any issue and in any case she was too physically weak and unwell to protest her rights.

Arguments between father and daughter about her mother's care needs and the need to release jointly held funds for her treatment resulted in him threatening to kill her and later physically assaulting her. On the basis of the threats and assault ██████ obtained an Intervention Order, but was not able to obtain an associate order to protect her mother. Her father never obeyed the intervention order and continued to make threats to kill as ██████ continued to visit her mother and to make arrangements for the return of services to support her.

After numerous threats of a similar nature, she was given legal advice to report him to Police for breach. The police response was to advise her to "stay away from her parents" or she would be charged with aiding and abetting an offence. Being a middle aged woman with no experience of dealing with the Police she was shocked at their response and their refusal to take any action to enforce the court order. Again lawyers intervened to advise the police that their power to charge victims (and to threaten to charge them) with aiding and abetting had been abolished by the new Family Violence Prevention Act. Her need to attend the house to care for her mother was also explained to Police.

Months went by and eventually her father was interviewed by Police for the alleged breach. In his recorded interview tape he expressed his anger towards her and admitted that he threatened her "when she was being silly". There seemed to be sufficient evidence to support a charge, however Police told ██████ that they felt that they could not charge him as "it would kill him".

When she refused to accept this position she was taken into the police station and given a family violence notice herself and told to stay away from her parents. Police claimed to have conducted a welfare check of her mother and that "she was fine". This was plainly contradicted by her mother's admission to hospital the next day delirious and with a high fever. Police went ahead with an application on behalf of both parents for an intervention order against her. The effect of such an order was to completely isolate her mother in the control of her husband. It took seven visits to the Magistrates' Court to revoke one order and vary the other. He was never charged with breach and Police continued with their position that he deserved to be protected from ██████.

It is acknowledged that neglect is not currently within the definition of family violence, but in this instance Police utterly failed to acknowledge the deleterious effects of financial control on the health of an older person who lacked the means to assert her

rights. They persisted with their characterisation of [REDACTED] as the funder of conflict in the family, rather than the one person advocating for protection of her mother. They did so, in our view wilfully, because they had been challenged in relation to their powers, and because they are not trained to recognise the subtlety of family violence experienced by older women.

### **Mandatory reporting**

One of the responses to abuse of older people likely to be received by this commission is the suggestion that there be mandatory reporting of violence towards older persons. The worst thing that may be said about mandatory reporting is that it occurs after the event.

At the time the EAPS strategy was developed some consideration was given to this approach but it was rejected in favour of the family violence model of the independent rights holder. This view posits that older people are not like children and have the rights to make decisions about whether to seek the protection of a court order. This view asserts that to characterise such persons as subjects in need of protection is to diminish their independence and autonomy. In this context comparison with other countries, particularly with the United States is unhelpful as many of those states have laws making self-neglect a basis for intervention. We don't. This permits a greater degree of official intervention in a person's life while less emphasis is placed on a person's autonomy and individual rights.

If mandatory reporting is recommended consideration needs to be given to which classes of professionals will be mandated, and what will be the consequences of their failure to report. Consideration would also need to be given to the provision of practical resources to support the person once identified as abused.

### **Neglect**

Neglect of a family member is not currently part of the definition of family violence contained in the FVPA and will not form a ground for an order unless it occurs in conjunction with financial control, which can be proven. It characteristically occurs when one family member is either older or is extremely unwell with high care needs. Examples of neglect are: refusing or failing to obtain (or refusing to pay for) medical treatment medicine or support services, turning away external service providers who might provide assistance.

It might be seen as difficult to place an obligation on adult children to care for their parents, although it has been achieved in some countries, for example China. On the other hand, there can be no doubt that there is an expectation that people in 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.

We respectfully submit that neglect of a family member should be included in the definition of family violence

## **Family Violence – young people**

### Homelessness – young people as victims

It is understood that a factor in homelessness of younger people is the experience of family violence as they leave home to escape violence being perpetrated upon them. However it is less well understood that young people who have been removed from home for their own protection also have a very high risk of homelessness once they reach an age to leave institutionalised care.

In other words, there is a wide spread failure to thrive experienced by care-leaving young adults. If a proportion of them are in that precarious position due to family violence preventing them from living at home, then transitional housing resources and training and support to live independently should be provided to this group of young people.

### Homelessness - young people as perpetrators

Increasingly parents are encouraged to expel young people from the home to prevent the use of violence. This is so despite the fact that the young people are of an age when their parents still bear legal responsibility for supporting them.

At one time there was a protocol in the Children's Court which required that all matters involving child respondents in defended matters to be transferred to the Children's Court at Melbourne, because expulsion from home might result in the child being made homeless and therefore in need of care and protection. In our experience it must be noted that the protocol was widely ignored by suburban Magistrates who took the view that there should be no unnecessary delay to hearing the application for an intervention order which might risk the safety of the applicant. It also has to be observed that the protocol failed to take account of the risk of homelessness of child respondents who consented to orders.

Nonetheless the current legislative regime still does not properly address this issue. Section 83 of the FVPA provides when a court is contemplating an order to remove a child respondent, it is desirable to consider effect on the stability of the child's education or training. It does not refer to other factors such as the potential for homelessness if the child is not currently in school or training.

Section 73A of the FVPA permits the Children's Court to order an assessment from DHS, but the current listing protocol in the Children's court does not seem to take

into account the need for a specialist protective enquiry to be made prior to making this type of order.

This is a very serious gap in the protection of young people whose rights to protection are declared in s. 17 of the Charter. We wonder just how young a child would have to be before the act of expulsion was viewed as a failure of parenting rather than prevention of violence by the child.

Question Nineteen

*How can responses to family violence in these groups and communities be improved? What approaches have been shown to be most effective?*

### **Data collection**

There can be no doubt that collection and analysis of accurate data to build a reliable evidence base the best approach towards improving safety in a range of other contexts for example safety in the workplace. But from whence should the data be collected?

Various agencies already collect data independently but in a way which is so inconsistent with each other that it seems almost impossible to accurately form any conclusions.

Police keep records of each contact with members of the public, however it is not clear whether their records can be collated in terms of the relationship between victim and offender, such as parent/child husband/wife and so on. Court statistics for assaults report only the number of reported, investigated and proven or settled cases. Other agencies that provide practical assistance can report the extent of unmet need of which they are aware. The Coronial service contributes to the National Coronial Information system which contains records of cause of deaths, if the deaths are reported to that office.

One of the suggestions likely to be made to the enquiry is that medical records should be analysed as it is likely to show disparity between the numbers of those reporting to police and those seeking medical assistance for injuries. Such information would likely identify those matters which resulted in physical injuries, however would be affected by the extent of denials about the cause of injuries.

Any enquires made of persons directly depend on both self -reporting and a shared understanding of family violence.

In a 2009 report on financial abuse of elders <sup>2</sup>came to the conclusion that :

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<sup>2</sup> Darzins, Lowdnes Wainer: Financial abuse of elders: a review of the evidence (2009) at p.4

One of the biggest problems detected in the literature is the absence of an operational definition and of empirical data after the intervention of various strategies” and “quantification of the size of the problem remains to be undertaken”

On important first step towards providing useful information to inform legislative reform and government programs would be the development of consistent approaches to the collection of data that could then form a basis from which to define more accurately the determinants of risk of violence as well as measuring the effectiveness of different types of interventions.

### **Endorsement of other submissions**

We endorse the submission made by Victorian Aboriginal Legal Service that a culturally appropriate approach to delivery of family violence services needs to be provided to Aboriginal and Torres strait islander clients and that the nature of family violence and the nature of families is experienced in a different way in those communities. There is unmet need for funding of defendant support services such as mental health, housing and drug and alcohol counselling for respondents.

We also endorse the submission made by Seniors' Rights Victoria that family violence is experienced in a different way by older members of the community and we note from our experience that the police in particular are unaccustomed with dealing with family violence issues that don't fit the paradigm.

Lynne Barratt

Moreland Community Legal Service

The views expressed are those of the writer and do not necessarily reflect the views of the organisation.