

Submission to the Parliamentary Inquiry
into a better family law system to
support and protect those affected
by family violence

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Authorised by:

Annette Gillespie

Chief Executive Officer

Phone: (03) 9928 9622

Address: GPO Box 4396, Melbourne 3001

Email: annette.g@safesteps.org.au

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Introduction

About safe steps Family Violence Response Centre

safe steps Family Violence Response Centre is the state-wide 24/7 service for women and their children experiencing violence providing immediate support, information, advocacy, referral and emergency accommodation, recovery services and prevention initiatives. **safe steps** is the central point of contact for the specialist family violence service system across Victoria.

About this submission

The Committee has established as part of its call for submissions to this Inquiry that hearing from women and children with a lived experience at the intersection of family violence and the Family Law system, is a priority. Likewise, **safe steps** Family Violence Response Centre is committed through our strategic objectives to ensuring that women and children's voices are heard, informing the community about their experiences of family violence.

As just one initiative to achieve this goal **safe steps** operates a Volunteer Survivor Advocates program, where women who have experienced family violence are trained and supported to share their story with the wider community, bringing to light the effects of family violence. A key focus of this program is to educate the community and the media to better understand that family violence can happen to anyone, regardless of education, economic status, age, religion, culture, or ethnicity.

Our approach

We welcome the opportunity to make a submission to this Inquiry and to continue to give voice to the experiences of women and children who we represent. To inform this submission, we undertook a range of consultations, including:

- an invitation to our Volunteer Survivor Advocate network to provide comment via email
- an invitation to our over 4,400 Facebook followers to share their stories
- face-to-face consultation with frontline service providers working at our refuge
- consultation with our team of 24/7 telephone response staff members, both face-to-face and through a noticeboard discussion
- a literature review which encompassed Government and not-for-profit reviews of the Family Law system together with front line worker and victim survivor case studies

Our findings

Through this consultation we have heard a wide range of experiences from women trying to navigate the family law system and identified some recurring themes:

- a lack of sufficient information about rights, supports and potential outcomes for survivors of family violence trying to navigate through the family law system
- the adverse effects of Family Law Contact Orders for children of separated families, where family violence is a factor and where family violence screening is not conducted with a child prior to a determination of their best interests
- the increased risk placed upon women residing in undisclosed refuge and/or emergency accommodation, where they are required by Contact Orders from the Family Court to meet with the perpetrator in spite of an Intervention Order

In order to protect the privacy and safety of the women and children who we spoke with, all names in this submission have been changed.

Summary of Recommendations

1. That all judicial, legal, and non-legal professionals in the family law system undertake mandatory training in the complexities of family violence and how it can affect the people involved in family law proceedings. This training should address the gender-based nature of family violence and should specifically seek to promote a shared understanding of family violence across disciplines, Courts, and other professions who interact with the family law system, in order to address the issues stated above.
2. That the Family Courts be appropriately funded to be able to employ specialist family violence workers, who are reflective of the diverse people and communities who go through the system, to support and provide timely and accurate information to survivors before, during and after their court appearance and across their journey through the family law system. These workers would undertake regular family violence screening of the women, her children, and the perpetrator in order to update the Court and enable it to make a more informed, survivor-centric decision.
3. That specialist family violence services have a mechanism to advise the Family Court when a women is placed into high security emergency accommodation or refuge and that Contact Orders are immediately ceased upon notification, pending a review of the situation and the level of risk placed on both the women and the child/ren.

4. That more specialist family violence court divisions be set up in Magistrates Courts across Australia. That these divisions consider broadening their approach to a person-centred view, rather than a matter-centric view and consider whether these divisions could be better informed of the lived experiences of survivors through an advisory panel.
5. That the Committee consider recommending the establishment of a panel of representatives with lived experience of family violence to provide ongoing recommendations for the improvement of the Courts and the Family Law system.
6. That separate family violence screening of children should be conducted where shared custody or shared time orders are being considered in Family Court cases.
7. That Section 60B should be amended to state that the best interests of the child are met by children having every opportunity to have their concerns represented and preferences addressed.
8. That measures are introduced to discourage perpetrators and their legal representatives from the practice of issuing subpoenas to specialist family violence services for confidential client files.

Family Violence and the Family Law System

Introduction

In recent years, there have been two attempts to reform the Family Law system to better accommodate the needs of family violence survivors and their children (in 2006 and 2012). Whilst each of these reforms has secured some improvements to the systems that preceded them, specialist providers of family violence response, like **safe steps**, are still confronted daily by examples of outcomes that fail the women and children the system is meant to protect. The complex intersections between family violence and the family law system can only truly be understood by listening to the stories of the women and children who have experienced it first-hand. This review is an opportunity to learn from those first-hand experiences and to finally create reforms which truly address the needs of women and children seeking safety and security.

It is horrific and soul-destroying

- Mary

Mary's quote is all too similar to many of the stories we heard throughout the course of these consultations. The women and children who need our services are often in a situation of limited resources, heightened state of fear and distress, and often caring for young children and/or young people. Safety is their number one priority.

Accessibility of the family law system to survivors of family violence

Recommendation 1: Training and Education

That all judicial, legal, and non-legal professionals in the family law system undertake mandatory training in the complexities of family violence and how it can affect the people involved in family law proceedings. This training should address the gender-based nature of family violence and should specifically seek to promote a shared understanding of family violence across disciplines, Courts, and other professions who interact with the family law system, in order to address the issues stated above.

The family law system is not accessible to, nor does it sufficiently support, women and children with a lived experience of family violence. The experience of a number of women who access our services and have been involved in the family law system is that of destabilisation, uncertainty, and fear.

I came from a domestic violence relationship and was taken to court by my ex to gain access to my children. I found this whole process difficult as unless you've reported it to the Police and your former partner charged, the violence is swept under the carpet. We went through the whole process of child psychologists, etc. ... who not only seemed to be one sided towards the abuser but had a way of making the victim feel inadequate and tried to make out that I had made it all up. It was degrading and uncomfortable.

- June

June's adverse experience with the family law system demonstrates a lack of understanding by Courts of family violence and inadequate support for survivors to navigate through the system, especially where no previous police or Court interactions were taken. June was required to take out a lifetime intervention order against her former partner as a result of further violence since the Family Court process had begun. In spite of this order, June is still required to share custody of the children. (This incompatibility between State and Federal law is discussed further below.)

My previous lawyer ... advised me that I should not express any of the fears I had for my child, nor even raise the issue of psychological abuse, as I would be

perceived as an 'alienating' parent, and have custody of my youngest child given to my ex-husband ...

[I]f I voiced my concerns or even expressed the assault against me and the perjury of the father to the police, I would be judged as alienating and my child would be in effect taken away... the fact that his violence against me was so diminished as to be taken as untrue was not acceptable. The effect of this has made me feel very scared of the process, and hesitant around representatives of the Court. My concern for my [child's] mental health and well-being were ignored and in fact trivialised.

- Harriet

Harriet's experience is evidence of a system that does not appropriately support or respond to survivors of family violence. That she was advised not to act in a particular way is evident of a system that emphasises the adversarial over the supportive. Harriet's negative experience was further exacerbated by her, and her child's, interactions with Court-ordered psychologists. Harriet states that the first psychologist appointed described Harriet as "deceptive" and claimed that her pre-school-aged daughter had been "coached" in her response to questions because Harriet had tried to prepare her for the process. Much later, however, a second psychologist identified significant psychological abuse being perpetrated toward the child by the father. Harriet also felt that the psychologists and family report writers failed to understand the nuance of family violence situations or to appropriately assess the psychological impact to her young daughter.

We did have to undertake a court ordered family report, and whilst the psychologist recommended the above orders for our child, the process was frightening and humiliating. The psychologist was very adversarial in her approach, and because I was so frightened of appearing 'alienating', she judged that I was 'cold' and non-responsive ... The mental health professionals who undertake family reports are not as fully trained in domestic violence as necessary. Certainly the two court report writers did not observe the psychological abuse involved in my daughter's case ...

It is a double-edged sword; if you present to a family report writer with all of your fears and stresses showing, you are judged as mentally unstable—especially if you are a protective parent. If you attempt to minimise your stress and present as reasonable and rational, you are either judged cold or you present an act that is designed to appease the court process and 'prove' that you are willing to have your child have time with an unstable and psychologically damaging parent, whose personal rights are more important than the mental well-being of the child.

- Harriet

In her 2014 paper, *Family Law: Challenges for responding to family violence in a federal system*, Rosalind Croucher also identifies this 'double edged-sword' in the family law system. She reports that a mother will hear "conflicting messages and divergent expectations at different points in the continuum of the broad family law system". She goes further to give an example of the types of advice a mother will receive in relation to her interactions with the system:

'... when a mother is experiencing family violence that may have attracted the attention of the relevant child protection authority, she is told that she is expected to be 'protective', otherwise she faces the potential that the interest of the child protection authority may lead to her 'losing her children. And yet, if she is drawn into family law proceedings, she is faced by the allegation that she not being a 'friendly parent' ...' (see Croucher 2014)

Women's Legal Services Australia's *Safety First in Family Law – a Five Step Plan* campaign advocates as Step Five to "strengthen the understanding of all family law professionals on family violence and trauma" (see Women's Legal Services Australia website). They propose the establishment of a national accredited and monitoring scheme for family report writers that would include mandatory training on family violence, cultural competence, and working with survivors of trauma; the delivery of comprehensive professional development packages for all family law judicial officers; and development of a comprehensive domestic violence training program for family law legal professionals, working with state and territory law and bar associations for delivery.

Family violence is inherently gender-based, with the overwhelming majority of acts of domestic violence and sexual assault perpetrated by men against women, and 95% of all victims of violence in Australia reporting a male perpetrator (see: OurWATCh). For this reason training in family violence must always take place through a gender-based lens.

Recommendation 2: Appoint Specialist Workers

That the Family Courts be appropriately funded to be able to employ specialist family violence workers, who are reflective of the diverse people and communities who go through the system, to support and provide timely and accurate information to survivors before, during and after their court appearance and across their journey through the family law system. These workers would undertake regular family violence screening of the women, her children, and the perpetrator in order to update the Court and enable it to make a more informed, survivor-centric decision.

Members of the **safe steps** client services team report that they are often required to accompany women at Court in order to provide a range of supports including, but not limited to, navigating the way to the correct courtroom, where to register arrival, when the case can be expected to be heard, and to provide emotional supports. On one occasion, a client felt forced to hide in the Court bathrooms until a **safe steps** support worker arrived. She had encountered the perpetrator and his support network waiting in the lobby and was too afraid to wait alone in the same room with him.

To compound this further, where there is lack of access to legal supports due to chronic under-resourcing of community legal centres, women have less ability to familiarise themselves with their rights and with potential outcomes and obligations that may accompany a Family Court Order, including where contact with the perpetrator in shared custody or contact orders is handed down (see further below in this submission for information about the increased risk a survivor is placed in when required to follow Family Court Orders).

Where women and children come from diverse backgrounds – for example, culturally and linguistically diverse (CALD), Aboriginal and/or Torres Strait Islander communities, living with disability, contact with alcohol and other drug use, or mental health problems – or have otherwise experienced disadvantage, this can present additional concerns. The process of selecting supervision, court reporters and so forth is of particular need and relevance for these women. These factors, combined with the presence of family violence, significantly increase the difficulties associated with navigating through the complex family law system.

Contact orders and family violence

Recommendation 3: Managing Contact Orders

That specialist family violence services have a mechanism to advise the Family Court when a woman is placed into high security emergency accommodation or refuge and that Contact Orders are immediately ceased upon notification, pending a review of the situation and the level of risk placed on both the woman and the child/ren.

One survivor account we received was from a woman who had managed after much effort to secure a lifetime intervention order against a former partner, only to discover that this would not prevent him from seeking contact with the children they had together:

(I got) a lifetime intervention order against my former partner as result of further violence... but I have been told by the police that his Family Law Court papers stand up over a lifetime intervention order. This I find absolutely ridiculous - am I

still supposed to supply my children if he turned around tomorrow and said he wanted to have access?

I think the law needs to change in regard to people who have intervention orders against a former partner for domestic violence and it shouldn't be overridden by family court orders. It's meant to protect the other parent and children and it doesn't if you still have to hand your children over to be victimised again and again... I now have a teenager who still suffers from anxiety and has regular panic attacks because of what she has been through. At 15 she still sleeps with her light on as she is afraid her father will come into my house and take her.

- June

In our consultations, **safe steps** workers identified numerous examples of women and children in emergency or refuge accommodation who were still required to maintain regular contact with a perpetrator in accordance with a Family Court Order despite having to leave their house due to safety concerns. This presents a particularly troublesome contradiction between family violence and protection laws and the *Family Law Act 1975*. A number of other issues arise out of this contradiction that have adverse effects on the emergency accommodation and refuge system and the women and children seeking safety and security. They are as follows:

1. Because the contact meeting is likely to be the first point of contact with the perpetrator since the woman and children left and went into crisis accommodation, the likelihood of violence at the point of visit is escalated. Numerous studies have identified increased risk in family violence relationships of violent behaviour and even death in the period following a separation (see: Dunkley and Phillips 2015, Campbell et al 2003). It is during this period that the perpetrator often seeks to regain lost power and control through escalating forms of violence (see: Meyer 2015, Ferguson 2015).

On handovers he had also been violent against myself and my mother, pushing both of us on two occasions and grabbing my child and running off with her.

- Kate

2. Many women's refuges require that a women have no contact with the perpetrator of violence as a blanket rule. Where she has a Contact Order in place issued by the Family Court, she is placed in an impossible situation where she risks criminal charges for not complying with the law or homelessness and/or a return to the violence due to violating the rules of the refuge she is staying at.

The women that we see are often forced to hand over their children to unsafe people in unsafe ways, or face punitive measures from both sides of the system that is supposed to be supporting them.

- safe steps Family Violence Response Centre worker

3. Another risk of requiring women and children in refuge or emergency accommodation to comply with a Contact Order is that the child could unintentionally reveal where they are living. This not only compromises the safety and security of the child and their mother, but also the safety and security of the numerous other women and children housed by the refuge or emergency accommodation provider, and specialist family violence response staff.
4. In securing the safety of women and children fleeing family violence, current standard Australian practice dictates that they be relocated to a place that presents a reduced risk of encountering the perpetrator or their network. This often results in a location that is geographically far removed from their place of residence. When a Contact Order is made, it is often in a location that is close to the suburb or residence of the perpetrator. This can present significant logistical difficulties for women who have to travel large distances in order to comply.

We had a women and a child staying in emergency accommodation in the north-west of Melbourne who had to travel to the eastern suburbs, past Dandenong, to comply with the order. The woman has a disability that prevents her from driving and so they were required to take public transport the entire way. It would often take them the entire day.

- safe steps Family Violence Response Centre worker

It is often these barriers that force women and children back into a violent home. Tantamount to the success of emergency accommodation and refuges is that women and children feel safe, heard, and supported. For this reason, additional structures should be implemented to ensure that women and children in the safe house and refuge system are not unintentionally placed in danger by Family Law orders.

Recommendation 4: Integrated Specialist Family Violence Courts

That more specialist family violence court divisions be set up in Magistrates Courts across Australia. That these divisions consider broadening their approach to a person-centred view, rather than a matter-centric view.

Chief Justice Diana Bryant has recently spoken out about the considerable under-resourcing of the Family Courts (see ABC News article *Family Court underfunded, letting people down*, 2017). She has publically acknowledged that the Courts are failing families where an outcome could take anywhere between 17 months to 3 years. In the vast majority of Australia’s Magistrates’ Courts, family violence matters are dealt with in different Courtrooms and by different Judges to Family Law matters. This can result in contradictory and inconsistent Court Orders, with delays meaning that obtaining interim orders to cease contact or visitation in light of a successful application for an intervention order can take weeks, if not months.

In Victoria, two Family Violence Court Divisions operating out of the Heidelberg and Ballarat Magistrates’ Courts have the capacity to hear other matters at the same time as Intervention Order cases. These include bail applications and pleas in criminal cases, family law parenting order matters, and Victims of Crime applications related to family violence (see: Magistrates’ Court of Victoria – Family Violence). This presents opportunities for cohesiveness in the process of considering family violence as an important consideration in any family law matter, and vice versa. In our submission to the Victorian Royal Commission into Family Violence, **safe steps** argued that this model should be replicated in every Magistrates’ Court across Victoria.

Learning from lived experience

Recommendation 5: Lived Experience Advisory Panel

That the Committee consider recommending the establishment of a panel of representatives with lived experience of family violence to provide ongoing recommendations for the improvement of the Courts and the Family Law system.

A theme throughout our consultations was that women do not feel heard or included by the legal processes they experience. This exclusion from “the system” results in a less satisfactory experience and for women of diverse cultural backgrounds or Aboriginal and Torres Strait Islander women in particular, may result in a decision not to seek legal supports at all. In turn, the three reviews of the Family Law system that have taken place in recent years illustrate that whilst there is a genuine desire to improve systems to address the needs of survivors of family violence, the experience needed to do so is often not at ready access to professionals working in, or governing the system. A panel of representatives with a lived experience of family violence to provide ongoing advice would be a potential approach to maintaining knowledge and practice improvement.

Best interests determinations of children and family violence

Recommendation 6: Children and Family Violence Screening

That separate family violence screening of children should be conducted where shared custody or shared time orders are being considered in Family Court cases.

The way a partner treats the kids can be vastly different to how they treat their partner. Unfortunately, the kids witness the treatment of one person to another (usually the husband to the wife – although not all the time). It may not be physically abuse, however, all the emotional, psychological abuse and mind games do stay with them. The kids see this as the norm and then projects these attitudes into their future relationships and the cycle continues.

- Mary

Children's voices and experiences are often not sought through the Family Court process. While Child Inclusive Practice (CIP) is a central element for some mediation and dispute resolution services, often families with a presence of violence are screened out of these alternative processes, due to safety concerns. An unintended consequence of this screening out is that often children are not individually screened for family violence separate to the mother, and their voice and/or experiences are not given due weight in legal proceedings by the Courts. This can lead to family violence being committed against children in the absence of the mother. This is exactly the situation that Harriet and her child found themselves in.

He also advised me that the words of my child have no bearing in court, because she was at the time too young to be believed. (She was coming home from access visits saying things such as 'daddy says you're a bitch, daddy says you're stupid, daddy says I am going to live with him always and never see you'). My lawyer advised me to keep a diary, but then paradoxically told me that no-one would believe that she said this and I would be accused of making it all up.

- Harriet

Although the perpetrator may exercise physical violence toward the mother only, we know that when a child witnesses violence it has profound psychological and developmental effects. As described in the previous section of this submission, Harriet's child was later determined by a family therapist to have suffered psychological abuse at the hands of the perpetrator after being Court ordered to see and spend time with her father.

Recommendation 7: The Rights of the Child

That Section 60B be amended to state that the best interests of the child are met by children having every opportunity to have their concerns represented and preferences addressed.

The family law system MUST take into account the words, expressions and experiences of the child involved. In all of my experience, there has been little attention paid to what my child is actually saying, and she has undergone the trauma of being bullied into diminishing the fear she feels, and called a liar.

- Kate

The United Nations Convention on the Rights of the Child (UNCRC) recognises that children have a right to freely express their views in all matters that affect them, and that these views are given due weight. This also applies in the context of judicial and/or administrative proceedings that affect them (see: Article 12.1 and 12.2, UNCRC).

Megan Mitchell, the Children's Commissioner for the Australian Human Rights Commission, noted in her 2014 speech at the 16th National Family Law Conference:

'Internationally, the UN Committee on the Rights of the Child has stated that the right to be heard "continues to be impeded by many long-standing practices and attitudes", as well as legal, social, cultural, political and economic barriers. These barriers include negative assumptions about children's capacities and the lack of suitable environments in which children can build and demonstrate capacities.

While there is general support for giving children a voice in family law, there is a big gap between the 'principle' of participation and 'how it is put into practice'. Judges, lawyers, mediators and family report writers emphasise the importance of children's voices but differ in terms of how this can be achieved. And so child participation remains a strongly contested area.' (see: Mitchell 2014)

The capacity of the Family Court to hear the concerns of children and young people remains a significant gap. The *Family Law Act 1975* would be greatly enhanced by amending section 60B to add a principle stating that the best interests of children are also met by including the voice, experiences, and preferences of the child or children heard by the Court.

The use of legal mechanisms to access confidential client information

Recommendation 7: The Issuing of Subpoenas for Access to Specialist Service Client Files
That measures are introduced to discourage perpetrators and their legal representatives from the practice of issuing subpoenas to specialist family violence services for confidential client files.

safe steps has observed a recent trend of legal representatives advising perpetrators to subpoena specialist family violence services for access to client files in order to uncover the location of their children and/or former partner. Our own organisation has been subpoenaed for this purpose five times in the past month. Whilst each of these subpoena applications was unsuccessful, demonstrating the strength of our organisation's confidentiality measures, the process of defending our clients' files against subpoenas creates a significant administrative and financial burden for small specialist not-for-profit organisations.

It is also a deeply concerning prospect that should a subpoena application for information from a specialist family violence service be successful, it may open the floodgates to applications of this nature, critically damaging the vulnerable trust relationship between family violence specialist providers and the clients we protect.

To subpoena a family violence specialist organisation represents another example of perpetrators attempting to exercise power and control by using the legal system to financially and emotionally distress their former partners and the services that are assisting them out of violence. It should be ensured that legal representatives are discouraged from this practice and that every other method of seeking information should be exhausted prior to a legal representative taking the step of seeking to subpoena a specialist family violence service for access to a confidential client file.

Conclusion

The decision to leave family violence often involves a total relocation away from family and friends, changes in education and employment arrangements, and significant financial and emotional disadvantage – it is not a decision entered into lightly. For many women, the process is too adversarial, too confronting, and unsupportive of their experiences. The process can be even more confronting where children are involved.

We welcome the opportunity to provide comment to the Committee's *Inquiry into a better family law system to support and protect those affected by family violence*. By supporting the recommendations outlined in this submission, the Committee will facilitate the

development of better processes within the family law system, improving outcomes for women and children experiencing family violence.

safe steps looks forward to working with the Commonwealth Government to realise these initiatives and to work towards a world where violence against women no longer exists.

For further information, please contact Annette Gillespie, **safe steps** CEO at Annette.g@safesteps.org.au or ring (03) 9928 9622.

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