

Submission to the Australian Law Reform Commission's Review of the Family Law System

Discussion Paper

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Introduction

safe steps Family violence Response Centre (**safe steps**) welcomes the opportunity to respond to the Australian Law Reform Commission (ALRC)'s Discussion Paper as part of its review into the family law system. Our submission provides feedback on the key ALRC proposals intended to improve the system for victim survivors of family violence, and builds upon our previous submission to the Issues Paper earlier in the year.

About **safe steps**

safe steps Family violence Response Centre is Victoria's 24 hour, 7 day per week statewide first response service for women (including women who identify as female or transfeminine), young people and children experiencing family violence. **safe steps** provides a critical service intervention, including support, accommodation, advocacy and referral throughout Victoria and nationally.

Our work includes referring women who have experienced family violence and are involved in current Magistrates or family court proceedings with legal and social support services via the Family Advocacy and Support Service (FASS). We connect women with a specialist **safe steps** social worker who can accompany them and ensure they are safe while at court, and offer emotional support.

safe steps is committed to ensuring all women and children are able to live free from abuse - our ultimate goal is the elimination of family violence. We acknowledge that family violence is inherently gendered in nature, with the overwhelming majority of family violence perpetrated by men, against women. As a result, in this submission we refer to the victim-survivor as female and to the perpetrator as male.

Our contributions to policy and legislative reform are evidenced-based, informed by a feminist framework and prioritise the safety and wellbeing of women, young people and children.

Our approach

Our submission has been informed by the experiences of our practitioners who work with women and children experiencing family violence and the lived experience of victim survivors who have come into contact with the family law system following separation from a violence partner.

In preparing this response, **safe steps** consulted with our volunteer Survivor Advocates and our former and current FASS workers in the Family Court. We also sought advice from our partners in the family violence and legal sectors.

All client case studies have been de-identified and are provided with the consent of the victim-survivor.

Recommendations

In addition to our commentary on the ALRC's proposals, **safe steps** would make the following recommendations:

1. That specialist family violence services are included on the standing working group to advise on the development of the family law system information package (Proposal 2–5).
2. That information about the proposed family law system information package is available in the form of free legal education workshops, for example, on parenting orders, property and assets, and the interaction of state-based family violence orders with family court orders.
3. That education initiatives regarding the family law system should also include a program providing peer mentoring and support, particularly for self-represented litigants.
4. That the Federal Government increase funding to the family courts and to the community legal and legal aid sector.
5. That a rebuttable presumption is inserted into the *Family Law Act 1975* (Cth) stating that perpetrators of family violence should be prohibited from spending unsupervised time with children unless the Court is satisfied that such an arrangement could be safe and in the child's best interests.
6. That the following additional principles are incorporated into the discretionary decision-making framework in the *Family Law Act 1975* (Cth) for determining property outcomes:
 - the housing requirements of dependent children;
 - the material and economic security of the parties;
 - whether adjustments should be made as compensation for relationship-based loss; and
 - equal division of any surplus.
7. That Proposal 3–14 is implemented now, rather than after the evaluation of voluntary industry action.
8. That the service system is better resourced and integrated practice and referral pathways are strengthened to improve access to legal and non-legal supports for family law system users.
9. That the expansion of the Family Advocacy and Support Service (FASS) include peer support for users, which could include volunteer victim survivors providing additional emotional support to women going through family law proceedings.
10. That the Federal Government progress, through the Council of Australian Governments, the development of a national family violence risk assessment tool, and that this tool is used in court-based triage and risk assessment. The tool must be nationally consistent, multi-method, multi-informant and culturally sensitive and be adopted to operate across sectors, between jurisdictions and among all professionals working within the family law system.
11. That court-based risk assessment processes include separate screening of children.
12. That the family courts introduce a process to make early determinations (findings of fact) of family violence in family law disputes. The process should not require a high threshold for evidence, allow for procedural flexibility, and adopt a case management approach.
13. That the *Family Law Act 1975* (Cth) include a stronger and more specific legislative requirement that family violence allegations be determined early.

14. That the Australian Institute of Family Studies be provided with a reference to undertake research into the experiences of victim survivors and their families after parenting orders have been made; and that the ALRC consider a further proposal to address the challenges faced by victim survivors following the conclusion of their parenting disputes.
15. That family court users are provided with one-off vouchers allowing them to access childcare services offsite.
16. That there are more and improved spaces available in the family courts for breastfeeding mothers.
17. That the option to use video-link to provide evidence in family court hearings is more readily available. This includes reducing red tape required to apply, improving existing technology at the family courts, educating lawyers, judicial officers and court staff in how to use the technology, and actively promoting its use to court users.
18. That, pending positive evaluation of the remote-witness pilot initiative currently operating for users of the Melbourne Magistrates' Court, a similar service be offered by the family courts.
19. That dowry abuse and forced marriage are added to the non-exhaustive list of behaviours constituting family violence in the *Family Law Act 1975* (Cth).
20. That intersectionality is added to the list of core competencies in the proposed workforce capability plan, as this would allow for an understanding of the way different vulnerabilities or 'oppressions' intersect to disadvantage family court users.
21. That all Children's Contact Centre workers are accredited and trained in family violence, including state-based family violence orders and family court parenting orders.
22. That the future appointment of federal judicial officers should ideally involve processes that advertise, interview and assess candidates to increase diversity and transparency.
23. That private family law consultants are abolished; or if they continue to operate, a nationally consistent fee schedule for reports is introduced.
24. That the Australian Institute of Family Studies be provided with a reference to undertake research into the practices and assessments of family consultants. This research should inform the development of training and education requirements for family report writers and the national accreditation system with minimum standards for all family report writers.
25. That a panel of representatives with lived experience of family violence and the family law system be established to provide advice and inform policy and practice improvements to the family law system.

Executive summary

Safe steps commends the ALRC on its proposals for reform to the family law system and, in particular, the proposals intended to improve the system for victim survivors of family violence, including children. We support the majority of these reform proposals.

We note that the Federal Government has recently announced a number of proposals for change to the family law system ahead of this inquiry's conclusion. Some of these will make a significant difference to victim survivors' journey through the system, in particular, the legislative ban on direct cross-examination, and measures to improve women's financial security in property and financial disputes.

Building a family law system that is more responsive to family violence – and the success of any of the proposed measures to achieve this – will depend upon mandatory and comprehensive training and education for all family law professionals in the nature and dynamics of family violence. If this aspect of the reforms is not given proper attention, any amendments to definitions in the law, guidance around decision-making, and changes to court processes in relation to family violence are likely to be ineffectual. A nuanced understanding of family violence on the part of those brokering the family law system for parties and adjudicating their disputes is a critical starting point. **safe steps** recognises, however, that the effects of this education will not be felt immediately, and that culture change takes time.

Creating an improved system for victim survivors also requires implementation of a majority of the reform proposals; and many of them are interdependent. The broad scope of the inquiry as set out in the terms of reference must be matched by a comprehensive program of reform. In our view, the following proposals must be implemented by the Federal Government:

- Early identification of family violence, via preliminary hearings, dynamic risk assessment and a national information sharing scheme that includes state-based family violence orders;
- Changes to the *Family Law Act 1975* (Cth) (the Act) to recognise financial abuse and misuse of the system within the definition of family violence;
- An improved decision making framework in the Act regarding parenting arrangements to protect the safety of children and respond adequately to family violence;
- Greater measures to ensure that perpetrators of family violence accessing the system are held responsible and accountable;
- Safe, affordable and non-adversarial options for families to resolve their disputes outside of court;
- Oversight of the family law system to ensure continuous improvement and responsiveness; and
- Further research into some aspects the system, such as the economic wellbeing of former partners and their children following separation.

We have used the term 'victim-survivor' in this submission primarily to refer to women who have been subject to family violence in the context of an intimate partner relationship, but also to those in domestic settings who experience violence at the hands of an extended family member or, sibling, carer, or adult child. 'Victim' recognises the systemic injustices which perpetuate violent behaviours and 'survivor' points to the resilience and agency of those who survive family violence, or indeed any other forms of harm. We use the term 'perpetrator' to refer to those who use violence against others within the broad definition of the *Family Violence Protection Act 2008* (Vic) (the Act), and note that the vast majority of perpetrators are men.

Commentary on proposals and questions

Education, Awareness and Information

safe steps supports the proposals in Chapter 2 of the Discussion Paper in relation to education and awareness. In particular, we endorse the development of stronger referral pathways between family law services and services that work with people experiencing family violence, including the Victorian Orange Door Support and Safety Hubs, state and territory police and child protection agencies. We are also pleased to see that development of the national awareness campaign and the information package will include consultation with Aboriginal and Torres Strait Islander, culturally and linguistically diverse, LGBTIQ and disability organisations and that information will be available in a range of languages and formats.

We would make the following comments regarding specific proposals:

- We would support training and community legal education for universal services regarding the family law system and separation-related issues, so that workers are more aware and able to make appropriate referrals into the system.
- Specialist family violence services should be included on the standing working group to advise on the family law system information package (Proposal 2–5)
- In addition to what is listed under Proposal 2–7, we would like to see information about the family law system information package available in the form of free legal education workshops, for example, on parenting orders, property and assets and the interaction of state-based family violence orders with family court orders.
- Education initiatives should also include a program providing peer mentoring and support, particularly for self-represented litigants.
- **safe steps** supports the consolidation of existing information services and resources regarding the family law system, and would like to see this include an update to the Family Court website to allow for easier access to information about court forms and processes.

We reiterate our previous recommendation that there must be an increase in funding to the community legal and Legal Aid sector to ensure more court users have access to information regarding the family law system via a legal representative.

Simpler and Clearer Legislation

safe steps supports reform proposals to:

- simplify the Act and family court forms to improve their usability for all readers;
- reduce the complexity of the decision-making framework and rules in the Act regarding children’s best interests, in particular amendment of the paramountcy principle to refer to the ‘safety and best interests’ of children,
- amendment of the Act to state that, where there is already a final parenting order in force, parties must seek leave to apply for a new parenting order, and the court must consider whether there has been a significant change of circumstances and it is safe and in the best interests of the child for the new order to be reconsidered.

We would emphasise that the above amendments to the Act are positive but will only result in safer decisions for children and families if the family law professionals applying the law are properly trained in family violence.

Simplifying decision making about parenting arrangements (Proposal 3–3 to 3–8)

safe steps notes the ALRC’s proposals to:

- amend the Act to clarify decision making about children and promote their safety and best interests;
- maintain the provision that each parent has parental responsibility for a child unless this position is altered by a court order but remove the terminology of a ‘presumption’; and
- replace the term ‘parental responsibility’ with ‘decision making responsibility’ in the decision making framework for parenting arrangements to reduce it being conflated with parents’ access rights and care-time arrangements.

In our submission to the Issues Paper, we recommended that the presumption of equal shared parental responsibility be removed from the Act, and that a rebuttable presumption be inserted that perpetrators of family violence should be prohibited from spending unsupervised time with children unless the Court is satisfied that such an arrangement could be safe and in the child’s best interests. We maintain our position in relation to this recommendation for the reasons elucidated in our first submission to this review.

Our views have been informed by the strong feedback we received from victim survivors regarding the operation of this presumption and the principle set out in 60CC that it is beneficial for children to have a ‘meaningful’ relationship with both parents, and the damaging impact they believe these aspects of the law have had upon their lives and the lives of their children. One woman emphasised that the family law system assumes “that it is dealing with reasonable people”, but noted that perpetrators of family violence do not act reasonably. This is certainly borne out in evidence that many ex-partners initiate vexatious proceedings and attempt to use the family law system as a tool for further abuse of victim survivors.¹

safe steps does not believe above proposals alone will be enough to significantly alter the substance of parenting orders, especially given that the family violence and child abuse exceptions to the current presumption of equal shared parental responsibility are rarely applied. Improvements to this part of the law will ultimately require a significant shift in thinking, and culture change, which will in large part depend upon an increased level of family violence expertise among family law professionals, including family report writers. It will require commitment to other reforms designed to make the system as a whole more responsive to family violence, including early determinations of family violence, increased accountability for perpetrators, and education for victim survivors involved in parenting disputes so that they understand the law and are not pressured into agreeing to consent orders that are harmful and unworkable for them and their children (ideally covered by Proposal 3–9).

A victim-survivor we consulted expressed her hope that an improved decision making framework for parenting arrangements would “look for and enable the child-focussed parent” rather than protect perpetrators.

¹ Australian Law Reform Commission, Review of the Family Law System, Discussion Paper No 86 (2018): 192; also see discussion in a House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, A Better Family Law System to Support and Protect Those Affected by Family Violence (2017): 91: 64-68.

Property and financial matters (Proposal 3–10 to 3–17)

safe steps supports the majority of the ALRC’s proposals intended to better recognise the impact of family violence on property and financial interests following separation.

After consultation with Victoria Legal Aid (VLA), we support the incorporation of additional legislative guidance to support the discretionary decision-making framework for determining property outcomes (Proposal 3–11), based on the principles proposed by Lisa Sarmas and Belinda Fehlberg;² and recommend that Proposal 3–14 is implemented now, as VLA advised that attempts to strengthen voluntary industry action have not resulted in better outcomes for vulnerable parties.

We note that the Federal Minister for Women has just announced a proposal to strengthen mechanisms that allow for disclosure of a partner’s superannuation funds during property settlements, which would see “a new electronic information sharing system between the Australian Tax Office and the Family Law Courts so superannuation assets can be identified quickly and accurately”³. **safe steps** endorses this proposal and believes that it would complement the tools set out in Proposal 3–17 in relation to superannuation.

Question 3–2

safe steps commends the proposals made by the ALRC in the Discussion Paper in relation to superannuation, but as previously stated, we do not support the early release of superannuation for victim survivors of family violence in cases of financial hardship. In our view, this approach wrongly puts the onus on the victim survivor, further detrimenting a woman’s financial security by threatening her retirement safety net, and fails to hold the perpetrator of violence accountable for financial abuse.⁴ **safe steps** maintains that other measures would be more desirable and effective, such as improving the social security net via increases to the Newstart rate, for example.

Getting Advice and Support

Families Hubs (Proposals 4–1 to 4–4)

safe steps agrees that there needs to be clear access points to legal and support services for separating families outside the courts. Many victim survivors and their children who have recourse to the family law system will need housing assistance, therapeutic and mental health services, immigration services, as well as legal assistance and the support of specialist family violence services.

We recognise that the service system is fragmented and that services often operate in ‘silos’, producing delays and inadequate referral pathways requiring users to repeat their stories to multiple people. However, **safe steps** does not believe that the proposal to establish Families Hubs (the Hubs) is an appropriate way to address these issues. Our opposition to the proposal is based on the following concerns.

We believe that a ‘hub’ model raises serious safety concerns for victim survivors of family violence. Many women and children experience ongoing harassment, stalking and threats to their safety – or their lives – following separation. We are reminded of this weekly, as media reports detail the murder of women and children by former

² See ALRC Discussion Paper: 60.

³ Stephanie Peatling, “‘Life-changing’: New measures to help women leaving abusive relationships”, 19 November 2018: <https://www.theage.com.au/politics/federal/life-changing-new-measures-to-help-women-leaving-abusive-relationships-20181119-p50gwy.html>

⁴ **safe steps**’ submission to Treasury review of the early release of superannuation benefits, February 2018.

partners.⁵ The women we consulted with expressed their opposition to the idea of Families Hubs; citing safety concerns.

Our FASS workers are of the view that Families Hubs could replicate many of the safety issues currently faced by women and children at the family courts. Below is a case study which illustrates the physical threat posed to victim survivors by ex-partners when accessing the courts:

“Jenny was high-risk. She had fled New Zealand due to ongoing domestic violence at the hands of her partner, David, which included him strangling her and attempting to suffocate her in front of her child (under 10 years old). David made threats by taking selfies with himself and Jenny’s other child with a gun. He followed Jenny and her child to Australia and attempted to locate them in Melbourne. He initiated proceedings in the Family Law Court in an attempt to force Jenny and her child back to New Zealand.

It had been approximately nine months since Jenny and her child had seen David when they presented to FASS. I received a call from the Information and Referrals Officer (IRO) explaining that Jenny and her child were so fearful of David that they were hiding in the IRO’s office. When I met them the child was visibly shaking. Jenny was concerned that David, who did not know their current home address, would wait for them out the front of the court, follow them home and kill them. Security was informed, and they advised us that David appeared to be waiting at the front entrance of the court for Jenny and her child. We had to organise a security escort for them out the back entrance of the court and I booked them a taxi and waited to see them off.”

FASS workers inform us that incidents like the above are common in the family courts. And there are risks posed not only to victim survivors, but to court and support staff. One of our FASS workers was asked to use the back exit of the court when leaving as she had supported a woman in court who was high risk and the FASS men’s service had concerns for her safety. She also observed an incident at the FASS IRO desk in the family court building in which a woman’s ex-partner grabbed her and slapped her in the face. The IRO panicked and, rather than hitting the duress button, tried to intervene and protect the woman, putting themselves at risk of harm.

We are concerned that if perpetrators of family violence currently act like this on court premises – where there are security guards, CCTV cameras, and judges responsible for adjudicating their disputes – they may pose an even greater risk to victim survivors and staff at a hub.

We are unable to conceive of a hub design which would ensure the safety of victim survivors. Removing specialist family violence services from the Families Hubs would not remove the risk, as perpetrators and victim survivors would need to attend the hubs to access other services related to their family law dispute. For many victim survivors who have separated from a violent partner, their safety will be at issue whenever they are in a public place. However, co-locating services increases this risk, and as the presence of security and cameras does not appear to deter perpetrators in the court setting, it seems unlikely that increased security would make a difference. Furthermore, heavy security measures would not make the Hubs very welcoming for users.

safe steps is also concerned that the Hubs will result in breaches of family violence intervention orders, by forcing families to be in the same location despite a family violence order being in place that prevents contact. Our FASS staff noted that this often occurs in the family courts: perpetrators approach their children directly as the family violence orders ‘don’t apply’ in the courts. This can cause great distress to children, in particular, as it may be the

⁵ Georgina Dent, ‘We despair. 10 women murdered in 22 days’, Women’s Agenda, October 2018: <https://womensagenda.com.au/latest/we-despair-10-women-murdered-in-22-days/>

first time that they have seen their father or step-father since separation. Further, for victim survivors involved in family law proceedings who are residing in refuge, contact or communication with their ex-partner often constitutes a breach of refuge policy.

Establishing Families Hubs in Victoria may also duplicate services, given the recent roll out of the Orange Door Support and Safety Hubs (the Orange Door), which were established in response to the Royal Commission into Family Violence and aim to provide a ‘wrap-around’ service for victim survivors, co-locating workers from specialist family violence services, family services, Aboriginal services, and services for men who use violence. Although a formal evaluation is yet to be undertaken, we note that early feedback indicates that the Orange Door has faced some challenges creating integrative practice across a wide variety of services.⁶

Funnelling services into a single access point has the benefit of convenience, but is not necessarily a priority for victim survivors, given the ongoing threats to their safety and wellbeing posed by ex-partners. Although they may need a range of legal and non-legal supports, streamlining this access would arguably be better achieved via a skilled case manager, rather than through co-location of services.

Further, in our view, hubs models are resource-intensive and require significant planning, resourcing and training of staff to operate effectively. We would argue that increasing funding and resourcing to existing services, in particular Family Relationship Centres (FRCs), is likely to be more affordable and effective than creating something new. We note that many of the shortfalls in the operation of the FRCs, in particular their focus on providing family dispute resolution at the expense of other objectives, have been partly due to funding cuts.⁷

safe steps would support additional funding and resourcing being allocated to facilitate:

- needs assessment and navigation assistance/coordination being provided by FRCs
- the improvement of existing referral pathways
- greater public awareness about existing service points, which could be achieved via the proposed national education and awareness campaign and information package.

safe steps does not support the Families Hubs proposal unless the evaluation of the Orange Door Support and Safety Hubs in Victoria provides a strong evidence-base in support of such a model for victim survivors of family violence.

Expansion of the Family Advocacy and Support Service (Proposals 4–5 to 4–8)

safe steps supports the proposal to expand the FASS. This is an important service for victim survivors, who benefit from both the case management support in relation to their non-legal needs provided by specialist family violence workers and the legal assistance offered by legal services. In Victoria, FASS includes an Information and Referral Officer (IRO), and we support this role being replicated in other locations.

We endorse the proposal for each FASS location to include two legal services, and hope that this will help to reduce the number of self-represented litigants in the system, and victim survivors being ‘conflicted out’ of accessing legal services. Increased access to legal representation also has the potential to reduce delays caused by parties without legal knowledge having to navigate the system alone. **safe steps** supports the proposal for one of

⁶ Family Safety Victoria, The Orange Door Commencement Update (July 2018)

⁷ Above n 1:82.

the legal services to be a specialist family violence legal service, as they will provide victim survivors with legal assistance that is sensitive to their needs and experiences and will navigate the system accordingly.

To ensure the success of an expanded FASS, there will need to be adequate funding and resourcing provided, particularly if it is expanded into rural and regional areas. We would reiterate our view that there must be increased funding directed to the community and Legal Aid sectors to support this proposal.

safe steps supports consideration of the FASS evaluation prior to any expansion going ahead, to identify any areas of weakness in the current model and devise improvements.

safe steps' FASS workers suggested that the FASS include peer support for users, which could include volunteer victim survivors who had previously been through the system (after an appropriate period, to ensure they would not be re-traumatised themselves) providing additional emotional support to women going through family law proceedings.

Dispute Resolution

Family Dispute Resolution

safe steps supports improved triage and risk assessment processes for Family Dispute Resolution (FDR) processes for parenting matters to ensure victim survivors are not being subjected to FDR when it is unsafe. Anecdotal feedback that we received from victim survivors supports submissions to this inquiry by other organisations, previous inquiries⁸ and research cited by the ALRC⁹ that current screening processes often fail to identify family violence, particularly when there are only allegations of violence, meaning women are being made to attempt FDR when it is unsuitable and potentially unsafe.

Victim survivors we spoke to who had been through FDR felt that the dispute resolution practitioners ignored or were unable to recognise family violence, and were instead focussed on finding evidence to support the presumption of equal shared parental responsibility, which they felt was often misunderstood as a presumption of equal access and equal time. As discussed elsewhere in this submission, this mirrors the approach taken by family consultants in their reports, and often produces outcomes which are unsafe for children and unworkable for victim survivors.

Crucial to improved triage, risk assessment and risk management processes and properly informed decision making in FDR for parenting, property and financial disputes is for family dispute resolution practitioners to be adequately trained in the dynamics of family violence. To this end, we strongly support the development and implementation of comprehensive training in family violence for all family law professionals as proposed in Chapter 10 of the Discussion Paper.

Disclosure obligations in property and financial matters (Proposal 5–6 to 5–8)

safe steps supports the proposals strengthening financial disclosure obligations: the proposal to shift these provisions from court rules into the Act, amending the law to describe adviser's duties in relation to disclosure,

⁸ House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, A Better Family Law System to Support and Protect Those Affected by Family Violence (2017): 91.

⁹ Rae Kaspiew et al, 'Evaluation of the 2012 Family violence Amendments: Synthesis Report' (Australian Institute of Family Studies, 2015) 33.

as well as the proposed provision in relation to taking non-disclosure into account in apportioning the property pool to align with current case law.

Question 5–2

The threat of civil or criminal penalties for failing to comply with financial disclosure provisions in the Act are unlikely to be effective in many matters involving family violence. As raised above by the victim survivors we consulted, these types of proposals are only likely to deter ‘reasonable people’ from engaging in such behaviour and many perpetrators of family violence currently disregard the threat of penalties for contempt of a court order or contempt of court. However, penalties, in combination with other proposals in the Act to minimise abuse of the family law system, may, over time, shift behaviour if the system is seen not to tolerate the unethical and obstructive actions of perpetrators.

Legally-assisted dispute resolution in property and parenting matters

We support the proposal for further development of culturally appropriate and safe models of family dispute resolution for parenting and financial matters. The expansion of legally-assisted dispute resolution (LADR) services would increase options for victim survivors who have been screened out of FDR due to the presence of family violence to resolve their disputes outside of the court system. As noted in the Discussion Paper, at present, these women do not have a low-cost option and must either go through the courts or resolve their matters without recourse to the system, potentially putting them at risk.¹⁰

Annabelle instigated FDR and didn’t apply for the family violence exemption because she “had wanted to keep costs down”. The alternative was expensive and potentially lengthy court proceedings. She only found out about the family violence exemption due to her own research: the mediator had failed to advise her about the family violence exemption, or the option to use shuttle mediation. Similarly, her lawyer only provided her with the ‘Annexure to Proposed Consent Parenting Order form’, which asks about the presence of family violence, at “the eleventh hour”. Annabelle confirmed the violence and her ex-partner did not. If they had both confirmed the history of family violence on this form, the substance of the orders would have been different. As it was, she was forced to sign consent orders that were unfavourable for her and her children, or risk losing the deposit on her home and becoming homeless.

safe steps notes that the Minister for Women has just announced \$10.3 million in federal funding to establish LADR programs provided by legal aid commissions in every state.¹¹ We support this initiative, and note that VLA, which has an existing LADR program for victim survivors, has reported positive outcomes and feedback from clients accessing their program.

VLA’s LADR model encompasses a case management model, which includes liaison with Independent Children’s Lawyers (ICLs) and child consultants, and links clients into other services. They also offer safety measures for victim survivors (such as shuttle mediation), and all legal and support professionals involved in delivering the service are family violence trained.

safe steps supports the availability of LADR in property and financial disputes, given the ALRC’s proposal to mandate an attempt at FDR in these matters. It will be important for victim survivors to have an option to access

¹⁰ Above n 1: 116

¹¹ Above n 3

LADR as an alternative to FDR given the potential for power imbalances to produce inequitable outcomes for victim survivors in existing FDR processes.

Reshaping the Adjudication Landscape

Court triage (Proposals 6–1 to 6–2)

We support the ALRC’s proposal for a court-based triage process to be conducted by court staff trained in dynamic risk assessment, family violence and trauma-informed practice. We would like to see this process underpinned by a national risk assessment tool, as was recommended in the SPLA’s inquiry¹². Risk assessment would need to be dynamic to allow for changing circumstances, and the process should continue throughout proceedings via case management. To align with the review’s focus on the safety and wellbeing of children, **safe steps** would recommend conducting separate risk assessments of children to ensure their needs are addressed from the beginning.

Specialist family violence list (Proposal 6–3 & 6–7)

Although **safe steps** generally supports specialist family violence courts as they provide victim survivors with a safer, more therapeutic forum in which to have their matters heard, we do not consider the proposal to establish a specialist family violence list in the federal family courts to be the most effective means of improving these courts’ response to family violence.

Our position is that all judicial officers and legal professionals should have expertise in family violence, given its prevalence in family court matters. We are concerned that a specialist list could result in lesser emphasis being placed on increasing family violence literacy amongst judicial officers and other family law professionals operating in the general family law court stream. Matters that are not assessed as ‘high risk’ (but still involve significant family violence), or those involving a serious history of violence that is not picked up at triage may then fall to those without sufficient family violence knowledge and experience to determine. This is likely to be even more of an issue if the combining of the Family Court and Federal Circuit Court goes ahead in its proposed form, as there are indications that this will lead to a reduction in family law specialisation, let alone in family violence. We would also be concerned if the Federal Government chose to implement the proposal for a specialist family violence list at the expense of other proposals which better acknowledge the prevalence of family violence present in disputes heard by the court system.

Question 6–1

If a specialist list were to be implemented, **safe steps** would suggest eligibility being flexible, and not only based on formal risk assessment outcomes. For example, self-identification of need should be considered, as this may provide a better indication of risk in some cases. Some women may not be classified as ‘high risk’ in reference to the categories of a specialist family violence risk assessment framework, which attaches risk to the victim, but are at serious risk for other reasons, such as where the perpetrator of violence is a police officer or lawyer, with knowledge of the legal system that they can use to their advantage. We also predict that it would be difficult to limit the caseload of the list, given the high number of matters involving family violence.

¹² See Recommendation 2 and 3 of the SPLA final report, above n 8: xxix

Early fact finding hearings (Question 6-2)

In our previous submission, we detailed the ways in which the family law courts fail to identify and account for family violence during proceedings, either because women are discouraged by their lawyers from mentioning it as it might work against their case, because family report writers minimise violence or present it as ‘marital conflict’ in their reports and expert evidence to judges, and because the courts often do not consider it until the final hearing, when allegations are often highly contested. This often results in interim parenting orders that threaten the safety of women and children and, in our view, is one of the most disadvantageous and damaging aspects of the current system for victim survivors of family violence. These issues were also raised by the House of Representatives Standing Committee on Social Policy and Legal Affairs Committee (SPLA Committee) in its 2017 final report.¹³

We consider that early determinations of family violence allegations have the potential to result in a reduction in combative and contested fact finding at the later stages of a dispute; safer interim orders; more informed decision-making that is able to focus on the current and future needs of children and families, rather than the past; and to offer a less resource-intensive approach to family disputes. We note that in some family law jurisdictions in Canada, family law proceedings for disputes involving allegations of family violence are ‘frozen’ until the police investigations into the allegations are concluded, to ensure that family courts are properly informed of the entirety of the circumstances.

safe steps notes that the ALRC have not provided any proposals detailing what an early fact finding process might look like. We support VLA’s suggestions for preliminary hearings that are less formal, have procedural flexibility and adopt a case management approach. The process might be similar to hearings conducted by the Victorian Victims of Crime Assistance Tribunal (VOCAT), which do not require a high threshold for evidence and are not bound by rules of evidence.¹⁴

We would add that the hearings should permit a broad range of evidence and supporting documentation to support allegations of family violence, for example, letters from support workers, reports from independent psychologists and medical practitioners, and notes kept by victim survivors detailing their experiences. As discussed below, **safe steps** does not support requiring parties to obtain reports from family report writers, unless there are significant improvements in the family violence literacy of these practitioners and the quality of their reports. Requiring victim survivors to obtain such reports can also create delays and puts the onus and the cost on parties. Adjudication of these hearings could possibly be undertaken by appropriately trained administrators, rather than judges. Some findings may be able to be made ‘on the papers’ and others may require a hearing. Findings should be recorded in written form so that they can be tendered as evidence in interim hearings.

In line with the broad definition of family violence in the Act, decision-makers would need to recognise both physical and non-physical forms of family violence, including psychological, emotional and financial abuse – as well as cumulative harm, to avoid an incident-based approach. Early fact finding would perform an important and distinct role from the court triage process, which would primarily consider risk and produce a risk assessment outcome; however the two processes would need to work in tandem to ensure that fact finding did not produce a static narrative of family violence that did not reflect any changing circumstances. To operate effectively, these

¹³ SPLA report: 113.

¹⁴ Victims of Crime Assistance Tribunal, *Annual Report (2016-2017)*: 24-25:
<https://www.vocat.vic.gov.au/sites/default/files/publication/2017-11/10850%20MCV%20VOCAT%20Annual%20Report%202017%20WEB%20Final.pdf>

hearings should have access to state based family violence orders. As such, we support the inclusion of these in the proposed national information sharing regime.

safe steps feels strongly that these hearings, if conducted prior to any formal family law proceedings, would ensure lawyers and judges are properly informed of the issues, and would guide judicial decision-making to avoid interim orders that ignore a history of violence or abuse and create a more child-focussed system. Victim survivors are also more likely to feel supported by the system if their experiences are acknowledged and accounted for, which may in turn give them the courage to raise new abuse allegations or to correct misinformation about the identification of the primary aggressor.

Question 6–3 and 6–4

We believe that it would be preferable to further develop LADR (discussed above), in place of the proposed Parent Management Hearings model, due to the safety risks inherent in an approach that does not include legal representation as a matter of course. We believe that it would be more appropriate to use the LADR model to explore problem-solving approaches to dealing with disputes involving children.

A post-order parenting support service (Proposal 6–9)

Our consultation with victim survivors indicates that there is still much to be done in supporting families after parenting orders have been made. They experience ongoing harassment and abuse that is often exacerbated by parenting orders facilitating increased involvement of their ex-partner in their children’s lives. One victim survivor stated that “you can’t parent with an abuser”, and another noted that the success of parenting orders could only be measured “five to 10 years later... because they go on and on and on”. One woman illustrated some of these challenges, noting that although there is a full state-based no-contact family violence order in place preventing her ex-partner from seeing her son, because of a federal family court order, she is required to provide her ex-partner with their son’s school reports and school photos. She sees this as aiding a breach of the family violence order. Others described problems in relation to getting an ex-partner to agree for their child to visit a psychologist for therapy; accessing child support; and enforcing joint payments. They also noted the high cost of enforcement proceedings.

safe steps acknowledges that the ALRC wishes to address some of these issues with its proposal to create a post-order parenting support service. However, given that the service is “not intended or appropriate for cases where there has been a history of coercive controlling violence”, it is unlikely to provide any relief for victim survivors and their children. We would like to see alternative proposals to support victim survivors of family violence with this aspect of their family law journey. As such, **safe steps** would support further research into this area and would recommend that the ALRC consider a further proposal to address the challenges faced by victim survivors following ‘resolution’ of their parenting disputes.

While **safe steps** is hopeful that a comprehensive program of reforms is likely to result in better and less contested parenting orders, there will always be some ongoing conflict and a need for support for parents and children following separation in matters involving family violence.

A safe and accessible court environment (Proposal 6–12)

safe steps supports the ALRC’s proposal to improve the physical design of family law courts. We note that these changes are relatively simple to implement but likely to contribute to a safer and less-traumatic court experience for victim survivors of family violence.

We would make some additional comments and recommendations regarding proposal 6–12, based on feedback from our FASS workers and victim survivors.

Video-link must be an option for victim survivors who would like to use it, for example, when they are very nervous about giving evidence in court, or have mental health issues. Many women are forced to face their abuser in court, despite there being a full no-contact order in place due to threats to their physical safety. We note that although it is technically an option for parties, our FASS workers have advised that they have never seen it used. They recalled instances of women verbally requesting if they could use it but being informed by lawyers and judges that it was not an option. Our staff were unsure whether it was refused because the courtrooms were not equipped with the technology to facilitate its use, or for other reasons. **safe steps** would like to see video link being more readily available for court users, and its use promoted on the Family Court website, as well as by lawyers and other court staff. In response to a recommendation of the Royal Commission into Family violence in Victoria, **safe steps** now facilitates a remote witness program for women to attend their family violence intervention order hearings at the Melbourne Magistrates' Court via video call from a safe location outside of the court environment. This option has been taken up by many victim survivors, who have found the experience much more supportive and less-intimidating than appearing in court in the same room as their abuser.

We note that there are no childcare facilities at the court, or any measures in place to assist parents in this regard. We recommend there being provision of one-off vouchers for parties that require them to use at off-site childcare centre/s. This is a simple solution that would alleviate a significant amount of stress for families at court, and, in particular, would increase the physical and emotional safety of children who have been subject or witness to family violence by one of the parties attending proceedings.

We would also recommend improvements to existing secure rooms. We received feedback that victim survivors feel anxious when using the secure room at the court as lawyers were constantly knocking on the door, forcing those in the room to get up and down to answer the door. Our FASS workers suggested making it a requirement for barristers to obtain and use a security pass to enter the room. This should apply to any new secure rooms created as a result of this proposal.

Children in the Family Law System

safe steps broadly supports the proposals outlined in Chapter 7 of the Discussion Paper regarding children's participation in the family law system.

We are pleased to see the proposal to create a new children's advocate role and to replace the ICL role with 'a separate legal representative', to acknowledge and separate the roles of supporting and advocating for a child and gathering evidence and managing litigation related to disputes involving children.

We also support Proposal 10–12 encouraging judges to take up an existing provision allowing appointment of "an assessor with expert knowledge in relation to the child's particular needs to assist in the hearing and determination of the matter". We would like this to allow for independent psychologists who have been working with a child for some time to provide expert evidence.

Victim survivors we consulted strongly supported the above proposals, particularly as the majority were critical of their experiences with ICLs, which we discussed in our previous submission to this review. One noted that children's advocates or anyone responsible for 'deriving' the child's voice needs to have a family violence lens, not just a child development lens, as an understanding of the nature and effects of family violence in family law disputes requires both.

Reducing Harm

Definitions of family violence and abuse (Proposal 8–1 to 8–2)

We support the proposals to amend the definition of family violence in the Act.

Question 8–1

We support a non-exhaustive list of behaviours that constitute family violence being provided in the Act. Given the inconsistent knowledge and understanding of family violence amongst family law professionals, it is preferable to be explicit about the kind of behaviours that amount to abuse until such time as family violence literacy has been improved within the system.

Question 8–2

In line with a recent change to Victorian law, **safe steps** would like to see dowry abuse and forced marriage included in the non-exhaustive list of behaviours constituting family violence. Victorian legislation describes dowry abuse and forced marriage (respectively) as “using coercion, threats, physical abuse or emotional or psychological abuse” to “demand or receive dowry, either before or after a marriage” and “to cause or attempt to cause a person to enter into a marriage”.¹⁵

Misuse of systems and processes as family violence and management of unmeritorious proceedings (Proposal 8–3 to 8–5)

We strongly support the proposals 8–3, 8–4 and 8–5, which intend to increase the accountability of perpetrators in the system, particularly the inclusion of ‘misuse of legal and other systems and processes’ in the list of examples of acts that can constitute family violence. This addresses significant feedback we have received from victim survivors that perpetrators of family violence regularly use the family law system to perpetuate abuse.

Sensitive records (Proposals 8–6 to 8–7)

safe steps welcomes the proposal giving family courts powers to exclude evidence of sensitive records (including counselling or specialist family violence client records) if the court determines that it is likely their admission would be harmful. To be effective, the proposal must be implemented alongside the workforce capability plan, to ensure that judicial officers are trauma-informed and able to balance the probative value of the evidence with the potential harm it may cause to vulnerable parties. We would also like to see decision-making in this area monitored by the Family Law Commission to ensure the changes provide sufficient protection for victim survivors and other vulnerable parties, and result in a reduction of perpetrators using this avenue as a means for intimidation and abuse.

We are pleased to see that Proposal 8–7 would see the family courts work with specialist family violence services and other relevant organisations to develop guidelines in relation to the use of sensitive records, including processes for objecting to a subpoena of such records. This would provide organisations with greater certainty about their rights and responsibilities and alleviate some of the stress associated with requests for access to client files.

¹⁵ Mosiqi Acharya, ‘Victorian parliament passes legislation banning dowry abuse’, 9 August 2018: <https://www.sbs.com.au/yourlanguage/hindi/en/article/2018/08/09/victorian-parliament-passes-legislation-banning-dowry-abuse>

Additional Legislative Issues

People with disabilities (Proposal 9–1 to 9–7 and 10–13)

safe steps has consulted with Women with Disabilities Victoria and endorses their submissions in relation to Proposal 9–1 to 9–7 and 10–13.

Workforce capability plan

safe steps strongly supports the ALRC proposal to develop a workforce capability plan for the family law system. This reflects our previous recommendations, and gives effect to recommendations made in many previous inquiries, including the recent SPLA Committee inquiry.¹⁶ We would make the following comments regarding the proposals in Chapter 10:

- Proposal 10–1: Development of the workforce capability plan should be co-designed with the specialist family violence sector, to ensure it promotes a nuanced understanding of family violence.
- Proposal 10–3: We are supportive of the proposed core competencies but note that the delivery of training in relation to these areas of knowledge must be comprehensive, to prevent a ‘tick-box’ or tokenistic approach to covering the issues.
- Question 10–1: We would like to see an intersectionality added to the list of core competencies, as this would allow for an understanding of the way different vulnerabilities or ‘oppressions’ intersect to disadvantage family court users.
- Proposal 10–7: We agree that Children’s Contact Service (CCS) workers should be accredited, particularly given the growth of private and unregulated CCSs. In particular, it is crucial that these workers have an understanding of family violence, including state-based family violence orders and family court parenting orders.
- Proposal 10–8 and Questions 10–4 to 10–5: We strongly agree with this proposal and agree that the appointment of federal judicial officers should ideally involve processes that advertise, interview and assess candidates to increase diversity and transparency.

Finally, we would add that for the workforce capability plan to be effective, some strain must be alleviated from the current family law system. Otherwise, the time-pressured environment is likely to prevent family law professionals from applying their improved knowledge and skills.

Family report writers

safe steps is concerned that the Discussion Paper does not adequately address the harmful role of family report writers in the family law system, particularly given their influence on judicial decision making in relation to parenting orders. Certainly, our consultation with victim survivors has indicated that the process surrounding family reports and the reports themselves were the most problematic aspect of the family law system for them.

We welcome the ALRC’s proposals regarding the development of an accreditation program for family report writers, a complaints avenue in relation to family report writers, and proposals 10–11 and 10–12, which aim to provide greater guidance to family report writers on what they are being asked to report on, and encouraging

¹⁶ Above n 8.

judges to use section 102B of the Act which allows them to appoint an independent expert to provide advice on a child's needs. These are important proposals, however, more needs to be done.

As we stated in our submission to the Issues Paper, the feedback we received from victim survivors and from within the family violence sector was that family consultants often “equalise” or minimise family violence in their reports, accuse women of coaching their children, exhibit threatening behaviour towards children who they are assessing, and put the safety of women and children at risk by ignoring family violence orders, meaning that victim survivors cross paths with their abuser. Victim survivors also stated that it was impossible for a family report writer to gain a full understanding of their circumstances, including the history of violence (particularly when it involved psychological and emotional manipulation) and the effects of cumulative family violence on children, in a one-hour session, which is what most family report writers offer.

One woman we spoke to said that a positive aspect of the drawn out, 12-month long court proceedings she and her child had endured was that it allowed the judge time to gain a picture of the abuse and her ex-partner's behaviour, which included refusing to attend parenting programs. She noted that she “was lucky” that her child had a disability and had been attending a psychologist for a number of years, which meant that she was able to tender these independent psychologist's records as evidence in court. This gave context to the violence and demonstrated the effect it had had on her child. The complex nature of family violence and the often covert and unusual behaviours of perpetrators cannot be properly uncovered during a brief, one-off session with a psychologist, particularly one without an adequate understanding of family violence. Another victim survivor stated that family consultants “fail to understand how fear and trauma plays out for children”. Indeed, a proper understanding of the complex dynamics at play may take a long time, even for a therapist with appropriate training.

Ideally, **safe steps** would like the practice of judges relying on family report writers to provide expert evidence in parenting disputes to cease. As discussed above, we support preliminary hearings to determine family violence allegations, which we may reduce the court's reliance on family reports. Further, we hope that if all of the proposals for reform are implemented, for example, those in Chapter 7 which provide for reports from Children's Advocates and Proposal 10–14 regarding cultural reports in parenting proceedings involving an Aboriginal or Torres Strait Islander child, the courts will have access to evidence from a more diverse range of sources that will provide judges with a more comprehensive and nuanced picture of family violence and abuse.

We reiterate our previous recommendations that the practice of using private family consultants should be abolished in favour of regulated in-house court family consultants. However, we note that existing in-house consultants will also require comprehensive training in family violence, and ideally, more time must be allocated for them to work with individual families to obtain a fuller picture of the circumstances. If private consultants continue to operate, a nationally-consistent fee schedule should be established to regulate their practice.

safe steps recognises that some of the problems with family reports are caused by other aspects of the family law system, in particular the current presumptions in the Act regarding equal shared parental responsibility and the importance of children having a meaningful relationship with both parents, and the sometimes problematic application of these provisions. We would hope that a comprehensive program of reform results in report writers approaching their task with more sensitivity and produce reports that better reflect the complexities of family violence dynamics, leading to safer outcomes.

Information Sharing

safe steps supports the proposals in Chapter 11 regarding information sharing between the family law, family violence and child protection systems. This key aspect of the reforms will make the system safer and more efficient for families. Information sharing has the potential to strengthen risk assessment and management processes, early determinations of family violence, and reduce jurisdictional fragmentation in the system.

The ability of federal family court orders to ‘trump’ state-based family violence orders, in combination with the system’s frequent failure to identify family violence prior to interim parenting orders being issued often puts victim survivors and children at risk. We received numerous examples of victim survivors and their children having to endure unsafe interim family court orders that conflicted with state-based family violence orders. As discussed above in relation to creating a process for early determinations of family violence, it would be very important for decision-makers in this process to have access to information regarding state-based family violence orders.

We welcome the proposal to expand the information sharing platform as part of the National Domestic Violence Order Scheme to include family court orders and orders issued under state and territory child protection legislation.

safe steps would recommend that the proposed national information sharing framework and scheme is informed by the experiences of recently implemented state-based information sharing schemes (for example, in NSW and Victoria).

System Oversight and Reform Evaluation

safe steps strongly supports the proposal to establish the Family Law Commission to oversee the family law system. If effective, the Commission would encourage continuous improvement and promote public confidence in the system. It would also allow court users with an avenue to make complaints, which **safe steps** considers important for victim survivors, whose feelings of powerlessness are only increased if their dispute results in an unfavourable or inequitable outcome.

Conclusion

safe steps thanks the ALRC for the opportunity to contribute to this review and would welcome any further consultation on the issues raised in our submission.

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