



## Submission to the Australian Law Reform Commission Family Violence Inquiry

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# I. Executive Summary

Family Relationship Services Australia (FRSA) member organisations provide Australian Government funded services to families in more than 650 locations across Australia. These services include relationship education, counselling, family dispute resolution, parenting programs, men and family programs, children's contact services, specialist responses to family violence and many more. Across the spectrum of service type, practitioners in family and relationship services are at the forefront of family safety and wellbeing.

Violence is never acceptable and those who use or threaten violence must be held accountable for the harm they cause. It is reasonable, within this principle, to accept that there are different forms of violence and gradations of severity and impact. FRSA believes there is value in developing a model definition for family violence and frameworks for common approaches to risk assessment and response across the professional disciplines and practitioners working with families. This would help to build a shared understanding and common language across all professional sectors that intersect with family violence.

Family separation can be a particularly dangerous time in which family violence can occur for the first time, intensify or escalate in terms of the severity of threat. Professionals working in the family law system continually make assessments relating to the safety, mental health and wellbeing of the parents and children involved; a significant and challenging responsibility that deserves to be fully supported and appropriately resourced.

While it is appropriate to have a continued focus on family violence in family separation, FRSA cautions against narrowing concepts of risk too exclusively on violence or specifically the presence or absence of a past history of violence. Behaviour patterns such as obsession, stalking, depression, control, retaliation, inability to let-go and attitudes of ownership towards children can be equally important in risk assessment. In cases of family homicide and child abduction, more research is needed to enhance our understanding of cumulative risk and opportunities for intervention.

The Family Law Reforms enacted in 2006 have substantially increased the number of separating families that participate in screening and assessment processes during contact with a Family Dispute Resolution service (including but not limited to the network of 65 Family Relationship Centres). Effective screening and assessment in Family Dispute Resolution has been supported by government investment in both practical tools and practitioner training. A pro-active approach to encouraging families to disclose and recognise family violence is taken.

Family Relationship Services are identifying separating families affected by violence and those at risk due to other factors including high conflict or impulsive behaviour by one or the other parent. Intervention at an early stage may help to resolve or reduce some of these risk factors or may 'fast track' these families to the Family Court for legal intervention when appropriate.

In addition, there is a capacity to develop more coordinated responses to families at risk and improve mechanisms for sharing information and improving referral pathways between government and non-government agencies when children and families are known to be at risk. FRSA supports the development and refinement of mechanisms that enable integration and address some of the practical barriers to cross-disciplinary responses to family violence.

## I.1. Summary of Conclusions

- a) FRSA supports proposals 4-1 through to 4-4 for a model definition of family violence to be adopted. 8
- b) FRSA supports proposals 4-17 & 4-18 to expand the definition of ‘Family violence’ in the *Family law Act Cth 1975*. 9
- c) FRSA recommends further research in the areas of family homicide and parental child abduction to inform the ongoing refinement of risk assessment that occurs across the Family Law System. 11
- d) FRSA recommends working with media industry bodies to develop ‘responsible reporting’ protocols for family homicide and parental child abduction. 11
- e) FRSA supports proposals 4-21, 4-22 and 4-23 to include in State and territory family violence legislation as well as the *Commonwealth Family Law Act 1975*, guiding principles, which should include express reference to a human rights framework. That these principles explain the nature, features and dynamics of family violence including: its gendered nature; detrimental impact on children; and the fact that it can involve exploitation of power imbalances; and occur in all sectors of society with reference to the particular impact of family violence on: Indigenous persons; those from a culturally and linguistically diverse background; those from the gay, lesbian, bisexual and transgender community; older persons; and people with disabilities. 12
- f) FRSA recommends the ALRC consider how the development of a ‘model definition of family violence’ could be supported by the development of cross-disciplinary understanding and common language for various types of violence. 15
- g) FRSA supports the recommendations of the Family Law Council and the Chisholm Review (2009) to amend the Family Law Act to better recognize family violence and encourage disclosure but also to better recognize the complexities of child-parent relationships and the range of circumstances that contribute to an assessment of risk and the relative value of maintaining a meaningful relationship with both parents. 19
- h) FRSA recommends continued refinement of screening and assessment tools developed in family relationship services to enhance the early identification of family violence. 24
- i) FRSA recommends greater investment in skills training and professional development opportunities to enhance the capacity of front line workers in the family law system to respond to the diverse needs of families affected by violence. 24
- j) FRSA supports the recommendation of the Chisholm Review (2009) that a common risk assessment be developed for those who enter the family law system and for this to incorporate alternative mechanisms for practitioners within the family and relationship services sector to share information (primarily in the form of case management recommendations) with other parts of the Family Law System, including the Family Courts obviating the need for s 60I certificates to contain additional information. 25
- k) FRSA recommends mechanisms be developed to enhance information sharing between community based family relationship services and the Family Courts, particularly where family violence has been disclosed or significant risks identified. 28

- l) FRSA recommends continued Australian Government investment and involvement in the development of professional training in family violence across the professional disciplines working in the Family Law System as part of a broader role in workforce development supporting professional standards and quality service delivery. 30
- m) FRSA recommends further research on the circumstances of Protection Orders being sought and granted in the context of this being an opportunity to identify and respond to high risk families. 34
- n) FRSA supports further work to explore the current and potential use of FDR, including child inclusive practice within FDR, in child protection matters. 37
- o) FRSA recommends a more comprehensive and strategic approach to enhance culturally responsive practice in FDR and other family support programs to better meet the needs of culturally and linguistically diverse and Aboriginal and Torres Strait Islander families. 38
- p) FRSA recommends increased investment to ensure the effectiveness of family and relationship services that rely on having adequate service capacity to work with each family member and coordinate timely access to a range of appropriate supports. 41
- q) FRSA recommends that Family Pathways Networks (FPN) have a national annual focus or theme, one of which would be on enhancing responses to family violence as part of a national strategy to improve service coordination. 42

## 2. About Us

Family Relationship Services Australia (FRSA) is the national peak body for family relationship services. Our purpose is to provide national leadership and representation for services that work to strengthen the wellbeing, safety and resilience of families, children and communities.

FRSA member organisations deliver services in more than 650 locations across Australia and work with over 300,000 people each year. They consist primarily of non-profit organisations embedded in local communities.

FRSA provides support to members and draws on their expertise to understand the changing needs of families accessing services and to inform public policy. FRSA also works collaboratively with the Australian Government and its agencies, related service networks, peak bodies and advocacy groups. For more information visit [www.frsa.org.au](http://www.frsa.org.au).

FRSA receives Australian Government funding to provide sector representation and support to services funded under the Family Support Program which has three core streams:

- Community and Family Partnerships: providing intensive and coordinated support targeted at significantly disadvantaged communities and families and especially vulnerable and at risk families and children.
- Family and Parenting Services: providing early intervention and prevention services to families to build and strengthen relationships, develop skills and support parents and children.
- Family Law Services (Attorney-General's Department responsibility): assisting families to manage the process and impacts of separation in the best interests of children.

Many of FRSA members also deliver a mix of other Australian Government and State/Territory Government funded programs, such as:

- Family violence and sexual assault services
- Child protection services
- Family support
- Community legal services
- Crisis accommodation and support
- Community/neighbourhood centres
- Disability and carer support services
- Mental health services
- Children's services

Family and relationship services work in partnership with other service systems working with families including family and children's courts<sup>1</sup>, legal services and law enforcement agencies. FRSA's submission is focused on the potential for enhancing responses to family violence through collaboration and systemic improvements. We believe that it is in the areas of systems design, inter-agency collaboration and service integration that the most substantial progress can be made in improving responses to family violence.

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<sup>1</sup> The term 'Family Courts' collectively refers to the Family Court of Australia, Federal Magistrates Court and Family Court of WA.

## 3. Family Violence: A Common Interpretative Framework

### 3.1. Legislative Definition

Individuals seeking support from family and relationship services are often ambivalent about recognising and naming violence within their family relationships. This can be because they are afraid of the consequences of admitting to violence – this might trigger an escalation in the violence or the services might withdraw its support or call in the police or child protection agency. Perhaps, more often, it is because the violence is seen as part of the family dynamic and not clearly identified as unacceptable behaviour. There may be confusion, uncertainty and shame about family violence, yet its impact on family members is often under-estimated or not acknowledged. Family violence lacks clear definition and common understanding in the community - it is not a topic regularly discussed at BBQs!

Current differences in the way that family violence is defined across jurisdictions and legal systems (eg family law, child protection) reflects the ambivalence in the community more broadly towards violence within the family. The line between acceptable behaviour and unacceptable behaviour is not clearly drawn. This is reflected in social attitudes towards the use of a physical smack to discipline a child. A smack following a verbal warning, on the leg of a misbehaving young child delivered by an otherwise loving parent would generally not be considered a violent act. Yet this would be unacceptable if delivered by someone other than the parent, or if it were too hard or accompanied by verbal abuse. It is also no longer acceptable to use a belt or strap to 'discipline' an older child or to subject children to corporeal punishment at school. The distinction between 'discipline' and 'child abuse' has changed considerably over the past 20 years and is continually evolving. As a result inappropriate behaviour lacks clear definition.

More needs to be done to promote greater understanding of the many forms that family violence can take and the impact it can have, including the impact on children. Clear and consistent definition across legislative frameworks and service systems has the potential to contribute to this by reducing confusion. Behaviour that is illegal is more clearly unacceptable than behaviour that is merely shameful.

FRSA believes that the development of a model definition would also be instructive for service systems and professionals working with families who are sometimes confronted with diverse community expectations and debate over what constitutes violence. While physical assault is relatively easy to define, a verbal assault can be more difficult to assess. It may be an example of conflict arising over a situation or disagreement in which neither party is more at fault than the other. There can also be confusion over the extent to which behaviour that is clearly threatening – such as inflicting deliberate harm to animals, will be recognised as violence by relevant authorities. A clear definition would help professionals in their role of educating people and explaining service system responses.

FRSA supports Proposal 4-1 that a model definition for family violence be developed and adopted across State and Territory jurisdictions, drawing on the Victorian family violence legislation. The Victorian example has also been put forward as preferable to the current definition used by the

Family Court 'Family violence covers a broad range of controlling behaviours, commonly of a physical, sexual, and/or psychological nature, which typically involve fear, harm, intimidation and emotional deprivation. It occurs within a variety of close interpersonal relationships, such as between spouses, partners, parents and children, siblings, and in other relationships where significant others are not part of the physical household but are part of the family and/or are fulfilling the function of family<sup>2</sup>.

While the majority of family violence is perpetrated by men against women<sup>3</sup>, it is not necessary to limit or narrow definitions by including gender references. Violence against men, perpetrated by a female or male partner does occur and warrants recognition as harmful and unacceptable. There are also circumstances where it is not possible to distinguish between perpetrator and victim - cases where violence becomes the 'norm' or a cycle of abuse in which adult partners are violent to each other, extended family networks are involved, children are subjected to direct and indirect violence etc. The model definition should be applicable across all scenarios and avoid gender stereotypes that could inadvertently narrow grounds for instigating legal responses.

In Section 11 of the Discussion Paper, the Commissions note that the *Family Law Act* definition of family violence is more restrictive than that used in some state and territory family violence legislation. It is also more restrictive than the definition used in some practice-based material such as the *Family Relationship Centre's Screening and Risk Assessment Framework*<sup>4</sup> and the Family Court of Australia's *Family Violence Strategy*. The question is asked - have variations between legislative definitions and practice-based definitions in family dispute resolution had any practical impact in FDR practices? FRSA is not aware of any impact on FDR practice as such but there have been situations reported where individuals have been referred back to FDR despite being deemed unsuitable and/or issued with S60I Certificate. This may reflect different understandings across the Family Law System about what constitutes Family Violence and which cases are not suitable for FDR. The development and adoption of a model definition may help to promote common understanding and common language.

## Conclusion

**a) FRSA supports proposals 4-1 through to 4-4 for a model definition of family violence to be adopted.**

### 3.2. Impact on Children

FRSA strongly endorses the preliminary view of the Commissions that family violence legislation ought to acknowledge the detrimental impact of family violence on children either through defining the exposure of children to family violence as a category of violence in its own right - as is the case in Victoria - or enable the making of orders to protect children from such exposure. It is important that research evidence concerning the impact of violence on children is reflected in legislation and contributes to improved understanding and community responses. FRSA would also welcome stronger legal protections for parents that take protective action to shield children from actual or threatened violence by another family member. Clearly such provisions need to avoid any

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<sup>2</sup> Family Court of Australia, *What is family violence?* Available online at [www.familycourt.gov.au](http://www.familycourt.gov.au)

<sup>3</sup> ABS (2005) *Personal Safety Survey; AIFS (XXXX) Violence Study Time for Action* Report, the National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009-2021.

<sup>4</sup> Family Relationship Centre's Screening and Risk Assessment Framework 2008 (Attorney-General's Department)

implication that a parent who is the victim of violence could be held responsible for failing to protect children from the violence of the other parent – as flagged in the Consultation Paper.

This is particularly pertinent in matters before the Family Court. Chisholm<sup>5</sup> describes in some detail the 'victims dilemma'. If the victim seeks orders that will protect the children from risk (such as orders for no contact or for only supervised contact), the victim will need to provide evidence of the risk, and this will normally be evidence of previous abuse or family violence. That evidence will often need to be detailed, so that the context and the significance of specific acts can be understood. The dilemma is that the seeking of such orders, and spelling out the reasons for the fear of risk, may be seen as vindictive or punitive, dwelling on the past and old grievances, or as a way of alienating the children from the perpetrator. The victim might therefore be rightly concerned that if the court does not accept his or her evidence, or if it considers that the protective orders are not warranted, it might take an adverse view of the victim, and not only fail to make the orders sought by the victim, but make orders placing the children with the perpetrator for longer periods, to protect them from what it might see as a style of parenting by the victim that would harm the children by alienating them from the other parent. Such an outcome, the victim would believe, would place the children at *additional* risk of harm. Chisholm explains how this becomes a dilemma for the court and that any decision taken can lead to perceptions that the Court is biased or has treated one party unfairly.

Legislative change is needed beyond the definition of family violence to support parents taking action they believe to be in the best interest of children, without fear of reprisal. At the same time legislation needs to treat both parties fairly and take steps to ascertain the best interest of the child without prejudice. This becomes a process of thorough risk assessment.

FRSA agrees with the Commissions' preliminary view, that the definition of family violence in the *Family Law Act* is too narrow. The definition should be expanded to include types of conduct recognised under state and territory family violence legislation. This would include other types of conduct - such as economic abuse, sexual assault, and exposing children to violence. The Commissions consider that the definition of family violence in the Victorian family violence legislation is an instructive model in this regard. FRSA notes that this approach is consistent with that taken by the Family Law Council in its December 2009 advice.

## **Conclusion**

**b) FRSA supports proposals 4-17 & 4-18 to expand the definition of 'Family violence' in the *Family law Act Cth 1975*.**

### **3.3. Homicide and Abduction**

The most extreme cases of harm occurring in the post-separation context occur when children are abducted, assaulted or killed by a parent and/or a parent is killed by their former partner. There are few crimes that generate the public outrage that child homicide provokes, particularly when a parent is the offender – as this is an extraordinary breach of trust by one who is meant to be responsible for nurturing and protecting the child.

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<sup>5</sup> Chisholm R (2009) Family Courts Violence Review.

Despite the high profile of these cases there is relatively little Australian research into the circumstances and contributing factors that might inform effective interventions to reduce the number of such tragedies. A study by Mouzos & Rushforth at the Australian Institute of Criminology<sup>6</sup> in 2003 examined 13 years of data on Family Homicide, found:

- On average, about 129 family homicides occur each year, with intimate partner homicides accounting for three out of five family homicides.
- Three quarters of intimate partner homicides involve men killing their female partners.
- More than half (53 per cent) intimate partner homicides stemmed from a domestic altercation between the victim and offender, slightly less than three in 10 (29 per cent) were believed to stem from jealousy or desertion/termination of the relationship (actual or pending).
- On average, 25 children are killed each year by a parent (filicide), with children under the age of one at the highest risk of victimisation and 68 per cent of all victims aged five years or younger.
- Fathers were responsible for the majority of filicides in Australia (63 per cent compared to 37 per cent by mothers).

Mouzos & Rushforth report that the underlying motives behind incidents of filicide are difficult to explain with the motive undetermined in three out of five cases (61 per cent). The most prevalent motives, where known, were domestic altercations (21 percent) and jealousy/termination of a relationship - where the child is killed by one parent as a consequence of the actual or pending separation from the other parent (nine per cent). They found that 15 per cent of all filicide offenders and one-third of the female filicide offenders were suffering from a mental disorder immediately before or at the time of the homicide incident, a quarter of the filicides involved the parent also committing suicide following the event (compared to about six per cent of murder-suicides in the general homicide offender population). They also refer to research on child deaths in New South Wales which reported that family breakdown was a precipitating factor in almost one in five filicides, and parental mental illness in three out of 10 filicides<sup>7</sup>.

In her 2005 review of child murder-suicides after separation, Carolyn Johnson<sup>8</sup> identifies a history of domestic violence as one of a number of potential 'danger signs' or risk indicators. A history of violent and controlling behaviour as well as drug/alcohol use were common in these cases, but there were also other danger signs such as specific threats of harming children, rehearsal of the act of homicide, stalking behaviour, refusal to accept the separation and proprietorial attitudes to children. With the power of hindsight these signals are very evident, yet at the time the risk was either unrecognised or no action taken. Those who were worried about the mental state of the perpetrator were either uncertain or afraid to intervene; it is also unclear what preventative action could have been taken by the Police or other agencies. The involvement of the Family Court was relevant to only a proportion of cases.

Both studies referred to above highlight the need for further in-depth and ongoing research to inform our understanding of causation but also to identify the points at which effective intervention might have occurred. There may be certain combinations of risk that warrant higher priority in the screening and assessment process. There may also be value in strategies that educate parents and

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<sup>6</sup> Mouzos, J and Rushforth, C. (2003) 'Family Homicide in Australia', Trends and Issues in Crime and Criminal Justice, no 225, Australian Institute of Criminology, Canberra.

<sup>7</sup> Lawrence, R. & Fattore, T. (2002) Fatal Assault of Children and Young People, Commission of Children and Young People, Sydney.

<sup>8</sup> Johnson C H (2005) Come with Daddy, Child Murder-suicide after family breakdown, University of WA Press.

other family members to be alert to danger signs as well as enhancement of response options when risk is identified.

*“Children are not just at risk of homicide through fatal abuse incidents; family breakdown has also been identified as a precipitating factor in some filicides. The improvement of counselling and support services for separating parents may play an important role in reducing child homicide in these instances. Other family and friends may also play a vital role by raising the alarm if they notice a family breakdown affecting the parents’ mental health and by encouraging the parents to seek medical or other assistance in dealing with possible illnesses such as depression resulting from the separation.”<sup>9</sup>*

A parallel may be drawn here with cases of parental child abduction. Further research could assist with refining risk assessment processes. There have also been calls for greater investment in law enforcement responses<sup>10</sup> which is beyond the scope of this review but might be assisted by the development of mechanisms for sharing information across the service system as recommended earlier.

The very high profile media coverage of family law cases that end tragically, particularly cases involving filicide, creates an insatiable media appetite for information and opinion. This can very quickly come to include sensational claims, misinformation and accusations of blame. It is also possible, as in cases of suicide, that it may trigger ideation in others. There may be some value in exploring opportunities to engage media industry bodies in the development of responsible reporting protocols, similar to the voluntary code for reporting on actual or suspected suicide. This code has been quite effective in reducing graphic, distressing descriptions of suicide that can have a substantially negative impact on others at risk. In addition, there might be an opportunity to feed correct information into media coverage of tragic events and to encourage the inclusion of preventative messages regarding warning signs, help-seeking and supports available.

## Conclusions

- c) FRSA recommends further research in the areas of family homicide and parental child abduction to inform the ongoing refinement of risk assessment that occurs across the Family Law System.**
- d) FRSA recommends working with media industry bodies to develop ‘responsible reporting’ protocols for family homicide and parental child abduction.**

### 3.4. Vulnerable Populations

There are population groups that experience higher rates of family violence and population groups that are particularly vulnerable to the impacts of violence once it has occurred. For this reason one-size fits all approaches are unlikely to be effective in responding to the diverse needs of families affected by family violence. It is difficult to do justice to the diversity of need and experiences in the timeframe available. In 2008 the NSW Office for Women summarised some of the key issues as follows:

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<sup>9</sup> Mouzos, J and Rushforth, C. (2003) ‘Family Homicide in Australia’, *Trends and Issues in Crime and Criminal Justice*, no 225, Australian Institute of Criminology, Canberra.

<sup>10</sup> See for example Family Law Council (1998) *Parental Child Abduction*.

- **Aboriginal and Torres Strait Islander** people are over represented as both victims and perpetrators of all forms of violent crime in Australia. Statistics cited in the Australian component of the International Violence Against Women Survey published in 2004, show that the rate of domestic and family violence victimisation for Aboriginal women may be 40 times the rate for non-Aboriginal women and that in 2002-03 despite representing just over 2% of the total population, Aboriginal women accounted for 15% of homicide victims in Australia.
- **Women living in rural or regional areas** experience social and physical isolation due to geographical location, transport difficulties, and unreliable or unavailable telephone services. Isolation, the limited availability of legal services, such as police, legal aid, and advocacy support, and domestic violence services, such as long term counseling and refuge accommodation, mean that accessing help can be challenging. In addition, when services are available they are often not used because of concerns regarding confidentiality.
- **Women with physical and cognitive disabilities** experience higher rates of violence than those without disabilities. Those with cognitive disabilities are particularly vulnerable. Once violence has occurred, women with disabilities suffer more severe and prolonged episodes of abuse. This is often due to their social and economic marginalisation and greater dependence on partners. Women with disabilities experience specific types of abuse related to their disability, such as the withholding of equipment, food and medication; limitations on their access to communication devices; and threats of institutionalisation. Compared with their non disabled counterparts, restraint and control are more likely to be features of domestic and family violence for women with disabilities.
- **Women from culturally and linguistically diverse backgrounds**, including immigrant women and refugee women, may be at increased risk of experiencing abusive situations. Reporting of domestic and family violence incidents by women from CALD backgrounds is low. Reasons include feelings of shame, fear of deportation (eg as a result of marriage breakdown), she also may feel responsible for providing financial support for family in her country of origin, and consider that their situation is more important or serious than her own. The erosion of self esteem accompanying domestic and family violence is compounded if the woman is isolated by limited English or lack of family/ friends in whom to confide.

There are also important differences in the experiences and help-seeking behaviour of older women, young women and women in same-sex relationships. Further consideration of the impact of these differences on the operation of the Family Courts and family law system more broadly is needed.

Lastly, FRSA believes more needs to be done to raise awareness that family violence does not end with partner separation; separation can trigger, escalate and increase the risk of family violence. This can be exacerbated by high levels of conflict and dispute over post separation parenting arrangements for children. The implications for the development of integrated service responses are examined in a later section of this submission.

## **Conclusion**

- e) **FRSA supports proposals 4-21, 4-22 and 4-23 to include in State and territory family violence legislation as well as the Commonwealth Family Law Act 1975, guiding principles, which should include express reference to a human rights framework. That these principles explain the nature, features and dynamics of family violence including: its gendered nature; detrimental impact on children; and the fact that it can involve exploitation of power imbalances; and occur in all sectors of society with reference to the particular impact of family violence on: Indigenous persons; those from a culturally and linguistically diverse background; those from the gay, lesbian, bisexual and transgender community; older persons; and people with disabilities.**

### 3.5. Differentiation of Family Violence

The prevalence of family violence in families attending family and relationship services is very high (up to 80% of families attending some services disclose some form of family violence) but the nature of the violence varies significantly – from a single incidence of verbal abuse to terrifying threats of homicide. While FRSA supports the development of an all-inclusive standard definition of family violence to be included in legislative and service frameworks, this needs to be accompanied with sophisticated response options that are appropriate to the situation. For example, while it is important that verbal abuse be included in the definition of family violence, this should not mean that legal intervention is mandated every time someone criticises their partner in a heated argument. Behaviour needs to be assessed in context and with regard to impact before determining what response may be appropriate. Service systems must be able to respond appropriately across the spectrum of behaviours and situations that may be captured under a very broad an inclusive definition.

Appropriate responses are important to encouraging disclosure. Both victims and perpetrators may under-disclose because they fear a punitive system response or 'over reaction' or because they see the system as unresponsive to disclosures of violence. Service systems need to work towards ensuring that responses are proportional and appropriate so that both victims and perpetrators can be reassured that any disclosure will be treated fairly and will be taken into consideration in decision-making together with other factors that may impact on safety and wellbeing.

In order avoid simplistic responses to family violence, there needs to be some agreement on differential responses across the spectrum of behaviours that constitute family violence. This is a strong theme in the research and practice literature. It has also been the focal point upon which attempts to develop cross-disciplinary cooperation in response to family violence has been undertaken. For example, participants at the Wingspread Conference in the US agreed... *“that each domestic violence situation must be closely examined to determine the potential for lethality, the risk of future violence, and the presence of other forms of intimidation. Critical variables identified by conference participants included: the frequency, intensity, and recency of the violence; the presence of sexual coercion or abuse; the existence of nonphysical coercive strategies including verbal abuse, threats, isolation, and financial control; the presence of an established history of violence, criminal activity, substance abuse, or mental health issues; the determination of “who is afraid of what”; the needs, interests and well-being of children; any history of child maltreatment; and the extent to which the violence is consistent with a recognized pattern with proven implications for ongoing risk or the utility or impact of particular interventions or determinations. Family strengths and protective factors should also be taken into account and supported.”*<sup>11</sup>

In 2009, FRSA brought Professor Janet R Johnston from the San Jose University (US) to Australia to share her expertise on family violence and to discuss the Wingspread Conference that sought to improve cross-sector professional understandings of family violence. Professor Johnston explored the development of typologies for differentiating types of family violence described in recent research literature<sup>12</sup>:

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<sup>11</sup> Ver Steegh N & Dalton C (2008) REPORT FROM THE WINGSPREAD CONFERENCE ON DOMESTIC VIOLENCE AND FAMILY COURTS, Family Court Review, Volume 46 Issue 3, Pages 454 – 475.

<sup>12</sup> In her presentation Professor Johnston (2009) identified the following research sources - Babcock et al, 2004; Capaldi & Owen, 2001; Dalton et al., 2003; Dutton, 2005; Graham-Kevan & Archer, 2003; Johnson, 2005; Johnson & Leone, 2005; Leone, et al, 2005;..

**(1) Coercive-Controlling Violence** (also known as Battering or Intimate Terrorism)

A pattern of control & domination is asserted by the perpetrator inducing varying degrees of fear, intimidation & submission in the victim through physical violence & threats to self & loved ones and one or more of the following:

- Verbal & emotional abuse
- attacks on self-esteem
- insistence on sole authority in multiple domains: social, financial, child-rearing etc.
- isolation & restriction of outside contacts
- use of legal disputes to harass & punish
- sexual coercion & rape
- Men are primary perpetrators in most shelter, criminal court samples.

**(2) Situational Couple Violence** (also called conflict-instigated or common couple violence)

- mutual blaming, hostility & verbal abuse
- escalation to occasional physically violent struggles
- limited problem-solving skills
- refusal to submit to one another's rules/demands
- power is relatively balanced; neither fearful
- legal disputes initiated by both parties
- Both male & female initiated in community samples

**(3) Violent Resistance** (a violent response to being abused)

- Reaction in response to being abused for purpose of
- Self-defence
- Protection of children
- Stopping the abuse
- Pre-empting a partner's violence
- Most female violence has been seen as VR but little research except in samples of victims who have killed their abusers

**(4) Separation-Instigated Violence [SIV]** (a time-limited reaction to trauma)

- One or two violent episodes only, around time of separation, custody dispute
- no history of violence nor coercive control
- acute reaction to a traumatic separation or other stressful events
- intense feelings of bewilderment, loss & shame
- diminished parenting & co-parenting capacity is usually time-limited
- Initiated by either males or females in separated family samples

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...Johnston & Campbell, 1993; Magdol et al, 1997; Migliaccio, 2002 Salari & Baldwin, 2002; Statistics Canada, 2001; Ver Steegh, 2005; Wallerstein & Kelly, 1980 a list of full references can be provided on request.

As discussed by both AIFS<sup>13</sup> and Chisholm<sup>14</sup> there are both benefits and risks in the use of typologies. They encourage a broader understanding of family violence and a move away from stereotypes or assumptions. There is, however, a risk that the complexities surrounding inter-personal relationships may be over simplified and the typologies wrongly applied or manipulated.

While cognisant of the risks, FRSA believes there is the potential to improve service system responses to family violence through the development of cross-disciplinary understanding and common language for various types of violence. The US Wingspread project provides an example of how this might be achieved. In Australia there is the potential to bring together those with social service expertise and those with legal expertise, drawing in family violence, family law and child protection service systems. A typology of family violence should be dynamic and not enshrined in legislation but it could support the 'model definition of family violence' by providing another layer of meaning that informs risk assessment and service responses.

### **Conclusion**

- f) FRSA recommends the ALRC consider how the development of a 'model definition of family violence' could be supported by the development of cross-disciplinary understanding and common language for various types of violence.**

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<sup>13</sup> AIFS (2007) *Allegations of family violence and child abuse in family law children's proceedings: a pre-reform exploratory study*, by Lawrie Moloney, Bruce Smyth, Ruth Weston, Nicholas Richardson, Lixia Qu and Matthew Gray.

<sup>14</sup> Chisholm R (2009) *Family Courts Violence Review*.

## 4. Identifying & Responding to Risk

### 4.1. The Family Law Act

There has been some debate in Australia since the introduction of the *2006 Family Law Reforms* over the extent to which the emphasis on shared parenting is potentially in conflict with ensuring the safety of women and children at risk of family violence.

As identified in the Chisholm Review of Family Violence in the Family Courts<sup>15</sup> there are specific provisions in the *Family Law Act 1975* that can potentially discourage the disclosure of family violence. FRSA supports recommendations to:

- remove the 'friendly parent' provision to recognize that parents sometimes need to take action to protect children from risk;
- replace the specific and separate costs provision (s 117AB) dealing with knowingly false allegations and statements with a simple reference to the giving of knowingly false evidence in the provision that deals with costs (s 117); and
- amend the information that advisers are required to provide to reflect not only the importance of parental involvement but also the importance of safety for children.

FRSA also supports the Chisholm proposal that the term 'equal shared parental responsibility' be replaced with a statement such as that proposed in the Chisholm Review "*that each parent should have parental responsibility*". FRSA has previously called for the use of the term 'joint parental responsibility' rather than 'equal shared parental responsibility'. This would help to address the expectations of some parents and the broader community more generally, that there is a presumption in the *Family Law Act* supporting children spending equal time with both parents. Expectations around equal time can distract parents from considering the broad range of arrangements that might be made for children and the relative benefits of the alternatives. Family Dispute Resolution (FDR) Practitioners report difficulties arising in dispute resolution from the misconceptions some parents have regarding 'equal time' being the starting point for negotiating parenting agreements. FRSA is also concerned about reports of cases involving equal shared care where it is clearly inappropriate – eg there is very high conflict, threats of violence and/or long distances between parents – typically parents have entered into these arrangements because of a perception about what the *Family Law Act* mandates and what would be the likely outcome of a Family Court trial or mediated agreement. In our experience, these families have often not sought the advice of a family lawyer or a family relationship service; they are acting on their own judgement and sometimes in the context of violence or fear of violence. Community education to address the assumptions about equal time would be very useful and a change of terminology would attract public attention.

We recognise that there will be some objections to such a change as it may be seen as a move away from recognising the importance of children having meaningful relationships with both parents post separation. Often the parent advocacy groups interacting with the Family Law System believe the system should be simplified and offer some certainty to parents. If violence is proven the

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<sup>15</sup> Chisholm R. Review of Family Violence in the Family Courts (2009)

children will have no further contact with the violent parent. If there is no violence the presumption is that equal shared care will be the 'norm'. This approach would rely upon the Family Law System adopting a very narrow definition of violence and assumes that it is possible to accurately determine what has occurred or is occurring within a private relationship. It also relies upon the 'right' decision being made and ignores the evidence that court orders are continuously challenged, undermined or ignored by parties who disagree with the court's decision.

The changes to the *Family Law Act* proposed by the Chisholm Review would place greater responsibility on parents and courts to make decisions that are in the best interest of each individual child based on his or her circumstances. This better recognises the complexities and changeability of family relationships and the need for a more individual approach.

The difficult message to convey to the community is that meaningful relationships are not defined by time spent or shared care but rather by the capacity of both parents to understand and respond to the needs of the child. The basis for including 'equal or substantial time' in the Act was that spending substantial time with both parents can assist in the development of meaningful relationships. However, as discussed in the AIFS Evaluation of the Family Law Reforms<sup>16</sup> research into the links between the amount of time children spend with each parent post-separation and children's wellbeing suggest that while some time spent with each parent is important to sustaining relationships there is no clear linear relationship – increasing amounts of time do not necessarily lead to better outcomes for children.<sup>17</sup> Furthermore, the benefits of shared care-time arrangements for children are completely undermined if it exposes them to inter-parental relationships characterised by conflict, fear, safety concerns or physical harm.<sup>18</sup>

The challenge of determining whether or not violence has occurred are difficult enough but attempting to predict the risk of violence occurring in the future is even more difficult and both are relevant to decisions regarding parenting arrangements most likely to ensure safety and promote wellbeing. There will be cases where relationships characterised by violence and fear have improved post separation, where children are no longer regularly exposed to parental conflict and the competency of both parents has been enhanced. At the other end of the spectrum are the cases where there is no history of violence prior to separation but one partner reacts badly to the relationship breakdown and begins using behaviour such as violence, intimidation and harassment with children 'caught in the middle' and potentially at risk. The complexity arises in predicting behaviour, particularly when variables such as emotional adjustment, mental health issues, drug/alcohol usage, housing stability and financial pressures are in the mix of factors that can trigger a change in behaviour or parental competency.

One of the challenges for the Family Law System is developing more sophisticated responses that can adapt to changing circumstances. For example, in Western Australia the Family Court has worked with community based family relationship services to develop more flexible and contingency based parenting orders that allow service providers to exercise some discretion about the support provided to a family prior to contact arrangements being enacted. Discretion may be exercised in relation to moving from supervised contact to supervised change over, requiring parents to satisfactorily complete a behaviour change or parent education program, continuing counselling until confident that a parent has adjusted to separation, or suspending contact because of deterioration in adjustment or another risk factor.

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<sup>16</sup> Kaspiew, R., Gray, M., Weston, R., Moloney, L., Hand, K., Qu, L., & the Family Law Evaluation Team. AIFS Evaluation of the Family Law Reforms (2009)

<sup>17</sup> Smyth, 2009: "A five-year retrospective of post-separation shared care research in Australia".

<sup>18</sup> Buehler et. al., 1997; McIntosh and Chisholm, 2008 and McIntosh, Long and Wells, 2009.

Similarly, Family Dispute Resolution Practitioners can be proactive in developing safety plans with families that have risk factors so that parenting arrangements are not 'written in stone' but can be changed quickly if circumstances change. For example, FRSA is aware of cases where parents with episodic mental health issues agree to patterns of contact with children which can be suspended at the discretion of a service (eg contact service) or a family member (eg grandparent) with the prior consent of the affected parent. This allows the child-parent relationship to be maintained while the parent is well while protecting children from harm when mental health deteriorates – without the ex-partner being the decision-maker which can perpetuate conflict between the parents. Clearly such arrangements are complex and not always appropriate but in some circumstances they can work, potentially avoiding more rigid arrangements or ongoing disputes over parenting arrangements.

An important benefit of considering the specific circumstances of each case is that each party has an opportunity to be heard and to be treated fairly. The purpose of the Family Law System is to identify and respond to factors that will impact on the safety and wellbeing of children and their parents. Parents who feel they have participated in a decision-making process and understand the outcome are less likely to feel disaffected. This includes both victims and perpetrators of violence. Victims who feel heard and have confidence that the professionals involved genuinely seek to ensure their safety are more likely to recover from the trauma they have experienced and engage in appropriate safety planning. Perpetrators who have used violence are more likely to accept the outcome of a fair process than one that they perceive to be biased. This is important because feelings of injustice can exacerbate violence potentially increasing the risk of serious harm – this is not to say that perpetrators should be 'appeased' or to imply they should not be held accountable for their behaviour. No form of violence is acceptable and that needs to be made very clear through every stage of the process, but the role of the Family Law System is not a forensic investigation of the past; it is a predictive assessment of the future and that is always going to contain an element of uncertainty. The role of support services can be critical and will be made easier if people feel they were treated fairly and can move forward.

It is also important that children of an appropriate age feel that they have been heard and their perspective has been taken into consideration. This is not to suggest that children should determine what arrangements are put into place or become a witness to the dispute between their parents. There will be some children so traumatised by the behaviour of a violent parent that any relationship with that parent would be detrimental; there will be others who are so strongly attached to a parent that the relationship is very important even in the context of high conflict, violence or abuse. Once again, no violence is acceptable and the safety of children is paramount but there is a complexity in child-parent relationships that should not be underestimated. In their work with children who have been abused by a parent, Mudaly & explore how the relationship can still be one that is important to identity and self-esteem, with children and young people often putting a high priority on maintaining contact with their parents while in out-of-home-care albeit with strategies in place to protect their own safety and that of other family members.<sup>19</sup>

The capacity of the Family Law System to listen to children and take note of their wishes has been substantially increased by the use of strategies such as Child Inclusive Practice in family dispute resolution and the role of Family Consultants and Independent Children's Lawyers in the Family Court. In particular, the use of Child Inclusive Practice in post separation services involves specialist child consultants who discuss the impact of parental separation with the child/ren and feed this back to parents during family dispute resolution. It is a powerful way to ensure that parents understand the impact of past and current behaviour on children. Comprehensive research

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<sup>19</sup> Mudaly & Goddard (2006)

confirms the benefits of child inclusive practice when properly implemented, particularly in the process of family dispute resolution<sup>20</sup>.

Post separation parenting arrangements involving contact between children and parents who have used violence involve complex risk assessment and balancing competing 'best interests'. Clearly, inappropriate contact arrangements can be detrimental to children<sup>21</sup>, so too can denial of contact which may further exacerbate rather than alleviate risk, particularly as children get older. Children's Contact Services have an important role both as a safe place for contact to occur and as a mechanism for further risk assessment and risk management in conjunction with the Family Court.

Family Courts and other professionals working with separated families need tools to explore all of the variables, encourage full disclosure by all parties and consider all relevant factors before making case-by-case recommendations. Once again, FRSA supports the recommendations of the Chisholm Review, that the Family Law Act be amended to deal separately with parental responsibility and the making of parenting orders dealing with such matters as with whom the child should live, and rather than suggesting that any particular outcome is likely to be best, the legislation should encourage parties and the courts to consider all options, including equal time and near-equal time, so that the best outcome can be arranged in each case. FRSA also supports proposed changes that give more weight to considering the existing parent-child relationships, parental capacity and performance as well as appropriate consideration to children's wishes, feelings and perceptions. Furthermore, FRSA supports the recommendations of the Chisholm Review relating to amendments to the act that:

- create a risk assessment process;
- make it clear that safety is an important aspect of children's interests, so that evidence will be presented on that topic; and
- ensure that the court knows about any current family violence order so that it does not inadvertently make a parenting order that is contrary to it;
- avoid creating an impression that the Family Court will draw adverse inferences from the family violence order itself, rather than on evidence put before the Family Court (which may or may not coincide with the evidence that was before the court that made the family violence order).

The direct interaction between family violence protection orders and family court proceedings and orders is well canvassed in the ALRC Discussion Paper. FRSA supports the recommendations regarding courts having greater awareness of the orders made in other jurisdictions and more alignment between court proceedings concerning family violence, child abuse/neglect and parenting arrangements. In past submissions (for example FRSA's Submission on the National Framework for Protecting Children) FRSA has argued in support of the Family Law Councils 2002 proposal for a single court approach to matters involving allegations of child abuse and neglect as well as dispute over post separation parenting arrangements.

## **Conclusion**

**g) FRSA supports the recommendations of the Family Law Council and the Chisholm Review (2009) to amend the Family Law Act to better recognize family violence and encourage disclosure but also to better recognize the complexities of child-parent relationships and the range of circumstances that contribute to an assessment of risk and the relative value of maintaining a meaningful relationship with both parents.**

<sup>20</sup> McIntosh, Wells & Long (2007) pgs 8-25; McIntosh & Long (2006).

<sup>21</sup> Bickerdike A (2006) Family Dispute Resolution: opportunities, risks, and challenges in the new system.

## 4.2. Screening & Assessment

As noted in the ALRC Discussion Paper the majority of families that seek the assistance of the Family Law System will now make contact with a Family Relationship Service either initially or during the course of their engagement with the service system.

FRSA suggests a subtle change in the language used in the ALRC Discussion Paper where it is stated that Family Relationship services have become 'gatekeepers' for the family law system. Family Relationship Services are not responsible for determining access to other parts of the service system. While the provisions of the Family Law Act require litigants to first attempt family dispute resolution before filing a matter for resolution in the Family Courts, Family Relationship Services are the primary but not the exclusive providers of family dispute resolution. It is also important to note that there are very clear exceptions in the Family Law Act for cases involving family violence, child abuse or urgency. Often families will engage simultaneously with different parts of the Family Law System. FRSA's preferred language would be that Family Relationship Services provide a significant 'gateway' to the broader service system, assisting families to navigate their way through the process of developing parenting agreements but also accessing other supports along the way – including legal advice, family counselling, therapeutic programs for children and education on separated parenting.

The main benefit of having so many families make early contact with a Family Relationship Service is that this provides an opportunity to assess for family violence and broader safety issues. The Australian Government Attorney-General's Department commissioned the development of a Screening and Assessment Framework to provide guidance to staff in the Family Relationship Centres. The framework is also used by the Family Relationship Advice Line. The Framework describes the good practice principles underpinning screening and assessment and gives guidance in screening and assessment. The Framework identifies three domains of risk-to-safety posed by clients, and to those associated with them (usually the partner or ex-partner):

- domestic and family violence and violence towards others
- child abuse or abduction, and
- self-harm.

Early screening questions include:

- do you have any reason to be concerned for your own safety or the safety of your children?
- do you have any other worries about your children at the moment?
- do you have any reason to be concerned for the safety of anyone else?

While screening for the presence of violence may help identify cases where there are safety issues, a single screening process cannot be relied upon to fully identify a history of, and potential for, violence and abuse. Victims may not perceive the abuse they have lived with as violence, may not feel comfortable reporting their experiences because of shame or embarrassment, may underestimate the severity of the situation, fear they won't be believed or that their children may be removed from their care. It could be that victims of violence are too afraid to disclose violence for fear of reprisal from their ex-partner. Screening and assessment is an ongoing process that continues throughout the provision of support to a family or family members using family relationship services.

Family Relationship Services have found the screening and assessment tools developed when the Family Relationship Centres were established to be very useful but practice is continually evolving in this area. Ongoing work to identify and evaluate tools and inform practice is necessary.

It needs to be recognised that allegations of violence and/or threatened violence are not uncommon during family breakdown. Effective strategies to encourage disclosure combined with a broad definition of family violence can give rise to concerns about the potential for simplistic responses that can impact on significant decisions regarding children potentially influencing where they live and what pattern of contact they have with each parent, impacting over the long-term on the nature of child-parent relationships which in turn impacts on safety and wellbeing over the long term. Understanding the different forms of family violence leads us to focus not on the type of violence alone but also the potential impact of past violence, threats of violence and indicators that suggest violence may occur in the future.

Professor Johnston describes **P<sup>5</sup> screening**:

**(1) Potency** of violence (*degree of severity, dangerousness, risk of serious injury/lethality*) indicates level of threat, need for immediate protective orders & other safety measures for child (& family).  
Basic indicators:

- threats & fantasies of serious harm (*homicide or suicide*)
- availability of weapons (*guns, knives*)
- Extent of prior abuse & serious injury
- history of mental illness, esp. thought disorders (*no self-insight; severe personality disorder*)
- obsessed with & possessive about partner (*incl. stalking / hostage taking*)
- Triggers & escalators:
- drug and alcohol use
- high depression or rage
- recent stressor (e.g. separation, loss of job, change of custody, death of loved one etc.)

**(2) Pattern** of violence (*history of using violent tactics & coercive control*) indicates degree of stress & trauma likely suffered by child & family, potential for future violence, need for longer term restraints on abuser, causal & contributing factors, need for corrective & rehabilitative measures, & prognosis with treatment.

Overt indicators

- history of violence & threats (esp. severe, frequent abuse, calls to police )
- sexual coercion & rape
- disregard / contempt for authority (e.g. violation of RO's, criminal arrest record)
- history of being obsessed with & possessive about partner (*following, spying, & sexual jealousy*)

Contributing Factors: history of violence & threats (esp. severe, frequent abuse, calls to police)

Covert Indicators:

- victim's high level of fear, intimidation
- verbal & emotional abuse
- attacks on self-esteem
- insists on sole control / authority in multiple domains (*social, money, children, activities etc.*)
- isolates & restricts victim's outside contacts
- uses legal disputes to harass & punish

**(3) Primary perpetrator** of violence (*rather than it being mutually or jointly instigated*) indicates whose parenting is more likely to be deficit, whose access needs to be restricted & who is more able to provide a violence-free home.

### Verbal Indicators

- Victim's story is clear, specific and plausible; perpetrator's more likely to deny, minimize, or justify violence
- Victim's motive/intent is to please, placate, self-protect, & stop the violence; perpetrator's motive to control, punish
- Victim aware of hurt inflicted, expresses shame and guilt re his/her role

### Behavioural Indicators

- "Defensive" wounds sustained by victim; "aggressive" wounds" inflicted by perpetrator
- Damage and injury usually inflicted by one with size, physical strength, & skill
- Violent responses by a victim proportional to the level of perceived threat; perpetrators respond with excessive force and violence
- Evidence of being the primary perpetrator in past

## **(4) Parenting problems** of both parent (varies widely generally with CCV > SCV> VR>SIV)

### Parenting problems of DV Perpetrator: Overt Abuse

- Uses coercive discipline tactics → physical abuse of child
- Alternately overly permissive & rigidly authoritarian
- reverse roles with child erratically
- Violates child's emotional boundaries -> perpetrate sexual abuse
- Emotionally abuse child – mind games, put downs, pit sibs against one another, isolates child socially
- Morally corrupts child by encouraging immoral & criminal behaviour
- Abducts child/threaten to do so

### Unempathic Parenting

- Convinced child's feelings/ needs are identical to own or fully manipulated by other parent
- Unable to stay focused on child (diverts to own issues or to blaming ex-partner)
- Provides few or highly idealized descriptors of child
- Angry outbursts, transitory breaks into rage re child's situation
- Makes odd, bizarre, or irrational remarks about child
- Parent's Accountability for Violence & Capacity to Repair Damage
- Minimizes or denies own violence negatively affects child
- Minimizes negative effects of own controlling, abusive child-rearing practices
- Intolerant/impatient at child's developmentally appropriate behaviour
- Impervious/intolerant about what other parent needs in order to provide emotional
- Parenting Problems: Use of Child as Weapon against Partner
- demands/insists that child demonstrate affection and loyalty to self
- Uses child to communicate threats/ negative messages to other parent
- Uses child's access to coerce or harass other parent
- Rewards child for rejecting/punishing other parent

### Parenting problems of DV victims

- Anxious, depressed, PTSD symptoms
- Uses drugs/alcohol to numb pain
- pre-occupied with demands of abuser & marital relationship
- physically & emotionally exhausted & unavailable

- less warm, more permissive OR coercive & power assertive
- role reversal with child
- unable to protect child from abusive partner for fear
- brainwashed by abuser to accept child's abusive treatment
- Lacks confidence in own parenting & has poor self esteem
- Difficulty managing children (especially boys)
- Acts irrationally, or with apparent poor judgment

**(5) Perspective of Child** Risks & benefits, wishes & fears re access

Preferences & Perspective of Child need to be considered when:

- The child's expressed wishes are mature and/or reasonable
- The child's fear/anger toward parent so intense that child feels/behaves unsafe/ly?
- The child show significant and sustained emotional & behavioural distress in response to the access arrangement

Screening and assessment tools are more effective when used by practitioners that have the relevant skills and understanding to identify family violence and other risks, to respond in an appropriate way and to offer effective support. As recommended in 'Time for Action Report – A Snapshot' <sup>22</sup>*The first door is the right door' means that for women who have experienced violence, their first point of contact should provide professional and compassionate assistance, and that the complexity and entirety of their needs are met. Recovery begins with the first point of contact. Access to quality legal, medical, and support services (both immediate and ongoing) is essential."*

Initial and ongoing professional training, performance measurement and supervision are critical to continual enhancement of screening and assessment processes. The Family Relationship Services sector has repeatedly called for greater investment in training and development in family violence for both new and experienced practitioners.

This is particularly pertinent when adapting assessment processes to different contexts and target groups. Approaches in rural, regional and remote areas need to be much more sensitive to confidentiality concerns and may need to address challenges such as transport issues, geographic isolation and a lack of available specialist services. Similarly, when working with Indigenous families there may be quite different approaches that recognise cultural norms and language as well as more complex family structures and relationships. Also, families from culturally and linguistically diverse backgrounds may need assistance from services that have specialist knowledge or skills or the capacity to work in a culturally sensitive way. Similar needs can be identified for other groups including people with a disability, young people, older people and those in same-sex relationships.

There has been some concern amongst stakeholder groups that women who have experienced violence are not well-informed of the exemptions in the Family Law Act related to family violence and may feel pressured to participate in family dispute resolution when it is not appropriate to do so. Also that services may not fully appreciate the impact of violence on women and children and not adequately respond to concerns about safety and risk. The AIFS Evaluation found some evidence of this and identified room for improvement in the way that services identify and respond to parents with safety concerns.<sup>23</sup> This has also been highlighted in recent case study research by Laing.<sup>24</sup>

<sup>22</sup> Time for Action – A Snapshot', The National Council's Plan to Reduce Violence against Women and their Children (2009-2021)

<sup>23</sup> Kaspiew, R., Gray, M., Weston, R., Moloney, L., Hand, K., Qu, L., & the Family Law Evaluation Team. AIFS Evaluation of the Family Law Reforms (2009)

<sup>24</sup> Laing (2010).

FRSA believes that while the screening and assessment being undertaken in Family Relationship Services is robust there is always room for improvement, particularly in embedding ongoing assessment and response strategies throughout the many layers of service delivery – as discussed in a later section of this submission.

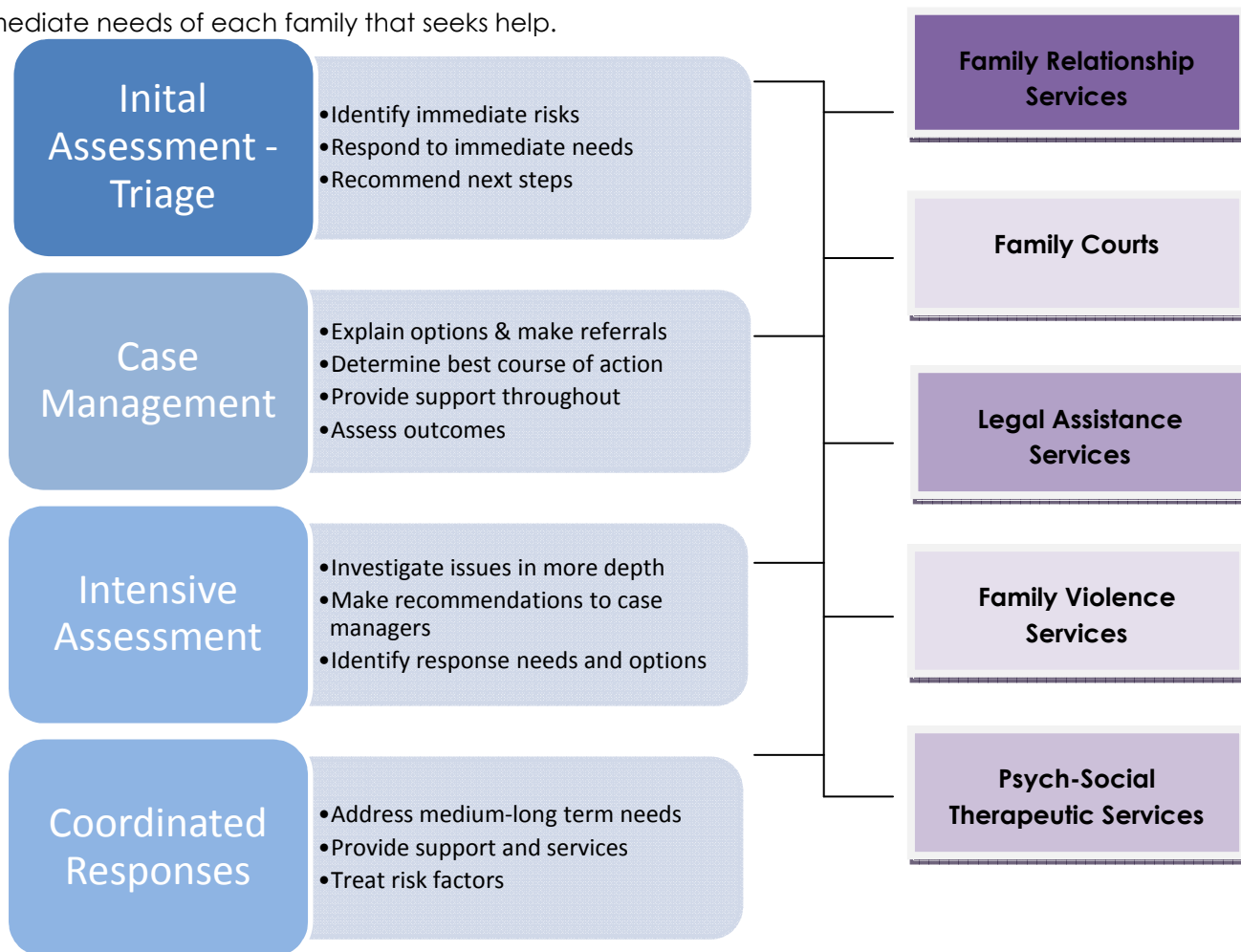
The more difficult challenge is to respond to families in which violence is an issue but those affected choose not to make use of an exemption and wish to continue with dispute resolution. This will be examined in more detail in a later section of this submission.

**Conclusions**

- h) FRSA recommends continued refinement of screening and assessment tools developed in family relationship services to enhance the early identification of family violence.**
- i) FRSA recommends greater investment in skills training and professional development opportunities to enhance the capacity of front line workers in the family law system to respond to the diverse needs of families affected by violence.**

**4.3. Common Risk Assessment**

A standard or common approach to initial assessment is needed to identify and respond to the immediate needs of each family that seeks help.



As described in the diagram above, FRSA believes that an effective approach to risk assessment would comprise four elements that can occur at any stage and involve multiple agencies. Ideally one agency would take a 'lead' or 'coordination' role at any given time though this may change as a family progresses through the Family Law System. Tools that would facilitate this include:

- **Common Assessment Frameworks** would help to ensure that initial assessment always includes an assessment of safety and any immediate risk of violence. A common framework would be one that can be applied at an FRC, Family Court Registry, legal Aid Commission etc. There are some common questions that should be asked regardless of the doorway through which the family comes – questions like are you safe? Are you fearful? Is there an immediate risk we should respond to? This is not unlike standard triage approaches to assessment in the health system – whether the patient attends a GP appointment, health clinic or hospital emergency room questions about pain, immediate concerns and past treatments will be asked before determining the next action to be taken.
- **Case Management** recommendations could then be made from whoever undertakes the initial assessment to other services involved in making case management decisions. This may be a Family Lawyer referring into an FRC or an FRC referring into a Family Court registry. The suggestion is that recommendations are made to assist further assessment as well as response. For example, an FDR practitioner might recommend to the Family Court the appointment of an Independent Children's Lawyer, referral to a contact service, Parenting Orders Program or family violence program and/or suggest the need for an interpreter or advocate to be involved in the case. There may be no obligation on the Court to accept these recommendations but they could inform early decision-making.
- **Intensive Assessment** can occur at any time throughout a family's engagement in the family law system. A fuller understanding of the issues may arise from participation in counselling or education programs, the commission of a Family Report or psychological assessment.

## Conclusion

- j) **FRSA supports the recommendation of the Chisholm Review (2009) that a common risk assessment be developed for those who enter the family law system and for this to incorporate alternative mechanisms for practitioners within the family and relationship services sector to share information (primarily in the form of case management recommendations) with other parts of the Family Law System, including the Family Courts obviating the need for s 60I certificates to contain additional information.**

## 5. Alternative Dispute Resolution

### 5.1. Section 60I Certificates & Sharing Information

The Commissions propose (10 – 7) that Section 60I Certificates ('Certificates') should include information about why Family Dispute resolution (FDR) was inappropriate or unsuccessful (for example to include information that FDR was unsuitable or was terminated because of family violence.) The idea behind this proposal is that this information could be used to alert the Family Courts to the issue of violence. The Commissions go on to ask how the information would then be used by Family Courts, whether it would become contestable evidence or would it simply be used for the purposes of risk assessment.

FRSA support the intent of enabling Family Dispute Resolution Practitioners (FDRPs) to share more information with the Courts about the risks identified during the provision of family and relationship services. This includes risks associated with family violence as well as those arising from child abuse or neglect, parental conflict, potential mental health issues or concerns about self harm, drug/alcohol misuse, poor language skills or the need for other assistance such as an interpreter or advocate to ensure procedural fairness. However, the s60I Certificates are not the best or only mechanism for achieving this.

The S 60I certificate provides one line for Family Dispute Resolution Practitioner's to indicate the issues in dispute (which generally pertain to the logistics of 'parenting matters') and separately the selection of one of five options (A to E) to indicate the Practitioner's judgement about the outcome of dispute resolution. The Certificate's format and categories listed do not aid identification of cases involving family violence because such cases are exempt from the requirement to attend Family Dispute Resolution prior to court attendance and therefore do not require a certificate per se.

If, during initial assessment and or subsequent dispute resolution sessions, the practitioner assesses that family violence may be an issue (among others listed in sub regulation 25 (2)) a 'not appropriate for Family Dispute Resolution' certificate can be issued. There is no requirement under the Act or via the Certificate to detail reasons for such an assessment beyond that contained in this sub regulation. Therefore the court could interpret this certificate type to refer any number of factors.

A category of certificate identifying family violence could be added to the types of Certificates available to FDRPs as an alternative to relying on court applicants to identify violence when they file. However, it needs to be remembered that Certificates are issued under a variety of circumstances. In some cases the service has met with just one of the parties involved in the dispute, or undertaken initial screening and assessment and determined unsuitability. In cases where allegations of violence are contested or denied, it is not the role of the FDR Practitioner to form a judgement on the allegations. The presence of fear or power imbalance between the parents may be enough to make it inappropriate to continue with FDR. Often the perpetrator of the violence will object to the decision not to attempt or continue FDR and may blame the victim, potentially increasing the risk of violence. For this reason, FDR Practitioners may quite rightly be reluctant to provide the details of why they believe FDR is inappropriate on the Certificate. Indeed many FDR Practitioners prefer to issue 'not appropriate' certificates rather than certificates such as 'non-genuine effort' which imply a judgement has been made or an alliance with one of the parties. This can be particularly pertinent in areas where there are long delays between filing a matter in a Court and having the

matter heard. FDR Practitioners do not want to 'do harm' by inflaming or exacerbating a dispute between two parents by including contested information on Certificates.

There is the potential for the Certificate to become part of the dispute and another point of contest, if too much information is included and it has the potential to influence court outcomes. There is nothing to prevent parties seeking an alternative Certificate from another provider should they object to the information contained on the first Certificate issued. Indeed there is no capacity for the Family Law System to identify and intervene when one party pressures another into multiple attempts at FDR through different services, despite this being clearly undesirable.

FRSA believes that there is value in keeping certificates simple – retaining the purpose of the Certificate as providing verification that a court applicant has fulfilled their obligation to have attempted FDR prior to attendance at court, rather than to be a mechanism by which information can be shared. FRSA understands that the Family Courts rarely rely on the type of Certificate issued for any purpose and the Certificate goes on file but rarely comes before the judicial officer.

Notwithstanding the limitations of the S 60I Certificates, many FDR Practitioners and Family Counsellors are keen to share useful information with the Court (including registrars, family consultants, independent children's lawyers, family lawyers and judges/magistrates and others) when this helps to:

- Clarify the issues in dispute and/or reduce conflict
- Identify children at risk and those with health or wellbeing concerns
- Share more information with the Court relevant to children's well being and safety (i.e. flag concerns)
- Identify parents at risk of violence and/or mental health issues (particularly when family violence is suspected but not confirmed)
- Keep parents focused on children's best interests
- Minimise the need for repeated interviewing of children where appropriate

As an alternative to expanding the information contained in certificates, FRSA supports the recommendation of the Chisholm Review for a mechanism to be developed for improving information sharing as part of a broader approach to risk assessments.

More specifically, we are in favour of the development of mechanisms that would allow FDRPs and Family Counsellors to make case management recommendations to judicial officers managing the early stages of the case in the Family Court (Registrar, Family Consultant etc). For example, an FDRP who is concerned about the behaviour displayed by a parent could alert the Court Registrar to the concern, recommend that the case be 'fast tracked' or make suggestions such as the use of a children's contact service or family violence program. It would then be up to the Family Court to decide how to handle the case and it may choose not to accept any of the recommendations, the purpose is to assist and inform rather than constrain early decision-making. Much like a referral from a General Practitioner to a specialist or diagnostic service this could include suggestions on how the case might be managed and what further assessment might be warranted.

Case management advice might include the practitioner's assessment of:

- **Urgency:** if there is an imminent risk or the situation is likely to deteriorate if there are delays, the practitioner might recommend an urgent hearing. Alternatively, the issues in dispute may relate to future decisions (eg schooling) and not require urgent attention. There may also be the possibility that the dispute will settle in time or that support provided to one or more family members over the medium term (eg counselling, parenting education) may be beneficial. A simple 3 scale rating system could be enough – regular / urgent / very urgent.

- **Safety Concerns:** An FDRP or Family Counsellor can become aware of risks to children, parents and other family members but is currently limited in what information can be shared – there is considerable interest in being better able to identify children at risk and those with health or wellbeing concerns to other parts of the Family Law System including the Family Courts. This could be in the form of a recommendation that an Independent Children's Lawyer be appointed or a Family Assessment undertaken. Once again a rating scale might be useful – no known safety issues / some known safety issues / significant known safety issues plus recommendations such as those mentioned above.
- **Procedural Fairness:** As discussed earlier in this submission the extent to which parties in family disputes feel that they have received procedural fairness; that their views have been heard and attention paid to their safety can be important to the outcome as well as the longer term safety and wellbeing of all concerned. There may be benefit in FDRPs being able to recommend to the Court the involvement of interpreters, advocates or liaison workers who can assist the process.

The difficulty here is whether these sorts of recommendations should be made in confidence through a notification to the Court or a 'case tracking' database or needs to be in the form of a referral document or report that outlines the recommendations and is provided to both parties in the dispute. Once again the 'do not harm' principle needs to be applied to avoid exacerbating the dispute or heightening the risk of violence.

It is not our intention that this information would become contestable and open to cross examination in Court. This would create substantial resource issues and draw FDRPs into the dispute. The *Family Law Act* already contains provisions to allow FDRPs to share information where a child is at risk, but we are proposing a much broader scope of information sharing without removing the inadmissibility provisions. Retaining inadmissibility is important for several reasons:

- Encourages client disclosure and open dialogue in counselling and FDR;
- Recognises that individuals can participate in counselling and FDR without legal advice because the process does not have a legally binding outcome;
- Protects against parties drawing FDRPs and Counsellors into the dispute;
- Avoids FDRPs and Counsellors spending time in Court attesting to statements made by parties during service engagement which would have a significant impact on the role of practitioners and the resource capacity of services.

The mechanism would need development in consultation with FDRPs and Family Counsellors as well as Court Registrars, Family Consultants, Lawyers and other stakeholders. The mechanism would need to be carefully developed with a therapeutic focus and would necessitate cross-disciplinary training for both practitioners providing the information and Court staff receiving the information.

Another potential development in publicly funded FDR is for FDRPs to provide written advice to parties when FDR is unsuccessful. This is not common practice in the publicly funded sector though not uncommon in private practice where a summary of the issues in dispute, progress made and recommendations for further dialogue are provided 'without prejudice'. This would not be advice that could be used in the Family Court but it could help parties to brief their legal advisers and clarify the issues in dispute.

## **Conclusion**

- k) FRSA recommends mechanisms be developed to enhance information sharing between community based family relationship services and the Family Courts, particularly where family violence has been disclosed or significant risks identified.**

## 5.2. Family Dispute Resolution Practice in Cases of Family Violence

The Commissions ask if FDRPs are identifying violence appropriately and indicate that consultations so far have indicated that some FDPs are very effective at identifying and managing violence but that the recent and rapid development of FRCs has meant that standards are not consistent.

FRSA accepts that the very rapid establishment of the network of 65 Family Relationship Centres as well as a substantially expanded family and relationship services network put considerable pressure on the family and relationship services workforce. We are aware that some services struggled to provide the very high volume of service needed to respond to community demand while also maintain the high professional standards that had applied to Family Dispute Resolution prior to its expansion into FRCs. Over time these issues have been addressed. Family and relationship services have always recognised the importance of ensuring that practitioners working with families are skilled in recognising and responding to family violence, this has been an area of substantial investment over recent years. Many services have invested in training and supervision - as evidenced by the Workforce Mapping Project Report<sup>25</sup> last year indeed this sector provides very high levels of professional supervision which is one of the most effective ways to build competency in a social service setting.

The Attorney-General's Department also sponsored training for all registered FDRPs which included a competency unit on family violence. This has assisted to ensure that all FDRPs have a baseline competency in this area – with many in the sector holding much higher qualifications. The competency requirements will increase again from July 2011 when all FDRPs applying for accreditation will be required to hold the Graduate Diploma in Family Dispute Resolution.

FRSA has supported a rigorous accreditation regime for FDRPs (our submission called for more substantive requirements than those currently in place, including an independent accreditation board and complaints process). It must be recognised though that additional impost on individuals and service providers needs to be supported with affordable training and appropriate levels of remuneration or the nonprofit sector becomes a revolving door with new entrants to professions using it for initial experience before moving into more highly paid positions in the private and public sectors.

FRSA is also concerned that the emphasis on training FDRPs in family violence is overshadowing the need for training across the broader spectrum of professionals working in family and relationship services including family counsellors (the largest group of practitioners), relationships educators, men and family relationship practitioners, workers in children's contact services etc. While all services have their own mechanisms for engaging staff with relevant qualifications, monitoring competency and building skills there is more that could be done at a national level. Family violence is also becoming an area of expert practice with the development of specialist roles within organisations, responsible for supervising cases involving family violence and providing advice to other practitioners. This could be further supported through the development of qualifications and post-graduate education opportunities.

There is always more that can be done and there continues to be challenges in maintaining an appropriately qualified and experienced workforce, however, we believe that the high professional standards can be maintained and that the sector has a high commitment to ensuring that service delivery is safe for those affected by family violence. FRSA and the Attorney-General's Department

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<sup>25</sup> Colmar Brunton, 2009. FRS Workforce Mapping Project Report

have been engaged in a Joint Sector-Government Working Group on Workforce Development to agree on strategies for ensuring the supply of qualified FDRPs, counsellors and other professions and to maximise access to affordable training for all practitioners. We will continue to put a high priority on this work. We understand that the Attorney-General has also commissioned the development of a cross-disciplinary training package on family violence for the Family Law System which will be a welcome addition to the resources available.

FRSA agrees with the proposition that Australian governments, lawyers' organisations and bodies responsible for legal education should develop ways to ensure that lawyers who practice family law are given adequate training and support in screening and assessing risks in relation to family violence. This is an area where there is considerable scope for cross-disciplinary education and training. At the undergraduate level family violence coursework could be applicable to law, social work, psychology, counselling and education. Likewise training in family violence for post graduate and professional disciplines could help promote shared understanding and common language in family violence across the professional groups working in both the family law system and the family support system (with strong links into the education and mental health service systems). The recently expanded Family Pathways Networks (see below) provide an effective mechanism for identifying and coordinating local training opportunities.

### Conclusion

- 1) **FRSA recommends continued Australian Government investment and involvement in the development of professional training in family violence across the professional disciplines working in the Family Law System as part of a broader role in workforce development supporting professional standards and quality service delivery.**

### 5.3. Confidentiality and Inadmissibility issues

The Commissions ask whether the confidentiality provisions in the *Family Law Act* Sections 10D and 10H inappropriately restrict counsellors and FDRPs from releasing information relating to the risks of family violence to courts exercising family law jurisdiction and courts exercising jurisdiction under family violence legislation (e.g. re making of protective orders). As stated above, FRSA believes that it is important to retain inadmissibility provisions generally to encourage disclosure and open dialogue in FDR and to avoid having FDRPs drawn into disputes and Family Court hearings unnecessarily. As previously outlined FRSA supports the development of common approach to risk assessment across the Family Law System including enhanced mechanisms for sharing information between FDRPs and the Family Courts, consistent with the recommendations of the Chisholm Review.<sup>26</sup>

The Commissions have proposed two alternatives in the Consultation Paper.

**Proposal 10 – 8:** that the present exceptions in ss 10D and H should permit counsellors and FDRPs to disclose communications where they reasonably believe that disclosure is necessary to prevent or lessen a serious threat to a person's life, health **or safety**. This would ameliorate the present test, which requires a serious **and imminent** threat to life or health. **Safety** is added to 'life or health.'

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<sup>26</sup> Chisholm R (2009) Family Courts Violence Review.

**Proposal 10 – 9:** that counsellors and FDRPs should be permitted to disclose communications where they reasonably believe that disclosure is necessary to report conduct that they reasonably believe constitutes grounds for a **protection order** under State/Territory family violence legislation.

FRSA supports the first of these two proposals (10-8) because the intent is clearer and less dependent on the variations between State/Territory legislation on family violence. The most significant issue with both proposals is who the disclosure would be made to and what action would eventuate. A disclosure can be made to the Police but unless this is reasonably likely to result in protective action it could act to inflame the situation and increase rather than decrease the risk. It would perhaps be preferable in practice to develop a safety plan in conjunction with the person or persons at risk so that any action taken doesn't inadvertently make the situation worse.

FRSA believes that FDRPs and Family Counsellors are already familiar with State/Territory family violence legislation so we do not see this as a barrier to the second proposal however it is not generally a 'good fit' with their role working with the family. They recognise that it can be fear of losing control of the situation and having others act on behalf of you that can prevent some people seeking support from family services. They will often work hard to build trust with the family, including the parent and children at risk of violence. They will inform them what action can be taken and offer to provide support but may also respect the right of the victim or potential victim to determine when and how to take protective action, rather than impose a course of action – if only to keep the victim engaged in support and working through the many emotions that they may be experiencing. It can take a long time for someone to come to terms with the fact that patterns of violence are occurring, that their own safety is important and that help is available. This can be a process that needs to occur rather than a single event. Other issues raised in the Consultation paper regarding the continued provision of FDR in cases involving family violence are dealt with below.

The Commissions have also asked if there should be any other amendments to the relevant sections, enabling release of any other sort of information, for example should release of information be permitted where it would:

- prevent or lessen a serious threat to a child's welfare. (Question 10 – 14) (cf FLA s10H (4) (a))
- include a situation where an adult or child discloses that a child has been exposed to family violence (Proposal 10 – 10)

FRSA supports these proposals but would like the second to be a little tighter to avoid rendering inadmissibility ineffective in the context of a very broad definition of family violence. It is unfortunately not uncommon for children to witness conflict between separating parents including verbal abuse and threats of harm but as discussed in earlier sections of this submission there can be considerable variation in the context, severity and potential impact of this. As a one-off occurrence related to separation conflict between two otherwise non-violent parents it would not warrant the removal of inadmissibility, at the other end of the scale disclosure of violence that poses a serious risk to the child or a parent would already be admissible.

#### **5.4. Collaboration between Family Dispute Resolution and Family Violence Services**

In light of increasing numbers of families disclosing family violence, some Family Dispute Resolution services have been rethinking current approaches to violence and family dispute resolution and

exploring strategies to support the families that choose family dispute resolution despite some history of family violence and to do so with safety and integrity. An investigation by the Domestic Violence and Incest Resource Centre (DVIRC), and Relationships Australia Victoria identified factors that supported participants through mediation even where violence was factor. (See box below).

### **Mediation and violence: a DVIRC and RA Victoria exploration**

The Domestic Violence and Incest Resource Centre (DVIRC), collaborated with Relationships Australia, Victoria exploring models of mediation that can take account of women's experience and respond to the higher incidence of families facing violence presenting to mediation services. They identified factors that appear to improve women's perception of safety and satisfaction with mediation outcomes, particularly where mediators:

- worked in a co-mediation, gender-balanced team
- asked specific questions about violence or abuse, including non-physical types of abuse or harassment;
- offered women detailed information about the process and specific guidance on the possible impact of violence or abuse on the mediation process;
- offered women separate time with the mediator to disclose or discuss any concerns before, during and after mediation sessions;
- demonstrated that they understood the woman's concerns both within and outside the mediation session by implementing specific strategies to deal with those concerns such as
- demonstrating that they could control abusive behaviour in the session and/or assist the woman to deal with it; and
- assisting the woman to deal with harassment or intimidation occurring outside the mediation session.
- Taking steps to ensure physical safety and safe protocols such as separate entrances and waiting areas as well as departure protocols are important but mediators also need to:
- Find ways to validate the experiences that victims have of violence while remaining neutral – women seek acknowledgement and belief, which are distinct from neutrality.
- Assess a victim's capacity — in the context of her experience — to participate in mediation, particularly where trauma affects capacity;
- Extend ongoing external support, including intensive coaching or counselling before, during and after mediation.
- Incorporate practices that provide 'time out' during mediation sessions, demonstrate understanding of non-physical abuse and its impacts and find ways to continuously 'check in' with the woman.

Sources: *DVIRC Newsletter*, Autumn 2005 and *Family Matters* No. 77, 2007

Building on this work, Bickerdike also argues that the concepts of 'neutrality' and advocacy for children need to be carefully determined.<sup>27</sup> The Family Dispute Resolution practitioner must listen about and acknowledge violence and seek recognition by the perpetrator; the point is to weigh this information in the best interests of children rather than respond simply in terms of mediator 'objectivity' or neutrality.' He also argues that there are 'degrees of violence in family dispute resolution but through constantly classifying, assessing and checking the circumstances, a mediator uses the information to modify the mediation process rather than simply define cases 'in' or 'out'. All types of violence can be severe. Non-physical or seemingly less severe physical violence (particularly where control and intimidation are present) may in some circumstances be more debilitating or traumatising than other forms.

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<sup>27</sup> Bickerdike (2007)

Some cases are unsuitable for mediation particularly those with severe threat and controlling behaviour sometimes called 'intimate terrorism'. However, there are expert FDRPs who can, with careful management of the process, support clients to participate and achieve outcomes that may not have been available via legal or court processes. Bickerdike summarises some of the strategies available to FDRPs working with clients who make a fully informed decision to pursue FDR despite being offered an exemption or referral to legal and court processes.

#### **Safety Strategies in Family Dispute Resolution:**

A number of features can be incorporated into the mediation process to assist abused partners participate safely and achieve constructive decision-making for their children and for other outcomes, including:

- An experienced practitioner undertaking thorough assessment for safety, capacity and willingness of each party
- Coaching and information prior to the session not only on process but how to anticipate the impact of violence on mediation
- Safety planning before and after mediation
- Short, multiple mediation sessions to reduce stress and impact of contact with an ex-partner
- Presence of a third party to assist in speaking freely or legal representation in or between sessions
- Separate 'time out' for mediator to check with parties
- Shuttle mediation (where parties do not meet/attend simultaneously) or co-mediation: using two mediators (male and female)
- Separate waiting rooms, separate arrival and departure times.
- Follow up after mediation to ensure safety and provide support, post-mediation coaching or counseling.

Source: Bickerdike (2007)

FRSA has also supported the recent roll-out of funds for projects between Community Legal Centres and Family Relationship Centres to develop collaborative practice strategies to support families.

### **5.5. Protection Orders and FDR Processes**

The Commissions are interested in the relationship between protection orders and FDR especially:

*In practice, are protection order proceedings referred to ADR by Local Courts? Are reforms needed to ensure that ADR is only used in appropriate cases? (Question 11.4)*

Family Dispute Resolution services do not report receiving referrals from Local Courts for ADR in protection order proceedings. We do not believe that this would be an effective response to protection order proceedings and do not see any need for reform in this area.

*Whether exceptions to allow the parties to attend FDR are inserted appropriately in protection orders. Obviously FDR should not be thwarted in appropriate cases nor permitted in cases where FDR would endanger the parties. (Proposal 11.4)*

FRSA is not aware of any problems with the extent to which exceptions to allow the parties to attend FDR are inserted appropriately in protection orders. There are substantial protections in the FDR process to avoid parties being endangered including the practice of meeting separately with each party at least once (often more than once) before commencing joint dispute resolution sessions.

Safety is paramount in family relationship services and 'critical incidents' involving any risk to a client or staff are relatively rare – for a sector that works with people who are often in conflict and highly distressed this is a testament to the ability of services to identify and treat risk through effective engagement with clients.

It would be difficult to identify absolute guidance regarding when FDR would be appropriate and when it would not. This is highly dependent on the specific circumstances of each case and FRSA believes that judicial officers need to have discretion to make that determination, fully informed of the service options available in the local area so that appropriate referrals can be made.

For example, in cases where a protection orders are sought to end a cycle of violent behaviour or address a serious or imminent threat FDR may not be appropriate. However, family and Relationship services may be able to help the family through the provision of counselling, trauma recovery and therapeutic programs for children. It may eventuate that both parties are opposed to going to the Family Court to resolve a dispute and cannot be compelled to do so, if the dispute is impacting negatively on children and FDR could help then a process such as shuttle mediation or legally assisted mediation might be appropriate. There is also the potential for FDR to assist couples who decide to reconcile (which occurs in a very high proportion of cases where one partner leaves the relationship due to violence only to return after a short break) then FDR may assist with setting ground rules for the relationship and ensuring that the victim of the violence has identified actions to take to protect themselves (ie safety planning). There would be value in research into the complexity of circumstances in which protection orders are sought and granted and what other supports are offered to parties at that time. This may be a significant intervention opportunity for 'high risk' families that is not currently being fully realised.

At the other end of the spectrum, protection orders sought for relatively minor incidents – such as a heated argument over the division of family assets which becomes a physical tussle involving minor force but no injury and does not occur in the context of regular use of violence or threat of violent – the process of applying for a protection order and recognising that there are very clear legal limits on acceptable behaviour can have a sobering impact on the parties involved. Family Dispute Resolution can assist with resolving the underlying dispute (which is generally more significant than who gets which asset) but it does not negate the need for the Local Court to deal with the protection order itself.

*Are FDR practitioners asking about Protection Orders and obtaining copies of them at intake? Are they using this information appropriately in risk assessment? (Question 11 – 3)*

As outlined in the section on current Screening and Assessment undertaken by family and relationship services ( Section 4) there are well developed tools for intake and ongoing risk assessment which ensure that questions about violence and/or abuse are asked and followed up throughout the process of FDR. One of the first questions to establish previous violence / abuse is to ask about the existence of family violence protection orders, child protection orders and any previous orders of a Family Court. Services rely on clients to answer these questions honestly and provide copies of any orders that apply, both parties will be asked the questions and it is important that this occurs in separate interviews.

## **Conclusion**

**m) FRSA recommends further research on the circumstances of Protection Orders being sought and granted in the context of this being an opportunity to identify and respond to high risk families.**

## 5.6. Child Protection

FRSA has previously raised concerns about the disconnection between the two legal systems in place to protect the safety and wellbeing of children in Australia – the State Based Child Protection System and Commonwealth Family Law System. Increasingly family relationship services are concerned about children's matters proceeding through family law courts when child protection agencies should be involved. These issues have been raised consistently in professional forums including the Family Law Council, Family Law System Reference Group and consultations on the National Framework on Protecting Australia's children. The relationships between Family Court registries and Child Protection Agencies vary significantly across the country and even across regions within State or Territory jurisdictions. The Magellan project for case management of cases in the Family Court that involve allegations of sexual abuse has significantly improved the way that these cases progress and has enjoyed very good support from DHS in Victoria. It is important to hold on to these gains but also to build on them further – perhaps to include other forms of abuse and allegations of harm.

FRSA has urged the Federal Government to address this and forge stronger connectivity between the two systems in the interest of those children at greatest risk of abuse or neglect. This could include:

- Improve information sharing across the two systems;
- Grant Family Court jurisdiction to make child welfare orders and Children's Court jurisdiction to make parenting orders;
- Increase resources for risk assessment and family support services working with vulnerable families and children before, during and after court proceedings.

Over the last ten years a single court process for children's matters has been advocated as the most effective way of dealing with issues of child abuse and parental responsibility and care. A report of the Family Law Council of Australia in 2002 called for a 'single court' process for those cases where protection issues intersected with family law issues<sup>28</sup>. This model requires one court to hand appropriate powers to the other, so that the process might be managed expeditiously. In most cases this would require the Australian courts to allow state courts to make judicial determinations on parental responsibility and care.

In other jurisdictions, such as New Zealand, single courts have been constituted to deal with the full range of children's and family law issues. This allows the court to make determinations on child protection issues prior to making orders for parental responsibility and care. In the UK, all courts who have applications relating to a family / and or child before them, convene a joint directions hearing at the first instance. At that time the judges are able to collectively determine the process, make relevant interim orders for the wellbeing of the children, and ensure that information is shared across the judicial jurisdictions. The advantage of this and the New Zealand process is that they clearly identify how the child's wellbeing and best interests are being protected and promoted and expedites the process in other courts to allow final determinations to be made as to where and with whom the child should reside.

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<sup>28</sup> Family Law Council (2002) *'Family Law and Child Protection'*, Final Report.

Notwithstanding the complexities of bringing the two court systems together, there is the potential to develop a more substantial role for Family Dispute Resolution in child protection matters. Child Protection authorities are often faced with very complex decisions about the best way to enhance the safety and wellbeing of children in families at risk of inflicting abuse or neglect. There may be a number of alternative strategies to strengthen support to the family, engage parents in making changes and involving extended family members. The process of a Children's Court hearing can be traumatic and damaging for the family and can become adversarial. The use of Family Dispute Resolution as an alternative could encourage earlier intervention and help to avoid risk escalating.

FDR in this context can be used to resolve a dispute or to assist decision-making involving multiple stakeholders. This is where the difference between 'mediation' and Family Dispute Resolution becomes very apparent - these terms are not interchangeable. Mediation is about assisting two parties to reach an agreement; Family Dispute Resolution is about assisting parents to reach agreement that is based on the best interests of the child or children at the centre of their dispute. The principle of 'best interest of the child' is central to the legislation and to practice. Family Dispute Resolution practitioners work with parents to identify options for sharing parental responsibility while keeping children's needs at the forefront of their considerations. Parents who attend an FDR or FRC service will often participate in counselling and education sessions to identify and explore the needs of their children and the importance of the relationship that they and their ex-partner have with each child. Relationships with extended family (eg grandparents) as well as stability of schooling, friendship networks and broader social activities may also be considered. As articulated by Dr Jenn McIntosh the goals of child-focused dispute resolution are to:

- Create an environment that supports disputing parents in actively considering the unique needs of each of their children;
- Facilitate a parenting agreement that preserves significant relationships and supports children's psychological adjustment to the separation, including recovery from parental acrimony and protection from further conflict;
- Support parents to leave the dispute resolution forum on higher rather than diminished ground with respect to their post-separation parenting; and
- Ensure that the ongoing mediation/litigation process and the agreements or decisions reached reflect the basic psycho-developmental needs of each child, to the extent that they can be known without the involvement of the children.

Where appropriate, FDR services may also employ Child Inclusive Practice to give children a voice in the dispute. Once again drawing on the descriptions provided by Dr Jenn McIntosh "child-inclusive dispute resolution is a process of developmental consultation and therapeutic conversation. The primary goal of the child-inclusive model is to re-establish and maintain a secure emotional base for the child post-separation. It requires the involvement of two highly skilled professionals: the mediator, who works with the parents in the resolution of the dispute; and a specially trained child consultant, who meets with and assesses the child and provides the mediator and parents with feedback. It is best if different people undertake the roles, particularly where neutrality is important or conflict/complexity is high". This process involves:

- Consulting with children in a supportive, developmentally appropriate manner about their experiences of the family separation and dispute;
- Ensuring that the style of consultation avoids and removes any burden of decision-making from the children;
- Understanding and formulating children's core experience within a developmental framework;

- validating children's experiences and providing basic information that may assist their present and future coping;
- Forming a strategic therapeutic loop back to the children's parents by considering with them the essence of their children's experience in a manner that supports them to hear and reflect upon their children's needs; and
- Ensuring that the ongoing mediation/litigation process and the agreements or decisions reached reflect at their core the psycho-developmental needs of each child.<sup>29</sup>

Comprehensive research confirms the benefits of child inclusive practice when properly implemented during family dispute resolution<sup>30</sup>. Experts in the child protection field have also called for increased consultation with children and young people when decisions are being made in their interest. Children and young people are well placed to inform decision-makers about the likely impact of different alternatives on their safety and wellbeing as well as to participate in the identification of arrangements that allow them to maintain meaningful relationships with parents even when they are in out-of-home or kinship care<sup>31</sup>.

For any of the above to be plausible, parents need to demonstrate parental reflective capacity or an ability to see the perspective of their children separate from their own relationship and independent of their own emotions. This capacity needs to be assessed or developed before a decision about the appropriateness of FDR can be made.

The model of FDR used in child protection matters needs to adapt to the power imbalance between the parties – parents are not in an equivalent position to representatives of child protection authorities. Similar approaches to assisted decision making such as Family Conferencing and more therapeutic approaches such as Family Therapy also have something to offer. Further work on practice models and implications for practitioner training and accreditation may be warranted to support this application of FDR.

A number of FRSA member organisations already provide FDR for Child Protection Authorities and there is growing interest in this application of FDR across Australian jurisdictions. Clearly the resource impact on services would be significant if changes were to be implemented to increase the volume of this work.

## Conclusion

- n) FRSA supports further work to explore the current and potential use of FDR, including child inclusive practice within FDR, in child protection matters.**

<sup>29</sup> AFRC Issues No. 1, 2007, Child inclusion as a principle and as evidence-based practice: Applications to family law services and related sectors by Dr Jennifer McIntosh, available from <http://www.aifs.gov.au/afrc/pubs/issues/issues1.html>

<sup>30</sup> McIntosh, Wells & Long (2007) pgs 8-25; McIntosh & Long (2006)

<sup>31</sup> See for example - Mudaly and Goddard (2006) *The Truth is Longer than a Lie*

## 5.7. Culturally responsive family dispute resolution

The proportion of families from a culturally or linguistically diverse background accessing family and relationship services varies considerably across service types and geographic locations. Nationally these families are not substantially under-represented<sup>32</sup> but might be expected to be over-represented particularly in the context of high rates of separation and family violence amongst specific groups including newly arrived migrant families. The barriers to service access have been well documented and various cultural competency training and resource manuals have been developed in response. The recent AIFS Evaluation of the 2006 Family Law Reforms identified that FDR Practitioners report a lack of confidence in working with clients from culturally and linguistically diverse families which suggests the need to do more.<sup>33</sup> FRSA believes that a comprehensive strategy is needed to address barriers such as low awareness of services in this population, practical difficulties with the use of interpreters and the additional resources needed to respond appropriately to the needs of families with complex needs.

Services that work extensively with Aboriginal and Torres Strait Islander communities report that it requires quite a different approach to service delivery than used for mainstream client groups. The Secretariat of National Aboriginal and Islander Child Care (SNAICC) has recently been funded by FaHCSIA to develop a comprehensive resource manual to support services to improve their cultural responsive capacity with Aboriginal and Torres Strait Islander families but FRSA has been disappointed that funding was not provided for associated training and dissemination. The Alice Springs Family Relationship centre has also developed a model of dispute resolution for Aboriginal families that warrants further dissemination and support. Improving practice in this area requires more than ad hoc activities driven by highly motivated individuals, a more comprehensive and strategic approach is needed.

### Conclusion

- o) FRSA recommends a more comprehensive and strategic approach to enhance culturally responsive practice in FDR and other family support programs to better meet the needs of culturally and linguistically diverse and Aboriginal and Torres Strait Islander families.**

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<sup>32</sup> FRSP National Data report available from [www.fahcsia.gov.au](http://www.fahcsia.gov.au)

<sup>33</sup> Kaspiew, R., Gray, M., Weston, R., Moloney, L., Hand, K., Qu, L., & the Family Law Evaluation Team. AIFS Evaluation of the Family Law Reforms (2009)

## 6. Improving Responses

### 6.1. Service Capacity

Since the 2006 amendments to the *Family Law Act* many more families are now accessing family relationship services, often much earlier in the journey through parental separation. As previously identified a much higher number of separating families now participate in an assessment process, beginning with their first contact with a service and continuing throughout their engagement in support programs. The screening and assessment that occurs in Family Dispute Resolution services is identifying families affected by family violence and risks in other domains including mental health, drug and alcohol misuse, self harm and suicide as well as child safety concerns related to abuse, neglect or parental capability. However, assessment relies on disclosure and that can often occur over time as the service works with each parent individually and together in mediation. The capacity of Family Dispute Resolution services to identify violence can be dependent on the amount of time spent with clients and the capacity of the broader service system which includes counselling, education and behaviour change programs. This is highlighted in the fictional case example below which draws on a number of actual cases provided by several providers.

Fictional case example: Tom contacts the Family Relationship Centre seeking family dispute resolution because his relationship with his ex-partner Fiona has broken down and they can no longer discuss or agree on arrangements for their two children Sean (5) and Rachel (8). The FRC contacts Fiona to invite her to come in and talk to a Family Advisor, she makes an appointment some weeks later. In the meantime, the Family Advisor meets with Tom, he is distressed about not seeing his children, he is angry with Fiona, he blames her new partner for their problems. Tom doesn't appear aggressive, when asked about violence towards Fiona or the children he says he would never harm them. When the Family Advisor meets with Fiona for the first time she appears anxious about having to negotiate with Tom but when asked about violence she avoids answering. She says Sean and Rachel don't want to see Tom and she doesn't want to have to force them to go with him. She doesn't want to have to go through the ordeal of Family Court; she wants the FRC to tell Tom to leave the children alone for a while. The Family Advisor encourages Fiona to talk about the violence that has occurred in her relationship with Tom and discussed options such as counselling and support groups to help her and the children recover. They also discuss the relationship between the children and Tom and strategies for enabling safe contact in the short term.

The FRC asks both Tom and Fiona to participate in some group sessions on shared parenting; they do this separately. The FRC also arranges individual counselling for both Tom and Fiona. During counselling, Fiona discloses that Tom has had problems with alcohol in the past and sometimes he gets violent when drinking; this was a factor in their separation. Tom had stopped drinking for about a year after their separation, during this time he saw the children every few days and often had them overnight, without any difficulty. Then Fiona met her new partner Joe and when Tom found out about it he became very angry. Several times when he was due to have the children he didn't turn up or was running very late. When Sean and Rachel did spend some time with Tom they complained that they don't have fun with him anymore and they were scared by some of his behaviour – driving fast, conflict with a neighbour, over reacting when things go wrong. Fiona suspects he is drinking excessively and this is having an impact. She is worried about the safety of the children and wants to protect them from Tom's reaction to her re-partnering.

After several sessions with Tom his counsellor is concerned he is experiencing depression and suggests a number of strategies for addressing this as well as his issues with alcohol and related violence. Tom speaks to his GP about the

depression, after commencing treatment for that he gets back on top of his drinking and enrolls in an anger management program.

When Tom and Fiona meet again with the family adviser before commencing dispute resolution they agree that long-term they want to have a cooperative parenting relationship with the children living with Fiona but spending lots of time with Tom as they did in the first year after separation. However they also agree that the children need to feel safe and Tom needs some time to get on top of his depression and problems with alcohol. In a session with a mediator they agree that for a few months Fiona will take the children over to Tom's sister's house and he will spend time with them there, gradually building up more time with them as his health and mental wellbeing improve.

Four months later Fiona and Tom come back to the FRC for another mediation session, things are much better – Tom is no longer depressed and has addressed his drinking. The children are enjoying their time with him and Fiona no longer fears for their safety. They agree on a longer term parenting plan with contingency plans in case problems arise again, they also sign up Sean and Rachel for 'Supporting Children after Separation' to give them an opportunity to talk through their feelings about the separation and their future relationships with mum, dad and new partners including Joe.

The example provided above is relatively simple with not too many issues, yet it illustrates how long it can take to identify and address the underlying causes of the dispute with all parties involved. In cases involving more complex issues this can be even more difficult and take much longer. The other 'take home' message from this example is the extent to which the effective resolution of a dispute can rely on the availability of a range of other programs beyond those provided directly by the FRC.

Early intervention can help to resolve or reduce some of the family violence risk factors or may 'fast track' these families to a family court for legal intervention when appropriate. The opportunity to provide timely access to appropriate programs for families affected by family violence is essential. This is equally, if not more so during and post separation.

Supports such as counselling and other therapeutic interventions for victims of family violence, including support to children who have witnessed family violence can also occur in parallel with Family Court processes. Services such as children's contact centres and behaviour change programs for those who have used violence or made threats of violence can also play a part in enhancing safety and support in some cases.

FRSA is concerned that proposed changes to reduce '3 free hours' of Family Dispute Resolution at Family Relationship Centres to '1 free hour and a means test on the 2<sup>nd</sup> and 3<sup>rd</sup> hour' may reduce the amount of time services have to undertake a proper assessment and encourage clients to disclose violence or other risk factors. A recent report documenting the experiences of 80 parents on income support found that after knowing about services, the next most frequently mentioned barrier was their cost followed by waiting times.<sup>34</sup>

Furthermore, reductions in funding for Family Counselling and long waiting times for services such as Children's Contact Services, reduce the capacity of the Family Law System to offer appropriate and adequate support to parents in a timely way.

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<sup>34</sup> McArthur et al, 2009.

FRSA believes that investment in the Family law System, particularly the family and relationship services component of this system should be increasing not decreasing. The 'business case' for this investment is well developed. The links between family relationship breakdown, poverty, socioeconomic disadvantage<sup>35</sup> and homelessness are well documented.<sup>36</sup> Unemployment and low incomes can have a direct impact on family breakdown, domestic violence and child abuse,<sup>37</sup> whilst family breakdown is among the risk factors for suicidal behaviour.

In 1998 the House of Representatives Committee on Legal and Constitutional Affairs noted that the cost of marriage breakdown to the broader Australian community was \$2.7 billion per annum, and that this was considered a 'conservative estimate'.<sup>38</sup> While the true economic, social, emotional, health and other costs of family breakdown are unlikely to ever be quantified, the daily effects of family breakdown on all Australians has been recognised by successive Federal Governments' committing to funding family relationship services located in the community.

### **Conclusion**

**p) FRSA recommends increased investment to ensure the effectiveness of family and relationship services that rely on having adequate service capacity to work with each family member and coordinate timely access to a range of appropriate supports.**

## **6.2. Family Pathways Networks**

Following the 2001 report, *Out of the Maze: Pathways to the Future for Families Experiencing Separation*<sup>39</sup>, the Attorney-general's Department established and has continued to support Family Pathways Networks to build connections and understanding between those operating within the Family Law System in order to make each family's pathway through the system more accessible at the local or regional level. Participation in Family Pathways Networks typically includes a range of representatives from all local agencies involved in the Family Law System including the Family Court, Legal Aid Commissions and Community Legal Centres, Family Relationships Service providers and private practitioners working in family law, mediation and dispute resolution services.

Most networks have a part-time Project Officer who organise monthly meetings, coordinates and facilitates agreed actions and plans with and for the network members. Many Networks have hosted interdisciplinary training, public information evenings and regularly disseminate up to date information about services available within the Network. The role of Family Pathways Networks in facilitating cross discipline links between private and public service providers and practitioners at the local level with the Courts is an important investment in achieving a collaborative and integrated Family Law System. The number of networks and the amount of funding provided to each existing network was recently substantially increased in the 2010 Federal Budget.

<sup>35</sup> Brotherhood St Laurence (2006) pg 11; ABS (2001) notes that the index used "variables that reflect disadvantage rather than measure specific aspects of disadvantage for example indigenous, separated / divorced."

<sup>36</sup> FaCSIA Research News 29 pg 14 "Marriage including living in a defacto relationship, is an important factor associated with lower likelihood of being 'in poverty'.

<sup>37</sup> Vinson T (2007) pgs 2,18,20

<sup>38</sup> FaCS & AGD(2004) pg 40

<sup>39</sup> 2001 report, *Out of the Maze: Pathways to the Future for Families Experiencing Separation* - AGD

There is potential for the Family Pathways Networks to drive system improvements including enhanced responses to family violence. FRSA suggests that the Attorney-General's Department consider an annual focus or theme for networks and support this through national coordination. For example, if the 2011 theme was improving responses to family violence each network might hold local consultations, bring together the family law services with the family violence services, host a training event or develop a local action plan. This sort of activity could be supported nationally by developing examples of how to address the theme, circulating information between networks, assisting with contact details for training providers and experts available to conduct education or information sessions.

### **Conclusion**

- q) FRSA recommends that Family Pathways Networks (FPN) have a national annual focus or theme, one of which would be on enhancing responses to family violence as part of a national strategy to improve service coordination.**

## 7. Conclusion

As stated throughout this Submission, family separation is often complex, difficult and rarely without trauma. It can be a very dangerous time in which violence or the threat of violence can occur for the first time or be exacerbated by conflict and dispute.

Professionals working in the family law system continually make assessments relating to the safety, mental health and wellbeing of the parents and children involved; a significant and challenging responsibility that deserves to be fully supported and appropriately resourced.

FRSA believes that the introduction of the Family Law Reforms in 2006 and significant expansion of post separation and early intervention services has had a significant impact on the safety and wellbeing of separating families, particularly children. Many more families now participate in screening and assessment. There is much greater opportunity for early identification of families affected by violence and those at risk due to other factors including high conflict, threats of violence or impulsive behaviour by one or the other parent. Intervention at an early stage may help to resolve or reduce some of these risk factors and/or 'fast track' these families to a family court for legal intervention when appropriate.

There is, however, always more that can be done and it is the combined responsibility of each service provider whether private or public, community based, government or private practitioner to operate as part of the wider family law system and to work collaboratively to achieve better outcomes for children and families affected by violence.

## 8. References and Resources

AIFS (2007) Allegations of family violence and child abuse in family law children's proceedings: a pre-reform exploratory study, by Lawrie Moloney, Bruce Smyth, Ruth Weston, Nicholas Richardson, Lixia Qu and Matthew Gray. Available from [www.aifs.gov.au/institute/pubs/resreport15/main.html](http://www.aifs.gov.au/institute/pubs/resreport15/main.html)

Kaspiew, R., Gray, M., Weston, R., Moloney, L., Hand, K., Qu, L., & the Family Law Evaluation Team. (2009). Evaluation of the 2006 family law reforms. Melbourne: Australian Institute of Family Studies.

Astor H (2007) *The mediation of disputes involving violence against women*, DVIRC Quarterly, Vol. 3, pp. 7-10.

ABS (2005) *Personal Safety Survey*

Background Paper to Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009-2021

Bailey A (2007) *Separating safety from situational violence: a response to the AIFS report*, Australian Institute of Family Studies Family Matters, No. 77, pp. 26-27.

Bickerdike A (2006) *'Family dispute resolution: opportunities, risks and challenges in the new system'*, Domestic Violence & Incest Resource Centre Newsletter, No. 2, pp. 11-15.

Bickerdike A (2007) *Implication for family dispute resolution practice: a response to the Allegations of Family Violence and Child Abuse in Family Law Children's Proceedings report*.

Braaf R & Sneddon C (2007) *Family Law Act reform: the potential for screening & risk assessment for family violence*. Australian Domestic & Family Violence Clearinghouse issues paper, No. 12, pp. 1-35.

Brotherhood St Laurence (2006) *Life on a Low Income, 2006 State of the Family*, cit. Brotherhood St Laurence & Anglicare, (2005), Submission to the Senate Community Affairs Legislation Committee, Welfare – to Work and other Measures, November.

FaCS: Department of Family and Community Services & Attorney-General's Department (2004) Review of the Family Relationships Services Program. Canberra. Commonwealth of Australia

Brown T & Alexander R (2007) Child abuse and family law: understanding the issues facing human service and legal professionals – the book abstract is available on the Australian Domestic & Family Violence Clearinghouse website.

Chisholm R (2009) Family Courts Violence Review, available from [www.ag.gov.au/www/agd/agd.nsf/Page/Families\\_FamilyCourtsViolenceReview](http://www.ag.gov.au/www/agd/agd.nsf/Page/Families_FamilyCourtsViolenceReview)

Evans E (2007) Battle-scars: long-term effects of prior domestic violence, Melbourne: Centre for Women's Studies and Gender Research, Monash University

Family Court of Australia, *What is Family Violence?*

Family Law Council (1998), *Parental Child Abduction – a report to the Attorney-General*

Field R (2006) *Using the feminist critique of mediation to explore 'the good, the bad and the ugly' implications for women of the introduction of mandatory family dispute resolution in Australia*, , 2006. Australian Journal of Family Law, Vol. 20, pp. 45 -78.

Harrison C (2008), *Implacably Hostile or Appropriately Protective?: Women Managing Child Contact in the Context of Domestic Violence*, Violence Against Women, Vol. 14, No. 1.

Howard J & Rottem N (2008), *It All Starts At Home: Male Adolescent Violence to Mothers*, Inner South Community Health Service Inc

Hume M (2005) *'Barriers to safety – proposed changes to the family law system'*, Domestic Violence & Incest Resource Centre Newsletter, No. 2, pp. 14-18.

- McArthur M, Thomson L, Winkworth G & Butler K (2009) *Getting what we need: Families' experiences of services*, Institute of Child Protection Studies- Australian Catholic University. Available from [http://www.fahcsia.gov.au/sa/families/pubs/families\\_experiences/Pages/default.aspx](http://www.fahcsia.gov.au/sa/families/pubs/families_experiences/Pages/default.aspx)
- Johnson C H (2005) *Come with Daddy, Child Murder-suicide after family breakdown*, Uni of WA press
- Johnston Janet R (2009) FRSA national Conference Proceedings, available from [www.frsa.org.au](http://www.frsa.org.au)
- Judge Marshall Irwin (2006) *Domestic violence: implications of the new legislation*, Calabro Consulting family law residential, Novatel Twin Towers, Sunshine Coast, 19 August 2006 Calabro Consulting, -- Brisbane: Queensland Courts, pp. 1-23.
- Kaye, M; Stubbs, J & Tolmie, J. (2003). Domestic violence and child contact arrangements. *Australian Journal of Family Law*, v.17 no.2 Jul 2003: 93-133.
- Kelly, J B (1993) *Current research on children's post divorce adjustment - no simple answers*, *Family & Conciliation Courts Review* 30 (1) pp 81-101.
- Kirkwood D (2007) *Behind closed doors: family dispute resolution and family violence*, *Domestic Violence & Incest Resource Centre*. Available online at [www.dvirc.org.au/PublicationsHub/BehindClosedDoorsDVIRCDiscussionPaper2007.pdf](http://www.dvirc.org.au/PublicationsHub/BehindClosedDoorsDVIRCDiscussionPaper2007.pdf)
- Lawrence, R. & Fattore, T. (2002) *Fatal Assault of Children and Young People*, Commission of Children and Young People, Sydney.
- McInnes, E. (2004). The impact of violence on mothers' and children's needs during and after parental separation. *Early Child Development and Care*, 174 (4), 357-368.
- McIntosh J E & Long C M (2006) *Children Beyond Dispute: A prospective study of outcomes from child - focussed and child inclusive post-separation family dispute resolution*, Final Report for Attorney General's Department. Family Transitions, School of Public Health, LaTrobe University.
- McIntosh JE, Wells YD, & Long CM. (2007) Child-focused and child-inclusive family law dispute resolution: one year findings from a prospective study of outcomes, *Journal of Family Studies*, vol.13 (1) pp 8-25.
- McArthur et al, 2009. 'Australian Parents on income support'
- Moloney, I., Smyth, B., Weston, R., Richardson, N., Qu, L. & Gray, M. (2007) *Allegations of family violence and child abuse in family law children's proceedings: a pre-reform exploratory study*, Australian Institute of Family Studies, Report No. 15, 2007. Available from [www.aifs.gov.au](http://www.aifs.gov.au)
- Mouzos, J and Rushforth, C. 2003, 'Family Homicide in Australia', *Trends and Issues in Crime and Criminal Justice*, no 225, Australian Institute of Criminology, Canberra.
- Mudaly, N & Goddard, C (2006) *The Truth is Longer than a Lie*. London: Jessica Kingsley.
- National Crime Prevention 1999, *Ending Domestic Violence: Programs for Perpetrators*, National Crime Prevention, Attorney-General's Department, Canberra
- National Plan to Reduce Violence Against Women and Their Children - Reports by the National Council to Reduce Violence Against Women and their Children are available from [www.fahcsia.gov.au/SA/WOMEN/PUBS/VIOLENCE/NP\\_TIME\\_FOR\\_ACTION/Pages/default.aspx](http://www.fahcsia.gov.au/SA/WOMEN/PUBS/VIOLENCE/NP_TIME_FOR_ACTION/Pages/default.aspx)
- NSW Government, Department of Premier and Cabinet, *Discussion Paper on NSW Domestic and Family Violence Strategic Framework*, available at [http://www.women.nsw.gov.au/discussion\\_paper.pdf](http://www.women.nsw.gov.au/discussion_paper.pdf)
- Out of the Maze: Pathways to the Future for Families Experiencing Separation – AGD 2001, report.
- Proceedings of the Inaugural Family Law System Conference 2009 'The Australian Family Law System - Better Access to Justice' at [www.ag.gov.au/www/agd/agd.nsf/Page/FamiliesFamily\\_Law\\_System\\_Conference](http://www.ag.gov.au/www/agd/agd.nsf/Page/FamiliesFamily_Law_System_Conference)
- Rendell, K; Rathus, Z & Lynch, A. (2000). *An unacceptable risk: a report on child contact arrangements where there is violence in the family*. Annerley, Qld: Women's Legal Service.

Response by the Australian Government - The National Plan to Reduce Violence against Women - Immediate Government Actions  
April 2009

Smyth 2009: "A five-year retrospective of post-separation shared care research in Australia", *Journal of Family Studies*, 15(1), 36-59

Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009-2021

Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children 2009–2021 - A  
Snapshot

Vinson T (2007) [Dropping off the Edge: The distribution of disadvantage in Australia.](#) Jesuit Social Services / Catholic Social Services  
of Australia

Wingspread Conference Report on Domestic Violence and Family Courts (USA) available from  
[www.afccnet.org/about/domestic\\_violence\\_and\\_family\\_courts\\_project.asp](http://www.afccnet.org/about/domestic_violence_and_family_courts_project.asp)