

**Submission to the Australian Law Reform Commission  
Review of the Family Law System  
Discussion Paper 86**

**Rape & Domestic Violence Services Australia (R&DVSA)  
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## About R&DVSA

1. R&DVSA is a non-government organisation that provides a range of specialist trauma counselling services for people who have been impacted by sexual, family or domestic violence<sup>1</sup> and their supporters. Our services include the NSW Rape Crisis counselling service for people in NSW who have experienced or have been impacted by sexual violence and their professional or non-professional supporters; Sexual Assault Counselling Australia for people who have been impacted by the Royal Commission into Institutional Responses to Child Sexual Abuse; and Domestic and Family Violence Counselling Service for Commonwealth Bank of Australia customers who are seeking to escape domestic or family violence.
2. In addition, R&DVSA provides consultation and training services to other organisations and individuals who may come into contact with people whose lives have been impacted by sexual, family or domestic violence. Consultation and training sessions may cover topics such as managing vicarious trauma, responding with compassion, and understanding complex trauma.

## Introduction

1. Rape and Domestic Violence Services Australia (R&DVSA) thank the Australian Law Reform Commission (ALRC) for the opportunity to comment on the *Review of the Family Law System – Discussion Paper 86*.
2. We commend the ALRC on its efforts to centre the experiences of people impacted by family violence throughout the Discussion Paper.
3. R&DVSA has long advocated that advancing the safety and wellbeing of children and carers must be the “paramount principle” guiding the modern family law system. This principle is nowhere more relevant than in matters involving allegations of family violence, which make up the majority of matters that come before family courts. As such, responding to family violence constitutes the core business of the family law system.
4. We are hopeful that the Proposals contained in this Discussion Paper will herald a new era in which safety is prioritised at every stage of the family law process.
5. R&DVSA endorse the Women’s Legal Services Australia (WLSA) submission to this inquiry. This submission represents an accurate and insightful summation of the issues affecting women who have been impacted by sexual, family and domestic violence when accessing the family law system. We thank WLSA for their ongoing work in amplifying the voices of our mutual clients.
6. In this submission, R&DVSA make comments in relation to some proposals included in the Discussion Paper which most closely affect people impacted by family violence. However, we do not attempt to respond to every proposal in the Discussion Paper.

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<sup>1</sup> R&DVSA prefer the term *people who have been impacted by sexual, family or domestic violence* rather than the terms survivors or victims. This is in acknowledgement that, although experiences of violence are often very significant in a person’s life, they nevertheless do not define that person.

## Chapter 2: Education, awareness and information

7. R&DVSA support the need to improve community understanding of the family law system through a national education and awareness campaign, enhanced referral relationships and a family law system information package.
8. However, we recommend that:
  - 8.1. The education campaign and information package must be developed in consultation with specialist family violence services, in addition to those organisations identified in **Proposals 2-2 and 2-5**.
  - 8.2. The education campaign and information package must include specific information about family violence, in addition to those topics identified in **Proposals 2-1 and 2-6**.
  - 8.3. The proposed initiatives must be accompanied by increased funding for legal assistance, in particular for people who have been impacted by family violence.

### Education about family violence as it relates to family law

9. Public education about family violence as it relates to family law may improve the safety and wellbeing of people impacted by family violence, both within and outside of the family law system.
10. R&DVSA recommend that the education campaign and information package should each include information about:
  - 10.1. the meaning of family violence, including the definition within the FLA and illustrative examples of physical and non-physical forms of violence;
  - 10.2. risk factors, including the escalated risks during the period of separation;
  - 10.3. the impact of family violence on children and adults;
  - 10.4. support services available to people impacted by family violence, including legal and non-legal services;
  - 10.5. the relevance of family violence to decision-making in relation to both parenting arrangements and property division; and
  - 10.6. protections available for people impacted by family violence when accessing the family law system.
11. Education on these topics may support people experiencing family violence to:
  - 11.1. **Seek information, advice and support when contemplating or experiencing separation.** It is important that parties are equipped to identify their safety, support and advice needs and those of their children.
  - 11.2. **Disclose family violence when accessing the family law system.** A 2015 AIFS report found that many people experiencing family violence did not disclose this information during family law proceedings.<sup>2</sup> One common reason for non-disclosure

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<sup>2</sup> Of parents who had experienced family violence and resolved their matter through family dispute resolution, only one third disclosed the violence to a professional during negotiations. Of parents who proceeded through court, around two thirds disclosed family violence. See Rae Kaspiew et al, *Experiences of Separated Parents*

is a lack of trust in the capacity of the legal system to respond appropriately.<sup>3</sup> For example, research by AIFS found that less than one third (32 per cent) of separated parents perceived the family law system as addressing family violence issues.<sup>4</sup> As such, education may support people to disclose family violence by increasing their confidence that disclosure will lead to enhanced protections and safer outcomes.

- 11.3. **Access protections within the family law system.** Evidence shows that existing protections for people experiencing family violence are under-used. For example, a 2018 AIFS report found that despite safeguards being available in matters involving family violence and direct cross-examination, these safeguards were not put in place in the majority of cases. It is important that parties are aware of any protections available to them, such that they are able to advocate effectively for their safety and wellbeing throughout the family law process. This is especially relevant where parties are self-represented.
- 11.4. **Negotiate safe post-separation arrangements outside of court.** As proposed by Mnookin and Kornhauser, out of court negotiations in separation matters occur in “the shadow of the law,” with legal entitlements often functioning as bargaining chips for each party.<sup>5</sup> Thus, it is imperative that people experiencing family violence understand their legal entitlements, including their right to have family violence taken into account in both parenting and property matters. Where parties understand their rights in relation to family violence, they will be less likely to consent to unsafe and/or unjust outcomes.

### **Increased funding for family law services**

12. Education must not be considered a substitute for specialised legal support for people who have been impacted by family violence.
13. In our submission to the Issues Paper, R&DVSA explained the critical importance of access to legal support and representation for people experiencing family violence (refer to Section 5). As we stated, “where women access the family law system without legal representation there is a significant risk that power imbalances will be perpetuated and that any resulting parenting arrangements may not adequately take into safety concerns.”<sup>6</sup>
14. R&DVSA recommend that any education campaign and information package must be accompanied by increased funding for legal assistance for people who have been impacted by family violence. As noted by WLSA in their submission to this inquiry, this is especially the case given that referral relationships are likely to increase demand to legal assistance services funded by legal aid commissions, including community legal centres (CLCs) and Family Violence Prevention Legal Services.

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*Study (Evaluation of the 2012 Family Violence Amendments)* (Australian Institute of Family Studies, 2015) 94-95.

<sup>3</sup> Women’s Legal Service Australia, ‘Response to Family Law Amendment (Family violence and Cross-Examination of Parties) Bill 2018, Submission 22, 6.

<sup>4</sup> Rae Kaspiew et al, *Experiences of Separated Parents Study (Evaluation of the 2012 Family Violence Amendments)* (Australian Institute of Family Studies, 2015) 117.

<sup>5</sup> Robert H Mnookin and Lewis Kornhauser, ‘Bargaining in the Shadow of the Law: The Case of Divorce’ (1979) 88(5) *Yale Law Journal* 950.

<sup>6</sup> Rape & Domestic Violence Services Australia, *Submission 167*, 7.

15. In this respect, we support the recommendation by AWAVA in their submission to this inquiry for a separate and additional specialised domestic violence pathway for legal aid grants, particularly for family law and care and protection matters.
16. We also support the recent recommendation by the Law Council of Australia that the Australian government must invest “at a minimum, \$390 million per annum” in Legal Aid Commissions, Community Legal Centres, Aboriginal and Torres Strait Islander Legal Services, and Family Violence Prevention Legal Services in order to address critical civil and criminal legal assistance service gaps. As the Law Council of Australia notes, “Legal assistance services are critically underfunded” and “this funding gap is often felt acutely by women without financial means, who often need assistance with family law, family violence and related civil law matters.”<sup>7</sup>

## Chapter 3: Simpler and clearer legislation

### Simplifying family law legislation and forms

17. R&DVSA welcome the simplification of family law legislation (**Proposal 3-1**).
18. In regards to **Proposal 3-2**, we recommend that family law court forms must be accessible, safe and appropriate for people experiencing family violence. For example:
  - 18.1. Forms should allow users to make freeform comments, to encourage the proper and safe disclosure of family violence.
  - 18.2. Collaborative form functions should be used with caution in matters involving allegations of family violence. In these circumstances, there is a risk that perpetrators may exploit collaborative functions as a tool of power and control. In addition, there is a risk that collaborative functions may inappropriately expose sensitive information to the perpetrator.
  - 18.3. Paper forms should be made accessible to parties experiencing family violence. Evidence shows that perpetrators of family violence regularly use technology to control, intimidate, stalk and harass victims. This form of family violence commonly extends to “preventing, restricting or monitoring victims’ use of technology.”<sup>8</sup> As such, people experiencing family violence may face particular difficulties accessing online court forms.

### Parenting arrangements

19. R&DVSA welcome the enhanced focus on safety within decision-making about parenting arrangements, not only for children but also for their carers.
20. It is imperative that safety is interpreted broadly to include emotional, psychological and cultural safety, alongside protection from physical harm. A parenting arrangement is not safe unless both the child and their carers are protected from exposure to physical and non-physical forms of abuse, neglect or family violence. We recommend that this interpretation be set out in legislation.

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<sup>7</sup> Law Council of Australia (2018) The Justice Project Final Report. Recommendations and Group Priorities, p. 4, rec. 2.1.

<sup>8</sup> State of Victoria. (2014-16) *Royal Commission into Family Violence: Report and recommendations*, Summary and Recommendations, 29.

### The paramourncy principle

21. We support **Proposal 3-3** to amend section 60CA such that the child’s “safety and best interests” must be the paramount consideration in making any parenting order.
22. However, we agree with the ALRC that this proposal alone is unlikely to shift judicial reasoning. We note, for example, that numerous reviews found the insertion of section 60CC(2A) in 2012 – which heralded a similar objective to elevate safety as a primary consideration – had little impact on judicial decision-making trends.<sup>9</sup> In light of this record, we should be cautious about the capacity for legislative change to enact the necessary cultural shift envisaged by this proposal.
23. R&DVSA propose that structural changes to the family law system – including enhanced risk-assessment and specialist family violence training for all family law professionals – are more likely to result in the desired cultural shift.

### Prioritising the safety of carers

24. R&DVSA support the explicit recognition in **Proposal 3-4** that parenting arrangements “should not expose children *or their carers* to abuse or family violence or otherwise impair their safety” [emphasis added]. As we discussed in our preliminary submission, R&DVSA understand the safety and wellbeing of carers as inextricably intertwined with the safety and wellbeing of their children.
25. We welcome the formulation of this principle in absolute terms. This provides clear and direct guidance to decision-makers that *any exposure* of a carer to family violence as the outcome of a parenting arrangement is unacceptable, and inconsistent with the child’s best interests. The safety of carers must be a baseline requirement of any parenting plan, rather than a discretionary factor to be weighed against other competing factors.
26. Unfortunately, **Proposal 3-5** does not reflect the same level of clarity on this point. Under this proposal, decision-makers are required to consider “whether particular arrangements are safe for the child and the child’s carers, including safety from family violence or abuse.”
27. This formulation lacks clarity for two reasons:
  - 27.1. First, it fails to specify that *any exposure* of children or their carers to family violence should be considered unsafe and therefore unacceptable. Instead, it leaves discretion to the decision-maker to determine what level of exposure to family violence they consider unsafe. R&DVSA is concerned that decision-makers may interpret safety narrowly to meaning protection from physical violence. For example, without clarification, a decision-maker may determine that a particular arrangement is safe despite the fact that it exposes a carer to non-physical forms of abuse.
  - 27.2. Second, it does not provide any definitive guidance to decision-makers on the need to prioritise safety over any other consideration. Instead, the decision-maker is afforded discretion to weigh this factor against other considerations. We note that the child’s safety is prioritised in the paramourncy principle. However, there is a risk the carer’s safety may be subsumed by the other five proposed considerations.
28. R&DVSA recommend that Proposal 3-5 be amended to provide stronger guidance to decision-makers. We suggest that decision makers be required to consider: “the need to

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<sup>9</sup> Rae Kaspiew et al, *Court Outcomes Project (Evaluation of the 2012 Family Violence Amendments)* (Australian Institute of Family Studies, 2015), 68.

ensure that parenting arrangements do not expose children or their carers to abuse or family violence or otherwise impair their safety.”

#### Prioritising safety over maintaining relationships

29. R&DVSA support the recognition in **Proposal 3-4** that decision-makers should only attempt to preserve the child’s relationship with parents “where maintaining a relationship does not expose them to abuse, family violence or harmful levels of ongoing conflict.”
30. Evidence shows that maintaining a relationship with an abusive parent is likely to be harmful for the child. As acknowledged in the Discussion Paper, exposure to family violence is a key predictor of poor outcomes for children.<sup>10</sup> Moreover, research demonstrates that fathers who perpetrate parental violence commonly exhibit poor parental characteristics, for example behaving in authoritarian, neglectful or manipulative ways towards their children.<sup>11</sup>
31. However, as above, R&DVSA is concerned that **Proposal 3-5** does not reflect the same level of clarity on this point. Under this proposal, the decision-maker is required to consider “the benefit to a child of being able to maintain relationships that are significant to them, including relationships with their parents, where it is safe to do so.”
32. R&DVSA is concerned that without clarification:
  - 32.1. Decision-makers may interpret safety narrowly as meaning protection from physical violence. This is concerning given that maintaining a relationship which exposes a child to non-physical forms of violence may be equally harmful to the child.
  - 32.2. Decision-makers may prioritise the child maintaining a relationship, even where this will expose their carer to family violence. As explained above, R&DVSA believe that parenting plans must be safe for both children and any carers as a baseline requirement.
33. We recommend that Proposal 3-5 be amended to provide stronger guidance to decision-makers. We suggest that decision makers be required to consider: “the benefit of a child being able to maintain relationships that are significant to them, including relationships with parents, where this will not expose the child or the child’s carers to abuse, family violence, or harmful levels of ongoing conflict.”

#### Remove the presumption of equal shared parental responsibility (ESPR)

34. R&DVSA support **Proposal 3-7** to replace the term “parental responsibility” with “decision-making responsibility” in order to increase legislative clarity.
35. However, like WLSA, we believe the most important legislative change required is the removal of the presumption of equal shared parental responsibility (ESPR).
36. As argued by WLSA in their submission to this inquiry, the presumption is responsible for a commonplace misunderstanding that parents are entitled to equal time in parenting arrangements. This perception can have dangerous implications for matters involving

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<sup>10</sup> EM Cummings and PT Davies, *The Guilford Series on Social and Emotional Development. Marital Conflict and Children: An Emotional Security Perspective* (Guilford Press, 2010).

<sup>11</sup> Leesa Hooker, Rae Kaspiew, Angela Taft. (2016). *Domestic and family violence and parenting: Mixed methods insights into impact and support needs: State of knowledge paper*. Sydney: ANROWS, 20-22.

family violence, serving as a tool for abusive parents to negotiate contact with their children in unsafe circumstances.

37. We note that the presumption is not intended to apply in circumstances of family violence. However, despite the legislative exclusion, the presumption may still impact matters involving family violence where they are negotiated outside of court “in the shadow of the law,” or more accurately, in the shadow of the misunderstanding of the law.<sup>12</sup>
38. It is unclear to R&DVSA whether or not the ALRC’s proposals include the removal of the presumption of ESPR.
39. We note that **Proposal 3-7** recommends “making it clear that in determining what arrangements best promote the child’s safety and best interests, decision makers must consider what arrangements would be best for each child in their particular circumstances.” We also note that in the text of the Discussion Paper the ALRC propose “removing the terminology of a presumption”<sup>13</sup> and adopting an approach that is “less complex and prescriptive about the steps to be taken in determining what is most likely to be consistent with the safety and best interests of the child.”<sup>14</sup>
40. As such, it appears that removal of the presumption may be implicit within Proposal 3-7.
41. However, we recommend the ALRC make explicit the need to remove any presumption in relation to decision-making responsibility or care-time arrangements.

#### Other issues

42. R&DVSA support **Proposal 3-8** to enshrine the principle in *Rice & Asplund* into legislation. As noted in the Discussion Paper, it is appropriate to limit the circumstances in which parties may apply for new orders in order to prevent perpetrators of family violence from misusing this legal process as a form of abuse. However, on the other hand, it is important that people experiencing family violence are able to seek revised orders where the risk of further violence has escalated or changed in nature, or where the full extent of the family violence was not taken into account when the previous orders were made.
43. R&DVSA also support **Proposal 3-9** that the Attorney-General’s Department commission a multi-disciplinary body to produce improved guidance material for families formulating care arrangements without professional help. R&DVSA agree that this material should be developed in consultation with family violence professionals and include information about risk factors, the impact of family violence on children and adults, and safety planning.
44. However, the material must ultimately emphasise the need for people experiencing family violence to seek professional support. It should highlight that without the support of family violence professionals, there is a risk that power imbalances will be perpetuated during negotiations and any resulting parenting arrangements will be unsafe.

#### **Property and financial matters**

45. In relation to property and financial matters, R&DVSA largely defer to the WLSA submission.

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<sup>12</sup> Crowe, J., Field, R., Toohey, L. et al, ‘Bargaining in the Shadow of the Folk Law: Expanding the Concept of the Shadow of the Law in Family Dispute Resolution’, 40(3) *The Sydney Law Review* 319.

<sup>13</sup> *Discussion Paper 86*, 52.

<sup>14</sup> *Discussion Paper 86*, 48.

46. However, we make brief comments below in relation to the effect of family violence on property settlements and the early release of superannuation.

#### Effect of family violence on property settlements

47. R&DVSA support **Proposal 3-11** that family violence should be a specific consideration that the court must take into account when assessing the property entitlements of parties, both in terms of contributions and future needs.
48. However, we agree with WLSA that this proposal could be further strengthened by amending the court's power to alter property interests such that:
- 48.1. The court must consider family violence when assessing whether it is just and equitable to make an order; and
- 48.2. The court may make orders which ensure that no party financially benefits from family violence they have perpetrated.
49. In addition, R&DVSA is concerned that enshrining the Kennon principle into legislation will not overcome problems in application – namely that “in practice Kennon adjustments are made infrequently and their effect on the ultimate ratio of property received is minor.”<sup>15</sup> In particular, we are concerned that:
- 49.1. **Judicial officers may undervalue the impact of family violence.** One study found that the mean Kennon adjustment for family violence was 7.3%.<sup>16</sup> However, research suggests that the financial impact of family violence is likely to be much higher. For example, one study in Washington found that women who experienced abuse as adults reported incomes that were on average 25% less than women who had not experienced abuse.<sup>17</sup> This aligns with evidence that shows women with a history of domestic violence have a more disrupted work history, are consequently on lower personal incomes, have had to change jobs more often and are employed at higher levels in casual and part time work than women with no experience of violence.<sup>18</sup> PwC has estimated that the lifetime costs for each woman who experienced violence in 2014-15 will be approximately \$313,125.<sup>19</sup>
- 49.2. **Judicial officers may overlook the financial impact of non-physical forms of family violence.** Research shows that adjustments for family violence were more likely to occur in matters involving physical violence.<sup>20</sup> Where financial loss occurred as a

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<sup>15</sup> Women's Legal Service Victoria, 'Small Claims, Large Battles: Achieving Economic Equality in the Family Law System' (2018), 34.

<sup>16</sup> Patricia Easteal, Catherine Warden and Lisa Young, 'The Kennon "Factor": Issues of Indeterminacy and Floodgates' (2014) 28(1) *Australian Journal of Family Law* 1, 12.

<sup>17</sup> Mark W. Smith, (2001), Abuse and work among poor women: Evidence from Washington State, in Solomon Polachek (ed.) *Worker Wellbeing in a Changing Labor Market* (Research in Labor Economics, Volume 20) Emerald Group Publishing Limited, 67 – 102.

<sup>18</sup> McFerran, L. (2011). *Safe at Home, Safe at Work? National Domestic Violence and the Workplace Survey (2011)*. Sydney: Australian Domestic and Family Violence Clearinghouse and Centre for Gender Related Violence Studies, University of New South Wales, 2.

<sup>19</sup> This figure was derived by dividing the total lifetime cost for women experiencing violence in 2014-15 (323,406 million) by the total number of women who experienced violence in 2014-15 (1,032,835): PwC, *A high price to pay: The economic case for preventing violence against women*, November 2015.

<sup>20</sup> Sarah Middleton, 'Domestic Violence, Contributions and s. 75(2) Considerations: An Analysis of Unreported Property Judgements' (2001) 15(3) *Australian Journal of Family Law* 230.

result of psychological, emotional or economic abuse, parties were less likely to be able to meet the evidential threshold.<sup>21</sup>

50. To overcome these problems, it is imperative that judicial officers receive training in relation to the various and complex direct and indirect ways that family violence may impact a person's financial circumstances. Until judicial officers understand the full extent of these impacts, they will be unable to factor them into Kennon adjustments.

#### Early release of superannuation

51. In response to **Question 3-2**, R&DVSA submit that early release of superannuation should be permitted in circumstances where parties face severe financial hardship as a result of family violence. However, this initiative must be supported by a comprehensive suite of policies designed to support people who have experienced family violence to achieve safety and financial stability.
52. R&DVSA recognise that in many circumstances, women escaping a violent relationship will require urgent and substantial funds. Recent research conducted by the Australian Council of Trade Unions estimates that leaving a violent relationship and finding a new, safe place to live can cost on average \$18,250 and takes 141 hours.<sup>22</sup> Some of the most substantial costs include truck hire (\$260), solicitors (\$2500 for the initial appearance, \$5000 for court appearances), and rent (\$3000 bond and four weeks rent).<sup>23</sup> Given that people experiencing family violence are already more likely to experience financial disadvantage, these costs can be prohibitive for many people.
53. Research conducted by the Australian Domestic and Family Violence Clearinghouse (ADFVC) found that women who were unable to stabilise their financial situation quickly after leaving an abusive relationship "typically found themselves in a downward spiral of debt and poverty."<sup>24</sup> It noted that early access to superannuation could "halt this spiral and provide much needed financial relief, for example, to make mortgage repayments and retain home ownership, and thus remain in stable accommodation."<sup>25</sup>
54. R&DVSA acknowledge there are some risks associated with the early release of superannuation. Where parties are not adequately supported to build financial independence, there is a risk that early release of superannuation may simply postpone the experience of financial insecurity as well as its correlated safety risks.
55. As such, R&DVSA submit that people impacted by family violence who access early release of superannuation must be supported to recover financially through a comprehensive range of policies including:
  - 55.1. Access to free financial counselling;

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<sup>21</sup> Women's Legal Service Victoria, 'Small Claims, Large Battles: Achieving Economic Equality in the Family Law System' (2018), 34.

<sup>22</sup> Australian Council of Trade Unions, Submission to the Education and Employment Legislation Committee inquiry into the *Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018*, Submission 19, 3.

<sup>23</sup> Australian Services Union, Submission to the Education and Employment Legislation Committee inquiry into the *Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018*, Submission 18, 16.

<sup>24</sup> Australian Law Reform Commission, 'Gaining early access to superannuation', *Family Violence and Commonwealth Laws - Discussion Paper 76* (2011), 636.

<sup>25</sup> Ibid.

- 55.2. Improved access to social security, in line with recommendations made by the National Society Security Rights Network in their recent report, 'How well does Australia's social security system support victims of family and domestic violence?'<sup>26</sup>
  - 55.3. Supportive workplace policies, including ten days paid family and domestic violence leave;<sup>27</sup> and
  - 55.4. Access to free legal support, which can be necessary to access these funds.
56. In addition, R&DVSA submit that there must be comprehensive data collection around the early release of superannuation, to ensure the impact of this policy can be monitored and evaluated over time.

## Chapter 4: Getting advice and support

### Families Hubs

- 57. R&DVSA support the objectives of the ALRC in proposing the establishment of Families Hubs (**Proposal 4-1**). However, we query whether this proposal represents a cost-effective response to the issues experienced by people accessing the family law system.
- 58. R&DVSA submit that an equivalent investment into existing family law services, with an increased focus on case management, is likely to result in better outcomes for people accessing the family law system.
- 59. This is because the expenditures involved in establishing an entirely new system of Families Hubs will involve significant duplication with existing service expenditure. We note that the Victorian Labor Government recently allocated \$448.1 million over four years to establish and operate its Orange Door Support and Safety Hubs.<sup>28</sup> The cost of establishing Families Hubs is likely to involve a similarly large expenditure, magnified across every Australian State and Territory. A significant proportion of these funds will be allocated to establishment costs, associated with building new physical facilities, administrative processes, and building community recognition and trust. In contrast, if funding were invested into existing services, it could be injected directly into service provision that better responds to client needs.
- 60. R&DVSA submit that with greater investment, existing family law services would be capable of providing enhanced case management that would fulfil the same objectives set out for the Families Hubs in Proposal 4-1, namely to:
  - 60.1. identify the person's safety, support and advice needs and those of their children;
  - 60.2. assist clients to develop plans to address their safety, support and advice needs and those of their children;
  - 60.3. connect clients with relevant services; and
  - 60.4. coordinate the client's engagement with multiple services.

<sup>26</sup> National Society Security Rights Network, 'How well does Australia's social security system support victims of family and domestic violence?' (2018), [http://www.nssrn.org.au/wp/wp-content/uploads/2018/08/NSSRN\\_Report2018\\_FamilyViolence\\_SocialSecurity\\_sm.pdf](http://www.nssrn.org.au/wp/wp-content/uploads/2018/08/NSSRN_Report2018_FamilyViolence_SocialSecurity_sm.pdf).

<sup>27</sup> See R&DVSA, Submission to the Education and Employment Legislation Committee inquiry into the *Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018*, Submission 21.

<sup>28</sup> Victorian Government, 'The Orange Door Support and Safety Hubs: Frequently Asked Questions' (2018), [https://www.vic.gov.au/system/user\\_files/Documents/fv/The%20Orange%20Door%20FAQs.pdf](https://www.vic.gov.au/system/user_files/Documents/fv/The%20Orange%20Door%20FAQs.pdf).

61. In addition to issues of cost efficiency, R&DVSA has concerns about whether the Families Hub model will be able to accommodate client needs:
  - 61.1. As raised by WLSA, there may be safety issues where both a perpetrator and the person impacted by family violence seek support from the same location.
  - 61.2. There may also be problems around duplication and integration with other service hubs, for example FRCs and state-based family violence hubs.
  - 61.3. Further, centralisation may inhibit the capacity for specialist services to provide a culturally appropriate service to their client base. For example, research shows that to be accessible and culturally safe, Aboriginal and Torres Strait Islander services must embed local culture as “the starting point for the design of service provision, rather than being a factor in design that needs to be accommodated to a mainstream culture.”<sup>29</sup> This will be difficult to achieve within mainstream Families Hubs.
62. We acknowledge that the proposed Families Hubs would have the benefit of greater visibility, which may increase accessibility for some people to the family law system. However, we suggest that proposals to improve education, awareness and information about the family law system may achieve increased visibility at a lower cost.
63. R&DVSA urge that increased funding be allocated to existing family law services, including legal assistance, trauma counselling, and case management services. This must include specialist women’s services and specialist Aboriginal and Torres Strait Islander community controlled organisations.

### **Family Advocacy and Support Service (FASS)**

64. R&DVSA support **Proposal 4-5** to expand the Family Advocacy and Support Service (FASS), subject to positive evaluation.

### **Chapter 5: Dispute resolution**

65. R&DVSA support **Proposals 5-9 and 5-10** to increase the accessibility of non-adversarial and culturally safe models of dispute resolution, including to people impacted by family violence.
66. R&DVSA agree that a shift towards non-adversarial and multi-disciplinary approaches is desirable within the context of family violence. As recognised by the Victorian Royal Commission into Family Violence, the court process is often “intimidating, confusing and unsafe” for people who have experienced family violence.<sup>30</sup> In addition, the high cost of accessing the family courts can have an especially detrimental impact on people impacted by family violence, who are more likely to suffer financial hardship due to economic abuse and the impacts of trauma.
67. However, it is imperative that the development of safe models of dispute resolution is informed by extensive consultation with specialist family violence services and people impacted by family violence.

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<sup>29</sup> Sam Morley, ‘What works in effective Indigenous community-managed programs and organisations’, Child Family Community Australia, Paper No 32 (2015), 5.

<sup>30</sup> State of Victoria (2014-16) Royal Commission into Family Violence: Report and recommendations, Vol III, Parl Paper No 132, Ch 16, 117.

68. We also support the recommendation made by WLSA for increased funding of legally assisted dispute resolution (LADR) models, to ensure that lawyers are funded to:
  - 68.1. obtain proper and detailed instructions from the client to be able to properly discharge their legal obligations to advise the client about their matter; and
  - 68.2. build up the trust with their client needed to meaningfully safeguard their interests in the dispute resolution.
69. These features are critical to ensure that LADR is safe for people impacted by family violence.

## Chapter 6: Reshaping the adjudication landscape

### Triage and risk assessment

70. R&DVSA welcome the establishment of a triage process under **Proposal 6-1**.
71. We support WLSA's recommendation that early risk assessment must be embedded into any triage process. Further, we recommend that:
  - 71.1. Staff conducting the triage process must receive comprehensive and ongoing training in relation to family violence, trauma-informed practice and cultural competency.
  - 71.2. Risk management must be a "dynamic, active and collaborative process." The ANROWS National Risk Assessment Principles for Domestic and Family Violence states, "As risk can change quickly and unpredictably, it must be continuously assessed, monitored and reviewed. ... [R]isk assessment is conducted continuously so that risk management and safety strategies can be adjusted over time as necessary to respond to changing experiences and contexts of violence."<sup>31</sup>

### A specialist family violence pathway

72. R&DVSA has long advocated for the need for a specialist approach to matters involving family violence.
73. However, R&DVSA has several concerns in relation to **Proposal 6-7** to establish a specialist family violence list for high risk cases:
  - 73.1. As noted above, risk in relation to domestic and family violence is dynamic and can change "quickly and unpredictably."<sup>32</sup> As such, it may not be possible to accurately identify high-risk cases during the initial triage process. Moreover, it is unclear whether cases could be moved in or out of the specialist list at a later date, in response to changing risk levels. There is a significant risk that cases which were initially triaged as low risk and hence excluded from the specialist list, may subsequently escalate in risk but be denied those additional protections afforded to cases in the specialist list.
  - 73.2. Matters that are identified as lower risk may still demand high-level specialist knowledge. For example, non-physical forms of abuse such as emotional,

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<sup>31</sup> Corina Backhouse and Cherie Toivonen, 'National Risk Assessment Principles for Domestic and Family Violence: Companion Resource' (Australia's National Research Organisation for Women's Safety, 2018), 24.

<sup>32</sup> Ibid.

psychological and financial abuse may be assessed as having a lower level of urgency and risk. However, responding appropriately to these types of more subtle or insidious forms of abuse may in fact demand a more sophisticated understanding of family violence than physical violence. Separating high risk cases into a specialist list may have the unintended effect of created a hierarchy between physical and non-physical forms of family violence.

- 73.3. It is unclear how the triage system will operate in relation to matters which are eligible for multiple specialist lists, for example matters involving parties who are Aboriginal or Torres Strait Islander and involve allegations of high risk family violence. Where the appropriate tools for responding to each type of case are segregated into specialist lists, there is a risk that matters involving intersectional issues will not be handled appropriately.
- 73.4. There is a risk that parties may be discouraged from disclosing the full extent of their experience of family violence in order to avoid being placed into a specialist list.
- 73.5. Given the overwhelming prevalence of family violence matters, it may be necessary to draw an arbitrary line between high and low risk cases in order to limit the number of cases entering the specialist list. This may create access to justice issues, where eligibility for a specialist approach is determined by resource limitations rather than evidence-based risk assessment principles.
74. R&DVSA believe it is critical that every matter involving allegations of family violence is afforded a specialist approach, which takes into account the particular circumstances of each case and acknowledges the dynamic character of risk.
75. Given that family violence matters account for an overwhelming 85% of cases coming before family courts, we submit that a specialist family violence approach must be imposed across the entire family court system.

### **Parent management hearings**

76. R&DVSA refer the ALRC to our submission to the Senate Legal and Constitutional Affairs Committee in response to the *Family Law Amendment (Parenting Management Hearings) Bill 2017* below. In this submission, R&DVSA raised a number of concerns about parent management hearings including:
  - 76.1. The model of parent management hearings is not evidence based.
  - 76.2. The barriers to legal representation for people who have experienced domestic or family violence create a significant risk that power imbalances may be perpetuated throughout the hearing process and that any resultant orders may not adequately take into consideration family violence or safety concerns; and
  - 76.3. The eligibility requirements for Panel Members are not sufficient to ensure that every Panel is equipped to handle the complexities of domestic and family violence.
77. We refer the ALRC to the recommendations we made in this submission.

### **Post-order support for families**

78. R&DVSA support **Proposals 6-9 and 6-10** to develop a post-order parenting support service.

79. It is essential that all parts of this service are designed in collaboration with specialist family violence services, instead of just intake assessment processes as contemplated by Proposal 6-9.
80. Given that the post-separation period is one of the most high risk times for family violence related homicide,<sup>33</sup> it is imperative that all staff working within this service have comprehensive and ongoing specialist training in relation to family violence.

### **A safe and accessible court environment**

81. R&DVSA support **Proposal 6-12** that the Government must ensure all premises used for family law matters are safe for attendees.
82. In addition, we support WLSA's recommendations to:
  - 82.1. Provide a crèche or child minding facility, in order to relieve financial pressure on people impacted by family violence.
  - 82.2. Provide safety planning regarding entering and leaving buildings; and
  - 82.3. Ensure cultural safety in consultation with Aboriginal and Torres Strait Islander communities.

## **Chapter 8: Reducing harm**

### **Definitions of family violence and abuse**

83. R&DVSA welcome **Proposals 8-1 and 8-3** to clarify the definition of family violence and ensure the link between family violence and abuse is clear. In particular, we support:
  - 83.1. The replacement of 'assault' with a plain language description: 'an act that causes physical harm or causes fear of physical harm'.**
  - 83.2. The replacement of 'repeated derogatory taunts' with 'emotional or psychological abuse'.** We recommend that the FLA should also incorporate the list of examples from section 7 of the *Family Violence Protection Act 2008* (Vic). These examples are especially important to illustrate the specific types of emotional or psychological abuse experienced by diverse groups, for example racial taunts, threatening to disclose a person's sexual orientation, or threatening to withhold a person's medication.
  - 83.3. The inclusion of examples to illustrate the meaning of financial abuse.** However, we recommend that the FLA should adopt the full list of examples from section 6 of the *Family Violence Protection Act 2008* (Vic), rather than those limited examples proposed in the Discussion Paper. Given the tendency for economic abuse to be overlooked, it is important to highlight the wide variety of behaviours that may amount to family violence in this context.
  - 83.4. The recognition that social violence may include preventing the family member from making or keeping connections with their "community or religion".** We recommend that the FLA should include illustrative examples such as "ridiculing or

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<sup>33</sup> The NSW Domestic Violence Death Review Team (2017) reported that two-thirds (65%) of female victims killed by a former intimate partner between 2000-2014, had ended their relationship within three months of being killed: Ibid 13.

preventing victim survivors' practice of faith or culture and/or manipulating religious and spiritual teachings or cultural traditions to excuse the violence".<sup>34</sup>

83.5. **The recognition of technology-facilitated abuse.** However, like AWAVA, we recommend that the FLA adopt a broader definition than that proposed in paragraph 8.33. As stated by AWAVA in their submission to this inquiry, "Technology-facilitated abuse encompasses a wide range of behaviours where technology is misused to perpetrate abuse against another person or persons. It includes using technology to harass, stalk, groom, monitor, conduct surveillance on, location-track, threaten, humiliate, impersonate and/or isolate. ... [N]arrow definitions are likely to become quickly outdated as technology and the way it can be used or misused rapidly evolve."

83.6. **The inclusion of misuse of systems and processes as a form of family violence.** However, we agree with WLSA that there is a need to further consider the difficulties in proving this form of abuse, as well as the potential for this new section to be misused by perpetrators. We support WLSA's call to implement Recommendation 19 of the Family Law Council Final Report (Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems) regarding commissioning research on the intentional and unintentional misuse of legal processes in the family law context and how such abuse of the system may be prevented.

84. In addition, R&DVSA support AWAVA's recommendation that reproductive coercion be explicitly recognised in the expanded definition of family violence.

### **Recognising diverse experiences of family violence**

85. R&DVSA strongly support **Proposal 8-2** to commission further research to examine the strengths and limitations of the definition of family violence in relation to the experiences of diverse groups.

86. However, we recommend that the ALRC:

86.1. Conduct extensive consultation with Aboriginal women in considering the removal of coercion, control and/or fear as limiting elements in the definition of family violence;

86.2. Commission research in relation to the experiences of people with disability; and

86.3. Commission research in relation to the experiences of older people.

### Coercion, control and/or fear as limiting factors

87. We recommend that research specifically consider whether the definition of family violence excludes experiences of family violence in Aboriginal and Torres Strait Islander communities, due to the limiting elements of fear, coercion and/or control.

88. R&DVSA submit that it is imperative this research prioritises the voices of Aboriginal women, in order to capture their unique experiences of family violence which sit "at the cross-roads of gendered and racialised oppression."<sup>35</sup>

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<sup>34</sup> Ibid 7.

<sup>35</sup> Heather Nancarrow, *Legal Responses to Intimate Partner Violence: Gendered Aspirations and Racialised Realities* (Griffith University, 2016), 46.

89. We note that the Aboriginal Family Violence Prevention and Legal Service Victoria (FVPLS) has cautioned that an approach which equates family violence in Aboriginal communities with other forms of lateral violence may serve to disadvantage Aboriginal women. In its submission to the Victorian Royal Commission into Family Violence, FVPLS stated:

Court and police statistics, together with FVPLS Victoria's 12 years of frontline experience, confirm the majority of victims/survivors of family violence are women and children, and the majority of perpetrators are men – including both Aboriginal and non-Aboriginal men.

...

It is of concern that some strategies and frameworks designed to address family violence in Aboriginal communities fail to recognise the gendered nature and impacts of family violence, instead framing family violence as an issue affecting families and communities or as simply one aspect of "lateral violence"<sup>36</sup> - thus overlooking the lived experiences of women and children as the primary victims/survivors of male perpetrated violence. FVPLS Victoria wholeheartedly supports the notion that solutions to family violence impacting Aboriginal people lie within Aboriginal communities and that Aboriginal people must lead strategies to prevent and eradicate family violence in our communities. Community ownership and community-driven solutions are fundamentally important. However, it is crucial that community approaches do not result in the voices and perspectives of Aboriginal women being lost. Without reference to women or to gender, reliance on a 'community voice' can serve to reinforce pre-existing gendered power dynamics and silence Aboriginal women."<sup>37</sup>

90. Similarly, Nancarrow has argued that the limiting elements of coercion, control and/or fear in the FLA definition function as an important way of distinguishing between Aboriginal women's experiences of coercive and controlling family violence, and other distinct forms of lateral violence within Aboriginal communities.<sup>38</sup>
91. In line with preliminary submissions made to the ALRC, Nancarrow recognises that intimate partner violence within Aboriginal communities often sits outside of the framework of coercive and controlling violence. She argues that much violence between Aboriginal family members is better characterised as "fights" emerging out of the "the context of chaos associated with the legacy of colonisation," which includes inter-generational trauma, disrupted culture and extreme disadvantage.<sup>39</sup> While Aboriginal men are more likely to engage in coercive and controlling violence, Nancarrow finds that Aboriginal women are more likely to engage in this form of non-coercive "chaos context violence."<sup>40</sup>

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<sup>36</sup> Lateral violence, sometimes referred to as 'horizontal violence' or 'internalised colonialism', has been described by Richard Frankland as: "[T]he organised, harmful behaviours that we do to each other collectively as part of an oppressed group: within our families; within our organisations and; within our communities. When we are consistently oppressed we live with great fear and great anger and we often turn on those who are closest to us." See: Australian Human Rights Commission (2011) 'Chapter Two: Lateral Violence in Aboriginal and Torres Strait Islander Communities', *Social Justice Report 2011*.

<sup>37</sup> Aboriginal Family Violence Prevention & Legal Service Victoria, Submission to the Victorian Royal Commission into Family Violence (2015), 22.

<sup>38</sup> Heather Nancarrow, *Legal Responses to Intimate Partner Violence: Gendered Aspirations and Racialised Realities* (Griffith University, 2016) 171-172.

<sup>39</sup> *Ibid*, Abstract.

<sup>40</sup> *Ibid* 160

92. However, in contrast with submissions made to the ALRC, Nancarrow argues that non-coercive “fights” between Aboriginal family members are properly excluded from the definition of family violence. According to Nancarrow, coercive and controlling violence demands a different response to “fights” between Aboriginal family members. Where the law fails to distinguish between these types of violence, as in the QLD and Victorian definitions, there is a risk that Aboriginal women will be inappropriately penalised for “violence related to extreme disadvantage and associated with racialised oppression.”<sup>41</sup>
93. Thus, R&DVSA urge the ALRC to exercise caution in considering the removal of coercion, control and/or fear as limiting elements in the definition of family violence.
94. Any recommendation to this effect must be informed by extensive consultation with Aboriginal and Torres Strait Islander women, in addition to mainstream Aboriginal and Torres Strait Islander controlled organisations.

#### Recognising the experiences of people with a disability

95. R&DVSA recommend that the Australian Government should also commission further research to examine the strengths and limitations of the definition of family violence in relation to the experiences of people with a disability.
96. People with disability experience unique forms of family violence including:
  - 96.1. Denial of care or denial of assistance with essential activities of daily life;
  - 96.2. Destruction or withholding of adaptive equipment;
  - 96.3. Withholding food or medication;
  - 96.4. Limiting access to communication devices;
  - 96.5. Threats of institutionalization;
  - 96.6. Threats to report to Community Services, meaning a fear of losing children;
  - 96.7. Manipulation of medication; and
  - 96.8. Forced sterilization.<sup>42</sup>
97. It is essential that these types of violence are captured within the definition of family violence in the FLA.

#### Recognising the experiences of older people

98. R&DVSA also recommend that the Australian Government should commission further research to examine the strengths and limitations of the definition of family violence in relation to the experiences of older people.
99. Older people may experience unique forms of family violence that take advantage of their vulnerabilities or lack of support. For example, older people may experience the following types of abuse:

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<sup>41</sup> Ibid.

<sup>42</sup> NSW Police, *Code of Practice for the NSW Police Force Response to Domestic and Family Violence* (2018) [https://www.police.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0016/165202/Code\\_of\\_Practice\\_for\\_the\\_NSWPF\\_response\\_to\\_Domestic\\_and\\_Family\\_Violence.pdf](https://www.police.nsw.gov.au/__data/assets/pdf_file/0016/165202/Code_of_Practice_for_the_NSWPF_response_to_Domestic_and_Family_Violence.pdf)

- 99.1. Over-medicating or refusing medication;
  - 99.2. Financial abuse, including misuse of a power of attorney, forcing an older person to change their will or taking control of their finances against their wishes; and
  - 99.3. Neglect, including the unintentional or intentional failure to provide necessities of life and care or the refusal to permit others to provide appropriate care.<sup>43</sup>
100. It is essential that these types of violence are captured within the definition of family violence in the FLA.

### **Managing unmeritorious proceedings**

101. R&DVSA support **Proposals 8-4 and 8-5** in relation to the management of unmeritorious proceedings. These proposals may assist in combating the misuse of systems and processes by perpetrators as a form of family violence.
102. However, in line with WLSA's submission, we submit that there is a need to consider the potential for misuse of these provisions by perpetrators of family violence. People who have experienced family violence often face difficulties proving the violence, due to a lack of evidence and/or the impacts of trauma (discussed extensively in our preliminary submission at paragraph 5.6). In these circumstances, there is a risk that perpetrators may invoke summary dismissal provisions as a threat in order to intimate the other party into consenting to unsafe and/or unjust arrangements.
103. Thus, it is crucial that family law professionals including judicial officers receive extensive training in regards the misuse of systems and processes in the context of family violence so they are able to identify and respond to these circumstances.

### **Sensitive records**

104. R&DVSA welcome **Proposals 8-6 and 8-7** to provide stronger protections for sensitive records in family law proceedings.
105. We refer the ALRC to our preliminary submission which outlined in detail the reasons we support the protection of sensitive records (see Section 9).
106. We recommend that in addition to considering the effect that allowing the evidence would have on the protected confider, the court should also be required to consider the impact on broader society. In particular, the court should be required to consider:
  - 106.1. The need to encourage people who have experienced family violence to seek counselling;
  - 106.2. That the effectiveness of counselling is likely to be dependent on the maintenance of the confidentiality of the counselling relationship;
  - 106.3. The public interest in ensuring that people who have experienced family violence receive effective counselling;
  - 106.4. That the disclosure of the protected confidence is likely to damage or undermine the relationship between the counsellor and the counselled person;

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<sup>43</sup> Ibid.

- 106.5. Whether disclosure of the protected confidence is sought on the basis of a discriminatory belief or bias; and
- 106.6. That the adducing of the evidence is likely to infringe a reasonable expectation of privacy.
- 107. This mirrors the NSW model of Sexual Assault Communications Privilege, which includes a list of similar mandatory considerations in section 299D(2) of the *Crimes Act 1900* (NSW).
- 108. In addition, we recommend that:
  - 108.1. The court should be required to consider whether a less intrusive option may be available, such as an affidavit or report by the confider summarising the content of the protected confidences. A summary document may have greater probative value as it allows the confider an opportunity to contextualise and account for any possible unreliability in their therapeutic notes. In addition, a summary document may limit the extent of any harm to the protected confider or society more broadly.
  - 108.2. The Australian Government establish and fund a legal service to provide free advice and representation to individuals and counselling services wishing to object to the production of confidential counselling records. This service could operate in a similar way to the Sexual Assault Communications Privilege Service in NSW.
  - 108.3. Specialist sexual violence services be consulted when developing guidelines in relation to the use of sensitive records in family law proceedings. These organisations will be able to offer valuable insights based on their experiences in relation to state-based models of sexual assault communications privilege.

## Chapter 10: A skilled and supported workforce

### Workplace Capability Plan

- 109. R&DVSA has long-advocated for the need to provide specialist family violence training to all professionals in the family law system. As such, we welcome **Proposals 10-1, 10-2 and 10-3** to develop a workforce capability plan for the family law system.
- 110. In line with WLSA's submission, we submit that in order to have any real impact, training must be:
  - 110.1. adequately funded;
  - 110.2. comprehensive and ongoing;
  - 110.3. accredited and overseen by an independent body (such as the proposed Family Law Commission);
  - 110.4. delivered by specialist training providers; and
  - 110.5. developed in consultation with relevant community groups and service providers, including Aboriginal and Torres Strait Islander communities, those from CALD communities and those with disability.

### Understanding sexual violence

111. We support WLSA’s recommendation for a separate, additional core competency that recognises the need for all family law professionals to have an ‘understanding of sexual violence’.
112. Research indicates that intimate partner sexual violence is “the strongest indicator of escalating frequency and severity of violence, more so than stalking, strangulation and abuse during pregnancy.”<sup>44</sup> One study found that of women who had experienced physical abuse, those who had also experienced forced sexual activity or rape were seven times more likely than other women to be murdered.<sup>45</sup>
113. However, intimate partner sexual violence (IPSV) is reported at lower rates than other risk factors associated with domestic and family violence. The Victorian Royal Commission into Family Violence found that “sexual violence is an area that has the potential to fall through the gaps in the system, as family violence services often do not ask about sexual assault, as it is viewed as a separate form of violence”.<sup>46</sup>
114. Thus, as the ANROWS National Risk Assessment Principles for Domestic and Family Violence states:

Training on IPSV for all workers conducting DFV risk assessment is essential and should include: detail on the myths and dynamics of sexual violence within relationships; guidance on “how to ask” sensitively and building trust; the specific impacts and health consequences of IPSV; and how best to manage victim-survivors’ safety, cultural considerations, legal options and evidence requirements.

... Asking victim-survivors of DFV about IPSV separately, distinct from physical abuse, will assist in better self-identification and identification by practitioners, and appropriate service responses and referrals.<sup>47</sup>

### Understanding family violence

115. R&DVSA urge that training programs in relation to family violence are developed in consultation with specialist family violence service providers and people who have experienced family violence.
116. At a minimum, training on family violence must cover:
  - 116.1. Early and ongoing risk assessment and screening.
  - 116.2. The forms, dynamics and nuances of family violence including:
    - skills for identifying primary and secondary aggressors;
    - offender behaviour and grooming strategies; and
    - the risks of importing family violence typologies into the law, as discussed in detail by Rathus in her article, ‘Shifting Language and Meanings between Social Science and the Law: Defining Family Violence’.<sup>48</sup>

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<sup>44</sup> Backhouse and Toivonen, above n 31, 28.

<sup>45</sup> Ibid.

<sup>46</sup> Law Council of Australia (2018) The Justice Project. Final Report Part 1. People who Experience Family Violence, drawing on the Victorian Royal Commission, Summary and Recommendations, 24.

<sup>47</sup> Backhouse and Toivonen, above n 31, 28.

<sup>48</sup> Zoe Rathus, ‘Shifting Language and Meanings between Social Science and the Law: Defining Family Violence’ 36(2) *UNSW Law Journal* 359.

- 116.3. Safety planning, including guidance for how to develop safe parenting plans in circumstances of violence.
- 116.4. The impact of family violence on children and parents, including complex trauma presentations.
- 116.5. The financial impacts of family violence.
- 116.6. A gendered analysis of family violence.
- 116.7. The specific experiences of diverse groups of people in relation to family violence, including Aboriginal and Torres Strait Islander families, LGBTIQ communities, culturally and linguistically diverse communities, people with disability and older people.

### **Judicial officers exercising family law jurisdiction**

- 117. R&DVSA strongly support **Proposal 10-8** that all future appointments of federal judicial officers exercising family law jurisdiction should include consideration of the person's knowledge, experience and aptitude in relation to family violence.
- 118. The importance of judicial education on family violence has been a consistent theme emerging from recent inquiries, including the Victorian Royal Commission into Family Violence. In their Final Report, the Royal Commission stated that judicial officers' skills and approach are "critical" to "the outcome of a hearing, the victim's safety, and a perpetrator's level of accountability."<sup>49</sup> Further, as Women's Legal Service Victoria stated in their submission to the Royal Commission, "Magistrate interaction with victims can have a real impact on whether victims feel empowered or disempowered in the court process."<sup>50</sup>

### **Professional wellbeing**

- 119. R&DVSA welcome **Proposal 10-15** that the Australian Government should, as a condition of its funding agreements, require that all government funded family relationships services and family law legal assistance services develop and implement wellbeing programs for their staff.
- 120. This proposal aligns with recommendations made by R&DVSA in our preliminary submission (see Section 8).
- 121. We recommend that services be provided with additional funding to support establishment costs in relation to a wellbeing program. Although wellbeing programs will likely reduce financial costs to organisations over time, services should be supported with initial costs related to developing the program, training staff, employing supervisors etc.
- 122. In addition, R&DVSA recommend that wellbeing programs be accredited and overseen by an independent body (such as the proposed Family Law Commission).

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<sup>49</sup> State of Victoria (2014-16) Royal Commission into Family Violence: Report and recommendations, Vol VI, Parl Paper No 132, Ch 40, 210.

<sup>50</sup> Ibid 182.