

Submission to Family Law Council

Your details

Name/organisation <i>(if you are providing a submission on behalf of an organisation, please provide the name of a contact person)</i>	Domestic Violence NSW Contact: Moo Baulch, CEO
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Confidentiality

Would you prefer this submission to remain confidential? NO

Submissions received may be published on the Family Law Council's webpage if provided in Word format, except where requests have been made to keep them confidential or where they relate to particular cases or personal information.

Developing and lodging your submission

Please note that your submission may address the questions in the call for submissions or a letter you received (simply provide the number of the question/s you are responding to), or provide any information you consider relevant to the Council's terms of reference about families with complex needs and the intersection of the family law and child protection systems.



Introduction:

Domestic Violence NSW Inc. (DVNSW) is the state-wide peak body for specialist domestic and family violence services within NSW. DVNSW provides a representative and advocacy function for specialist domestic violence and family services and the women, children and communities they support, and is committed to facilitating and supporting ongoing improvement and good practice within specialist domestic and family violence services.

“Domestic violence is recognised as the single greatest preventable cause of death, ill health and disability for women aged under 45 in Australia”

NSW Auditor General's Report, Responding to Domestic and Family Violence, 2011

As the NSW peak body for specialist domestic and family violence (DFV¹) services, Domestic Violence NSW (DVNSW) works with a range of specialist and mainstream non-government organisations and government agencies supporting women as victim-survivors of intimate partner violence as well as child survivors of family and domestic violence². We also work with communities and community organisations that seek to address domestic and family violence at a local population level. Our role is to advocate for evidence-based best practice and policy responses to women, children, young people and communities impacted by DFV. We contribute at a state and federal policy level and work from the perspective that a gendered analysis of domestic and family violence based on human rights and social justice principles should be central to all DFV responses for women, children, young people and communities.

We welcome the opportunity to make a submission to the Attorney General and Family Law Council's discussion paper *“Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems”*. There are a number of major research projects and inquiry findings relating to the gaps in support for victim-survivors of domestic violence and systemic barriers in the justice system. Recommendations from the Australian Law Reform Commission, the recent Senate Inquiry into Domestic Violence and the Productivity Commissions' work in this area are particularly noteworthy. The Family Court journey presents a range of complexities for many women and families impacted by domestic and family violence.

Whilst some steps have been taken to address gaps and discrepancies there are still major barriers and system failures for families impacted by violence. DVNSW receives several new requests for advocacy and support every month from survivors of domestic and family violence who are engaged in the Family Court process. We note that nationally, frontline support services are reporting an increased demand. This demand is inevitably passed on through the courts and the existing pressures on community legal centres and Legal Aid eligibility restrictions mean that many survivors of violence are unable to access justice. We are therefore delighted that a review of the issues impacting on families with complex needs is being undertaken.

¹ We use the term domestic and family violence to refer to abuse that occurs in the context of the family.

² We note that some prefer to use the terms victim, victim-survivor and survivor of violence. When DVNSW use the term victim, we are referring to both those that identify as victims, and those that identify as survivors.

This submission would not have been possible without the input, experience and expertise of DVNSW's membership; specialist workers and services from across the sector in NSW. There are relatively few service networks in our state that are funded adequately to comprehensively meet the needs of women, children, young people and communities impacted by violence. We therefore advocate for a well-resourced dedicated, specialised workforce that can work from a trauma-centred approach to empower survivors of violence to recover from the impacts of trauma. In order to provide a balanced and representative submission to this inquiry DVNSW consulted with members through an online survey as well as working with survivors of DFV who have had experiences with the Family Court and their advocates. Illustrative, de-identified case studies and comments from our research are included to highlight some of the major issues and barriers that women and their children experience during the Family Court journey. This submission focuses on the areas for systemic improvements in relation to domestic and family violence and highlights a critical and urgent need for cultural change within the Australian Family Law Court system as identified by specialist services.

Summary of key issues identified by DVNSW member services:

According to submissions received by DVNSW, all too often the Australian Family Law system fails to protect those who need it, despite positive, evidence-based, domestic violence-informed policy amendments adopted in 2012. The substantial number of women, children and young people affected by Family Law Court rulings detailed by our member services indicate that there are still extensive systemic issues that fail to account for and recognise the complex nature of domestic and family abuse. Substantial improvements to policy and practice are required if we are to ensure that the safety of children is prioritised.

"Accessibility of information about abuse, violence, control and manipulation are key"

DVNSW member submission, 2015

Our research with NSW domestic and family violence services highlights the need to develop a range of comprehensive strategies so that workers in all parts of the system are trauma-informed, and wherever possible, trauma-specialist approaches are adopted by both the Family Law Court and the Children's Court. If we are to work effectively and justly with women, children and families in a way that improves their safety, a comprehensive understanding of the nature of violence in the family context and the impacts of trauma on women, child, young people and communities must be integrated at all levels of legal proceedings including preparatory processes prior to the jurisdiction of the Family Court. The submissions we received in relation to this inquiry prioritised urgent and substantial improvements to court policy and practice, increased service knowledge across all parts of the system as well as enhancements in the expertise of services specifically developed to support families with complex needs.

Systemic barriers

Support services and survivors of abuse have reported that matters brought to the Family Court often have protracted timeframes. We are aware that inadequate resourcing of the court system substantially impedes court staff from carrying out their duties and often impacts on timeframes and processes. With court delays and insufficient funding for forensic investigations, the Family Law Court significantly contributes to ongoing exposure to trauma for victim-survivors of domestic and family violence. In addition, such delays have legal consequence in recovery matters where status quo is relied upon in later proceedings.

"2 months of delay in the making of decisions in the best interests of a child or young person equates to 1% of childhood that cannot be restored"³

Judge Crichton, 2010

³ Judge N Crichton (1 July 2010), Family Drug and Alcohol Court, Wells Street, London W1 as quoted in The Munro Review of Child Protection Part One: A Systems Analysis 1 October 2010, accessed 12th September 2015,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/175407/TheMunroReviewPart_one.pdf

Trauma and safety considerations

Children and young people have unique needs when they grow up in an environment impacted by domestic and family violence regardless of whether they physically witness the abuse or not. Consistent, appropriate safety planning for children and young people should be the core principle of any contact decision-making process but our services and their clients report that it is often in direct conflict with court decisions based on the principle that a relationship with both parents is paramount. If we are to improve the safety of families impacted by violence, Family Courts must thoroughly and sensitively investigate allegations of perpetration of domestic, family and sexual violence. Our members report that unsafe, inadequately considered custody arrangements regularly and unnecessarily expose children, young people and their protective parent to further trauma.

Shared parenting principles

While the nature of a 50/50 shared parenting arrangement can be positive in principal, 50/50 co-parenting requires a high level of parental cooperation and power and control that is often not present in the parental relationship. Many families in the Family Law Court system, who have been impacted by violence, are there primarily because a level of cooperation, for a myriad of reasons, is disrupted and cannot be achieved. Women who have experienced violence in their intimate partnership expect the court to protect their children from further exposure to abuse and trauma. The reality is that this is often not the case and many women and their advocates report that the Family Law system further reinforces victim-blaming dynamics, rewarding the perpetrator and failing to hold him to account for his abusive behaviour.

Core conceptual frameworks for dealing with fathers who are perpetrators of violence

Dr Lesley Laing⁴ (2010) argues that domestic and family violence is often treated as an issue markedly separate to considerations of men's fathering capacities in the Family Law Court. Susan Heward-Belle⁵ (2015) explores the fragmentation of men's identities as fathers and resulting perception that men "*can be simultaneously "poor partners" but "good fathers"*". There is an increasing need to develop better understanding of fathers who are perpetrators of domestic and family violence and the impacts on their children. We need to "*view these men holistically; to attend to their multiple and complex identities in order to develop a more nuanced understanding of their contributions (both positive and negative) to family life and child development. A feminist intersectional approach offers a frame to attend to this complexity. This approach elevates gender as the primary contributor to violence against women, while considering how gender may be mediated through class, culture, and health*" Heward-Belle (2015).

Further work is required in this area if Family Courts are to protect children from fathers who abuse their mothers.

Systemic victim-blaming

"There is a total disregard or a total ignorance of family violence being an issue,...You're viewed in court as likely to be lying to manipulate the system"

Rosie Batty, Australian of the Year, 2015

Our work with specialist services and survivors has identified a culture of disbelief and victim blaming entrenched in the Family Law system and permeating through all levels of the court, including many of the related support systems. Women report being treated as if they are making up allegations of abuse or coaching their children to make allegations, even when they have clear evidence to the contrary. We are aware of a number of cases where serious allegations relating to the abuse of children by their fathers are being investigated by state justice agencies whilst at the same time the matter is being considered by the Family Court.

Women are frequently advised to comply with unsafe arrangements so that they are not judged or recorded as "non-compliant" with family mediation services, experts and report writers to the Court. DVNSW members have detailed numerous cases

⁴ Laing, L. (2010). No way to live: Women's experiences of negotiating the family law system in the context of domestic violence. Accessed 12th September 2015 <<http://hdl.handle.net/2023/6255>>

⁵ Susan Heward-Belle (2015): The Diverse Fathering Practices of Men Who

Perpetrate Domestic Violence, Australian Social Work, accessed 11th September 2015 ><http://dx.doi.org/10.1080/0312407X.2015.1057748><

where they have witnessed mothers who have had to coerce their children to attend contact visits with their abusive father, clearly against the child or young person's wishes and mothers are encouraged to "perform to be nice" so they are seen as a compliant and capable caregiver. This type of systemic coercion is unacceptable and contradicts the principle of court decisions being "in the child's best interests".

Information sharing and safety

How can the exchange of information between the family courts and family relationship services (such as family dispute resolution services, counselling services and parenting order programs) be improved and facilitated in a way that maintains the integrity of therapeutic service provision?

The current system does not manage conflicts of interest well in the context of domestic and family violence particularly in relation to specialist support services. Safeguards must be introduced to ensure that practice standards prioritising the safety of children and families are adhered to. Organisations providing family dispute resolution processes and supervised contact services that are 'pro' mediation, financially remunerated for delivering such services or compelled to meet KPIs may not understand the needs and safety of survivors of domestic and family violence. Therapeutic counselling services should not be provided by a service that is also evaluating the family dynamic, especially where a fee is payable for such services.

"Although courts are sometimes viewed as coercive systems set apart from more traditional service organizations, family courts can also be natural collaborative partners with other agencies and with community based organisations. First, courts are among the institutions in society where troubled children and families are most likely to be found. Children who are abused and neglected, who are delinquent, or who witness domestic violence are more likely than children who do not face similar stresses to need advocacy and mental health services. Their parents also need services to improve their parenting skills, to deal with their own mental health or substance abuse issues, and to help them escape from dangerous environments or to minimize the danger in their current environments⁶"

Horn and Hitchens, 2007

DVNSW member recommendations:

- 1. Timely availability of appropriate, trauma-informed services for families in Family Court systems that prioritise gender and cultural safety for their clients.**
- 2. A central database and protocols to facilitate information sharing to be explored for use by key Family Court agencies, support services and staff (with appropriate security and access restriction) to ensure that victim-survivors of violence and trauma are not required to share their stories multiple times.**
- 3. Increased resources for Family Courts to ensure that all court staff have the ability to adequately, accurately and holistically investigate allegations relating to perpetration of domestic and family violence.**
- 4. Adoption of common definitions of domestic, family and sexual violence that incorporate core, evidence-based understandings of psychological harm, trauma and the impacts on child development and survivors of violence.**
- 5. Consistent responses to allegations and evidence relating to domestic, family and sexual violence to be adopted by the Children's Court and the Family Law Court.**
- 6. Accessible, ongoing, specialised training for all Family Law Court staff on the misuse of power dynamics in abusive relationships, particularly exploring the impacts of trauma, abuse, manipulation and control by**

⁶ Patricia Van Horn and Judge Donna J Hitchens Partnerships for Young Children in Court How Judges Shape Collaborations Serving Traumatized Children in Young Children and Trauma Intervention and Treatment edited by Joy D Osofsky (2007) p246

perpetrators of DFV. Information and training to be available to Family Court staff on the intersection of these factors with perpetration and experiences of domestic and family violence specifically in relation to the litigation process.

7. All services interacting with families in the Family Law Court to be informed by the evidence base and contemporary research on trauma, child-development and Personality Disorder.
8. Trauma-specialist support for families where domestic and family violence is present, alleged or suspected
9. All appropriate evidence that pertains to the best outcome for children be made readily available and admissible in the Family Law Courts including reports on:
 - a) Parent child interaction and discussion during supervised contact
 - b) Observed aggressive behaviours displayed by the perpetrator of violence towards the child.
 - c) Reported and unreported incidents of violence
 - d) When a parent cannot meet the child's contact arrangements
 - e) When the perpetrator of violence breaches contact boundaries such as unannounced phone calls and home visits.
10. More weight and consideration to be given to reports from specialist services that a child or young person has interacted with.
11. The self-expressed needs of a child or young person to be taken into account when regarding contact arrangements. Appropriate support services to work with children and young people to determine what they want.
12. If parties attend mediation, observations from the Mediator should be available to the Courts.
13. Family Law Courts to work with domestic, family, sexual violence specialists to create and adopt a clear, plain-English information guide for parents who suspect physical or sexual child abuse perpetrated by their current or former partner.
14. Police call out records, apprehended violence orders and criminal histories to be made available to the Family Court.
15. Evidence-based risk assessment tools and systems should be available for all services that have an ongoing case management role and the results of risk assessment by professional agencies should be admissible as evidence to the Family Law Court.
16. Risk assessments should be regularly reviewed as a family moves through the Family Court system to determine ongoing threats to safety.
17. Consistent approaches to confidentiality and trauma must be developed and shared across services when dealing with sensitive records. Prioritise use of evidence from other sources over counselling records.
18. Counselling records should be used as a last resort acknowledging the nature of the relationship between counsellor and client.
19. Accreditation of all Family Report Writers. Adopt strategies to recruit and retain more Aboriginal and Torres Strait Islander and culturally and linguistically diverse family report writers.
20. Independent children's lawyers to have training and experience in working with victims of domestic and family violence. Independent children's lawyers should consult children comprehensively and present their needs to the court.
21. Safe waiting areas with parenting rooms, video link and trauma-specialist support workers.

22. **Availability and resourcing of case management available for families, women and children and for perpetrators of violence. A service to be located within the family law system to explain the court system and improve women and children's safety within it.**
23. **Specialist services for children impacted by the trauma of DFV.**
24. **Independent case coordinators in each Family Registry to allow for greater trust and quality relationships with clients and reduce bias.**

Informed Consent

DVNSW members noted that client permission to release information is often in conflict with the legal demand to produce documentation. Services recommend that fully '*informed consent*' should be a priority principle and that full disclosure of the implications of releasing information must occur, including a clear explanation of the legal implications outlining how that information might be used by the courts, to all parties involved. Whilst an open exchange of information may seem immediately beneficial to encompass child protection risk factors, domestic and family violence incidents often fall below the significant risk of harm threshold, yet during and after separation the evidence tells us that risk increases exponentially for women and their children.

Family Court, Family Relationship Services and Men's Behaviour Change

DVNSW notes the benefit of having DFV perpetrators who are referred into '*accredited men's behaviour change programs*' to provide details of their attendance, engagement and safety actions implemented towards their former partner and children. These programs should include a partner support component that ensures that the safety of women and their children are prioritised whilst working with the father.

"The Family Law Court still seems to be a patriarchal system that favours the rights of the father yet makes them unaccountable for their actions. I am unsure how this can be addressed but find this is a common complaint from the women we see at Court"

DVNSW member submission, 2015

Services working with and for the Family Law Court must prioritise minimum standards-based work with men who use violence in their relationships. Male violence is frequently ignored, minimised or may be poorly understood in the Family Courts. Women are regularly placed in the position of having to negotiate with a partner who they know is violent and controlling. Specialist DFV services supporting women and their children frequently report the use of mediation processes that further perpetrate control and abuse. If a perpetrator of violence is not identified as abusive or the court is not aware that he is using the litigation process to exercise power and control, courts may inadvertently collude with the abuse and further validate a perpetrator's patterns of behaviour. In the same way, parenting orders that do not take perpetrator abuse and tactics seriously will continue to place vulnerable women, children and young people at risk.

"The silos that have different rules, different strategies and procedures need to fill the gaps and get on the same page."

DVNSW member submission, 2015

Therapeutic Intersections with the Family Law Court

Therapeutic interventions and support are widely offered by psychologists and psychiatrists outside the Family Court system but these professionals are required by law to provide a report if a subpoena is issued. Patient confidentiality presents an issue if private matters proceed to court. However, when issues of safety, particularly children and young people's safety are concerned, there may be an urgent necessity to convey information regardless of its private nature. We recognise that there are sometimes tensions in relation to the safety of women and her children and that this this can be a difficult judgement for a court to make. Safety and trauma should be at the core of these processes.

Confiding personal traumas in confidence, may assist the therapist and the client to form strategies to benefit the protection of the victim(s). We have been made aware of a number of cases where subpoena orders have placed women and their children in dangerous circumstances. Just as the sexual assault communications privilege exists to protect and preserve the safety of rape victims, so a DFV privilege could increase the safety of women and children at serious threat of further harm. Ultimately, highly trained professionals who understand the potential risks to a woman and her children and analyse each case on its merits must consistently make decisions about information sharing and admissible evidence.

Therapists provide summary reports rather than verbatim recordings of therapy sessions, the therapist then presents the most crucial points of the family dynamics. Ideally, the case for the children and the protective parent who has experienced the abuse should proceed to court by appointing a well qualified, specialist solicitor of family law who has extensive knowledge and training in DFV. Rosie Batty and her counsel made several comments relating to the importance of access to specialist legal supports during the inquest into her son Luke's death this year. Having well-trained and informed professionals who understand DFV and trauma at all stages of the Family Court process from the initial stage of intake would significantly impact on the experiences of families. All disclosures of domestic and family violence recorded for government purposes, including the 60i certificate should be taken into account.

Any reports from a service that the child/young person attends could potentially be subpoenaed. One of the most significant issues of concern identified by DVNSW members is the weight given to these reports in a court, particularly when a report may indicate that the children are functioning well in the presence of the alleged abuser, and that these reports are presented in the absence of a forensic report.

"It has been my experience that those in the [name of service] are not as experienced as I had expected, and some were convinced by the abuser that he was actually the victim. It took two forensic reports to discover and report the actual demeanour of the abuser, and this was reinforced by the conduct of the abuser in court. The perspective of the law and government agencies should be of protection to the victims."

DVNSW member submission, 2015

Keeping children safe post separation

There is a strong theme identified in our member's submissions relating to the challenges that women report in keeping their children safe from the abuser after separation. DVNSW members have reported the effect of being involved with the Family Law Court and that some victims choose to stay in abusive relationships at terrible costs to themselves and their children because of a real or received fear that the Court will not protect them. If a victim has been abused it should be automatically assumed that the children are not safe in the care of the abuser. Police reports and charges in other jurisdictions should be taken into consideration. Whilst it can be difficult to prove the nature and extent of the abuse, many women struggle to find or access a professional report writer that understands DFV such as a forensic psychologist or psychiatrist. The law needs to actively support survivors of violence, enforcing safety and trauma-limiting consideration rather than encouraging family "harmony" at any cost. If laws requiring children to have a meaningful relationship with both parents were amended with consideration of domestic and family violence, pressure on the Family Court system would be reduced.

DVNSW submits that it is fundamental that a child is safe before any consideration of contact with an abuser. The acceptance of abuse, and even the acceptance of playing happy families on occasion, confuses children and enforces a social and systemic acceptance of the violence itself. Ultimately, mothers who persist in protective actions risk losing the child to the perpetrator, being labelled as "mad" and "bad, unable to care for and protect their children.

"In my experience children are often groomed by the father (particularly young men) to continue the violence against the mother in his absence"

DVNSW member submission, 2015

Mediation in the Context of DFV

Mediation is an inappropriate tool and context for families impacted by domestic and family violence. Most professional services and trained psychologists recognise the inappropriate nature of working in a mediation context when one partner is the victim of power and control by the other. Conversely, our members consistently report a disconnection between what is

held as a best practice recommendation and its failure to be applied on a practical level. DVNSW has received reports of family mediation services introducing KPIs relating to the resolution of matters through a mediation process despite this being an entirely inappropriate measure for families where DFV is present. Mediation in an abusive family or intimate partner environment exacerbates risk of further abuse. The evidence base is unequivocal on this. We are aware that the practice of using mediation by some family services prior to the Family Court has left many women and their children complying with arrangements that compromise their safety and wellbeing because they are advised to comply with visitation arrangements to keep the peace or maintain stable arrangements with the perpetrator.

A number of our members report Family Dispute Resolution Services as being unequipped and inappropriate for the needs of DFV victims, citing concerns relating to “*Anger Management*” classes or courses (as opposed to accredited *Men’s Behaviour Change Programs*), poor knowledge and understanding of the dynamics of domestic violence and pressure on practitioners who are motivated by internal KPIs that conflict with the core principles of safety and best practice. DVNSW has received submissions and case studies and complaints from members that women who have survived intimate partner abuse in their relationship are coerced through a family mediation process and leave the experience more traumatised than before they began. The Family Law system must have the capacity to compel a sensitive, forensic investigation of abuse allegations. Crucial decisions in Family Law matters, particularly at this early stage need to be mitigated with risk, without this, decisions are being made on the basis of very limited information, which may put children and/or adults at further risk.

Consideration of Diverse Family Needs

There are many different types of families that progress through the Family Law Court system. Consistency is crucial in the application of support for these families but a one size fits all approach will not result in consistent, sensitive or safer outcomes. Families that are culturally diverse may experience a number of significant barriers to seeking support from either mainstream or specialist domestic and family violence services or agencies. These families often require culturally-sensitive, flexible approaches which take account of pressures from extended family or community to maintain good relations with an abusive partner. Families that may require further specialised assistance or face barriers to seeking support or identifying domestic and family violence include:

- Where the primary caregiver is in prison
- Aboriginal and Torres Strait Islander Families
- Culturally and linguistically diverse families
- Newly arrived migrants and refugee families
- Lesbian, gay, bisexual, transgender, intersex and queer families
- People with disability

Ongoing collaborative work with diverse families, their advocates and experienced legal professionals is required to ensure that the Family Court can support and meet the needs of all families.

Risk Assessment and Collaboration Between Support Services

What opportunities exist for ensuring the early assessment of risk to children in family law matters?

How can services such as child protection departments, mental health, family violence, and drug and alcohol services make relevant information available to the courts to support decision-making in cases where families have complex needs?

DVNSW advocates for a set of basic principles on domestic and family violence and sexual assault that should underpin legal, criminal justice, support and referral systems and encourage collaborative multi-agency approaches. Ultimately the system must work consistently to stop punishing women or threatening them with the removal of their children for trying to keep them safe. Experiences of abuse must be systemically recognised, believed and validated. The impacts of exposure to sexual assault and/or domestic and family violence on child development must be acknowledged and evident in court decisions and system responses.

“Amend the confidentiality and admissibility sections of the Family Law Act to ensure the protection of children, so documented evidence of DV or child abuse can be allowed in court proceedings”

DVNSW member submission, 2015

DVNSW member recommendations:

- **Police call-out records, apprehended violence orders and criminal histories to be made available to the Family Court.**
- **Evidence-based risk assessment tools and systems should be available for all services that have an ongoing case management role and the results of risk assessment by professional agencies should be admissible as evidence to the Family Law Court.**
- **Risk assessments should be regularly reviewed as a family moves through the Family Court system to determine ongoing threats to safety.**
- **Consistent approaches to confidentiality and trauma must be developed and shared across services when dealing with sensitive records. Prioritise use of evidence from other sources over counselling records.**
- **Counselling records should be used as a last resort acknowledging the nature of the relationship between counsellor and client.**

There are still substantial gaps and anomalies in the ways in which we assess risk for women and children for violence in the family context. A risk screening tool or process alone is not enough to ensure the safety of women and their children is prioritised. Without adequate and consistent training in the skills required to assess risk and plan safely, we will continue to poorly manage and analyse risk. Opportunities to assess risk must be embedded in all service environments. NSW has recently begun trialling a common risk assessment process with Police and Domestic Violence Court Advocacy Services (DVCAS) now automatically sharing information on risk level and referral under the DV Justice Strategy and Safer Pathway initiative.

Whole of school approaches designed to change young people’s attitudes to violence in their relationships and equipping them with tools to identify abuse in the home environment and seek support must be embedded throughout the schooling system. Whole of school work requires an intensity of initial support and resourcing to begin building structural and attitudinal changes in a school community. Models in Victoria based on evidence about what works in the school environment and tackling core issues relating to gender inequality also offer opportunities to identify risk to children early and prevent longer term damage.

“In the past we have not been able to provide information as we are an NGO specialising in DFV case management support for women and children. We are not seen as capable of supplying an "expert report" even though we may have worked for months with a family. The court prefers an expert report from someone who has a few appointments with the family (if that), and may not specialise in the area of family violence. If asked to report, services like ours would be able to share information sensitively while assessing the potential for further risk.”

DVNSW member submission, 2015

Currently, risk assessments are undertaken formally, informally and with varying thresholds by a myriad of services and government agencies in different contexts with vulnerable families. Additionally, there are significant differences in the application of risk assessment tools, from formal, legal assessments through to risk identified during the conversations that DFV specialist workers have whilst working with a mother and her children that often elicit much deeper and disturbing levels of risk. An early and consistent risk assessment process and forensic investigation would allow the Family Law Court to access all relevant Health records, Police records, Education records, Family and Community Services records as well as counselling reports. These factual information sources would minimise the need for the victim and/or the

children to retell their stories and could be used to support decisions that maintain the best interest of the child while also uncovering cumulative harm and patterns of abuse and/or violence.

"Each time the denial of the right to share [information] means another victim risks not being believed, supported and assisted"

DVNSW member submission, 2015

DVNSW believes that a common risk assessment tool and strategy should be considered for family court interventions and support systems although should not be considered. In our member service's experience, many women and families do not disclose domestic and family violence until after they have accessed mediation or when they are starting the process in court itself. Some are cases where there have been child protection issues but because of lack of education, cultural barriers, shame or fear of removal of children, DFV has not been disclosed or reported. In these cases there has to be a sensitive risk assessment conducted sensitively, the results of which should be filed with all other evidence and to the child protection authorities. There must be a strengthened collaboration between the Family Law Court and child protection systems in conjunction with a shared understanding and information sharing between federal and local jurisdictions. Case studies DVNSW has been provided show that because of a lack of communication and understanding about DFV neither court puts the necessary restrictions in place and this can result in devastating outcomes for families. One way to deal with this issue could be trialling models of integrated court models such as in other international jurisdictions⁷.

Family support and child safety

What services are needed to support families and children who use the family law system where child safety concerns are identified?

DVNSW member recommendations:

- **Independent children's lawyers should have significant training and experience in working with victims of domestic and family violence and sexual assault.**
- **Safe waiting areas with parenting rooms, video link and trauma-specialist support workers.**
- **Independent children's lawyers to consult children comprehensively and present their needs to the court.**
- **Availability and resourcing of case management available for families, women and children and for perpetrators of violence. A service to be located within the family law system to explain the court system and improve women and children's safety within it.**
- **Specialist services for children impacted by the trauma of DFV.**
- **The self-expressed needs of a child or young person to be taken into account when regarding contact arrangements. Appropriate support services to work with children and young people to determine what they want.**

Specialist DFV court support services are underfunded or non-existent in many Family Courts. Parents and victims of domestic violence are often intimidated or harassed by either the other party or traumatised and intimidated simply through the process of attending the Court. Specialised court support services should be an essential support offered at all Family Courts in Australia. Therapeutic services are also essential for families exposed to domestic and family violence. The ongoing monitoring and attendance of such services is crucial, the Family Court does not monitor the family's level of engagement and subsequent outcomes with these services even when it refers families.

⁷ Bridging the Gaps between Family Law and Child Protection, Julie Jackson, 2011, accessed 7th September 2015, <<http://www.aiaa.org.au/Child Protection 2011/Presentations/Jackson.pdf>>

Housing

The evidence base clearly demonstrates that women of all socio-demographics stay in abusive relationships because there are few safe and appropriate options when it comes to housing. Flexible, responsive, trauma-specialist support over a transitional period is usually required to help women rebuild their lives following experiences of domestic and family violence. NSW has a lack of safe, affordable options for vulnerable people impacted by domestic and family violence. Women and children who have experienced domestic and family violence often face lengthy and fragmented processes when attempting to secure temporary and/or longer-term accommodation. LGBTIQ people who have experienced domestic and family violence are extremely vulnerable when accessing emergency accommodation due to fears of (or experiences of) homophobia and transphobia and discrimination. Aboriginal and Torres Strait Islander women and culturally and linguistically diverse women and children may experience similar difficulties finding safe accommodation where they can remain connected to family and community. Women with a disability face multiple barriers to accessing support or accommodation that meet their needs. Often it is their carers or the institution that is abusing them. Many women find it just too hard to contemplate leaving an abusive relationship and home as the alternative solutions are filled with uncertainty. Older women and young women on lower incomes have very few options and are also vulnerable in a system that is already overburdened and offers little hope. Also older CALD women face multiple disadvantages and vulnerability as they often rely on family members for support and speak languages other than English so can experience language barriers.

Families leaving violence are often forced to move between various types of accommodation that lack security of tenure and/or failed to provide a sense of safety. The lack of stability generated through constantly relocating can impact directly on the ability of survivors of violence to achieve a life free from abuse. The success of integrated homelessness prevention schemes for women and children who have experienced domestic and family violence is demonstrated in Australia, however, their effectiveness depends upon more resourcing and improvements to the prevention, intervention and response systems including supportive legal and judicial processes.

Through our work we have identified a number of unique needs for families going through the Family Law Court in reference to safe accommodation:

- There are no truly appropriate housing products for parents seeking restoration of their children.
- Parents without custody cannot afford housing in metropolitan areas and many regional centres that is large enough to adequately house their children without a statutory payment that includes the parenting payment. and often cannot have their child restored until they gain this housing which they can't afford
- Insufficient support to appropriately rehouse a family at the early intervention stage of child safety.
- Women with children are often forced to choose between keeping their child in an unsafe home environment, and homelessness.
- Many women report having to rent a property close to where the perpetrator lives so that she can maintain the shared parenting or other access arrangements ordered by the Family Court.

Integrated service responses:

Integrated responses exist in a limited capacity in some areas of NSW. Services are attempting to work in a more meaningful and integrated way but there are substantial systemic barriers to doing so in some areas. Competition for funding at a local level has increased the pressure on services who work with vulnerable and complex clients and systems are still disconnected and siloed particularly in government agencies. The NSW Police and DVCAS do now use a common database however its application is limited and doesn't include all other networks or other agencies that clients may be involved with. Case conferencing is working in some areas but also often lacks buy-in from cross-government agencies. Depending on your postcode, integrated responses vary considerably, dependent on availability, capacity and existence in a particular area. A truly integrated response should include, case management, conflict resolution and/or mediation, child focussed therapeutic counselling, victim advocacy and men's behaviour change programs. In reality there are very few districts in NSW that can offer a family that is impacted by violence this level of support.

Financial Abuse

Financial abuse is an extremely common experience for domestic and family violence victims and there is little or no recognition that women involved with the Family Law Court may not have the ability to access cash, bank accounts, liquefiable assets or even to work. Even in circumstances where a woman is living in the family home, it is a common experience that she may have a house but no access to money for legal advice and support. Many women may appear to be financially stable but because of this they are unable to access Legal Aid. Women who have had experiences with the Family Court system report that few solicitors (if any) will take on a matter without a substantial retainer. We have evidence including statutory declarations and case studies detailed by women from all backgrounds, professions and income strata that have borrowed thousands of dollars to pay for representation in the Family Court. Many women give up because they are in huge debt as a result of court costs. The financial circumstances of families need to be considered individually and sensitively with an understanding of the dynamics and impacts of financial abuse. We must offer better flexibility for women when it comes to eligibility of Legal Aid.

Client support is multifaceted, and often, as detailed in the attached case studies, a one dimensional approach to decision-making is apparent simply due to lack of information. Adequate and appropriate client support information will help identify more women, children and young people who are at risk and orders being made will truly be in the best interest of the children. Having support workers at Family Law Courts that access historical information and make recommendations to Magistrates will assist Magistrates with additional information.

Core principles for working with women, children and communities impacted by domestic and family violence

Domestic Violence NSW advocates from the premise that the essential principles at the core of effective responses to women, children and communities impacted by domestic and family violence should include and prioritise:

1. Trauma-specialist approaches for both adult and child victim-survivors.
2. Specialist child support workers who are skilled and experienced in working with child survivors of violence as clients in their own right.
3. Safety and confidentiality for women, children and young people and other v victim-survivors of violence.
4. Survivor-centred approaches that ensure informed consent is continually at the core of all work practices and are responsive to the diverse needs of both adult and child survivors.
5. Integrated, coordinated, cross-agency approaches that operate in the best interests of both adult and child survivors.
6. Strengths-based approaches that respect and empower victim-survivors of domestic and family violence and their children.
7. Recognition that domestic and family violence is a violation of human rights, a crime against the individual and impacts broadly on communities and the whole of society. Domestic and family violence is not just an individual or private problem.
8. Recognition that domestic and family violence primarily impacts on women and their children.
9. Flexible approaches that celebrate and include diversity and are committed to promoting access to and equity of services for all women, children, young people and communities impacted by DFV.
10. Recognition that additional disadvantage and barriers are experienced by particular groups and that these communities are more vulnerable because they are less likely to seek help, identify family and domestic violence in their relationships, or may perceive that their needs might not be met by mainstream services or dealt with sensitively and in confidence.

Given the prevalence and impacts of domestic and family violence and sexual assault, we believe that all citizens should expect to be able to access professional, tailored, specialist service responses located in their communities. Domestic and family violence services and specialist practitioners should prioritise trauma-specialist, culturally-safe and client-centred approaches. There is no “one size fits all” solution. Appropriate responses require sophisticated case planning and review, safety planning and specialist skills.

We recognise that legislation, practice of the law and best practice information cannot in isolation solve the issue of domestic and family violence. In early 2015 the *NSW Women’s Alliance* in conjunction with the *NSW Men’s Behaviour Change Network* worked together on *A Safer State; A Blueprint to End Sexual Assault and Domestic and Family Violence*.

A Safer State explores three main themes of change; *Leadership, Prevention and Early Intervention and Responding to Domestic and Family Violence*. DVNSW support all 27 *A Safer State* recommendations and advocate that major change is required to make a real difference to the horrific statistics currently associated with DFV in NSW. The recommendations relate specifically to the NSW context but are relevant to the Family Law Council’s current inquiry and terms of reference.

1. LEADERSHIP: Strong high-level messages from communities and government

- The NSW Premier to drive a strong, sustained, coordinated prevention message that speaks to the diversity of communities affected by sexual assault and domestic and family violence and specifically acknowledges the impacts of violence on children and young people.
- Development of a NSW Framework for responding to and preventing sexual assault which includes the impacts of sexual violence on children and young people and intergenerational trauma.
- Embedded, systematic opportunities for sexual assault and domestic and family violence peak organisations to work meaningfully with government to co-design reforms.
- Political and community leaders to demonstrate leadership and commitment by filming messages unequivocally condemning violence against a diverse range of women and children and making a clear public statement that violence against women and children is serious, a crime, a violation of human rights and will not be tolerated.
- Implementation of a long-term cross-departmental NSW Aboriginal Family Violence Strategy driven by Aboriginal communities. The Family Violence Strategy must intersect with a strong, well-resourced Aboriginal Family Violence Network to develop consistent and evidence-based best practice initiatives.

2. PREVENTION AND EARLY INTERVENTION

- The adoption of a coordinated, long-term NSW Domestic and Family Violence Prevention Plan including strategies that respond to diverse communities affected by sexual assault and domestic and family violence and strategies specifically addressing the diverse needs of children.
- Prioritisation of State and Federal Prevention Programs and research, including a commitment to ANROWS and Our Watch for the lifespan of the National Plan to Reduce Violence against Women and their Children.
- Interagency and inter-sectoral collaboration to ensure relevant strategic planning around program funding for Men and Boys’ Violence Prevention, including NGO representation at all levels of design and evaluation.
- A regular review of the NSW Men’s Behaviour Change minimum standards including accreditation and regular auditing for Men’s Behaviour Change Programs (MBCPs) and expansion to include standards for one-on-one behaviour change counselling and programs.

- Review annually, and adapt as new research emerges. Accredited MBCPs to be funded adequately to ensure NGOs are able to deliver best practice and implement latest research recommendations, particularly in relation to the impacts of domestic and family violence on children.
- Embedding of evidence-based respectful relationship education that focuses on promoting gender equality and violence prevention. Evaluated respectful relationship education needs to target all sections of community and all ages, not only throughout the NSW school curriculum, but also in conjunction with sporting, recreation and community organisations.
- Development and investment in a NSW specific program based on the principles of Victoria's Gender and Disability Workforce Development Program, specifically education programs for women with disability about the nature of violence.
- Ongoing training to police, prosecutors, judicial officers, court staff, legal practitioners and other justice workers on risk assessment and management, the nature and dynamics of sexual assault and domestic and family violence and victims' experiences.

3. RESPONDING TO SEXUAL ASSAULT AND DOMESTIC AND FAMILY VIOLENCE: A well-resourced, sustainable service & support system that can respond effectively to women, children and communities impacted by DFV

- A minimum investment of \$100 million over the next 3 years in NSW's specialist domestic and family violence sector.
- Urgent expansion of funding for accessible, specialist, targeted, culturally safe, client-centred services that meet the health, housing, justice and legal needs of all women, children, young people and high risk communities including but not limited to:
 - Aboriginal and Torres Strait Islander women
 - Young women
 - Older women
 - Women with disabilities
 - Culturally and linguistically diverse and migrant women
 - Women living in regional, rural and remote areas
 - Women in prison and women exiting custody and
 - Lesbian, gay, bisexual, trans*, intersex and queer people (LGBTIQ)
- Investment in the state-wide roll out of Safer Pathway with adequate resourcing of all service providers to provide immediate and long-term, trauma-specialist support to women and their children experiencing domestic and family violence.
- Increased protections and support for women and children escaping abusive relationships whose private tenancies or mortgages are compromised
- Investment in a state-wide expansion of the Staying Home Leaving Violence program to ensure coverage across NSW.
- Adoption of the Shelter NSW target; "*within 10 years making 100,000 more rental properties available to low income household at affordable rents*".
- Increased appropriate support options for LGBTIQ people impacted by sexual assault and/or domestic and family violence.
- Increased legal assistance funding, including specialist women's legal services and other legal services that provide gender and culturally safe trauma-specialist sexual assault and domestic and family violence expertise.

- All agencies working with women and children impacted by sexual assault and/or domestic and family violence to be resourced and supported to work in trauma-specialist, culturally safe, client-centred and gendered frameworks.
- NSW Domestic Violence Death Review Team to meet and publicly report regularly. Where recommendations of the Committee are not implemented, the NSW Government should give reasons for not doing so. The recommendations should inform NSW reforms intersecting with sexual assault and domestic and family violence including child protection.
- Research into the effectiveness of trauma-specialist psychosocial interventions for women who experience violence. Use of this research should inform subsequent policy and practice particularly in relation to the impacts of trauma and violence on children and young people.

Family Law Case Study 1

*Names and identifying details changed to maintain confidentiality.

'Abby' was supported by our Service through a number of program areas – our crisis accommodation facility, outreach service and IDFVS which was co-located with Police at the time.

Abby has 2 daughters – one 17, and one 4. The youngest, Zoe, was a child Abby shared with the man who Abby identified as her abuser.

Abby revealed that her eldest daughter had been sexually abused by her step-father - Zoe's father. Zoe's father had been convicted of a number of offences in relation to the sexual abuse.

Abby was attempting to navigate the Family Law process, convinced no Court would ever allow Zoe to have contact with a convicted child sex offender. Abby was wrong. The Court determined contact was appropriate, which resulted in Abby being required at Court a number of times afterward as she refused to comply with the Order.

On the second occasion, Abby was warned she would be jailed for contempt if she ignored the Order. Abby told the Judge she had no intention of complying as she would be placing her young daughter at risk.

Child Protection authorities in NSW agreed that Zoe should not have contact with her father, and warned Abby she would be placing her child at risk of harm if she did so.

A Mandatory Report was made indicating the Family Court was placing a child at risk of harm by exposing her to a known child sex offender.

On appeal, the Orders were changed before a different Judge to prevent contact.

In conclusion, whilst a number of significant steps have been taken to improve responses to women and children impacted by domestic and family violence in the Family Court we are aware that significant gaps and systemic barriers exist. Major cultural change urgently needs to occur if we are to have a system that prioritises the safety and best interests of children. To make these changes effective and sustainable, significant resourcing is required for training, resource development and long term best practice approaches that prioritise gender and cultural safety. At a time when there is substantial pressure on the system to improve responses to survivors of violence we believe there is unprecedented will and energy to work collaboratively to create a better system that holds perpetrators of violence to account, can put children and young people's needs at the centre of practice and supports families post separation holistically and safely. We welcome the opportunity to work in partnership with the Judicial Commission, the Family Law Council and other government partners to continually improve all responses to children impacted by domestic and family violence.