



Domestic and Family Violence Death Review and Advisory Board

In reply, please quote 4597595, 1600312/2

16 November 2018

Professor Helen Rhoades
Commissioner in Charge
Australian Law Reform Commission
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By email: familylaw@alrc.gov.au

Secretariat

Domestic and Family Violence Death Review and Advisory Board

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Dear Professor Rhoades

Re: Response to Review of the Family Law System, Discussion Paper No 86

I am writing in my capacity as Chairperson of the Queensland Domestic and Family Violence Death Review and Advisory Board (the Board) in response to the Australian Law Reform Commission's (ALRC) review of the family law system, and to provide comment on Discussion Paper No 86.

The Board was established in 2016 under the *Coroners Act 2003* (Qld) to undertake systemic reviews of domestic and family violence deaths in Queensland. Membership is multidisciplinary and includes representatives from government, non-government agencies and other relevant experts.

I enclose a copy of the Board's 2017-18 Annual Report for your consideration, noting that several of the cases subject to review demonstrate the heightened risk commonly experienced by victims of domestic and family violence planning, or in the process of, separating from an abusive partner.

I also attach a response to the relevant proposals outlined in the discussion paper to inform this review. I trust this, along with the more detailed findings included in the attached report, will be beneficial in informing this important review of the family law system.

The cases reviewed by the Board demonstrate that post-separation violence is a critical and complex issue. There is also compelling evidence of the extent to which some perpetrators manipulate systems to re-traumatise and victimise their partners; and the manner in which contact required to facilitate shared parenting arrangements may be utilised to perpetrate further acts of violence.



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Sadly, the cases further highlight the unique and heightened risk posed to children in the context of relationship breakdown, even in cases where there was no evidence of prior physical violence. Also noteworthy is the extent to which children may be subjected to abuse following separation, or be used by perpetrators as a means to further abuse their primary victim.

Should you require further information, Ms Susan Beattie, Manager, Domestic and Family Violence Death Review Unit, Coroners Court of Queensland, is available on telephone on (07) 3247 9424, or via email at Coroner.DFVDRU@justice.qld.gov.au.

I commend you on the comprehensive nature of this review to date and look forward to much needed reform of the family law system in Australia.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'TR', is positioned below the text 'Yours sincerely'.

Terry Ryan
State Coroner of Queensland

Response by the Queensland Domestic and Family Violence Death Review and Advisory Board to the Australian Law Reform Commission's (ALRC) Review of the Family Law System

Area	Comments
Education, awareness and information	<p>The Board considers that any effort to improve understanding and awareness of the family law system is warranted given the likely benefit of increased accessibility and engagement by families.</p> <p>A recurrent theme within the Board's findings is a lack of formal engagement with this system, despite the primary victim and their children being subjected to ongoing violence post-separation and identifiable difficulties in negotiating safe shared parenting arrangements.</p> <p>In the vast majority of the cases reviewed by the Board to date, there was a clear and demonstrated willingness by the victim to establish, and adhere to, informal shared parenting arrangements. Victims commonly expressed a desire to ensure the father (and their former partner) continued to have access to their child/ren even when it placed the adult victim at an increased risk of future harm.</p> <p>However, while attempts to negotiate informal shared parenting arrangements may be seen positively in families which are not characterised by domestic and family violence, this is not the case for families where domestic and family violence is present. For instance, in these cases it was evident that the victim/s and their children were exposed to ongoing abuse, with limited opportunity for services to identify, and respond to, ongoing domestic and family violence because of a lack of engagement with the systems designed to ensure safe parenting arrangements are established (and adhered to).</p> <p>Consequently, improved education, awareness and information may assist families in understanding what formal supports are available within the family law system, and how to access them, to facilitate safe and effective shared parenting arrangements and negotiate post-separation agreements.</p> <p>To maximise the effectiveness of such strategies, and to ensure vulnerable families experiencing domestic and family violence are engaged and ultimately supported in a meaningful way, specialist representation from experts in this field in their design and delivery is essential. This will ensure strategies are appropriately informed and account for the holistic, underlying needs of victims, perpetrators and their children.</p> <p>The proposed focus on increasing accessibility for specific groups, including Aboriginal and Torres Strait Islander people and those from a culturally and linguistically diverse background, is a positive and necessary</p>

Response by the Queensland Domestic and Family Violence Death Review and Advisory Board to the Australian Law Reform Commission’s (ALRC) Review of the Family Law System

	<p>one. Cultural constructs of domestic and family violence are disparate and require contextualised responses. For example, of the cases reviewed by the Board, it is evident that people from a culturally and linguistically diverse background may not consider abusive acts perpetrated within the confines of marriage to constitute domestic and family violence, or may not recognise certain behaviours as abusive. It is also the case that victims may experience difficulties in understanding how services can assist, or where to access them, and in understanding relevant visa provisions where family violence is present and there are children in the relationship.</p> <p>We must, therefore, ensure messages are clear and culturally inclusive to overcome accessibility issues which extend beyond simple language barriers.</p>
Simple and clearer legislation	<p>Steps to simplify the family law system are long overdue and this review is undoubtedly timely and appreciated. The proposals outlined in the discussion paper which seek to embed a focus on the safety and welfare of victims of domestic and family violence, and their children, are commensurate with a clear need.</p> <p>Legislative amendments to articulate this through the principles and objectives of the <i>Family Law Act 1975</i> (Cth) are a critical first step, although appropriate infrastructure and support will be required to fully actualise this intent.</p> <p>At all times, promoting the best interests and safety of children is paramount, and being mindful of the nature and impact of domestic and family violence on victims and their children in formulating care arrangements is essential. It is also appropriate that this issue be considered in determining property and financial matters as has been proposed.</p>
Getting advice and support	<p>The infrastructure supporting those in contact with the family law system who may be experiencing domestic and family violence is critical to achieving improved outcomes for victims and their children.</p> <p>The proposed family-centred approach, which focuses on the safety and wellbeing of separating families, is likely to achieve optimal outcomes. However, this must be supported by dedicated and sustainable resourcing, and appropriate training delivered in a mode and frequency that leads to meaningful change.</p>

Response by the Queensland Domestic and Family Violence Death Review and Advisory Board to the Australian Law Reform Commission's (ALRC) Review of the Family Law System

It is also important to maximise integration across all agencies working with separated families experiencing domestic and family violence, to ensure that these agencies are collectively operating with a common understanding of domestic violence, safety and risk.

Integrated and well communicated pathways must be fostered and promoted, with efforts made to ensure those agencies who play a gatekeeper role (such as psychologists or general practitioners) into the system also have adequate training.

Care must further be taken to ensure there is no duplication of efforts or arbitrary separation of state and national initiatives, systems and pathways. This can be achieved through facilitating genuine collaboration and information sharing across sectors and services to wrap-around the family; rather than having agencies operating in isolation of each other to much less effect.

The attached 2017-18 Annual Report of the Board highlights the critical need for coordinated, consistent and cohesive service responses to, and case-management processes for, victims, perpetrators and their children, across all sectors. This includes ensuring timely access to support from specialist social and legal services to assist victims of domestic and family violence to establish safe parenting arrangements.

Dispute resolution

The proposal to include a mandatory requirement for parties to attempt family dispute resolution prior to lodging a court application for property and financial matters is problematic and may require further consideration to limit unintended, negative consequences for victims of domestic and family violence.

Although it is proposed to provide exemption in cases '*where there is an imbalance of power, including as a result of family violence*', there is significant potential to inadvertently expose unidentified victims to further harm. This is particularly relevant for those victims experiencing non-physical coercive controlling violence, who may not recognise certain behaviours as domestic and family violence, such as extreme sexual proprietariness, obsessive possessiveness or threatening behaviours.

Response by the Queensland Domestic and Family Violence Death Review and Advisory Board to the Australian Law Reform Commission's (ALRC) Review of the Family Law System

In a substantial proportion of the cases reviewed by the Board to date, victims, as well as their informal supports, did not recognise these behaviours as domestic and family violence related. They were, by extension, unaware that there was support available.¹

Similarly, in the absence of disclosures of physical violence, service providers did not always identify indicators of non-physical coercive controlling violence as domestic and family violence related, even where there was clear evidence of these behaviours occurring within the relationship.

Given the substantial under-reporting of domestic and family violence, further consideration should be given to the likelihood that mandatory participation may inadvertently traumatise or endanger victims who have not disclosed their experiences because they are unwilling or unable to safely do so.

To that end, the proposal to include domestic and family violence specialists to develop family dispute resolution models and guidelines is critical and supported. Screening and assessment tools which are appropriately validated and assess for non-physical coercive controlling behaviours should also be used.

The utilisation of specialist domestic and family violence legal services may further assist with the negotiation of safe and fair outcomes.

Reshaping the adjudication landscape

The proposal to include specialist court pathways for victims of domestic and family violence and establish a specialist list for high risk family violence matters in each registry is strongly supported. However, care must also be taken to ensure matters proceeding through standard channels are not excluded from ongoing risk assessment and management.

Risk is dynamic and matters that may screen as low or medium risk can quickly escalate to high risk if there is a change in circumstances in the family and any model would need to have sufficient flexibility and adaptability to identify and respond to this.

With respect to specialist domestic and family violence court models and approaches, the Board notes the recent evaluation of the Southport Domestic and Family Violence Court in Queensland. In an independent

¹ This issue is explored in significant detail in the [2016-17 Annual Report of the Domestic and Family Violence Death Review and Advisory Board](#)

Response by the Queensland Domestic and Family Violence Death Review and Advisory Board to the Australian Law Reform Commission's (ALRC) Review of the Family Law System

evaluation of this trial, Griffith University reported that both stakeholders and those using the court provided strongly positive assessments of this specialist court. There may be adaptable learnings from this evaluation which is accessible via the Queensland Courts website at <https://www.courts.qld.gov.au/courts/domestic-and-family-violence-court>.

Finally, establishing a post-order parenting support service to assist in the implementation of orders and to support parties to manage their co-parenting relationship is a positive proposal. The inclusion of processes to identify and manage risk in those relationships characterised by domestic and family violence are required to improve child/ren and victim's safety.

This can be facilitated through embedding practices to identify and screen for the signs and impact of domestic and family violence (inclusive of systems abuse), monitor for signs of abuse during contact visits, and developing strong referral pathways and partnerships with specialist domestic and family violence support services. It is also critical that staff are adequately equipped to work with both victims and perpetrators of violence, in alignment with relevant national standards.

As outlined in the 2017-18 Annual Report of the Board, the impact of domestic and family violence on children is significant and can continue over the life-course. In this respect, a post-order parenting support service should either be able to provide direct support to children exposed to domestic and family violence, or have strong networks with services that have the capacity to provide therapeutic supports to children exposed to domestic and family violence.

With respect to the cases reviewed by the Board to date, in the vast majority of cases there was no formal parenting arrangement in place at the time of the homicide event (irrespective of whether it was the victim or the child/ren that died). Consequently, consideration should also be given to expanding availability of this type of service to ensure those relying on informal arrangements, which arguably may pose a higher level of risk, are also able to access appropriate support.

Children in the family law system

Sadly, in addition to the intimate partner homicides reviewed by the Board in which a female partner was killed by their former abusive spouse, several cases involved the homicide of children whose parents had recently, or were in the process of, separating.

Response by the Queensland Domestic and Family Violence Death Review and Advisory Board to the Australian Law Reform Commission's (ALRC) Review of the Family Law System

Ongoing abuse perpetrated against victims during periods of contact to facilitate child custody arrangements was also significant in the cases reviewed, and in some cases, victims were killed by their partners during custody hand-overs.

In 13 of the 20 cases² reviewed by the Board during the 2017-18 reporting period alone, there was evidence to suggest that children were exposed to, or a direct victim of, domestic and family violence. This included:

- the perpetrator using the child/ren to manipulate the victim to remain in, or reconcile, the relationship;
- the perpetrator using the child/ren to monitor the primary victim's (their mother) behaviour;
- witnessing and experiencing direct and indirect episodes of violence;
- the perpetrator making threats to seriously harm or kill the child/ren as a means to exert control over the victim (their mother); and
- in addition to the four child homicides reviewed in this reporting period, there were 18 children present during the homicide event (across nine cases).

Among the intimate partner homicides considered by the Board in the 2017-18 reporting period, there were children in 10 cases. A domestic and family violence protection order was in place in seven of the cases (70%), with the children listed as named persons on each of these orders.

No Family Law Court Orders were established in any of the five cases where the couple had separated, although there were indicators of attempts to establish informal shared parenting arrangements.

It is clear that many separating couples negotiate parenting arrangements 'in the shadow' of what they understand to be the law, including presumptions about how much time children should spend with each parent. These arrangements can be made without careful consideration of the ongoing risk that exposure to a violent parent may pose.

This highlights the need for greater awareness of the capacity of the system to adjust parenting arrangements where there is evidence of domestic and family violence, to ensure that adult victims have

² As some of these cases involved homicide suicides, and multiple homicide events, the total number of domestic and family violence related homicides and suicides reviewed within this reporting period was 30.

Response by the Queensland Domestic and Family Violence Death Review and Advisory Board to the Australian Law Reform Commission's (ALRC) Review of the Family Law System

confidence the system will be responsive to their concerns about their children being exposed to ongoing violence, and that the primary victim of violence will not be penalised as an uncooperative parent.

Further, it is also the case that where perpetrators presented to services post-separation, there were clear indicators and/or disclosures that they presented a risk of harm to both themselves and others (including their partners and children). In a number of these cases, the children were assessed as a protective factor that reduced the risk of suicide by their father or the threat that he posed to others, with no attempts made to assess the safety of the children within the relationship.

It is for these reasons that in relationships characterised by domestic and family violence, the presumption towards shared parenting must be challenged; and victims and children must feel assured throughout each step of the often lengthy process that their safety is paramount.

Although the underlying need to reduce harm is addressed in further detail below, there is a critical need to ensure the safety of children in the family law system is prioritised in any proposed strategies or initiatives such as those outlined in the discussion paper. In this regard, embedding a focus on risk screening and assessment through all stages of a child's participation in proceedings must be included and standardised.

Reducing harm

Evidence suggests, and the cases reviewed by the Board demonstrate, the clear and heightened risk of harm posed to victims and their children during periods of separation. A focus on harm reduction and prioritising the safety of families in contact with the family law system is, therefore, prudent.

The proposed expansion of the definition of family violence to include a broader scope of behaviours is warranted and supported. Commissioning research to ensure the definition is sufficient to capture family violence as it relates to Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse backgrounds and LGBTIQ people, is also an appropriate and inclusive step.

Legislative provisions to minimise the harmful misuse of the family law system through the proposed amendments are also important in identifying and, ultimately, reducing this form of abuse from occurring.

Response by the Queensland Domestic and Family Violence Death Review and Advisory Board to the Australian Law Reform Commission's (ALRC) Review of the Family Law System

	<p>Issues pertaining to information sharing and harm reduction are further outlined below, however, generally, information sharing between core agencies for the purposes of identifying and responding to any risk of harm should be supported and facilitated.</p> <p>Any guiding consideration regarding information sharing and protected confidences should focus on promoting the safety and wellbeing of victims of domestic and family violence and their children; as is the case in Queensland where information can be shared without consent in some circumstances for this purpose.</p>
A skilled and supportive workforce	<p>The proposed family-centred approach focusing on the safety and wellbeing of separating families is likely to have positive outcomes, however, this must be supported by dedicated and sustainable resourcing. It also requires the involvement of specialist domestic and family violence services (including legal supports) throughout the system, and includes specialist training delivered in a mode and frequency that leads to meaningful change.</p> <p>A dual focus on embedding specialist domestic and family violence workers into family law processes, as well as increasing awareness, understanding and competency of the existing workforce is likely to improve outcomes and enhance knowledge across the system.</p> <p>This training should aim to equip service providers with the necessary skills and competence to respond to both victims and perpetrators. For the latter cohort, it is essential that strategies are implemented to minimise the risk of collusion with perpetrators, which adhere to the <i>National Outcome Standards for Working with Perpetrators of Domestic and Family Violence</i>.</p> <p>It is also clear that there must be an equivalent focus on being able to identify situations in which a primary victim may use violence pre-emptively, or in defense of themselves or their children, to minimize the risk of secondary victimization, and encourage engagement by victims with the system.</p>
Information sharing	<p>Information sharing is integral to effective risk management and safety planning. Given the known heightened risk of harm post-separation in relationships characterised by domestic and family violence, it is prudent to consider strengthening information sharing protocols and pathways between key agencies within the family law system (including gatekeepers).</p>

Response by the Queensland Domestic and Family Violence Death Review and Advisory Board to the Australian Law Reform Commission's (ALRC) Review of the Family Law System

In a large proportion of the cases reviewed by the Board, it is clear that greater information sharing between key agencies would likely have led to a clearer picture of the nature, frequency and severity of violence occurring in the relationship. which may have triggered earlier intervention or a more robust system response

In Queensland, information sharing for the purpose of identifying and responding to risk is already authorised under the *Domestic and Family Violence Protection Act 2012*. In May 2017, the Queensland Government introduced the *Domestic and Family Violence Information Sharing Guidelines* to support practitioners to share information appropriately with one another in order to assess and manage domestic and family violence risk.

Consideration may need to be given as to other state and territory legislative provisions which allow the sharing of information in similar circumstances to these, to ensure agencies working with families at risk are adequately equipped to be able to appropriately respond.