



Australian Government

Government Response to the Australian and NSW Law Reform Commissions':

Family Violence – a national legal response

June 2013

Australian Government response to recommendations of the Australian Law Reform Commission Report 114 and New South Wales Law Reform Commission Report 128: Family Violence – A National Legal Response Final Report that recommend unilateral action by the Australian Government

The National Council to Reduce Violence against Women and their Children (the Council) was formed in 2007 as part of the Australian Government's election platform. In May 2008 the Council was given the task of developing a National Plan to reduce the incidence and impacts of violence experienced by women and their children. In their April 2009 report 'Time for action: The National Council's Plan to Reduce Violence against Women and their Children', the Council identified a number of high priority actions. The Australian Government agreed to act immediately on many of those high priority actions, including undertaking to make a reference to the Australian Law Reform Commission to examine the integration of the domestic violence, child protection and federal family law. Former Attorney-General, the Hon Robert McClelland MP issued terms of reference to the Australian Law Reform Commission to work jointly with the New South Wales Law Reform Commission in this regard on 17 July 2009.

As a result of the reference, the Australian and New South Wales Law Reform Commissions extensively examined family law, family violence laws and legal frameworks to improve the safety of victims of family violence across Australian jurisdictions, including the Commonwealth. The report, 'Family Violence – a National Legal Response' (the Report), released in November 2010, provides a detailed analysis of the Australian legal system's capacity to address family violence. The Report's recommendations provide a useful means by which the Australian Government can assess the effectiveness of the federal family law system in addressing family violence, and consider solutions to problems associated with intersections across state and territory based criminal law and child protection systems and federal family law systems, to better protect victims of family violence.

The Australian Government welcomes this comprehensive report into family violence and acknowledges the dedicated work of the Law Reform Commissions in conducting this inquiry. The Australian Government recognises the devastating impacts of violence in families and is committed to improving the way that the federal family law system tackles the issue.

Of the 186 recommendations contained in the report, 56 have been identified as appropriate for the Commonwealth to respond to separately, independent to the responses of the states and territories. 24 recommendations that affect the Commonwealth, States and Territories jointly are being addressed in a national response through the Standing Council on Law and Justice. 9 recommendations are being addressed through a National Justice CEOs project which is looking at collaboration between the family law and child

protection systems. States and Territories have committed, through the first three year action plan of the National Plan to Reduce Violence against Women and their Children, to respond separately to the remaining 97 recommendations that relate specifically to them.

Of those 56 recommendations that relate to the Commonwealth, many have been acted upon by the Australian Government to improve the capacity of the federal family law system to respond to family violence, since the release of the report. These initiatives include;

- a multidisciplinary training package known as *AVERT- Addressing Violence: Education, Resources, Training; Family Law System Collaborative Responses to Family Violence* (AVERT), developed by the Commonwealth Attorney-General's Department in collaboration with Relationships Australia South Australia,
- a standardised common screening and risk assessment framework and tool, and associated learning guide and software system to detect and respond to safety and well-being risks in families, across the family law system, known as the Detection of Overall Risk Screen (DOORS), and
- reforms to the *Family Law Act 1975* to assist people within the family law system to better capture, understand, disclose and act on family violence and child abuse.

In working through the response to the report, a number of additional legislative reforms to the Family Law Act to improve family violence responses have been identified for consideration. The Australian Government will consider future work in this area in the context of this report and the broader context of the National Plan. The Australian Government welcomes the Report of the Australian and New South Wales Law Reform Commissions and thanks them for their consideration of, and valuable input into, reforming family violence laws in Australia.

Recommendation 6-4

The *Family Law Act 1975* (Family Law Act) should adopt the same definition as recommended to be included in state and territory family violence legislation (Rec 5–1). That is, ‘family violence’ should be defined as violent or threatening behaviour, or any other form of behaviour, that coerces or controls a family member or causes that family member to be fearful. Such behaviour may include but is not limited to:

- (a) physical violence;
- (b) sexual assault and other sexually abusive behaviour;
- (c) economic abuse;
- (d) emotional or psychological abuse;
- (e) stalking;
- (f) kidnapping or deprivation of liberty;
- (g) damage to property, irrespective of whether the victim owns the property;
- (h) causing injury or death to an animal, irrespective of whether the victim owns the animal; and
- (i) behaviour by the person using violence that causes a child to be exposed to the effects of behaviour referred to in (a)-(h).

The Australian Government agrees with this recommendation.

The Australian Government takes the issue of addressing and responding to family violence and the safety of children very seriously. As part of wide-reaching reforms implemented by the Australian Government to address the serious issue of family violence in Australia, the *Family Law Act 1975* (Family Law Act) has been amended to incorporate a broader definition of family violence that is in line with this recommendation.

The *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Family Violence Act) expands the definition of family violence in the Family Law Act to better capture harmful behaviour. In addition to this change, the definition of abuse in relation to children has also been amended to include assault, sexual abuse and exploitation, causing a child to suffer serious psychological harm, including where the child is exposed to family violence, and serious neglect of a child.

These amendments are designed to improve the understanding of what family violence and abuse are by clearly setting out what behaviour is unacceptable. For example, the new definition is provided in a new section, section 4AB of the Family Law Act, and is no longer contained in the interpretation section of the Family Law Act. The new definition reflects a more comprehensive understanding of the types of conduct that are considered unacceptable and may constitute family violence.

Recommendation 7-3

The Family Law Act should be amended to include a similar provision to that in Recommendation 7-2 explaining the nature, features and dynamics of family violence.

Recommendation 7-2 provides;

State and territory family violence legislation should contain a provision that explains the nature, features and dynamics of family violence including: while anyone may be a victim of family violence, or may use family violence, it is predominantly committed by men; it can occur in all sectors of society; it can involve exploitation of power imbalances; its incidence is underreported; and it has a detrimental impact on children. In addition, family violence legislation should refer to the particular impact of family violence on: Indigenous persons; those from a culturally and linguistically diverse background; those from the gay, lesbian, bisexual, transgender and intersex communities; older persons; and people with disabilities.

The Australian Government agrees with this recommendation in principle.

The Australian Government acknowledges that statistics on family violence show that family violence is predominantly committed by men, that it can occur in all sectors of society, that it can involve exploitation of power imbalances, that its incidence is underreported and that it has a detrimental impact on children. However, the Family Law Act is focused on the best interests of the child and is gender neutral. The Australian Government is of the view that the recommended provision is not suitable for inclusion in the Family Law Act but its objectives can be achieved through other non-gender specific and non-legislative means.

The Australian Government recognises that the underlying rationale for this recommendation is to ensure that decision makers particularly, are aware of the nature, features and dynamics of family violence. An important tool used by decision makers in federal family courts to understand the nature and dynamics of family violence is the *Best Practice Principles for Use in Parenting Disputes When Family Violence or Abuse is Alleged*. These principles are the culmination of an extensive Family Violence Strategy implemented by the Family Court of Australia. After being revised to extend to the then Federal Magistrates Court of Australia, the principles were launched by the former Attorney-General, the Honourable Robert McClelland MP, on 19 July 2011. The principles provide important guidance to decision makers when dealing with matters involving allegations of family violence and sexual abuse and explain some of the suggestions proposed by this recommendation about the nature, features and dynamics of family violence, including the impacts of family violence on people from culturally and linguistically diverse backgrounds and children. The principles complement other training measures, including the AVERT Family Violence training package.

The former Attorney-General, the Honourable Robert McClelland, launched AVERT in March 2011. AVERT is intended for use by practitioners, judicial officers, counsellors and other professionals working in the family law system, to improve the level of understanding about

the nature and dynamics of family violence and the handling of family violence cases. AVERT contains a module on diversity, 'Responding to Diversity', which assists professionals in developing a sound and practical understanding of family violence. This module provides training on the impacts of family violence and strategies for responding which promote safety for all involved. The module, as part of a broader training environment, deals specifically with family violence in the context of how it may affect people from Indigenous backgrounds, culturally and linguistically diverse communities, rural communities and those living with a disability.

Through the development of AVERT, the Australian Government has demonstrated commitment to the training and education of all practitioners in the family law system about the nature, features and dynamics of family violence.

In addition, the Australian Government, in consultation with States and Territories through the national response to recommendation 31.2 of the Report, is considering the development of a national bench book on family violence as an important educative tool for judicial officers and decision about the nature, features and dynamics of family violence.

The Australian Government is of the view that the educative purpose of this recommendation is best addressed through training and education rather than through legislative measures. The Family Law Act is gender neutral and focused on the best interests of the child, and as stated above the Australian Government is of the view that this essential feature of the Family Law Act should be preserved.

Recommendation 12-2

Federal, state and territory police, and directors of public prosecution should train or ensure that police and prosecutors respectively receive training on how the dynamics of family violence might affect the decisions of victims to negate the existence of family violence or to withdraw previous allegations of violence.
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The Australian Government notes this recommendation.

The Australian Government considers that this is primarily a matter for State and Territory police and directors of public prosecution.

Recommendation 13-2

Federal, state and territory police, and Commonwealth, state and territory directors of public prosecution respectively, should ensure that police and prosecutors are encouraged by prosecutorial guidelines, and training and education programs, to use representative charges wherever appropriate in family-violence related criminal matters, where the charged conduct forms part of a course of conduct. Relevant prosecutorial guidelines, training and education programs should also address matters of charge negotiation and negotiation as to agreed statements of facts in the prosecution of family-violence related matters.

The Australian Government notes this recommendation.

Please see response to recommendation 12.2 above.

Recommendation 16-4

Section 60CG of the Family Law Act—which requires a court to ensure that a parenting order does not expose a person to an unacceptable risk of family violence and permits the court to include in the order any safeguards that it considers necessary for the safety of a person affected by the order—should be amended to provide that the court should give primary consideration to the protection of that person over the other factors that are relevant to determining the best interests of the child.

The Australian Government agrees with this recommendation in principle.

Recent amendments to the Family Law Act by the Family Violence Act make it clear that the need to protect the child from physical or psychological harm or from being subjected to, or exposed to, abuse, neglect or family violence is to be given greater weight than the benefit to the child of having a meaningful relationship with both of the child’s parents in the event of any inconsistency in applying these considerations.

However, the overarching principle of the Family Law Act is to promote the best interests of the child. When making a parenting order, the Family Law Act requires a court to regard the best interests of the child as the paramount consideration. The Australian Government is of the view that the ‘best interests of the child’ is the appropriate principle upon which a court should make a parenting order. Section 60CC of the Family Law Act guides the court as to the appropriate matters to be taken into account when determining what is in the best interests of the child.

The two primary considerations for a court to consider when determining the best interests of the child is the benefit to the child of having a meaningful relationship with both of the child’s parents and the need to protect the child from physical or psychological harm and from being subjected to, or exposed to, abuse, neglect or family violence.

Where a person continues to fear for their safety, or requires protection, state and territory courts have the power to vary or suspend a parenting order to provide that person with protection from violence. The state and territory courts have the protection of a victim of family violence as their primary focus. The family courts have the best interests of the child as their paramount focus. The Australian Government is of the view that the Family Law Act should retain its paramount focus on the best interests of the child when resolving parenting disputes. Family courts are required to consider the need to protect the child from being exposed to family violence as the primary consideration of what is in a child’s best interests. The family courts must also ensure that parenting orders are consistent with family violence orders and do not expose a person to an unacceptable risk of violence to the extent that it is possible to do so consistently with the child’s best interests. The Australian

Government is of the view that the family courts can adequately protect victims of family violence without disrupting the philosophical foundation of the Act; a child's best interests.

Recommendation 17-1

The 'additional consideration' in s 60CC(3)(k) of the Family Law Act, which directs courts to consider only final or contested protection orders when determining the best interests of a child, should be amended to provide that a court, when determining the best interests of the child, must consider evidence of family violence given, or findings made, in relevant family violence protection order proceedings.

The Australian Government agrees with this recommendation.

The Australian Government takes the issue of addressing and responding to family violence and the safety of children very seriously. Amendments made to the Family Law Act by the Family Violence Act expand the types of family violence protection orders that the court must consider when determining the best interests of the child to include any past or current family violence order.

The Family Law Act now provides at section 60CC(3)(k) that:

if a family violence order applies, or has applied, to the child or a member of the child's family—any relevant inferences that can be drawn from the order, taking into account the following:

- (i) the nature of the order;
- (ii) the circumstances in which the order was made;
- (iii) any evidence admitted in proceedings for the order;
- (iv) any findings made by the court in, or in proceedings for, the order;
- (v) any other relevant matter;

The section now also requires courts to consider any relevant inferences that can be drawn from any family violence order, considering also the nature of the order, the circumstances in which the order was made, any evidence admitted in proceedings for the order, any finding made by the court in, or in proceedings for, the order and any other relevant matter.

Recommendation 17-2

The Australian Government should initiate an inquiry into how family violence should be dealt with in property proceedings under the Family Law Act.

The Australian Government agrees in principle with this recommendation.

The Australian Government is committed to ensuring victims of family violence are protected from harm and this is evident in the recent amendments to the Family Law Act that came into effect on 7 June 2012. These amendments were the result of a number of reports commissioned by the Australian Government into how the family law system deals with family violence.

The primary reports contributing to the recent amendments to the Family Law Act include:

- *Evaluation of the 2006 family law reforms* by the Australian Institute of Family Studies (AIFS);
- *Family Courts Violence Review* by Professor Richard Chisholm AM; and
- *Improving responses to family violence in the family law system: An advice on the intersection of family violence and family law issues* by the Family Law Council.

The Australian Government is committed to evidence based policy making and will consider a review of how family violence is addressed in property proceedings in the context of other priorities and budgetary allowance.

Recommendation 17-3

The Family Law Act should be amended to provide separate provisions for injunctions for personal protection.
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The Australian Government notes this recommendation.

The Australian Government notes the submissions to the Commissions supporting this recommendation. The Australian Government supports making laws clearer and more accessible to the community.

The Australian Government also notes the submissions to the Commissions referring to the advantages of state and territory protection orders, in particular, that the processes for obtaining a protection order in state and territory courts are simple, quick and low cost. The Australian Government is of the view that state and territory courts are the most appropriate avenue for addressing personal protection in the community.

The Australian Government notes that statistics indicate that since the introduction of state and territory legislation aimed specifically at family violence – and particularly the ready availability of family violence protection orders – the number of family violence injunctions sought in the Family Court of Australia has fallen dramatically.¹

The Australian Government is committed to improving protection for those affected by family violence and, as such, the injunction provisions remain in the Family Law Act as additional protection for victims of family violence. However, protection through state and territory courts is the most effective protection for victims of family violence and the Australian Government considers that they are best placed to protect victims of family violence.

¹ R Alexander, *Domestic Violence in Australia: The Legal Response* (3rd ed, 2002), 64.

Recommendation 17-4

The Family Law Act should be amended to provide that breach of an injunction for personal protection is a criminal offence.

The Australian Government notes this recommendation.

The Australian Government notes the overwhelming support from stakeholders for this recommendation.

The Australian Government is committed to assisting the community to find the most appropriate and effective means for obtaining personal protection. There are well established processes for breaches of state and territory protection orders and state and territory courts are the most appropriate avenue for victims of family violence to obtain protection and to have a breach of a protection order enforced. The family courts are a specialised jurisdiction, with a primary focus of resolving private disputes about children and property between separating partners. The state and territory courts have a closer and well-established relationship with the relevant enforcement and prosecution agencies and are the most appropriate jurisdiction to obtain and enforce protection for victims of family violence.

Recommendation 17-6

Section 114(2) of the Family Law Act, which permits a court to make an order relieving a party to a marriage from any obligations to perform marital services or render conjugal rights, should be repealed.
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The Australian Government agrees with this recommendation.

The Australian Government is of the view that subsection 114(2) of the Family Law Act is not consistent with the societal values of Australians. The case of *R v L* [1991] HCA 48 provides that ‘if it was ever the common law that by marriage a wife gave irrevocable consent to sexual intercourse by her husband, it is no longer the common law’.² A recent case *PGA v The Queen* [2012] HCA 21 also confirms that ‘lawful marriage to a complainant provide[s] neither a defence to, nor an immunity from, a prosecution for rape’.³ It is clear that there are no obligations upon a party to a marriage to perform marital services or render conjugal rights and as such, the Australian Government proposes to introduce legislation to repeal this subsection of the Family Law Act.

² At paragraph 19

³ At paragraph 64

Recommendation 21-1

The Australian Government Attorney-General's Department should continue to collaborate with the family dispute resolution sector to improve the standards in identification and appropriate management of family violence by family dispute resolution practitioners.

The Australian Government agrees with this recommendation.

The Australian Government is committed to continuing to collaborate closely with the family dispute resolution sector, including services funded by government to provide support to families experiencing family violence. This includes Family Relationship Centres and the network of other support services funded to provide services to families.

One of the objectives of the Attorney-General's Department funded Family Law Pathways Networks is to develop and maintain cross sector training and the recent Networks evaluation report indicated that during 2011-12, many Networks facilitated or delivered the AVERT family violence training.

The Coordinated Family Dispute Resolution Pilot was developed to trial a model of providing families affected by family violence with safe and supportive options to allow them to try to resolve their disputes outside court. Coordinated Family Dispute Resolution is a distinct, new model of family dispute resolution that builds on and enhances family dispute resolution practice by involving a wide range of professionals (e.g. legal and support services for victims and perpetrators) working collaboratively. The pilot concluded on 30 April 2013, having been extended by 12 months. The Australian Institute of Family Studies (AIFS) evaluated the pilot and provided its final evaluation report to the Government on 15 December 2012. The findings in the AIFS evaluation report, combined with the current budgetary environment, do not support the roll-out or extension of the pilot at this time. Other work underway may provide an opportunity in the future to implement CFDR-type service delivery to assist families experiencing family violence.

The Allen Consulting Group (now known as ACIL Allen Consulting) was commissioned to conduct research into other family law services that has helped inform a review of family law services undertaken by the Commonwealth Attorney-General's Department. The Department expects to provide a brief to Government about the review in June 2013.

Additionally, as highlighted in response to recommendation 7-3, former Attorney-General, the Honourable Robert McClelland, launched AVERT in March 2011 with the intention of improving the standards in identification and appropriate management of family violence by all family law system professionals, including family dispute resolution practitioners. The AVERT training can also be delivered as part of the family violence units of competency within the Vocational Graduate Diploma of Family Dispute Resolution. This qualification forms the basis for accreditation as a family dispute resolution practitioner and includes two compulsory units of competency relating to family violence.

The Australian Government also contracted Relationships Australia South Australia to develop a standardised common screening and risk assessment framework and tool and associated learning guide and software system to detect and respond to safety and well-being risks in families, across the family law system. This package is known as the Detection of Overall Risk Screen (DOORS) and is simple, practical and sufficiently flexible to meet the needs of different professionals, locations and client demographics. It is also intended to facilitate the referral of clients to appropriate services, when required. DOORS is being disseminated by the Australian Government and is freely available for family law system practitioners to use. DOORS covers the following behaviour domains: client’s culture and religious background; about the separation; managing conflict with the other parent; how the client is coping lately; how the other parent seems to be coping; client’s children; managing as a parent; children’s safety; parent’s personal safety; behaving safely; and other stresses.

<p>Recommendation 21-2</p> <p>The Australian Government Attorney-General’s Department should:</p> <ul style="list-style-type: none"> (a) Promote and support high quality screening and risk assessment frameworks and tools for family dispute resolution practitioners; (b) Include these tools and frameworks in training and accreditation of family dispute resolution practitioners; (c) Include these tools and frameworks in the assessment and evaluation of family dispute resolution services and practitioners; and (d) Promote and support collaborative work across sectors to improve standards in the screening and assessment of family violence in family dispute resolution.
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The Australian Government agrees with this recommendation in principle.

As discussed in the response to Recommendation 21-1 above, DOORS is now available throughout the family law system, including for use in training of family dispute resolution practitioners. The DOORS tool also has the potential to be utilized for professional development for family dispute resolution practitioners and other providers.

The Vocational Graduate Diploma of Family Dispute Resolution (or its higher education provider equivalent) underpins the accreditation regime for family dispute resolution practitioners. This qualification includes two compulsory units of competency (‘Responding to family and domestic violence in family work’ and ‘Creating a supportive environment for the safety of vulnerable parties in dispute resolution’) relating to family violence.

Those units are aimed to assist future family dispute resolution practitioners to identify the different forms of family violence, determine suitability of family dispute resolution where family violence exists and consider what safety measures should be in place and which medium of family dispute resolution should be utilised if dispute resolution proceeds where family violence is an issue (ie shuttle, telephone, face to face). Practitioners seeking accreditation must complete these units of competency (or the higher education provider

equivalent) prior to being accredited. Accreditation also requires ongoing professional development.

The pilot of Coordinated Family Dispute Resolution, as discussed in Recommendation 21.1 above, also trialled family dispute resolution in cases where there is family violence involving collaboration between professionals including legal providers, family dispute resolution practitioners, domestic violence and men's workers. As discussed above, after considering the pilot evaluation report and taking account of current budgetary restraints, the Government has determined it is not in a position to either extend or roll out the pilot at this time.

Recommendation 21-3

The Australian Government Attorney-General's Department, family dispute resolution service providers, and legal education bodies should ensure that lawyers who practise family law are given training and support in screening and assessing risks in relation to family violence and making appropriate referrals to other services.
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The Australian Government agrees with this recommendation.

As discussed in the response to Recommendation 21-1, Relationships Australia South Australia has developed DOORS. As part of the development of DOORS, Relationships Australia South Australia has also developed a learning guide to help ensure that all professionals in the family law system are trained consistently in the use of the framework and tool. The learning guide has been developed so that it can be adapted as an accredited course with the Continuing Legal Education program for legal practitioners.

As discussed in response to recommendation 7-3, former Attorney-General, the Honourable Robert McClelland, launched AVERT in March 2011. This multidisciplinary training package is also intended for use by lawyers who practise family law to provide training and information on screening, risk assessment and safety planning for family violence. AVERT is designed to improve the identification of family violence, assessing the seriousness of the risk presented by family violence, and the screening of family violence to determine the appropriate referrals, if required.

Recommendation 21-4

The Australian Government Attorney-General's Department should continue to provide leadership, support and coordination to improve collaboration and cooperation between family dispute resolution practitioners and lawyers.

The Australian Government agrees with this recommendation.

The Australian Government provides leadership, support and coordination to improve collaboration between family dispute resolution practitioners and lawyers in a number of ways, including:

- sponsorship of and participation in professional development conferences hosted by national bodies such as the Australian Institute of Family Studies, the Family Law Section of the Law Council of Australia and Family and Relationship Services Australia
- establishing the Family Law Pathways Networks that include local family dispute resolution practitioners and legal practitioners, and
- developing AVERT to improve the understanding by participants in the family law sector of the different roles of each participant in the family law sector.

Since 2009, the Australian Government has allowed lawyers to be present at Family Relationship Centres to provide non-adversarial legal assistance services. To further improve collaboration and cooperation between family dispute resolution practitioners and lawyers, the Australian Government announced funding for 12 months to develop pilot partnerships between Family Relationship Centres, Community Legal Centres and Legal Aid Commissions. These partnerships have been extended until 2013 and consist of sixty-four Family Relationship Centres and seventy-seven legal assistance bodies.

The partnerships assist families by providing access to early, targeted legal information as well as advice when attending Family Relationship Centres. The Australian Government notes that National Legal Aid is of the view that these partnerships, funded by the Australian Government for the provision of legal assistance before, during and after family dispute resolution within Family Relationship Centres have built on strong links between family dispute resolution practitioners and lawyers.

Recommendation 21-5

The Australian Government Attorney-General's Department should take a comprehensive and strategic approach to support culturally responsive family dispute resolution, including screening and risk assessment processes.

The Australian Government agrees with this recommendation.

In November 2010, the then Commonwealth Attorney-General made a reference to the Family Law Council to examine ways in which the family law system (courts, legal assistance and family relationship services) meets client needs; whether there are ways the family law system can better meet client needs including ways of engaging clients in the family law system, and what considerations are taken into account when applying the Family Law Act to Indigenous clients and clients of culturally and linguistically diverse backgrounds. The Family Law Council provided their report on 27 February 2012 and the recommendations contained in the report are being considered by the Australian Government.

The Vocational Graduate Diploma of Family Dispute Resolution contains six elective units relating to diversity and cultural context that are available to be completed by persons seeking to be accredited as a family dispute resolution practitioner. Some employers may require the completion of these elective units to suit workplace needs. They include competencies around providing domestic and family violence support in both Aboriginal and Torres Strait Islander communities and communities with a non-English speaking background. In addition, many of the compulsory competencies of the diploma require an understanding of cultural issues that arise in the context of family dispute resolution.

AVERT also contains a component on diversity, 'Responding to Diversity', that is intended to provide professionals with a sound and practical understanding of family violence, its impact and strategies for responding which promote safety for all involved in the context of culturally and linguistically diverse communities.

As discussed in the response to recommendation 21-1, Relationships Australia South Australia developed DOORS, which entails an associated learning guide and software system. DOORS is intended to identify special considerations that might be had by family law system professionals to the impacts and considerations that culture and religion might have on family violence.

Family Relationships Services Australia has also been funded to provide scholarships for family dispute resolution training for potential Indigenous and culturally and linguistically diverse family dispute resolution practitioners. These were offered for the first time for study during 2012 and a second round has been funded for students to commence in 2013. More practitioners from these backgrounds are expected to assist in the provision of more culturally sensitive family dispute resolution services. The scholarship scheme is expected to conclude on 31 January 2014.

In May 2012 the Commonwealth Attorney-General's Department provided funding to Interrelate Family Centres to undertake train-the-trainer programs in the delivery of the Aboriginal Building Connections program in each state and territory. The training program has been constructed within a partnership framework with the aim of enhancing the skills and expertise of professionals currently operating within the family law system that will advance the development of cultural competency and a shared understanding of the post-separation needs of Indigenous families across services and communities.

Recommendation 22-1

Sections 10D(4)(b) and 10H(4)(b) of the Family Law Act should be amended to permit family counsellors and family dispute resolution practitioners to disclose communications made during family counselling or family dispute resolution, where they reasonably believe that disclosure is necessary to prevent or lessen a serious threat to a person's life, health or safety.

The Australian Government agrees with the recommendation.

The Family Law Act permits a family counsellor and a family dispute resolution practitioner to disclose a communication made to the family counsellor or family dispute resolution practitioner if the family counsellor or family dispute resolution practitioner believes on reasonable grounds that the disclosure is necessary for the purpose of protecting a child from the risk of harm; preventing or lessening a serious or imminent threat to the life or health of a person or reporting the commission, or preventing the likely commission, of an offence involving violence or a threat of violence to a person.

The Australian Government agrees to consider amending the Family Law Act to remove the requirement that a threat to the life or health of a person is imminent.

Recommendation 22-2

The Australian Government Attorney-General's Department, in consultation with family dispute resolution practitioners and family counsellors, should develop material to guide family dispute resolution practitioners and family counsellors in determining the seriousness of a threat to an individual's life, health or safety and identifying when a disclosure may be made without consent. Such guidance should also encourage family dispute resolution practitioners and family counsellors to address the potential impact of disclosure on the immediate safety of those to whom the information relates, and for that purpose:

- (a) Refer those at risk to appropriate support services; and
- (b) Develop a safety plan, where appropriate, in conjunction with them.

The Australian Government agrees with this recommendation.

As discussed in response to recommendation 7.3, AVERT is intended for use by practitioners, judicial officers, counsellors and other professionals working in the family law system, to improve level of understanding about the dynamics of family violence and the handling of family violence cases. The package provides training to the sector to improve the understanding of the legal framework of family violence; including providing information about mandatory reporting requirements and the types and form of protection from family violence offered.

AVERT specifically addresses the skills required to identify family violence, and respond effectively. AVERT provides information and training for family dispute resolution practitioners and family counsellors to specifically address how to respond to risks faced by women, men and children involved in the family law system.

The DOORS package will also help practitioners detect threats to an individual’s health welfare and safety, refer the individual to appropriate services and where appropriate, develop a safety plan.

In addition, the training requirements for accredited family dispute resolution practitioners include, as part of the required skills and knowledge, that family dispute resolution practitioners are able to help develop a safety plan and to build networks for appropriate referrals.

Recommendation 22-3

Bodies responsible for the education and training of family dispute resolution practitioners and family counsellors should develop programs to ensure that provisions in the Family Law Act and in state and territory child protection legislation regulating disclosure of information relating to actual or potential abuse, harm or ill-treatment of children are understood and appropriately acted on.
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The Australian Government notes this recommendation.

AVERT specifically addresses mandatory reporting obligations for family dispute resolution practitioners and family counsellors to improve understanding of their legal obligations. The training package addresses the professional obligations of court staff, family dispute resolution practitioners, court counsellors and independent children’s lawyers under the Family Law Act in relation to child abuse and risk of child abuse. The training package also identifies the various professional obligations under state and territory laws relating to the disclosure of information relating to actual or potential abuse, harm or ill-treatment of children.

As discussed in the response to Recommendation 21-1, Relationships Australia South Australia was contracted by the Australian Government to develop DOORS, for use throughout the family law system by all family law system professionals.

DOORS will facilitate screening and risk assessment in relation to children’s safety issues.

Recommendation 22-4

Sections 10E and 10J of the Family Law Act, which regulate the admissibility of family dispute resolution and family counselling communications, should be amended to state expressly that the application of these provisions extends to state and territory courts not exercising family law jurisdiction.
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The Australian Government agrees with this recommendation.

As part of current reform, the Australian Government is proposing to clarify that these sections of the Family Law Act extend to state and territory courts not exercising family law jurisdiction.

Recommendation 22-5

The Australian Government Attorney-General's Department should coordinate the collaborative development of education and training – including cross-disciplinary training – for family courts' registry staff, family consultants, judicial officers and lawyers who practise family law, about the need for screening and risk assessment where a certificate has been issued under s 60I of the Family Law Act indicating a matter is inappropriate for family dispute resolution.

The Australian Government agrees with this recommendation.

As discussed in the response to Recommendation 21-1, Relationships Australia South Australia was contracted by the Australian Government to develop DOORS, for use throughout the family law system by all family law system professionals.

AVERT is also intended for use by practitioners, judicial officers, counsellors and other professionals working in the family law system, to improve levels of understanding about the dynamics of family violence and the handling of family violence cases.

Recommendation 23-6

The Australian Government Attorney-General's Department and state and territory governments should ensure that family violence screening and risk assessment frameworks indicate the importance of including questions in screening and risk assessment tools about:

- (a) past or current applications for protection orders;
- (b) past or current protection orders; and
- (c) any breaches of protection orders.

The Australian Government agrees with this recommendation.

As discussed in the response to recommendation 21-1, Relationships Australia South Australia has developed DOORS, a standardised frontline screening framework and associated learning guide and software system, to detect and respond to safety and well-being risks in families, across the family law system.

DOORS will prompt family law system professionals, including family dispute resolution practitioners, to ask about the existence of past and current protection orders and applications, and any breaches of protection orders.

Recommendation 23-7

Family dispute resolution service providers should ensure that:

- (a) Tools used for family violence screening and risk assessment include questions about past and current protection orders and applications, and any breaches of protection orders; and
- (b) Parties are asked for copies of protection orders.

The Australian Government agrees with this recommendation.

See response to recommendation 23-6 above.

Recommendation 25-2

Federal, state and territory sexual offence provisions should provide a uniform age of consent for all sexual offences.

The Australian Government notes this recommendation.

Commonwealth criminal law does not contain family violence or general sexual assault offences. For the limited range of Commonwealth sexual offences (child sex tourism, sexual servitude and sexual assault of United Nations personnel), the applicable criminal proceeding and evidence laws and court procedure rules are State and Territory laws and rules (with the exception of provisions in Commonwealth legislation dealing with children in proceedings for sexual offences).

Recommendation 25-4

Federal, state and territory sexual offence provisions should include a statutory definition of consent based on the concept of free and voluntary agreement.

The Australian Government notes this recommendation.

See response to recommendation 25-2 above.

Recommendation 25-5

Federal, state and territory sexual offence provisions should set out a non-exhaustive list of circumstances that may vitiate consent including, at a minimum:

- (a) lack of capacity to consent, including because a person is asleep or unconscious, or so affected by alcohol or other drugs as to be unable to consent;
- (b) where a person submits because of force, or fear of force, against the complainant or another person;
- (c) where a person submits because of fear of harm of any type against the complainant or another person;
- (d) unlawful detention;
- (e) mistaken identity and mistakes as to the nature of the act (including mistakes generated by the fraud or deceit of the accused);
- (f) abuse of a position of authority or trust; and
- (g) intimidating or coercive conduct, or other threat, that does not necessarily involve a threat of force, against the complainant or another person.

The Australian Government notes this recommendation.

See response to recommendation 25-2 above.

Recommendation 25-6

Federal, state and territory sexual assault provisions should provide that it is a defence to the charge of 'rape' that the accused held an honest and reasonable belief that the complainant was consenting to the sexual penetration.

The Australian Government notes this recommendation.

See response to recommendation 25-2 above.

Recommendation 26-2

Commonwealth, state and territory Directors of Public Prosecution should ensure that prosecutorial guidelines and policies:

- (a) facilitate the referral of victims and witnesses of sexual assault to culturally appropriate welfare, health, counselling and other support services at the earliest opportunity;
- (b) require consultation with victims of sexual assault about key prosecutorial decisions, including whether to prosecute, discontinue a prosecution, or agree to a charge or fact bargain;
- (c) require the ongoing provision of information and assistance to victims of sexual assault about the status and progress of proceedings;
- (d) facilitate the provision of information and assistance to victims and witnesses of sexual assault in understanding the legal and court process;
- (e) facilitate the provision of information and assistance to victims and witnesses of sexual assault in relation to the protective provisions available to sexual assault complainants when giving evidence in criminal proceedings;
- (f) ensure that family violence protection orders or stalking intervention orders are sought in all relevant circumstances; and
- (g) require referral of victims and witnesses of sexual assault to providers of legal advice on related areas, such as family law, victims' compensation and the sexual assault communications privilege.

The Australian Government notes this recommendation.

See response to recommendation 25-2 above.

Recommendation 26-3

Federal, state and territory governments and relevant educational, professional and service delivery bodies should ensure ongoing and consistent education and training for judicial officers, lawyers, prosecutors, police and victim support services in relation to the substantive law and the nature and dynamics of sexual assault as a form of family violence, including its social and cultural contexts.

The Australian Government notes this recommendation.

See response to recommendation 25-2 above.

Recommendation 26-5

Federal, state and territory legislation should:

- (a) establish a presumption that, when two or more charges for sexual offences are joined in the same indictment, those charges are to be tried together; and
- (b) state that this presumption is not rebutted merely because evidence on one charge is inadmissible on another charge.

The Australian Government notes these recommendations.

See response to recommendation 25-2 above.

Recommendation 26-6

Federal, state and territory legislation should permit the tendering of pre-recorded evidence of interview between a sexual assault complainant and investigators as the complainant's evidence-in-chief. Such provisions should apply to all complainants of sexual assault, both adults and children.

The Australian Government notes this recommendation.

See response to recommendation 25-2 above.

Recommendation 26-7

Federal, state and territory legislation should permit child complainants of sexual assault and complainants of sexual assault who are vulnerable as a result of mental or physical impairment, to provide evidence recorded at a pre-trial hearing. This evidence should be able to be replayed at the trial as the witness' evidence. Adult victims of sexual assault should also be permitted to provide evidence in this way, by leave of the court.

The Australian Government notes this recommendation.

See response to recommendation 25-2 above.

Recommendation 26-8

The Australian, state and territory governments should ensure that relevant participants in the criminal justice system receive comprehensive education about legislation authorising the use of pre-recorded evidence in sexual assault proceedings, and training in relation to interviewing victims of sexual assault and pre-recording evidence.

The Australian Government notes this recommendation.

See response to recommendation 25-2 above.

Recommendation 27-1

Federal, state and territory legislation should provide that complainants of sexual assault must not be cross-examined in relation to, and the court must not admit any evidence of, the sexual reputation of the complainant.

The Australian Government notes this recommendation.

See response to recommendation 25-2 above.

Recommendation 27-2

Federal, state and territory legislation should provide that the complainant must not be cross-examined, and the court must not admit any evidence, as to the sexual activities—whether consensual or non-consensual—of the complainant, other than those to which the charge relates, without the leave of the court.

The Australian Government notes this recommendation.

See response to recommendation 25-2 above.

Recommendation 27-3

Federal, state and territory legislation should provide that the court must not grant leave under the test proposed in Rec 27–2, unless it is satisfied that the evidence has significant probative value and that it is in the interests of justice to allow the cross-examination or to admit the evidence, after taking into account:

- (a) the distress, humiliation and embarrassment that the complainant may experience as a result of the cross-examination or the admission of the evidence, in view of the age of the complainant and the number and nature of the questions that the complainant is likely to be asked;
- (b) the risk that the evidence may arouse discriminatory belief or bias, prejudice, sympathy or hostility;
- (c) the need to respect the complainant’s personal privacy;
- (d) the right of the defendant to fully answer and defend the charge; and
- (e) any other relevant matter.

The Australian Government notes this recommendation.

See response to recommendation 25-2 above.

Recommendation 27-4

Federal, state and territory legislation should provide that evidence about the sexual activities—whether consensual or non-consensual—of the complainant, other than those to which the charge relates, is not of significant probative value only because of any inference it may raise as to the general disposition of the complainant.

The Australian Government notes this recommendation.

See response to recommendation 25-2 above.

Recommendation 27-5

Federal, state and territory legislation should require that an application for leave to cross-examine complainants of sexual assault, or to admit any evidence, about the sexual activities of the complainant must be made:

- (a) in writing;
- (b) if the proceeding is before a jury—in absence of the jury; and
- (c) in the absence of a complainant, if a defendant in the proceeding requests.

The Australian Government notes this recommendation.

See response to recommendation 25-2 above.

Recommendation 27-6

Federal, state and territory legislation should require a court to give reasons for its decision whether or not to grant leave to cross-examine complainants of sexual assault, or to admit any evidence, about the sexual activities of the complainant and, if leave is granted, to state the nature of the admissible evidence.

The Australian Government notes this recommendation.

See response to recommendation 25-2 above.

Recommendation 27-7

Australian courts, and judicial education and legal professional bodies should provide education and training about the procedural requirements for admitting and adducing evidence of sexual activity.

The Australian Government notes this recommendation.

See response to recommendation 25-2 above.

Recommendation 27-8

Federal, state and territory legislation and court rules relating to subpoenas and the operation of the sexual assault communications privilege should ensure that the interests of complainants in sexual assault proceedings are better protected, including by requiring:

- (a) parties seeking production of sexual assault communications, to provide timely notice in writing to the other party and the sexual assault complainant;
- (b) that any such written notice be accompanied by a pro forma fact sheet on the privilege and providing contact details for legal assistance; and
- (c) that subpoenas be issued with a pro forma fact sheet on the privilege, also providing contact details for legal assistance.

The Australian Government notes this recommendation.

See response to recommendation 25-2 above.

Recommendation 27-9

The Australian, state and territory governments, in association with relevant non-government organisations, should work together to develop and administer training and education programs for judicial officers, legal practitioners and counsellors about the sexual assault communications privilege and how to respond to a subpoena for confidential counselling communications.

The Australian Government notes this recommendation.

See response to recommendation 25-2 above.

Recommendation 27-11

Federal, state and territory legislation should authorise the giving of jury directions about children's abilities as witnesses and responses to sexual abuse, including in a family violence context.

The Australian Government notes this recommendation.

See response to recommendation 25-2 above.

Recommendation 27-13

Federal, state and territory legislation should provide that, in sexual assault proceedings, tendency or coincidence evidence is not inadmissible only because there is a possibility that the evidence is the result of concoction, collusion or suggestion.

The Australian Government notes this recommendation.

See response to recommendation 25-2 above.

Recommendation 28-1

Federal, state and territory legislation should prohibit a judge in any sexual assault proceedings from:

- (a) warning a jury, or making any suggestion to a jury, that complainants as a class are unreliable witnesses; and
- (b) giving a general warning to a jury of the danger of convicting on the uncorroborated evidence of any complainant or witness who is a child.

The Australian Government notes this recommendation.

See response to recommendation 25-2 above.

Recommendation 28-2

Australian courts and judicial education bodies should provide judicial education and training, and prepare material for incorporation in bench books, to assist judges to identify the circumstances in which a warning about the danger of convicting on the uncorroborated evidence of a particular complainant or child witness is in the interests of justice.

The Australian Government notes this recommendation.

See response to recommendation 25-2 above.

Recommendation 28-4

Federal, state and territory legislation should provide that, in sexual assault proceedings:

- (a) the effect of any delay in complaint, or absence of complaint, on the credibility of the complainant should be a matter for argument by counsel and for determination by the jury;
- (b) subject to paragraph (c), except for identifying the issue for the jury and the competing contentions of counsel, the judge must not give a direction regarding;
- (c) the effect of delay in complaint, or absence of complaint, on the credibility of the complainant, unless satisfied it is necessary to do so in order to ensure a fair trial; and
- (d) if evidence is given, a question is asked, or a comment is made that tends to suggest that the victim either delayed making, or failed to make, a complaint in respect of the offence, the judge must tell the jury that there may be good reasons why a victim of a sexual offence may delay making or fail to make a complaint.

The Australian Government notes this recommendation.

See response to recommendation 25-2 above.

Recommendation 28-5

Federal, state and territory legislation should:

- (a) prohibit an unrepresented defendant from personally cross-examining any complainant, child witness or other vulnerable witness in sexual assault proceedings; and
- (b) provide that an unrepresented defendant be permitted to cross-examine the complainant through a person appointed by the court to ask questions on behalf of the defendant.

The Australian Government notes this recommendation.

See response to recommendation 25-2 above.

Recommendation 28-6

Federal, state and territory legislation should permit prosecutors to tender a record of the original evidence of the complainant in any re-trial ordered on appeal.

The Australian Government notes this recommendation.

See response to recommendation 25-2 above.

Recommendation 29-2

The Australian, state and territory governments, in establishing or further developing integrated responses to family violence, should ensure ongoing and responsive collaboration between agencies and organisations, supported by:

- (a) protocols and memorandums of understanding;
- (b) information-sharing arrangements;
- (c) regular meetings; and
- (d) where possible, designated liaison officers.

The Australian Government notes this recommendation.

The Australian Government is currently working with States and Territories, through the National Justice CEOs forum, on a collaboration project to improve the interface between the child protection and family law systems. As part of this work the Attorney-General's Department commissioned Professor Richard Chisholm to prepare a report on "Information-sharing in family law and child protection – enhancing collaboration". This report includes a draft pro forma Memorandum of Understanding to provide guidance to stakeholders in the two systems in their development of agreements for information sharing. This work may potentially inform the future development of protocols for the exchange of information between the family law and criminal justice systems.

Recommendation 29-3

The Australian, state and territory governments should prioritise the provision of, and access to, culturally appropriate victim support services for victims of family violence, including enhanced support for victims in high risk and vulnerable groups.

The Australian Government agrees with this recommendation.

The AVERT training package contains a section on 'Responding to Diversity' that is intended to provide professionals with a sound and practical understanding of family violence, its impact and strategies for responding which promote safety for all involved in the context of culturally and linguistically diverse communities.

Recommendation 30-1

The *Initiating Application (Family Law)* and *Initiating Application (Family Law) Response* forms should clearly seek information about past and current family violence protection and child protection orders obtained under state and territory family violence and child protection legislation and past, pending or current proceedings for such orders.

The Australian Government agrees with this recommendation in principle. The Australian Government notes that giving effect to the recommendation is a matter for the Family Court of Australia and the Federal Circuit Court.

The Australian Government notes that all family court forms were renewed and updated in line with the family violence amendments that commenced on 7 June 2012. Page 6 of the *Initiating Application (Family Law)* and *Initiating Application (Family Law) Response* forms now contain questions that request this information.

The Australian Government takes the issue of addressing and responding to family violence and the safety of children very seriously. As part of wide-reaching reform that the Australian Government has implemented the Family Law Act requires a party to proceedings who is aware that a child, or another child who is a member of the child's family, is or has been the subject of a notification or report to a prescribed state or territory agency or an investigation, inquiry or assessment by a prescribed state or territory agency and the notification, report, investigation, inquiry or assessment relates to abuse, or an allegation, suspicion or risk of abuse to inform the court of the matter. The Family Law Act expressly authorises a person who is not a party to the proceedings to inform the court of the abovementioned matter. Information about whether a child, or another child who is a member of the child's family, is or has been the subject of a care order, notification or investigation under a child welfare law is crucial in assisting the court to make decisions that are in the best interests of the child.

Recommendation 30-2

The *Initiating Application (Family Law)* and *Initiating Application (Family Law) Response* forms should be amended to include a question seeking more general information, for example, 'Do you have any fears for the safety of you or your child or children that the court should know about?'

The Australian Government agrees with this recommendation in principle. The Australian Government notes that giving effect to the recommendation is a matter for the Family Court of Australia and the Federal Circuit Court.

See response to Recommendation 30-1.

Recommendation 30-8

Federal family courts should provide state and territory courts dealing with family violence and child protection matters – and others with a proper interest in such matters, including police and child protection agencies – with access to the Commonwealth Courts Portal to ensure that they have reliable and timely access to relevant information about existing federal family court orders and pending proceedings for such orders.

The Australian Government agrees with this recommendation in principle. The Australian Government notes that giving effect to this recommendation is a matter for the family courts.

The Australian Government agrees that it is important for State and Territory courts and others with a proper interest in family violence and child protection matters to have efficient and timely access to relevant information about existing federal family law orders and pending proceedings for such orders. The Policy Advisory Committees of the Family Court and the Federal Circuit Court are actively considering ways to improve the timely and efficient access to this information by relevant agencies and organisations with the primary focus at present being on improving access to family law information for child protection agencies.

The Australian Government proposes to consult with the Courts about the progress of their consideration of this issue.

Recommendation 30-9

The Australian, state and territory governments should ensure that privacy principles regulating the handling of personal information in each jurisdiction expressly permit the use or disclosure of information where agencies and organisations reasonably believe it is necessary to lessen or prevent a serious threat to an individual's life, health or safety.

The Australian Government agrees with this recommendation.

The Australian Government accepts that personal information should be used or disclosed for a secondary purpose where an agency or organisation reasonably believes that the use or disclosure is necessary to lessen or prevent serious threat to the life, health or safety of any individual, or to public health or safety. However, to ensure that there are safeguards against the mishandling of personal information, this activity should only be permitted only after the consent of the individual concerned has been obtained, unless it is unreasonable or impracticable to obtain that consent.

That is consistent with the Australian Government's response to recommendation 25-3 of the Australian Law Reform Commission's (ALRC) report 108, *For Your Information, Australian Privacy Law and Practice*. The Government's response to that recommendation has been included in the Privacy Amendment (Enhancing Privacy Protection) Act 2012 (Sch 1, Item 82, clause 16A).

As to state or territory laws, the Government recognises there are clear benefits of nationally consistent privacy regulation. The Government stated in its response to rec 3-1 of the ALRC's privacy report that it would 'work with its state and territory counterparts to progress this matter through further discussions in appropriate fora'.

Recommendation 30-10

The Australian, state and territory governments should consider amending secrecy laws that regulate the disclosure of government information to include an express exception to allow the disclosure of information in the course of a government officer's functions and duties.

The Australian Government notes this recommendation.

This recommendation is similar to recommendations 7-1 and 10-2 of the ALRC Report 112 on Secrecy Laws and Open Government in Australia. The Australian Government is working through the policy issues associated with the legislative reforms involved in responding to ALRC Report 112 and will respond to this recommendation in the context of responding to that Report.

Recommendation 30-14

The Australian, state and territory governments should develop guidelines to assist agencies and organisations working in the family violence and child protection systems to better understand the rules relating to the sharing of information.

The Australian Government notes this recommendation.

See response to recommendation 29-2 above.