



Submission: Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems

16th October 2015

Introduction

safe steps Family Violence Response Centre greatly appreciates the opportunity to provide feedback on the Family Law Council's *Discussion Paper on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems*. The Family Law system has engagement with women and children experiencing family violence. It is therefore important for Family Law reforms to contribute to women's and children's safety, and to holding perpetrators accountable.

About safe steps Family Violence Response Centre

safe steps Family Violence Response Centre is Victoria's 24 hour, 7 day per week service for women and children experiencing family violence. **safe steps** provides a critical service intervention, including support, accommodation, advocacy and referral throughout Victoria and nationally. **safe steps** ensures that women and children experiencing family violence, including those at the highest risk of harm, receive an immediate response to keep them safe.

Family violence and the Family Law system

What is family violence?

Family violence involves an ongoing pattern of threatening, coercive and violent behaviour in a current or former domestic, intimate or family relationship. This not only includes physical assault, but also threats, verbal abuse, emotional and psychological abuse, abuse of institutional and administrative systems, economic abuse and control, social abuse and isolation, cultural or spiritual abuse, all of which cause a person to live in fear. Family violence is most likely to be perpetrated by men towards women and children¹ – this makes family violence a gendered form of violence.

For this reason this submission will focus on women and children as those experiencing family violence, and men as perpetrators of family violence.

Family violence in the Family Law system

safe steps works with many women and children who have Child Protection or Family Law system involvement. We have found that women and children often experience the Family Law system as

¹ ANROWS (2013) *Violence Against Women: Key statistics*, available at: <http://www.anrows.org.au/publications/fast-facts/key-statistics-violence-against-women> (last accessed: 29/05/2015).

another site for the perpetrator to continue the abuse after separation. Despite the amendments to the *Family Law Act 1975* in 2012 to address family violence, we find this system abuse has continued.

The Family Law system's involvement with families with complex needs is usually sporadic. This creates risks for women and children experiencing family violence, often with adverse outcomes resulting from Family Court orders that compel contact between the woman, her children, and the perpetrator.

Case study 1

A woman with an 8 month old baby came into **safe steps**' safe house. The woman had experienced significant economic abuse, including domestic slavery. The woman had evidence of the perpetrator harming the baby. Despite this evidence, the Family Court ordered contact between the perpetrator and the child.

Perpetrators of family violence are often adept at presenting as credible and reasonable with public authorities, and in discrediting their victims. This is a significant tactic used by perpetrators to reinforce power and control, and to keep the violence secret. Systems that respond to family violence must include opportunities for safe disclosure of violence and ongoing risk assessment and risk management in order to keep women and children safe. Furthermore, it is important that systems responding to family violence have the capacity to address risk factors that affect the perpetrator's escalation of his use of violence.

safe steps proposes that, to truly keep children safe in cases of family violence, the Family Law system needs a more holistic approach that can evaluate risk on an ongoing basis. This would potentially expand the role of family consultants to have longer involvement with families, taking a case management based approach. This would enable the Family Law system to contribute proactively to risk management, sharing information, and collaboration with other services and systems. It would also provide an independent third party source of evidence for the Family Court which could ensure that vulnerable people, particularly children, have a stronger voice in the process.

Risk assessment

Risk assessment is central to maintaining women's and children's safety. The Victorian Risk Assessment and Risk Management Framework (also known as the Common Risk Assessment Framework or CRAF) is primarily a risk assessment framework, and at times is used as a tool. The key elements of the CRAF are (1) the victim's assessment of risk to herself, (2) evidence-based risk factors, and (3) the assessor's professional judgement.

The CRAF is unique in that it involves a central role for the self-reported risk of the victim of family violence. In many settings the judgement of professionals is considered more reliable than the report of the victim. As family violence usually takes place within the home, and perpetrators go to great lengths to avoid their abusive behaviour being detected, overriding the victim's report contributes to women and children being at risk. This particularly the case for women and children, who already face barriers to being believed due to entrenched gender bias.

The central elements of the CRAF can be incorporated into other assessment tools. In that sense, there is not necessarily an either-or choice between CRAF and another assessment tool for another purpose.

The recent report of the Victorian State Coroner, Judge Ian Grey, from the Inquest into the death of Luke Batty demonstrates the importance of consistent risk assessment to promote children's safety. Judge Grey specifically recommends that the State of Victoria considers giving greater weight to the victim's level of fear and her assessment of risk to herself and her children. Doing so may reduce risk of serious harm, injury or homicide. **safe steps** recommends that the victim's level of fear and own assessment of risk is included in risk assessment and management within the Family Law system.

Furthermore, **safe steps** would advise the Family Law Council that the Child Protection Service in Victoria does not use the CRAF, and it is therefore not always equipped to assess or address risk to children from family violence. The dual risk to mothers and their children from family violence falls outside the Child Protection framework of practice.

safe steps recommends that family violence specific risk assessments must be conducted by specialist family violence services, where family violence is identified. Identification of family violence in the Family Law system should trigger referral and intervention by family violence responses.

Information sharing

2.8% of **safe steps** referrals in 2014-15 came from the Child Protection Service and other family or child services agencies. A further 0.6% of referrals came from courts. There are many more children at risk whose families are involved in some way with the Family Law system.

safe steps and many other agencies share the frustration of lacking information about risk to our clients when making decisions. We welcome any opportunity to keep our clients safe in the long term, and encourage the Family Court and Family Law agencies to establish protocols with family violence services to ensure that children are safe. Ideally, this would be a multi-agency protocol involving the Child Protection Service, police, family violence services, and associated services.

For the purposes of ensuring safety and mitigating threats to life, health, safety or welfare of any person or the public, information sharing is permitted under Victorian legislation. **safe steps** also obtains clients' consent to share their information when this is possible and appropriate. To these ends, current privacy safeguards would allow a workable process of information sharing between relevant agencies involved with families in which a one family member is abusing another.

Supporting children

safe steps regularly finds that children's voices are excluded from Family Law processes. The capability to hear and represent the concerns of vulnerable children and young people is a key gap in the Family Law system. The *Family Law Act 1975* would be greatly enhanced by amendments to section 60B to state that the best interests of children are met by children having every opportunity to have their concerns represented and preferences addressed.

safe steps agrees that “*where the safety concerns do not meet the threshold for child protection intervention (particularly where there is one protective parent), children may lack access to services or supports to keep them safe*”. We regularly see this demonstrated in our work with the Child Protection Service in Victoria. Furthermore, historical anomalies in the development of family violence services have resulted in very piecemeal services specifically for children.

These gaps also arise from the Family Law system, as we have found that Victorian agencies, especially Child Protection and police, are reluctant to intervene where there is a Family Court order in force.

The other major gap with regard to ensuring children’s safety is the capacity to hold perpetrators accountable for abuse. The gaps in information sharing are particularly large with regard to perpetrators, whose use of violence can be invisible to the Family Law system despite the existence of State-based Intervention Orders or even criminal offences. This was clearly demonstrated in the findings of the Victorian State Coroner into the death of Luke Batty. The case management approach proposed above would enable the Family Law system to interface with State systems such as the Victorian Risk Assessment and Management Panels (RAMPs) to hold perpetrators accountable.

If the woman is so unsafe that she requires high security, secret accommodation to keep herself and her children safe, **safe steps** has found that the Family Law system presents significant barriers. Family Law orders requiring the woman to facilitate contact between the child and the perpetrator of violence can present major barriers to women in these circumstances. Women’s refuges usually require that women have no contact with the perpetrator of violence. By availing herself of safe accommodation, the woman is at risk of breaching a Federal law, which carries significant penalties including criminal charges. A process for women’s family violence services to notify the Family Court when women go into high security accommodation would assist to overcome this barrier.

Provisions in the *Family Law Act 1975* (Cth) to vary Family Law orders are also very limiting for State justice systems. Variations by other courts to Family Law orders are only in effect for 21 days when the variations are made because of an interim family law order. This is a barrier due the difficulty with serving and finalising Family Violence Intervention Orders in Victoria, as perpetrators may be difficult to track.

The cost of legal representation, is a particular barrier for women experiencing family violence. This can result in women simply being unable to use the Family Law system. Court-appointed family consultants who can make applications to the Court on behalf of one of the family members would provide an alternative option for women and children who cannot access legal representation.

All changes to practice must be accompanied by specific training and practice direction for Family Court and Federal Circuit Court judicial officers and staff. Practice development will need to be specific to the Family Law system context, where risks relating to post-separation violence and systems abuse are particularly high. This would include initial training supported by practice supervision, performance measurement and appraisal processes, and evaluation of the Family Law system’s capability to address family violence.

Integration and collaboration with other services

In addition to the integration opportunities noted above, **safe steps** recommends that the Family Law system participates in current State-based integrated family violence responses. This would reduce duplication and contradictions between State and Federal systems.

To this end, the Family Court could participate in Victoria's Risk Assessment and Management Panels (RAMPs). RAMPs are area-based multi-agency panels that collaborate to manage situations of high-risk family violence. The contribution of the Family Court and family relationship services in these panels would ensure an added layer of risk management capability within RAMPs.

safe steps agrees that collaboration between the Family Law system and men's behaviour change programs is an important opportunity to collaborate with State based systems. Furthermore, family law system services, such as family relationship services, counselling and dispute resolution, should collaborate more closely with men's and women's family violence services through the information sharing mechanisms outlined above.

Conclusion

safe steps appreciates the opportunity to provide feedback to the Family Law Council's review, and looks forward to the release of the final report.

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