

**Submission
No 7**

COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS

Organisation: Australian Brotherhood of Fathers

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ABF

AUSTRALIAN BROTHERHOOD OF FATHERS

AUSTRALIAN BROTHERHOOD OF FATHERS

**Position Paper
Criminalising Coercive Control**

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Criminalising Coercive Control

Recommendations Summary

Coercive Control Legislation

1. Introduce coercive control as a criminal offence, and that Australian state and territory-based coercive control provisions include:
 - a. A the definition including “threats”
 - b. An objective standard of proof when assessing the likely impact of an offender’s behaviour on the victim.
 - c. That there must be a sustained and ongoing pattern of conduct (in excess of two occasions).
 - d. That the legislation is not limited to intimate or cohabiting relationships but applies to parties who are or have previously been in an intimate relationship, parties who live together, or parties who are members of the same immediate or extended family, including under kinship.
 - e. That the sentencing guidelines allow for maximum penalty of 12 months if convicted summarily and a maximum penalty for an offender convicted on indictment of five years imprisonment.

Reform of all Domestic Violence legislation, industry, services and support

2. Review and Reform domestic violence legislation and the Family Law system.

Gender neutral services

Minister for Men

3. Establish and fund a Minister for Men, equivalent to the current portfolio of the Minister for Women.

Service for Men

4. Provide the following services for men:
 - f. Men to be included into the re-titled National Plan to Reduce Violence against **Women** and their Children 2010 – 2022 and associated systemic reforms.
 - g. Government funded public awareness campaigns be conducted to raise awareness of intimate partner violence against men.
 - h. Consideration should be given to providing publicly-funded services specifically for male victims of intimate partner abuse.

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- i. Consideration should be given to how services for male victims of intimate partner abuse can be integrated with services for female victims and general services for victims of family violence in all its forms.
 - j. Workers in the broader health and welfare fields should be provided with training to assist them to respond effectively to male victims of intimate partner abuse.
 - k. Tertiary education courses (social work; other health and human services) to consider the inclusion of specific training about meeting the needs of male victims of family violence and their children.

Gender Neutral funding, services and support

- 5. Gender neutralise all legislation, funding, services and support within the Domestic Violence industry and Family law Services, including but not limited to:
 - a. All legislation
 - b. All Family Court content, public and internal including Benchbooks and sentencing guidelines
 - c. Police and prosecutor policies and guidelines
 - d. Courthouse facilities
 - e. Behaviour change programs that are gender neutral
 - f. Remove all language that limits reference to traditional family structures
 - i. Remove words “each” and “both” in the Act and associated documents
 - ii. Considering the use of the term 'couple' when referring to parents or 'both' parents
 - g. Gender neutralise all Legal Aid services:
 - i. Legal Aid available for defendants in AVOs/DVOs matters
 - h. All government department domestic violence accreditation based training using the Duluth Model (such as White Ribbon accreditation) should be abolished
 - i. All services are provided equally and identically in a non-gendered manner
 - j. All publicly funded awareness campaigns

Previous Reports

- 6. We urge the Committee to follow through with the recommendations for male victims from previous parliamentary inquiries to ensure they are implemented properly.
- 7. Do not adopt the recommendations of the April 2019 Australian Law Reform Commission tabled: Family Law for the Future — An Inquiry into the Family Law System: Final Report, comprising 574 pages and 60 recommendations.
- 8. Endorse the engagement of an independent multiple stakeholder and advocacy group to produce a consolidated report of all previous parliamentary reviews focussed on domestic and family violence, inquiries, studies, research and recommendations produced in the since 2000. Including analysis of:
 - a. whether they now represent sensible measures for reform
 - b. whether they are high priority, medium priority or low priority
 - c. and the relationship (if any) of each high and medium priority recommendation to current work in progress

Research and collection of data

9. The gender neutralised collection of all data/surveys and research relating to domestic violence
10. Endorse funding and support for ongoing gender neutral research, in relation to:

Domestic violence

- a. Review of the research underpinning the Domestic Violence industry and narrative in Australia
- b. Definition, forms, causes and prevalence of domestic violence in Australian society
- c. Parental alienation status as for form of domestic violence

Recommendations in relation to Family Law Act 1975 and Domestic Violence

Urgent Domestic Violence Allegation Review Process

11. Create a process (legislative amendments made to the Family Law Act 1975 (Cth) to require a relevant court to determine domestic violence allegations at the earliest practicable opportunity to urgently assess claims of Domestic Violence in Family Court matters with 14 days of filing (to prevent unfounded allegations from becoming entrenched:
 - a. With adequate court resources and hearing time allocated to fully examine the claims and the evidence relied upon
 - b. With proof of balance of probabilities
 - c. With actions in perjury and cost orders for claims found to be intentionally false or misleading on the balance of probabilities
 - d. With an emphasis to urgently re-establish withheld access to children where safety risks are unfounded or low
 - e. No ex parte orders permitted where children are involved

Domestic Violence Definition

12. Amend the Family Law Act to include a new definition of Family Violence to include:
 - a. A national standardised definition of domestic violence, with standardised examples of behaviour
 - b. To provide for a categorisation of Family Violence according to severity and risk:
 - i. Establishment of a low risk category that includes behaviour that is: situational, separation/relationship breakdown instigated, mutual, not part of a pattern or exercise of control, represents no risk in relation to parenting or child access issues
 - ii. Other forms of serious violence that represent risk
 - iii. With the emphasis on overcoming impediments to the urgent re-establishment of meaningful access for both parents to the children

Family Violence Orders

13. Remove “admission without consent” as an option and direct those application to consideration of agreeing to Undertakings. All application for Orders should be tested on evidence (with Legal Aid available to all defendants) and no party should be coerced to concede to Orders that are grossly impactful and that have possible criminal ramifications.

False statements and perjury

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14. Introduce a mandatory penalty system when allegations and statements are found to be deliberately false, including:
 - a. Financial penalties
 - b. Custodial sentences
 - c. Adverse findings in relation to parenting and child custody/access
 - d. Adverse findings in relation to property settlements
 - e. Disciplinary action in relation to culpable legal practitioners

Family Law System Improvements

Recommendations to create an alternate non-adversarial model

15. Convene a cross stakeholder and advocacy group Committee to develop an alternate non-adversarial model to the current Family Law system and to develop a means to pilot, implement and test the same

Family Law Oversight Body

16. Endorse the creation of a multiple stakeholder (not solely staffed by industry stakeholders) independent statutory body (A Family Law Commission) that operates effectively and deserves public confidence, to undertake inquiries on systemic issues in relation to Family Law Associated Services.
 - a. undertake ongoing and systemic monitoring, and
 - b. conduct inquiries by reference from Government or on own motion

Psychological support services

17. With the input of psychologists produce information and support services to assist separating parents at the point of entry into the Family Law System to assist people to manager their internal states through effective stress management, education and information to enhance decision-making and assist in building resilience for those navigating the system.

Resourcing, funding and training

18. Obtain funding for
 - a. Appoint more Judicial members
 - b. Allocate more funding to alleviate delay
 - c. Training for all judiciary, court staff, legal practitioners in relation to
 - i. Mental health of all parties before a court
 - ii. Gender neutral training

Family Law Complaints Process

19. Create a new complaints, accountability and review mechanism for a professionals within the system.

Legal Aid

20. Legal Aid to be available for defendant of AVO/DVOs in all cases and to be available for all other matters on a non gendered basis.

1. Executive Summary

The ABF welcomes the introduction of the criminalisation of coercive control within Australian jurisdictions, as a means of addressing harmful and abusive behaviour exhibited by men and women in relationships.

The criminalisation of coercive control must be equally applied to perpetrators irrespective of gender. The legislation should also apply to men and women post relationship separation as this is a time where both men and women continue to exert coercive control, at similar rates.

The legislation and all documentation associated with its creation, enactment and application should be entirely gender neutral. The consensus is that men comprise one-third of all victims of domestic violence in Australia. There is a significant and increasing body of research (including a 2020 University of Queensland study) that indicates that up to half of all victims of domestic violence may be men.

<https://www.sciencedaily.com/releases/2020/01/200129091511.htm>

In August-September 2020 four week period, one man a week was murdered by his female partner.

Alexandra Hills (ABC news) 18 August), Murrumba Downs (7News August 26), Bray park (ABC news 6 September), St Marys (Western Weekender 16 September)

There are convincing reasons as to why the official one in three accepted rate may be lower than reality, and that research is referenced in this document.

Whether the figure is one-third or up to one-half, there is simply no equitable basis for the legislation to be enacted with gender bias, even if it will be in operation within the current profoundly gender biased system. That system itself must reform, and the continuation of the denial of funding, services and support to male victims must stop and along with the immense harm and cost caused to our men, fathers, brothers, partner, sons, their children, families and our society.

Men can face unique challenges in domestic relationships in both the form and frequency of abuse, as well as how they are treated as victims, the services and support available to them, and how the existing system can be used to perpetuate significant ongoing abuse and coercive control. For instance, mothers may perpetuate very harmful coercive control for years after the end of a relationship through Family Court litigation, restricting or making access to children conditional, parental alienation and through ongoing financial abuse and servitude (Child Support and Spousal Support).

Many men that seek to escape abusive relationships, can never entirely move on and heal while they still desire to be in the lives of their children. Many of them continue to be abused and coercively controlled by the Mothers of their children.

We welcome the criminalisation of that example of behaviour under the new legislation, along with other forms of female perpetuated coercion and control.

2 The Australian Brotherhood of Fathers (ABF)

2 (a) Introduction

This Position Paper outlines the ABF position in relation to the proposed criminalisation of coercive control in Australia.

2 (b) The ABF

The Australian Brotherhood of Fathers is an advocacy organisation committed to reforming the Australian Family Law System, Domestic Violence policy, the Child Support System, and associated policies and procedures. Our goal is to establish a system that focuses on the best outcomes for children, parents and families, after relationship separation and breakdown.

<https://www.theabf.org.au/>

We believe in equality and we support feminism's ambitions in that regard. Equality should not proceed beyond that: equality and it should never be entitlement, privilege or oppression. There are many areas of our society and legal system that are now distinctly gender based, prejudiced towards women and bias towards men. This was never the ambition of feminism.

Our goal of a safe and equal society for all, and for our men and boys is a goal supported by men and the vast majority of women who continue to love and care for the fathers, brothers, husbands, partners and sons in their lives.

Domestic Violence legislation, policies and services (which we call an "industry"), intersect at many levels and significantly so with the Australia Family Law System (see our 2020 Submission to the Joint Select Committee on Australia's Family Law System, submission number 1668).

https://www.apf.gov.au/Parliamentary_Business/Committees/Joint/Family_Law_System/FamilyLaw/Submissions

In 2020, the ABF has provided submissions to and appeared before the (Senate) Joint Select Committee on Australia's Family Law System, the (Parliamentary) Inquiry Into Inquiry into Family, Domestic and Sexual violence, provided position papers in relation to legislative reforms at both state and federal level.

2 (c) Our unique perspective

Our organisation is has worked tirelessly to raise the profile of broken social policy and its impact on vulnerable families while working to deliver a range of services in support of fathers and their families. While the service is focused on improving policy and services in support of fathers we recognise the important role mothers play in the lives of our children and believe our objectives would benefit mothers equally.

As a result, we believe that we have Australian leading database on fathers affected by the system, including accurate statistics on domestic violence rates, gathered without the bias of gender models.

Both parents need to enter the all systems on equal and equivalent footing. At the moment this is not the case: with every single service, support and process heavily gender biased against

fathers. We detail that in this document. As a result fathers are much more likely to suffer emotionally, psychologically and physiologically.

They are much more likely to lose meaningful access with their children. The system takes children from heavily engaged fathers one day, removes them entirely the next, in some cases for years, and then may never again re-establish the same deep relationship and parental role that the father once had.

The legislation provides for only one valid circumstances where this scenario should be able to occur: where there is serious domestic violence. The delay in addressing such claims, the low standard of proof, the significant financial and custodial incentives for making such claims, the total absence of any ramifications for false or exaggerated claims, lawyers focused on nothing other than a binary win/lose system and the financial windfall the conflict means for them, results in countless terrible outcomes for father's and their children.

While we all of the focus on the deaths of women to violence, none on deaths of men, there is little concern of the thousands of deaths to suicide of men trapped within the system. These are often men that have lost everything that makes life worth living: children, family, home, wealth, reputation, careers, liberty and their future.

2 (d) Serve all, help all

The ABF helps thousands of Fathers that are blameless victims. With careful consideration and using accredited behavioural management techniques, ABF also attempts to assists troubled individuals who may have committed acts of abuse, domestic violence and criminality. We believe that the system does not in all cases manage these individuals correctly. The current mechanisms that act to remove effective treatment, autonomy, privacy, reputation, dignity, respect, liberty, income, assets and access to children are not mechanisms that produce a best outcome for the troubled individuals, their children or for society.

The current system can increase, not mitigate, risk.

2 (e) Who we work with and what we do

The Australian Brotherhood of Fathers advocates for reform through multiple avenues in our society.

The ABF consults and works with people from all walks of life. Within the industry, we consult with legal practitioners, accountants, mental health professionals, justice professionals, academics, advocates, journalists and most important of all, Fathers, Mothers, Children and their extended families.

We are nationally affiliated with both domestic violence charities, specialist legal, accounting and psychology services, and family support services. We have offices in three states and services available across Australia.

3 Coercive Control

It is proposed that Coercive Control describes the use by one person of controlling and manipulative behaviours such as isolation, emotional manipulation, surveillance, psychological abuse and financial restriction against another person over a period of time for the purpose of establishing and maintaining control. In relationships characterised by coercive control, abusers use tactics of fear and intimidation to exert power over their victim, undermining their independence and self-worth.

An example would be, a Mother continually threatening her husband that she will ruin him financially and permanently take the children from him if he does not comply with her demands. This form of coercive control has been shown to be especially debilitating and impedes the victims ability to escape the relationship and abuse.

While domestic and family violence has often been conceived of as incident based, and primarily involving physical violence, coercive control can be just as detrimental, if not more so, to victim-survivors.

Coercive control is a foundational element of domestic violence, and also a major predictor of severe physical violence, homicide and suicide. Male victims have been found to suffer profoundly and uniquely. Studies have indicated a significant impact on the physical and mental health of emotionally abused men with research finding that 11% of abused men try to kill themselves. Research has also found that attacks on a man's self-worth may be especially debilitating.

Dutton G. Rethinking Domestic Violence, Univeristy of British Columbia press 2007
https://www.biscmi.org/wp-content/uploads/2015/05/Dutton_CJS_Book_Review_CJS-Dekeseredy.pdf

<https://www.mankind.org.uk/statistics/>

This position paper explores the proposed new legislation in the context of the critical need for law reform around domestic violence offences within Australia and the Family Law system it is frequently related to.

Should Australia have a coercive control offence?

Family violence has received a huge amount of attention in Australia in recent years. The introduction of a coercive control offence in Australia has been considered during the course of several inquiries, such as the Special Taskforce on family violence in Queensland in 2015 and the Royal Commission into Family Violence in Victoria in 2016.

In the past, proposals to introduce coercive control offences have been rejected because of a lack of precedent for how such a law would work in practice. However, now that other international jurisdictions have enacted coercive control provisions, the issue of whether such an offence should exist in Australia is being revisited.

3 (a) Arguments in favour

Supporters of the move suggest that existing criminal laws relating to family violence have been unsuccessful in providing justice for all victims of intimate partner violence. They argue that

serious consequences can flow from non-physical abuse and that such behaviour should therefore be criminalised. Controlling behaviour can strip a person of their autonomy and self-worth and can make it difficult for the victim to recognise that they are being abused and to leave the relationship.

Australia can now turn the UK and Scotland for examples of the enactment of similar legislation and its impact.

3 (b) Arguments against

Reform the existing system

We detail in this document how the current domestic violence system is gravely flawed. After decades of funding, it has failed to address the root causes of domestic violence as it is primarily based upon a flawed and discredited gendered based model that has little to no explanatory power in the real world. Research and statistics have irrefutably indicated this.

The current system is too easily weaponised to cause harm to good people, and often the children caught up within it. The current system also little power to prevent or respond to the committing of tragic violent offences. We are argue, it may even perpetuate such.

The enacting of coercive control, within the current paradigm may just be yet another weapon that causes harm and fails to protect.

Administration of the offence

Opponents of the move to criminalise a difficult to define concept such as coercive control have suggested that such an offence could overly tax and divert resources. There is doubt as to the ability of police to identify instances of coercive control and to obtain the information needed to correctly assess a series of unrelated events and the harm caused by a pattern of behaviour. Determining what constitutes controlling or coercive behaviour is likely to be an issue of much debate in cases prosecuted under the new provision.

The difficulty of proving the offence of coercive control has also been flagged as a concern. Demonstrating that a pattern of abuse has existed and that harm resulted from it is likely to be much harder than proving that a violent act occurred on a particular occasion. The impact upon existing police and justice sector resources may be significant and it may impact the availability of resources for existing crimes.

The creation of a coercive control offence would also not address the barriers, primarily for men, to access to justice that have long existed for victims of domestic abuse.

Such legislation has been introduced in England and Wales (“the UK”), as well as Scotland, not without significant operational issues.

Claims of Increased Risk of Systems Abuse?

One critique of the criminalisation of coercive control is that it will create new opportunities for legal systems abuse, that is where perpetrators use the legal and other formalised systems to further assert control over their partners. However, systems abuse is already a prevalent issue within the NSW civil and criminal justice system whereby, for example, female perpetrators are able to persuade

responding officers that they are in fact the victim in a particular domestic violence incident and this is then used by the perpetrator as a means to exert further power and control over their victim.

Heather Douglas, 'Legal systems abuse and coercive control' (2017), 18 (1) Criminology & Criminal Justice.

To address the impact of parental conflict on children and the parents, the nature of the conflict needs to be addressed. Labelling a matter high-conflict can be misleading where the conflict might be driven solely by one party. There is also no basis to assume which of the two parties it may be that is driving the conflict without detailed examination. The narrative would have it is driven by the person who might have perpetuated the conflict and/or domestic violence when the relationship was still on foot. The narrative would say that this is a continuation of the abuse and control, and the narrative would suggest that statistically this would be the Father. There is much discussion, but very little definitive research, that this abuser might continue such abuse through system and process abuse.

However, the system provides much greater empowerment to the Mother, and if it was the Mother that was the abuser within the relationship, or if the Mother now feels empowered to obtain retribution, the conflict can be powerfully sustained by the Mother. This is particularly so, where the Mother, through the mechanisms available, has taken control of the home and assets, denied access to the children and is using or abusing the powers and resources of the state.

B. Eddy, High Conflict people in Legal Disputes, Scottsdale, AZ: High Conflict Institute Pores, 2012 asserts that high-conflict legal disputes are driven more by personality than by legal or financial issues. In his view courts attract individuals with personality disorders, or traits or personality disorders, because court processes resembles their thought structure.

<https://www.highconflictinstitute.com/bookstores/high-conflict-people-in-legal-disputes-2nd-edition>

There are no marked differences in the diagnosis rates of disorders like borderline personality disorder (schizophrenia and bipolar disorder) between the sexes, although earlier research suggested higher rates for women. (There are some gender differences with regard to personality traits). As above, we posit that the family Law System provides women with personality disorders the ability to exert ongoing sustained abuse through control over the children, assets and future income (Child Support and Spousal Support), making it difficult or impossible for Father's to disengage from the abuse especially if they desire to maintain meaningful relationships with their children.

"Gender and women's health". World Health Organization. Retrieved 2007-05-13.

^Sansone, R. A.; Sansone, L. A. (2011). "Gender patterns in borderline personality disorder". *Innovations in Clinical*

At the ABF we see system abuse commonly as women activating the gendered system to remove their estranged partners from the lives of their children and their own homes, to secure an enormous and almost always unrecoverable advantage in the Family Court System. In a gender bias system, where there are significant financial (and parenting) incentives along with practically no consequences for false allegations any further domestic violence legislation and offences will merely increase system abuse. This is a burden that is disproportionately born by men and their children who lose meaningful access to their father's and paternal families. This is causing crippling intergenerational harm to our children and our society and it is as yet unaddressed and unacknowledged.

The only way to avoid this is to address the system issues identified in this document through systemic reform. This must include ensuring that ensuring law enforcement and judicial officers have the appropriate gender neutral knowledge, training, expertise and practices to guard against this form of violence and abuse by female domestic violence offenders.

Above all else, the gender based narrative must cease.

3 (c) Current Australian Approaches

There is also no national legislative consensus on the definition of domestic and family violence, which is highly problematic. We talk about the definition of domestic violence and the research related to it further in this document.

To date, Australian jurisdictions have not gone down the path of introducing a criminal offence focused on controlling and coercive behaviour. There has been debate, however, about the introduction and application of ‘course of conduct’ type offences in the domestic violence sphere.

3 (d) Previous Reports and Studies

The overwhelming pervasive, but entirely unscientific and unsupported gender based narrative within the domestic violence industry permeates the research and official reform recommendations.

We recommend a definitive piece of research be conducted to update and consolidate previous work. This would require setting up an expert group of people to review all the reports and recommendations going back twenty years that have not been implemented and to consider:

- removing gender bias and gender references
- whether they now represent sensible measures for reform
- whether they are high priority, medium priority or low priority
- and the relationship (if any) of each high and medium priority recommendation to current work in progress

The composition of the Expert group will be critical. It should not be a financially incentivised stakeholder group: it should be strongly independent, objective and with no vested interest.

3 (e) The UK and Scotland

Such legislation has been introduced in England and Wales (“the UK”), as well as Scotland. It cannot be considered an unconditional success.

Sandra Horley, the chief executive of UK charity Refuge, said she did not believe that criminalising coercive control was the right solution. “We already have enough laws – the problem is that they are not being implemented properly,” she said. “The police don’t even arrest when there is evidence of serious physical violence, so how are police and juries ever going to understand complex concepts like coercive control?”

“Controlling behaviour can be incredibly subtle, and isn’t always coercive. Extreme jealousy and possessiveness, for example, can be dressed up to look like care or concern. Providing evidence of such behaviours to satisfy criminal standards is likely to be extremely difficult.”

<https://www.theguardian.com/society/2014/dec/18/theresa-may-domestic-abuse-offence-coercive-behaviour>

In the UK The number of coercive control cases brought by police and prosecutors varies dramatically from place to place. Twelve of England’s 29 police forces have brought fewer than one charge of controlling and coercive behaviour for every 100,000 people under their jurisdiction, according to the London-based Bureau of Investigative Journalism. Forces told the Bureau that coercive control charges are “hard to achieve” and “challenging to prove.”

Figures for the first two-and-a-half years of a new law on coercive and controlling behaviour show the majority of cases were dropped without a charge. Data obtained by the BBC from 33 police forces in England and Wales, for January 2016 to July 2018, showed there were 7,034 arrests - but only 1,157 cases ended with someone being charged. Some 4,837 cases were dropped by police or prosecutors, the figures show.

The Home Office said there had been 235 successful convictions since the law was introduced.

According to Ministry of Justice data for 2016 and 2017, the average custodial sentence for those sent to prison under the new law was 17 months. And the average amount of compensation paid to victims was £413.

<https://www.bbc.com/news/uk-46429520>

<https://www.ons.gov.uk/> 2019

Those statistic represent significant police and justice sector resource utilisation (and cost to the community) and may suggest that some victims failed to obtain justice. Similarly that may also indicate that many accused avoided having to respond to frivolous and destined to fail charges (and the associated costs, reputational harm, deprivation of liberty and severe stress in doing so). With the latter assessment it can be further assumed that the new legislation subject to the same system abuse and false allegations that, in Australia, in plaguing our domestic violence industry.

Gender of prosecuted in the UK

Of grave concern is that 97% of defendants prosecuted in the UK for coercive and controlling behaviour in the year ending December 2018 were male.

Paul McGorrrery and Marilyn McMahon, ‘Prosecuting controlling or coercive behaviour in England and Wales: Media reports of a novel offence’ (2019), Criminology & Criminal Justice.

This is massively below the official published gender victims rates of domestic violence in the UK, which officially at a ratio of two women to one man are in the context of research confirming that one half of all male victims do not report their abuse.

<https://www.mankind.org.uk/statistics/>
<https://www.mankind.org.uk/wp-content/uploads/2020/03/Summary-Police-Reporting-2012-2018-website-published-March-2020.xlsx>

This may indicate that the new laws, continuing the gender based narrative, are not readily accessible to male victims. This is a betrayal of such victims and a continuation of their abuse. The conviction rates may also indicate a continuation of a system that does not disincentivise, identify and deal with false allegations.

3 (f) Common Coercive Control experienced by Men

Some of the position papers prepared in relation to proposed coercive control legislation in Australia make specific references to minimising the availability of the legislation for male victims. This is discrimination of victims on the basis of their gender alone and such sentiment has no place in civilised society. It is also utterly unjustified on any ethical or equitable grounds.

One document already prepared by Women's Safety NSW, expresses this sentiment and makes direct reference to the ABF and our work in support of fathers. This is concerning indication of where the gendered narrative has taken the industry. It is gravely concerning that a women's group is expressly referring to drafting the legislation so that the protective value for men is reduced. That is excluding 30% to 50% of all victims, on the basis of their gender alone.

<http://www.womenssafetynsw.org.au/>

As an organisation, we assist with gravely traumatised and harmed clients on a daily basis. As this document goes on to describe, this is trauma that can represent a potential risk to life in the shorter and longer term. In many cases it is the exact equivalent of critical assistance and support provided by Women's services; services we as a community have considered essential and are funding to the tune of hundreds of millions of dollars.

In many cases the harm is unique to or significantly more common in male victims. Regularly these include threats to take kids and to cause financial ruin. In the now profoundly gendered industry and family court system, these options are available at will to women, and the threats deadly serious. This can trap men in abusive relationships for years, in some cases for the entire duration of their children's childhood, before fathers are able to escape.

The abuse and the threats does not stop upon separation. It can continue for years and decades. Conduct can be controlled and coerced both within the relationship and beyond, including, financial blackmail with the children always able to be held for ransom. That the children are also harmed by this behaviour seems lost on the abusers. If it is enacted and available post separation, coercion and control legislation would help to end this cycle of ongoing abuse.

The legislation must be available in these circumstances. Proving coercion and control under the legislation in any event will remain a matter of evidence.

The claim of "protecting the children"

The conduct described above is distinctly non-protective and any attempt to describe it as such is incorrect and obtuse.

One of the essential elements for both a man or a women in safely departing from a dangerous abusive relationship is that of secrecy. Every Domestic Violence web page has an Exit button for this very reason and escape plans make reference to the importance of discretion.

<https://www.1800respect.org.au/>

Repeatedly threatening a partner that you will leave them, take the children and cause financial harm is not secret or discrete behaviour providing any protective value. It is coercive control and abuse. Countless thousands of men in Australian society have been gravely harmed by this behaviour, many unrecoverably. We outline that harm further in this document.

There is and will remain existing protection for a parent, a father or a mother, that needs to take and with legal authority, keep the children from an abusive partner. This will not change with new legislation in relation to coercive control.

3. (g) Coercive Control in Same-Sex and LGBT Relationships

Domestic violence is far more frequent in lesbian relationships than in heterosexual relationships. The prevalence is between 40% to 75% of such relationships.

Lie and Gentlewarrior: Intimate Violence in Lesbian Relationships, *Journal of Social Science Research*, 15, 41-59.

https://www.researchgate.net/publication/15503361_Patriarchy_and_Wife_Assault_The_Ecological_Fallacy

https://d3n8a8pro7vhmx.cloudfront.net/marriage/pages/183/attachments/original/1469648679/Colleen_Stiles-Shields_and_Richard_A_Carroll.pdf?1469648679

Domestic violence occurs at a lower frequency in gay relationships than lesbian relationships. Around 28% of male-identifying respondents reported having been in a relationship where a partner was abusive.

Pitts, Smith, Mitchell, & Patel, 2006

<https://aifs.gov.au/cfca/publications/intimate-partner-violence-lgbtqi-communities>

These findings completely debunk the feminist narrative about domestic violence and patriarchal control. It clearly reveals that it is entirely insufficient to explain the complexities of domestic life, including the disturbing occurrence of battering among lesbians.

Coercion and control may also be used by same-sex partners and by or against transgender males or females or others whose marginalized status gives them little social power to draw on in response.

Frankland & Brown, 2014

There has been an ongoing debate about the applicability of the feminist understanding of domestic violence as a pattern of coercively controlling behaviors that draws on, constructs, and reconstructs gender inequality. Some have called this approach “heterosexist”

Hassouneh & Glass, 2008

Critics reject the application of the gender inequality model to LGBT intimate relationship abuse from a post-modern perspective. Based on research with gay men, Kwong-Lai Poon (2011) argues that we should “move away from the abstract, but fixed notions of victims and perpetrators while allowing us to see multiple and sometimes contradictory aspects of their personality”

In their more recent work on the Canadian Indigenous Two Spirit LGBTQ people, Ristock, Zoccole, Passante, and Potskin (2017) have broadened their emphasis on the contextual factors that shape abuse experiences to include societal forces. They found that experiences of domestic abuse not only were situated and impacted by structural factors such as poverty, unemployment, and homelessness—which featured heavily in the lives of Indigenous communities—but also bore the imprints of racist policies of the state.

4. Key Drafting Considerations

Defining Coercive Control

The UK Framework defines controlling behaviour as a ‘range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.’ It goes on to define coercive behaviour as a ‘continuing act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.’

Statutory Guidance Framework, Controlling or Coercive Behaviour in Intimate or Family Relationships, Home Office UK 3.

As a guideline for judicial officers, the Statutory Guidance Framework also includes a non-exhaustive list of behaviours that may constitute coercion and control:

- isolating a person from their friends and family;
- depriving them of their basic needs;
- monitoring their time;
- monitoring a person via online communication tools or using spyware;
- taking control over aspects of their everyday life, such as where they can go, who they can see, what to wear and when they can sleep;
- depriving them of access to support services, such as specialist support or medical services;
- repeatedly putting them down such as telling them they are worthless;
- enforcing rules and activity which humiliate, degrade or dehumanise the victim;
- forcing the victim to take part in criminal activity such as shoplifting, neglect or abuse of children to encourage self-blame and prevent disclosure to authorities;
- financial abuse including control of finances, such as only allowing a person a punitive allowance;
- threats to hurt or kill;
- threats to a child;
- threats to reveal or publish private information (e.g. threatening to ‘out’ someone);
- assault;
- criminal damage (such as destruction of household goods);
- rape;
- preventing a person from having access to transport or from working.

We believe that including “threats” with in the definition is an essential element, and is a common behaviour in coercive and controlling abuse.

4 (a) Elements of the Offence

The UK Statutory Guidance Framework describes the offence as having four elements:

1. The controlling or coercive behaviour must take place repeatedly or continuously.
 - Each case must be considered on an individual basis, there is no set

number of incidents where controlling or coercive behaviour has been displayed which must be proved.

2. The pattern of behaviour has a serious effect on the victim.
 - o This means that the victim has been caused to fear that violence will be used against them on ‘at least two occasions’, or they have been caused serious alarm or distress which has a substantial adverse effect on their usual day to day activities.
3. The behaviour is such that the perpetrator knows or ought to know that it will have a serious effect on the victim.
 - o Ought to know means that a reasonable person in possession of the same information would know.
4. The perpetrator and victim were personally connected when the incidents took place.
 - o This means that at the time the incidents took place they were in an intimate personal relationship (whether they lived together or not), or they lived together and were family members, or they lived together and had previously been in an intimate personal relationship.
 - o If they were not personally connected, or the incidents took place after a relationship or cohabitation ended, the stalking and harassment legislation may apply.

Statutory Guidance Framework, Controlling or Coercive Behaviour in Intimate or Family Relationships, Home Office UK 3.

Course of Conduct/Frequency

‘Course of conduct’ describes an approach to evidence whereby a series of acts over an extended period of time, when considered together, may constitute an offence. This approach is significant in the context of domestic and family violence, as it recognises that abuse is often characterised by a strategic pattern of behaviours over a period of time. In particular, perpetrators of coercive control often use a series of abusive behaviours and fear tactics over time to establish control over their victim.

Heather Douglas, ‘Do we need a specific domestic violence offence’ (2015) 39(434) Melbourne University Law Review 435-440.

Under section 76(4) of the Serious Crime Act 2015 (UK), controlling or coercive behaviour will be regarded as having a ‘serious effect’ on the victim if it causes the victim to fear ‘on at least two occasions, that violence will be used against [the victim]’, or it causes the victim ‘serious alarm or distress which has a substantial adverse effect on [the victim’s] usual day-to-day activities’.

Serious Crime Act 2015 (UK) s 76(4)

We believe that “two occasions” is too low a threshold: particular when there is no reference to how contiguous the behaviour must be. We propose that there be a reference to an ongoing and sustained pattern of behaviour.

A large number of crimes are expressive crimes – that is they are affected by anger, rage, depression, drug or alcohol use, indicators of psychological disturbances. In these circumstances, people are not turning their mind in a rational, calculating way, using cost-benefit of whether the punishment outweighs the benefit. These should be distinguished from patterns of behaviour.

<https://newsroom.unsw.edu.au/news/business-law/do-harsher-punishments-deter-crime#:~:text=But%20it%20turns%20out%20that,is%20more%20tale%20than%20truth.&text=The%20criminal%20justice%20researcher%20says,actually%20have%20the%20opposite%20effect.>

The Control Element

Coercive control can be best described as a series of behaviours that aim to establish control over the victim. It is crucial that law reform in this area recognises that the desire to establish power and control are at the heart of these behaviours.

Both the UK and Scottish legislation incorporate fear and intimidation as core components of coercive control. However, while fear, anxiety and intimidation are key tools used by abusers to manipulate victims, they are not the ultimate goal of coercion. Perpetrators of domestic and family violence use these tactics to undermine and emotionally manipulate victims, with the ultimate intent being subjugation. Establishing this power dynamic enables perpetrators to entrap victims, preventing them from escaping abuse or seeking help. For legislation to effectively protect victims/survivors from coercive control it must focus on identifying and criminalising these abuses of power within relationships, rather than focusing solely on elements of fear and intimidation which, while relevant, are incidental to the process of asserting control.

Standard of Proof

When developing law reform around coercive control in Australia, it is important that the standard of proof for the offence is set correctly. We already have components of the domestic violence system, such as Violence Order (AVOs, DVOs etc) where the ease of obtaining such an order is disproportionately low compared to the consequences of it being granted.

Unlike the UK legislation, the Scottish legislation imposes an objective standard of proof when assessing harm. A person will have committed an offence if 'a reasonable person would consider the course of behaviour to be likely to cause the victim to suffer physical and psychological harm', and either (i) the defendant intended the behaviour to cause the victim such harm, or (ii) the defendant was reckless as to whether the behaviour would cause the victim such harm.

Domestic Abuse (Scotland) Act 2018 s1

ABF supports an objective standard of proof for ascertaining the effect of an offender's behaviour on the victim. This will avoid some of the inherent flaws of the current subject fear test applied to AVOs/DVOs.

4 (c) Relationships Included and extension to post separation

For the criminalisation of coercive control to afford meaningful protection to domestic violence victims/survivors, it must be recognised that abuse can occur in a range of different domestic relationships. Controlling and coercive behaviours and the damage they cause are not limited to intimate partner relationships, but can also arise in parent/child relationships, within extended families, and in any other domestic relationships. These behaviours can continue to exist even when parties are not living in the same household.

While Australia should follow the UK approach of recognising that domestic violence can occur outside of intimate partner relationships, it should follow the Scottish approach of recognising that domestic violence can occur even after an intimate relationship has broken down and the parties no longer live together. It is often after separation from an abusive partner that the risk of violence and abuse escalates.

ABF believes that, should coercive control become an offence in NSW protection should be extended to victims who are no longer living with the perpetrator. We have found that many abusers have difficulty accepting that they have lost control of their ex-partners, cannot accept that their ex-partners have moved on, commenced other relationships and that the children of the previous relationship may have a second household and a second parental figure. We find this is where abuse may continue, or even commence for the first time.

Legislation should be drafted along the following lines:

A and B are “personally connected” if:

- (a) A is in an intimate personal relationship with B, or
- (b) A and B have previously been in an intimate personal relationship, or
- (c) A and B live together, or
- (d) A and B are members of the same family.

4 (d) Penalties

The penalties imposed under coercive control legislation must be proportionate. While deterrence is one of the stated objectives of a criminal justice system, research conclusively indicates that deterrence does not occur.

“Deterrence is very largely an article of faith,” says UNSW Law Emeritus Professor David Brown. “I call it sentencing’s dirty secret because it’s just assumed that there is deterrence ... but what the research shows is that the system has little to no deterrent effect.”

The criminal justice researcher says harsher punishments, such as longer prison sentences, not only do not prevent crime but may actually have the opposite effect.

“What research is increasingly showing is that imprisonment itself and punishment more generally is actually criminogenic – it makes it more likely that people are going to re-offend,” he says.

<https://newsroom.unsw.edu.au/news/business-law/do-harsher-punishments-deter-crime>

The primary aim of the Justice system is rehabilitative and this approach is proved to be effective and reducing re-offending rates (Norway moved its focus from punishment to rehabilitation (including for those who were imprisoned) 20 years ago. This was followed by large reductions in reoffending rates.

<https://theconversation.com/why-rehabilitation-not-harsher-prison-sentences-makes-economic-sense-132213>

The greatest advantage of the legislation is in the identification of offenders and the then possibility of rehabilitative treatment and education. This is especially the case where there may be children involved who have a right to have a meaningful relationship with both parents post separation, and the criminalisation and incarceration of a parent may impair that.

This also produces the best overall outcome for society.

Under the UK Serious Crime Act 2015 (UK), an offender convicted summarily faces a maximum penalty of 12 months' imprisonment and/or a fine. The maximum penalty for an offender convicted on indictment is five years imprisonment and/or a fine.

Serious Crime Act 2015 (UK) s 76(11)(a).

These penalties may be considered also appropriate in Australia.

4 (e) Accompanying System Reforms

As we elaborate in this document, the entire system needs reform before enacting any new legislation. The absence of such will see a perpetuation of the significant harm currently caused by the system and may actually add another element to that harm.

The ABF also recommends that along with the enactment of the coercive control offence, there needs to be the development and implementation of gender neutral system tools, resources and guidelines to assist key actors in the civil and criminal justice system in implementing the laws as intended.

Studies have shown that gendered policies and procedures can have a detrimental impact on the administration of justice. In the 2011 study by Haselschwerdt, Hardesty, & Hans, Family Violence Evaluators were much less likely to identify false allegations if they had been indoctrinated with gender biased training.

(Haselschwerdt, Hardesty, & Hans, 2011).

This must include **gender neutral**:

- Domestic Violence risk tool (the DVSAT tool is largely gender neutral except where it makes reference to pregnant women)
- Updating Police policy and procedural guidelines, including Domestic Violence Liaison Officers (DVLOs) re-trained in gender neutral policies and more DVLOs who are male
- The development of prosecution guidelines
- The re-drafting of all existing National Domestic and Family Violence Bench Book (Bench Book) and Judicial Guidelines to include the new offence and remove all existing gender references
- The creation of equivalent court facilities and services for men and processes and procedures to support men
- Updating of the Sentencing Bench Book for the new offence and to remove any gender references

5. Domestic Violence in Australia

The domestic violence industry in Australia has failed.

Decades of funding, policy and services have made no significant impact to the existence of domestic violence within our society. While we deny the alarmist claims of a “crisis” as the statistics are trending in-line with population, there is no appreciable decrease in violence per capita, despite decades of significant funding.

<https://www.abc.net.au/news/2019-09-05/an-australia-free-from-all-forms-of-violence-and-abuse-against/11470584?nw=0>

Domestic violence charities such as White Ribbon and others, have failed, embroiled in financial mismanagement (perhaps the ultimate betrayal of the use of government funds and private donations), and in some cases phoenixed back into existence with exactly the same mantra and business models, and seeking the same funding sources.

The gender based narrative as an explanatory model for domestic violence services is not correct. We know from the ongoing tragedies in the media, that the system also fails to protect. Women, Men and children continue to be the victims of violence within families and within the home. We see a gender biased domestic violence system that can so easily be weaponised to cause grave harm to good people, more often than not, good men. A system that gravely harms good men and in many cases gravely harms children within those relationships.

All the while there is an enormously well funded domestic violence industry, along with corollary service providers, such as lawyers, consuming so much of the wealth of vulnerable families. The cost to Australian society is estimated to be in the tens of billions a year.

The manner in which our legal system currently deals with the issue of domestic violence is harmful to our society. We have presented in this submission evidence that the domestic violence system, often through false or exaggerated allegations, is weaponised to hurt good people. People at the coalface of the industry: family law practitioners, members of the judiciary and police confirm the same. That is detailed in this submission.

So why is such a high profile, highly funded and resourced industry failing?

Because the narrative: “that the primary if not sole perpetrator is male and that it is an issue of gender, power and control” is wrong, and it has limited explanatory power. By adhering to a false narrative we are failing to not only understand the nature of the issue, but we are implementing processes that are bound to also fail.

The ABF is in a unique position to have gathered statistics from thousands of clients and our database evidences that gender is not the primary issue in relation to domestic violence. It is an issue for a minority of violence and where it is an issue, it can be so whether a man or a woman is the perpetrator.

Recent 2020 University of Queensland research indicates that victim rates may even be equal between genders.

Intimate partner violence and subsequent depression and anxiety disorders Ahmadabadi, Zohre, Najman, Jakob M., Williams, Gail M., Clavarino, Alexandra M., d'Abbs, Peter and Tran, Nam (2020). Intimate partner violence and subsequent depression and anxiety disorders. *Social Psychiatry and Psychiatric Epidemiology* 55 (5) 611-620. <https://doi.org/10.1007/s00127-019-01828-1>

This is contrary to the most commonly accepted figure that one in three victims of domestic violence is male. We believe that there are multiple reasons why the rate of 33% may not reflect reality.

One in Three Campaign: source 2012 ABS personal safety survey

Nevertheless, within the Family Court system, it is Mothers who make the majority of claims and receives the necessary support and affected outcomes for doing so. Claims of domestic violence can result in immediate seizing of property, assets and exclusive access to children (and full amount of child support payable), in addition to possible criminal sanctions with significant adverse consequences.

The industry narrative is gender biased, and practically all funding, service and support are available to women only. We cannot solve the issue of Domestic Violence if we do not clearly understand it and address it in its entirety. We would go so far as to say that the current failed approach to the issue contributes to the rates of domestic violence in our society.

5. (a) Prevalence of Domestic Violence allegations in Family Court

Almost 50 per cent of matters before the Family Court of Australia 70 per cent of matters before the Federal Circuit Court of Australia and 65 per cent of matters before the Family Court of Western Australia, involve allegations of family violence. As a result, responding to family violence has been described as 'core business of the federal family courts'.

House of Representatives Report, [1.6], citing Australian Institute of Family Studies, Evaluation of the 2006 Family Law Reforms, 2009, p. 314 and Monash University – Castan Centre for Human Rights Law (Castan Centre for Human Rights), Submission 57 to the House of Representatives Report, p. 2.

Of the matters that our national ABF legal practitioners manage, domestic violence has been claimed by the Mother in almost 100% of the cases (of those claims, almost 100% of those claims have not been tested in Court at anytime).

This figure is surely disproportionate to real world statistics and supports the notion that claims of domestic violence go hand-in-hand with adversarial family court cases.

5. (b) What is Domestic Violence?

While the anecdotal understanding of domestic violence is the committed acts of actual physical violence, the true definition of domestic violence is broad (and varies between jurisdictions). It can include much of the conduct that both parties might engage in during an acrimonious separation. Domestic Violence claims have a low evidentiary burden, and the court practically never applies consequences to demonstrably false claims.

We are of the belief that a combination of broad definition, low evidentiary burden, no consequences for false allegations and a financial incentive for making such claims we believe makes a mockery of the current justice system. This further becomes inequitable when it is realised that the domestic violence industry has a prominent, if not at all justified gender narrative, and the services and support available to women far exceed those available to men.

As a result, the system is immensely harmful to our society. The many letters, phone contacts and emails that this organisation has received from mums, dads and grandparents referring to the broken Court system is responsible for many lost lives because they become the victims of these unjust and discriminate laws which sent them to see no end to the tunnel and end their lives.

5. (c) Tiered definition of domestic violence

The definition of domestic violence in Australia varies between jurisdictions. The limited definition of domestic and family violence in the Family Law Act is not consistent with the broader definitions adopted by most state and territory jurisdictions that include psychological abuse, coercive and controlling behaviour, including the use of technology to stalk, harass, intimidate, abuse and control.

What is clear, is that not infrequently, the definition is expanding to include more behaviours. It now encompasses behaviours that range from criminal through to that which the general community would perceive as “bad”, but not uncommon in an acrimonious relationship breakdown, and often mutually committed.

https://www.dss.gov.au/sites/default/files/documents/05_2012/domestic_violence_laws_in_australia_-_june_2009.pdf

A reviewer of research in the area of “family violence” would quickly come to realise that data relating to such matters as prevalence and severity are difficult to capture unless that which is being measured has been carefully defined. Thus, as Hegarty and Roberts (1998) have noted, the prevalence of partner abuse in Australia has variously been estimated to be as low as 2% and as high as 28%, depending largely on the definitions used.

<https://www.dvrcv.org.au/sites/default/files/Whats-In-A-Name-Discussion-Paper-1998.pdf>

At the heart of such analyses of family violence are well-reported differences in findings from two types of studies. Those generally known as “family conflict studies” appear to paint a picture of violence that is largely situational and initiated by men and women in roughly equal proportions. By contrast, those generally known as “crime victimisation studies” paint a picture of escalating violence perpetrated overwhelmingly by men, primarily motivated by an obsessive need to control the partner and, usually, the children as well.

The difficulty arises in the Family Court System is that when domestic violence has been found, arising from any behaviours, the system is triggered: for instance the presumption of equal shared parental responsibility except in the case of family violence (Sect 61DA (2) (b) Family Law Act 1975).

To avoid this, the ABF proposes a more granular definition of domestic violence that categorises the behaviours into objective seriousness. This assessment could form part of the Urgent Domestic Violence Allegation Review Process that number 8 of our recommendations.

Consistent with these differential findings, Johnson (2005) has been developing a typology

of intimate partner violence that currently posits the existence of three major categories: (a) “intimate terrorism”; (b) “violent resistance”; and (c) “situational couple violence”. The first of these, in his view, is discontinuously related to the third, and the second is largely a reaction to the perpetration of violence.

<https://journals.sagepub.com/doi/10.1177/0192513X04270345>

According to Johnson (2005), “intimate terrorism” is strongly gendered in origin and is linked to questions of control associated with patriarchal assumptions and a patriarchal culture. In Johnson’s model, “violent resistance” is a typical response by the female partner to violent behaviour. As the name implies, Johnson sees “situational couple violence” as being characterised by a greater sense of reciprocity. He has suggested that it is not fundamentally gendered in its origins.

56% of “situational couple violence” was initiated by men. In a British sample, Graham-Kevan and Archer (2003) found figures of 87% and 45% respectively for these same dimensions.

<https://psycnet.apa.org/record/2003-06107-007>

In Johnson’s typology, “situational couple violence” is seen as qualitatively different from “intimate terrorism”. It generally involves fewer incidents of less severity that do not result in significant injury. It is not seen as part of a larger pattern of control and usually does not escalate. Indeed, Johnson and Ferraro (2000) claimed that it is more likely to de-escalate or stop altogether. Ver Steegh (2005) saw this category of violence as being consistent with the “conflict instigated violence”.

<https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1741-3737.2000.00948.x>
<https://www.ssrn.com/abstract=910270>

Johnson (2005) cited Archer’s (2000) meta-analysis of intimate partner violence in the United States, in which Archer found that intimate partner violence in agency samples was heavily male perpetrated, whereas in general samples it was largely gender-symmetric.

<https://www.ncbi.nlm.nih.gov/pubmed/10989615>

Holtzworth-Munroe and Stuart (1994), for example, claimed to have identified “family only” male perpetrators, whose violence is less severe and who exhibit little or no psychopathology. In their view, the violence emanates from stress, anger and poor relationship skills; these men generally have positive attitudes towards women. Holtzworth-Munroe and Stuart estimated that about 50% of male violence in families is in this category. Similarly, Leone, Johnson, Cohan, and Lloyd (2004) suggested that “situational couple violence” is the most common form of family violence.

<https://www.ncbi.nlm.nih.gov/pubmed/11142534>
<https://psycnet.apa.org/record/2004-15844-015>

The implications of adopting a discontinuous model of violence are profound. Johnson and Ferraro (2000) put it this way:

The modelling of the causes and consequences of partner violence will never be powerful as long as we aggregate behaviours as disparate as a “feminine” slap in the face, a terrorizing pattern of beatings accompanied by humiliating psychological abuse, an argument that escalates into a mutual

shoving match, or a homicide committed by a person who feels there is no other way to save her own life.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2562919/>

In 2005, Johnson was prepared to go further:

“It is no longer scientifically or ethically acceptable to speak of domestic violence without specifying loudly and clearly, the type of violence to which we refer”.

5. (d) The False Narrative

Those advocating gender based narratives of domestic violence have been quick to dismiss scrutiny of the industry. They are the same parties who throughout their literature conflate children’s interests with the Mother’s interests and when referring to the acts of men mention domestic violence in the same sentence as child abuse and sexual abuse.

At Victoria’s royal commission, the commissioner, Marcia Neave, asked pointed questions of Fergus and Renee Imbesi from VicHealth, a statutory authority that has played a leading role in promoting the gender inequality thesis. First, Neave asked: if domestic violence is at heart about gender inequality, and gender inequality has improved significantly in Australia in the past few decades, why has there not been a big reduction in violence against women?

If Scandinavian and Nordic countries in particular have good records on gender inequality, what is the evidence that there are lower incidences of family violence compared with Australia? (Nordic countries have rates of domestic violence consistently above the European average)

<https://www.washingtonpost.com/news/worldviews/wp/2016/06/10/the-best-countries-for-gender-equality-may-also-have-a-domestic-violence-problem/>

https://www.researchgate.net/publication/299737791_Intimate_partner_violence_against_women_and_the_Nordic_paradox

Is too much effort going into gender equality at the expense of the causes of violence more generally, whether against men or women, and how we might reduce it?

A paper by Parkinson and Knox (2018), point to flaws in the legislation that permit courts to allow disputes in which there are no credibly serious risks, to move directly into adversarial negotiations and litigation.

<https://onlinelibrary.wiley.com/doi/full/10.1002/anzf.1351>

This is an important consideration, as a lack of focus on the perpetrator as a parent who risks being denied access to their child only makes the situation worse. There should always be hope of rehabilitation and relationship recovery. The kind of attention that is paid to both victims and perpetrators matters. The asymmetry in attention and resourcing is resulting in a backlash - life becomes even less safe for victims and their children, and neither victims nor perpetrators are getting the kind of interventions they need.

Dr Emma Partridge, who spent a year researching and writing the Our Watch framework, says there is little evidence specific actions by governments have reduced the prevalence rates of domestic violence.

Prof Peter Miller, principal research fellow and co-director of the violence prevention group at Deakin University. But Miller argues there have been significant changes in attitudes in Australia and other developed nations, both legislatively and culturally. The feminist dominance of the debate now is “deeply flawed”, he says, if the goal is to prevent the tiny number of men who do commit violence from a gendered perspective from doing so.

<https://www.theguardian.com/society/2016/feb/19/australians-are-being-told-that-gender-inequality-is-the-root-cause-of-domestic-violence-but-is-it>

He says the debate now assumes domestic violence is completely different from other forms of violence, whereas they have much in common. And, he says, the gender inequality thesis ignores that women are perpetrators in a substantial minority of cases, and that there is domestic violence between same-sex couples which has nothing to do with gender inequality.

“The decision for the very small percentage of people to step over that line to strike somebody else is exceptionally complicated and it doesn’t come down to whether their attitudes towards men or women are inappropriate,” he says

“In other countries there are different discourses that are better informed by evidence – it’s not simply the gender inequality card that’s played, however important that is.”

Miller is finishing a study into the role of alcohol and drugs in family violence. He knows that views like his are unpopular and believes research is too dominated by those who take a strong feminist approach to violence against women.

<http://classic.austlii.edu.au/au/journals/CICrimJust/2018/13.html>

Thea Brown has also had difficulties researching domestic violence. Brown has been a professor of social work at Monash University for more than 25 years and is finishing off a major study into parents who kill their children. And so, when she started a research project in 2012 into domestic violence and whether men’s behaviour change programs actually changed men’s violent behaviour, she was astonished at the “harassment” she says she received.

<https://www.theguardian.com/society/2016/feb/19/australians-are-being-told-that-gender-inequality-is-the-root-cause-of-domestic-violence-but-is-it>

Brown told Victoria’s royal commission into family violence last year that she had never experienced anything like it in all her years of research. She says the feminist framing of domestic violence among some groups is so strong they are nervous about academic research in case their approach is shown to be flawed. “There’s a very strong ideology in some domestic violence services and it becomes an anti-research ideology because research is feared in case it threatens the ideological basis of the program,” Brown told the commission. “It is a problem when ideology rather than evidence forms a basis of discussion and has the impact of stifling discussion.”

<https://www.psychology.org.au/getmedia/210e21e9-ceb8-452c-b111-2319dd247885/Submission-to-victorian-royal-commission-family-violence.pdf>

To the commission and in an interview with Guardian Australia, Brown said that No to Violence, the peak Victorian body whose members run men's behaviour programs, advised their members not to cooperate with Brown's research. That made it much harder for Brown to approach men to participate, and the research was delayed for 12 months.

There are others less confident and equally frustrated that the dominance of the gender equality way of looking at domestic violence is pushing out other significant factors that, they argue, could make a big difference to reducing violence against women if they weren't so sidelined.

For instance, reports of domestic violence to police, in common with all forms of violence, is concentrated in disadvantaged areas, particularly in the regions and in remote Indigenous communities. The suggestion that domestic violence is experienced by all women in all communities is of course true, but there are pockets where it is far more pronounced.

In a study of domestic assaults reported to NSW police from 2001 to 2010, 19 out of the top 20 local government areas were rural or regional areas and the top five were all remote – Bourke, Walgett, Moree Plains, Coonamble and Wentworth. Four of the five have Aboriginal populations whose experience of violence of all kinds is far higher than that of non-Indigenous people.

<https://www.bocsar.nsw.gov.au/Documents/BB/bb61.pdf>

Alcohol's link to violence of all kinds is undeniable, including violence in the home. It is involved in about half of domestic violence incidents attended by police, and violence incidents involving alcohol tend to be more frequent and severe. Almost 45% of intimate partner homicides are alcohol-related and that rises to 87% of Indigenous intimate partner homicides, which means alcohol had been consumed by the perpetrator, victim or both.

Michael Thorn says alcohol can be considered a "cause" of violence in a public health sense but he avoids the word because it's "like a red rag to a bull" to domestic violence groups. Yet, he says, alcohol is the "low-hanging fruit" that could reduce violence now, without having to wait for generational change that may or may not happen.

<http://drinktank.org.au/2015/03/hh-michael-thorn/>

"One of the key messages around this is that when you take alcohol out of the picture for a very small group of the population who are obviously indicated as problem people, you get this huge reduction in domestic violence. We are a bit crazy not to have tried it already."

5. (e) The False Narrative in Canada: the same issues

UBC psychology professor Don Dutton, following the evidence, has written hundreds of peer-reviewed articles, more than eight books and textbooks, won dozens of grants and served as an expert witness in scores of legal cases. Dutton explains his research is readily received in many places outside Canada. Scholars around the world have formally cited his research more than 7,000 times. The author of *Rethinking Domestic Violence* and *The Domestic Assault of Women* (both published by UBC Press) has already spoken to the World Bank, the University of Washington law school and many other institutions.

Canada is a place like many other western countries, he says, where gender stereotypes remain unusually strong. Few seem able to hear that women can be as violent as men in domestic disputes. As early as the 1990s, Dutton realized many husbands were telling the truth when they said, “My wife is violent, too.” American researchers were discovering the same reality. Daniel Whittaker has found the most common form of domestic violence is mutual: Up to 75 per cent of victimized women were also aggressors.

Dutton outlines how most domestic disputes involve “bilateral,” or mutual, violence. “Couples get into screaming matches that get physical,” Dutton says. “They are under stress and insult each other. And they just don’t know how to stop.” The second most-common form of intimate-partner violence is perpetrated by females, according to Whittaker and others. The third most-common form, known as wife battering, is perpetrated by males.

Weapons, despite being rare in domestic violence, are gender-neutral, including scissors and boiling water.

Why is such data so little known in Canada? A key factor, says Dutton, is technical, at least on the surface. Statistics Canada’s widely used domestic-violence data is based solely on criminal reports — and women make the vast majority of complaints to police. Canadian researchers don’t take the extra steps that American and European researchers do: They don’t ask each partner if they contributed to the violence.

When U.S. scholar Deborah Capaldi has asked such questions, she’s found that in 87 per cent of the cases in which the man was arrested, the woman admitted she had shown prior aggression.

In his presentations, Dutton also cites a study by Denise Hines, who followed 302 men who called a New Hampshire hotline that had been established for men involved in domestic violence (a rare public service). In three out of four cases the men had been injured. But when those same men sought follow-up help from another domestic-violence program, 64 per cent were told they were the “real batterer.”

In one case, a husband called police after his drunken wife attacked him. The police found the man with a knife sticking out of his body. They still arrested him.

Most police officers that Dutton knows, male and female, are already aware that gender stereotypes about domestic disputes don’t hold up. But he says police feel their hands are tied by public perceptions about violence against women.

The problem, Boyanowsky believes, is that Canada is home to more liberal, “well-intentioned” people than most countries. “They follow their unanalyzed prejudices based on what they think is the right thing to do — rather than looking at the data and acting appropriately for harm reduction.”

Describing Dutton as brilliant, Boyanowsky said the UBC psychology professor: “challenged the paradigm that men are the perpetrators and women are the victims in almost all cases. He follows the evidence. He’s a scientist.”

SFU professor emerita of psychology, Kim Bartholomew, also admires Dutton. “He’s been courageous in maintaining his intellectual integrity in a field in which ideology is often more influential than data, and in which there are strong pressures against challenging the ideological view.”

For his part, Dutton believes Canadian politicians, from both the left and right, have fallen into a gender trap. Liberal-left politicians and activists have turned domestic violence into solely a women's rights issue, often defining the entire category as "violence against women."

Dutton wants policy-makers, to overcome their stereotypes and recognize men and women are similarly violent in relationships. If public officials understood the realities, Dutton believes they would realize the harm of domestic violence could be reduced by courts mandating both partners take part in couples therapy.

5. (f) The False Model: Duluth, and a replacement

Most of the prominent domestic violence charities refer to the Duluth Model. We believe that it fails to address root psychological or emotional causes of abuse, in addition to completely neglecting male victims and female perpetrators of abuse. A purely gender based model where only males are seen perpetrators has little explanatory power. It disregards anything from one third to one half of victims, and all victims in same sex relationships.

*Pizzy, Erin (3 March 2015). "Duluth Model buries key facts on domestic violence". *Honest Ribbon*. Retrieved 17 April 2018 (About Erin Pizze)*

Erin Pizze is founder of Chiswick Womens' Aid, the first ever refuge in the world for victims of domestic violence. She is a lecturer and advocate, and has authored books on domestic abuse, including the seminal "Prone to Violence." Her latest effort is her autobiography, titled "This Way to the Revolution." She is also an Editor-at-Large and adviser for A Voice for Men on domestic violence policy.

"Over the last ten years more and more academic studies published their findings which prove that domestic violence is almost equal amongst men and women and therefore the Duluth Model is defunct. Its only remaining value is as a funding source for the feminist movement. Because the feminist movement has had over forty years to create a stranglehold on any information coming out of academia, it has made it very difficult for people seeking valid information to work their way through the reams of dishonest feminist publications."

I believe that the Duluth Model is unethical coming as it does from the now thoroughly discredited idea that it is only men who are violent in intimate partner relationships. I also believe it is probably illegal"

Ellen Pence herself "By determining that the need or desire for power was the motivating force behind battering, we created a conceptual framework that, in fact, did not fit the lived experience of many of the men and women we were working with. The DAIP staff [...] remained undaunted by the difference in our theory and the actual experiences of those we were working with [...] It was the cases themselves that created the chink in each of our theoretical suits of armour. Speaking for myself, I found that many of the men I interviewed did not seem to articulate a desire for power over their partner. Although I relentlessly took every opportunity to point out to men in the groups that they were so motivated and merely in denial, the fact that few men ever articulated such a desire went unnoticed by me and many of my co-workers. Eventually, we realized that we were finding what we had already predetermined to find."

Pence, Ellen (1999). "Some Thoughts on Philosophy". In Shepherd, Melanie; Pence, Ellen (eds.). *Coordinating Community Responses to Domestic Violence: Lessons from Duluth and Beyond*. Thousand Oaks, CA.: Sage. pp. 29–30.

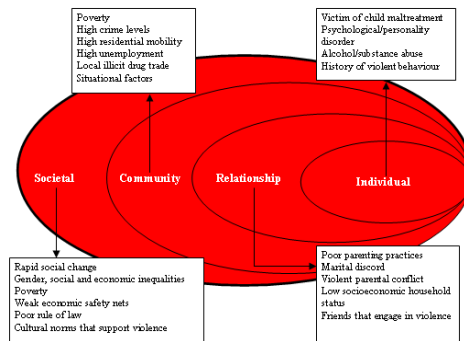
Erin Pizzezy the founder of Chiswick Women's Aid, the first ever refuge in the world for victims of domestic violence notes in an interview in *The Red Pill* that men and women are equally capable of domestic violence, though over time domestic abuse shelters have shifted to be almost exclusively for battered women. [22]

Cassie Jaye (7 October 2016). The Red Pill (film)|format=requires |url= (help). Gravitas Ventures.

The ABF supports the revision of the gendered based Duluth model, as a program to reduce violence.

We endorse and revision of the Duluth model to incorporate the socio-ecological model as used by the World Health Organisation. The ecological framework is based on evidence that no single factor can explain why some people or groups are at higher risk of interpersonal violence, while others are more protected from it. This framework views interpersonal violence as the outcome of interaction among many factors at four levels—the individual, the relationship, the community, and the societal.

The ecological framework: examples of risk factors at each level



1. At the **individual level**, personal history and biological factors influence how individuals behave and increase their likelihood of becoming a victim or a perpetrator of violence. Among these factors are being a victim of child maltreatment, psychological or personality disorders, alcohol and/or substance abuse and a history of behaving aggressively or having experienced abuse.
2. Personal **relationships** such as family, friends, intimate partners and peers may influence the risks of becoming a victim or perpetrator of violence. For example, having violent friends may influence whether a young person engages in or becomes a victim of violence.
3. **Community** contexts in which social relationships occur, such as schools, neighbourhoods and workplaces, also influence violence. Risk factors here may include the level of unemployment, population density, mobility and the existence of a local drug or gun trade.
4. **Societal** factors influence whether violence is encouraged or inhibited. These include economic and social policies that maintain socioeconomic inequalities between people, the availability of weapons, and social and cultural norms such as those around male dominance over women, parental dominance over children and cultural norms that endorse violence as an acceptable method to resolve conflicts.

<https://www.who.int/violenceprevention/approach/ecology/en/>

We consider that any government department or organisation that is accredited by a domestic violence charity that endorses the discredited and false Duluth model, is a sexist and discriminatory organisation. Their policies, decisions, processes and actions will be effected by a gender based bias, that will underpin and assumption that domestic violence is committed by men and that women are victims. These organisations will likely fail to provide adequate services to men, and may be a danger to men in relation to their rights, liberty, mental health and lives.

These organisations also represent a grave risk to the children of men, because it is possible that their best interests and rights to have meaningful relationships with their fathers and paternal families may be gravely impacted by the powers of these departments.

These criticism and risks apply equally to LGBTIQ families.

All such accreditations should be abolished and replaced with gender neutral training and accreditation.

5. (g) The perpetrators of domestic violence

It is frequently stated that while “situational couple violence” (not motivated by a desire to control the life of the other person) is perpetrated almost equally by men and women, “coercive control” (a pattern of behaviour which seeks to take away the victim’s liberty or freedom, to strip away their sense of self) is predominantly or almost exclusively perpetrated by men.

Since the inception of our 1800 crisis hotline, we have been recording statistics through the administration of a survey as part of the initial screening process.

The initials findings of our research data bases are alarming.

- The dataset derives from the crisis hotline which has been in operation for 2 years (100 new interactions each week, with 300 follow ups each week)
- The research conducted focused on a sample of over 1000 Fathers, who used the crisis hotline service

Callers answered survey questions on topics such as Family Court matters, child access, domestic violence experiences and accusations. The, as yet unreleased data set, indicates:

- a. 53.6% of males had been physically assaulted by the previous female partner, up to 83.8% being subjected to other forms of abuse and domestic violence
- b. 70.4% of such domestic violence reported to police, resulted in no police action (of those that did report to police, their levels of suicidal ideation was higher)
- c. 90% of men that reported being victims of domestic violence to police received false allegations of domestic violence in return

In the Judicial Commission NSW survey of Magistrates August 1999, the Magistrate were asked for their opinion on the causes of domestic violence:

“relationship pressures play a significant role in domestic violence and are exacerbated by poverty, alcohol and drug problems. There is often a history of growing up in violence situations”

“Normal stress of life come to the fore in domestic violence”

“It is personal and mostly results from other pressures within a relationship, for example, poverty, drug/alcohol abuse”

“There is in the majority of cases, blame on both sides”

“It is undeniable that a successful relationship requires the commitment of both parties. It is also undeniable that in many domestic and personal violence matters it is impossible to conclude that either party is blameless in bringing about the confrontation which caused the problem”

“Not all complaints are one-sided. From time to time the complainant too has demonstrated violence or has otherwise been provocative. There is often fault on both sides”

“sometimes both parties act totally unreasonably”

“Women cause a lot of problems by nagging, bitching and emotionally hurting men. Men cannot bitch back, for hormonal reasons, and often no recourse but violence. The widespread notion that men are inarticulate is an urban myth propagated by feminists – anger and hurt is what hampers self- expression, not inability to formulate simple sentences”

Only 1/6 of the magistrates surveyed identified power/control (assertion of power and gender imbalance) as a cause of domestic violence.

Recent research from the UK also challenges the male control/gender imbalance narrative. In 2014 Elizabeth Bates from the University of Cumbria, along with Nicola Graham-Kevan and John Archer from the University of Central Lancashire published their study titled Testing predictions from the male control theory of men’s partner violence

Bates, E. A., Graham-Kevan, N. and Archer, J. (2014), . *Aggr.Behav.*, 40: 42–55. doi:10.1002/ab.21499.

The aim of this study was to test predictions from the male control theory of Intimate Partner Violence (IPV) and Johnson’s (1995) typology. A student sample (N = 1104) reported on their use of physical aggression and controlling behaviour, to partners and to same-sex non-intimates. Contrary to the male control theory, women were found to be more physically aggressive to their partners than men were, and the reverse pattern was found for aggression to same-sex non-intimates. Furthermore, there were no substantial sex differences in controlling behaviour, which significantly predicted physical aggression in both sexes. IPV was found to be associated with physical aggression to same-sex non-intimates, thereby demonstrating a link with aggression outside the family.

Using Johnson’s (1995) typology, women were more likely than men to be classed as “intimate terrorists”, which was counter to earlier findings. Overall, these results do not support the male control theory of IPV. Instead, they fit the view that IPV does not have a special aetiology, and is better studied within the context of other forms of aggression.

https://www.researchgate.net/publication/237230405_Using_Johnson's_domestic_violence_typology_to_classify_men_and_women_in_a_non-selected_sample

In light of this evidence, we would encourage the inquiry to consider that perpetrators who might be seeking to extend their coercive controlling behaviour by declaring themselves as victims, may be either male or female.

It is critically important that the Committee also understand that while 'coercive control' is undeniably the most serious form of family violence, 'couple violence' is by no means minor or trivial.

Even feminist scholar Michael Johnson, one of the best known scholars of typologies of violence, acknowledges that women's violence is a serious social issue which must be addressed:

Johnson, M. (2011) . Aggression and Violent Behaviour, Volume 16, Issue 4, July/August 2011. pp 289 - 296.

- "women both initiate violence and participate in mutual violence and that, particularly in teenage and young adult samples, women perpetrate violence against their partners more frequently than do the men"
- "repeat, severe violence against a non-violent intimate is symmetrical by gender"
- "I and others have always noted that situational couple violence:
 - (a) is far and away the most common form of intimate partner violence,
 - (b) is perpetrated about equally by men and women, and
 - (c) can be extremely consequential."

Contrary to popular opinion, women instigate domestic violence more frequently than men. Indeed, research is finding that women use far more emotionally controlling or bullying behaviour – coercive control – than men. It is this that can lay the groundwork for physical abuse in a domestic relationship.

In 2014 Dr Elizabeth Bates, also found that women are more likely than men to be aggressive and controlling towards their partners.

This has a significant impact on the physical and mental health of emotionally abused men. The UK Crime Survey found that 11 per cent of British men abused by female partners try to kill themselves, compared with only 7.2 per cent of women who are abused by male partners.

Research has also found that attacks on a man's self-worth may be especially debilitating. One of the victims said: "If I told her to stop hurting me, she'd say: 'What kind of man are you?' She'd spit in my face and say repeatedly that I was a spineless, pathetic excuse for a man".

https://www.biscmi.org/wp-content/uploads/2015/05/Dutton_CJS_Book_Review_CJS-Dekeseredy.pdf

In the US, the Centers for Disease Control and Prevention released data from its National Intimate Partner and Sexual Violence Survey, estimates based on more than 18,000 telephone-survey responses in the United States — roughly 5,365,000 men had been victims of intimate partner physical violence in the previous 12 months, compared with 4,741,000 women. By the study's definition, physical violence includes slapping, pushing, and shoving.

More severe threats like being beaten, burned, choked, kicked, slammed with a heavy object, or hit with a fist were also tracked. Roughly 40 percent of the victims of severe physical violence were men. The CDC repeated the survey in 2011, the results of which were published in 2014, and found almost identical numbers — with the percentage of male severe physical violence victims slightly rising. “Reports are also showing a decline of the number of women and an increase in the number of men reporting” abuse, says counselor and psychologist Karla Ivankovich, PhD, an adjunct professor of psychology at the University of Illinois, Springfield.

https://www.cdc.gov/mmwr/preview/mmwrhtml/ss6308a1.htm?s_cid=ss6308a1_e#Table6

A US researcher has also found that women’s initiation of domestic violence is a predictor of risk to them:

https://www.huffpost.com/entry/researcher-says-womens-in_b_222746

Domestic violence is apparently far more frequent in lesbian relationships than between husband and wife. In the early nineties research workers were studying relationships between same sex couples. They studied 1,099 lesbians and discovered that 52% of the respondents had been abused by a female partner or lover.

Lie and Gentlewarrior: Intimate Violence in Lesbian Relationships, Journal of Social Science Research, 15, 41-59.

These findings completely debunk the feminist narrative about domestic violence. It clearly reveals that it is entirely insufficient to explain the complexities of domestic life, including the disturbing occurrence of battering among lesbians.

5. (h) Is women’s use of violence primarily in self-defence?

It is suggested that when women use violence against their partner, it is primarily defensive in nature. There is much contrary evidence to this notion.

The most recent Australian population survey on young people and domestic violence is Young People and Domestic Violence – national research on young people’s attitudes to and experiences of domestic violence. The national research involved a quantitative survey of 5,000 young Australians aged between 12 and 20, and in-depth discussions with special groups, namely homeless youth, victims of domestic violence, and youth from different ethnic backgrounds.

(YPADV). Published in 2001 by the National Crime Prevention division of the Commonwealth Attorney General’s Department and the Department of Education, Training and Youth Affairs

The YPADV study found that very little of the physical domestic violence used by either men or women was in self defence only (this evidence is provided by children and young people watching their parents’ violence), and children witnessed equal amounts of violence between their parents.

Male to female violence in the study

The study also found that the items pertaining to physical violence, that is, thrown something at, tried to hit, hit in defence, hit although not being hit, threatened with knife or gun, and used knife or gun were analysed as one sub classification described as physical domestic violence. Using this definition, it was found that 23.4 per cent of respondents reported at least one act of physical domestic violence against their mothers/stepmothers. Very little of this was in self defence only;

when hit in defence (i.e. 1.3% hit her because he was being hit was removed), the proportion reporting physical domestic violence was 22.1 per cent.

Female to male violence in the study

As with male to female violence, the items pertaining to physical violence were analysed as 'physical domestic violence' sub classification. Compared to the 23.4 per cent of respondents who reported at least one act of physical domestic violence against their mothers/stepmothers, 22.1 per cent reported at least one act of physical domestic violence against their fathers/stepfathers. As with male to female violence, very little was only in self defence; the percentage reporting physical domestic violence, excluding 1.3% hitting because being hit was 21.2 per cent.

<https://catalogue.nla.gov.au/Record/2699959>

What does the international research show when it comes to the use of violence in self-defence?

The (PASK) is the world's largest domestic violence research database – 2,657 pages – with summaries of 1,700 peer-reviewed studies.

<https://domesticviolenceresearch.org/>

The purpose of PASK is to bring together in a rigorously evidence-based, transparent and methodical manner existing knowledge about partner abuse with reliable, up-to-date research that can easily be accessed both by researchers and the general public. In March, 2010, the Senior Editor of the Partner Abuse journal recruited family violence scholars from the United States, Canada and the UK to conduct an extensive and thorough review of the empirical literature, in 17 broad topic areas.

Researchers were asked to conduct a formal search for published, peer-reviewed studies through standard, widely used search programs, and then catalogue and summarise all known research studies relevant to each major topic and its sub-topics. In the interest of thoroughness and transparency, the researchers agreed to summarise all quantitative studies published in peer-reviewed journals after 1990, as well as any major studies published prior to that time, and to clearly specify exclusion criteria. Included studies are organised in extended tables, each table containing summaries of studies relevant to its particular sub-topic.

The PASK study found the following when it comes to the motivation for using intimate partner violence (IPV):

- Male and female IPV perpetrated from similar motives – primarily to get back at a partner for emotionally hurting them, because of stress or jealousy, to express anger and other feelings that they could not put into words or communicate, and to get their partner's attention.
- Eight studies directly compared men and women in the power/control motive and subjected their findings to statistical analyses. Three reported no significant gender differences and one had mixed findings. One paper found that women were more motivated to perpetrate violence as a result of power/control than were men, and three found that men were more motivated; however, gender differences were weak.
- Of the ten papers containing gender-specific statistical analyses, five indicated that women were significantly more likely to report self-defence as a motive for perpetration than men. Four papers did not find statistically significant gender differences, and one paper reported that men were more likely to report this motive than women. Authors point out that it might be

particularly difficult for highly masculine males to admit to perpetrating violence in self defence, as this admission implies vulnerability.

- Self-defence was endorsed in most samples by only a minority of respondents, male and female. For non-perpetrator samples, the rates of self-defence reported by men ranged from 0% to 21%, and for women the range was 5% to 35%. The highest rates of reported self-defence motives (50% for men, 65.4% for women) came from samples of perpetrators, who may have reasons to overestimate this motive.
- None of the studies reported that anger/retaliation was significantly more of a motive for men than women's violence; instead, two papers indicated that anger was more likely to be a motive for women's violence as compared to men.
- Jealousy/partner cheating seems to be a motive to perpetrate violence for both men and women.

In an Australian study, members of 68 families with allegedly violent wives were studied to explore the nature of women's violence at home and to ascertain whether wives assault their spouses in self-defence. Accounts of children and the wives' mothers were contrasted with husbands' and wives' accounts to ensure a high degree of accuracy of the assessment of the problem and to test the validity of the spouses' accounts. Qualitative analysis revealed that the credibility of the wives' accounts of violence was highly questionable and a justification of self-defence for female-to-male violence was unfounded in a majority of cases.

A 2004 qualitative Australian study by Sotirios Sarantakos from Charles Sturt University titled *Deconstructing Self-Defence in Wife-to-Husband Violence* is also particularly illustrative¹¹. Sarantakos, S. (2004), "The Journal of Men's Studies 12, no. 3 (2004)

The results of the study revealed that neither the nature of the behaviour of the spouses nor the structure of the family context of violence, nor the answers to direct questions support the defence of self-defence. In most cases, wives assault their husbands physically and otherwise not to defend themselves but to achieve other goals, for example, to settle a conflict or to punish their husbands.

Simply, (a) wives assault their husbands when there is no "impending danger" for them or the children; (b) they hit husbands who have not been violent against them in the past; (c) they cause husbands to live in fear of their lives and of the lives of their children; (d) not wives but husbands leave the relationship, with the wives attempting to force husbands to return home; and (e) the majority of abusive wives admit that they did not hit their husbands in self-defence.

Equally important is the finding that women's allegations of DV were proven to be false. In most cases, the initial allegations of DV were modified considerably by them during the course of the study, particularly when they were faced with the accounts of their children and mothers, admitting in the end that they were neither victims of violence nor acting in self-defence. It is worth noting that these allegations were used—and are still used—by the authorities to construct DV and to act upon it.

In the United States a study of 302 men who sustained severe partner violence revealed that: "...over half of the men reported that their women partners made false accusations against them, which included that he hit or beat her, that a restraining order was filed against him under false pretences, or that he physically and/or sexually abused the children. These findings are congruent

with a previous study that showed that approximately 50% of men victims of IPV stated that their partners gave false information to the court system in order to gain custody of the children or to obtain a restraining order”.

Hines, D. & Douglas, E. (2010), ”, Partner Abuse. 2010 Jan 1; 1(3): 286–313.

Reducing women’s use of violence will reduce women’s rates of injury from violence

A woman’s perpetration of intimate partner violence is the strongest predictor of her being a victim.

While this may sound like ‘victim-blaming’, it is simply stating the research evidence finding that women who perpetrate violence suffer greater injuries than those who do not. If a woman hits her partner who then hits her back and injures her, both persons are responsible for their own use of violence.

As American researcher Professor Linda Kelly puts it: “Put in blunt utilitarian terms, female violence must be addressed in order to protect women as a man provoked by a violent female has the potential to inflict greater injury”

Kelly, L. (2002). Disabusing the definition of domestic abuse: How women batter men and the role of the feminist state. Florida State

A large metaanalysis by Sandra M. Stith and colleagues found that a woman’s perpetration of violence was the strongest predictor of her being a victim of partner violence:

"Victims who hit their partners are at greater risk of further victimisation. In fact, Shields and Hanneke found that severe violence was more likely when a wife has been physically aggressive with her partner. Furthermore, Feld and Straus found that when a wife had severely assaulted her husband but he had not physically assaulted her, there was a one in seven chance that he would severely abuse her in the course of the next year. Clinical services to victims of abuse, whether male or female, have focused on empowering the victim but have not always addressed methods for helping victims to manage their own anger. Results from this metaanalysis highlight the need for clinicians to address this issue with victims."

Stith, S.M., Smith, D.B., Penn, C.E., Ward, D.B. & Tritt, D. (2003). Intimate partner physical abuse perpetration and victimization risk

Another rationale for reducing women’s use of violence is offered by the *Australian Young People and Domestic Violence* study. The survey found that “Witnessing parental domestic violence was the strongest predictor of subsequent perpetration by young people. The best predictor of perpetration was witnessing certain types of female to male violence”. In other words, to break the cycle of violence, women’s violence must be addressed.

In order to reduce women’s perpetration of intimate partner violence:

- Clinicians working with female victims (and male victims for that matter) need to address the victims’ own use of violence and abuse in all its forms, and refer them to anger management or other services where appropriate
- Domestic violence and respectful relationship public education campaigns must be run in order to give female-male violence the same stigma and condemnation as male-female violence currently enjoys.

The Young People and Domestic Violence study found that while males hitting females was seen by virtually all young people surveyed to be unacceptable, it appeared to be quite acceptable for a girl to hit a boy.

Are males primarily victims of family violence from other males?

It is often suggested that while male victims of family violence certainly exist, much of the time the perpetrator is another male (a same-sex partner or another family member), not a female.

The 2016 ABS Personal Safety Survey (PSS) sheds light on this claim. The PSS found the majority of men that experienced intimate partner violence experienced it from a female perpetrator (93.6%). The remainder were in same-sex relationships with male perpetrators.

Australian Bureau of Statistics (2017). Personal Safety Survey, Australia, 2016 (Cat. No. 4906.0). Canberra: Australian Bureau of Statistics. Table 5.1 VIOLENCE IN THE LAST 12 MONTHS, Type of violence by relationship to and sex of perpetrator, Estimate. 106,600 males in 2016 experienced violence from a female intimate partner during the last 12 months and 113,900 males experienced violence from all intimate partners during the last 12 months.

5. (i) Barriers to male victims disclosing their abuse

The evidence demonstrates that the process of family separation has negative impacts upon the health, safety and wellbeing of children and families. This is evidenced by the increase in experiences of emotional abuse post-separation, with fathers experiencing the most severe impacts in terms of control and coercion.

Children are just as likely to report seeing Mum hit Dad as Dad hitting Mum, and the most common and damaging scenario is mutual (or reciprocal) couple violence (Mum and Dad hitting each other). The evidence is clear that women's use of relationship violence is not primarily in self-defence, and that male and female perpetrators alike can use the claim of self-defence to excuse their use of violence. Most male victims of family violence experience it from female perpetrators. The most severe form of family violence - coercive control - is not exclusively a male domain, but is also used by female perpetrators.

Male victims face many barriers to disclosing their abuse, and the policies of many government agencies including the family court can re-victimise male victims by presuming they are actually perpetrators.

Men are 2 to 3 times more likely than women to have never told anybody about experiencing partner violence. 54.1% of males who have experienced current partner violence have never told anybody about it, along with 20.9% of males who have experienced previous partner violence.

Australian Bureau of Statistics (2013), Personal Safety Survey, Australia, 2012, cat no 4906.0, ABS, Canberra. Table 23 EXPERIENCE OF PARTNER VIOLENCE SINCE THE AGE OF 15, Whether ever told anyone about partner violence. 54.1% of males and 25.6% of females

Men are also around 50% more likely than women to have never sought advice or support about experiencing partner violence. 68.1% of males who have experienced current partner violence have never sought advice or support, along with 59.2% of males who have experienced previous partner violence.(Table 17.1 EXPERIENCE OF CURRENT PARTNER VIOLENCE SINCE AGE 15, By sex of respondent), 102,400 males in 2016 did not seek advice or support after incident of violence by a

current partner, while 150,300 males had experienced violence by a current partner since the age of 15. Table 18.1 EXPERIENCE OF PREVIOUS PARTNER VIOLENCE SINCE AGE 15, By sex of respondent), Estimate. 235,300 males in 2016 did not seek advice or support after incident of violence by a previous partner, while 397,300 males had experienced violence by a previous partner since the age of 15.

Australian Bureau of Statistics (2017). Personal Safety Survey, Australia, 2016 (Cat. No. 4906.0). Canberra: Australian Bureau of Statistics.

Many barriers to male victims disclosing their abuse are created or amplified by the lack of public acknowledgement that males can also be victims of family violence, the lack of appropriate services for male victims and their children, and the lack of appropriate help available for male victims from existing services. Such barriers include not knowing where to seek help, not knowing how to seek help, feeling there is nowhere to escape to, feeling they won't be believed or understood, feeling that their experiences would be minimised or they would be blamed for the violence and/or abuse, feeling that services would be unable to offer them appropriate help, fear that they would be falsely arrested because of their gender (and their children left unprotected from the perpetrator).

If the majority of male victims have never sought advice or support about experiencing domestic violence, it is no wonder they have trouble providing evidence to the family court of their partner's violence and abuse, and are often labelled a perpetrator as a result.

However, men do make up a significant percentage of victims of family violence overall, can experience severe and ongoing violence and abuse (even domestic homicide, where one male is killed every ten days on average), and there are very few resources or services available to support these men.

See and Tilbrook, E, Allan, A, and Dear, G (2010). Intimate Partner Abuse of Men. East Perth: Men's Advisory Network, May 26, 2010.

The ABF survey of 1000 Fathers indicated that there was no meaningful difference between men who reported as being victims of domestic violence and those they had not in relation to their gaining access to their children.

ABF Survey of 1000 Fathers Appendix A

5. (j) Lack of support services for male victims and their children

What support services are available in Australia for male victims and their children? Some generic (i.e. not male-specific or male-friendly) support is certainly available but such services are often unaware of the unique issues faced by male victims of family violence and are therefore unable to offer effective and appropriate help. Some generic – and even specialist male – services do not believe male victims, minimise their experiences or even blame them for the abuse. Another issue is that while individual workers within generic services might be aware of the issues facing male victims, they often face workplace cultures and systems that aren't supportive.

While it is undeniable that some female victims lack access to the range of services required to adequately meet their needs, male victims are still denied access to the vast majority of family violence services in Australia. Despite males making up approximately one third of victims of family

violence overall in the Australian community, there are far fewer support services available to male victims and their children compared to female victims.

Thankfully, family violence legislation across Australia is gender-neutral. However only men are discriminated against in policy and service provision.

Government-funded services are often suspicious of ‘male perpetrators claiming to be victims’.

Health services screen women, but not men, for family violence. Service providers adopt the Family Violence Multi-Agency Risk Assessment and Management Framework (MARAM Framework), stating that heterosexual males – and only heterosexual males - who present as victims of intimate partner violence are likely to actually be perpetrators.

The Victorian Government’s Family Violence Risk Assessment and Risk Management Framework and Practice Guides advise service providers that, “...in all circumstances where a man is initially assessed as or claiming to be a victim of family violence in the context of a heterosexual relationship, you should refer him to a men’s family violence service for comprehensive assessment or to the Victims of Crime Helpline. His female (ex)partner must always be referred to a women’s family violence service for assessment, irrespective of whether she is thought to be the victim or aggressor...”

Victorian Government (2012). Melbourne: Victorian Government, Department of Human Services, p41.

<https://www.vic.gov.au/family-violence-multi-agency-risk-assessment-and-management>

The Judicial College of Victoria’s Family Violence Bench Book advises members of the judiciary that, “The research evidence and experience of family violence professionals unambiguously demonstrates that relatively few men in heterosexual relationships are solely victims of intimate partner violence. The majority of women who use some form of violence towards their partner have been subjected to (worse) violence by that man before, or on the same occasion. Often, men who are genuinely victims of family violence experience the violence from a same sex partner, carer or a male relative. Men who are the principle users of family violence often try to present as a victim or the victim of violence. Sometimes they succeed in convincing themselves, police and others.”

Judicial College of Victoria (2014). Family Violence Bench Book. Melbourne: Judicial College of Victoria.

<http://www.judicialcollege.vic.edu.au/eManuals/FVBBWeb/index.htm#34578.htm>

Safe rooms at courthouses in Queensland are open to female victims and female perpetrators of family violence, while no such support is offered to male victims. This is an appalling, unjust state of affairs that denies basic human rights to half of Australia’s citizens on the basis of their gender.

Health services across Australia have in place domestic violence screening tools (see Appendix A) that are used on all women aged 16 and over to screen for domestic violence. No men are screened for domestic violence.

For those who argue this discrimination is appropriate because the majority of victims of family violence are women, our response would be that we do not discriminate in this way on any other issue. We don’t deny services to suicidal women because more men kill themselves, or deny

workplace health and safety programs to women because more men die in the workplace. We have the capacity to support all victims of family violence, whether male or female, young or old, gay or straight, rich or poor, whatever their religion or cultural background, and wherever they live.

This rationale is never presented when talking about services for any other sub-population. For example, LGBTQI or Aboriginal and Torres Strait victims of family violence aren't ignored because they make up a small minority of victims. To the contrary: there are specialist services available for these sub-groups precisely because they are in the minority and need services tailored to their specific needs and circumstances. The same is true of male victims of family violence. It doesn't matter whether males make up 5 per cent, 15 per cent, 35 per cent or 50 per cent of victims of family violence, the fact is that there are few services currently available to assist them. This flies in the face of our international human rights and equal opportunity obligations.

Not only do these policies fail to support male victims of family violence (and fail to challenge female perpetrators who claim to be victims), but they increase the danger for male victims and their children by advising violent female partners that male victims have sought support for their violent and abusive behaviour.

NSW Government Legislative Council's Standing Committee on Social Issues "Domestic violence trends and issues in NSW" (August 2012)

The *NSW Government Legislative Council's Standing Committee on Social Issues' report on domestic violence trends and issues in NSW* was the first ever to acknowledge the existence, needs, barriers to reporting and barriers to accessing support faced by male victims of family violence.

The findings of the report include:

- "There was a broad recognition among inquiry participants that women offenders and male victims do exist" "Of [reported] victims of domestic assault in 2010, 69.2% were female, while 30.8% were male."
- "Male victims have been much less visible and able to access supports than should be the case"
- "The experience of [males]... is equally as bad as that of other victims"
- Recognising "the gap in services for male victims and [encouraging] the government to examine how services can most appropriately be provided to male victims of domestic violence"
- Identifying males as "in need of special consideration with regard to domestic violence," along with Aboriginal people, older people, people with disability, and several other population groups

The Committee recommended that the entire system for preventing and responding to family violence needed to take account of, and be effective for, all victims and perpetrators: not just women and children victims and male perpetrators as had been the case up until 2012.

The Committee also advised the Government that legislation and policy should be written in gender neutral terms.

They also strongly recommended that male victims and female perpetrators be addressed in the Government's forthcoming Domestic and Family Violence Framework.

Senate Finance and Public Administration References Committee “Domestic Violence in Australia”

In August 2015, the *Senate Finance and Public Administration References Committee* handed down their report into domestic violence in Australia. It made a number of positive findings and recommendations with regard to male victims of family violence. The most important was: Recommendation 15. The committee recommends that the Commonwealth Government recognise the need to provide appropriate services to male victims of domestic and family violence.

Finance and Public Administration References Committee (2015). *Domestic violence in Australia*. Canberra: Commonwealth of Australia.

Victorian Royal Commission Into Family Violence

The March 2016 Royal Commission Into Family Violence made two major recommendations regarding male victims. Recommendation 180. The Victorian Government publicise and promote the Victims Support Agency in any information campaign relating to family violence as the primary source of assistance for male victims. The agency should also provide appropriate online resources for male victims [within 12 months].

Recommendation 181. The Victims Support Agency continue to receive all police referrals (L17 forms) relating to male victims, including after the establishment of the Support and Safety Hubs. The agency and all other relevant support services should develop joint arrangements to ensure that male victims of family violence are supported in obtaining the help they need [within two years].

Neither of these recommendations have been implemented.

Men's “Services”: the ultimate betrayal for male victims

In November 2016, the NSW Government committed \$13 million over four years for Victims Services to pilot new responses for male victims of domestic and family violence. The Men's Referral Service (MRS) was initially appointed to run the pilot service to connect male victims of family violence with local support services set up in 48 locations throughout the state. The MRS, an arm of No To Violence (NTV), was originally established to work with male perpetrators of family violence, and had no track record of working with male victims. NTV is on the public record as stating "the need to be cautious in automatically assuming that a man assessed by police or another referring agent as a victim of domestic violence truly is the victim".

Vlais, R. (2014). *No To Violence response to the One in Three organisation's comments about male victims*. Burnley: No To Violence.

A male victim seeking support who is told he needs to take responsibility for his 'violent and controlling behaviour' is probably not going to have a lot of confidence in ringing that service and asking for help. And if he does call and is assumed responsible for the violence, he may not reach out for help again. After taking around 120,000 calls in 12 months from men whom the police had determined to be victims, the MRS decided to stop providing the service.

As of January 2018, five new Local Support Services had been contracted to provide services to male victims of domestic and family violence in NSW:

- Relationships Australia NSW,
- Relationships Australia Canberra,
- The Family Centre,
- Interrelate
- Catholic Care Sydney.

These services have never been publicly advertised, so it is unlikely male victims are aware they exist. They cannot be accessed directly - male victims can only be referred to them by the police.

At the date of writing this submission, the NSW government still provides no direct telephone support line, counselling or support services to male victims equivalent to its Domestic Violence Line. This is a 24 hour NSW statewide telephone crisis counselling and referral service for women, including trans women. Counsellors on the Domestic Violence Line can help women talk to the police and get legal help; get hospital care and family support services; obtain an Apprehended Violence Order (AVO); develop a safety plan for them and their children; and find transport and emergency accommodation for them their children.

<https://www.facs.nsw.gov.au/domestic-violence/helpline>

Men are instead referred to three national telephone support lines –

- MensLine Australia,
- 1800RESPECT
- Men'sReferral Service

The first two lines are bound by the MARAM Framework which assumes male victims who call are actually perpetrators, and the third is a support line for male perpetrators, not victims.

There are no safe rooms providing safety, court advocacy services or legal advice at any NSW courthouses. There are no domestic violence screening programs for men run by NSW Health. There are no shelters for men and their children. No community education and prevention programmes about male victims have been run.

5. (k) Perpetrator programs that work

Most existing perpetrator programs based (loosely) on the Duluth Model of male patriarchal power and control don't acknowledge the lived experience of many male perpetrators or any female perpetrators, and are therefore largely ineffective at preventing future violence. Clear evidence of success for Duluth-based perpetrator programs is limited. There is even evidence that some Men's Behaviour Change Programs lead to increases in hostility and sexist attitudes and the escalation of violence for some men who take part.

Richards, J., MacLachlan, A., Scott, W., & Gregory, R. (2002). Final Report: 'Identification of characteristics and patterns of male domestic partner abusers,' pp 32 & 35.

We would recommend the trialling of evidence-based perpetrator programs for both sexes based on other models.

5. (l) The impacts of the COVID-19 pandemic

Data from NSW show that referrals through the government's *Safer Pathways* program for female domestic and family violence victims in March 2020 increased by 11 per cent from the same period last year, while for males there was an increase of almost 9 per cent. There is no reason to assume

that the impacts of health requirements such as staying at home (such as being ‘trapped’ with an abusive partner with fewer opportunities to seek help) would affect female and male victims differently. If there is an increase in domestic violence because of changes brought about by the COVID-19 pandemic, both females and males will be affected and will need additional support as a result.

5. (m) Using public funds to survey women only

Now that it is widely acknowledged that males make up a significant number of victims of family, domestic and sexual violence, research must now survey both men and women so that an accurate picture can be painted of how the entire Australian community is affected.

This did not occur in the recent 2020 ABS Personal Safety Survey.

It was disappointing in 2020, the Australian Institute of Criminology spent significant public funds on a survey about women’s experience of family and domestic violence during the COVID-19 pandemic. Some 15,000 women took part in the online survey. No men were asked about their experiences.

https://www.aic.gov.au/sites/default/files/202007/sb28_prevalence_of_domestic_violence_among_women_during_covid-19_pandemic.pdf

5. (o) Betrayal of the Media: an example

Advocates of equality in relation to the provision of services for victims of domestic violence note that the media rarely publishes content on the issue that is fair, accurate or gender neutral. Australia’s own publicly funded broadcasting Corporation, the ABC, is consistently guilty in this regard, publishing a disproportionate amount of gendered content and misleadingly portraying the issue of violence against men.

Rarely, the ABC will publish an article describing the plight of male victims. When they do so, the article still retains significant express content and undertones supporting the false gender based narrative. Increasingly, the ABC receives significant backlash and correction in the comments sections, notably from both men and women.

Such an article was published on 1 September 2020, under the title “*Men with nowhere to turn*”.

This article purported attempted to tell the plight of male victims, using select examples, weighted words and subliminal undertones.

In our society full of thousands of male victims, it used a single case example. A man called Andy.

It attempted to deemphasise the “accidental” physical assault perpetrated by him by his female partner. It then emphasised that it was another male: his step son, that physically assaulted him with force.

Despite saying “*one group of victims remains poorly understood and rarely discussed: men*” The article then immediately negates the sentiment with the following paragraph:

“Many experts say this is partly because men don’t experience domestic violence as frequently or severely as women and, when they do, they generally don’t fear for their lives. Some weeks it’s hard just to keep track of the number of women killed by husbands or ex-partners, so it’s perhaps not surprising if communities don’t have headspace for the much smaller number of victims who are male. Asking ‘what about men?’, then, might feel a bit like complaining about a stomach bug to someone with terminal cancer.”

This paragraph is not a direct quote of Expert(s). No reference is given. It is a paraphrasing of what the author believes they have said, with the authors opinion summed up in words such as “Some weeks it’s hard just to keep track of the number of women killed by husbands or ex-partners”, and “if communities don’t have headspace for the much smaller number of victims who are male” and “Asking ‘what about men?’, then, might feel a bit like complaining about a stomach bug to someone with terminal cancer.”

The first sentence tries to give the incorrect impression of scale by suggesting that the numbers of victims per week is un-trackable. It is less than one.

The second suggest that male victims are a much smaller number. They are between 30% and 50% of all victims.

Finally, the last sentence attempt to use an analogy to dismiss the plight of men in a disrespectful and impassionate manner.

https://www.abc.net.au/news/2020-09-01/male-victims-of-domestic-violence-shame-stigma-support/12495738?nw=0&fbclid=IwAR3Bq_-TJPwa5tDYDVzrxzNpGC7Hi56mnEp8KDarXRRSiy2NlvcPPVvwWTw

6. As Many as 21 Fathers a week

The ABF produced a suicide awareness campaign called 21 Fathers based on reports made by other men's advocacy groups including Lone Fathers, The Men's Rights Agency and Dads In Distress who suggested a base number of 3 fathers a week were ending their lives as a result of the stress and grief around relationship breakdowns, divorce, separation from children, financial duress and navigating the Family law System and Child Support Agency.

This is a profoundly serious proposition. This death rate (~1092) would be on par with the national road toll (1182 in 2019), but instead of attracting millions of dollars of funding, is it invisible, unstudied and disregarded by the community.

This controversial figure has been questioned: and we agree, a more precise figure needs to be obtained through research. The criticisms levelled at the figure, focus of the precision of it and the fact that current research, data and information indicates that we cannot know with conclusively certainty that this figure is correct. Is uncertainty a basis to dismiss the carnage?

We concede the exact figure is currently unknown, but the catastrophic suicides rates are unequivocal, and the link between calamitous events such and divorce/relationship breakdown and suicide unequivocal. From the data that we have, and in the absence of definitive focused research we can still conclude that the actual number of suicides of Father's going through divorce in Australia is profound and devastating to our society, our families and our children.

<https://bmcpublihealth.biomedcentral.com/articles/10.1186/s12889-016-3702-9>

The 21 Fathers was derived from conservative assumptions resulting in a figure of around 19.6 male suicides as week due to family court issues.

- Australian Suicide rate (2017) 3,128.

"Causes of Death", 26 September 2018, Australian Bureau of Statistics, <http://www.abs.gov.au/causes-of-death>

- Since 2014, on average, six men have committed suicide every day in Australia (42 a week). The number of men who die by intentional self-harm every year is nearly double the national road toll—2,348 suicides compared to a total of 1,225 road deaths in 2017

Australian Bureau of Statistics (ABS), in 2017

- In Australia, 48% of all suicides in 2000 were by 35 to 64-year-olds; an additional 13% were by 65 year olds and over.

Australian Institute for Suicide Research and Prevention, *Australian Institute for Suicide Research and Prevention, 2011, archived from the original on 10 March 2012*

- In 2017, about 75% of people who died by suicide were males and 25% were females (three times greater rate). Male suicide rates increased by 10% in 2017

<https://www.amhf.org.au/male-suicides-in-australia-up-10-in-2017>

- For every suicide there are between 20 to 30 unsuccessful attempts.
<https://www.blackdoginstitute.org.au/resources-support/suicide-self-harm/facts-about-suicide-in-australia/>
- Behind the epidemic of male self-harm, there is a sea of neglect based harm: 50 men die a day under the age of 75 in ways that could have been avoided.
<https://www.facebook.com/MensHealthAMHF>
- As of 2018, the group of men aged between 45 and 54 — represented the largest age-specific increase in suicide deaths.
<https://www.abc.net.au/news/2020-02-13/middle-aged-men-dying-too-soon-suicide-we-can-learn-from-history/11958284>
- The Australian Institute of Health and Welfare now reports that the suicide rate for men aged 20 to 39 years has risen by 70 per cent over the last two decades
Wendy McElroy, 'Are Fathers' Rights a Factor in Male Suicide', Fox News, January 15, 2015, at <https://www.foxnews.com/story/are-fathers-rights-a-factor-in-male-suicide>
- Global suicide rates of males are highest in those western countries with gendered approaches to Family Law, such as Australia.
https://www.griffith.edu.au/__data/assets/pdf_file/0033/359754/GriffithMen_WEB.pdf
- In a 12 month period, from July 2015 to June 2016, there were 112,637 ambulance attendances for men experiencing acute mental health issues.
- A report provides further detail on self-harm related attendances, stating there were 30,197 in the 12 month period (306 male per 100,000), including self-injury, self-injury ideation (or threat), suicidal ideation (thoughts), suicide attempt and suicides, and almost all of these cases were transported to hospital. There were almost twice as many ambulance attendances for suicidal ideation than attempts, but both often involved police
https://www.beyondblue.org.au/about-us/about-our-work/suicide-prevention/beyond-the-emergency?utm_source=facebook&utm_medium=organic&utm_campaign=beyondtheemergency_may19&utm_demo=all&utm_targeting=followers&utm_format=link&utm_create=infographic&utm_objective=traffic&utm_id=beyondtheemergency0003&fbclid=IwAR3Wysk1jTkb1YbVmsZ1oiNny3S_5VXUmtXC99gI995ZcE8_kLPg1gZgmqw
- Suicide and self-inflicted injuries were found to have contributed a total of 49,916 DALYs, with more than two-thirds accounted for by males. (DALY describes the “amount of time lost due to both fatal and non-fatal events, that is, years of life lost due to premature death coupled with years of ‘healthy’ life lost due to disability”).

Begg et al., 2007
- In an academic paper by Susan Beaton and Peter Forster. Published by the Australian Psychological Society, these two experts in suicide preventions explain that ‘suicide is the number one killer of men under 44 years’ in Australia, and that the dramatic increase in male suicide is at least partially due to ‘marriage breakdown ‘ coupled with ‘poorer social support among ... divorced males’.

Susan Beaton and Peter Forster, 'Insights into Men's Suicide', Australian Psychological Society, August 2012, at <https://www.psychology.org.au/inpsych/2012/august/beaton/>

- The Australian Family Association, 'Submission to the Parliamentary Inquiry into the Child Support Program' submissions reveal an alarming level of suicides by post-separation fathers who are alienated from their children. After analysing the suicide rate amongst non-residential fathers, that submission reported that 'the death rate amongst child support payer fathers is double the rate of Australian males who do not have administrative child support assessments'

The Australian Family Association, 'Submission to the Parliamentary Inquiry into the Child Support Program', 31 January 2015, p 6.

- 'The death rate amongst child support payer fathers is double the rate of Australian males who do not have administrative child support assessments'

The Australian Family Association, 'Submission to the Parliamentary Inquiry into the Child Support Program', 31 January 2015

- Relationship breakdowns, associated financial and health issues are the highest risk factors in male suicide. (81% of suicides linked to relationship separation, 85% to pending legal matters)

<https://www.amhf.org.au/infographics>

- Using a large nationally representative sample, Sociology Professor Kpsowa of the University of California at Riverside, noted that the risk of suicide among divorced men was 2.4 times higher than that of their married counterparts. (Amongst women, however, there was actually no statistically significant differentials in the risk of suicide by marital status categories). Indeed, divorced men were nearly 9.7 times more likely to commit suicide than comparable divorced women. This leads to the conclusion beyond any reasonable doubt that marital status, especially divorce followed by the loss of access to children, has strong net effect on mortality from suicide, 'but only among men'

*Augustine J Kpsowa, 'Marital Status and Suicide in the National Longitudinal Mortality Study' (2000) 54 **Journal of Epidemiological Community Health** 254-261, p 254.*

- According to professor Kpsowa, divorce following the loss of contact with their children has become a major factor of male suicide. 'As far as the divorced man is concerned, he has lost his marriage and lost his children and that can lead to depression and suicide', Professor Kpsowa says.

*Augustine J Kpsowa, 'Marital Status and Suicide in the National Longitudinal Mortality Study' (2000) 54 **Journal of Epidemiological Community Health** 254-261, p 254.*

- If matter goes through court to trial: Mothers 4 times more likely to get sole parental responsibility, Fathers 15 times more likely to get no contact orders than mothers. (along with corresponding financial benefits from property settlement, maintenance and CSA).

<https://aifs.gov.au/publications/parenting-arrangements-after-separation>

- 50.5% of those surveyed going through the Family Court system did not have contact with their children (as a subset of 82.4% that had restrictions of access of some kind). Those without contact had higher mental health issues (including an alarming 20.3% with suicidal ideation: which is far higher than those levels in the general population)

The ABF Survey of 1000 Fathers Appendix E

- The suicide rate amongst Aboriginal and Torres Strait Islander peoples is more than double the national rate. In 2015, suicide accounted for 5.2% of all Indigenous deaths compared to 1.8% for non-Indigenous people

ABS, Causes of Death, 2015

Professors Kpsowa further wrote: "Some analysts argue that societal institutions tend to ignore or minimise male problems as evident in suicide statistics. For instance, in many jurisdictions ... there seems to be an implicit assumption that the bond between a woman and her children is stronger than that between a man and his children. As a consequence, in a divorce settlement, custody of children is more likely to be given to the wife".

Dr. Kpsowa suggested that society has undervalued the strength of paternal-child bonds, and thus underestimated the traumatic effect of severing those bonds through our typical custody arrangements. Further, we fail to appreciate the catastrophic financial impact of divorce on men, and the anger and resentment engendered by losses of both property and status in the wake of a divorce settlement.

In the end, the father loses not only his marriage, but his children. The result may be anger at the court system especially in situations wherein the husband feels betrayed because it was the wife that initiated the divorce, or because the courts virtually gave away everything that was previously owned by the ex-husband or the now defunct household to the former wife.

Events could spiral into resentment (toward the spouse and "the system"), bitterness, anxiety, and depression, reduced self-esteem, and a sense of "life not worth living". As depression and poor mental health are known markers of suicide risk, it may well be that one of the fundamental reasons for the observed association between divorce and suicide in men is the impact of post divorce (court sanctioned) "arrangements"

Augustine J Kpsowa, 'PostScript: Divorce and Suicide Risk' (2003) 57 Journal of Epidemiological Community Health 993.

Of course, the problem is not restricted to Australia. In the UK, a study commissioned by the Samaritans involving eleven leading social scientists concluded that marriage breakdown and a family court system perceived to favour women with the custody of children and the family home (even where these men are unemployed and have nowhere else to go) are significant factors in the suicide of countless men. When marriages fail, the research paper concluded, 'men are less likely to be awarded full custody of their children, more likely to be displaced from the family home and have less access to their children'. This means the loss of personal identity, social status and respect. Adding to loneliness and the natural isolation of so many men in their mid-life, these are significant causes the high risk of male suicide.

Clare Wyllie, Stephen Platt, Julie Brownlie, Amy Chandler, Sheelah Connolly, Rhiannon Evans, Brendan Kennelly, Olivia Kirtley, Graham Moore, Rory O'Connor and Jonathan Scourfield, 'Men, Suicide and Society: Why Disadvantaged Men in Mid-Life Die by Suicide', Samaritans Research Report, September 2012, p.25, p43

'Men and Suicide: Why It's a Social Issue', Samaritans, July 2015 p.10.

The causes of suicide are complex. Factors that may contribute to suicide include:

- stressful life events
- trauma
- mental illness
- physical illness
- drug or alcohol abuse
- poor living circumstances

All of these elements could be present in a divorce in the Family Court System

By contrast, there are protective factors that make us more resilient and can reduce suicidal behaviour, such as:

- supportive social relationships
- a sense of control
- a sense of purpose
- family harmony
- effective help-seeking
- positive connections to good health services available

The Family Court System impedes or harms these protective factors.

6. (a) The Impact on Mental Health

Many adults who experience a relationship breakdown and subsequent family court proceedings experience psychological distress. Separation and/or family law proceedings may exacerbate existing mental health issues or contribute to the development of a mental health issue.

(Royal Australian and New Zealand College of Psychiatrists RANZCP)

RANZCP has found:

- The mental health of adults and children is negatively impacted by relationship separation and family law proceedings.

- The nature of the family law system exacerbates difficulties experienced by families during proceedings, particularly families with complex needs.
- Clearer pathways should be developed between the family law system and mental health services to ensure that individuals and families can access the support and treatment they need during and after family law proceedings.
- To protect the mental health and wellbeing of individuals and preserve the therapeutic relationship between the individual and their medical practitioner, medical and, in particular, psychiatric records should be more rigorously protected from being released by subpoena.

Mental health and wellbeing of adults

Separation 'is associated with increased rates of depression, suicidal behaviour and overall high levels of mental health problems'. Research has demonstrated that there is a bidirectional relationship between separation and mental health issues, indicating that 'separation leads to increased rates of mental health problems but also that mental health problems lead to increased risks of separation'. Therefore, many individuals come to separation and subsequently family law proceedings with existing mental health issues. As a result of existing mental health issues, these individuals may be more vulnerable to the stressors associated with family law proceedings.

Mental health issues and associated vulnerability may be compounded by factors such as family violence, child protection issues, migration, housing stress and involvement in the criminal law system.

Fitzroy Legal Service and Darebin Community Legal Centre. Submission to ALRC Family Law Review. 2018. Available at: <https://d3n8a8pro7vhmx.cloudfront.net/fitzroylegal/pages/77/attachments/original/1525820408/ALRCReviewsubmissionMay2018.pdf?1525820408>

These complex social and economic factors and their interaction with mental health are challenging for the family law system to address and can exacerbate separation-related needs. Individuals and families with complex needs may also have difficulties understanding the processes, terminology and rules associated with the family law jurisdiction and repeating their 'story' many times. Navigating these challenges may aggravate existing mental health issues, particularly for individuals who are self-represented or change their legal representative multiple times.

House of Representatives Standing Committee on Social Policy and Legal Affairs. A better family law system to support and protect those affected by family violence. Canberra: Commonwealth of Australia; 2017.

Australian Law Reform Commission. Review of the Family Law System: Discussion Paper. Queensland: Australian Law Reform Commission; 2018.

Family Law Council. Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems: Final Report. Canberra: Commonwealth of Australia; 2016. Available at: <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Families-with-Complex-Needs-Intersection-of-Family-Law-and-Child-Protection-Systems%E2%80%93Interim-Report-Terms-1-and-2.pdf>

Mental illness and stigma

Twenty per cent of family violence incidents recorded by Victoria police between 2013 and 2014 identified mental illness as a risk factor among perpetrators of family violence. There was a particularly strong association between recidivist-identified perpetrators and mental illness (Thomas, 2019).

<https://www.aph.gov.au/DocumentStore.ashx?id=5474d948-c688-4463-a9b7-4b7252ec2dde&subId=679536>

It is important to note however the overwhelming majority of people with a mental illness are not violent.

Mental health deterioration is associated with separation and relationship distress, in general. Among victim survivors, domestic and family violence is a significant risk-factor for mental disorders (Golding, 1999), and maladaptive coping among both perpetrators and victims may exacerbate an ability to traverse the family law system. A large number of men presenting with a variety of mental health issues that impact on their ability to engage with court services and the process overall.

<https://link.springer.com/article/10.1023/A:1022079418229>

Biases and stigma in relation to mental illness operate within the family law system to negatively impact those who are parenting with mental illnesses and/or disabilities. The Family Law Act 1975 (Cth) allows the Court to consider a parent's capacity to 'provide for the needs of the child' in making parenting orders. However, courts may equate mental illness or disability with an incapacity to properly parent, due to misconceptions about the nature of a particular mental illness or disability. This can affect parenting orders made, and reduce the time that a parent experiencing mental illness or a disability spends with their child, despite the mental illness or disability having no effect on the parent's parenting capacities or adversely affecting the child's best interests.

Pascoe J. Litigants with Mental Illness. *Australian Family Lawyer*. 2013; 23(2): 21-26.

Ryan J. Mental Health and Family Law - A Question of Degree. *Federal Judicial Scholarship*. 2006;

It is the ABF's experience that parents presenting with mental illness, whether is an existing illness or if it is related to the stresses of divorce and the Family Court System, are dealt with very poorly by the court. In our opinion, this borders of discrimination of behalf of the court, and almost criminal activity on behalf of the legal representatives who may target the frailties inherent in the illness of the opposing party.

This targeting is not symmetrical. In our experience, mental illness of behalf of the father will be seen as an issue in relation to parenting, risk and behaviour: even if this illness is a product of the system or actions of the other party. Practically any mental illness on behalf of the Mother will be presented as resulting from the actions of the Father and given that likelihood that the Mother has primary care, will be seen as actions of the Father negatively impacting the children by impeding her ability to provide care.

A further agony is suffered by those within the system. The definition of domestic violence in several jurisdictions now includes "threats of suicide", as a form of emotional abuse amounting to domestic violence. This is perhaps the ultimate betrayal of those most needing help. Father's with suicidal ideation risks having that fact defined as domestic violence should they have ever turned to their spouse for support. Such individuals are also deemed a "risk" by the system, and Father's that disclose their pain will have this used against them in parenting matters. As we will see below, Father's cannot even safely turn towards mental health support, as the subpoenaing of their medical records will disclose such ideation anyway.

All this adds up to many law firms advising desperately unwell Father's to not risk seeking support, except from trusted friends and family, if available. Those friends and family also face the challenge that if they escalate the Father to emergency services, their actions will be responsible for this being used against the Father in parenting matters.

Many Father's feel understandably feel they have no-one to turn to; that the system gives them no-safe option for support, and they often chose not to seek any.

For about 21 father's per week, this ends catastrophically.

We have already identified how the Family Court System can cause mental illness or exasperate existing mental illness. The sustained and prolonged stressors of the system are very difficult to navigate for the healthiest and most resilient of individuals. Those suffering from benign mental illness but who function well professionally, within the community and as a parent may find their ability to cope severely compromised within every stage of the system. The resultant coping mechanisms, anger, frustration, venting, etc are misinterpreted and used against them. It is for this reason that we strongly advocate for mental health training for all within the system from law enforcement personnel, court administrative staff and most importantly, judicial members.

Appropriate training should be available to the above family law professionals in relation to mental health issues and disabilities so that proper assessments can be made in relation to whether the parent's mental illness affects their capacity to parent. This training would decrease the tendency to equate mental illness with a lack of capacity, or with dangerous behaviours, eventually allowing more parents with a mental illness to care for and spend time with their children in a meaningful and safe way.

We do not endorse family law practitioners attending such training.

It is the nature of their industry for many to look to weaponise knowledge for the advantage of their client and case. We feel that family lawyers will just continue what we now know happens: and that is to exploit mental health issues to trigger outcomes, and to stigmatise opponents before the court.

Patient–psychiatrist confidentiality: the issue of subpoenas

We refer to the RANZCP October 2016 Position statement number 89.

<https://www.ranzcp.org/confidentiality>

We have discussed how the Family Court System can causes mental health problems or exasperate existing ones. The family Court System also makes it difficult for participants to seek effective treatment at the time that they most need it. This is a serious concern that undauntedly contributes to both the harm and the suicide rate of those involved.

Effective treatment is impeded simply because those that seek treatment can have their clinical records subpoenaed and used against in court. Some Australia Family Law Firms go so far as to advise their clients to not engage with medical or mental health practitioners at all.

When compared to other common law countries, Australian law offers less protection for patients against access to their clinical records and the protection that does exist varies greatly across the federal, state and territory jurisdictions. As a result, patient records in both the private and public sectors may be subject to subpoena in Family Court matters (and both criminal trials and civil litigation). This has become a common event in court proceedings, even when the disclosure of these records appears to serve little evidentiary purpose and is likely to have severe effects on former, current and potential patients.

The Royal Australian and New Zealand College of Psychiatrists itself urges Australian governments to undertake law reform that recognises the importance of confidentiality in mental health care, confining breaches to rare cases where an overriding medical or legal purpose is served, such as ensuring patient safety. Overseas models can serve as a guide to law reform – in particular, the stronger protections available under New Zealand law.

6. (b) Quantifying the Harm

21 Fathers

The annual Australian road toll is about 1100 fatalities per year; serious injury rates are about 38,000. The cost to the community per fatality is \$7.8 million (2016), totalling in 2016, \$10.2 billion. Serious injuries in that year cost \$13 billion. Including property cost, in 2016 road crashes cost Australia about \$33 billion.

In response the federal and state governments spend single figure billions each per year to attempt to reduce the figure.

21 Fathers take their lives each week as a result of the family law system, totalling about 1100 per year. (This figure is for fathers alone. We can probably add many more mothers and many more children). For each suicide there are about 30 attempted suicides, totalling about 33,000 per year.

The Family Court system kills and seriously injures about as many men as the road toll harms Australians every year. Fatality and injury costs of the road toll are, in 2016, \$7.8 billion and \$10.2 billion. There is no reason to not presume that the costs to society for the loss and injury to the same number of fathers, might not be similar: or ~\$18 billion a year.

Know one yet knows the exact figure. No one yet knows the exact cost. No one seems to want to know. No funding is assigned to quantify the cost and to address the harm, even though it may be commensurate with one of our highest profile community issues: the national road toll.

This figure is for fathers alone. We can probably add many more mothers and many more children.

https://www.aaa.asn.au/wp-content/uploads/2018/03/AAA-ECON_Cost-of-road-trauma-summary-report_Sep-2017.pdf

7. False Allegations

False allegations occur within the Family Court System. To suggest they do not is to deny the reality: the experiences of parents going through the system, the opinion of the judiciary and the opinion of family law practitioners. The issue is simply a matter of scale impact. Parents, Judiciary and Family Law Practitioners claim that false allegations are rife. To the extent that the jurisdiction as it operates now, is a farce and that it is ineffective in the application of justice. Given the impact of the system that we have outlined above, this is yet another imperative for the system to be replaced urgently.

The opposition opinion on the issue of the prevalence of false allegations does not hold up to scrutiny and must be silenced as it perpetuates harm and impedes justice and reform.

In 2007 The Australian Institute of Family Studies (AIFS) undertook an exploratory study into allegations of family violence and child abuse in family law children's proceedings.³¹ The report stated *"fathers' groups frequently claim that separated mothers routinely make false accusations of family violence and/or child abuse for revenge or to gain a tactical advantage in child custody disputes, with the aim of reducing their former partner's involvement in their children's lives or of cutting them out altogether."*

The AIFS study examined random samples of family law cases filed in specific family law registries in 2003. The key findings of the report included that:

1. More than half the cases in the family law courts contained allegations of adult family violence and/or child abuse.
2. There is little evidentiary material to support allegations. When all the pieces of evidence were taken together, most individual allegations of spousal violence across the courts and samples received no corroborative evidence.

Prima facie, high rates of allegations of violence that are not corroborated by evidence of strong probative weight is consistent of high rates of false allegations. On this basis the empirical data from the AIFS supports the hypothesis that false allegations are widespread in Australia.

In Canada, where much of the allegation research has been conducted, Bala and his colleagues noted that "a range of circumstances may lead to a parent making unfounded allegations of abuse after parental separation":

- allegations that are made knowingly with the intent to seek revenge or manipulate the course of the litigation; or
- allegations that are made in the honest but mistaken belief that abuse has occurred, often due to some misunderstanding or misinterpretation of events; or
- allegations that are made as the result of an emotional disturbance or mental illness of the accusing parent.

Bala, N. M., Mitnick, M., Trocmé, N., & Houston, C. (2007). Sexual abuse allegations and parental separation: Smokescreen or fire?. *Journal of Family Studies*, 13(1), 26-56, at 37.

While allegations of family violence and abuse have for some time represented the core business of the court, the other side of the coin cannot be ignored – that a sizeable proportion of allegations cannot be substantiated.

Jaffe, P. G., Johnston, J. R., Crooks, C. V., & Bala, N. (2008). Custody disputes involving allegations of domestic violence: Toward a differentiated approach to parenting plans. *Family Court Review*, 46(3), 500-522.

7. (a) Opinion of Family Law Practitioners and Professionals

Those that work within the industry day to day, and those who are best placed to assess the credibility of both their client's and their opponents evidence, family law practitioners, confirmed that there was widespread agreement (all but one of the lawyers interviewed though this occurred) that AVOs are used for tactical purposes in relation to family law issues, with the majority of the lawyers considering this happened with some regularity.

https://www.researchgate.net/publication/228185770_The_Views_of_Family_Lawyers_on_Apprehended_Violence_Orders_after_Parental_Separation

One study conducted by Melville and Hunter, included questions about family violence orders as part of a broader project on the work of family lawyers in Queensland. They reported that “several family law solicitors also expressed a belief that many women deliberately fabricated allegations in order to deny contact”. Robust language was used reflecting the emotional response to the impact of such allegations.

Angela Melville & Rosemary Hunter, “As Everybody Knows’: Countering Myths of Gender Bias in Family Law’, (2001) 10 *Griffith Law Review*, 124 at 127

Of the matters that our legal principal manages, domestic violence has been claimed by the Mother in almost 100% of the cases (of those claims, almost 100% of them have not been tested in Court at anytime). This figure and supports the notion that claims of domestic violence go hand-in-hand with adversarial family court cases.

Family Violence Evaluators, state that they believed that false allegations of intimate partner violence were made in 40-80% of cases. Importantly, those evaluators that were not trained in the feminist narrative of domestic violence were able to identify more false allegations.

(Haselschwerdt, Hardesty, & Hans, 2011)

The rebuttal to this compelling opinion is that it is contrary to research and that that research somehow academic studies trump real-world experience and practice. This argument actually appears in the Australasian Institute of Judicial Administration (2017) *National Domestic and Family Violence Bench Book*, 4.1.

Advocates stating that rate of false allegations is low often quote these two pieces of research conducted in Australia and conducted in Canada.

The Australian study actually states:

“As noted in Chapter 1, it is not possible to directly determine the prevalence of “true” and “false” allegations of family violence or child abuse within the confines of this study. However, one way in which we can begin to approach that question is to note the extent to which such allegations were corroborated.

So, for example, in the first panel we see that 82% of allegations of spousal violence in the general population of Family Court cases were not supported by any form of corroborative evidence, while 14% of allegations in that group were supported by one piece of corroborative evidence.

Most individual allegations of spousal violence and child abuse were made in the absence of any information that may support them (top row, top panel in Table 6.2). This absence was especially pronounced for allegations of child abuse raised in the fmc general litigants sample (92% vs 71–82%). Where any evidence was raised, usually only one piece of evidence was cited”

Moloney, L, et al, “Allegations of Family Violence and Child Abuse in Family Law Children’s Proceedings – A Pre-Reform Exploratory Study” (2007), Australian Institute of Family Studies, Australian Government.

The Canadian research states:

“A custody or access dispute creates an emotionally charged context, within which intentionally false allegations of maltreatment are more likely to occur. In the CIS-1998, approximately 15,000 of the estimated 135,573 investigations involved a custody or access dispute (see Table 7-10(b) in Trocme et al., 2001). Intentionally false allegations were made in 12% of these. 14% suspected. 34% unsubstantiated. Only 40% substantiated. Intentionally false allegations of abuse and neglect are serious issues confronting child protection services, the legal system, and families. The number of unsubstantiated allegations of maltreatment occurring in the context of parental separation raises important questions regarding the efficacy of existing screening procedures”

Knott, T, Trocme, N and Bala, N, “False Allegations of Abuse and Neglect” (2004), Centre of Excellence for Child Welfare, Health Canada.

7. (b) Opinion of Judicial Members

We have already quoted the Judicial Commission NSW survey of Magistrates August 1999 above, in relation to applications for DVOs. The survey of 68 magistrates from New South Wales indicates that 90 per cent of them agreed with the statement that these orders are often sought as tactical devices to aid applicants with family law disputes, including depriving the former partners of any contact with their children. There was a general concern that DVOs were too easily obtained and were not often reflective of the real situation between the parties.

The overwhelming majority of magistrates in Australia share this popular perception that family violence orders (FVOs) are often sought for solely collateral reasons which are unrelated to authentic fear or real violence. For instance, a survey of 38 magistrates in Queensland revealed that 74 per cent of them agreed with the assumption that FVOs are often used for tactical purposes

Belinda Carpenter, Susan Currie and Rachael Field, ‘Domestic Violence: Views of Queensland Magistrates’

Rosemary Hunter’s interviews with magistrates in Victoria indicated similar views.

In 2013, a retiring Family Court Justice David Collier, retired from Parramatta Family Court after 14 years on the bench. It is rare for Family Court judges to speak publicly about their views, but he stated:

"If a husband and wife really get down to it in this day and age, dirt flies," Justice Collier said.

"The worst are those mothers who direct false allegations of abuse against former partners"

"When you have heard the evidence, you realise that this is a person who's so determined to win that he or she will say anything. I'm satisfied that a number of people who have appeared before me have known that it is one of the ways of completely shutting husbands out of the child's life"

"It's a horrible weapon."

"Such cases are fraught for Family Court judges. Once an allegation has been made it is impossible to ignore. The court must deem whether there is an "unacceptable risk" of abuse occurring in the father's care."

"They're difficult to disprove. The allegation lingers there."

Justice David Collier discussed that, unfortunately, the accusations are very common during family law proceedings. He says that 'when you have heard the evidence, you realise that this is a person who's so determined to win that he or she will say anything.'

<https://www.smh.com.au/national/false-abuse-claims-are-the-new-court-weapon-retiring-judge-says-20130705-2phao.html>

In 2015, retiring Magistrate Ron Kilner stated in an address to the legal fraternity on his final day on the Bench in the Southport Magistrates Court, "Domestic violence laws are being used as a "weapon" to obtain favourable rulings in the family court or permanent residency".

Dr Kilner recognised that domestic violence was a scourge on the modern community but he said at the "most weighted" end of the spectrum there were disputes that arose from living in a close domestic relationship. "Increasingly, what was intended as a mechanism to keep the peace between parties who could not live in harmony together has become a weapon in the hands of an aggrieved," Dr Kilner said.

He said this was used to achieve control over a respondent, advantage at a family court or for nonresidents to obtain residential status without waiting the required time. Under existing legislation, migrants on spousal visas can skip the two-year wait for permanent residency if they obtain a domestic violence order.

"The balance needs to be restored to give domestic violence laws the clout they need to assist in reducing this blight upon our community," he said.

<https://www.goldcoastbulletin.com.au/news/crime-court/retiring-magistrate-ron-kilner-says-domestic-violence-laws-have-been-exploited/news-story/93c20b6abfc05159ddb3871fd5474e59>

7. (c) Opinion of Police Officers

If a person made a report of a crime that didn't happen, you would likely receive criminal charges once the deceit was discovered. However, with domestic abuse charges, this is not the case. Courts practically never charge the accuser in a false domestic abuse case. The emphasis is that they want everyone to feel comfortable enough with the legal system to come forward in actual cases of abuse.

We recommend further research as to the opinion of the police in relation to the prevalence of false allegations.

7. (d) What the public believes

The public knows that false accusations of domestic violence are made, but virtually never punished when the claim is disproved. In Australia, a telephone survey of 2000 people in Victoria found that 46% of respondents agreed with the statement that: "women going through custody battles often make up claims of domestic violence to improve their case". Men and women in the general population were equally likely to hold this view that women fabricate allegations to gain a tactical advantage in custody disputes

Community perceptions of domestic violence ISSN: 1445-7288 Australian Institute of Criminology Published: 19/12/2006 Taylor & Mouzos, 2006.

Furthermore, the 2009 national survey of community attitudes showed no diminution in the extent to which respondents believed that women going through custody battles often make up or exaggerate claims of domestic violence, compared with the Victorian study in 2006. In a survey with over 12,500 respondents, more than half agreed with the statement that 'women going through custody battles often make up or exaggerate claims of domestic violence in order to improve their case', and only 28 per cent disagreed.

National Survey on Community Attitudes to Violence Against Women 2009: Changing Cultures, Changing Attitudes – Preventing Violence Against Women: A Summary of Findings p. 44 (2010)

The findings from the 2017 National Community Attitudes towards Violence against Women Survey (NCAS) reveal beliefs among Australians relating to family separation and violence. For example, more than two in five Australians (43%) believe that women make up or exaggerate violence in order to secure tactical advantage in disputes about where children will live after separation or divorce, with men more likely to believe this than women (49% vs 37%).

K Webster, K Diermer, N Honey, S Mannix, J Mickle, J Morgan, A Parkes, V Politoff, A Powell, J Stubbs and A Wards. (2018). Australia's attitudes to violence against women and gender equality. Findings from the 2017 National Community Attitudes towards Violence against Women Survey (NCAS) (Research report, 03/2018), ANROWS.

The number of young people suggesting that men and women are equally likely to perpetrate domestic violence has increased from 23% in 2009 to 36% in 2017. The survey was administered to two random samples: (a) 2000 Victorians 18 years and over, and (b) an oversample of 800 adults from specific culturally and linguistically diverse (CALD) backgrounds.

Findings from the 2017 National Community Attitudes towards Violence against Women Survey (NCAS)

In the United States a study of 302 men who sustained severe partner violence revealed that:

“...over half of the men reported that their women partners made false accusations against them, which included that he hit or beat her, that a restraining order was filed against him under false pretences, or that he physically and/or sexually abused the children. These findings are congruent with a previous study that showed that approximately 50% of men victims of IPV stated that their partners gave false information to the court system in order to gain custody of the children or to obtain a restraining order”.

12 Hines, D. & Douglas, E. (2010), "Partner Abuse. 2010 Jan 1; 1(3): 286–313.

A recent (UK) link between how money motivates mother's to lie (and ruin the lives of their children and their fathers):

"Thousands of parents falsely claim domestic abuse in order to access legal aid and stop estranged partners from seeing their children, a shared parenting charity claims. Families Need Fathers says parents are being encouraged by some solicitors to file for non-molestation orders - injunctions used in urgent abuse cases.

New figures show a 30% rise in orders made after legal aid was axed in everything but abuse cases in family courts in 2012.

The charity suspects that solicitors' firms are talking parents into seeking such orders because it enables them to qualify for legal aid, from which both the legal profession and the complainant could benefit.

A spokesman for the charity said: "We're getting a lot of people coming to us talking about false allegations, whether it's grossly exaggerating events or even completely fabricating them."

Jerry Karlin, chairman of Families Need Fathers, said the result of the government's "well-intended but ill-conceived changes" to the family courts system was a 30% increase in non-molestation orders (NMOs) to 25,000 a year. In some regions of England and Wales the increase has been as much as 900%. In others there has been a 150% rise, according to information obtained by Families Need Fathers.

"These (NMOs) are used in allegations of abuse and they don't have to be true to obtain access to legal aid." "Non-molestation orders have gone up by several hundred per cent since the legal aid changes in some districts," he added.

The outgoing president of the High Court's family division, Sir James Munby, described false allegations as a "vice in the system".

<https://www.bbc.com/news/education-44628179?SThisFB>

The ABF survey of 1000 Fathers indicated:

- 72.3% of those surveyed reported having to respond to false allegations of domestic violence
- 90% of men that reported being victims of domestic violence to police received false allegations of domestic violence in return

7. (e) How the Family Court treats false allegations

Judicial Officers of the Family Court have powers in respect of the proceedings including, the power to issue a charge of contempt of court for swearing a false oath or misleading a court, or referring them to the Director of Public Prosecutions for consideration for criminal prosecution for perjury and related criminal offences. The Act and the Rules of the court establish duties of full and frank disclosure and any findings of failure in compliance may result in more generous findings in favour of the innocent party. Under the Act, the judge can also order costs. (in financial proceedings, non-compliance by a litigant with duties enables a judicial officer to adopt a robust approach when completing the Section 79/Section 90SM decision making pathway.

Section 117AB was inserted into the Family Law Act 1975 (Cth) ('Family Law Act') to address this particular concern. The section mandates that a court must make a costs order against a party who 'knowingly made a false allegation or statement in the proceedings.' From 7th June 2012, however, section 117AB was removed from the Family Law Act via the Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011 ('Family Violence Act').

The powers are exercised in relation to property matters, particularly more generous findings in favour of the innocent party where full and frank disclosure had not occurred. Our gravest concerns arise in relation to parenting matters. Considering the prevalence of false allegations, we see an inadequate exercising of judicial powers in response (amount of prosecutions versus known rate of false allegations).

We have already discussed that the system currently incentivises the making of false allegations by providing both custodial but also significant financial incentives for successfully doing so. The lack of adequate judicial response is the final straw in the creation of a farcical jurisdiction: eradicating any final disincentive. We are mortified by recent decision where the court has found that the fact that a parent who is prepared to mislead a court, is not directly related to parenting arrangements that might be implemented for children. That is, a parent who disrespects authority enough to commit a criminal offence; an action that should cast doubt on the merit of not only their entire case before the court but also their capabilities as a parent able to meet the development needs of their children, is still considered the best option for the parent. Either new powers need to be created or the court needs to apply the existing powers.

Further Research and evidence on false allegations

What is clear is that there is a general paucity of rigorous and methodologically sound international research on this topic and little Australian context. Consequently, in this area of family law, anecdote appears to have indeed reigned supreme and this can be to the significant detriment of effective policy development.

7. (f) The Link between Child Support Payment and False Accusations

Contrary to popular belief, child support payments have nothing to do with fathers abandoning their children, or renegeing on their marital vows, or agreeing with a divorce. Since in a 'no-fault' system nobody can contest their divorce, such payments are awarded ostensibly and without any reference to 'fault' whatsoever. The payment of support is an entitlement to be automatically assessed on non-custodial parents.

Accordingly, support payments can be a financial reward for divorced parents who make very difficult for non-custodial parents to develop a meaningful contact with their children. In view of the financial reward acquired from such support payments, the position of some custodial parents is that the non-custodial parent should not be allowed to spend any time with their children. A parent who holds temporary custody may decide to procrastinate as much as possible in custody litigation, thus preventing the other (innocent) parent any right of access to their children. When this awful reality takes place, a parent will lose access to their children through no fault or agreement of his volition.

There have been many accounts of non-custodial parents who are falsely accused of child abuse and neglect, and even the sexual molestation of their children. Some non-custodial parents lose access to their children even after the Department of Child Protection (DCP) entirely clears them of any wrongdoing or 'unsubstantiated' allegation. When both DCP and the family court clear this parent of any wrongdoing, more often than not the court still keeps the custody of the child with the false accuser; i.e., the custodial parent who has maliciously made such false allegations.

To make a false accusation of violence has become a common strategy used to alienate a parent from his children. The strategy consists in the ability of the custodial parent to defame the non-custodial parent without the slightest need of proof.

According to Dr Adam Blanch, a provisional psychologist and counsellor working in Melbourne; The more a single parent can restrict the other parent's access to the children the more financial support they receive from the alienated parent and the government, and a [FVO] even when based on allegations that have been unsubstantiated is a great weapon in the fight for primary custody and restricted access.

<https://www.onlineopinion.com.au/view.asp?article=20466&page=3>

7. (g) AVOs /DVOs and Parental and Property Rights

Each year thousands of innocent Australians are issued with FVOs that evict them from their homes (and often alienates them from the lives of their children) without due process or any significant issue of physical safety or fear for safety involved.

Since these orders are often granted on an ex parte basis, armed police officers evict surprised owners from their properties without any evidentiary hearing or admissions. Since these orders nullify the legal right of homeowners to occupy their homes, it basically creates a crime out of the ordinarily innocent act of returning home.

All a person will need to do is head off to court with their silver-tongued lawyer and tearfully explain that they have a reasonable fear of something bad happening. There will then be an automatic presumption in favour of granting a AVO or DVO. And all of the above can take place without the alleged perpetrator even being informed. The first time he, or she, might know of what is being said about them is when they return home to find the locks changed and a police officer serving them with a copy of the order.

Hence a property right is nullified and the family is transformed into a public space in which the state 'deliberately and coercively reorders and controls private rights and relationships in property and marriage – not as an incident of prosecution, but as its goal'. In this legal

context, Jennie Suk of Harvard Law School concludes that '[t]he police presence is required in that space and the state gains a foothold for its supervisory presence and control in the home'.

Jeannie Suk, 'Criminal Law Comes Home' (2006) 116 *Yale Law Journal* 1, at 31.

Since AVOs require the respondent to immediately vacate the family house, such orders have profound implications to parental rights. They often restrict parental contact with children, which may result in supervised parenting time or no parenting time at all. Clearly, when an accusation is made the stakes are extremely high. This is contrasted by the incredibly low burden of proof that is often applied to these orders, which is then exacerbated by the abbreviated manner in which court hearings are held.

Remarkably, even if the accusation is based on trivial or uncorroborated allegations, an ex parte interim DVO still evicts the accused from the home. This makes the person who has been accused the only individual in the world who is specifically prevented by law from seeing his/her children without the accuser's permission.

Warren Farrell, *Father and Child Reunion: How To Bring the Dads We Need to the Children We Love* (New York: Tarcher/Putnam, 2001), at 198. Parliamentary inquiry into a better family law system to support and protect those affected by family violence

These orders, separating parents from their children for years and even life, are sometimes issued without the presentation of any evidence of wrongdoing. A parent receiving the order must immediately vacate his home and make no further contact with his children. If he tries to contact with his children, then the alleged victim may contact the police and a pro-arrest policy for domestic violence will make sure the innocent person is summarily arrested.

In many states, Police have a pro-arrest policy for family and domestic violence whereby arrest is expressed to be the 'preferred option' (COPS Manual, DV 1.1.4.1.). The Police expressly informed the WA Law Reform Commission that the accused are usually arrested for breaching a violence restraining order or a police order.

This is extremely serious since the Chief Justice of Western Australia, Wayne Martin, stated to the WA Law Reform Commission that such a presumption of arrest 'will almost inevitably produce injustice and hardship in some cases'.

Chief Justice of the Supreme Court of Western Australia, Submission No. 24, 27 February 2014. 2.

Under the current provisions, the police may enter a person's premises following a false or unsubstantiated report of family violence. For instance, Section 62B the Restraining Orders Act (WA) sets out the powers of police to search and enter private premises in certain circumstances involving family and domestic violence.

The Misuse of Restraining Orders Published on June 7, 2017 Amanda Sillars Parental Alienation | Education | Research | Generational Lived Experience | Public Speaker

8. AVOs and DVOs: bad policy

Domestic Violence Orders (DVO's) and Apprehended Violence Orders (AVO's) are not being used for their intended purpose. Police and courts issue restraining orders to protect victims, not so those orders can be used as a tactic to gain the upper hand in a divorce or a child custody matter along with the financial rewards they bring. Many parents are playing the victim where they are in fact the perpetrator.

Here are some of the many reasons why parents are taking out DVO's/AVO's:

- To gain an advantage in a divorce;
- To quickly put a parent out of the house without an eviction or a court mention hearing;
- To get vengeance;
- To control or manipulate a parent, or get leverage in some way;
- To put a parent in jail;
- To emotionally and psychologically damage the other parent;
- To get financial support or compensated from social services or a victim's compensation groups;
- To misrepresent a parent as being dangerous to officials and or the children;
- To give the applicant a chance to relocate far away without the other parents consent;
- To put the accused under financial pressure and place them a situation where they will potentially be homeless and be unable to have the children;
- To buy them time to manipulate, brainwash and coach the children;
- To isolate a parent from their child, including extended family;
- To quickly get custody of the children without a hearing;
- To stop a parent from modifying custody after the child expresses a desire to live with them;
- To gain 100% custody for child support purposes;
- To give them a reason to tell the children that the other parent is so dangerous that they had to get a restraining order to protect themselves;
- To gain benefits from victim support services like new phone, change locks free of charge;
- Socially isolate someone;
- To give the applicant justification to defame the other parent. To make them look like the child's protector and saviour and the best parent.
- To keep everything in the house once the other parent is removed;
- To allow the complainant to get a new boy/girlfriend into the picture, and the other parent out.

Domestic Violence/Restraining Orders have severe consequences for the alleged offender, and also for the relationship between the alleged offender and his or her children, since the order would likely put strain on the parent-child relationship. Due to the inherent gender bias in the false narrative perpetuated by the primary domestic violence charities, such as the discredited White Ribbon, Father's are more often than not the ones that suffer. A restraining order is something no one should consider obtaining without a serious, valid threat to his or her physical safety.

Some divorce lawyers are routinely and unethically advising their clients to take out an AVO/DVO as well as move interstate.

With these types of cases you don't have to prove anything. A subjective claim of fear and allegations are as good as a conviction as there is a presumption of guilt, particularly against men accused of domestic violence. The police and courts hold the view that the right to protection outweighs the right to fair process.

When an AVO/DVO is placed on a parent there is nowhere to go for free legal help or advice if you are falsely accused as the perpetrator. You cannot obtain legal aid to represent yourself and no free legal advice given to you will encourage you to defend it. The government websites simply advise and corral the defendant into consenting without admission, even though they have done nothing wrong. This is often a profound mistake to make in relation to a Family Court matter.

<https://www.legalaid.nsw.gov.au/publications/factsheets-and-resources/is-someone-making-an-avo-against-you>

The alleged abuser is put into an emotional pressure cooker; some would say it fits the definition of torture. It grinds people down to where they are exhausted, feel helpless, their thoughts become clouded and they have nowhere to turn. It appears who ever gets in first wins while the other parent spends most of their life defending themselves.

Hearings are taking at least six months to be heard, so this buys the applicant time to manipulate the children and gain financially.

The alleged abuser's ability to hold certain type of employment or secure new employment, especially jobs for the government where they are required to hold a firearms licence or jobs that involve working with children, is often severely compromised.

In parental alienation cases most parents accused of abuse are never formally charged, tried or convicted, because there is little to no evidence to support the allegations made against them, events that most likely never happened. An accused party is never found "innocent", the best you can hope for is that the charges are "unsubstantiated". There is no recourse against a false allegation and defamation proceedings are expensive and difficult to win.

While a restraining order is in place parents can be withheld from children's lives. Children miss out on seeing their parent on their birthday, school holidays and on Father's Day or Mother's Day. Special events like graduation, sports carnivals, award nights or times when the child just wants to spend time with their parent, the child misses out.

8. (a) Prevalence of misuse

According to David Collier, a retiring judge from the Parramatta Family Court, such accusations have now become a 'major weapon' in the war between parents who wish to secure full custody of their children. Unfortunately, some excellent parents have completely lost any access to their children. This is particularly so when non-residential parents are falsely accused of child abuse and neglect, and even the sexual molestation of their children. Even after the Department of Child Protection (DCP) and the family courts entirely clear the innocent parent of any wrongdoing, more often than not the courts end up keeping the custody with the parent who made the false allegations.

Harriet Alexander, 'False Abuse Claims are the New Court Weapon', Sydney Morning Herald, Sydney/NSW, July 6, 2013 <<http://www.smh.com.au/national/false-abuse-claims-are-the-new-court-weapon-retiring-judge-says-20130705-2phao.html#ixzz31YnbCik0>>.

Adam Blanch, 'Vigilante Justice: Feminism's Latest Attack on Human Rights', On Line Opinion – Australia's E-Journal of Social and Political Debate, 22 August 2014.

The overwhelming majority of magistrates in Australia share this popular perception that family violence orders (FVOs) are often sought for solely collateral reasons which are unrelated to authentic fear or real violence.

Patrick Parkinson, 'How Widespread are False Allegations of Abuse?' News Weekly, Melbourne/Vic, June 25, 2011.

Adam Blanch, 'Vigilante Justice: Feminism's Latest Attack on Human Rights', On Line Opinion – Australia's E-Journal of Social and Political Debate, 22 August 2014, at <http://www.onlineopinion.com.au/view.asp?article=16613>

For instance, a survey of 38 magistrates in Queensland revealed that 74 per cent of them agreed with the assumption that FVOs are often used for tactical purposes.

Belinda Carpenter, Susan Currie and Rachael Field, 'Domestic Violence: Views of Queensland Magistrates' (2001) 3 Nuance 17, 21. See also: Patrick Parkinson, Judy Cashmore and Judith Single, 'The Views of Family Lawyers on Apprehended Violence Orders after Parental Separation' (2010) 24 Australian Journal of Family Law 313, at 317

Rosemary Hunter's interviews with magistrates in Victoria indicated similar views. She reported that "many magistrates subscribed to the 'fright' narrative that women make false allegations of violence and apply for intervention orders only in order to gain a tactical advantage in family law proceedings"

Rosemary Hunter, Domestic Violence Law Reform and Women's Experience in Court, p. 264, (2008)

Similarly, a survey of 68 magistrates from New South Wales indicates that 90 per cent of them agreed with the statement that these orders are often sought as tactical devices to aid applicants with family law disputes, including depriving the former partners of any contact with their children. There was a general concern that DVOs were too easily obtained and were not often reflective of the real situation between the parties.

J Hickey and S Cumines, 'Apprehended Violence Orders: A Survey of Magistrates' (Sydney/NSW: Judicial Commission of New South Wales, 1999), at 37.

Judicial Commission NSW survey of Magistrates August 1999 (63) Quotes from the Magistrates included:

"yes yes yes, too many are using them as a lever in Family Court proceedings." "Yes.. In many cases it is the family law issue, such as access to children which feeds the potential violence. If the family law issues are resolved satisfactorily the basis for a DVO often disappears"

"yes. The local court is unable to predict what effect a final AVO has on family court proceedings. AVOS are very easily obtained and one has the feeling often that they do not accurately or honestly reflect the real situations between the parties. I suspect AVOS are often given disproportionate weight in family court proceedings which could lead to injustice (and probably does)"

“Cannot ignore possible tactical role of AVO applications vis-à-vis some family law proceedings”

“One must be aware that AVOs are used as a tactical weapon in family law disputes. Often the reason advanced by an applicant for an AVO is “the legal practitioners told me to get one” and “family law proceedings are pending or contemplated”

“Any suggestion of domestic violence orders to further family proceedings should be very closely scrutinised

The great majority of respondents (90%) agreed that DVOs were used by applicants in Family Court proceedings as a tactic to aid their cases and deprive their partner from access to children

“A Magistrate should be able to resolve the matter fairly and have regard to the rights of the children to have contact with both parents”

“It is disputes around contact to children which created the circumstances complained of. The delays in the Family Court determining questions of contact are a significant cause of domestic violence”

“I do know that it can be, and is used as a lever in some cases. A regrettable tactic”

“The court must be very vigilant to ensure its operation is not tainted by such practices”

Some Magistrates believed that women were advised by their legal practitioners to apply for orders and the Family Law Act needs to be amended to overcome this problem.

“This is true. In one case at: Liverpool court a complainant actually admitted that this was the reason her legal practitioners had told her take out the complaint. She agreed she had no actual problem with her partner!”

“A complainant once appeared in court without her legal practitioner (a prominent local legal practitioner with a busy family law practice). She did not understand why her legal practitioners had not attended court and told the court she did not wish a restraining order – she never had – but was advised by that legal practitioners it was necessary to help her family law case”

35% of the magistrates thought DVO processes were unfair to men. Some expressed concern that many defendants (most often a male) were not represented in court or had no assistance or support. Conversely the person in need of protection (most often a female) had support groups or the police to assist them in obtaining the order.

“A system which provides police prosecutor and facilitate support groups for complainant/PINOP, the majority whom are women, should provide legal assistance to men as a matter of fairness”

“This is certainly true at any objective level. All outside support is directed to female complainants and men frequently complain in court about the obvious gender bias. It is too easy to make a complaint which can have implications such as the removal of a person from their home, on an interim basis at least, for reasons of malice”

A few magistrates thought that orders were too easily available, and were made merely because they were sought. Consequently, men feel it is hopeless to argue, and consent to the orders rather than go to the time and trouble of defending the matter.

“They are not (defended), partly because many magistrates are reputed in the profession to make orders merely because they are sought and without adequate evidence. Men feel it is hopeless to argue. Moreover, many respondents are unrepresented and cannot properly test the evidence or marshal their own evidence. They behave in a passive, defeated way”.

Others viewed the lack of discretion in bringing these matters to court as a denial of natural justice. The consequences to men in relation to exclusion orders and contact with children was also thought to be harsh.

“Yes if there is an incident – the man is always arrested – his views, opinions and rights are generally ignored. The requirement that complaint must issue is a total denial of natural justice”

“This point really revolves around the issue of children. If there are children of the relationship and a non-residence order is sought by the female partner and mother the consequence of the order is more dislocating to men”

“The procedures are more helpful or geared towards assisting women. More needs to be done in assisting men. Quite often AVOs are used in conjunction with custody matters and it would appear to gain some advantage”

30% of respondents thought that more discretion should be available to police to filter out DVO cases they considered to be frivolous.

“The court should have the power to order court costs in matters inappropriately instituted or conducted by police where defendants have as a consequence suffered significant financial loss. The police have just become a law unto themselves in these matters”

“AVOs should be much harder to initiate. At present there is nothing to prevent them from being used maliciously. The disruption that can be caused to someone’s life simply by virtue of making of a compliant in considerable”

This is also confirmed by an analysis of 68 families with allegedly violent wives conducted by Dr Sotirios Sarantakos. He is an Associate Professor of Sociology at Charles Sturt University and his study reveals that a considerable number of ‘women’s allegations of DV were proven to be false’.

As noted by Dr Sarantakos, in such cases ‘the initial allegations [of domestic violence] were modified considerably by them during the course of the study, particularly when they were faced with the accounts of their children and mothers, admitting in the end that they were neither victims of violence nor acting in self-defence’.

Sotirios Sarantakos, ‘Deconstructing Self-Defence in Wife-to-Husband Violence’, (2004) 12 (3) *The Journal of Men’s Studies* 277, 287

One of the most insidious consequences of the politicisation of the debate on domestic violence relates the undermining of traditional procedural rules that are normally applied to govern our adversarial system of justice.

Kenneth J Arenson, 'When Some People Are More Equal Than Others: The Impact of Radical Feminism in our Adversarial System of Criminal Justice' (2014) 5 *The Western Australian Jurist* 213, at 217

At a minimum level due process requires sufficient evidence to convict. Further, due process requires that proceedings be designed to allow a person charged with a criminal offence or accused of a civil wrong to be heard in a regular court and be fully informed in a timely fashion of the nature of the accusation(s).

Christine Synowish, 'Utopia and the Rule of Law', in David Dyzenhaus (ed), *Recrafting the Rule of Law: The Limits of Legal Order* (Oxford/UK: Hart Publishing, Oxford, 1999), at 180.

Due process entails, at least in criminal prosecutions, a presumption of innocence and the right to a fair and impartial adjudication. This necessitates, among other things, that the accused shall receive a fair and timely opportunity to respond to the allegations and prepare a defence.

Family violence orders (FVOs) lack the proper application of due process because the evidentiary standards are dramatically relaxed. In more extreme cases, the vast majority of such orders have no evidentiary foundation and are often granted on a 'without admissions' basis that have virtually no evidentiary value in themselves.

Jane Wangmann, in an analysis of court files in NSW, discovered that the information provided in written complaints was typically brief. The accounts tended to focus on a single incident, and there was often very little information, and/or a considerable amount of irrelevant information. She found that references to "fear" in ADVO complaints appeared "to be included in a routine and habitual manner, frequently as a bald statement to conclude a complaint without any reasoning or thematic connection to the victim's experience.

The lack of time to go into the basis for an application where the respondent is prepared to consent without admissions means that magistrates may well have great difficulty knowing much more than is available from the written, and sometimes formulaic, application.

Jane Wangmann, 'She said...' 'He said...': Cross Applications in NSW Apprehended Domestic Violence Order Proceedings, PhD thesis, University of Sydney, 2009 at 100-112

Additionally, having only a few days to prepare to a defence to an accusation of domestic violence is not nearly enough time. This is compounded by the undeniable stress caused by being evicted from the home by armed police officers at the behest of the domestic partner.

Far more often than not, the respondents will have lost access to their children and even their joint bank accounts too. This is because the applicant might have spent several months or even years with a lawyer planning to file such an order.

In sharp contrast, the accused is given only a couple of days to prepare a defence. Following a final hearing, those who are adjudicated guilty through such precarious process will have his life and reputation forever tarnished.

David N. Heleniak, 'The New Star Chamber: The New Jersey Family Court and the Prevention of Domestic

Violence Act' (2005) 57 (3) Rutgers Law Review 1009, at 1014-16.

And contact with his children may also be banned, particularly when the mere existence of the restraining order makes any contact impossible.

There is a widespread view that some lawyers have instructed clients to seek restraining orders even when they are palpably unjustified.

Parkinson, above n.11, at 324.

Rather than being honestly motivated by legitimate concerns about feeling safe, a person may seek a AVO simply because he or she is legally advised to look for any reason to apply for such an order when facing a family law dispute.

As a result, law-abiding citizens have been caught in police proceedings and evicted from their homes by ex parte orders that seriously violate the most basic elements of due process – including advance notice of the proposed action, the right of facing the accuser, and the opportunity to refute the allegation.

The WA Law Reform Commission recommended that legislation should provide a fair and just legal response to domestic violence. Above all, the Commission's Final Report stated that:

[A]s Legal Aid confirmed, this does 'not mean that fairness and the protection of individual rights are not important considerations.' In this context, it is vital to acknowledge that not every person who applies for a violence restraining order is a victim of family and domestic violence and not every respondent is a perpetrator. As noted in the Discussion Paper, the current restraining order system is not without its critics in terms of its overuse or abuse. Although it is true that most applications for violence restraining orders are properly made, sometimes they are unmeritorious or otherwise used for tactical purposes in family law litigation. And yet, many lawyers consider that violence restraining orders, in particular those applied for after proceedings have been instituted in a family law dispute, may actually exacerbate conflict and decrease the prospects of the parties reaching agreement, with a consequent impact upon legal costs.

Because an interim violence restraining order can be made on the uncorroborated evidence of the applicant, the potential for abuse is very real. One example repeatedly mentioned to the Commission during its consultations is where the person protected by a violence restraining order is the perpetrator and the person bound is the victim. Further, it is important to acknowledge, from the respondent's perspective, the potential consequences of a violence restraining order: exclusion from the family home, prohibition of contact with children, inability to work, and general restrictions on day-to-day activities. Additionally, a respondent is liable to serious consequences under the criminal law for failure to comply with the order (including an interim order).

For these reasons, the justice system must ensure that the legal rights of all parties are respected and, in particular, that respondents to violence restraining order applications have a right to be heard within a reasonable time. Additionally, the importance of ensuring that the legal system responds to family and domestic violence in a fair and just manner supports the provision of better and more reliable information to decision makers at the outset, thus enabling more accurate and effective decisions to be made.

9. Children

The family law system does not deal adequately with child protection issues. It is not equipped to identify or address serious risks to children's safety, and it does not have capacity to determine the truth about allegations of violence and abuse, even where evidence of such behaviour is available. The system is poor at discerning risk to children and poor at determining the truth where there are competing claims about such risks. The system also vicariously hurts children by harming their parents and making poor and incorrect decisions.

Family Law Council, 2002. *Family law and child protection*, Final report, Commonwealth Government, p 15.

9. (a) Children are at greatest risk with their biological Mothers

While the witnessing of parental domestic violence can be damaging to children, family and domestic violence frequently involves parents or step-parents being directly violent to their children or step-children. The 2015 Children's Rights Report⁹ by the National Children's Commissioner found that children comprised the second most frequent group of victims of family and domestic homicides after intimate partner homicides (quoting data from the *Australian Institute of Criminology's National Homicide Monitoring Program* (NHMP) for the 10 years from 2002-2012).

Over half (52%) of all family violence child murders were perpetrated by women.

In the most recent biennial reporting period of the NHMP (2014-16), mothers killed 20 children, while fathers killed children (4 children were also killed by mothers' new male partners).

In 1997, the Australian Institute of Health and Welfare made a decision not to publish any more data indicating the gender of child abuse perpetrators. No such data has been published since. The action was taken just one year after the figures were first published in 1996 (968 men and 1138 women). A more recent FOI request to all states and territories to obtain more data (only the WA Government complied) found that mothers once again made up the vast majority of reported child abusers in WA in 2007-08 ¹¹.

Harm prevention is particularly critical for children. Processes and services that de-escalate conflict and address oppositional behaviour between parents are vital to harm prevention and supporting healthy child development in the context of parental separation. This is the most fundamental failure of the current court-centric system. It expects that children's best interests can be protected by a winning parent and loser parent emerging, emotionally scarred and financially bruised (if not broken) from the prolonged turmoil of affidavits and cross-examination. The situation for many children, enmeshed in their parents' disputes, is dire and long-lasting. In too many instances, its repercussions will echo throughout their lives, bleeding into their relationships with their own partners and children. Most family Court matters also drain and deplete the financial legacy of the children. It is imperative for governments to break this cycle. An advanced society should not fail to protect its children because of blind insistence, in the face of all evidence, on a model that institutionalises and rewards parental conflict by offering only win/lose outcomes.

When the children of our society cannot have a meaningful relationship with both their mother and their father it is indication of a society which in major respects is dysfunctional and failing its children.

LFAA 2010 National Conference titled "we have witnessed a Second Stolen Generation of our Children", "Systems Failing Fathers and Children"; "A Fatherless Society in Waiting" also attracted 13 Ministers and Senators many of whom were guest speakers, which included both the Attorney General Robert Mc Cleland, and Shadow Attorney General George Brandis.

Over the last 10 years the Family Law system has continued this trend with many countless thousands of children not been awarded their natural rights as Australian Children. Much of this has occurred through the amendment to the 2010 Family Violence Bill that accepts a person is guilty on accusation alone.

In 1997, ALRC Report 84 reported that children believed that the family law system was 'dominated by legal strategizing by competing parties to maximise their chances of winning the case...The interests of the child often get lost between the warring parties.' Reforms to fix this have been forcefully resisted by those in favour of the status quo (but not by parents or by practitioners with expertise in conflict, violence or mental health).

<https://www.alrc.gov.au/inquiry-categories/children-legal-process/>

The 2018 ALRC recommendations would propose amendments that would further erode the rights of children, especially in relation to meaningful access to their Fathers.

Australians know that the current system – designed to make winners and losers of parents – is not only not working, but is actively harming children and their parents. From the binary win/loss outcomes that litigation is designed to produce flow all manner of serious and sometimes irreparable harm to children and their families:

- entrenching and deepening conflict between parents
- incentivising litigation tactics such as burning off and making unfounded allegations
- incentivising other misuse of court processes and other legal systems, and
- incentivising aggressive behaviours intended by one parent to incapacitate the other parent from co-parenting effectively.

Parental conflict predicts poor wellbeing outcomes for children. Mitcham-Smith and Henry (2007) observed that the win/loss nature of litigation in the family law courts can:

- entangle children in perpetual turmoil, as parents navigate through complex, expensive, emotionally, intimidating and too-often prolonged processes
- diminish the role of parents as legitimate protectors of their children
- complicate the child's role identity
- teach ineffective conflict-resolution skills, and
- embed shame and self-blame by children if ongoing parental conflict relates to parenting matters, including contact arrangements and child support.

<https://psycnet.apa.org/record/2007-14600-008>

The Australian Psychological Society notes that the factors predicting child wellbeing are the same for children in separated families and those in stable families. The presence of inter-parent conflict and family violence reduces child wellbeing, while responsive, warm, consistent and authoritative parenting is associated with improved outcomes for children (Sanson & McIntosh, 2018).

<https://www.psychology.org.au/for-members/publications/inpsych/2018/December-Issue-6/Children%E2%80%99s-wellbeing-after-parental-separation>

Savard observed that high conflict divorce 'roughly doubles the rate of emotional and behavioural problems in children', with children enmeshed in chronic high conflict families, experiencing 'chronic stress, insecurity and agitation; shame, self-blame and guilt', as well as fears for their own safety.

Savard, 'Through the eyes of a child: impact and measures to protect children in high-conflict family law litigation' (2010).

The effects of separation and divorce on children have been studied extensively since divorce rates began rising in the last century. Parental separation can have a significant impact and present multiple risks:

- Loss of contact with parent and developmental benefit
- Stress of adjusting to changed living arrangements
- Lack of psychological resources
- Parents' mental health and parenting ability
- Economic decline

Exposure to high levels of conflict between parents and caregivers has consistently been identified as the most significant predictor of poor outcomes for children. Such children are likely to have:

- Adjustment problems
- Relationship problems
- Exhibit psychological maladjustment
- Lower academic achievement
- Social difficulty
- Poor self esteem
- Higher levels of anxiety and depression

Children of divorced families, compared to never divorced families are:

- more likely to experience greater economic, social, and health difficulties,
- more likely to use alcohol, cigarettes, and drugs;
- more likely to rely on peer groups who use substances
- twice as likely, even when compared with otherwise bereaved children, to give birth to a child as a teenager
McLanahan, 1999 <https://psycnet.apa.org/record/1999-02129-006>
- 2.5 times more likely to receive psychological treatment (Johnston, 1997);
[https://books.google.com.au/books?id=RXEsBgAAQBAJ&pg=PA25&lpg=PA25&dq=psychological+treatment+\(Johnston,+1997&source=bl&ots=H2AZ0T2hd5&sig=ACfU3U1ojFGI2FddYt0iZ9MNjTwKfLwVAg&hl=en&sa=X&ved=2ahUKEwjX1oCl-aDpAhXmzzgGHADfDE0Q6AEwA3oECAsQAQ](https://books.google.com.au/books?id=RXEsBgAAQBAJ&pg=PA25&lpg=PA25&dq=psychological+treatment+(Johnston,+1997&source=bl&ots=H2AZ0T2hd5&sig=ACfU3U1ojFGI2FddYt0iZ9MNjTwKfLwVAg&hl=en&sa=X&ved=2ahUKEwjX1oCl-aDpAhXmzzgGHADfDE0Q6AEwA3oECAsQAQ)
- more than twice as likely to drop out of school early (Buchanan & Heiges, 2001) except when fathers are actively involved;
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2930824/>
- more likely to have earlier marriages, which in turn correlates with increased propensity to divorce;
- more likely to demonstrate poorer socioeconomic attainment (McLanahan & Sandefur, 1994)
<https://www.hup.harvard.edu/catalog.php?isbn=9780674364080>

-
- More likely to be especially disturbed (especially boys) if the divorce processes are accompanied by parental violence (Margolin, Oliver, & Medina, 2001).
<https://psycnet.apa.org/record/2001-01346-001>

The 2012 AIFS survey of recently separated parents found that only 44% of parents agreed that the family law system meets the needs of children and just under half of all parents agreed that the system protects the safety of children. Just over two-fifths of all parents agreed the system effectively helps parents find the best outcome for their children.

From ALRC DP 86, paragraph 1.43, citing South Australia Commissioner for Children and Young People, *What Children and Young People Think Should Happen When Families Separate* (Office of the Commissioner for Children and Young People, 2018) 15.

Children's physical, mental, emotional and cultural safety must be paramount in all their experiences with the family law system. In addition to experiencing feelings of loss, guilt, fear and anger as a result of their parents separating, family law proceedings may have consequences for children's mental health.

9. (b) Fatherless homes

We agree with the Royal Australian and New Zealand College of Psychiatrists (RANZCP) Family Court Proceedings general principles:

- There is no clear evidence to suggest that, on the basis of gender alone, one parent or the other is the more appropriate custodian. (exception only where there may be breastfeeding):
H & D [2003] FMCAfam 290 (18 July 2003) and SDW & JCJ [2005] FMCAfam 210 (6 May 2005).
- Procedures that diminish the adversarial process and shorten litigation will generally promote the welfare of the child. In the case of young children, it is desirable that the development of an attachment relationship to a parent figure should not be jeopardised by delays or reversed decisions.
- Any wishes expressed by the child in relation to custody, guardianship, access or other relevant matters, should be conveyed to the Court, with appropriate qualifications regarding the child's ability to make a responsible and considered assessment either of the relevant factors or of the significance of the decision.
- It is recognised that the biological parents are most often the persons with the strongest commitment to and relationship with the child.
- The welfare of the child is generally best served when provision is made for consistent care by an adult or adults with whom the child has a safe and secure attachment.

Michael E. Lamb is a professor and former Head of the then Department of Social and Developmental Psychology at the University of Cambridge, and he has done extensive research on shared parenting after divorce. He has stated that hundreds of papers show a higher risk of maladjustment in children when parents have separated and that maintaining a relationship with both parents minimizes the risk and the bad effects of parental separation.

His work in family relationships has focused on the role of fathers and the importance of their relationships with children.

Lamb ME. Does shared parenting by separated parents affect the adjustment of young children?. *Journal of Child Custody*. 2018 Jan 2;15(1):16-25.

Braver SL, Lamb ME. Shared parenting after parental separation: The views of 12 experts. *Journal of Divorce & Remarriage*. 2018 Jul 4;59(5):372-87.

Braver S, Lamb ME, Holstein N. Factors associated with successful shared parenting following family dissolution. *Journal of Child Custody*. 2018 Jan 2;15(1):1-3.

Philip Greenspun, Shared parenting literature review from Michael Lamb: is the main point of social science research to bolster personal prejudice?, 22 June 2017.

Courts have historically awarded winner status to the mother, who is also typically the plaintiff in a divorce or custody lawsuit, with young children spending 100 percent of their overnights with the mother and enjoying occasional visits with the father (though that tenuous relationship often withers away to nothing). In the old days it was enough to say “the kids go with the mother because she is the mother,” but in a nominally gender-neutral legal system it became necessary to find more elaborate theories for why the outcomes should continue to park children exclusively with the Mother.

<https://philip.greenspun.com/blog/2017/06/22/shared-parenting-literature-review-from-michael-lamb-is-the-main-point-of-social-science-research-to-bolster-personal-prejudice/>

In the US, cash motivated Mothers tend to sue when the youngest child is 2 years old. This is the point at which a second adult in the household is less useful because (a) the child can be parked with day care, (b) the child can be parked with an iPad or TV, or (c) the child can be parked with a babysitter in the evening. In the “preserve and extend the status quo states” the winner parent from the first round of litigation is generally guaranteed to retain winner parent status until the child ages out of the child support system, age 18-23. Preventing the child from spending overnights with the loser parent is an important first step in severing the relationship with the loser parent, which is helpful for keeping the cash flowing and also with getting court permission to relocate.

One of the undeniable facts about divorce is that children often adapt better to their parents’ separation if they are allowed to have a continuing contact with both parents. Indeed, a recurring theme in the field of child psychoanalysis is that children of divorced parents often desire to develop a meaningful relationship with both of their parents, including their non-residential parents. According to a significant academic paper endorsed by 110 leading international experts, it is not correct to assume that sharing overnight care is necessarily problematic for the little child.

Richard A. Warshak, ‘Social Science and Parenting Plans for Young Children: A Consensus Report’(2014) 20 (1) *Psychology, Public Policy and Law* (American Psychological Association) 46-67

By Richard A. Warshak, this peer-reviewed academic article analyses existing research and it finds that little children commonly develop attachment relationships with more than one caregiver. It also finds that, in normal circumstances, children are likely to do considerably better if they have overnight contact with both parents. Thus the article concludes, beyond reasonable doubt, that ‘sufficient evidence does not exist to support postponing the introduction of regular and frequent involvement, including overnights, of both parents with their babies and toddlers. The theoretical and practical considerations favouring overnights for most young children are more compelling than concerns that overnights might jeopardize children’s development’.

As mentioned, 110 leading researchers and practitioners have read, provided comments, and offered revisions to Dr Warshak's article and they endorse his article's conclusions. This includes Dr Don Edgar, former foundation director of the Australian Institute of Family Studies; Judy Cashmore AO, Professor in Socio-Legal Studies at Sydney University; and Barry Nurcombe, Emeritus Professor of Child & Adolescent Psychiatry, University of Queensland. According to Nurcombe, 'the experts who signed the report are amongst the best in the world in their fields'. As he also explains, 'the paper highlights the fact that current policies relating to overnight contact with [...] young children have been excessively affected by misplaced concern to the mother'.

Fatherlessness is a growing problem in Australia and the Western world. Whether caused by divorce and broken families, or by deliberate single parenting, more and more children grow up without fathers.

Bryan Rodgers of the Australian National University has recently re-examined the Australian research. Says Rodgers: "Australian studies with adequate samples have shown parental divorce to be a risk factor for a wide range of social and psychological problems in adolescence and adulthood, including poor academic achievement, low self-esteem, psychological distress, delinquency and recidivism, substance use and abuse, sexual precocity, adult criminal offending, depression, and suicidal behaviour." He concludes: "There is no scientific justification for disregarding the public health significance of marital dissolution in Australia, especially with respect to mental health."

Bryan Rodgers, "Social and Psychological Wellbeing of Children from Divorced Families: Australian Research Findings," *Australian Psychologist*, vol. 31, no. 3, November 1995, pp. 174-182

"The weight of the evidence is that fathers can make unique, direct contributions to their children's well-being. These findings held true after controlling for a range of factors, including mothers' involvement, children's characteristics, children's early behavioural problems, family income, socio-economic status over time, stepfather involvement and family structure." It goes on to list the many specific ways in which fathers positively contribute to the wellbeing of children.

Lees, Daniel, *Going Further with Fathers*. Auckland: Maxim Institute, 2007, p. 3.

Fatherlessness

- Fatherlessness lowers educational performance
- Fatherlessness increases crime
- Fatherlessness increases drug abuse
- Fatherlessness increases sexual problems
- Fatherlessness increases physical & mental health problems
- Fatherlessness increases physical and sexual child abuse

<https://www.fatherhood.org.au/resources/FACTS-ON-FATHERLESSNESS.pdf>

The above is just a small sampling of a very large body of research findings on the issue. The social science research on the need for children to be raised by both a biological mother and father is vast and growing.

Wade Horn, the head of the National Fatherhood Initiative in the USA offers this concluding word: "The news is not good when large numbers of children are growing up disconnected from their fathers. It's not that every child who grows up in a fatherless household is going to have these kinds

of difficulties. But it is true that there's an increased risk of these negative outcomes when kids grow up without fathers."

Wade Horn, in Katherine Anderson, Don Browning and Brian Boyer, eds, *Marriage: Just a Piece of Paper?* Grand Rapids: FpencveEerdmans, 2002, p. 295.

With the rise of fatherlessness Australia and the Western world has also experienced a marked rise in social problems. And the brunt of these problems has been borne by children. We owe it to our children to do better. We urgently need to address the twin problems of fatherlessness and family breakdown. Public policy must begin to address these crucial areas.

10. Associated Services

The ABF position in relation to all Family Law Services and support is that they be entirely gender neutral in both their availability, access, services and support, but also in content. The experience in accessing those services should be indistinguishable between men and women. As we have stated in our submission on domestic violence, all within our community should have equal access to services. Such access should be based solely on objective need.

We have police departments proclaiming that they are domestic violence accredited (with such training based on rejected and outdated sexist models such as the Duluth model), Legal Aid that in reality is primarily available to women, crisis and support services that presume male victims might be perpetrators, charities that only provide services to one gender, and people within the support and services industry that bring significant gender bias to their roles. There is no valid or ethical reason why this should be the case, and why a large subset of victims are denied access to essential services. This situation exists only because those who have lobbied for the current status quo have done so most successfully and piggy backed off the earlier movements for equality that largely if not entirely achieved their goals decades ago.

Domestic Violence accreditation

Government departments that received accreditation and training from domestic violence charities that base their content on the sexist and rejected Duluth model, should have that accreditation disregarded and replaced. (This should also apply to any government organisation that received the same accreditation). By way of example, Queensland Police received White Ribbon Workplace accreditation (based on the Duluth model) in 2017. This training provides Qld Police with the false gender based narrative in relation to domestic violence that undermines their ability to carry out their jobs, justly, correctly and safely. It is also contrary to the reality of domestic violence as experienced by those at the coalface: family law practitioners, judiciary and police themselves.

<https://www.facebook.com/QueenslandPolice/photos/a.10150704734123254/10156130447138254/?type=1&theater>

<https://www.whiteribbon.org.au/understand-domestic-violence/what-is-domestic-violence/controlling-relationships/power-and-control-wheel/>

After many years of criticisms, including scrutiny around the management of finances and treatment of staff, White Ribbon has since gone into receivership. It seems inconceivable that a charitable organisation that operated on both government grants and public and corporate donations would be criticised in relation to the management of finances, and the provision of actual real-world services and support to victims, and finally meet its demise because of the inability to manage the millions that had gone through its coffers in good faith. It can be seen as an abuse of trust of both public and private money and a failure for victims: female victims only, in this case.

<https://www.smh.com.au/opinion/as-its-dramatic-debt-is-revealed-can-white-ribbon-survive-20190219-p50yx1.html>

There are now national domestic violence charities, such as endalldv, that provide gender neutral workplace training.



ABF

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