

CONNECTING SYSTEMS, PROTECTING VICTIMS: TOWARDS VERTICAL COORDINATION OF AUSTRALIA'S RESPONSE TO DOMESTIC AND FAMILY VIOLENCE

KAREN WILCOX*

I INTRODUCTION

The legal system has been central to government responses to family and domestic violence in Australia. Through the implementation of the criminal, protection order and child protection laws of the States and Territories, structures of intervention have been established which attempt to protect victims of violence from harm, as well as deter perpetrators and make them accountable. A wide variety of agencies support Australia's legal response to domestic and family violence,¹ including the criminal justice systems, women's legal services, community legal centres, legal aid units, court advocacy services and specialist child protection or family violence courts. In addition to these legal system structures, Australia has a range of non-legal services which support and assist victims to heal and rebuild, including refuges, support and outreach services, counselling and therapeutic services, and family support.

Historically, service 'silos' have arisen in relation to each of these systems and support structures, with agencies developing separate goals, procedures and understandings of the issues and problems to be addressed by them. These silos have been the source of many barriers preventing services and agencies from

* BA (Hons) LLB (UNSW), Good Practice Officer, Australian Domestic and Family Violence Clearinghouse. The author is grateful for the feedback and comments provided by anonymous reviewers of an earlier version of this paper.

1 In this field, much terminology is contested. The differing connotations surrounding the terms 'family' and 'domestic' violence are acknowledged. In Australia, the term domestic violence generally refers to intimate partner violence, while family violence is used to refer to violence committed by a wider range of family members: National Council to Reduce Violence against Women and Their Children, *Time for Action: National Council's Plan for Australia to Reduce Violence against Women and their Children* (2009) 186–187 ('*Time for Action*'). However, given that some jurisdictions favour one term over the other, (and this usage does not always reflect the usage in the literature – Tasmania's *Family Violence Act 2004* (Tas) relates to partner violence), the terms will be used interchangeably unless distinction is required to clarify meaning. The non-gendered term 'victims' of violence has also been used in this article, although the author acknowledges that this term may obscure both the gendered nature of domestic violence and the agency and strength of those who survive living with domestic abuse. However, the term 'victims' better acknowledges the effects and impacts of abuse and its often criminal nature.

meeting their intended outcomes, and together have created complex and inaccessible pathways for victims to navigate.

There are a number of inconsistencies, gaps and limitations which become evident when victims of domestic violence attempt to navigate the legal system. These arise in part from the divisions caused by federation and in part from the professional and jurisdictional silos which operate with little connection across courts, government agencies, professionals and services. Furthermore, the differing priorities placed on the safety and protection of victims and their children in the face of other goals and principles often leads to decisions which undermine the needs of family violence victims and their children.

In response to the problems of ‘agency siloing’, over the past few decades, the domestic violence sector has developed strategies for ‘joining-up’ some of the services which victims of violence will encounter in order to obtain safety and protection. In some cases, these strategies have involved loose and informal interagency networking. At the other end of the spectrum, formal structures of coordination and integration have emerged in some parts of the country.

By and large, joining-up of domestic violence responses has occurred only at a state and territory level, thus involving three key systems – child protection, criminal justice and domestic violence services. The development of cross-agency practice has been initiated by state and territory governments and has therefore focused primarily on ‘horizontal’ relationships – those between agencies within a particular state or territory which might come into contact with families living with domestic and family violence. Yet in Australia, integration of systems within the states and territories cannot adequately address the maze through which victims of domestic violence must negotiate in order to develop avenues of safety and recovery. Layered on top of these legal and service systems, integrated or not, is the Family Law system. This system presents another, *fourth*, silo. Thus even where the states and territories have been successful in building bridges across systems, victims nonetheless find themselves experiencing secondary, system-generated victimisation, whereby continuous re-engagement with an array of services and interventions, re-telling of their stories, along with exposure to questioning, disbelief and cross-examination makes victims feel like they are ‘wading through molasses’ in their attempts to find safety for themselves and their families.²

This article will examine some of the remaining gaps in system integration in relation to domestic and family violence that have arisen from this fourth sector – the Family Law system.³ The difficulties which have arisen from the family

2 Amanda Lee-Ross, ‘Wading through Molasses: the Unintended Outcomes of a Non-systemic Approach to Family Law, Child Protection and Domestic Violence Legislation’ (Paper presented at the ‘Putting Safety First’ Forum, Brisbane, 4 December 2009) <<http://www.noviolence.com.au>>.

3 In addition to child protection, domestic violence and criminal justice. Other areas of law also impact on the lives of domestic violence victims, or have been drafted to address particular issues which they face. These include social security, immigration, industrial and victim’s compensation laws. In this paper, the term ‘Family Law’ will be capitalised when referring to the system of services and pathways that have arisen out of the legal framework, to distinguish the phrase from the law itself.

law/family violence nexus have been the subject of review over recent years,⁴ with a range of recommendations emerging, including law reform, training, and judicial education. Many of these studies note the disjuncture between the service systems which respond to family violence, and the Family Law system. Developing more ‘joined-up’ legal and service responses to the needs of family violence victims (including children) provides one of the most valuable means through which this disjuncture can be addressed. This approach to the disconnection of legal and system responses to the needs of victims of violence will be addressed in this article and the potential for ‘vertical coordination’ will be scoped. In doing so, the features of multi-agency responses to domestic violence will be identified first. Following this, the impacts of Family Law system decision making on victim safety will be reviewed. The possibilities for vertical integration of responses to family violence within the Australian federation will be then be explored.

It is timely to examine the capacity for vertical coordination of responses to families living with domestic violence, given the release of the key reviews mentioned above, the introduction of several government policy initiatives assisting cross disciplinary practice,⁵ and a growing interest within the Family Law sector in what has become known as the ‘Wingspread’ movement.⁶ These will also be discussed later in the article.

II BACKGROUND

Intervention in domestic and family violence has, for some decades, been considered a matter for government and legislative action. This has given rise to major policy and law reform projects in Australia since the 1980s, and the legal system has provided a central focus of this response, through the acknowledgement of the criminal aspects of domestic violence and through the development of a unique system of protective injunctions.⁷ Yet the division of powers and responsibilities under federation provides a set of problems, difficulties and gaps when it comes to protection from violence and abuse for

4 See, for example Richard Chisholm, *Family Courts Violence Review* (Attorney-General’s Department (Cth), November 2009); Family Law Council, Attorney-General’s Department (Cth), *Improving Responses to Family Violence in the Family Law System* (2009); Dale Bagshaw et al, Attorney-General’s Department (Cth), *Family Violence and Family Law in Australia* (2010); Australian Law Reform Commission (‘ALRC’) and New South Wales Law Reform Commission (‘NSWLRC’), *Family Violence: Improving Legal Frameworks*, ALRC Consultation Paper No 1, NSWLRC Consultation Paper No 9 (2010); Lesley Laing, *No Way to Live* (University of Sydney & Benevolent Society, 2010); Rae Kaspiew et al, ‘Evaluation of the 2006 Family Law Reforms’ (Report, Australian Institute of Family Studies, 2009).

5 See, eg, Robert McClelland, Attorney-General, ‘\$2.8 Million for Family Pathways Networks’ (Media Release, 27 April 2010); Robert McClelland, Attorney-General, ‘New Project to Improve Collaboration in the Family Law System’ (Media Release, 6 July 2010).

6 See *Family Courts Review* special issue on domestic violence: (2008) 46 *Family Court Review* 3.

7 For a current overview see Karen Wilcox, ‘Recent Innovations in Protection Order Law – A Comparative Discussion’ (Topic Paper No 19, Australian Domestic and Family Violence Clearinghouse, 2010).

adult and child victims, which are not found in other federations. There is no national legislation specifically targeting family and domestic violence, but there are eight separate state and territory legislative schemes which enable victims of family violence to obtain protection through the police and the courts.⁸ States and territories specifically legislate in regards to:

- criminal laws, such as the laws of assault and stalking, as well as bail, evidence and sentencing laws;
- protective injunctions and orders (with both civil and criminal qualities), which in some jurisdictions include restraining instruments issued directly by police;⁹
- child protection orders under state and territory child protection law, which in some jurisdictions includes witnessing of family and domestic violence as a ground for intervention, as well as direct child abuse and neglect;
- criminal injuries compensation legislation;¹⁰ and
- tenancy laws.¹¹

In addition, legislation enacted by the Commonwealth impacts on domestic violence interventions, either directly or indirectly. Commonwealth laws relate to:

- injunctions under the *Family Law Act 1975* (Cth) sections 68, 114 ('*FLA*');
- family law parenting orders, which require courts to consider safety from family violence as one of the key considerations in determining children's best interests, and whether time should be spent with perpetrators of violence.
- social security law, which requires sole parents, including women leaving abusive relationships, to register for 'the dole' and pass requisite work tests (with some limited, short term exemptions);¹²
- child support law and family laws relating to property, which impact on the decision making of victims of domestic violence who may be considering leaving an abusive relationship;¹³

8 Ibid.

9 Ibid.

10 Isobelle Barrett Meyering, 'Victim Compensation and Domestic Violence: A National Overview' (Stakeholder Paper No 8, Australian Domestic and Family Violence Clearinghouse, 2010).

11 Karen Wilcox and Ludo McFerran, 'Staying Home, Staying Safe: The Value of Domestic Violence Protection Order Provisions in Homelessness Strategies' (2009) 94 *Reform* 24, 25.

12 For current regulations, see National Welfare Rights Network, *Independent Social Security Handbook* (2002). In the past, single parents who were not financially self-supporting were included in the less onerous and more generous pension system – the shift to an 'allowance' framework is arguably a retrograde step for women, which limits their choices in relation to financial dependency on abusers.

13 Ludo McFerran, *It Could Be You: Female, Single, Older and Homeless* (Homelessness NSW, 2010). This report shows that older women's homelessness is linked to property and maintenance decision making post-separation, with women who have experienced violence at particular risk.

- workplace and industrial laws, which may impact on the financial position of victims and thus the options available to them. Laws pertaining to flexibility in working hours, leave for child-related matters and court appearances, and discrimination laws are of particular relevance to victims of domestic and family violence;¹⁴ and
- migration laws and regulations (particularly in relation to spousal visa applications).

Each of these areas of law can affect the options available for victims of domestic and family violence who are attempting to find safety and recover from the effects of the abuse, and each provides a potential entry point for victims seeking assistance.

III INTERAGENCY RESPONSES TO DOMESTIC AND FAMILY VIOLENCE

A The Problem of 'Dis-Integration'

The array of areas of government and legal intervention noted above provides much potential for service and system siloing. Even within the states and territories of Australia, responses to family violence are not unified, given that there are separate laws for domestic violence and for child protection. Cracks in the system are inevitable when agencies are established in accordance with separate jurisdictional, strategic and administrative enclosures. The consequent *dis*-integration which has occurred relates not simply to differing legal frameworks, but also to the distinct and often incompatible priorities and understandings of the problem, and to ideas about appropriate interventions with families.¹⁵ Victims of domestic violence can feel torn between the competing demands of child protection agencies and their own efforts to risk-manage and survive abuse.

This is in spite of the well-established research base which suggests comorbidity of child abuse and domestic violence: many families where children are abused, or at risk, are often families where partner abuse is also prevalent.¹⁶ In addition, a substantial body of evidence has shown that exposure to domestic violence (sometimes referred to as 'witnessing' violence) has significant harmful

14 Suellen Murray and Anastasia Powell, 'Working It Out: Domestic Violence Issues and the Workplace' (Issue Paper No 16, Australian Domestic and Family Violence Clearinghouse, 2008).

15 See Lesley Laing, 'Domestic Violence in the Context of Child Abuse and Neglect' (Topic Paper No 9, Australian Domestic and Family Violence Clearinghouse, 2003); Lana Zannettino, Department for Families and Communities (SA), *Better Outcomes for the Protection of Children Affected by Domestic Violence: Developing Interagency Collaboration between Child Protection and Domestic Violence Services* (2006).

16 Ernest N Jouriles et al, 'Child Abuse in the Context of Domestic Violence: Prevalence, Explanations, and Practice Implications' (2008) 23 *Violence and Victims* 221; Laing, 'Domestic Violence in the Context of Child Abuse', above n 15; Christine Potito et al, 'Domestic Violence and Child Protection: Partnerships and Collaboration' (2009) 62 *Australian Social Work* 369.

effects on children – even babies.¹⁷ These effects are emotional, psychological, developmental and cognitive, and all aspects of the child's growth, wellbeing and identity can be damaged. The long term psychological harm caused by living with one's own fear and with the fear shown by one's primary attachment figure makes domestic violence a significant issue for child protection systems.

Yet often victims of domestic violence, rather than perpetrators, are held accountable for the effects of the violence on their children.¹⁸ In some states and territories, authorities may remove children from their mothers because of 'failure to protect from violence', highlighting the failure of the system to hold perpetrators accountable and to support victims of violence.¹⁹ This secondary, system-created, victimisation occurs when services, either directly or indirectly, hold victims responsible for the abuse, which further disempowers victims.

Secondary victimisation also occurs when the practices of the system or service provider themselves are disempowering or discriminatory to victims of violence, or lead to decreased, rather than increased, levels of safety. Victims who are required to tell their stories repeatedly to various agencies, or to initiate engagement with an array of services in order to address the complexities of their needs also experience secondary victimisation. In this way, victims of domestic violence can be further disadvantaged through engagement with the state (which ought to protect them). Secondary victimisation is in part a consequence of agency siloing, and the failure of agencies within other disciplines to understand the complexities and pre-determinants of abuse.²⁰ Victims of family violence and their children can be overwhelmed by rules, regulations and requirements which are often contradictory and at times appear to punish them.

B Towards Horizontal Integration

Domestic violence services have attempted to address contradictory interventions and secondary victimisation by forging interagency connections. This has led to increasingly formalised degrees of cooperation or engagement which can vary from collaborative networking to full-scale integrated systems, often based on Duluth (United States) and Hamilton (New Zealand) responses to family violence.²¹ The ACT's Family Violence Intervention Project ('FVIP') was

17 See Jennifer McIntosh, 'Thought in the Face of Violence: A Child's Needs' (Paper presented at 'The Way Forward: Children, Young People and Domestic Violence' Conference, Melbourne, 26–27 April 2000); Lesley Laing, 'Children, Young People and Domestic Violence' (Issues Paper No 2, Australian Domestic and Family Violence Clearinghouse, 2000); Zannettino, above n 15.

18 See, eg, ALRC and NSWLRC, above n 4; Susan P Johnson and Cris M Sullivan, 'How Child Protection Workers Support or Further Victimize Battered Mothers' (2008) 23 *Affilia: Journal of Women and Social Work* 242; Linda Davies and Julia Krane, 'Collaborate with Caution: Protecting Children, Helping Mothers' (2006) 26 *Critical Social Policy* 412; Potito et al, above n 16.

19 Ellen Pence, Sherrilee Mitchell and Arina Aoina, Family and Domestic Violence Unit, Department for Communities (WA), *Western Australian Safety and Accountability Audit of the Armadale Domestic Violence Intervention Project* (2007).

20 See, eg, Zannettino above n 15.

21 See, eg, Department of Justice and Industrial Relations (Tas), *Safe at Home: A Criminal Justice Framework for Responding to Family Violence in Tasmania, Options Paper* (2003).

the first integrated domestic violence response to be introduced by an Australian government. It was followed by the Tasmanian government's Safe at Home strategy, and more recently, by developments in Victoria and South Australia, where state-wide integrated systems are being developed or piloted. In addition, smaller scale multi-agency responses have arisen at local levels in some States and Territories.

Much has been written on the trend towards interagency collaboration and coordination in relation to social issue interventions.²² This trend has involved various forms of engagement with those from other organisations who may be working with the same client on similar or related needs. There is often a strong focus on collaboration with the criminal justice system and on perpetrator rehabilitation.²³

Service systems involved in multi-agency responses usually include criminal justice agencies (particularly the police), child protection, state-based services providing family support or domestic violence support, and NGOs and legal services. The extent of interagency connection varies, reflecting both breadth of service involvement, depth of collaboration and integration, and the level at which management and direction is provided. Descriptors such as 'interagency', 'multi-agency', 'cooperative', 'collaborative', 'integrated' or 'coordinated' are often used arbitrarily in relation to widely differing strategies.²⁴ Yet in practice, models can be distinguished in relation to the extent to which they sacrifice organisational autonomy for case-focussed unity. This has led some commentators to develop means of differentiating levels of integration, usually within a spectrum which scales levels of engagement across agencies.²⁵ Figure 1, adapted from Wangmann,²⁶ demonstrates this spectrum:

22 See Jane Mulroney, 'Trends in Interagency Work' (Topic Paper No 2, Australian Domestic and Family Violence Clearinghouse, 2003); Zannettino, above n 15.

23 See, for example, Department of Justice and Industrial Relations (Tas), above n 21; Andrew Day et al (eds), *Domestic Violence: Working with Men. Research, Practice Experiences and Integrated Responses* (Federation Press, 2009).


24 Jane Wangmann, 'Examining Integrated Models to Respond to Domestic Violence' (Report Prepared for Sutherland Shire Domestic Violence Committee, 2006) 4.

25 Karen Wilcox, 'Multi-Agency Responses to Domestic Violence: From Good Ideas to Good Practice' (2008) 33 *Australian Domestic and Family Violence Newsletter* 4.

26 Wangmann, 'Examining Integrated Models to Respond to Domestic Violence', above n 24.

Figure 1: Levels of engagement in interdisciplinary or interagency practice

1. Service autonomy, with networking	2. Collaborative practice – formalised networking arrangements and organisational policy development	3. Streamlined referrals (incident-based processes, such as police faxbacks)	4. Cooperation (regular communication around clients and some common goals)	5. Coordination (agreed plans and protocols or a separately appointed coordinator)	6. Integration (single system with sub units and cross-unit accountability)
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low levels of engagement **high levels of engagement**
 (adapted from Wangmann)

Ranges of coordination also are evident in relation to the types of agencies involved, with some engaging only two services or sectors (such as police and a domestic violence agency, or federally, a family dispute resolution ('FDR') service and a legal service) while others, such as the Victorian government's 'New Approach', engaging with a wide range of services and disciplines.²⁷

C Developing Solutions: The Value of Horizontally Coordinated Service Pathways

Multi-agency approaches offer capacity for horizontal coordination across the various agencies which may be working with families within a state or territory. This reflects an understanding that one agency alone cannot meet all the needs of a client.

Coordination also has the potential to address fragmentation of service responses to complex social needs.²⁸ Zannettino outlines the following benefits:

- increase in the safety of women and children and the prevention of homicides;
- achievement of desirable and predictable outcomes ... that is, a consistent rather than incongruent or contradictory approach;
- increasing awareness of domestic violence in both agencies and the general public;
- identifying gaps in the service provision and working together to address these; providing a more holistic intervention service in response to domestic violence;
- improved lines of communication;

²⁷ Department of Human Services (Vic), *Changing Lives: A New Approach to Family Violence in Victoria* (2006).

²⁸ Zannettino, above n 15, 32.

- more efficient processes; clarification of agency roles and responsibilities; and
- increased information sharing and better decision making.²⁹

In addition, coordinated service pathways can assist in minimising secondary victimisation and provide a seamless response to the needs of victims of domestic violence, particularly where the collaboration is accompanied by case-focused information sharing. Collaboration with other agencies in service delivery also assists in upskilling agency professionals, saving costs caused by unnecessary duplication, providing some level of transparency or accountability and focusing priorities on shared goals. An additional benefit of multi-agency coordination is that victims are provided with multiple entry points into a system which can then respond consistently regardless of the entry points: ‘every door is the right door’. Not all victims of domestic violence engage with police, for example, so if health (including community controlled health), child protection and NGO (including refugee, migrant and Indigenous) agencies are all working together, then it is more likely that interventions will address the greatest areas of need.

IV VERTICAL DIS-INTEGRATION: FAMILY LAW AND DOMESTIC VIOLENCE – INTERACTIONS AND PROBLEMS

Integration across State and Territory service provision – horizontal integration, has provided an important starting point for joined-up service provision. Yet while the problems of service siloing have in part been addressed at the State and Territory level, the interaction of systems of law, policy and practice across the tiers of federalism can have a significant impact on the safety and future wellbeing of victims and their children. Family Law-related matters, particularly in regard to children, provide a major stumbling block to development of safety-focused responses to domestic violence, given that ongoing contact with abusers exposes victims and their children to risk of abuse or danger. In spite of the abovementioned major initiatives within some jurisdictions to enhance cross-agency responses to domestic violence, to date these initiatives have largely been restricted to state and territory areas of responsibility. Some interpersonal networking across Commonwealth and state and territory services has been commonplace in many regions, but this has not been translated into case-based problem solving or the development of a framework for coordination with sharing of some understandings and goals.³⁰

29 Ibid 33.

30 In the field of child protection, the development of a national framework holds some promise, however, without the joining-up of this framework with family violence strategies, ongoing dis-integration is likely. See Department of Families, Housing, Community Services and Indigenous Affairs (Cth), *Australia's Children: Safe and Well: A National Framework for Protecting Australia's Children: Discussion Paper for Consultation* (2008).

Decision making around families experiencing domestic and family violence within areas of Commonwealth responsibility, including family law, can impact on the effectiveness of integrated responses designed to enhance safety and wellbeing. Family Law processes may lead to secondary victimisation when the system requires victims to prove their experience of violence.³¹ The Family Law system also provides an avenue through which perpetrators can exercise ongoing control or abuse through litigation or financial control.³² Engagement with Family Law processes can lead many victims to be less safe than before, jeopardising the value of what might appear a 'sensible' strategy, such as leaving the relationship with an abuser. The ways in which Australian family law impacts (either positively or negatively) on protection and safety of victims of violence will be briefly overviewed below.

A The *FLA*

Various sections of the *FLA* relate to domestic and family violence. These are listed below.

Section 4	Definition of family violence – 'conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person's family that causes that or any other member of the person's family reasonably to fear for, or reasonably to be apprehensive about, his or her personal well-being or safety'.
Sections 10D, 10H	Provides family violence-related exceptions to confidentiality of counsellor and FDR practitioner communications, where the disclosure is necessary to prevent: risk of harm to a child, or the likelihood of acts of violence, or threats to life or health of a person.
Section 43(1)(ca)	Principles. Requires a court to have regard to the need to protect individuals from family violence in circumstances of family violence.
Section 60CC	Determination of best interests of children. Primary considerations include exposure to abuse or family violence but equal weight is also given to a meaningful relationship with parents. Additional considerations include the existence of a final, contested protection order, or family violence involving a child or child's family member, and the willingness of a party to facilitate relationship with the other parent.
Section 60CF	Requirements for information about relevant state and territory protection orders.
Section 60CG	Responsibilities of the court relating to consistency of any parenting order with

31 From a victim perspective, court processes, which necessarily require some standard of proof, can nonetheless be disturbing. See Rosemary Hunter, *Domestic Violence Law Reform and Women's Experience in Court* (Cambria Press, 2008) ch 2.

32 See Laing, *No Way to Live*, above n 4; Bagshaw et al, above n 4.

	any protection order made, and to not expose a person to an unacceptable risk of family violence.
Section 60K	Requires a court to take 'prompt action' in cases where a person applies for parenting orders and files a Form 4 ('Notice of Child Abuse or Family Violence') alleging 'as a consideration that is relevant to whether the court should grant or refuse the application' that: <ul style="list-style-type: none"> - there has been abuse of the child by one of the parties, or - risk of such abuse if there were to be a delay in applying for the order, or that - there has been or is a risk of family violence by one of the parties.
Section 60I (9)	Provides for certificates of exemption from FDR where there is child abuse or family violence.
Section 68B	Injunctions under the Act.
Division 11 (Sections 68N–68T)	Provisions for addressing inconsistencies between state family violence orders and orders for spending time with children; to ensure parenting orders do not expose people to family violence. These provisions require the court to specify the inconsistencies, explain them to the parties and outline details of contact arrangements. Section 68Q invalidates protection orders to the extent they are inconsistent with orders of the Family Courts.
Section 68R	Provides state and territory courts with the power to amend family law orders while making or varying protection orders
Section 69ZW	Provides the court with the power to order reports from state and territory agencies in relation to child abuse or family violence.
Section 114	Provides for protective injunctions for victims who have been married, including injunctions excluding a party from the home or workplace.

Section 117AB of the *FLA*, which provides for the making of cost awards where there have been false claims made by parties (including false allegations and false denials of violence), does not relate directly to domestic violence, but can also impact on victims of violence, who may be advised not to raise violence where there may be only limited corroborative evidence.³³ The Family Court has also published 'Best Practice Principles', which set out procedural details to assist the court in dealing with family violence,³⁴ where a Form 4 ('Notice of Abuse or Family Violence') is lodged. The Magellan pathway has also been

33 For a discussion of this section, see Chisholm, above n 4, 101 ff; Kaspiew et al, above n 4, 248; Laing, *Now Way to Live*, above n 4.

34 Family Court of Australia, 'Best Practice Principles for Use in Parenting Disputes when Family Violence or Abuse Is Alleged' (2009).

adopted by the Family Court to assist the court in dealing with child abuse allegations.³⁵

B Vertical Dis-integration and the Family Law System's Response to Family Violence

The *FLA* deals with domestic violence both in its consideration of children's best interests and through court ordered protective injunctions. However, the capacity of the courts (and non-adversarial service pathways) to respond to domestic violence is impacted by a number of factors. Over the last decade, there has been an increasing trend to make arrangements and orders for post-separation parenting which lead to ongoing contact between victims (including exposed children) and perpetrators of family and domestic violence. This trend has been emerging over the past two decades³⁶ and was cemented in the *Family Law (Shared Parental Responsibility) Amendment Act 2006* (Cth). As noted earlier, a number of reports have been prepared which investigate the implications of this trend, particularly in relation to children's wellbeing.³⁷ An analysis of the current situation reveals six distinct problem areas arising from the Family Law/family violence nexus. These are: definitional issues, safety, evidentiary issues, non-disclosure, limited understanding of the dynamics of violence and the power-blind legal narrative. These factors arising from the Family Law system, will first be considered, then the effects of interlaying this experience on engagement with State and Territory domestic violence responses, demonstrating another manifestation of system 'dis-integration'.

1 Problems Arising from the FLA and Family Law System

The *FLA* and the interpretation and application of this Act to individual cases (both formally and informally, through the practices of mediators and lawyers)³⁸ have contributed to some of the problems which give rise to 'vertical dis-integration'. Both the recent ALRC consultation and the Chisholm report,³⁹ have identified some of the problems emerging from the *FLA* itself. The issues identified there and elsewhere can be summarised as follows:

(a) Definitions

The *FLA*'s definition of violence does not adequately cover the complexities of domestic violence.⁴⁰ In addition, the definition of children's 'best interests' has been interpreted or applied in such a way that time with a parent may be

35 See Daryl J Higgins and Rae Kaspiew, "'Mind the Gap...': Protecting Children in Family Law Cases" (2008) 22 *Australian Journal of Family Law* 235.

36 See Laing, *No Way to Live*, above n 4; Hunter, above n 31, ch 6.

37 Jennifer McIntosh et al, Attorney-General's Department (Cth), *Post-Separation Parenting Arrangements and Developmental Outcomes for Infants and Children: Collected Reports* (2010).

38 See, eg, Kaspiew et al, above n 4, ch 9; Laing, *No Way to Live*, above n 4; Bagshaw et al, above n 4.

39 ALRC and NSWLRC, above n 4; Chisholm, above n 4.

40 Chisholm, above n 4, 145.

prioritised where there is domestic violence,⁴¹ even though section 60CC provides that protection from abuse and family violence is an equal and primary consideration to facilitation of child/parent relationships in determining best interests.

(b) Safety

As several of the recent reports have demonstrated, the Family Law system, including its alternative pathways such as mediation, has been developed to maximise parent–child contact.⁴² Subsuming of issues of safety to the pro-contact imperative appears to be a worldwide trend, and certainly was reflected in the Australian system prior to the 2006 *FLA* amendment.⁴³ FDR practitioners are required to raise shared parenting possibilities during dispute resolution sessions (section 63DA); they are not required within the Act to raise or make recommendations in relation to protection from harm.⁴⁴ The *FLA* also creates a dilemma for victims wishing to protect their children from harm, as they must also appear to be supporting ongoing relationship with an abuser, given the ‘friendly parent provision’ in section 60CC(3)(c).⁴⁵

(c) Evidentiary Issues

It is often difficult for victims of violence to provide sufficient corroborative evidence to support applications for reduced or supervised contact with perpetrators of violence. The Family Court system is not always able to access evidence from state agencies, and where evidence is accessed, it is often not seen as of corroborative value (particularly where protection orders are obtained by consent without admission to the facts).⁴⁶ As Hunter has argued, this is in part a result of the ways in which the presentation of evidence must rest on discrete, corroborated ‘incidents’, to which the historical aspects of domestic violence in a relationship may not be easily translated.⁴⁷ Further, as both Laing and Hunter have noted, victims are often traumatised from their experiences, and this impacts on evidence presentation in family law matters and in FDR, where they may appear to lack credibility because of their distress or vulnerability.⁴⁸

41 Ibid 127 ff; Laing, ‘Children, Young People and Domestic Violence’, above n 17.

42 See Chisholm, above n 4; Laing, above n 4; Bagshaw et al, above n 4.

43 See Thea Brown and Renata Alexander, *Child Abuse and Family Law* (Allen & Unwin, 2007); Helen Rhoades, Reg Graycar and Margaret Harrison, *The Family Law Reform Act 1995: The First Three Years* (University of Sydney and Family Court of Australia, 2000); Hunter, above n 31, 203–6.

44 See Chisholm, above n 4, 106–8.

45 Ibid 101; Kaspiew et al, above n 4, 275.

46 Family Law Council, above n 4; ALRC and NSWLRC, above n 4, chs 8 and 9.

47 Hunter, above n 31, 40–4, 222–6.

48 Laing, *No Way to Live*, above n 4, 78, 60–3. Although, with the Less Adversarial Trial, rules of evidence are less stringent (*FLA* div 12A) and the court has discretion in relation to the application of this section.

(d) *Non-Disclosure of Violence*

Laing has identified systemic disincentives to the disclosure of violence, such as notions of ‘parental alienation’, disbelief or disregard for victim’s experiences of abuse, or discouragement by lawyers or judges.⁴⁹ The friendly parent provision, noted above, and fear of the awarding of costs should a ‘false allegation’ be established under section 117AB, may also inhibit disclosure within the family law system.⁵⁰

(e) *Knowledge*

Family Law professionals do not always understand the complexities of domestic violence or the tactics of abusers, which can include ongoing litigation, financial control through reductions in child support, disruption of mothering or cultural abuse.⁵¹ In addition, abuse can be excused as justified or legitimate behaviour, particularly in the context of perceived post-separation stress.⁵² In addition, post trauma behaviours of women can be misinterpreted. As an earlier Queensland report argues, as a woman:

[takes] steps to protect her children and herself from on-going abuse, she may engage in conduct which is interpreted as disorganized, chaotic or impulsive ... as the system appears to ignore the woman’s concerns, she may become more agitated and will seem to be portraying all the characteristics which have been ascribed to her – malicious, hysterical, exaggerating.⁵³

(f) *Equality*

As feminists local scholars have long argued, the emphasis on formal legal equality masks substantive gender inequalities and power imbalances.⁵⁴ Family Law discourse which portrays domestic violence as ‘high conflict’ reflects this. The ‘relationship breakdown’ context in which the Family Law system operates obscures dynamics of abuse and violence.⁵⁵ This is exacerbated by the consent/agreement imperative in Family Law, which encourages consented rather than litigated decisions, even though the victim may feel pressured (without obvious duress) to agree with perpetrators whom they fear.⁵⁶

2 *Multiple System Engagement: Effects on Victims of Family and Domestic Violence*

Victims of domestic violence are often required to engage with with both state, territory and Family Law systems, with the problems and difficulties

49 Ibid 54, ch 4.

50 See Chisholm, above n 4, 108 ff.

51 Laing, *No Way to Live*, above n 4, 58; Kathryn Rendell, Zoe Rathus and Angela Lynch, *An Unacceptable Risk: A Report on Child Contact Arrangements where There Is Violence in the Family* (Women’s Legal Service, 2000) 38.

52 Laing, *No Way to Live*, above n 4, 44 ff.

53 Rendell, Rathus and Lynch, above n 51, 109.

54 Hunter, above n 31, ch 3.

55 See, eg, Rendell, Rathus and Lynch, n 51.

56 See Hunter, above n 31, 176 ff.

summarised above, at the same time as they deal with their own trauma recovery. Contact arrangements after separation provide an arena through which abuse may continue, so parenting arrangements made within the Family Law system can have a significant and often negative impact on victim safety and wellbeing. Separation is often the most dangerous time for both women and children, and threats against children, or abuse of children is a commonplace form of abuse, 'readily transferable to the context of Family Law actions'.⁵⁷ The potential risk of post-separation homicide remains a critical issue following parenting decision making.⁵⁸

Three problems are evident in relation to the effects of Family Law systems on victims.

(a) *Secondary Victimisation*

As noted earlier, victims of violence can experience further disempowerment through engagement with a system which requires multiple entry points, endless retelling of their stories, unsympathetic values and attitudes and conflicting demands. The secondary victimisation which victims of violence experience following engagement with disjointed criminal justice, child protection, health and other State/Territory areas of service delivery is exacerbated when Family Law systems are then encountered. The likelihood that victims must then engage with several concurrent proceedings exacerbates this system-created experience of further victimisation.⁵⁹

Secondary victimisation may also arise within the FDR sector. Researchers have long argued that victims of domestic violence are disadvantaged in mediation, as the model rests on an assumption of equal bargaining power, which is clearly unlikely in relationships of abuse and control.⁶⁰ The subtleties of controlling violence, imprinted through past incidents, can be difficult for mediators to identify through observation alone, particularly where they do not have experience working with domestic violence, or have limited understandings of power and control. Hence victims may also experience cynicism from practitioners in relation to their experiences of abuse and trauma.⁶¹

(b) *Gaps in Service Provision*

Gaps in service provision caused by jurisdictional 'buck-passing'. Thus:

before I had Family Court Orders and we had the cops involved and they didn't want to get involved because I didn't have Family Court orders. When I did have Family Court orders, the cops said they didn't want to get involved because I had

57 Laing, 'Domestic Violence in the Context of Child Abuse and Neglect', above n 15.

58 Rochelle Braaf and Clare Sneddon, 'Family Law Act Reform: The Potential for Screening and Risk Assessment for Family Violence' (Issues Paper No 12, Australian Domestic and Family Violence Clearinghouse, 2007) 9.

59 Ibid; see also ALRC and NSWLRC, above n 4, ch 8.

60 Debbie Kirkwood, 'Behind Closed Doors: Family Dispute Resolution and Family Violence' (Discussion Paper No 6, Domestic Violence Resource Centre Victoria, 2007); Rachael Field, 'Women and ADR', in Patricia Eastal (ed), *Women and the Law* (LexisNexis Butterworths, 2010). See also Hunter, above n 31, 176.

61 Laing, *No Way to Live*, above n 4, ch 4.

Family Court orders. DoCS doesn't want to get involved because I've got Family Court orders.⁶²

As Laing argues, 'buck-passing' has the additional effect of shifting the costs of securing child protection or collecting evidence of violence from the state to the private individual who is trying to secure protection.⁶³ Other problems, noted in the ALRC paper, include gaps which arise where Local/Magistrates' Courts do not issue protection orders because Family Law matters are pending, or contact issues are left unresolved.⁶⁴

(c) *Contradictory Decisions or Obligations*

Contradictory decisions or obligations from the various arms of the fragmented systems may undermine any protective measures or deterrents implemented under state and territory laws or service systems.⁶⁵ For example, protection orders may require an abuser to stay away from victims (including children), yet parenting orders or arrangements require contact, and thus override the protection order or child protection authorities' instructions. As one victim noted in Laing's study:

I didn't send the kids and that was the recommendation of the Child Protection agency ... DoCS supported that recommendation. And Family Court found that I was guilty without reasonable excuse (of breaching the Family Court order for contact).⁶⁶

The increased potential disruption to victim safety caused by the overlapping of federal Family Law with domestic violence and child protection laws and systems demonstrates the current need for greater co-operation across the tiers of government.

V JOINING-UP SYSTEMS, PLUGGING THE GAPS: TOWARDS VERTICAL COORDINATION

The problems emerging from the Family Law/family violence nexus have been investigated in reviews recently commissioned by the Commonwealth.⁶⁷ Various potential solutions have emerged, including law reform, judicial education, cross-disciplinary knowledge sharing, and procedural improvements. It is the contention of this article, however, that while the recommendations from these reviews are welcome, any real improvements to the safety and wellbeing needs of victims of violence requires building on the successes of multi-disciplinary practice evidenced in the ACT, Tasmania and Victoria. Access to accurate information, relevant skills and cross-disciplinary conversations about

62 Ibid 40.

63 Ibid 41; Family Law Council, above n 4, 75.

64 ALRC and NSWLRC, above n 4, ch 8.

65 Ibid.

66 Laing, *No Way to Live*, above n 4, 39.

67 See above n 4; *Time for Action*, above n 1.

risk and safety management for individual families are each required to ensure effective responses to family violence within the Family Law system.

Recent work by Powell and Murray⁶⁸ argues the importance of developing shared understandings of domestic violence across Family Law and child protection agencies. This is also an issue for consideration in the ALRC review.⁶⁹ Heightened interest in developing greater collaboration between domestic violence agencies within the state and territory systems and federal Family Law professionals has also emerged recently.⁷⁰ This recognition within the Family Law system has been inspired in part by similar cross-disciplinary engagement in the United States, which gave rise to what is now widely known as the 'Wingspread' Conference,⁷¹ whereby feminist legal academics and advocates and professionals from the family law sector commenced discussion around family law and family violence with a view to identifying and developing common areas of concern. The Wingspread cross-disciplinary movement has attempted to develop commonalities between advocates for victims of violence and the 'mediation community'.⁷² The Wingspread proponents argue that

we can search together for ways to meet the needs of children; we can develop and implement appropriate interventions using the expertise and political will of both communities; and we can make the most effective use of existing resources. And we should work together because collaboration will help us to achieve our mutual goal of safer, healthier families.⁷³

In Australia, some collaborative initiatives have arisen out of this growing acceptance of the value of interagency engagement, and a review of relationships between professionals within the Family Law sector has provided impetus for *horizontal* coordination at the federal level.⁷⁴ Family Pathways networks have been established to enhance interactions between Family Law system professionals, particularly court-based professionals and the dispute resolution services.⁷⁵ The Community Legal Centre/FRC partnerships recently rolled out by the Commonwealth similarly represent attempts to collaborate across the various pathway services within the Family Law sector.⁷⁶ Coordinated, lawyer-assisted mediation has also been proposed by Rachael Field as a model for the

68 Anastasia Powell and Suellen Murray, 'Children and Domestic Violence: Constructing a Policy Problem in Australia and New Zealand' (2008) 17 *Social & Legal Studies* 453.

69 ALRC and NSWLRC, above n 4.

70 This is evidenced by the reports above n 4, and the Family Relationships Services of Australia ('FRSA') Conference, Sydney, 24–25 November 2009.

71 Nancy Ver Steegh and Clare Dalton, 'Report from the Wingspread Conference on Domestic Violence and Family Courts' (2008) 46 *Family Court Review* 454.

72 Peter Salem and Billie Lee Dunford-Jackson, 'Beyond Politics and Positions: A Call for Collaboration between Family Court and Domestic Violence Professionals' (2008) 46 *Family Court Review* 437, 444.

73 Ibid 442.

74 Helen Rhoades et al, *Enhancing Inter-Professional Relationships in a Changing Family Law System, Final Report* (University of Melbourne, 2008); Richard Chisholm, 'Perspectives on Safety, Risk Assessment and Sharing Information' (Paper presented at FRSA Senior Executives Meeting, Canberra, 24 March 2010) <http://www.frsa.org.au/site/Past%20Events.php#Conference_2009>.

75 See Family Law Council, above n 4, 44–5.

76 See above n 5.

development of more appropriate responses to mediation with victims of violence.⁷⁷ Recently, the Commonwealth funded a pilot project in outer Melbourne which may eventually provide enhanced interaction with domestic violence agencies.⁷⁸ However, it is worth noting that structured collaboration even *within* the Family Law sector is relatively new.⁷⁹

Ad hoc, vertical cooperative practices have developed in some local areas, such as between the Victorian Legal Aid Roundtable and Domestic Violence Resource Centre Victoria.⁸⁰ Other developments to address vertical 'dis-integration', introduced at a state and territory level, include the development of practice and training links with domestic violence agencies and Family Pathways networks in the Act and Victoria, and in some instances domestic violence agencies have been included in sub-committee membership. The Victorian government has also promoted cross-jurisdictional judicial practice in the pilot Family Violence Court Division of the Magistrates Court.⁸¹ This enables resolution of safety issues in regard to ongoing contact between abusers and their children at the time of the Intervention Order matter, criminal matter, and any other related matters such as compensation. A single court responding to all family violence issues has the capacity to provide victims with a more seamless response to their needs. Specialist and cross-jurisdictional family violence courts, such as the Victorian model, are of great value in addressing the system fragmentation with which domestic violence victims must engage, as contact matters can concurrently be determined.⁸² This provides the kind of seamless, coordinated and non-contradictory outcomes which can reduce secondary victimisation. These specialist courts, where they adopt good practice, include specially trained magistrates, a discrete domestic violence list, safe rooms for victims, specialist support workers, legal representatives and specialist prosecutors, thus addressing some of the multiple needs of victims and streamlining processes. In Victoria, specialist courts hear matters relating to family violence across jurisdictions, including federal family law (using their

77 Field, above n 60.

78 See above n 5. At this stage, the Dandenong pilot is in its infancy and is primarily focused on improvements to listing at the Dandenong Federal Magistrates Court registry, and the provision of an information booth with access to networks and appointment information.

79 See Ver Steegh and Dalton, above n 71.

80 Margot Scott and Walter Ibbs, "'Fasten Your Seat Belts We're in for a Bumpy Night!': The Story of Collaboration between FDR and Family Violence Organisations" (Paper presented at FRSA Conference, Sydney, 24–25 November 2009). Cooperative Legal Service Networks have also been promoted through Legal Aid NSW, but they are generalist, and not necessarily a response to the needs of domestic violence victims. See Legal Aid NSW <<http://www.legalaid.nsw.gov.au>>.

81 See Julie Stewart, 'Specialist Domestic Violence Courts: What We Know Now – How Far Have Australian Jurisdictions Progressed?' (Topic Paper No 20, Australian Domestic and Family Violence Clearinghouse, 2010).

82 Ibid. The Family Law Council propose that instead Family Courts could exercise concurrent jurisdiction in relation to protection orders: above n 4, 87. This alternative solution has merit but does not enable the addressing of other matters such as criminal charges: see Hunter, above n 31, 273.

powers under section 68R of the *FLA*), and where there are no orders in place, they may make contact-type orders under the state law.⁸³

Law reform in Victoria and South Australia has given rise to new protection order legislation which has also assisted local courts outside the specialist court pilot sites to address parenting arrangements during protection order determinations, by facilitating the use of their powers (to amend, vary or suspend family court orders during the protection order process) under section 68R of the *FLA*.⁸⁴ Victorian law also directs all Magistrates Courts to make arrangements for children's contact if no family law order is in place.⁸⁵ As with specialist courts, these reforms provide the capacity to reduce secondary victimisation caused by multiple engagements with legal systems, and can facilitate enhanced consideration of relevant evidence from State agencies to ensure safe child contact arrangements.⁸⁶

The protocol for cross-jurisdictional file-sharing which has been adopted in Tasmania also reflects a movement towards vertical coordination.⁸⁷ This protocol enables information from Magistrates Courts to be transferred to the Family Court for parenting determinations, and allows police to notify magistrates if parenting orders under the *FLA* pose a risk to the safety of victims. The magistrate can then suspend the *FLA* order until these issues are reviewed in the Family Court.

The advantages of greater coordination of intra-state services, which were noted above (such as homicide prevention, consistency, efficiency and better decision making), are likely to similarly result should greater vertical coordination of services for families be achieved. Developing better multi-agency interventions across levels of government would also have the added benefit of enabling skill exchange and training in relation to issues such as family violence risk assessment and management, or meeting needs of clients from diverse backgrounds (including cultural safety needs), especially where increased, structured engagement with cultural and linguistic diversity ('CALD'), Indigenous and other specialist workers from within state and territory domestic violence systems is included. Importantly none of these outcomes is inconsistent with the key goal of the Family Law system in relation to promoting children's best interests. Multi-agency responses which aim to enhance safety are most likely to achieve this aim if all agencies share knowledge of risk issues.

A Implementing Change

The process of developing horizontal interagency relationships across sectors working with families in the states and territories has led to refinement and theorising of effective strategies. The development and coordination of models

83 *Family Violence Protection Act 2008* (Vic) s 93 ('*FVPA*').

84 *FVPA* s 90; *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s 16.

85 The 2006 reforms to the *FLA* removed the power to *make* parenting orders from s 68R. These arrangements are a stop-gap under the state's domestic violence law: see *FVPA* s 93.

86 See ALRC and NSWLRC, above n 4, ch 8.

87 *Ibid* 96.

for integration has been a cornerstone of good government policy across domestic violence, health, criminal justice and child protection systems.⁸⁸ Lessons from successful state and territory experiences can be applied to the newly emerging vertical collaborative developments between these sectors and the Family Law system.

The existing steps which have been taken towards greater coordination, outlined above, are of value; however, the overall approach across Australia's tiers of government has been largely ad hoc and organic. Potito et al note (in relation to horizontal integration):

[w]orking collaboratively will not automatically produce high-quality responses for women and children. ... A new systems response that prioritises quality outcomes ... requires both systems to rethink fundamentally the way they do business. Obviously change of this magnitude is not a simple process...⁸⁹

An approach which focuses on quality outcomes for families thus requires more than ad hoc relationship development. In particular, differing perspectives, values and worldviews that have been evident across the domestic violence and Family Law sectors suggest the development of long lasting safety focused change will prove difficult.⁹⁰ This article contends that effective change that will address the problems which victims of violence experience when engaging with multiple systems is only likely to occur in the context of cross-disciplinary structural reform, cemented by scaffolding that will support its longevity.

For this reason, developing and implementing an effective model to enable and direct vertical coordination is the first step, and may be required before the conflicting visions and understandings across the disciplinary silos can be adequately addressed. Such an approach cemented the successful implementation of the Tasmanian Safe at Home model.⁹¹ Potito et al argue that development of cross disciplinary case management systems, as an initial step in developing collaborative models, can facilitate the trust, communication and shared philosophies necessary for effective long term interagency practice.⁹² This means that the need for lengthy debates contesting definitions and philosophies and the issues of gender can be circumvented. They note that:

identification of common clients and discussion about how these cases have been managed should open up many possibilities for more collaborative working practices. ... it would only be by working through these cases that organisations could come to identify their shared aims and purposes, be clear about the need for clear communication in managing risk, and develop strategies to implement information sharing while protecting client confidentiality.⁹³

88 See, eg, Karen Wilcox, 'Tasmania's Safe at Home: A Whole of Government Response to Domestic Violence' (2006) 26 *Australian Domestic and Family Violence Clearinghouse Newsletter* 5.

89 Potito et al, above n 16, 379–80.

90 See Ver Steegh and Dalton, above n 71; Rendell, Rathus and Lynch, above n 51.

91 See Wilcox, 'Tasmania's Safe at Home', above n 88.

92 Potito et al, above n 16, 383. Their discussion relates to child protection and domestic violence horizontal integration, but the argument could apply equally to vertical coordination with family law systems.

93 *Ibid.*

They argue that the discipline of organisational change theory offers valuable insight – noting the need for leadership, critical energy and commitment of senior executives and governments and the anchoring of change in protocols, procedures and accountability structures which feed back to the top and prompt ongoing refinement and change.⁹⁴ In addition, given the importance of the judiciary's role in family violence-related responses, such leadership would also require commitment to law reform which addresses the pro-contact focus in determination of children's best interests where there are allegations of violence, and enhanced judicial training. Successful long term change also requires 'a sense of urgency that a major transformation is needed', usually driven by tragedy or crisis.⁹⁵ Sadly, the occurrence of homicides (including post-separation child homicide) in the context of domestic violence provides such an imperative.

B Model Practice – Structuring Vertical Coordination

The features of effectively coordinated structures have been the subject of much discussion within the field.⁹⁶ Elsewhere, I have listed components of successful integration. These include:

- systems for sharing information, particularly in the context of privacy or professional confidentiality rules. Information sharing systems can involve shared access to databases (for example, Safe at Home) or continuous updating at regular case management meetings (for example, Family Safety Framework, Safe at Home). Law reform which facilitates information sharing, such as section 37 of the *Family Violence Act 2004* (Tas), as well as file sharing protocols, may assist;⁹⁷
- shared aims, shared definitions of family violence and shared knowledge about the assessment of risk;
- respect for professional expertise across disciplines and agencies;
- adequately trained and professional staff;
- willingness to sacrifice some professional autonomy for the goal of practice unity;
- focus on victim safety and perpetrator accountability;
- inclusion of all family-related services at all levels (service delivery, policy, problem solving). The connection of CALD and Indigenous services within an effective integrated framework is also vital;
- willingness to change organisational practice to meet the aims of the response and develop operating procedures to achieve this;

94 Ibid 380–1.

95 Ibid.

96 See, eg, Zannettino, above n 15; Wangmann, 'Examining Integrated Models to Respond to Domestic Violence', above n 24; Potito, above n 16.

97 For further discussion of this in the context of family law, see ALRC and NSWLRC, above n 4.

- practices and protocols which ensure cultural safety, inclusivity and access and equity, and inclusion of Indigenous services;
- commitment to continual self-auditing, with data collection and monitoring processes to enable this. Monitoring would include development of indicators that reflect safe outcomes for children and their carers in the context of parenting agreements – not just throughput; and
- mechanisms to enhance legal access, such as legal representation.⁹⁸

Shared concern for children's wellbeing across both the Family Law system and state and territory services provides a starting point for the development of shared practice,⁹⁹ even in the absence of agreement about other issues.¹⁰⁰ Family law decision making about parenting, by definition, must focus on children's needs, as they are the 'parented' subject. However this need not mean that what Hunter has called a 'conceptual separation between the interests of mothers and children' must be perpetuated.¹⁰¹ Theoretical developments relating to child protection have cemented awareness of the inseparability of children's wellbeing from the safety of their mothers.¹⁰²

The so-called 'Duluth goals', of reducing risk, increasing safety, and facilitating an abuser's responsibility for violence¹⁰³ can provide a lens for the assessment of the value of Family Law actions and outcomes. This might, for example, lead to separate pathways within the system where there are allegations of violence, additional to those already available through the court system. Kathryn Rendell, Zoe Rathus and Angela Lynch have outlined what such pathways might look like:¹⁰⁴ their model is commendable as it circumvents the unintended consequences that might arise from alternative strategies, such as premature triaging through differentiation of types of violence.¹⁰⁵ Similarly, mediation services might include risk and safety planning in family assessments, or challenge perpetrators who deny or minimise their abuse. In this way, addressing common concern for children's safety and mothers' wellbeing across sectors provides a launching point from which services might better manage the

98 See Wilcox, 'Multi-Agency Responses to Domestic Violence: From Good Ideas to Good Practice', above n 25.

99 See Ver Steegh and Dalton, above n 71.

100 Ibid.

101 Hunter, above n 31, 228–30. The strategic value of focusing on children's safety as a means of heightening awareness of family safety and adult victim safety nonetheless requires mindfulness of the potential for violence against women to be marginalised by such a strategy, or worse, the blaming of mothers for 'failure to protect'. See Potito et al, n 16. The author would like to thank an anonymous reviewer of an earlier version of this paper for raising this concern.

102 See Zannettino, above n 15.

103 These principles have arisen from what is known as the 'Duluth model', over several decades of practice in various western legal systems. See Pence, Mitchell and Aoina, above n 19.

104 Rendell, Rathus and Lynch, above n 51, 115.

105 Jane Wangmann, 'Different Types of Intimate Partner Violence? A Comment on the Australian Institute of Family Studies Report Examining Allegations of Family Violence in Child Proceedings under the Family Law Act', (2008) 22 *Australian Journal of Family Law* 123.

difficulties which arise from inconsistent system responses and address the diverse and complex needs of communities and individual victims. This provides the potential for a common goal to unite the sectors in collaborative management of the individual cases with which they work.

In developing effective framework for coordination, it is also important to include a breadth of services involved in working with families post-separation. Vertical coordination might see inclusion of professionals from across the Family Law sector (including FRC Managers, practitioners, Family Law counsellors, contact centre staff and report writers) in 'case management' along with domestic violence and child protection professionals.¹⁰⁶ For example, FRS staff or family consultants might be incorporated within the integrated systems in South Australia, Tasmania or the ACT.¹⁰⁷ Each of these players has an important and distinct role to play in the development of safe outcomes for victims of violence dealing with post-separation issues. Integration of case management with legal sector involvement, such as has been rolled out through the previously mentioned CLC/FRS partnerships, or the involvement of Legal Aid Tasmania in Safe at Home, might then be enhanced so that victim safety needs might be incorporated most effectively in decision making.¹⁰⁸ Wangmann notes that 'an important feature of a good integrated response is its capacity to critically evaluate and reflect on the work performed and to continue to change and develop over time'.¹⁰⁹ Shared discussion of issues relating to common clients not only assists with establishing a pathway to enhanced safety for individual victims (because responses which jeopardise safety are detected more readily), but also to the development of systems of continuous improvement. This is important not only for communication and trust building across sectors, but also for the arguably more important project of joining up responses to address safety and risk most effectively.

Whilst the federal family court itself stand outside of the service systems discussed here (and it could not be involved in case-management meetings, for example), it nonetheless plays an important role in assisting the delivery of safe outcomes for children living with domestic and family violence. For this reason, increased inter-professional engagement with domestic violence professionals (for example, through committees),¹¹⁰ cross-jurisdictional file sharing and recognition of the vulnerability of victims of violence who stand before them would enhance vertical integration of responses to domestic violence.

106 I am using this term in the sense of multi-agency information sharing and case coordination around management of risk and safety, as occurs in the Tasmanian Safe at Home system, and elsewhere.

107 With necessary amendments to the operations of these systems, eg, the Tasmanian system currently includes only Safe at Home (government) agencies.

108 There may also be a role for lawyers and Independent Children's lawyers in ACT, South Australian or Tasmanian style case coordination – in Tasmania, Legal Aid lawyers attend the Safe at Home case meetings.

109 Wangmann, 'Examining Integrated Models to Respond to Domestic Violence', above n 24.

110 Rendell, Rathus and Lynch, above n 51, 106–7.

The development of an effective coordinated response to family violence might then build upon the joining up of pre-existing initiatives in the federal sphere with successful state and territory frameworks.

C Further Issues

The features outlined above provide a scaffolding upon which strategies might be developed to structure and manage vertical coordination of responses to families experiencing domestic violence. With effective intergovernmental leadership, it is certainly possible that the details of a joined-up national system could be scoped from existing initiatives. In doing this, some issues to be considered would include:

- the need for awareness of the different attitudes and approaches of the sectors involved;
- the need for adequate resourcing appropriate to the *level* of coordination proposed (see above). Token references to ‘integration’ in program development may mask a poorly conceived strategy, which is neither resourced nor developed to address any change away from the service-autonomy end of the spectrum. Little by way of enhancement of victim safety or reduction of violence can be expected in these circumstances;
- ensuring that process issues for agencies or cost-saving agendas for government, rather than enhanced victim safety, are not the central underpinning of program development;
- acknowledgement of the differences between the legal responses to domestic violence in each of the States and Territories. For example, Queensland, Victoria, South Australia, ACT and Tasmania fund statewide domestic violence service structures, while in NSW, domestic violence service provision is ad hoc and subject to competing priorities in the health and community sectors; and
- the need to address other significant areas of law which impact on victims’ lives and their safety. These include in particular, the laws and systems which can entrench or alleviate poverty and economic disadvantage experienced by victims of violence, including child support, social security, industrial laws and Medicare. The ALRC reference in relation to these other areas of law is welcomed in this regard.¹¹¹

¹¹¹ ALRC and NSWLRC, above n 4. For further discussion of issues that impact on effective system integration, see Potito et al, above n 16.

VI CONCLUSION

Australia has moved some way towards joining-up responses to family violence, both in terms of promoting horizontal coordination and in reviewing some of the difficulties emerging from the family law and family violence intersection. Yet if we examine current initiatives using the spectrum of coordination described earlier in this article, it appears that most strategies involve lower levels of networking and cooperation and Australia remains some way from implementing system-wide responses which facilitate shared management of the problems faced by victims of domestic violence. In addition, key organisations remain outside of the existing system, leaving gaps, secondary victimisation and ongoing inconsistencies or contradictions arising from the requirements of the discrete systems.

To this end, this paper proposes greater vertical coordination of responses to family violence, through inclusion of family law systems in the case management and decision making processes under way in some jurisdictions. In developing case-based systems for managing the complex issues facing families affected by domestic violence, it is possible that some of the difficulties which they face can be addressed in a way that promotes the safety and wellbeing of children. Any further improvement will require a unification of principles and aims so that safety and protection are prioritised – this remains the greatest stumbling block to complete integration, however this is achievable with legislative will, resourcing and confident law reform which prioritises safety in the determination of children's interests where there is violence.¹¹²

112 See eg, Hunter, above n 31, 272.