



Australian Law Reform Commission Review of the Family Law System  
Submission in response to the March 2018 Issues Paper  
Prepared by Relationships Australia South Australia Ltd

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## Who We Are

Relationships Australia South Australia Ltd (RASA) is a not-for-profit, secular, community service organisation with more than 60 years' experience in providing relationship support and community services. Our stated purpose is to help people to create positive relationships that build wellbeing and resilience. We assist over 26,000 clients each year throughout regional and metropolitan South Australia, and currently employ over 300 staff. Our services operate from eight sites and include community outreach programs in the mid north, APY lands, Ceduna and the South East. We are the largest provider of relationship services in South Australia.

Our work is based on a public health care approach and adheres to the Ottawa Charter principles. Our extensive family service experience is built upon genuine partnerships with individuals, families and communities that promote and enable enduring wellbeing. Our proximity to families and communities means we are very familiar with the multiplicity of risks that impinge negatively on their wellbeing and safety.

RASA is well known for relationship counselling, however, over the last few decades our services have expanded into support and assistance for vulnerable and disadvantaged children, families, individuals and couples with multiple and complex needs such as problem gambling, parenting stress, children at risk of homelessness, and health counselling.

Importantly, RASA is a major recipient of funding from the Australian Government to provide family law and post-separation services. We operate two Family Relationship Centres (FRCs), and also auspice the Family Law Pathways program. We employ over thirty registered family dispute resolution practitioners (FDRPs).

The following table shows the total number of clients seen across RASA post separation services in 2016-17 financial year.

2016/17 Financial Year	
Service	Total Clients
Family Relationships Centre (FRC)	3963
FRC Family Advice/Case Management	2095
Children's Contact Service	1226
Family Dispute Resolution (FDR)	1134
iKids (Supporting Children After Separation)	552
Post separation Cooperative Parenting	291
FDR Regional	291
<b>Total Clients</b>	<b>9552</b>

## Our Submission

A significant focus of this submission sits within the Integration and Collaboration section of the Commission's discussion paper. In particular, question 31: *How can integrated services approaches be better used to assist client families with complex needs? How can these approaches be better supported?*

There are a series of other issues arising from the Inquiry's terms of reference about which we consider it important to comment. This commentary is located in the latter part of our submission, with the corresponding sections of the Commission's discussion paper identified.

### The Rationale

RASA believes firmly in the value of early intervention services that adopt a holistic approach to complex family situations. We know when families use our services that there are "windows of opportunity" to respond to wellbeing and safety risks. Within a family law context, one such moment is that of relationship separation. There are multiple entry points into the family law system, and pivot points within it, whereby appraisal of wellbeing risks and engagement in preventative support is possible. There is existing infrastructure within our current family law system (in particular, FRCs and Family Dispute Resolution services) that create valuable opportunities to undertake these appraisals, and to strengthen family safety and wellbeing.

It is now well documented that within the population of families that seek the services of the Family Court system in Australia, a sizeable proportion of them have multiple concerns and interrelated vulnerabilities. Family violence is a critical issue in this context. Over the years, the *Family Law Act 1975* (Cth) has been amended a number of times with a view to improving the capacity of the family law system to provide effective outcomes for people who are experiencing family violence. These amendments are part of a commitment and growing momentum in Australia to interrupt harmful pathways of risk, and to assist family members to establish safer directions in their post-separation relationships.

While screening for family violence is increasingly standard within the family law system, screening for broader patterns of risk, including developmental risks for children, is not widespread. RASA recognises that family violence is not an isolated behavior. Instead, there is a bi-directional relationship between family violence and issues like alcohol and other drug problems, problem gambling, and psychological distress. In some cases, family violence may not be part of the equation, but these other risk factors may be present. What is clear is that any of these factors can compromise parenting and are a risk to family safety and wellbeing. Once these risk factors are identified, opportunities for service intervention is available.

Our vision is for a holistic, tailored and joined up services approach for separating families that is based on common frameworks and streamlined information sharing. This approach is one that can be adopted for use by practitioners across the current family law system. We use the term "practitioner" in the broadest sense here. It goes beyond the confines of the traditional adversarial legal system to encompass lawyers, mediators, and a range of allied community service professionals. The family law sector would benefit from the use of a common screen (compulsory) so that a common language is understood, a standard process is used and professionals are better able to work together in a joined up way.

## The Family Law Detection of Overall Risk Screen (FL-Doors) Tool

The FL-DOORS was developed as a result of collaborative work conducted over a number of years by RASA and Professor Jennifer McIntosh (Deakin University). The Attorney-General's Department later commissioned RASA and Professor McIntosh to refine the tool for use by the broader family law sector. This included the preparation of a comprehensive handbook, which the Attorney-General's Department freely distributed across the sector.

Based on RASA's implementation of the FL-DOORS, RASA subsequently developed an online training program that is available to the sector for a small fee.

The FL-DOORS is a three-part screening framework, designed to support all professionals in the family law system to identify, evaluate and respond to safety and wellbeing risks in separated families. It also appraises infant, child developmental, and safety risks. RASA has used the FL-DOORS whole-of-family screening system in all family law services operating within RASA services since 2013. The psychometric properties of FL-DOORS were confirmed in 2015 (McIntosh, Wells, & Lee, 2016). Following this, the existing universal screening tool in all counselling and case management services was revised and made more consistent with FL-DOORS. This non-family law version is called MyDOORS and completes the DOORS family of tools. We have used the various tools in the DOORS family with more than fifteen thousand clients with effective results. FL-DOORS is now used widely in several other Australian relationship services and law firms, and is under pilot in at least three other countries (Norway, Sweden and Singapore) and in several states in the USA.

In 2017, all tools in the DOORS family were made available via a free app (Flint, Lee, & McIntosh, 2017). The app uses a secure web-interface and enables clients and professionals to complete DOORS on any device (tablet, iPad or similar) that uses a web browser like Google Chrome. You can find it at [www.familydoors.com](http://www.familydoors.com). Based on data to 4 May 2018, 74 organisations have registered to use the DOORS app, representing 126 practitioners. There are 33 unique locations currently using the DOORS app, though some locations are allowing multiple users to share the same login in some locations (including RASA).

The fitness of purpose of FL-DOORS was recently reconfirmed using a sample of over 5,500 clients (Wells, Lee, Li, Tan, & McIntosh, in press). This audited the routine use of the DOORS framework in practice and demonstrated again excellent scale properties and, importantly for practitioners, predictive reliability against external, objective indices of risk. To our knowledge, the FL-DOORS is currently the only validated whole-of-family risk screening tool, applicable across the whole family law system.

The FL-DOORS supports a cross-disciplinary understanding in the family law system of factors that combine to create a climate of elevated risk for families. In contrast to specific domestic violence screening practices, the FL-DOORS is built upon a broad definition of risk, including adult, infant and child wellbeing and safety, conflict and communication, parenting stress, and other related stressors such as financial problems, housing concerns and substance misuse.

As a common screening framework that can be used across multiple services in the family law arena, the FL-DOORS can help professionals to detect and interpret the contribution of *all* of these factors to imminent personal and interpersonal safety risks. This takes place at the client's point of entry into their services, and provides pathways towards an effective, coordinated response.

The FL-DOORS' philosophy is based on the following axioms:

- Risk is not static; it is multi-determined and changes over time.

- Risk assessment therefore needs to occur across domains of behaviour and relationships and over time; and
- Best practice in risk identification involves three steps (1) universal client self-report, (2) tailored professional follow up, evaluation and response planning, and (3) implementation and monitoring.

There are three DOORS within this framework, each outlined below. Each DOOR within the framework enables a different level of exploration of individual and family functioning after separation, with a focus on identifying risks to safety, parents' wellbeing and children's wellbeing and development.

### Screening and Risk Assessment: a note on terminology

There is scope for confusion among practitioners between the concepts of screening and risk assessment. The distinction between these two things are important, as articulated in public health domains. For example, faecal blood screening is now universal, but a colonoscopy is an assessment that only follows when risks are indicated. Many potentially life-saving assessments are triggered by identification of minor symptoms. Equally of comfort, those without symptoms are not required to undertake invasive procedures.

In the FL-DOORS framework, screening of safety refers to the early identification of potential risks to the physical safety of adults, children and infants, as well as significant risks to their psychological wellbeing. It includes a structured client self-report (DOOR 1) and practitioner evaluation (DOOR 2). Assessment is a phase of further, in-depth enquiry into safety and wellbeing risks (DOOR 3). All clients need to be screened for safety and wellbeing risks, but not all clients require further assessment.

### DOOR 1: Parent Self-Report Form

Entry into the framework is through DOOR 1, a standardised parent self-report questionnaire, designed to identify antecedent and immediate factors associated with spiraling mental health and family violence risks. Ten domains of risk are covered. Depending on the needs of the case, the practitioner can choose to screen for all domains of risk, or only some. The domains are:

1. Client's culture and religious background
2. About the separation
3. Managing conflict with the other parent
4. How the client is coping
5. How the other parent seems to be coping
6. About the client's baby/young child(ren) and school-aged child(ren)
7. Managing as a parent
8. Child(ren)'s safety
9. Parent's safety and safety behaviour
10. Other stresses

There are two formats for completing DOOR 1: computer-assisted, or via pen and paper. Either can be done by the client alone, given effective prior explanation and sufficient personal engagement. Alternatively, DOOR 1 screening and DOOR 2 follow-up can be done simultaneously via a personal interview. This takes longer but may be indicated in complex matters involving acute and immediate risk or trauma. Using DOOR 1 and DOOR 2 simultaneously is also an effective way of conducting a comprehensive screening process with clients with limited literacy and/or English proficiency.



## DOOR 2: Practitioner Aide Memoire

DOOR 1 provides a DOOR 2 report, and provides prompts to help the practitioner to establish an effective follow-up conversation with the client. The practitioner is supported to elaborate on red flag areas with the client, and to decide if detailed risk assessment is required. Crucially, only when a client screens positive at DOOR 2 for a risk do practitioners then assess that risk in detail.

## DOOR 3: Resources for Responding to Risks

If needed, DOOR 3 provides resources for assessment. This stepped approach through each metaphorical door with its metaphorical screen means that “doing FL-DOORS” is only as detailed or as lengthy as it needs to be for each client. Moreover, FL-DOORS makes it possible for screening to be available at each point of entry into the family law system, and indeed to be a shared responsibility across legal and social sectors.

While DOOR 1 is highly structured, DOOR 2 is highly flexible and DOOR 3 gives considerable scope for divergence in assessment practice. There is nothing to prevent a practitioner from using the FL-DOORS framework as a series of prompts in a semi-structured interview. It can also act as a resource to loosely underpin an unstructured conversational approach to screening, described by some practitioners as their preferred method (Kaspiew et al., 2015a, p. 66). However, research leaves no doubt that structured, behaviourally-specific questions impact on the detection of risk, while face-to-face practitioner-led conversations can lead to less disclosure of safety concerns (eg Ballard, Holtzworth-Munroe, Applegate, & Beck, 2011).

## What Do We Mean by Risk?

Within the FL-DOORS framework, risk is broadly defined as physical or psychological harm to self and/or other family members, and in the case of children, developmental harm. The FL-DOORS framework is built on the idea that risk is multiply determined, and includes personal characteristics, historical and situational variables, and systemic hazards that increase the likelihood of adverse safety outcomes. Risk needs to be viewed from many perspectives, including the nature, timing and magnitude of the risk, the roles played by victims and perpetrators and the confidence or accuracy with which risk outcomes can be predicted.

When considering the screening for risk in family law, attention understandably focuses on the ‘big five’ safety risks: familicide, suicide, family violence, child abuse or neglect, and child abduction. The jeopardy of personal safety is the central issue, namely the likelihood that a client — or someone connected to the client or their case — may currently be or may become endangered. As many have documented, safety risks are rarely isolated and do not arise out of nothing. The FL-DOORS framework works on the principle that major harm can be averted by noticing small but connected risks in the overall patterns of family and individual stress.

Risks to life, safety and wellbeing emerge out of a wide spectra of factors, some recent, and others historical. Each factor can be understood as part of a continuum, and each, in turn, may exert a protective or amplifying influence in the presence of other related factors. The following group of significant factors has informed the development of the FL-DOORS framework:

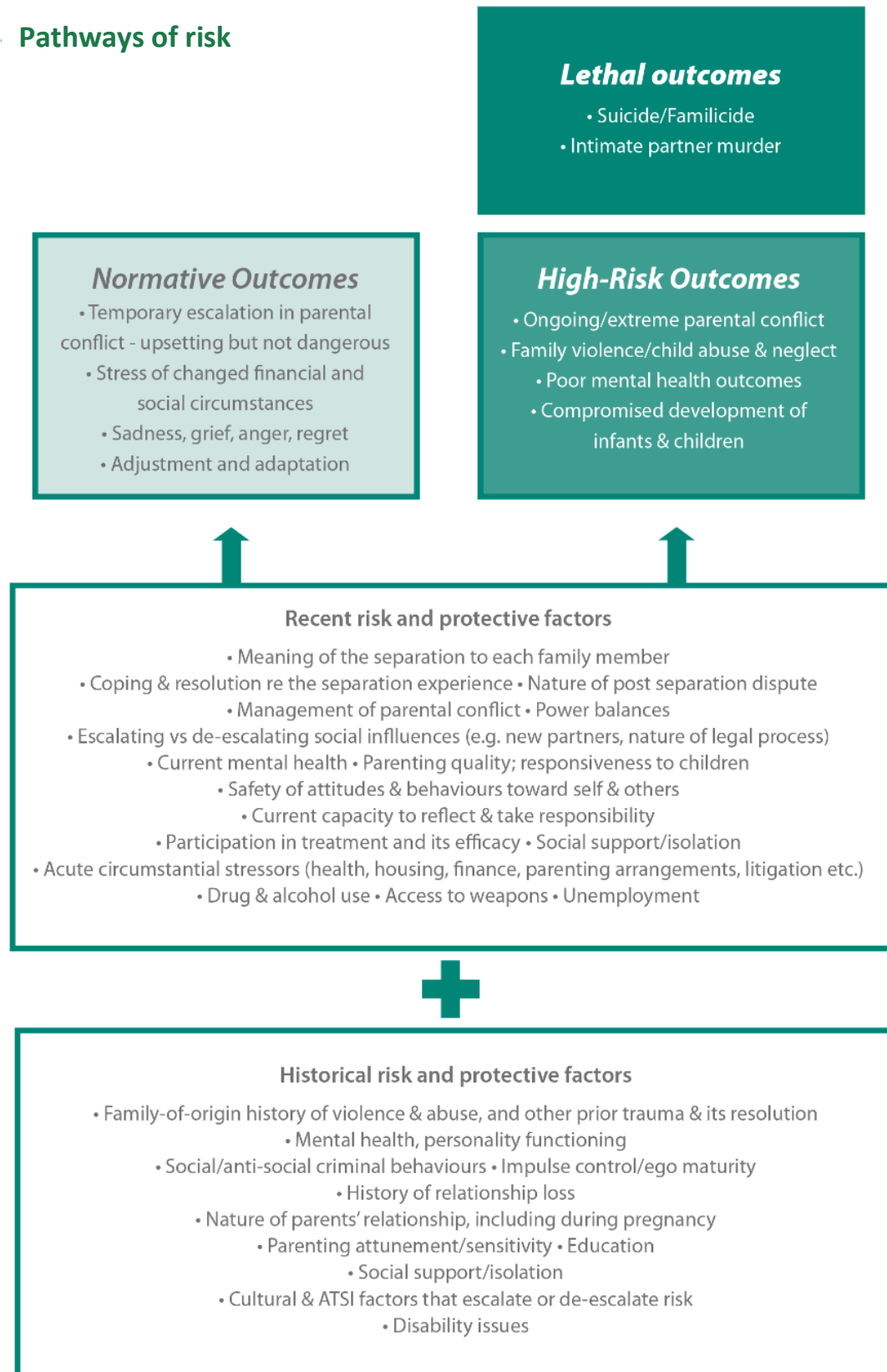
- The psychology of the individual parent
- The ex-couple relationship
- The history and nature of the current dispute(s)
- The development of the infant/child
- The role of social, cultural and professional support

These individual and interpersonal factors sit within a framework of social and cultural influence.

The following diagram places these factors within a pathway of risk, illustrating how the same historical and recent factors can align in various ways to create normative, risky or lethal outcomes, depending on the direction and combined effect of their influence.



## Pathways of risk





## Screening for What?

Practitioners must notice and actively ask clients about risks like FDV. The Family Law Act already encourages this and the Act was amended to make it easier for people to disclose risks. However, many parents are not confident to disclose these risks or were simply not asked, according to AIFS research (Kaspiew et al., 2015b). This research showed around one third of parents said they were not asked about FDV and safety concerns despite seeing practitioners in formal pathways for resolving disputes. Furthermore, about one fifth of parents felt unable to disclose even physical violence.

A practice of universal screening enables all clients to be asked about all key risks they face. This practice allows 100% of practitioners to ask 100% of clients efficiently about the risks they face if using a tool like FL-DOOR 1. Even if a client denies any victimisation risks at DOOR 1, then the tool plants a seed in the client's mind that 'Your safety is important and we want to know about risks you face' and makes it easier to disclose when meeting the practitioner soon after.

However, even when we at RASA do this universal screening, we have confirmed that screening and elaborating DFV victimisation is essential but not enough. If a client reports feeling unsafe or concerned about safety (an indicator of possible FDV), then it is likely that many other risks must also be explored. This is shown the table below in the blue row, which confirms that women reporting this FDV risk are indeed also reporting many other possible risks. Yet even when a woman denies any safety risk – saying no the 'Current safety concern' question in the green row – then many other risks must still also be explored. If the trigger for further screening is a woman saying 'Yes' to safety concerns then all the risks in the green row could be left unexplored.

	Seen professional for mental health problem, for self?	Any child protection reports?	Any serious health/developmental problems, for child?	Any serious health/developmental problems, for infant?	Thoughts of killing/hurting self lately?
<b>Current safety concern</b> 	41.3%	27.0%	24.0%	16.0%	2.5%
<b>No current safety concern</b> 	29.6%	10.1%	20.0%	12.1%	1.5%
<b>Requires elaboration for</b>					
	Mental health issues	Child abuse/neglect	Child health problem	Infant health problem	Imminent suicide

## Indigenous and CALD Clients

Australia's increasing cultural diversity flows into and shapes community attitudes to safety, rights, family responsibility, gender relations and parenting practices. Cultural understanding and respect are therefore an important foundation for the effective promotion of family wellbeing during separation and divorce events. Without this foundation, the family law system can itself create barriers to effective access and involvement and become an added risk factor for many families.

The high incidence of family violence among Aboriginal families highlights the importance of effective screening and risk identification in that group. Alcohol abuse is strongly associated with Aboriginal family violence, and alcohol and drug-related mental health issues are prevalent within Aboriginal communities.

Culturally and Linguistically Diverse (CALD) families are also in need of effective screening and risk identification. The emotional impact of migration, particularly forced migration and refugee experiences, combined with the impact of adjustment to Australian society, leads to family breakdown and family violence for many CALD families.

The first domain of the FL-DOORS is devoted to culture and religion, in response to these increased safety risk after separation (see McIntosh & Ralfs, 2012b).

## Summary

Without doubt, separation and divorce are critical events that increase the risk of mental health problems, drug and alcohol abuse, parenting distress, harassment and threats from former intimate partners and their families/new partners, possibly leading to physical violence, abduction of children, intimate partner homicide, suicide or familicide.

The FL-DOORS framework was built upon a comprehensive literature search, which documented the pathways of risk development in each of these areas. The developers of the framework discovered a significant amount of evidence from the reliable literature that highlighted the noxious, concomitant risks to the wellbeing of every family member post-separation. This evidence takes the need for early screening and intervention beyond platitudes or political correctness, to acknowledgement that this is an essential process for protecting the safety and wellbeing of all who enter the family law system.

Separation and divorce are processes designed in their healthiest form to liberate and reduce the daily stress of dysfunctional relationships. While this remains an arrival point for many, the process for most nonetheless brings with it many layers of stress. For some adults, separation-related stress is compounded by diminished coping resources and a history of other risk factors to create unmanageable distress, and with that comes the real possibility that a family member may be unsafe, or may act unsafely.

The FL-DOORS screening and risk identification processes are based on the belief that there are points in a family's separation journey where the translation of stress into an assault on safety or wellbeing may be preventable. Early identification, triage to counselling support, together with sensitive legal processes, can combine in the right time and place to protect safety and can ultimately lead to healthier management of difficult times.

Early screening will never predict 100% of serious risks to safety or wellbeing. It will however assist the practitioner to recognise patterns of behaviour associated with serious risk, to plan accommodations to the dispute resolution process, and to provide other follow-up or referral services as needed.

There are significant opportunities inherent in FL-DOORS for advancing a common language and methodology at the individual case level, and for a population-level indication of whole of-family risk. The imperative for coordinated, effective sector-wide engagement with clients around safety monitoring has never been clearer. As evidence from recent Australian tragedies within the family law system graphically attests, no single practitioner or service can bear the responsibility for preventing harm to family members amidst the vulnerability and volatility of conflicted separation. Expansion of the family law system's capacity to effectively screen and respond to family safety and wellbeing during separation is nothing short of a public health matter.

No single risk-screening tool holds the answers to risk prevention. Equally, there is no doubt that evidence-based, behaviourally-specific screening frameworks are more effective than ad hoc individual approaches, and safer than doing nothing. The FL-DOORS, grounded in Australian and international evidence, provides one validated means for harvesting layers of complex information and reliably indicating wellbeing and safety risks for children and parents, together with a compass for coordinated responses to risk. The FL-DOORS system endorses the responsibility shared by the whole family law system to minimise the negative impact of family separation and, where possible, identify disrupting risk pathways.

## Relationships Australia SA's Post Separation Services Model

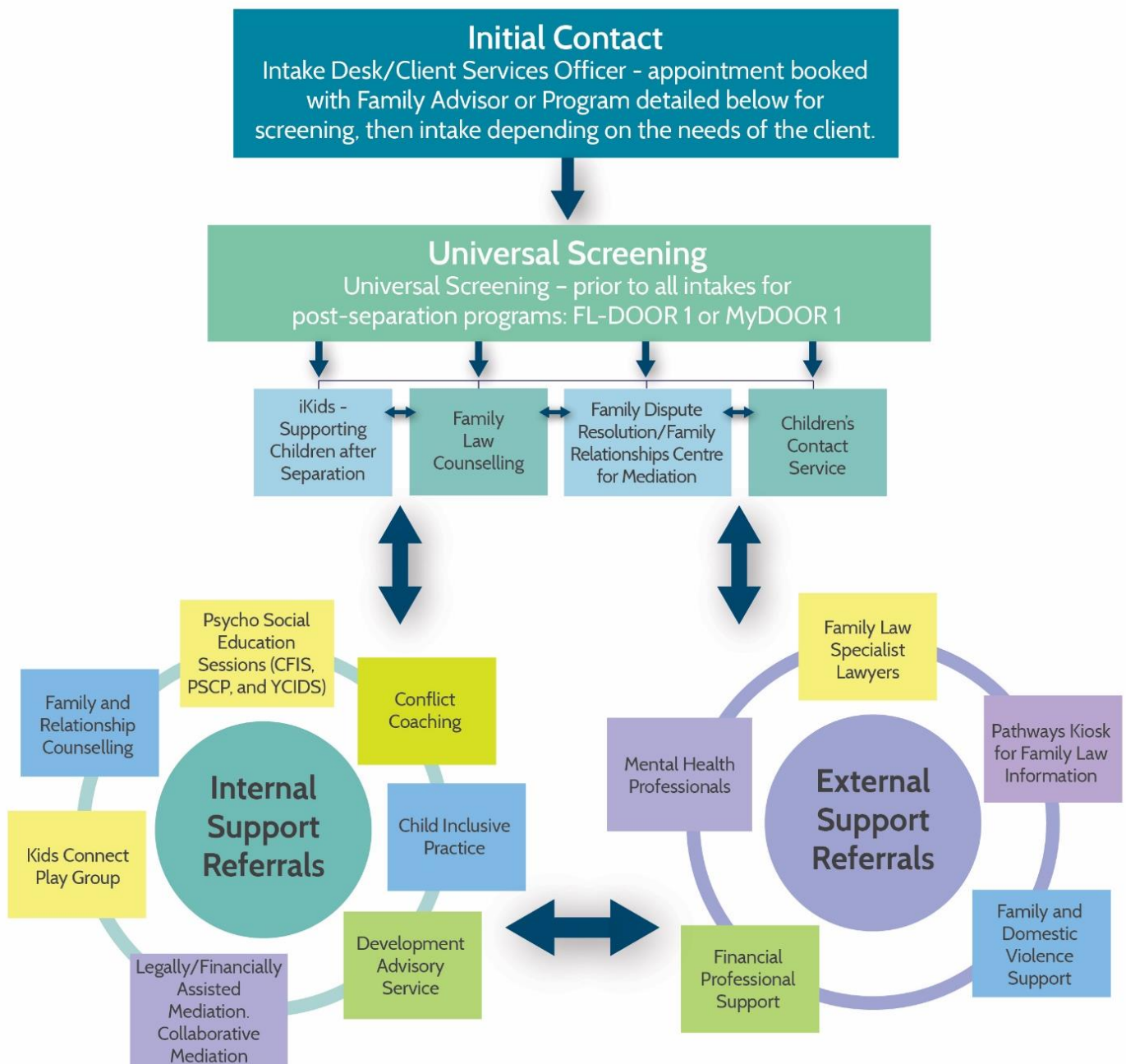
Our Post Separation Services provide high quality, timely, safe and ethical services that are addressed through an integrated, client centred approach that supports families to improve family functioning with a focus on the needs of their children.

Our primary support is provided through psycho education, effective referral, structured dispute resolution, counselling, supervised contact and changeover services, child inclusive practice, group work and case-management.

We aim to avoid working in the "siloed" approach, which has been a common feature of the social services sector. We strive to ensure that our services are joined up. Accordingly, a key feature of our model of service delivery is the development of an integrated case-management approach with other internal and external services. A fundamental principle underpinning our model is that good client outcomes are best achieved through agencies working together. We work collaboratively with other community and legal services contributing positively to networks and partnerships to ensure optimum outcomes for clients.

We have employed Family Advisors, Aboriginal Liaison Officers and Culturally and Linguistically Diverse Liaison Officers since Family Relationships Centres were created in 2006. These positions are key to supporting clients experiencing significant risk factors and connecting them to the police, legal services and other allied support services.

## Post Separation Services Flow Chart



## Benefits of a Universal Screening Tool – Lessons from our Data

### Windows of opportunity to influence risks are open at different times

We can decrease risk when different windows of opportunity open up. We know this from analysis of over three thousand relationships counselling clients from a two-year period at RASA (Lee, Muirhead, & McIntosh, 2017). Safety fears were highest when women said they were considering leaving a relationship, and for men when they said they wanted to stay out of relationships. However, no relationship stage is free of risk, with those in even 'honeymoon period' when they have recently started new relationships.

	Staying out of relationships	Looking for relationship	Recently started relationship	In established relationship	Considering leaving	Relationship recently ended
WOMEN	41%	34%	19%	36%	47%	40%
MEN	32%	18%	9%	14%	20%	19%

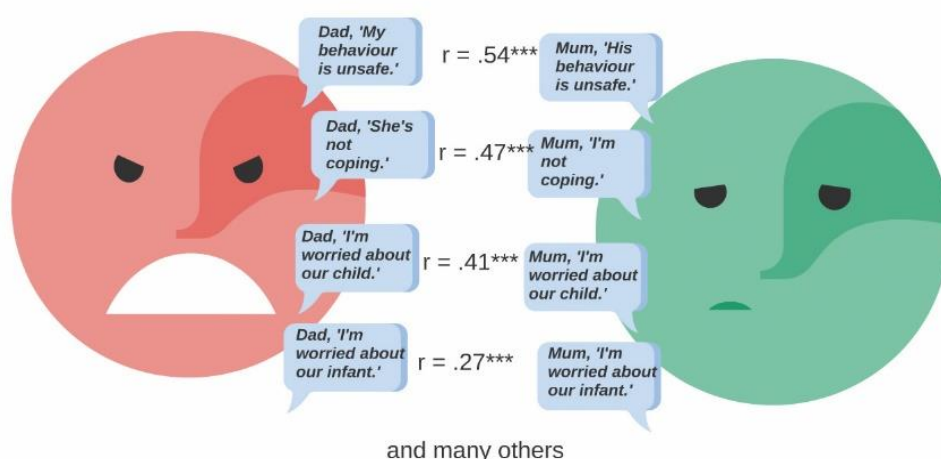
Proportion of relationships counselling clients saying 'Yes' to "...in past year, concerned for your safety because of someone else (e.g., partner, former partner, family member etc.)?"  $n=3,675$

Therefore practitioners must tune into risks for clients at key relationship transitions while being aware that no relationship stage is free of possible risks.

### Accuracy of risk identification

Families face risks in common, according to detailed analysis of matched pairs of FL-DOORS clients showed high corroboration of independent reports risk (McIntosh, Wells, & Lee, 2016). In other words, what one parent in a dispute tells us will predict strongly what the other parent will tell us. Parties' versions of events broadly match when they are talking about the same thing or different things independently. For example, a separated mum and dad will broadly agree about his risky unsafe behaviour towards her, or about her recent coping; but equally, they will also tend to agree about their own individual independent experiences of their child. What this means is that we should believe broadly what a party says about risks before we even meet the other party because we know it is likely to correlate. People do not tend to deny, dismiss, minimise, exaggerate or over-report their risks.

## Corroboration of parents





Screening is efficient and effective RASA's experience has been that our clients overwhelmingly accept the process associated with administering the FL-DOORS. We reviewed large-scale client satisfaction surveys for clients using services before and after the launch of FL-DOORS in late 2012. We have found no loss of satisfaction, even with the extra 'paperwork' that FL-DOORS brings (McIntosh, Lee, & Ralfs, 2016).

Service	Before launch (%)	After launch (%)		
	2012	2013	2014	2015
<b>Children's Contact Service<sup>a</sup></b>	86	88	93	92
<b>Mediation<sup>b</sup></b>	94	92	94	95

*RASA clients agreeing 'I am satisfied with the service I received' before and after launch of universal screening*  
<sup>a</sup>n = 100-137; <sup>b</sup>n = 274-366

Our clients have also revealed that they do not mind 'being screened' with FL-DOORS, despite the searching questions we asked about safety risks, according to an anonymous survey in 2015 (Lee & Ralfs, 2015). In fact, 94.3% of clients agreed it was 'a benefit to me to fill out these forms' and only 8.6% agreed 'some of the forms made me feel suspicious'. This finding of low suspicion is reassuring given many fathers after separation say they feel unfairly scrutinised for violence. Because the screening is universal – meaning all clients are asked – then no-one is singled out for risk assessment on the basis of gender or previous history or hearsay: we can defensibly say: 'This is our process and it applies to everyone'. What was surprising in our survey, and even counter-intuitive for many of us, was finding that 68.3% of clients said, "It's easier to disclose sensitive information on a form than face-to-face". In other words, if clients were forced to choose, two-thirds of clients said they would rather 'tell it to a form' than 'tell it to a face'.

When clients disclose risks, it makes a difference to family law practitioners. In the FL-DOORS framework (McIntosh & Ralfs, 2012a) practitioners elaborate risks detected on the DOOR 1. Our client information system has allowed us to analyse what clients tell us on DOOR 1 and what actions practitioners take in response. As would be expected, there is a close link between what a client says on the screening form and what a practitioner does as a result (McIntosh, Wells, & Lee, 2016). For example, clients who tick many 'Yes' boxes on the child safety concern section of DOOR 1 are much more likely to trigger a child protection notification and less likely to have their case assessed as 'suitable for mediation'. This is how it should be: clients disclosing risks are taken seriously by practitioners (Lee & Ralfs, 2016).

### Common frameworks make families safer

When risks like FDV are detected, families use more services at community-based agencies like RASA

*Internal referrals taken by client, based on FDV presence*

	Presenting service only	... plus one referral	... plus two referrals	... plus three or more referrals
FDV detected in file	52%	68%	81%	91%
No FDV in file	48%	32%	19%	9%

(Lee, 2016). Based on analysis of case files, families given a higher number of internal referrals have an increasing chance of having at least one strong indicator for



family and domestic violence (FDV) in a linear dose-response trend. In other words, services are going to those with the highest risks. Crucially, RASA has intentionally made such case management possible by using a common agency-wide framework for risk (McIntosh & Ralfs, 2012a) and a single, easily accessible, paperless client information system. This reflects the call by peak bodies for inter-agency partnerships for common risk frameworks and information sharing protocols (Toumbourou et al., 2017).

## Case Studies

We have developed several case studies, based on actual client histories, to demonstrate how the use of a screening tool in the family law system can support improved safety and wellbeing outcomes.

### **Mary and Tom**

Mary was ordered by the Court to register with RASA's Children's Contact Service (CCS) in order for her two children Jane and Lisa aged 9 and 10 to have supervised contact with their father Tom. Mary reported that Tom had a serious alcohol problem, drove the children around whilst drunk and had been violent towards her throughout their relationship. The children had regularly witnessed this. Mary said that Tom had also ruined them financially with his gambling and what little they had left had been used on legal fees. Mary said she was scared that Tom would get access to the children again and that he would put them at risk once more.

At the orientation, the children said that they did not want to see their dad, as they were angry with him and scared of him.

Tom said that he hadn't seen his kids for the past 18 months because Mary had dragged him through the courts and left him broke. He said that she was doing the classic parental alienation thing, as the girls had told his parents recently that they were scared of him and didn't want to see him. He said that although he had had issues with drinking and the horses, that this was in the past.

At the first supervised contact visit the girls arrived and refused to see Tom. They had both written letters to Tom and asked the workers to give them to their dad.

The worker let Mary and the girls go home. She explained to Tom that the girls had refused to see him. Tom was extremely upset and very angry, citing parental alienation as the cause of the refusal.

The CCS weekend supervisor reported back to the CCS Coordinator and it was decided that Tom be invited to engage with Ikids, a Supporting Children After Separation Program. It was considered appropriate for Tom to be given the letters from the children in a space where he could reflect on their contents with the support of a professional. Mary was told that this was the plan and also invited to engage with the service and consider taking the children for counselling if they wanted to attend. Tom was given the children's letters and became very emotional. He decided to write a letter of apology to the children for the trauma that he had caused in their lives. He acknowledged all of his behaviour and also apologised to Mary in the letter. Mary and the children were given the letter and were also very emotional and relieved that Tom had apologised for the first time and had not just tried to blame Mary. Tom said that although he desperately wanted to see them he would respect their decision, and would wait until they were ready to see him.

The children attended counselling with the Ikids counsellor, and Mary and Tom voluntarily attended Family Dispute Resolution (FDR) to discuss the possibility of future children's contact. The younger girl decided to see her father at the CCS and then eventually progressed to unsupervised visits during the day.

### **Jenny and John**

Jenny and John attended FDR screening, intake and assessment for parenting and property matters at RASA. Jenny identified safety issues in relation to the couple's two daughters. John had initiated FDR, and Jenny was reluctant to participate as she was emotionally devastated by the circumstances of their recent separation that had occurred two months prior.

Jenny had discovered that John had been having numerous affairs with both men and women throughout their twenty-year marriage after coming across photographs and emails on his computer, some of which were pornographic in nature. John had left the family home after this discovery and their two teenage girls, 13 and 15 years old, were refusing to see him.

Whilst Jenny was devastated, she had been discreet about what she had told the girls about the separation. Her trust in John was shattered, and she feared that he might not properly protect the girls while they were in his company. She was concerned in particular that they may come across images as she had and she was not confident that he would protect them from the people that he associated with sexually. Jenny stated that the girls were choosing not to see their dad now, as they knew that she was very upset by the separation and that there was someone else involved, so they were probably protecting her.

Apart from parenting arrangements, they also had to settle the property and schooling issues.

Both John and Jenny were referred to legal advice and to separate counsellors. The girls were referred to a counsellor outside of RASA.

Whilst John wanted to proceed with ordinary FDR, Jenny identified that she was too vulnerable emotionally at this time. Jenny also had a history of trauma in her life, which in addition to recent circumstances made it impossible for her to proceed with traditional FDR. After further assessment, the FDRP suggested legally assisted FDR, which both parties agreed to. Jenny also chose to have her counsellor attend the FDR as her support person.

John and Jenny had at least three legally assisted sessions, with John's lawyer attending by phone and Jenny's in person. They then progressed to ordinary shuttle FDR and consulted lawyers between sessions. Detailed parenting plans were produced and updated over a two-year period. Eventually all property and schooling issues were resolved.

The flexibility of the model used, including the ability to make short-term plans and review them regularly, was critical to the eventual successful outcome.

### **Billy and Sarah**

Billy, a young Aboriginal man, initiated FDR with his ex-girlfriend Sarah in order to see his daughter Lucy. Lucy was three years old, and Billy had never met her. Billy took off when Sarah was pregnant and had been living up North. He had recently moved back to South Australia. He said he had come back to South Australia to stay away from drugs and people that he knows. Billy said was clean now, had a job and wanted to know his daughter and for her to know her culture and family.

Sarah had been heartbroken when Billy took off with another girl, but eventually she was relieved, as Billy had been taking ice and would not have been a good dad. Sarah met a guy who she is now married to, and they have a new baby. Lucy calls him dad and doesn't even know that Billy exists. Sarah is also worried about Billy and his drug use and the people that he hangs out with in relation to Lucy's safety.

The FDR practitioner offered Billy Aboriginal Liaison Officer (ALO) support which he accepted. Sarah brought her husband to the joint session with Billy's agreement and the ALO attended as Billy's support person. The discussion centred on how to introduce Billy to Lucy and they agreed to use the Children's Contact Service and then return to FDR to review how things have gone and where to next.

## Other Issues

The following are further issues arising from the Inquiry's terms of reference on which we wish to comment.

### Access and engagement

#### *Property Settlement*

RASA is of the view that pre-litigation property dispute resolution should be made compulsory (with the same exceptions as parenting matters) with the capacity to assess matters as inappropriate and issue 60I certificates.

FDRPs are trained in and skilled at property settlement. There is a view that only family law legal practitioners are able to conduct property settlement. It should be noted that most clients have lawyers when they engage in property dispute resolution and FDRPs always refer clients to lawyers for advice. If pre-litigation property dispute resolution was made compulsory, full disclosure of relevant documents would also need to be a requirement to maximise the opportunities for success.

The scope of legal conferencing (currently provided by Legal Service Commissions across Australia to assist parties affected by family violence) should be extended to include property and financial dispute resolution, including debt. Generally speaking, people with "ordinary means" are more likely to engage in property dispute resolution. People with complex financial arrangements such as family trusts, companies, businesses and large real estate and superannuation investments use lawyers to settle their matters. Consequently there could be a financial cap on matters that must engage in property dispute resolution prior to filing for property settlement in the court.

If pre-litigation property dispute resolution was made compulsory, it would provide an opportunity for agencies to screen for children's wellbeing even if parents were not presenting with disputes about children, therefore adding an extra layer of checks around children's wellbeing at the point of separation.

#### *Section 60I certificates*

Whilst section 60I certificates have been useful with regard to compelling people to engage with our services prior to filing an application in court, we recommend that the type of certificates and language used in 60I certificates be reviewed. We suggest that four types of certificates be available, namely "attended FDR", "did not respond", "declined invitation to attend FDR" and "inappropriate for FDR at this time". We take this view as considerable time is wasted responding to complaints about the type of certificate that is issued mostly in relation to "genuine effort" and "non-genuine effort" certificates.

Having an option for inappropriate for FDR at this time "enables the process of FDR to be slowed down so that clients can obtain sufficient supports necessary to engage in FDR in a meaningful way.

### *Culturally Appropriate Models of Practice for Indigenous and CALD Clients*

RASA uses Aboriginal and Culturally and Linguistically Diverse Liaison officers who are based in our FRCs to work with clients from these backgrounds in culturally appropriate ways, particularly at the time of separation.

We are currently engaged in discussions with Aboriginal Legal Rights Movement (an Aboriginal Community Legal Service) to partner with them in providing a fast-tracked by appointment service at their head office. The goal is to help clients access other support services in addition to their legal issues where required. Where parenting issues are identified that have the potential to involve the removal of children by the state, we hope to make relevant referrals, initially to FDR.

While referrals such as these might ordinarily be considered unsuitable for FDR between parents, there may be opportunities to engage with flexible models of practice, like family-inclusive restorative group conferencing, with a broader kinship group. This process may identify appropriate alternative (and ideally, temporary) carers. Applications for Interim Orders can be made by the agreed carer(s) to the Federal Magistrates Court. Birth parents would then be better placed to seek appropriate support/treatment to overcome their issues and work towards reunification.

Judge Kelly has recently started an Indigenous list in the Adelaide Federal Magistrates Court Registry drawing on the work of retired Judge Robyn Sexton who started and ran the first indigenous list in Sydney.

### *Specialist Issues: Palliative Care*

There are currently no legal pathways available to secure future arrangements for children in Australia when a “primary carer” is dying and there are complex issues.

RASA has been providing a specialist mediation service to support families in this situation for the last ten years. The service has involved flexible practices and collaboration with a multi-disciplinary team of professionals including family lawyers, many of whom have provided pro bono assistance to clients.

Where clients are not able to negotiate suitable arrangements for children in this situation there appears to be no current legal mechanism for binding orders to be made in relation to children prior to a carer’s death. This area needs to be examined and addressed.

### *Children’s experiences and perspectives*

#### *Children’s Voice*

Mechanisms for children's voices as consumers need to be incorporated into the system and funded accordingly. The Young Person's Family Law Advisory Group that operates in South Australia is a good example of lived experience feedback that can be given to the sector to try to improve the experience and outcomes for young people. For further information, see:

<https://www.pathwaysnetworksa.com.au/ypflag/>

Child Inclusive Practice should be funded and standard practice in the FDR process, except where there are contra indicators and it is assessed as inappropriate to seek children’s views and experiences.

The role of Independent Children’s Lawyers needs to be reviewed to ensure that they are required to talk with children as opposed to such engagement being optional.

### *Child Focused Information sessions*

RASA offer a three-hour information session to all prospective parties to FDR where children are involved. We also have an online version of the session that can be completed in flexible hours and remotely. Each session includes information about:

- Family Dispute Resolution and Family Law
- Understanding the child's needs after separation
- Keeping children away from adult conflict
- Sharing tips on how to make a child focussed parenting plan
- Opportunities to find out about other support services

These information sessions are recommended but not compulsory.

Feedback from parents who have engaged in the sessions is overwhelmingly positive despite some initial reluctance to participate. FDRPs also report anecdotally that clients who have completed such courses prior to FDR have more child-focused outcomes. RASA recommends that these sessions should be made a compulsory part of the FDR process prior to a joint FDR session occurring .

### *Resolution and adjudication processes*

#### *Legally Assisted Family Dispute Resolution (FDR)*

RASA has always worked closely with lawyers and has close working relationships with Community Legal Services and the South Australian Legal Services Commission. We have a Collaborative Law Practice Group and we undertake legally assisted FDR in cases where we identify that it would be of particular use. We have found that this approach can be especially helpful in matters involving vulnerable clients.

We suggest that legally assisted FDR be inserted as an additional step in the pre-litigation process following an unsuccessful FDR. This approach could serve to reduce the amount of applications filed with the Court, and provide clients with access to lawyers who could draft Consent Minutes of Order if agreement was reached.

In order to maintain a non-adversarial focus within FRC services, we recommend that an FDRP manage this process, with the role of the lawyer being to provide legal support and advice for their client (as opposed to legal representation as such). The emphasis of the dispute resolution process can then remain on reality testing likely outcomes if matters were to proceed to court.

Funding such a model could be via legal aid (means-tested), with non-eligible clients being required to participate at their own cost for up to two sessions.

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