



# Submission to the Australian Law Reform Commission's Discussion Paper on Review of the Family Law System

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Domestic Violence New South Wales

Domestic Violence Victoria

NSW Men's Behaviour Change Network

## Introduction

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No to Violence (NTV) thanks the Australia Law Reform Commission (ALRC) for the opportunity to provide this submission in response to its Discussion Paper on the Review of the Family Law System. In providing this submission, NTV also endorse the submissions and recommendations made by the Women's Legal Services Australia (WLSA), Domestic Violence Victoria, and Domestic Violence New South Wales.

No to Violence recognises that the ALRC's discussion paper and many of its proposals are placed in the wider endeavour to prioritise and protect the safety and best interests of children, as well as seeking to increase access to justice, make simpler and streamline processes, addressing the high rates of family violence, making the system easier and less costly to navigate, and adopting a client-centred approach. No to Violence believes these are commendable goals that are huge in scope and will be resource intensive. If implemented as envisioned, we see them as positive developments in the family law system.

## About No to Violence

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No to Violence is the largest peak body in Australia representing organisations and individuals working with men to end family violence. NTV provide support and advocacy for the work of specialist men's family violence interventions carried out by organisations and individuals. The work undertaken by specialist men's family violence services is diverse and includes but is not limited to; Men's Behaviour Change Programs (MBCP); case management; individual counselling; and research and evaluation. NTV also provide a range of training for the specialist men's family violence workforce including a Graduate Certificate in Client Assessment and Case Management (Male Family Violence). NTV play a central role in the development of evidence to support the work of specialist men's family violence work as well as providing guidance for practice and policy development in Victoria, Tasmania and New South Wales.

Family violence is a pervasive social harm in Australia. Family violence poses the greatest risk factor – for permanent injury and/ or death – to women aged between 15 and 44. Although there is diversity in the gender identities, socioeconomic status, age, and ethnicity of both family violence perpetrators and victim/survivors, family violence is overwhelmingly perpetrated by men against women and children. Family violence is gendered in that its impacts are overwhelmingly experienced by women, and it is perpetrated predominantly by men.

No to Violence believe that working with men to address family violence is tackling the problem at the source. All interventions endorsed or advocated for by NTV place primary importance to supporting the safety of victim/survivors – this safety is supported by working with men to change their violent behaviour while offering support for those family members impacted by their abuse. NTV believe that men who use family violence must be held accountable for their violence, and that accountability is an integral part of the process of behaviour change. NTV advocate for an integrated family violence intervention system and believe that specialist men's family violence services must sit alongside statutory bodies; victim/survivor support services; and family services in order for victim/survivor safety to be upheld; and to support a perpetrator of family violence to take steps toward real, meaningful change.

## About the submission

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No to Violence's submission attempts to respond to several proposals raised by the ALRC in their Discussion Paper (2018). The submission does not attempt to respond to all proposals but instead focusses on the areas in which NTV hold expertise and can offer a unique contribution. The issues explored in the present submission cover:

- Getting Advice and Support;
- Reshaping the Adjudication Landscape;
- Reducing Harm;
- A Skilled and Supported Workforce; and
- A broader comment on perpetrator interventions.

## Section 4: Getting Advice and Support

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The proposed Families Hubs are an initiative based on the development of the Orange Door Support and Safety Hubs (Orange Doors) in Victoria, as well as existing Family Relationship Centres. We understand that the Families Hubs are to perform several duties:

- Be a central hub or problem-solving centre;
- Identify a client and their children's safety, support and advice needs;
- Assist clients to develop safety plans;
- Connect clients to relevant and appropriate services; and
- Provide clients with either case coordination or case management.

The proposed Families Hubs would house out-posted workers from a variety of services, including legal assistance and specialist family violence services. The Families Hubs would require significant ongoing funding, as well as resources to safely and properly design, develop, and implement the hubs. In the Victorian context, several issues have been identified in the implementation of the Orange Door. We note that the following information has been collected from our membership.

One of the main strengths of the Families Hubs are the co-location of staff from a multitude of services in the one physical centre. This is a potential enhancement to the family violence system and potentially reduces the historic siloing of community and family services and the consequential constraints on the service system to undertake robust risk assessment and management. In the Orange Doors, co-location operates through a series of Memorandum of Understanding's and agreements. The co-location of staff from multiple services has the potential to improve inter-agency collaboration and client support. However, this professional framework would be a large shift away from current service approaches.

To develop effective teams and inter-agency relationships would require intensive workforce development, careful piloting, and Families Hubs that are tailored to their location and context. Best practice processes are encouraged, including group supervision by an external clinician specialising in family violence and other complex presentations. The presence of a Families Hubs coordinator may facilitate teamwork within the Hubs, and relationships between external organisations and services and the Families Hubs. We note that due to the short timeframe in which the Orange Doors were implemented, workforce training and coordination were not adequately developed. The development of the Orange Doors arose directly from Victoria's Royal Commission into Family Violence. The implementation process has suffered from the absence of a clear theory of change which has resulted

in inconsistencies across sites and disciplines and different understandings being held across the service system about the function and desired outcomes of the Orange Doors.

The Orange Doors appear to have been designed based on assumptions around urban contexts, which has made their operation in regional and remote areas difficult. Of particular concern is the lack of anonymity for clients, in regional and remote communities, where 'everyone knows each other'.

No to Violence supports Proposals 4-5, 4-6, 4-7 and 4-8 in the expansion of the Family Advocacy Support Service (FASS). However, presently FASS is funded to 30 June 2019 under the Third Action Plan National Plan To Reduce Violence. No to Violence recommends that this funding is extended indefinitely in order to support the above proposals.

The ALRC discussion paper makes no reference to perpetrator interventions in the Families Hubs. While there is provision of services for specialist family violence services and parenting programs for men, it is presumed that this is a broader reference to all male clients. In the Orange Doors, there is an inadequate amount of staff resources attributed to specialised work with men who use family violence. Most funding is allocated to working with women and children, however perpetrators must also access the Orange Doors as the specified and desired intake point. It follows logically that there is a corresponding perpetrator (the majority of whom are men) to every victim that enters a hub and therefore funding should be allocated accordingly. No to Violence would however recommend that any funding for perpetrator interventions in the Families Hubs be new money, and not diverted from women's and children's services.

Although the development of the Orange Door Safety and Support Hubs are part of a key recommendation arising from the Victorian Royal Commission's Inquiry into Family Violence, the pilots demonstrate that without careful implementation, training and workforce development, families may be put at greater risk, and may continue to fall through the gaps. Issues that have been identified are still seeking resolution. It is to be noted that the Orange Door Pilot Evaluation is still in its early stages, currently pending ethics approval. If the Families Hubs are advanced, No to Violence recommend that this follows the evaluation of the Orange Door Safety and Support Hubs so that risks and limitations are accounted for in the development of the Families Hubs.

## Section 6: Reshaping the Adjudication Landscape

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No to Violence refers to paragraphs 6.50 to 6.65.

No to Violence agrees with Domestic Violence Victoria's submission that any adversarial interactions in the family law system "is one of the most significant barriers to access and engagement for survivors of family violence... replicates the power imbalance of family violence and colludes in the coercion and control of women experiencing family violence. It is a space that advantages perpetrators of family violence and disempowers survivors...".<sup>1</sup>

For these reasons, we agree with their suggestion for the introduction of a less adversarial decision making process in the form of an inquisitorial model combined with case management as a preferred alternative to the current system.<sup>2</sup>

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<sup>1</sup> Domestic Violence Victoria, 2018, 'Australian Law Reform Commission Review of the Family Law System: Issues Paper Submission'

<sup>2</sup> Ibid.

The problem-solving adjudication process that paragraph 6.63 to 6.65 refers to a form of case management by judges, empowering them to 'connect litigants with relevant services, such as behaviour change programs, trauma recovery services and rehabilitation and education programs'. The presumption is that litigants refers to either parties, and in the context of family violence, to perpetrators and victims equally.

No to Violence has several reservations in relation to judges being empowered to essentially case manage litigants. Case management in the social services sector is carried out by experienced specialists familiar with working with vulnerable and at-risk individuals in at least one area such as mental health, alcohol and other drugs, and sexual, domestic and family violence services. Therefore No to Violence believe case management may be more appropriately and skillfully carried out by those already working in the social services sector. Furthermore, No to Violence hold concerns about how case management undertaken by judges will interact with the proposed Families Hubs and their case management services. From a logistical standpoint, organisational processes and waitlists may hinder adjudication and case progression which may put victims at further risk of harm and create additional opportunities for perpetrators to control victims.

In the same vein, litigants being case managed or connected to appropriate services by a judge may perceive such instructions as correctional and punitive in nature. In a family violence context, this may become a barrier to a male litigants' engagement with any goals set out in a case management plan. Finally, even in a less adversarial setting, No to Violence believes there is a risk that perpetrators may use this mechanism as a tool against victim-survivors. For example, perpetrators may engage superficially with referred services to prolong adjudication, or cause distress and disruption to victim-survivors by manipulating the adjudication process into making inappropriate referrals.

No to Violence also envisions that such referrals may include men's behaviour change programs. These programs prioritise the safety and wellbeing of women and children by engaging with men on their use of family violence, including coercive and controlling behaviours. The program encourages men to take responsibility for their behaviour and explores various topics around healthy relationships, respectful behaviours, and male entitlement.

No to Violence warns that participation in a men's behaviour change program should not be seen as a panacea to the problem of male family violence. A man's journey towards non-violence is complex and often involves a variety of interventions including statutory bodies, community health services, case management services, counselling, and men's behaviour change programs. It should also be noted that recidivism is an issue for a significant proportion of men who complete men's behaviour change programs. Programs are best utilised as tools to manage the risk of perpetrators re-offending, and to increase the safety of women and children by providing men insight into their abusive behaviours and providing them with skills to make safer choices in their relationships. Male family violence interventions could be supported through federal funding of men's behaviour change programs with integrated case management.

## Section 8: Reducing Harm

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In relation to the addition of examples to the definition of family violence in the Act, No to Violence make the following suggestions.

With regards to paragraph 8.32 we suggest that the ALRC also include other types of financial abuse such as gambling, incurring further debt on a joint account, and refusing to make reasonable contributions on a joint account and placing further financial stress on one party.

With regards to paragraph 8.33 we suggest that the phrase “using electronic or other means to distribute words or images that cause harm or distress” being clarified to include audio and video.

With regards to question 8.3 we suggest that the word ‘frequently’ be substituted with a more appropriate and easily provable term, such as ‘repeated’ or ‘numerous’. However, case law also suggests that there may be issues with interpreting key terms and words in the legislation. It may be pertinent to provide a test or algorithm to guide decision makers, and we presume this will promote its applicability to all cases, whether family violence is or is not present.

## Section 10: A Skilled and Supported Workforce

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No to Violence thanks the ALRC for taking into consideration training on predominant aggressors<sup>3</sup> for legal practitioners. No to Violence would recommend that this training be expanded to the family law system as part of the core competencies.

As in our previous submission, we also believe that this training would be complemented by education on victim-survivors’ acts of resistance. There are many pervasive myths about women perpetrators. This arises from a poor understanding of family violence as being based on single incidents where one party may have initiated a violent event, rather than recognising a pattern of coercive control by a predominant aggressor. Single incidents of violence committed by women victim-survivors are most commonly not acts that seek to control others. Instead, Dr Allan Wade believes that these are most commonly acts ‘through which a person attempts to expose, withstand, repel, stop, prevent, abstain from, strive against, impede, refuse to comply with, or oppose any form of violence or oppression’.<sup>4</sup>

Without an understanding of predominant aggressors’ patterned use of coercive control and victim-survivors’ acts of resistance within such a context, there is a high likelihood that workers will collude with perpetrators and victim-survivors may be misidentified as perpetrators.

Furthermore, No to Violence believes it may be of interest to the ALRC to investigate the Safe and Together Model, developed by David Mandel. The Safe and Together Model is child-centred and works towards keeping children safe and together with the non-offending parent. The Model provides a framework for working with domestic violence victim-survivors to understand how the violence has restrained and limited their parenting, and intervening with domestic violence perpetrators in order

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<sup>3</sup> No to Violence prefers the use of ‘predominant aggressor’ over ‘primary aggressor’. The NTV definition for both terms is as follows: *The person who is exerting the greatest amount of harm and control over another through any number of abusive behaviours including physical and sexual violence, threats, intimidation, emotional abuse, stalking and isolation.* It should be noted that the definitions NTV have given to predominant and primary aggressor are the same, this is principally because changes from primary to predominant aggressor have to do with language and terminology rather than changes to the goals or principles of the terms. Predominant aggressor is NTV’s preferred term because;

(a) It does not lend itself to misinterpretations associated with temporality (‘primary’ is often construed as one who ‘started’ an incident)

(b) It does not risk mutualising violence as some critics have argued “primary aggressor” does

(c) It provides greater context and speaks to the power dynamics of family violence

<sup>4</sup> Dr Allan Wade (1997) ‘Small Acts of Living: Everyday Resistance to Violence and Other Forms of Oppression’, *Contemporary Family Therapy*, 19(1), 23-39.

to enhance the safety and wellbeing of children. This model pivots awareness and conversations to the perpetrator's use of violence as a parenting choice, and the impacts these choices have on family functioning.<sup>5</sup>

## Perpetrator interventions

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No to Violence is the largest peak body focused on men's family violence in Australia, and as such is best placed to speak on perpetrator issues.

We note that where the discussion paper raises family violence, the focus is rightly placed on safer access and solutions for victim-survivors. This is a commendable direction and principled approach to supporting the safety of women and children, and families who are experiencing family violence. However, the natural consequence is that fathers who use family violence are often invisible in discussions of family violence, voiding their responsibility in the harm caused to their families.<sup>6</sup>

While resources are justifiably allocated to assisting those who are experiencing family violence, No to Violence hold the position that perpetrator interventions are a crucial component of assisting women and children who may be experiencing family violence by addressing the problem at the source. Perpetrator interventions do this by increasing a perpetrators accountability and moving them towards non-violent change. No to Violence believe that these interventions should be developed and provided with the aim of keeping men in view, holding them responsible for their use of family violence and providing opportunities for change while maintaining a priority of increasing safety for women and children. These interventions are targeted at different stages and intensities, ranging from preventative measures to intensive and ongoing interventions.<sup>7</sup> If the Australian family law system is to prioritise the safety and best interests of children, then parents' roles in their development and wellbeing must be addressed. The active participation and decision-making role of men who use family violence in their children's lives may be limited. However, fathers may still contribute to childhood development and family functioning by respecting parenting orders, apprehended domestic violence orders, and child support.

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<sup>5</sup> Safe and Together Institute, 2018 <<https://safeandtogetherinstitute.com/about-us/about-the-model/>>. The Safe & Together Model is used statewide in Colorado, Florida, Oregon, Michigan, Iowa, Connecticut, New York, New Jersey, Wisconsin, Ohio and the District of Columbia. The Safe & Together Institute has worked extensively with child welfare and children's services in the United Kingdom. In Australia, the Safe & Together Institute staff has consulted with elected officials, and provided training and technical assistance to child welfare agencies and their community partners.

<sup>6</sup> Domestic Violence Resource Centre Victoria (2009), 'Discussion Paper No. 7 Bad mothers, invisible fathers: Parenting in the context of domestic violence' <<https://www.dvrcv.org.au/sites/default/files/Bad%20mothers%20and%20invisible%20fathers%20%28full%20paper%29.pdf>>; Australia's National Research Organisation for Women's Safety (ANROWS) (ongoing), 'Invisible practices: Intervention with fathers who use violence', <<https://www.anrows.org.au/node/1307>>

<sup>7</sup> No to Violence (2018), '2018-2019 Annual Report' <[https://www.ntv.org.au/wp-content/uploads/2018/11/NTV\\_2018-AnnualReport\\_online.pdf](https://www.ntv.org.au/wp-content/uploads/2018/11/NTV_2018-AnnualReport_online.pdf)>; No to Violence classes interventions into five classes: Prevention (bystander programs and campaigns, providing expert advice to community and government on mne's behaviour), First Response (The Orange Door, police response, courts, women's services, Men's Referral Service, child protection services, best practice workforce training), early intervention (maternal child health, training GPs to recognise perpetrators and make appropriate referrals, training for private psychologists and counsellors, at-risk group identification, family services), intensive intervention (group-based interventions and one-on-one interventions), ongoing intervention (couples work, parenting groups, post-program follow-up)



In No to Violence's experience, victim-survivors' safety and rights are best upheld by working with men who use family violence through a range of interventions. These interventions include educating men on their use of violence and the impacts of their behaviours. In addressing coercive, controlling and violent behaviours and the impacts on family members, men are challenged and invited to interrogate their beliefs, take responsibility for their behaviours, and develop skills to make safer choices around the safety and wellbeing of their families. Men's behaviour change work must not act in isolation. These interventions must be integrated within the broader community and service system where women and children's safety and recovery are undertaken by specialist sexual, domestic and family violence services.

## References

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Australia's National Research Organisation for Women's Safety (ANROWS) (ongoing), 'Invisible practices: Intervention with fathers who use violence', <<https://www.anrows.org.au/node/1307>>

Domestic Violence Resource Centre Victoria (2009), 'Discussion Paper No. 7 Bad mothers, invisible fathers: Parenting in the context of domestic violence' <<https://www.dvrcv.org.au/sites/default/files/Bad%20mothers%20and%20invisible%20fathers%20%28full%20paper%29.pdf>>

Domestic Violence Victoria, 2018, 'Australian Law Reform Commission Review of the Family Law System: Issues Paper Submission'

No to Violence (2018), '2018-2019 Annual Report' <[https://www.ntv.org.au/wp-content/uploads/2018/11/NTV\\_2018-AnnualReport\\_online.pdf](https://www.ntv.org.au/wp-content/uploads/2018/11/NTV_2018-AnnualReport_online.pdf)>

Safe and Together Institute, 2018 <<https://safeandtogetherinstitute.com/about-us/about-the-model/>>

Wade, Allan (1997) 'Small Acts of Living: Everyday Resistance to Violence and Other Forms of Oppression', *Contemporary Family Therapy*, 19(1)