



CASA Forum

Victorian Centres Against Sexual Assault

Australian Law Reform Commission

Review of the Family Law System:
Discussion Paper 86 (DP86)

Submission

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About the CASA Forum

CASA Forum was established in 1992 and is the peak body for fifteen Centres Against Sexual Assault (CASAs) in Victoria, including the Victorian after-hours Sexual Assault Crisis Line (SACL).

The Forum is represented on a wide range of government policy and practice bodies within Victoria, providing advice and advocacy re the development of statewide policies, programs and services. We are also a member of the National Association of Services Against Sexual Assault (NASASV).

CASAs are funded by the Victorian Government to provide a range of sexual assault counselling and support services to victims/ survivors of sexual assault, and their non-offending family members/carers and friends. We understand sexual assault to occur along a continuum that includes any uninvited sexual behaviour that makes the recipient feel uncomfortable, harassed or afraid; unwanted touching or remarks; sexual harassment; coerced sexual activity; rape with physical violence and threat to life; and sexual assault of children and the grooming of children that accompanies this crime.

CASAs work with all victims of sexual assault and sexual violence, including women, children, young people and men. The majority of our service users are women, who have experienced sexual assault in an intimate partner relationship; were sexually abused as children; have experienced date rape; or sexual assault by a stranger or recent acquaintance; or have experienced sexual assault within an institutional setting.

Children also make up a large proportion of CASA service users. They have most often been sexually abused by a family member.

Our services provide a crisis care response to recent assaults, and to recent disclosures of sexual assault. The majority of crisis care responses are provided to women and children. While the number of male victims accessing our services has increased, in most cases they are men seeking support to deal with the impact of historical childhood sexual assault perpetrated by male family members, by friends, or within institutions.

Many CASAs also now provide treatment services and programs for young people who demonstrate sexually abusive behaviours, with a view to intervening early to stop the problematic behaviour and support them to develop healthy attitudes and approaches to relationships.

In addition, CASA Forum provides Standards of Practice to guide the work of our services; a statewide workforce development training program for the sexual assault field; education and training for other sectors; respectful relationship programs in secondary schools; and advanced personal safety programs in primary schools.

This submission sets out CASA Forum's response to the proposals and questions detailed in DP86.

General comments:

CASA Forum commends the ALRC on its review of the Family Law System, and we are heartened by the decision to focus on families, not the system, and to take a client-centred approach.

The focus on advancing the safety and well-being of children and families is critical, and we agree that this should be the paramount principle guiding the redevelopment of the FLS. Our work aligns closely with this principle.

CASAs are highly specialised sexual assault counselling and advocacy services with a long track record of taking a rights-based advocacy approach to our work with clients, many of whom continue to be affected by the trauma of their experience of sexual assault, and could be described as having complex needs. Involvement with the FLS is common for our service users, including many women and children.

Our experience in supporting clients has led to concerns that the family law system has been inward looking, and has operated as somewhat of a closed-system. For families dealing with the FLS at a stressful (and sometime dangerous) time in their lives, particularly where sexual abuse and family violence is a factor, there is a need for a multi-disciplinary approach and greater collaboration with other systems and specialist services that offer support to affected clients.

We strongly support the ALRC's decision to engage directly with children and young people as part of this review. The voices of children and young people have long been sidelined. Decisions about their safety and well-being are central to the business of the FLS, and we support the development of measures that will ensure that they are supported to participate in such processes in developmentally appropriate ways. This will require the support of skilled professionals who understand the ways in which children can be coerced by abusive adults.

Proposals to simplify information and procedures; make the FLS more accessible and affordable; and less confrontational are also welcomed. All reforms must be designed to align with the paramount principle of ensuring safety and wellbeing.

Proposed public health approach

CASA Forum holds some reservations about the proposal to use a public health approach to frame a plan for change, unless that approach is underpinned by an acknowledgment of the gendered nature of violence against women and children.

The public health approach was originally designed for disease prevention and involves defining a problem; identifying risk and protective factors; developing and testing prevention strategies and programs; and ensuring widespread adoption of information about how to prevent disease.

In the context of family law system reform, it will be critical that in defining the problem, the ALRC explicitly acknowledges the gendered nature of family violence and considers how that plays out in family law dynamics. Gender based violence is the single largest driver of homelessness for women¹;

¹ 55% of women with children presenting to specialist homelessness services nominated escaping violence as their main reason for seeking help. Australian Institute of Health and Welfare (2012) Specialist homeless services data collection 2011-12, Cat. No. HOU 267, Australian Institute of Health and Welfare, Canberra, <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129542529>

a common factor in child protection notifications²; and results in a police call-out on average once every two minutes across the country³.

In the context of the family law system, this requires acknowledgement of the links between prevalence, dynamics and impacts of gender-based violence, family violence and intra-familial sexual abuse; and the cohort requiring support through the family law system as a result of their experience of violence, who are described as having ‘complex needs’. The causal link needs to be made explicit as part of these reforms.

In the absence of a gendered lens complex cases where there are allegations of family violence or child sexual abuse risk being identified as resulting from parental conflict; or a protective parent (usually the mother) risks being accused of alienating their child from the other (abusive) parent.

Intra-familial sexual assault frequently co-occurs with family violence. While it remains in the margins, and is regarded as a taboo subject, those who are subjected to sexual abuse are at risk of further harm. In the family law system, this poses particular risks to children who by a ruling of the court may end up in the care of the perpetrator with continued exposure to violence and abuse. The rights of children, young people and their non-offending parents must be upheld, with those parents supported to keep their children safe from harm.

Taking a gender-neutral public health approach would not be compatible with the ALRCs proposal to make the safety, protection and well-being of children and families the paramount principle guiding the redevelopment of the family law system.

The safety and well-being of children and their carers (primarily their mothers) can only be assured by locating key determinants of violence against women (and children) at the head of a family law system public health model. Proposed primary, secondary and tertiary interventions will need to counteract the impact of this violence within the family law system.

The right to live free from violence is a fundamental human right.

² Australian Institute of Health and Welfare (2015) Child Protection Australia 2013-14, Child Welfare Series No. 61, Cat. No. CWS 52, Australian Institute of Health and Welfare, Canberra, <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129550859>. Children exposed to family violence are classified as experiencing ‘emotional abuse’, which, while a broader category, is the most commonly substantiated type of harm (39%) in child protection notifications across Australia.

³ Police across Australia dealt with 239,846 domestic violence incidents in 2015, an estimated 657 domestic violence matters on average every day of the year (or one every two minutes) – calculated for police data sourced across all states and territories, collated at <http://www.abc.net.au/news/2015-05-29/domesticviolence-data/6503734>

Our responses to the Discussion Paper Proposals and Questions

In this submission, CASA Forum has chosen to focus on selected Proposals and Questions of the Discussion Paper.

2. Education, Awareness and Information

Proposals 2-1 to 2.8: National awareness campaign, information package & supporting development of referral relationships

CASA Forum supports P2-1 to 2-8.

However we urge the Australian Government to include and work with specialist sexual assault services in developing the family law system National Awareness Campaign and information package; and in developing referral relationships to family law services.

Sexual assault is an often-hidden feature of family violence, with devastating impacts on victims, including both women and children. The reluctance of generalist and other specialist services to identify issues and ask questions about sexual assault is well documented.

The Royal Commission into Family Violence in Victoria found that:

Despite the fact that family violence and sexual assault often coincide, workers in the health, criminal justice and specialist family violence services often fail to ask about sexual assault, treating it as different from, and somehow separate to, other forms of family violence.⁴

Information products and education programs must address this hidden issue.

3. Simpler and Clearer Legislation

Proposals 3-1 to 3-9: Simplifying legislation, improving usability, changes to objects & principles in parenting

We support the ALRC proposals to simplify and clarify legislation as detailed in P3-1 to P3-9.

In particular, CASA Forum strongly supports P3-3: *'that the... paramount consideration in making decisions about children should be... amended to refer to 'safety and best interests.'* We would however recommend including 'protection' as an additional element in this amendment to the paramount consideration of the family law system.

We agree with the proposal to amend the *'objects and principles... to assist the interpretation of the provisions governing parenting arrangements'* to increase the focus on supporting children's human rights, advance their safety and best interests, and ensure that arrangements will not expose them or their carers to abuse or family violence or otherwise impair their safety (P3-4).

We also support clarifying principles that children should be supported to *'maintain relationships with parents and other people who are significant in their lives where maintaining a relationship does*

⁴ Royal Commission into Family Violence Summary and Recommendations, Victorian Government March 2016 p24

not expose them to abuse, family violence or harmful levels of ongoing conflict, and the child's right to maintain their cultural identity where it is safe to do so.

The proposal to simplify the list of mandatory considerations when determining the best interests of the child (P3-5) is welcome with the focus throughout on children's safety critical.

Replacing the term 'parental responsibility' with a more easily understood term such as 'decision making responsibility' (P3-7) will assist in addressing issues that arise when parents focus on themselves, believing it is their 'right' to see their child. We support these efforts to focus on the child's safety and best interests.

Question 3–1 How should confusion about what matters require consultation between parents be resolved?

Assessment of matters requiring consultation between parents must be conducted by skilled professionals, who:

- Understand the gendered nature of family violence and intra-familial sexual assault
- Understand child development and the impact of trauma on a child
- Are familiar with and skilled in risk assessment frameworks and application of risk assessment tools
- Understand perpetrator tactics, and the potential for coercion and grooming of a child to ensure the child complies with the perpetrator's wishes
- Are skilled in identifying indicators of child abuse and sexual assault

Proposals 3-10 to 3-19: Amending provisions in relation to property

With regard to property provisions and financial considerations, we endorse proposals to acknowledge the needs of women impacted by family violence to have their future needs arising from the violence taken into account in reaching property agreements.

While we support proposals to amend principles and protocols to help to mitigate against hardship for vulnerable parties, including victims of family violence, we do not intend to comment in detail on this section of the DP86.

We endorse comments in relation to these matters in the submission tendered to the ALRC by Women's Legal Service Victoria on 13 November 2018.

4. Getting Advice and Support

Proposals 4-1 to 4-4: Introduction of community-based 'Families Hubs'

CASA Forum supports the proposal to establish community-based Families Hubs (P4-1) that will provide separating families and their children with a visible entry point to access the range of legal and support services they need as they engage with the family law system.

In order for hubs to be able to identify needs and assist with the development of safety, support and advice plans, and coordinate referrals to relevant services the design process is critical.

We support the proposal (P4-4) for hub design to occur in partnership with the broader service system and in particular involve specialist agencies whose core business is risk and safety. Specialist sexual assault services must also be included as part of the design team, and as important partners in the resulting hub co-location model. We would also submit that 'Families Hubs' need to be established in a way that aligns with state-based service systems – for example, in Victoria, it would be important that 'Families Hubs' take into account and are integrated with other 'hub' type arrangements such as Orange Doors and Multi-Disciplinary Centres (MDCs).

A redesigned family law system should not exacerbate the existing state / federal divide, where clients in one system end up not knowing about what is available in the other system or are isolated from available services. Families should not have to move from hub to hub to have their needs met and receive the support and safety they need. Duplication of service systems and functions should be avoided where possible.

Proposals 4-5 to 4-8: Expansion of Family Advocacy & Support Service

Pending positive evaluations, we support proposals to expand the Family Advocacy and Support Service (FASS) model, to ensure best practice responses within family courts to clients experiencing family violence or who have other complex needs.

We would stress that these services need to include professionals with expertise in identifying and responding to sexual assault. This is a specialist area not necessarily synonymous with family violence expertise. As identified by the Royal Commission into Family Violence in Victoria, family violence responses are not always inclusive of sexual assault, and this is an area that needs to be addressed. An expanded FASS service model should include specialist sexual assault services to assist in identification of risk and ensure the safety, protection and well-being of children and young people and their carers.

Importantly, FASS service professionals need to be aware of the existence and understand the purpose of programs such as Sexually Abusive Treatment Services in Victoria. These programs work with children and young people exhibiting problem sexual behaviour. They offer an important referral pathway for families where family violence coexists with intra-familial sexual abuse, and where complex trauma manifesting as problem sexual behaviour by children and young people poses particular risks to others, including younger children in a family.

5. Dispute Resolution

Proposals 5-1 to 5-11: Dispute resolution

CASA Forum does not intend to comment in detail on P5-1 to 5-11, except to note our concerns that where victim-survivors of family violence and sexual assault wish to engage in alternative dispute resolution processes, they need to be supported to access this through affordable legal assistance.

Where victim-survivors seek exemption from engaging in family dispute resolution (FDR), systems for assessing suitability must be strengthened to align with other intended processes for identifying risk and safety concerns. The court needs to ensure that it does not perpetuate the dynamics of abuse, for example through misidentification of these parties as 'not acting in good faith', resulting in costs

awards against them and exacerbating the impact of the trauma already experienced through the perpetrator's use of violence.

In relation to P5-10, we support the development of effective practice guidelines for providers of FDR services. In particular we submit that these guidelines should include advice about the need for highly skilled professionals who understand the social context and dynamics of family violence and intra-familial sexual assault; barriers to safety; perpetrator tactics of coercion and control; patterns of grooming of children and young people; and high-level skills in identifying risk and safety concerns.

We would also submit that guidelines stipulate that information sharing and collaborative practice must be a two-way process between federal family law funded agencies and state specialist and community services.

6. Reshaping the Adjudication Landscape

Proposals 6-1 to 6-5: Triage, risk assessment and creation of specialist court pathways

We support proposals to strengthen processes to expand the specialist features of the court system and the allocation of additional resources. Intake and risk assessment processes for clients who have experienced and continue to experience family violence and sexual assault must be timely, accurate and effective, and result in court responses that prioritise safety for clients and minimise harm where family violence and sexual assault are a factor.

We strongly support establishing specialist lists for high-risk family violence (including sexual assault) matters in each registry. All of the professionals in these roles should have specialist family violence and sexual assault knowledge and experience.

In relation to recommended criteria for determining eligibility for inclusion in a family violence list, we would suggest the following as suitable for inclusion:

- Allegations of sexual assault between family members.
- Allegations of physical harm that have caused significant injury and/or evidence of persistent physical harm through actions such as harsh methods of discipline.
- Matters subject to Criminal or Civil Court proceedings.
- Matters subject to Police and/or Child Protection investigation
- Either or both parties are from Aboriginal or Torres Strait Islander communities,
- Either or both parties are from culturally or linguistically diverse backgrounds or have a disability.
- Either or both parties are self-represented.

We would also propose criteria independent of the nature of actual/alleged family violence, that relate to the health and wellbeing of a child. We would suggest a child who is demonstrating significant signs of developmental difficulty, mental health problems or extreme behaviours that research suggests can arise in circumstances of family violence, should at the very least be subject of a triage process for consideration within the proposed Specialist List.

Proposals 6-9 to 6-11: Development of post-order parenting support services

We endorse efforts to assist parties to implement and manage orders, and agree it will be important for the court to work with relevant stakeholders including sexual assault services and peak bodies to co-design intake and assessment processes for post-order services.

We also strongly support proposals to develop accreditation and training requirements for professionals working in these services. It will be critical that these professionals have a sound understanding of the nature and dynamics of family violence, expertise in avoiding collusion with narratives about ‘mutuality’ in family violence cases, and able to distinguish between ‘parental conflict’ and family violence.

They must also be required to have high-level understanding, experience and skills in assessing indicators, allegations and concerns about intra-familial sexual assault, and able to recognise when a parent may be withholding contact as a protective measure.

In relation to P6-12, we recommend that the ALRC look to the child witness program in Victoria⁵ as a model for ensuring the safety of witnesses where violence is alleged.

7. Children in the Family Law System

We submit that in all recommendations and proposals that the ALRC should amend language to include ‘children and **young people**’. The needs of children and young people, the information they are able to access, and their capacity to participate in family law proceedings needs to be assessed in age **and developmentally** appropriate ways.

Proposals 7-1 to 7-2: Access & Engagement

We support proposals to expand and increase the amount of age- and developmentally appropriate information available to children and young people about family law processes.

We also support proposals to ensure that Families Hubs include workers from children services and other specialist services including family violence and sexual assault services.

Proposals 7-3 to 7-5: Right to be heard

We support amendments to the Family Law Act to grant children the right to be heard where developmentally appropriate in both court and through family dispute resolution (FDR). The development of best practice guidelines for child-inclusive FDR should occur in consultation with children’s services, family violence and sexual assault specialist services, and the family relationship sector.

Proposals 7-6 to 7-7: Safe participation

We support proposals to manage risks for children and young people of participating in family law proceedings via initial and ongoing risk assessment.

⁵ <https://www.victimsofcrime.vic.gov.au/going-to-court/child-witness-service>

We agree with the ALRC recommendation that provisions in the Family Law Act that protect children and young people from being required to express a view in family law proceedings remain unchanged.

Proposals 7-8 to 7-11: Supporting children's participation

We support the introduction of an advocate to support a child should they wish to participate in family law proceedings, who is able to facilitate the child's participation in the range of ways outlined in P7-11.

We agree that the child's advocate should be a social science professional with training and expertise in child development and working with children. Equally importantly, we submit that children's advocates must be skilled professionals with highly developed expertise in relation to the dynamics involved in family violence and sexual assault; perpetrator tactics of coercion and control; and patterns of grooming of children and carers to facilitate sexually abusive behaviour.

Where a child is not able to participate in proceedings, the role of the advocate should be to assist and ensure the child's wishes are represented as fully as possible, as well as to advocate for their best interests.

Regarding approaches to be taken relating to the admissibility of communications between the children's advocate and a child, and whether the children's advocate may become a witness in a matter, we consider this role should be a confidential relationship between the advocate and under most circumstances the child's advocate not be called upon to act as a witness.

The exception to this would be the need to break confidence were the child to disclose information that would suggest risk to self or others; and if the child had disclosed a sexual assault by an adult and/or family member (Q7.3).

We also support P7.10, regarding the appointment of a separate legal representative for a child upon application by the child's advocate, where a child's wishes differ from the recommendations of the Court appointed legal representative.

We agree that the role of the separate legal representative should be to gather evidence pertaining to the child's safety, risk, protection and best interests; and to assist in managing litigation. (Q7.1)

Proposals 7-12 to 7-13: Guidance for judges and oversight re participation of children

CASA Forum supports the establishment of a Children and Young People's Advisory Board to provide advice about children's experiences of the family law system and to inform policy and practice development within the family law system.

We submit that members of the Advisory Board will need to be supported by professionals from a range of children's and young people's services, by specialist services including family violence and sexual assault services working with young people at risk, and by family law professionals.

8. Reducing Harm

Proposals 8-1 to 8-3: Definition of FV

CASA Forum favours a definition of family violence that is consistent with the Victorian definition – with fear, coercion and control as non-mandatory elements. We submit that an experience of fear should not be required in order to determine that an experience is violent.

Our services note that children and young people who are victims of sexual assault may not experience fear as a physiological experience. Sexual assault of young children in contexts of caregiving behaviour may be experienced as ‘normal’ by a victim of such grooming; and coping mechanisms such as identification with a perpetrator, self-blame and dissociation may assist a victim of sexual assault to not ‘experience’ fear.

CASA Forum also supports the ALRC view that including non-exhaustive examples of family violence, under broad categories, plays an important educative role across the family law system, and more broadly.

We support ALRC proposals to include consideration of the impact of psychological and /or emotional harm within a definition of family violence and provide examples that make clear that the definition of abuse encompasses direct or indirect exposure to family violence.

Proposals to expand the list of examples to include tech related abuse and the misuse of legal and other systems are a welcome and necessary addition.

Question 8–2 Are there issues or behaviours that should be referred to in the definition, in addition to those proposed?

We recommend that the list of family violence examples should include a perpetrator accessing child abuse material online; or exposing children or their carers to pornography. Such examples are reported by victims of sexual abuse and point to particular risks of harm to both children and their carers that must be considered when assessing the safety, protection and well-being of children to inform decisions about parenting arrangements.

Proposals 8-4 to 8-5: Abuse of process

We support proposals that aim to address unmeritorious proceedings, and unreasonable use of the court to interfere in the lives of children and their carers.

This includes allowing the court to *‘have regard to evidence of a history of family violence and in children’s cases... consider the safety and best interests of the child and the impact of the proceedings on the other party when they are the main caregiver for the child’* (P8-5).

Proposal 8-6 to 8-7: New guidelines for use of protected confidence evidence

CASA Forum strongly supports the proposal that: *‘courts have the power to exclude evidence of ‘protected confidences’: that is, communications made by a person in confidence to another person acting in a professional capacity who has an express or implied duty of confidence’, and agree that ‘the court should exclude evidence of protected confidences where it is satisfied that it is likely that*

harm would or might be caused, directly or indirectly, to a protected confider, and the nature and extent of the harm outweighs the desirability of the evidence being given’ (P8-6).

Where victims of sexual assault are involved, we are concerned that parties can seek access to confidential counselling records of victims of sexual assault. In our experience these applications are usually sought by a party to proceedings who has been accused of causing sexual harm to a child. The discussion paper speaks well to the nature of our concern.

We submit that it is essential for any client of a counselling service to be guaranteed confidentiality and protected from further acts of betrayal of trust, and that under no circumstances should an alleged perpetrator of family violence be permitted access to counselling records of the victim of abuse.

We welcome the proposal for professional bodies to develop guidelines in relation to the use of sensitive records in family law proceedings. This will assist agencies to prepare for such requests including how to best support clients (P8-7).

In developing guideline, we stress the importance of including specialist sexual assault services in the working group. The sexual assault services sector has grappled with issues around sensitive records and protected communications in legal settings for many years and is well placed to contribute to the development of the guidelines. We reiterate that sexual assault services and family violence services are not synonymous, with each holding particular and specific expertise and practice knowledge.

9. Additional Legislative Issues

Proposals 9-1 to 9-7: Supported decision-making

CASA Forum supports the range of proposals designed to provide people with disabilities with the necessary supports to enable them to participate in family law proceedings and in decisions that affect their lives.

We endorse the ALRC recommendation that guidance around a family law supported decision-making framework should be *‘in a form consistent with... [the] National Decision Making Principles and Guidelines’*; outlined in the ALRC Report 124, Equality, Capacity and Disability in Commonwealth Laws.

We also support ALRC recommendations for *‘the family law system [to have] ... specialist professionals and services to support people with disability to engage with the family law system’* (P9-7). We agree that the Australian Government should work to build links between the family law system and the National Disability Insurance Agency (NDIA). It is the role of the National Disability Insurance Service (NDIS) to fund people's daily disability support requirements, including enabling them to access necessary supports to build their parenting abilities and carry out parenting responsibilities. It is also important that the NDIA is supported to better understand family violence and parenting issues in the context of family law system.

However, we would caution that this work should not obscure or replace the court's obligation under the Disability Discrimination Act to provide accessible services and information for people with

disabilities, regardless of whether they are NDIS funding recipients, or are among the many thousands of Australians with disabilities who will not receive NDIS funding.

Proposal 9-8: Definition of family member

We recommend that the definition of family member in s 4(1AB) of the Family Law Act 1975 (Cth) be amended to be inclusive of Aboriginal and Torres Strait Islander concepts of family. We believe that the Victorian Family Violence Protection Act 2008⁶ provides a definition that is broad enough to be inclusive, and provides a useful example:

Meaning of family member

(3) For the purposes of this Act, a "family member" of a person (the "relevant person") also includes any other person whom the relevant person regards or regarded as being like a family member if it is or was reasonable to regard the other person as being like a family member having regard to the circumstances of the relationship, including the following—

- (a) the nature of the social and emotional ties between the relevant person and the other person;
- (b) whether the relevant person and the other person live together or relate together in a home environment;
- (c) the reputation of the relationship as being like family in the relevant person's and the other person's community;
- (d) the cultural recognition of the relationship as being like family in the relevant person's or other person's community;
- (e) the duration of the relationship between the relevant person and the other person and the frequency of contact;
- (f) any financial dependence or interdependence between the relevant person or other person;
- (g) any other form of dependence or interdependence between the relevant person and the other person;
- (h) the provision of any responsibility or care, whether paid or unpaid, between the relevant person and the other person;
- (i) the provision of sustenance or support between the relevant person and the other person.

10. A Skilled and Supported Workforce

Proposals 10-1 to 10-12: Workforce capability plan

We strongly endorse the range of ALRC proposals for a 'whole-of-system approach to developing and maintaining core competencies among practitioners who work with separating families, [and] system-wide standards and a capability framework for the family law system'.

The ALRC proposal (P3-3) to amend the Family Law Act so that the 'paramount consideration in making decisions about children should be... 'safety and best interests' will require an overhaul of workforce capability strategy within the family law system.

⁶ Family Violence Protection Act 2008, s8,
http://www5.austlii.edu.au/au/legis/vic/consol_act/fvpa2008283/s8.html

In order to deliver on this principle, all family law professionals will require in-depth training, be able to demonstrate core competencies in relation to child abuse, family violence and intra-familial sexual assault and the impact of trauma; and must be able to meet accreditation standards.

Intra-familial sexual assault frequently co-occurs with family violence but is still regarded as a taboo subject. Protective parents who raise concerns or allegations of child sexual abuse are too often dismissed as obstructive or difficult. All family law professionals, including legal practitioners, must have expertise in this area, and understand the realities and risks for children who by a ruling of the court may end up in the care of the perpetrator with continued exposure to violence and abuse.

We are concerned about the lack of awareness across many sectors of an understanding of sexual harm. There are risks of simply submerging sexual abuse in policy and practice settings as just another form of family violence. This minimises the impact, and the harm. Until there is broader understanding across systems of the extent of this harm, it is critical that the specialist expertise of a sector such as ours is maintained, supported and enabled to contribute to the knowledge base and to help inform responses to children and families impacted by sexual abuse.

In addition to the list of core competencies listed in P10-3, we submit that this list should include an in-depth understanding of the dynamics of intra-familial sexual assault including additional barriers to reporting and disclosure; and grooming tactics of perpetrators of child sexual abuse, including in families.

We support the establishment of a Family Law Commission (P12-1) to oversee the workforce capability framework, training and accreditation systems; and the maintenance of a publicly available list of accredited private family report writers with information about their qualifications and experience as part of the Accreditation Register (P10-10).

We agree that the appointment of federal judicial officers exercising family law jurisdiction should include consideration of the person's knowledge, experience and aptitude in relation to family violence (P10-8); and should include consideration of their knowledge and experience in relation to intra-familial sexual abuse.

11. Information Sharing

Proposals 11-1 to 11-12: National Information Sharing Framework

CASA Forum endorses the intent of proposals to improve information sharing in order to lessen the number of often contradictory orders made by family law courts and state child protection regimes.

While we support the development of a new national legal framework for sharing information within the family law system, we caution that this framework must be developed via rigorous consultation processes involving state and federal agencies and key service providers.

We would recommend that the Australian Government look to the development of Victoria's family violence information sharing scheme where much of this work has taken place. We would also submit that it might be useful to delay the national scheme until the Victorian scheme is more established, has been tested and teething issues ironed out.

Victoria's experience in developing family violence and child information sharing frameworks points to the need for a clear legislative foundation, guidelines and training, and for clearly prescribed roles for mandated organisations. Clear definitions of what constitutes 'appropriate circumstances'; and what is 'relevant information' is essential (P11-1 to 11-3).

The creation of a safe information sharing portal and secure systems will be necessary to control points of access, and safeguard information. Structures must guarantee that a perpetrator's legal team would be excluded from accessing the other party's data and reports from specialist family violence and sexual assault services.

Question 11–1 What other information should be shared or sought about persons involved in family law proceedings?

While it is pleasing to see stronger links with family violence systems as part of the reform proposals, those systems and services (and sexual assault services) must be accorded 'expert' status when providing reports or opinions, and information they provide protected where appropriate.

Inadvertent or inappropriate sharing of information can contribute to increased risk for victims of family violence and sexual abuse. For example, the disclosure by one party that the other party has guns is information that needs to be protected. It also needs to be managed. We would recommend that state police (Victoria Police in this case) should be *obliged* to investigate issues relating not only to registered firearms, but also to possession of guns in general.

CASA Forum cannot stress too strongly our concern about the risks of information being shared for one purpose and used for another - for example, confidential files being discoverable by the perpetrator's legal team. There are inherent risks in sharing information in ways that are unregulated or inadequately safeguarded. Sharing details of a client's sexual assault counselling file, or her health records can increase that risk. We would propose that relevant agencies provide reports rather than whole files to guard against this risk.

Question 11–2 Should the information sharing framework include health records? If so, what health records should be shared?

We agree that the family law system should be able to access records that report injury or distress in relation to family violence and sexual assault, but these should also be protected notifications.

We also submit that caution is needed in relation to the sharing of health records. Health records have been used as evidence of mothers suffering mental health disorders, to colour the family court's perception of those who have often been victims of family violence. In many of these cases, family violence and sexual assault experts would argue that her mental health issues stem from the violence she has experienced.

Question 11–3: Should records be shared with family relationships services such as family dispute resolution services, Children's Contact Services, and parenting order program services?

We would similarly caution that clear guidelines about the purpose of information sharing and with whom information can be shared applies to these agencies. There is a history in the family law system of claims or allegations of family violence being used negatively against a person who makes those claims.

While we support the intention to have child protection and family violence support workers co-located at each of the family law court premises (P11-7), we maintain that the independence and specialist work of each of these agencies and services must be preserved.

Question 11–4: If a child protection agency has referred a parent to the family courts to obtain parenting orders, what, if any, evidence should they provide the courts? For example, should they provide the courts with any recommendations they may have in relation to the care arrangements of the children?

We support ALRC proposals that governments work together to facilitate child protection agencies and police providing summary documents about their involvement with families and children.

Where a child protection agency has referred a protective parent to the family court to obtain parenting orders, we agree that the onus should be on that agency to provide evidence to support the protective parent’s application to the court.

Question 11–5 What information should be shared between the Families Hubs (P4–1 to 4–4) and the family courts, and what safeguards should be put in place to protect privacy?

We recommend that the framing of purpose that applies to the Victorian Family Violence Information Sharing Scheme, where information is only able to be shared in order to address risk and preserve safety, is relevant to the sharing of information between Families Hubs and the family courts. Provision of examples of what constitutes ‘risk-relevant’ information should be part of guidelines and training.

12. System Oversight and Reform Evaluation

Proposals 12-1 to 12-10: Independent statutory body to oversee the family law system

We support the establishment of a Family Law Commission to oversee the family law system to manage professional accreditation and training, issue guidelines for family law professionals, resolve complaints, and conduct inquiries into family law system functioning

A central governance body with power to hold the system and practitioners within that system accountable is welcome and will play a critical role in ensuring the vision for reform is realised.

The proposal to develop a cultural safety framework to ensure the system is responsive and able to meet the needs of all families and groups within the community including Aboriginal and Torres Strait Islander, culturally and linguistically diverse, and LGBTIQ service users (P12-8 to 12-9) is also welcome.

Proposal 12-11: Privacy Provisions

We agree that privacy provisions that restrict publication of family law proceedings to the public, currently contained in s 121 of the Family Law Act 1975 (Cth) should be maintained.

We also support the establishment of a Judicial Commission to consider complaints and heighten the accountability of judicial officers.