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ISSUES PAPER 12

Family Law Act Reform: the potential for screening and risk assessment for family violence

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On 1 July 2006 the *Australian Family Law Act 1975* underwent major reforms with the introduction of the *Family Law Amendment (Shared Parental Responsibility) Act 2006*. The reforms have serious implications for adult and child victims of family violence. Among the safeguards for victims accompanying the changes to the *Act* is the introduction of family violence screening and risk assessment processes, designed to identify victims, to consider future risk of harm (e.g. for re-assault or homicide) and to manage and respond to that risk. This paper examines the strengths, weaknesses and good practices of family violence screening and risk assessment approaches, drawing on an exploration of their more traditional applications in health and criminal justice settings. Consideration is given to how these approaches might be employed at multiple points in family law proceedings.

The paper is divided into four sections under the headings: Introducing screening and risk assessment for family violence to family law proceedings; Australian family law reforms; Screening and risk assessment for family violence; and Opportunities for screening and risk assessment in family law proceedings.

INTRODUCING SCREENING AND RISK ASSESSMENT FOR FAMILY VIOLENCE TO FAMILY LAW PROCEEDINGS

On 1 July 2006 major reforms were introduced to Australian family law by the *Family Law Amendment (Shared Parental Responsibility) Act 2006*. The legislation carries with it strong messages about shared parenting after separation. A key feature is the shift towards consideration of 'equal time' or 'substantial and significant time' for both parents, where shared parental responsibility is considered (*Family Law Act 1975* section 65 DAA). The changes also carry an emphasis on dispute resolution between separating parties before or instead of attending court in family law cases.

While many see this shift as positive, it has caused concern amongst service providers, advocates and legal practitioners who seek to ensure that changed procedures do not endanger or disadvantage women and children experiencing family violence. The Federal Government's *Family Law Violence Strategy* (Attorney General's Department 2006a), which is specifically focussed on family violence issues for family law matters, acknowledges the need to introduce screening and risk assessment for violence in family law proceedings. The document recognises that separating from a partner can place women and their children at risk of continuing or

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significantly elevated levels of family violence (Williams & Barry Houghton 2004; Brown 2003a; Jaffe, Lemon & Poisson 2003; Wilson 2002; Hume 2003; Strang 1996). Embedding screening and risk assessment processes in family law proceedings is a way to highlight the existence or threat of violence at a time when victims are particularly vulnerable. Professionals within the family law system can then take steps to try to ensure their clients' safety and ultimately achieve safe outcomes from such proceedings.

This paper explores how screening and risk assessment for family violence could be applied to family law proceedings to provide support, assistance and protection for victims, as well as appropriate sanctions and treatment for perpetrators. This paper reviews literature and research on screening and risk assessment where these practices have been used in health and criminal justice settings to identify and address family violence. The paper considers the strengths and limitations of the tools in those contexts, their capacity to form the basis of a risk management approach and examples of good practice.

A transition phase has been established for implementing screening and risk assessment until 30 June 2009, during which time training, protocols and standards will be developed. Many domestic violence services, children's and women's advocacy groups, as well as researchers and agencies, are actively engaged in research and discussion about the use of these practices in the Australian family law context. The paper seeks to highlight some key issues elicited from that research and discussion, and to invite continuing debate as the family law reforms are implemented and refined.

The paper refers to the *Family Law Act 1975* where the 2006 reforms have come into effect. Where the reforms have not yet come into effect, the paper refers to the *Family Law Amendment (Shared Parental Responsibility) Act 2006*.

Defining key terms

The paper makes reference to a number of terms that have specific definitions in the context of Australian family law and these are clarified below.

Child abuse

The *Family Law Act 1975* (section 4) defines abuse in relation to a child as assault (including sexual assault) of children according to State or Territory laws. This includes involving a child in a sexual activity or using a child directly or indirectly as a sexual object.

Domestic violence

Domestic violence is understood in the literature to refer to violent and abusive behaviours by an intimate partner or ex-partner to control and maintain power over the other partner. Domestic violence is recognised as gendered; i.e. the vast majority of perpetrators are male and victims female. The Australian Domestic and Family Violence Clearinghouse favours the definition adopted by the Commonwealth Partnerships Against Domestic Violence program in 1997:

Domestic violence is an abuse of power perpetrated mainly (but not only) by men against women both in relationships and after separation. It occurs when one partner attempts physically or psychologically to dominate and control the other. Domestic violence takes a number of forms. The most commonly acknowledged forms are physical and sexual violence, threats and intimidation, emotional and social abuse and economic deprivation. Many forms of domestic violence are against the law. For many Indigenous people the term family violence is preferred as it encompasses all forms of violence in intimate, family and other relationships of mutual obligation and support.

Domestic violence is an abuse of power perpetrated mainly (but not only) by men against women both in relationships and after separation.

Family violence

The term family violence includes domestic violence and incorporates violence in other relationships; such as those involving children of the relationship, siblings, parents and other family members. The *Family Law Act 1975* (section 4) defines the

term family violence as:

... conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person's family that causes that or any other member of the person's family reasonably to fear for, or reasonably to be apprehensive about, his or her personal well-being or safety.

In 2002 the Family Court of Australia reviewed all aspects of the Court's performance with regard to violence and harm to its clients, their children and staff. As a result of the review a more comprehensive description of the elements of violence was adopted by the Court:

Family violence covers a broad range of controlling behaviours, commonly of a physical, sexual, and/or psychological nature, which typically involve fear, harm, intimidation and emotional deprivation. It occurs within a variety of close interpersonal relationships, such as between spouses, partners, parents and children, siblings, and in other relationships where significant others are not part of the physical household but are part of the family and/or are fulfilling the function of family. (Family Court of Australia 2004-2005, p.3)

This paper uses the term 'family violence' to reflect the language adopted by the *Family Law Act 1975*. However, where reference is made to research, literature or programs that specifically focus on domestic violence (i.e. violence or abuse used primarily by a man against his female partner or ex-partner) or child abuse, the paper uses those terms to accurately reflect the source of information.

The paper acknowledges that some women are violent towards their male partners and that violence occurs in some same sex and transgender relationships. The use of gendered language in this paper reflects the fact that most violence in intimate relationships is perpetrated by men against their female partners or ex-partners. However, it is not intended to exclude violence perpetrated by women against men or violence in same sex or transgender relationships.

Family dispute resolution

The *Family Law Amendment (Shared Parental Responsibility) Act 2006* replaced the terms 'mediation' and 'conciliation' with 'family dispute resolution'. The reforms also changed 'family and child mediators' to 'family dispute resolution practitioners'.

Family dispute resolution is now one of the primary dispute resolution methods named in the *Family Law Act 1975*. The Act defines family dispute resolution as a process (other than a judicial process) (section 10F):

(a) in which a family dispute resolution practitioner helps people affected, or likely to be affected, by separation or divorce to resolve some or all of their disputes with each other; and

(b) in which the practitioner is independent of all of the parties involved in the process.

Mediation

Mediation is a process where a mediator (an impartial third party) assists parties in dispute to identify issues related to the dispute (including issues relating to property and finances). The mediator assists parties to develop options, consider their alternatives and try to reach an agreement. The purpose of the mediator is to resolve specific disputes.

While the *Family Law Amendment (Shared Parental Responsibility) Act 2006* replaced the term 'mediation' with 'family dispute resolution', mediation continues to be regarded as one form of dispute resolution. For example, Regulation 83 (former Regulations 60 and 61) of the *Family Law Regulations 1984* dealing with the qualifications, skills and training required of family dispute resolution practitioners, refers to training in either family dispute resolution or mediation.

The terms 'mediation' and 'dispute resolution' are used interchangeably in this paper.

Screening

Screening for domestic violence involves a professional or organisation asking a series of questions that seek to determine if a client is experiencing or is at risk of violence in their intimate relationship (including emotional, physical or sexual abuse and threats of violence). Domestic violence screening is most commonly conducted in health settings and with women only. If a woman screens positively for domestic violence, the screening assessment is used to identify resources and referrals most appropriate to her circumstances. Screening for child abuse is less advanced but may also take place in health settings with women to ascertain the possibility that there is some abuse of the child taking place.

Risk assessment

Risk assessment for domestic violence is a process that attempts to assess the risk of harm or injury to victims, including the risk of homicide. Risk assessment for domestic violence is most commonly conducted with women to assess their risk of experiencing (further) violence, although in some contexts other information about the male abuser may be considered, such as criminal justice records or police information on call outs. Risk assessment may grade risk in terms of severity and in terms of a time frame. An assessment forms the basis for determining future action; such as safety plans, ongoing referrals or criminal justice, or legal responses (Laing 2004).

Abusive relationships tend to be characterised by a particular power dynamic, where abusers attempt to control and dominate their victims.

Recognising power dynamics and gender in intimate partner relationships

Before examining the implications of the family law reforms for cases in which family violence is a factor, it is important to understand why these cases require specialised treatment.

Several authors have sought to make the distinction that while both men and women may engage in acts of violence (usually relatively minor) during conflict in non-abusive relationships, this is not the same as the violence that occurs in abusive relationships (Johnston 2005; Neilson 2004; Henning and Feder 2004). They maintain that in high conflict separation situations there may be general distrust, blaming, hostility, refusal to meet each other's demands and intractability around some or all issues. High conflict relationships or ones in which there is 'common couple violence' tend to involve both parties

(e.g. mutual shoving and pushing), the violence does not escalate and is less severe. In contrast, they suggest that abusive relationships (i.e. those in which domestic or family violence is occurring) tend to be characterised by a particular power dynamic, where the abuser attempts to control and dominate their victims.

Abusive relationships are also characterised by a gender imbalance; that is, the majority of abusers are male and the majority of victims are female. To illustrate, the *Personal Safety Survey* recently conducted by the Australian Bureau of Statistics found that of those women who were physically assaulted in the 12 month period prior to the survey, 31% were assaulted by a current or previous partner, compared with 4.4% of men who were assaulted by a current or previous partner (2006, p. 9). A review of research studies examining male and female violence in intimate relationships has also found significant differences between men's and women's violence and experience of violence (Bagshaw and Chung 2000, p. 11):

- Men's violence is more severe;
- Women are more likely to be killed by current or former male partners than anyone else; i.e. 60% of female homicides are by male (ex)partners, where as less than 10% of male homicides are perpetrated by female (ex)partners;
- Significant precipitants for men who kill their female partners are desertion, termination of a relationship and jealousy, while for women who kill their partners there tends to be a history of marital violence in a large majority of cases;
- Some studies suggest that women's violence is more likely to be the result of self-defence where the male partner is violent;
- Men's violence towards female partners is often an attempt to control, coerce, humiliate or dominate, by generating fear and intimidation. Women's violence is more often an expression of frustration in response to their dependence or stress; and
- Most women whose partners are violent live in fear before, during and after separation, while male victims of violence are far less likely to be afraid or intimidated and are more likely to be angry.

Similarly, James (2004) makes the point that in abusive relationships women are more likely to be victimised in terms of fear and intimidation, sexual abuse and homicide. She concludes that:

...men inflict greater injury, are motivated by domination, control and punishment; and are more able to instil fear and terror in women partners who, when compared with men, are less able to escape. They are more likely to sexually assault their partners and to kill them.

James also argues that while some women are violent and abusive to their partners, these situations are rare in comparison to violent men.

The distinction made between high conflict relationships and abusive relationships may be useful in a family law context to identify appropriate responses. However, it is important to note that Saunders (2002) and James (2004) caution that violence in high conflict relationships or separations is not necessarily minor in nature, that women rarely escalate the violence, are more likely to act in self-defence and that men are likely to employ their greater strength to win the contest.

Given these issues many workers and advocates have serious concerns about the potential for false

identification of victims as perpetrators or as equal participants in violence, in a family law context. Women who are victims in abusive relationships may in fact engage in violent self-defence, violent retaliation, violent reaction to abuse and violent resistance (Neilson 2004). Despite the victim's violence, however, it is the abuser and not the victim who is dominating, intimidating, degrading and controlling (p. 426). It is also

important to recognise that abusive men frequently deny the violence, minimise it, deflect responsibility to others (victim blaming) or other factors (e.g. stress or alcohol use), or define the violence as part of their relationship to their partner (e.g. as the patriarch) (James, Seddon & Brown 2002).

It is critical for professionals in the family law system to accurately identify abusive relationships in order to protect, support and assist victims. Neilson (2004, p. 425) suggests a number of ways for professionals and the courts to make sense of mutual claims of violence and abuse. They include:

- making careful scrutiny of the history of violence in the relationship;
- examining the power, domination and control dynamics of the relationship;
- assessing the context (including the social and cultural context, victim vulnerability and psychological and physical impact); and
- taking into account victims' fears and perceptions.

The new definition of family violence requires the Court to assess whether the fear or apprehension of violence is reasonable from the perspective of the person in fear.

In order to protect victims of abuse, Neilson advises professionals and the courts to listen carefully to descriptions of the violence but more importantly to information about who was exercising domination and control in the relationship (p. 427).

AUSTRALIAN FAMILY LAW REFORMS

Changes to the Family Law Act as of 1 July 2006

The *Family Law Amendment (Shared Parental Responsibility) Act 2006* reforms are the most comprehensive changes in thirty years. Importantly, the best interests of the child are still the paramount consideration in parenting cases, however the issues to be considered in this determination have changed. Of particular relevance is the tension between the benefit to the child of having a meaningful relationship with both parents and the imperative of protecting children from harm. The following three concepts are critical to the changes

- children have a right to know both of their parents and be protected from harm;
- parenting is a responsibility that should be shared, provided this does not put children at risk of harm; and
- parents and children benefit when parenting arrangements after separation are resolved outside the court system.

The reforms require that all parties attending court on parenting matters first attend compulsory dispute resolution with an accredited family dispute resolution practitioner (although see provision regarding family violence below). This is being phased in and will not apply until 1 July 2007.

These reforms fundamentally impact on adult and child victims of family violence, and legislators have recognised the need for safeguards to protect them. Safeguard provisions in the legislation include that the (*Family Law Amendment [Shared Parental Responsibility] Act 2006*):

- Court needs to protect children from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence (Part 1, 8, Section 60B, 1b);
- Court take prompt action in relation to allegations of child abuse or family violence (Part 1, 9, Section 60K);
- Court consider risk of family violence, and not expose a person to an unacceptable risk of such violence (Part 1, 9, Section 60CG, 1b); and

- Court consider any family violence and family violence order that applies to the child or a member of the child's family (Part 1, 9, Section 60CC, 3j & k).

The new definition of family violence requires the Court to assess whether the fear or apprehension of violence is reasonable from the perspective of the person in fear. The following priorities and requirements do not apply if family violence is present:

- the presumption of equal shared parental responsibility;
- consideration of equal time or substantial and significant time; and
- the requirement for couples to attend mandatory family dispute resolution sessions and to make a genuine effort to resolve the issues in dispute before applying to court.

The court process has also moved to a case management approach, focusing on children and attempting to deal with violence and abuse at the outset of a matter.

An essential part of the role of Family Relationship Centres will be to screen for family violence and assess clients' suitability for dispute resolution.

Central to the reforms is the establishment of 65 Family Relationship Centres across the country over the next three years. These provide multiple services to all families, including pre-marital advice, marital and post separation advice, dispute resolution, information and referrals.

An essential part of their role will be to screen for family violence, assess clients' suitability for dispute resolution and where violence is an issue, to assist them to access the services and assistance they need. While dispute resolution can be provided by any accredited family dispute resolution practitioner it is envisaged that most parties will attend a Family Relationship Centre.

The reforms require that Family Relationship Centres, as a priority, ensure the safety of all children and adults who visit (or work) there. Centres are required to have a safety and security plan that addresses risks across all areas of service delivery. The plans must address screening, assessment, referral process and training of staff.

The Federal Government has allocated \$10.4 million over three years to establish Specialised Family Violence Services (operating under the Family Relationship Services Program) to deliver integrated responses to family violence. These services provide a combination of men's, women's and children's support groups, as well as individual and couple counselling, with the aims of:

- minimising the incidence, severity and impact of family violence by increasing anger management skills;

- assisting clients to achieve and maintain positive family relationships;
- improving understanding of self and other family members in the context of family violence;
- increasing skills to minimise or eliminate family violence; and
- enhancing capacity to apply these understandings and skills (Attorney General's Department 2006a, p. 5; D Syme, Director of Development, Research and Evaluation, Family Pathways Branch, Attorney General's Department 2006, pers.com., 18 August).

A national Family Relationship Advice Line has been established to assist family members affected by relationship or separation issues, particularly for those unable to access a Family Relationship Centre. The Advice Line provides information on family relationship issues, advice on parenting arrangements after separation and referral to relevant services. Callers can receive information about the family law system, advice about the impact of conflict on children, and referral to Family Relationship Centres or other dispute resolution services.

As part of its family law reform initiatives the Attorney General's Department has also developed its own *Family Law Violence Strategy* (2006a), which sets out commitments to:

- working with state governments to improve investigation and reporting of family violence;
- improving court processes for cases involving violence (through initiatives based on Project Magellan and the Columbus Project); and
- asking the Family Law Council to review how to better deal with cases involving violence.

These actions complement the Family Court of Australia's own *Family Violence Strategy* (2004 - 2005). The *Family Violence Strategy* outlines eight guiding principles, including recognition of the primacy of safety, the impact of family violence both generally and specifically on children and the adoption of a risk assessment approach.

Implications for victims of family violence

While the *Family Law Amendment (Shared Parental Responsibility) Act 2006* establishes provisions to protect victims of family violence, their efficacy is governed by the context in which they are applied. That is, their implementation is affected by the level of training of professionals in the family law system, available resources, availability of family violence services, the orientation of the legislation towards dispute resolution

and equal shared parenting, interpretation by staff and the perceptions of clients themselves.

Concerns expressed from some quarters about the reforms relate to the introduction of new hurdles for victims of family violence. These include:

- a requirement to obtain a certificate from a family dispute resolution practitioner before making an application to court, unless an exception applies (from 1 July 2007);
- applying a test of reasonableness to allegations of domestic violence or child abuse;
- the possibility of a party incurring some or all court costs for making 'false' allegations of violence and the introduction of a 'friendly parent' provision. The latter requires consideration of a parent's 'willingness' to facilitate a relationship with the other parent;
- an assessment as to suitability of parties for dispute resolution; and
- an emphasis on equal time or substantial and significant time where shared parental responsibility is considered.

These are discussed below.

Mandatory attendance at family dispute resolution

The 2006 family law reforms have introduced mandatory participation in family dispute resolution before application to court for a

parenting order, requiring a certificate issued by a family dispute resolution practitioner to be filed with a court application. (Attendance at dispute resolution is not mandatory if the Court is satisfied there are reasonable grounds to believe there has been or is a risk of family violence). The rationale for this reform is for the Court to have a diminished role in family disputes and for it to be the last resort. The Court can direct parties to undertake counselling, dispute resolution or participate in an appropriate course, program or other intervention. This change is being introduced in three phases.

During phase 1 (from 1 July 2006 to 30 June 2007) it will not be mandatory for parties to attend family dispute resolution but they will need to comply with pre-action procedures (see Rule 1.01 and Schedule 5 of the Family Law Rules). This means that before filing a parenting application with the Court, a party will need to provide a letter to the other party covering the issues in dispute, the orders sought, making a genuine effort to resolve the dispute, offering 14 days for them to respond and providing a copy of the pre-action procedures (Blazey & Loughman 2006).

During phase 2 (effective from 1 July 2007) parties attending the Court for parenting matters will be

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required to produce a certificate from an accredited family dispute practitioner, indicating one of the following (*Family Law Amendment [Shared Parental Responsibility] Act 2006*, Part 1, 11, 60 I 8):

- that the person did not attend family dispute resolution because the other party refused or failed to attend;
- that the person did not attend because the practitioner did not think it would be appropriate to conduct the proposed family dispute resolution;
- that both parties attended family dispute resolution and made a genuine effort to resolve the issue or issues; or
- that both parties attended family dispute resolution and one party did not make a genuine effort to resolve the issue or issues.

As previously stated, participation in dispute resolution is not mandatory if there are reasonable grounds to believe there has been or is a risk of family violence.

An applicant will still be referred to a family counsellor or dispute resolution practitioner to obtain information about services and assistance available.

Phase 3 (expected to be effective from mid 2008) will see the implementation of changes in full for all cases (Blazey & Loughman 2006).

One of the implications of this reform is that it accords dispute resolution practitioners with a significant responsibility to accurately assess whether women or children are experiencing family violence and assessing women's suitability to attend family dispute resolution (Women's Legal Services Australia 2006; Bailey 2005/6).

Reasonableness

In order to recognise violence as a factor in a family law matter, the reforms require that a person demonstrate that they have a reasonable fear or apprehension about their wellbeing or safety, due to actual or threatened conduct of a violent family member.

One of the traditional problems of a threshold approach is that family violence can be difficult to prove, even where there are physical injuries or property damage, as the perpetrator and victim(s) are often the only witnesses. While the Court will take into consideration finalised or contested interim protection orders as evidence of family violence, violence is especially difficult to prove if there has not been significant police and criminal justice system involvement (Jaffe, Crooks & Bala 2005).

To prevent a violent parent spending time with a child similarly requires reasonable proof that a parent of the

child has perpetrated some form of family violence (*Family Law Act 1975*, section 61DA 2). The *Act* states that the Court may order the production of evidence of notifications to an agency of suspected family violence affecting the child; any assessments by the agency of investigations into such notifications or the outcomes of those investigations; or reports commissioned by the agency in the course of investigating a notification (section 69 ZW). It is quite possible that none of these have taken place if disclosure is made for the first time during the course of screening, during the making of parenting plans or at other stages in family law proceedings, making it difficult to overcome the threshold.

The definition of reasonableness for fear of family violence is unclear. Flood (2005) and Young (1998) have argued that the standard of proof demanded by the Family Court is higher than for the formal civil standard of a 'balance of probabilities'. As a result the Court often finds that no abuse took place and sees no impediment to granting contact arrangements with alleged abusers. For example, in a study of child protection and the

Family Court of Western Australia, children expressed their frustration that their disclosures of violence and preferences for no contact with abusive fathers were minimised by the Court and rejected as being influenced by their mothers (Hay 2003). This illustrates again the problematic nature of establishing a threshold approach.

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False allegations and willingness to facilitate a relationship

The *Family Law Act 1975* includes a provision on false allegations and statements about violence. That is, if the Court is satisfied that a party knowingly made a false allegation (e.g. of family violence) or statement in the proceedings (including a false denial), the Court must order that party to pay some or all of the costs of the other party (section 117AB).

As most allegations of family violence are made by women, this provision could be interpreted as an implication that women lie about family violence. This is despite a lack of evidence to support the view that women lie more about these types of crimes, than people lie about any other crime (Jaffe, Crooks & Bala 2005; Brown *et al.* 2001). For example, in an Australian study of allegations of abuse, women were found to notify the Family Court of child abuse at over twice the rate of fathers, but these were four times as likely to be substantiated, as opposed to unsubstantiated (i.e. insufficient evidence) or false allegations. Where false allegations related to child abuse, they were more commonly made by fathers (Brown 2003b).

In contrast with the assumptions inherent in the provision, many women minimise the abuse or choose *not* to disclose violence for a range of reasons, including a fear of continuing or escalating abuse (Laing 2003b). Women are often reluctant to take out protection orders and do so as a last resort, having been subjected to serious and repeated violence (Melville & Hunter 2001).

Legislation reforms also include a consideration of: 'the willingness and ability of each of the child's parents to facilitate, and encourage, a close and continuing relationship between the child and the other parent' (*Family Law Act 1975* section 60CC 3c). Domestic violence services and women's advocacy groups have argued that parents who fear violence from the other parent will wish to protect children from harm and would not be willing to facilitate a relationship with the other parent (e.g. Women's Legal Services Australia 2006; Bailey 2005/6).

These commentators have suggested that the provision around false allegations and the need to demonstrate a willingness to facilitate a relationship between the child and other parent may dissuade women from disclosing family violence, for fear of incurring costs or being interpreted as unwilling, resulting in a negative court decision (e.g. Women's Legal Services Australia 2006; Bailey 2005/6). Some commentators have argued in a similar vein that legislative reforms in the United States (US) and United Kingdom (UK) that favour custody outcomes promoting shared parenting and seeking to penalise a parent's unwillingness to accommodate these aims, have resulted in silencing some victims of violence (Levin 2000 cited in Kernic *et al.* 2005; Radford *et al.* 1999; Jaffe & Geffner 1998).

Suitability for dispute resolution

The legislation states that mandatory participation in family dispute resolution does not apply if there has been or is a risk of family violence (section 60JJ). Because this is an exemption for dispute resolution, it is assumed that all dispute resolution practitioners will screen for family violence (although how this will be done and whether a risk assessment will also be conducted is unclear). In these cases family dispute resolution practitioners and services like Family Relationship Centres may provide clients with advice on their options, services and referral.

Despite this safeguard, if both parties are highly motivated to resolve their dispute outside the court system it may be difficult for mediators and other dispute resolution professionals to identify violent situations. Furthermore, the reforms allow parties to attend dispute resolution, even if family violence is identified in a case but both parties wish to proceed. (However, it is also possible that the dispute resolution

practitioner will decline in this case). This poses a risk that victims of family violence will experience coercion or pressure by violent partners, families and the family law system to attend dispute resolution, rather than use the court system (Women's Legal Services Australia 2006; Bailey 2005/6). Victims of family violence may not be emotionally able to refuse to take this option. Bailey and Bickerdyke (2005) have argued that more family violence matters will be referred to dispute resolution because screening is not foolproof, many victims do not disclose and because the family law system strongly encourages dispute resolution.

In the US mediation is allowed in some jurisdictions for parenting-related disputes in which violence is a factor and one study there found that mediators address the issue of domestic violence in less than 50% of cases. This occurred despite it being expressly alleged on the pre-screening form and in some cases a restraining order was in place (Thoennes 1995 cited in Murphy & Robinson 2005). More disturbingly, a study carried out in New Jersey found that women who informed mediators that they were victims of domestic violence received less favourable custody awards (Saccuzzo & Johnson 2004).

Issues regarding the practice of mediation of family law disputes, where family violence is a factor, are expanded in the latter section of this paper.

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Equal shared parental responsibility

Legislation reforms emphasise equal shared parental responsibility when making parenting orders. It means that where shared parental responsibility is considered, the Family Court will first give consideration to parents' spending equal time with children and where that is not granted, next give consideration to 'substantial and significant' shared time arrangements. On paper the legislation has safeguards for the protection of children (and women) by excluding this provision in cases of family violence. However, how the legislation is implemented is critical. The emphasis on shared parenting and greater direction of judges' discretion requiring consideration of equal or substantial and significant time has the potential to put women and children at risk of continuing contact with abusive and violent men.

One way in which this occurs is that decision-making over issues relating to a child is frequently used by abusive men to continue their controlling and abusive behaviour post separation (Rendel, Rathus & Lynch 2000; Rhoades, Graycar & Harrison 2000; McMahon & Pence, 1995). This may occur in a family law matter whether or not a woman has disclosed domestic violence. For example, an Australian study of 40 women

who had experienced domestic violence and who were required to negotiate child contact arrangements with their abusive ex-partner, found that the abuse continued after separation in most of the cases and that contact or contact negotiations prolonged the violence (Kaye, Stubbs & Tolmie 2003). Understanding how this process may be manipulated by abusive men is critical to informing courts and staff dealing with these cases.

A second way in which this occurs is the underlying assumption that children benefit from contact with both parents, even if their fathers are found to be abusive. This point is illustrated by a US retrospective study that examined 246 child custody disputes where there was a known history of domestic violence by the police and courts, and 610 cases where there was no known domestic violence history. The study found that mothers who had experienced domestic violence were no more likely than the comparison group to be awarded child custody. It also found that the movement towards shared parental responsibility had resulted in the fathers in the study rarely being denied child contact. In only a small group of cases men who were abusive were denied custody; the large majority of abusive ex-partners were allowed child visitation (Kernic *et al.* 2005).

A third way in which this occurs is pressure on women to agree to contact arrangements by the courts and family law system. This is illustrated by a study conducted in England and Sweden, in which 53 women who had experienced violent relationships were followed up post separation (Radford *et al.* 1999). Fifty of the 53 women experienced violence during handovers of children for contact visits. Attempts by women to prevent contact due to safety concerns for themselves and their children were interpreted as 'hostile' or 'obstructive' by the courts. The 'hostility' of the violent ex-partner was rarely considered by the courts or professionals involved. As this view by the courts placed them at risk of losing their children, the women agreed to contact arrangements with the violent ex-partner (Radford *et al.* 1999).

Challenges for legislation and practice around family violence

In addition to the impediments to achieving safe outcomes for victims posed by the way the family law changes are drafted, professionals in the system face other challenges in implementing the reforms. These include the:

- prevalence of family violence in family law matters;
- many barriers to disclosure of family violence faced by victims;
- threshold question of whether family dispute

resolution is appropriate in cases where there is family violence;

- limited services available to which victims can be referred; and
- traditional experiences of women in the Family Court.

Prevalence of family violence in family law matters

Family law reforms to suggest that violence is an anomaly in cases coming before the Family Court and they will be relatively easy to detect. In reality a significant proportion of cases seen by the Court involve violence. In a media release dated 18 March 2004 the Family Court of Australia stated that its own analysis of cases showed that violence was a factor in 68 out of 91 judicially determined cases (i.e. 75%). Similarly, the US experience has shown that of all marriages referred to court-based divorce and custody/visitation mediation programs, 50-80% involve domestic violence (Maxwell 1999, cited in Zylstra 2001).

Furthermore, the violence tends to be serious. Research by Brown *et al.* (1998) found that child abuse cases in the Family Court of Australia tend to be more severe abuse cases, with physical or sexual abuse found in some 70% of cases.

One explanation for this may be that family violence has been found to be more common and more

severe around the time of separation and divorce. Brown *et al.* (2001) cite the Australian Institute of Family Studies' (2000) research finding that: '66% of separating couples point to violence as a cause of marital breakdown, with 33% of the couples describing the violence as serious'. Many studies describe separation and divorce as a 'change in life stressor' that increases the risk and degree of harm in families (Koziol-McLain *et al.* 2006; Williams & Barry Houghton 2004; Karan & Lazarus 2004; Brown 2003a; Family Violence Prevention Fund cited in Kuncie Field 2002).

To identify family violence cases will require particularly comprehensive screening and assessment processes, starting with the intake procedures at dispute resolution services and continuing throughout family law proceedings.

Barriers to disclosure of family violence

Many women who experience family violence do not disclose the crime to police or services. The Family Court, family dispute resolution practitioners and Family Relationship Centres staff need to be aware of and sensitive to this dynamic. This point is illustrated by the Australian contribution to the International Violence

To identify family violence cases will require particularly comprehensive screening and assessment processes...

Against Women Survey (IVAWS) that found that only one in seven women (14%) who experienced domestic violence indicated that they had reported the most recent incident to police. A quarter of women (25%) who stated in the IVAWS that they had experienced domestic violence had not previously spoken to anyone else about the incident (Mouzos & Makkai 2004).

The Keys Young Australian report, *Against the Odds: how women survive domestic violence* (1998), found that less than 20% of women interviewed who were experiencing domestic violence, had contacted a domestic violence crisis service and only around 25% of women had been in contact with the police while they were in a violent relationship. The Australian Bureau of Statistics (1996), *Women's Safety* survey similarly found that only 4.5% of women who were physically assaulted in the previous 12 months had contacted a crisis organisation. More recent findings from the Australian Bureau of Statistics' (2006) *Personal Safety Survey* show that 36% of women surveyed who were physically assaulted in the previous 12 months had contacted the police.

The reasons for non disclosure are varied across diverse groups of victims and between individuals. Almost half of the Australian women who participated in the IVAWS indicated that their reason for not reporting was because they preferred to deal with it themselves, preferred to keep the matter private, or out of shame or embarrassment (Mouzos & Makkai 2004). Of the *Women's Safety, Australia* survey respondents, 42% said the main reason for not contacting the police was that they wished to deal with the matter themselves (Australian Bureau of Statistics 1996).

The Partnerships Against Domestic Violence (2000) study on *Attitudes to Domestic and Family Violence in the Diverse Australian Community* found particular difficulties around disclosure for some groups of victims. Indigenous Australian participants in the study nominated barriers to disclosure of family violence as including: fear (of reprisal or being ostracised in the community); shame; a wish to maintain family relationships; concerns about using the police or justice system; a lack of access to services or culturally appropriate services; and a lack of housing options. For women from culturally and linguistically diverse backgrounds barriers to disclosure included: shame and fear (e.g. of escalating violence, being deported, being alone without support); victim's self-blaming; a sense of obligation or love for the perpetrator; fear of police and other authorities; community expectations of tolerance; issues around language barriers; and a lack of culturally specific services.

Bagshaw (2001) has noted barriers to disclosure for women in rural areas (such as shame, lack of

confidentiality and isolation); barriers for older women and women with disabilities (including vulnerability, poverty, unemployment, and dependence on others, including violent carers); and barriers for lesbians (such as threats of 'outing' and lack of appropriate services).

Appropriateness of dispute resolution for dealing with family violence

A number of services and organisations, such as Relationships Australia and the Domestic Violence and Incest Resource Centre (DVIRC) in Victoria have registered their concern that the family law reforms will see more cases presenting for dispute resolution where family violence is disclosed. This is anticipated due to women feeling pressured to attend and by the fact that screening may focus on physical violence and not necessarily other forms of abuse, such as emotional abuse, which women themselves may not recognise as abuse. For example, the Coburg-Brunswick Community Legal and Financial Counselling Centre (2004) has produced a report on financial abuse advising women of their rights, based on concern that that this form of abuse will not be recognised and screened for in family law matters.

Mediation has consistently been criticised as being inappropriate in family disputes where there is evidence of violence in the relationship.

Mediation has consistently been criticised as being inappropriate in family disputes where there is evidence of violence in the relationship. Some of the commonly stated arguments against mediation where violence is evident are:

- mediators fail to recognise and report domestic violence or child abuse (Johnson, Saccuzzo & Koen 2005);
- mediation relies on an assumption of equality of bargaining power (Murphy & Robinson 2005; Rimelspach 2001). Where violence is present this is not the case, and the violence makes the power differential impossible for a mediator to address (Bailey 2005/6; Zylstra 2001);
- victims of domestic violence may have difficulty in participating in mediation and they may fail to recognise the full extent of the injury done to them (Murphy and Robinson 2005) or even be aware that they have been affected (Zylstra 2001). They may not be able to articulate their own interests or needs due to the extent of psychological harm done to them (Rimelspach 2001);
- the neutral stance adopted by mediators in a context of power imbalance between parties can have a negative impact on victims of violence (Domestic Violence and Incest Resource Centre 2006);
- mediation lacks the safeguards and formalities of litigation, some of which serve to address

the power imbalance between parties where violence is present, for example, the decision making by a neutral party as opposed to the agreement required by mediation, the naming of actions as wrong or illegal (Murphy and Robinson 2005);

- the prevalence of untrained mediators who do not address the power imbalances but tend to coerce parties to agree (Murphy and Robinson 2005);
- mediation encourages or may even force the victim to collaborate with the perpetrator, and the process may become one of re-victimisation (Rimelspach 2001); and
- mediation places victims at further risk of continuing violence and may allow the abuser greater access to the victim because of more liberal agreements resulting from the mediation, e.g. supervised or unsupervised contact and handover (Johnson, Saccuzzo & Koen 2005).

Other commentators have mounted arguments for the use of mediation in cases where violence is evident, if the victim participates voluntarily and if there are safeguards in place to ensure the victim is able to negotiate for her position (Murphy & Robinson 2005; Ver Steegh 2003). Some have argued that the decision as to whether mediation is appropriate must be made on an individual basis and individuals should be able to decide on the process that best suits them, based on an informed choice (Ver Steegh 2003). Others have also argued that objections to mediation based on unskilled mediators may be overcome by training and introducing rigorous professional standards (Pierce 2004).

Pierce (2004) suggests that mediation is not used to mediate violence but rather to resolve other genuine conflicts, which then enables the couple to set new boundaries for future behaviour. She describes some of the common modifications to mediation, such as shuttle mediation, where the mediator speaks separately to the parties at all times so that the victim does not have to confront the perpetrator directly. These, she suggests, can overcome the objections to mediating cases involving violence. This approach does not, however, address concerns regarding power imbalances between parties, the ability of victims to negotiate effectively for themselves and their children, pressure on victims to reach agreements or the need for protection and safety outcomes.

Referral to services

Upon disclosure of family violence, Family Relationship Centres are charged with referring clients to appropriate

services (including, for example, counselling, legal advice, court support, financial support and accommodation services). Valuable referral is dependent on Centre staff's knowledge of local services and being able to identify appropriate services (i.e. those with a philosophy that prioritises safety for family violence victims and which recognises the dynamics of such abuse).

It is also contingent on such services being available. Services may be limited in some areas, particularly in rural and remote locations. (The 2006 family law reforms have been accompanied by funding of \$10.4 million over three years for Specialised Family Violence Services which may address gaps in services in some regions). Family Relationship Centres will need to monitor any increases in disclosures of family violence resulting from screening, that could place a strain on services and leave some clients with few options.

Women's experiences of the Family Court

After 1 July 2007 the family law reforms allow that in cases where family violence is a factor, a party does

not have to attend dispute resolution but may proceed to court. However, the Court itself does not always produce positive outcomes for victims of family violence. For example, an Australian study of 40 women who had experienced domestic violence showed they found the Family Court hearings intimidating and disempowering (Kaye, Stubbs & Tolmie 2003).

Abusive ex-partners can use this forum to control and maintain power over their victims; e.g. through disputes over child contact and residence (Rendell, Rathus & Lynch 2000; McMahon & Pence 1995).

There is a widely held view that women fabricate allegations of abuse at court as a tactic in claims for residence although, as previously cited, Brown (2003b) reports that women are less likely than men to make false allegations of child abuse. A Queensland study on contact that found women's reports of child abuse to the state child protection agency, where there were concurrent family law proceedings, tended to be viewed as vindictive, malicious or not serious (Rendell, Rathus & Lynch 2000). Women's Legal Services, NSW found their female clients had similar experiences with child protection agencies (Nanlohy 2002, cited in Laing 2003a). Katzen (2000, cited in Laing 2003a) also found that police were reluctant to take action on breaches of protection orders when these occurred in the context of contact handovers, and that police perceived them as a 'family matter not a police matter'.

Family Relationship Centres will need to monitor any increases in disclosures of family violence resulting from screening that could place a strain on services and leave clients with few options.

SCREENING AND RISK ASSESSMENT FOR FAMILY VIOLENCE

The previous discussion serves to highlight the critical role to be played by screening and risk assessment processes in the new family law regime. A comprehensive understanding of the strengths and weaknesses of screening and risk assessment is needed.

Both screening and risk assessment tools and approaches have been applied for some time to identify adult and to some extent child victims of family violence, primarily in the health and criminal justice spheres. The experience and application in these areas are instructive to their application to family law proceedings in Australia.

Screening

Screening for family violence

Screening has historically been used in the area of health to diagnose the underlying presence of disease, so that it can be prevented or at least treated (Taft 2001; Lawler 1998). For the purposes of this paper, the definition of screening is limited to the process by which an organisation or professional attempts to identify victims of violence or abuse in order to take further action or refer for intervention. Although some definitions include the process of prediction of further violence, the paper makes a clear distinction between the concepts of screening and risk assessment (Taft 2001; Lawler 1998).

When applied to family violence, screening usually takes the form of several questions asked of a woman when she attends a health service, such as the casualty department of a public hospital, an antenatal clinic or other health context (Laing 2003b). A screening tool is used as a means of measuring incidence. It is usually a carefully devised, standardised list of questions that elicit the history of the client's relationship and any features that may indicate that the client is at risk of violence from her partner, or if a child is at risk from a parent.

Typical screening questions for family violence include (drawn from Kozio-McLain *et al.* 2006; American Bar Association 2005; Siegal *et al.* 2003; Kuncie Field 2002; NSW Health Department 2001b):

- Whether a past or current partner is making the client feel unsafe;
- Whether a past or current partner is making the client feel afraid or frightened;
- Whether a past or current partner has damaged objects in the home, clothing or other items the client cares about;
- Whether a past or current partner has threatened or harmed the client, their children or their pets;

- Whether a past or current partner has hit, slapped or hurt the client in other ways;
- Whether the client has been forced to have sexual activities against their will by a past or current partner;
- Whether the client has had to call the police for protection;
- Whether the client has ever stayed in a refuge;
- Whether the client is afraid to be in the same room with the other party;
- Whether the client feels safe to go home; and
- Whether the client would like any assistance with these issues.

Screening in health settings is usually gendered, to reflect the gendered nature of the crime; i.e. only women are screened to determine if they are experiencing family violence. Sometimes screening is conducted with men about their behaviour (e.g. Alternatives for Domestic Aggression program in Ann Arbor, Michigan, cited in Kuncie Field 2002). There are difficulties in administering screening to men who use violence: they may lie, may deny their responsibility for the violence, blame others or other factors, may appear charming or credible.

Screening for child abuse is much more limited in its application and more recent than screening for adult victims of violence. In most applications screening

for child abuse is conducted with parents (particularly pregnant women) rather than children. Screening parents for child abuse is typically carried out in health care settings or during health home visits (Nygren, Nelson & Klein 2004).

Substantial research in the health field advocates for routine screening for family violence. Many writers on the subject agree that professionals in settings such as health, legal and law enforcement should ask their female clients if violence has occurred in their relationships (Laing 2003b; Rhodes & Levinson 2003; Taft 2001; Hegarty & Taft 2001).

For example, bodies such as the American College of Obstetricians and Gynaecologists (ACOG) 1989,1995; American Medical Association (AMA)1992; American Nurses Association (ANA) 2000 and the Joint Commission on the Accreditation of Health have recommended universal screening (Stayton & Duncan 2005). In Australia, New South Wales, the Northern Territory and Queensland have introduced some level of screening in the public health systems.

Increasingly, screening for family violence is being utilised in criminal justice spheres in the US, as a means of informing police, lawyers, solicitors, and courts about their clients and how best to assist them. Many women

Screening can increase the rate of disclosure...

experiencing violence seek assistance and advice from a lawyer when they are unable to agree about assets and children. The advice sought may refer to protective orders, divorce proceedings, child related matters or paternity claims. The client often will not disclose the violence for many reasons (Karan & Lazarus 2004, American Bar Association Commission on Domestic Violence 2005). Given the large numbers of women who have an elevated risk of violence at the time of separation (Wilson 2002), this presents the lawyer with a professional and ethical responsibility. Karan and Lazarus (2004) suggest that:

Practitioners must be aware of the power and control dynamics involved in domestic violence and the recognized risk factors in order to provide effective intervention and representation.

The American Bar Association Commission on Domestic Violence (2005) goes even further and states that:

To ensure that you are ethically representing your client and to avoid malpractice, it is critical that you learn if she is a survivor and consider how this information affects your representation.

There are also calls in the US and Australia to use screening in courts to determine if violence is present in a relationship, in order to avert further violence, prevent threats to safety for adult and child victims, prevent children from being exposed to violence and to avoid court processes being used to manipulate and abuse victims (Kunce Field 2002).

For this paper the authors made queries about whether Australian lawyers are advised to screen their clients for family violence. The Law Institute of Victoria and Tasmanian, Western Australian and Northern Territory Law Societies have indicated that they do not provide any advice or policy with regard to lawyers or solicitors screening their clients for family violence. NSW and Queensland Law Societies were not able to provide that information for this paper. Legal Aid Queensland provides best practice guidelines for lawyers who are working with clients who have experienced family violence. The Law Institute of Victoria provides information on its website about family violence (<http://www.liv.asn.au/public/legalinfo/family/family-Domestic.html>).

Strengths of screening

One of the most common arguments for routinely screening all clients attending a service is that it improves identification of people experiencing violence. Research indicates that although high numbers of women report to health services with problems related to the fact that they are experiencing family violence,

these services have a low rate of identifying the problem (NSW Health Department 2001b). Reasons include the lack of '... agreement on the constellation of signs, symptoms and illnesses that a primary care physician should recognise as a current or prior history of [domestic violence]' (Campbell *et al.* 2002, p. 1157) and the unreliability of suspicious injuries as an indicator (Bybee & Sullivan 2002, p. 631). Because some signs of violence will not be evident, it is possible for health professionals to misdiagnose if screening is not conducted.

Screening can increase the rate of disclosure. Women are often hesitant to disclose that they are experiencing violence unless they are directly asked (NSW Health Department 2001b Laing 2001; Lawler 1998; Mazzo *et al.* 1996). The NSW Health routine screening pilot found a substantial increase in disclosures, including many who agreed to some form of assistance (NSW Health Department 2001b). Similarly, the Children's Hospital of Michigan routine screening trial generated 164 referrals for domestic violence to the clinic social workers from a sample of 5445 female carers, compared with nine referrals from a sample of 5446 female carers in the previous year without screening (Holtrop *et al.* 2004).

Screening can promote help-seeking by victims of violence. Abused women can feel validated by a caring medical professional, whether or not violence was specifically identified (Gerbert *et al.* 1999, cited in Laing 2003b; Rhodes

& Levinson 2003). A sympathetic response is likely to enable a woman to make changes in her life (Gerbert *et al.* 1999, cited in Laing 2003b).

Screening can be used to prevent violence and improve victim safety. Karan and Lazarus (2004) cite research in Miami-Dade County (2003) and nationally (Campbell *et al.* 2003) that victims die because no one knew how dangerous their situation was, or if they did, did not take the necessary steps to get help. Screening can enable staff to frame questions to name the possibility of violence and attend to safety issues (American Bar Association 2005; Laing 2004). This may include assistance and referral to counselling and support, as well as police intervention, legal advice and assistance with accommodation and finance.

As the use of screening for child abuse is underdeveloped, identifying a situation of risk for the mother can be extremely important for the protection of children. There is substantial evidence to suggest that domestic violence is a risk indicator for children of the family (Tomison 2000). In a review of studies examining co-existence of these forms of abuse, results suggested that between 30-60% of children whose mothers were abused, were themselves likely to be abused (Edleson

...victims die because no one knew how dangerous their situation was, or if they did, did not take the necessary steps to get help.

1999). Given this, it is critical that processes that identify violence against female partners result in interventions on behalf of any children of the relationship or living in the home.

Through accurately screening for family violence, professionals can provide better advice and referral. For example, having identified clients experiencing domestic violence through screening, lawyers can provide the best advice possible with a broader understanding of the context for their clients, ensure that they ethically represent their client and avoid malpractice. Arguably a family law practitioner may recognise through screening that a client, as a result of experiencing or fearing violence, is not in an equal bargaining position. The lawyer may then enable that client to seek a different legal resolution: for example, avoiding mediation and opting for facilitated negotiation or more conventional court processes (American Bar Association 2005).

Routine screening (involving training, information and practice) can improve the knowledge base and practice of professionals about family violence. Through improved knowledge about family violence, screening may foster interagency collaboration.

Routine screening in health settings may in turn educate the community about the seriousness and prevalence of family violence (NSW Health Department 2001a).

Limitations

Routine screening is not without its critics. Screening for family violence is still a relatively new practice and more evaluation and research is necessary to inform good practice.

One criticism is that screening tools tend to emphasise physical and sexual violence, and do not identify other forms of violence or abuse (Strauchler *et al.* 2004). For example, the focus of the screening tool used in the NSW Health routine screening pilot was on physical abuse. Emotional abuse and its harm were recognised, although not included (NSW Department of Health 2001). A related issue is that many screening tools rely on very few questions (e.g. between one and five), which does not produce a very sophisticated diagnostic assessment (Zylstra 2001).

Critics caution that the mere application of a screening tool does nothing to protect the victim or deter the perpetrator. One of the most critical aspects is the system's response when a woman is identified as experiencing violence in her relationship (Laing 2003b; Taft *et al.* 2003). A number of reviews have found a lack of research and evidence about the long term outcomes of screening for people experiencing family violence; i.e. outcomes such as morbidity, mortality, safety seeking behaviours, mental health outcomes, sense of wellbeing, etc. (Coulthard *et al.* 2004; Nelson *et al.* 2004;

US Preventative Services Task Force 2004; Anglin & Sachs 2003).

For example, an international review of evaluation papers on screening for domestic violence in health settings found that while screening improved disclosure rates in antenatal, primary care clinics and emergency departments, the increase was modest and no evidence was found that it was sustained. In addition, the review found little evidence that interventions were effective (the authors did not consider rates of referral to outside agencies as a sufficient indicator of improved health outcomes) (Ramsay *et al.* 2002; see also Taft & Hegarty 2002).

Resistance to screening by professionals is often exacerbated due to problems surrounding its implementation, including the use of staff time and the increased workload, lack of sustainable training regimes, lack of privacy to conduct screening with women and problems when partners are present (Taft & Hegarty 2002; Ramsay *et al.* 2002; Ramsden & Bonner 2002). For example, the evaluation of the NSW Health screening pilot found the screening protocol was not followed in 71% of cases. The most common reason was because of the presence of a partner or other family members. Other reasons were lack of privacy to ask questions, limited time due to workloads, discomfort at asking personal questions and uncertainty about how to respond to disclosures of abuse.

Resistance to screening by professionals is often exacerbated due to problems surrounding its implementation.

The evaluation of the Michigan Children's Hospital routine screening trial (Holtrop *et al.* 2004) found that practitioners were discouraged from routine screening by the lack of protocols and education for practitioners, the availability of immediate resources to offer the abused patient (Dowd *et al.* 2002, cited in Holtrop *et al.* 2004), and the pressures of their existing time schedule and workload (Sugg & Inui 1992, cited in Holtrop *et al.* 2004).

Good practice in implementation

There are a number of recommendations from the health and criminal justice literature regarding good practice in screening for family violence:

- Screeners should ask additional questions about family violence as part of routine history taking (Pence 1999). Professionals can distribute information on family violence to all women, so that it is provided in a non-stigmatising, non identifying way (NSW Health Department 2001b);
- Screeners should ask questions in private, separately from the (ex)partner (Keys Young 1996);

- Family violence encompasses an array of behaviours and so screening needs to emphasise not only physical violence but also other factors, such as harassment, intimidation, threats, financial abuse, emotional abuse, animal abuse, child abuse etc. (Strauchler *et al.* 2004; Keys Young 1996);
- Professionals need to be aware of factors impeding disclosure of family violence, and particular barriers for some groups, such as Aboriginal women, CALD women, lesbians, women with disabilities, rural women (Keys Young 1996). Barriers may include fear of the legal system, language or communication difficulties, dependence on the perpetrator (financially, for immigration purposes, or as a carer), and the power and control dynamics of violent relationships;
- Screeners should encourage disclosure by putting clients at ease, by indicating permission to disclose (i.e. that they are interested and that it would be relevant), and validating victims' experiences (Holtrop *et al.* 2004; NSW Department of Health 2001a&b; Keys Young 1996). The demeanour and conduct of the parties need to be sympathetic and non-judgemental, with screeners providing an informed response (Suchting 2006; Kuncie Field 2002; Gerbert *et al.* 1999). Laing argues that this is extremely valuable and can be a catalyst for change (2003b);
- Screeners should also understand that women are unlikely to overestimate their risk and many minimise or underestimate the severity of the situation (Campbell *et al.* 2003);
- Training, staffing levels, suitable facilities and the policies and protocols for the operation of routine screening are critical for its successful implementation (NSW Health Department 2001b). Training has been shown to bring about changes in barriers to screening, through changes in attitudes, self-efficacy and behaviours of staff (Knapp *et al.* 2006; Salmon *et al.* 2006). Simple but effective management protocols are needed to enable practitioners to deal with the large number of newly identified cases revealed by routine screening (Holtrop *et al.* 2004); and
- Screening in the context of law enforcement should result in outcomes where perpetrators are made accountable by arrest and denial of bail, and victims are thereby protected from further risk.

Risk assessment is commonly conducted with victims of violence to identify those at risk of experiencing violence in the future.

Risk assessment

Risk assessment for family violence

Risk assessment is a process through which an organisation or professional attempts to assess the degree of harm or injury likely to ensue from family violence, including homicide. An effective risk assessment includes a specific time frame; e.g. whether the perpetrator is likely to offend in the next few days, months or ever (Tyagi 1998). Roehl and Guertin (2000, p. 171) define risk assessment as:

... the formal application of instruments to assess the likelihood that intimate partner violence will be repeated and escalated. The term is synonymous with dangerousness assessment and encompasses lethality assessment, the use of instruments specifically developed to identify potentially lethal situations.

Assessment needs to be ongoing because relationships are dynamic and complex. Dynamic factors to monitor include alcohol and drug consumption, changes in the relationship, experiences of victims and other partners, and changes in women's perceptions of risk (Jones & Gondolf 2001).

Risk assessment is most often used by police, probation and parole and judicial officers to inform safety planning for victims, and treatment and release arrangements for perpetrators (Dutton & Kropp 2000). Risk

assessment is commonly conducted with victims of violence to identify those at risk of experiencing violence in the future. For example, the Danger Assessment Scale (Campbell 1986) is a tool designed for use with victims, as opposed to perpetrators. Individual interviews with both parents may be conducted on more than one occasion (Jaffe, Crooks & Bala 2005). Professionals may also take into consideration the perpetrator's criminal justice records, police information on call outs, offender self reports and other factors pertaining to their behaviour in the assessment, as with the Spousal Assault Risk Assessment tool, one of the most commonly used risk assessment tools (Kropp *et al.* 1994).

Three approaches to risk assessment

There are essentially three approaches to conducting risk assessment for family violence and homicide: unstructured clinical, actuarial and structured professional approaches.

Unstructured clinical decision making

An unstructured clinical approach depends entirely on the exercise of professional judgment and experience. There are no standardised components or guidelines. In this approach a professional uses their experience

and expertise to assess a person's risk of experiencing or perpetrating future violence (Waugh 2006; Kropp & Hart 2004). Because of the limited number of validated risk assessment tools available, most risk assessment is probably conducted in this way; by professionals in a range of settings using their intuition or gut reaction to determine who is at risk or dangerous (Kropp 2004).

The benefit of this approach is its sensitivity to individual circumstances, behaviours and contexts. Obvious criticisms of this approach are its lack of reliability, validity, accountability (Kropp 2004; Litwack & Schlesinger 1999; Quinsey *et al.* 1998), and its subjectivity (Grove & Meehl 1996). There is an argument for professionals using this approach to, at the very least, use risk factors based on empirical or clinical research (Kropp 2004).

Actuarial approach

An actuarial approach to risk assessment relies on tools developed from empirical research (Saunders & Goddard 1998). Actuarial models tend to use a list of common risk factors or characteristics for violence and homicide. Sometimes these are given a numeric weighting.

An assessor scores a person's level of risk, predicting the likelihood of experiencing future violence (Waugh 2006; Kropp 2004; Saunders & Goddard 1998, citing Johnson 1996). This approach requires training in the use of the instrument.

An example of this approach is the Tasmanian Police Risk Assessment Screening Tool (RAST) (Winter 2006). RAST is being implemented across Tasmania by police officers called to an incident of family violence. The tool consists of 34 questions and an information sheet to assist police in its administration. The victim is ascribed a total RAST score which determines the course of action for the attending police and future intervention.

One benefit of an actuarial approach is its usefulness in situations where the user does not necessarily have therapeutic or clinical qualifications or skills, or whose primary work is not in the area of family violence (for example, police officers, lawyers, intake or parole officers). These professionals can make use of standardised assessment tools. Actuarial approaches have also been demonstrated to have a better predictive capacity than unstructured clinical approaches (Litwack 2001; Quinsey *et al.* 1998; Grove & Meehl 1996).

Criticisms of the actuarial approach lie in limiting its analysis to predetermined risk factors and not allowing for any 'unique, unusual or context specific variables' (Hart 1988) that may also signal risk (Kropp 2004). Commentators advise that users not rely on these instruments solely to give accurate assessments but to also consider victims' perceptions of risk and other

information (Cattaneo & Goodman 2003; Gondolf 2002; Weisz *et al.* 2000). Other criticisms relate to the fact that risk is not just a function of the number of factors present. An offender could be high risk with only one or two factors, such as forming or entertaining homicidal ideas and access to weapons (Kropp 2004). Others have commented that while actuarial methods may provide predictive information, they are not very useful in terms of management of risk (Heilbrun 1997).

Structured professional approach

A structured professional approach provides a combination of the clinical and actuarial approaches. Guidelines for professionals are drawn from clinical and research judgments. These include a minimum set of risk factors that should be considered in every assessment (Baird & Wagner 2006; Hetherington 1999). Professionals collect qualitative information about the individual case (Kropp 2004). The guidelines provide recommendations for information gathering (e.g. abuser's self reports, **behavioural observation or case tracking**). Commentators also recommend taking into account victims' perceptions of their risk (Gondolf 2002; Cattaneo

& Goodman 2003). Instead of using numerical scores, professionals then make their own judgments to assess the range of factors relevant to an individual case.

An example of this approach is the Spousal Assault Risk Assessment tool (Kropp *et al.* 1994). It was developed at the British Columbia Institute on Family Violence, for a

criminal justice context to determine which domestic violence offenders are most likely to re-offend and which ones are suited to various management strategies. It is used by courts in some US states to determine the level of supervision and intervention appropriate for a particular case, and in Canada to determine the treatment plan to manage risk (Roehl & Guertin 2000).

The benefit of this approach is that it provides structure in terms of risk factors and improves the consistency and visibility of risk judgments, while keeping some flexibility and professional judgment, as well as examining a wider body of information specific to individual cases (Kropp 2004). Criticisms of this method lie in the same area as for clinical unstructured approaches; that it is still somewhat subjective (Grove & Meehl 1996).

Risk factors and tools

There is no clear abuser typology to mark abusive men, in terms of their socio-economic status, age, language, culture, ethnicity or education (Tyagi 1998). However there are risk factors, predictors or markers that are strongly associated with abuse, violence and homicide. These are not considered to be causal factors for violence (Saunders 1995; Gondolf 2002, cited in

One benefit of an actuarial approach is its usefulness in situations where the user does not necessarily have therapeutic or clinical qualifications or skills.

Laing 2004). In assessments risk factors are usually used in combination to identify more serious offenders and to predict re-offending. Factors may include offender's record of past violence, psychosocial and psychological characteristics of the violent offender, and dynamics of the victim-offender relationship (Roehl & Guertin 2000; Saunders 1995; Gondolf 2002, cited in Laing 2004). Risk factors have been identified by a number of authors (e.g. Gondolf 2002; Davies, Lyon & Monti-Catania 1998; Saunders 1995; Campbell 1986). Commonly cited risk factors for violent behaviour include:

For homicide:

- History of violent behaviour towards family members, and others (Dutton & Kropp 2000);
- History of physical, sexual or emotional abuse towards intimate partners (Dutton & Kropp 2000);
- Threats of homicide or suicide (Hart 1990);
- Abuse or killing of pets (Straus 1991);
- Having homicidal or suicidal fantasies (Hart 1990);
- Access to weapons (Hart 1990);
- Threats or assaults with a gun or other weapon (Campbell *et al.* 2003);
- Hostage taking (Hart 1990);
- Depression and or mental illness (Hart 1990); and
- Strangulation (Richards 2003).

For re-assault:

- Young age (Hilton & Harris 2005);
- A physical assault (Heckart & Gondolf 2004);
- History of marital conflict (Hilton & Harris 2005); and
- Drunkenness (Gondolf 2002).

The assessment may be delivered by a tool or instrument that in some cases weighs each risk factor and provides an overall assessment of risk. Examples of risk instruments or tools currently in use include:

- The Danger Assessment tool (Campbell 1986);
- The Spousal Risk Assessment Guide (SARA), British Columbia Institute on Family Violence (Kropp *et al.* 1994);
- DV-MOSAIC (Gavin de Becker & Associates 2000);
- Domestic Violence Screening Inventory (DVSI) (Williams 1999);

- Kingston Screening Instrument for Domestic Violence (K-SID) (Gelles 1988) and
- Risk Assessment Screening Tool (RAST for family violence, Tasmania Police Safe At Home Program) (Winter 2006).

Choices about which risk assessment tools to use depend on whether the assessor wants to determine the risk of homicide (e.g. Danger Assessment Scale [DA] or DV-MOSAIC) or the risk of re-assault, which has a higher probability and occurrence than homicide (e.g. Domestic Violence Screening Inventory [DVSI], the Kingston Screening Instrument for Domestic Violence [K-SID] and the Spousal Assault Risk Assessment Guide [SARA]) (Kropp 2004).

Choice of tools may also depend on the amount of time available to conduct the assessment. Some tools are much shorter than others and do not require access to the victim (e.g. as in the case of DVSI and K-SID, as opposed to DA and DV-MOSAIC) (Campbell 2005a).

Another factor determining the choice of instrument may be the person conducting the assessment. In cases where a person with limited experience and skill in risk assessment is responsible, a more structured tool may be used, and training may still be required. In cases where a professional with skills and experience in risk assessment is responsible, clinical judgement may play a greater role (Campbell 2005a).

Decisions also need to be made regarding the response to the assessment. This includes decisions about what information is given to the victims, advocates and services; what is appropriate for court proceedings and criminal justice agencies; what is recorded and who has access to this information over time (Campbell 2005a). Campbell also notes that how such tools will be used with male victims, same sex and transgender couples also needs to be determined.

Evaluation of risk assessment is complicated. Considerable focus has often been placed on the predictive accuracy of evaluations and on their false negatives and positives and sensitivity (e.g. Douglas *et al.* 1999; Quinsey *et al.* 1998). This may not be appropriate for risk assessments which aim to *prevent* violence. That is, if the assessment and response prevent violence from occurring, that does not mean the assessment was ineffective, rather the opposite (Kropp 2004).

Strengths of risk assessment

Many of the arguments for and against screening also hold true for risk assessment since it is a similar process, which tends to go further and assesses the levels of future harm that are likely to occur. One of the purposes of risk assessment is that it enables advocates and professionals to estimate the severity of potential

There are risk factors, predictors or markers that are strongly associated with abuse, violence and homicide.

violence (e.g. lethality threat) to inform action in the more extreme cases of risk (Campbell 2005b), and to estimate the risk of re-offending (Laing 2004; Roehl & Guertin 2000; Campbell 1986).

Risk assessment assists victims to assess their risk (albeit an imperfect process). It helps them to act accordingly, including producing evidence of dangerousness for civil and criminal justice proceedings (Campbell 2005a). While some victims of violence have a good understanding of the risk posed by a violent partner or ex-partner (Heckert & Gondolf 2004; Goodman, Dutton & Bennett 2000; Weisz, Tolman & Saunders 2000), research in the US has found that women victims were unlikely to overestimate their risk, and many underestimated the severity of the situation (Campbell *et al.* 2003).

Risk assessment can assist in child custody and access decisions, such as in determining whether a child is at risk of being a victim of or exposed to violence (Kropp 2004).

The assessment process provides judges, probation officers and other criminal justice professionals with a more accurate system of determining potential danger, rather than relying on a best guess to determine the level of risk (Campbell 2005b). For example, research indicates that validated instruments are more accurate in predicting sexual assault offending than practitioner wisdom (Hanson & Morton-Bourgon 2004; Quinsey *et al.* 1998, cited in Campbell 2005a). The process provides an opportunity to gather information and structure collation and assessment, such as histories of abusive behaviour not reflected in criminal convictions (Heckert & Gondolf 2004; Dutton & Kropp 2000; Johnson & Grant 1999).

Risk assessment aims to prevent violence, not just predict it. One way in which it does this is to assist victims and workers to develop more realistic safety plans (Kropp 2004; Weisz, Tolman & Saunders 2000; Websdale 2000, Roehl & Guertin 2000, Campbell 1986). It also enables professionals and services to tailor responses more appropriately. For example, it can improve the quality of advice and referral (Laing 2004), assist perpetrator programs to identify the most appropriate treatment (Weisz, Tolman & Saunders 2000), and assist the criminal justice system to identify those offenders requiring closer supervision (Kropp 2004; Weisz, Tolman & Saunders 2000). In the US risk assessments are being used in courts in some states to guide sentences involving probation, treatment and incarceration (Roehl & Guertin 2000).

As with screening, risk assessment provides a common language regarding risk for diverse services and agencies (Kropp 2004; Abrams *et al.* 2001; Websdale 2000). It can also play a role in educating service providers about

family violence, encouraging them to pay attention to victims' perceptions, and informing victims and perpetrators about identified risk markers (Kropp 2004; Websdale 2000; Goodman, Dutton & Bennett 2000).

Limitations

Research on the use of risk assessment tools for violence is still in development and data is scarce about their reliability and predictive accuracy (Laing 2004; Saunders & Hamill 2003; Weisz, Tolman & Saunders 2000; Roehl & Guertin 2000).

Risk assessment tools are based on generalised factors associated with family violence and homicide from a broad population. They cannot accurately predict every incidence of violence for an individual perpetrator (Websdale 2000). In addition, most risk assessment tools have been developed in countries outside Australia and are therefore based on risk factors associated with violent men from those countries. Risk factors for Australian offenders may differ.

At present most risk assessment tools predict either the likelihood of re-assault or homicide (one exception is the SARA tool which does both). Risk assessment tools are far more valuable if they are able to predict both (Campbell 2005a).

The accuracy of assessments depends heavily on the quality of information gathered, requiring the gathering of data from multiple sources and using a variety of methods (Gondolf 2002; Dutton &

Kropp 2000). Roehl *et al.* (2005) recently conducted a valuable study on the accuracy of risk assessment models. They evaluated four risk assessment tools widely used in the US. These included the Danger Assessment (DA) and threat assessment method DV-MOSAIC, which use questions or areas of inquiry to diagnose the risk of lethal violence and extreme dangerousness. The other instruments were the Domestic Violence Screening Instrument (DVSII) and Kingston Screening Instrument for Domestic Violence (K-SID), which aim to diagnose the risk of repeat assault at any level of severity.

The study found that all four methods tested were able to predict subsequent abuse better than chance and improved on the victims' own predictions of risk. There were problems with the accuracy of risk assessments because some victims who were predicted to be at low risk experienced assault and some women who were predicted to experience re-assault were not re-assaulted.

Critics have argued that there is a danger that women's voices and experiences are discounted or obscured by 'scientifically' derived risk assessment scores (Websdale 2000). Interestingly, Roehl *et al.*'s (2005) research found that women's perceptions of risk emerged as more important predictors than men's psychological

...women victims were unlikely to overestimate their risk, and many underestimated the severity of their situation.

characteristics or personality types. The authors found that victims were fairly good predictors of risk but should not be relied on solely to accurately predict risk. Goddard *et al.* (1999) have also commented on the absence of the child's voice or story in assessments.

Practitioners consider the length of risk assessments (anywhere from 10 to 50 questions) to be a concern, especially during a crisis situation (Roehl *et al.* 2005). The evaluative study by Roehl *et al.* (2005) found that brevity or length of risk assessments did not improve the accuracy of predictions. The DA tool performed best overall as a predictive model. The DV-MOSAIC performed best in predicting subsequent stalking or threats and K-SID was the most accurate in correctly identifying cases not at high risk.

Heckert and Gondolf (2004) have found a difference in the predictive accuracy of risk factors for repeat re-assault, as opposed to one time re-assault – which is significant in terms of determining levels of risk and risk management strategies.

Despite the growth in use of risk assessment for family violence, Kropp (2004, p.687) points out that there are still no professional standards for:

- minimal qualifications for those conducting the assessments;
- best practices for applying the assessments;
- training of assessors; and
- evaluation and monitoring of assessments.

As with screening, risk assessment provides a common language regarding risk for diverse services and agencies.

Good practice in implementation

The review of literature for this paper suggests that selection of a particular risk assessment instrument or approach to predict future violence or abuse should give consideration to the following issues:

- assessors should adopt structured professional approaches that utilise standard risk factors, other information and professional judgement, as these have demonstrated the best predictive accuracy;
- risk factors should be empirically and clinically validated, preferably from local studies (Kropp 2004);
- tools are designed for and used in particular settings (e.g. by police or by courts). Any selection of tools should be mindful of the setting for which they were designed (Williams & Barry Houghton 2004) and the change expected to result from the intervention (Abrams *et al.* 2001);
- tools are designed to assess either risk of re-assault or homicide, or in some cases both.

Users should be mindful of what level of risk they wish to assess (Roehl *et al.* 2005);

- tools should include a time frame, indicating whether the perpetrator is likely to (re)offend in the next few days, months or ever. Assessment should also provide an indication of the kinds of conditions or dynamic factors likely to signify risk of re-offending (e.g. drunkenness or separation) (Tyagi 2003); and
- women are unlikely to overestimate their risk and many underestimate the severity of the situation (Campbell 2004). Women's perception of risk as a predictor of re-assault by perpetrators should be included in assessments, along with information gathered through risk tools (Heckert & Gondolf 2004; Websdale 2000). Women's fear should be regarded as a more important sign than any other of increased risk (Roehl *et al.* 2005; Campbell 2004).

The literature also makes recommendations for how risk assessment is conducted:

- risk assessment tools should not be administered if they place women at further risk from the violent perpetrator. Any risk assessment should be conducted with women separately; they should not be asked to fill in forms at home or in the presence of the abuser (Websdale 2000);
- risk information resulting from the assessment should be communicated to women victims. Information can inform victims about their risk and about factors associated with violence (such as unemployment, mental health issues, substance abuse etc), that they may have previously considered as sympathy factors (Kropp 2004). Women and their children need structured and consistent support to manage their risk (e.g. development of safety plans, discussion of legal and other options) (Kropp *et al.* 2004; Hart 1998; Heilbrun 1997);
- risk assessment needs to be linked to well crafted strategies of supervision and treatment of offenders to protect victims, to hold perpetrators accountable for their actions and to prevent violence (Williams & Grant 2006; Dutton & Kropp 2000). Authorities should impose sanctions and containment for men who are non-compliant, drunk or who re-assault (Gondolf 2002); and
- as circumstances can change, it is important that there is an ongoing process of assessment, review and re-assessment (Suchting 2005).

Essentially, practitioners conduct risk assessment in order to better manage risk (Dutton & Kropp 2000). This requires a comprehensive and informed risk assessment. How the system responds to the information gleaned through the process is crucial.

The literature makes a strong case for such tools to be administered by trained and skilled professionals. They should be professionals who:

- have considerable knowledge of family violence dynamics (Kropp 2004) and are regularly given refresher training and professionally supervised regarding family violence (see Taft 2001);
- have been recruited for their skills and training in interviewing and assessing victims and perpetrators, as well as their empathy, warmth and helping attitude when it comes to domestic violence issues (Gunn *et al.* 2006; Kropp 2004; Dowd *et al.* 2002);
- have been trained in the use of screening and risk assessment tools and in particular the workplace's chosen tool (Gunn *et al.* 2006; Taket *et al.* 2003; Dowd *et al.* 2002; Ramsay *et al.* 2002) (although see Taft 2001 who points out that in the NSW pilot doctors did not retain their training);
- have access to systems that enable them to capture and preserve the information that they have obtained regarding the clients' risk or potential for harm (Taket *et al.* 2003);
- are guided by policies and protocols that embody current research and knowledge on handling situations where family violence has been experienced (Holtrop *et al.* 2004; Siegal *et al.* 2003; Ramsay *et al.* 2002);
- have been given comprehensive background information on each client by a skilled, trained intake officer who has screened for family violence; and
- have resources immediately available to a victim who requests them (Taket *et al.* 2003; Dowd & Kennedy *et al.* 2002).

Roehl *et al.* (2005, p.16) concluded in their review of four major risk assessment tools:

The ideal would be a well-validated instrument specific to domestic violence in the hands of a practitioner who is expert in domestic violence by virtue of training and expertise, who listens to a victim who is expert in her particular situation, and who has access to other sources of information.

The literature makes out a strong case for tools to be administered by trained and skilled professionals.

OPPORTUNITIES FOR SCREENING AND RISK ASSESSMENT IN FAMILY LAW PROCEEDINGS

The notion of being able to accurately identify victims of family violence and to predict an abuser's likelihood of re-assaulting or murdering their victims, as a way of informing risk management, is highly attractive. However, the reality is that the development of screening and risk assessment techniques is still in its infancy and there are significant implementation issues in matching risk assessment to management strategies.

Yet in the context of the Australian family law reforms, these are the only tools available to assist professionals who are responsible for the safety of family violence victims. The challenge is to implement practices based on the very best information available, while rigorously pursuing a greater understanding of these processes, their application in family law proceedings and outcomes for victims of violence.

Critique of the application of screening and risk assessment tools to the Australian family law context is limited by the fact that reforms are still being implemented. The training and accreditation of professionals and protocols and procedures have yet to be finalised. When they are implemented, consideration will need to be given to the following issues.

Training and information

The 2006 family law reforms recognise the importance of adequate training for professionals dealing with family violence. Family Relationship Centres are required to recruit staff with a high level of qualifications and skills, and to ensure that they are skilled in screening and assessment. Currently Centre staff undertake a week long orientation training course provided by organisations like Relationship Australia, covering screening and assessment, safety planning and other issues related to family violence. The reforms dictate that only professionals trained around family violence issues and screening mechanisms will be responsible for conducting screening in the Family Relationship Centres.

The reforms also require that family dispute resolution practitioners and family counsellors are accredited. An accreditation system is currently being developed and expected to be implemented by 1 July 2007. The Attorney General's Department has advised the authors that a transitional period will operate from 1 July 2006 to 30 June 2009 to allow services to continue uninterrupted while the new accreditation system is being implemented (D Syme, Attorney General's Department 2006, pers.com., 18 August). During the transition period practitioners will still need to comply

with certain qualifications, training and experience, as detailed in the *Family Law Regulations 1984*, and family counsellors must be authorised by an approved organisation.

The Attorney General's Department has engaged the Community Services and Health Industry Skills Council to develop national competency standards and qualifications within the Vocational Education and Training (VET) sector, including a unit on responding to family violence. However, no decisions have been made on how the qualifications will apply to family dispute resolution practitioners and family counsellors.

In addition, the Federal Department of Families, Community Services and Indigenous Affairs recently established an Australian Family Relationships Clearinghouse (AFRC) at the Australian Institute of Family Studies in Victoria. The purpose of the Clearinghouse is to provide information and resources to family relationship service providers and practitioners across Australia. The AFRC aims to assist the Family Relationship Services Program as a resource and contact point for its practitioners.

As a basis for working with family law matters in which family violence is evident, professionals need to have an understanding of the dynamics of domestic violence and child abuse, and the connection between the two. They need to be cognisant of the impacts of violence and abuse for victims and the barriers to disclosure. They also need to be aware of the increased likelihood of family violence during separation (Williams & Barry Houghton 2004; Brown 2003a; Wilson 2002; Hume 2003; Strang 1996) and that abusive ex-partners may manipulate, harass, and abuse victims through dispute and child contact negotiations.

Jaffe, Crooks & Bala (2005) recommend that the education and training of professionals dealing with family law matters aim to assist them to:

- recognise family violence (including non-physical abuse);
- have the skills to provide differential service response to meet the level of need for each case;
- be able to differentiate between high conflict and family violence cases;
- be able to distinguish between minor isolated acts versus acts that are part of an ongoing pattern of abuse, creating fear and harm in its victims. Incidents of abuse that may seem minor or less severe on their own may generate greater concern if they form a larger pattern of abuse and domination;

...professionals need to have an understanding of the dynamics of domestic violence and child abuse, and the connection between the two.

- be able to identify early in the process an abusive party who engages community members and the court system in a dialogue about their former partner making false allegations; and
- be aware of the harmful consequences of responding inappropriately to family violence cases.

Protocols

Evaluations of screening and risk assessment indicate difficulties in implementation when staff feel uncertain of procedure, lack time and resources, or have few protocols to follow. The Federal Government has commissioned the development of a *Screening and Assessment Framework* to assist Family Relationship Centres and Family Relationship Advice Line staff (and presumably other family dispute resolution practitioners) for use in conducting screening and risk assessment with their clients for family violence. At the time of writing the Framework document had not been publicly released. A document of this nature would be valuable

in providing a theoretical framework for screening and risk assessment, practice guidelines and protocols, and resources for practitioners.

A framework document would be most useful if it was prescriptive about the selection of screening and risk assessment tools, training and implementation. Failing to be prescriptive about these matters

runs the risk that each Family Relationship Centre and dispute resolution practitioner will adopt different tools and approaches, with widely varying results. For example, some may conduct screening but not risk assessment. Some may only use their clinical judgement to determine whether family violence is occurring, which can be subjective and inconsistent. Some may screen both men and women for family violence without recognising the power dynamics and gendered nature of the violence between partners. An ad hoc approach to screening and risk assessment does not result in uniformity of practice, benchmarks for quality or accountability in adhering to standards.

Protocols for Family Relationship Centres and dispute resolution practitioners could also dictate:

- how and where plans for screening and risk assessment and safety are recorded;
- how information is kept confidential; and
- at what points screening and risk assessment are conducted.

Family Relationship Centres dealing with cases where family violence has been identified or disclosed will have both victims and perpetrators as their clients. This raises

concerns around the impartiality of advice and support, confidentiality of information regarding the abuse and contact details of victims, security for staff and clients, and a possible lack of clarity about the role of the Centres in assisting these clients (e.g. to ensure safety, to achieve joint parenting arrangements, etc.). The existence of, and adherence to, protocols are critical to addressing these issues.

Intake for screening and risk assessment

The primary opportunities to apply screening and risk assessment in family law matters are when a client presents with a family dispute. Family dispute resolution practitioners within and outside of Family Relationship Centres will be the first port of call for all family law matters coming before the Court. Their mandate to screen for and assess family violence places them in a pivotal position to prevent violence and to assist and support victims. In this respect they are responsible for:

- screening clients for family violence;
- assessing clients for risk of experiencing violence or perpetrating further abuse or homicide;
- providing information, support, advice and referral for victims and appropriate treatment and referral to criminal justice agencies for perpetrators;
- assessing cases for their suitability for dispute resolution;
- conducting dispute resolution of some matters where family violence has been disclosed, with a range of safeguards; and
- assisting development of parenting plans, some with identified abusers (including options of no contact, supervised contact, supervised handovers or equal shared parental responsibility).

Staff operating the Family Relationship Advice Line are also required to employ screening strategies and to use Family Relationships Online to search for appropriate services to meet the client's needs. Family Relationships Online links to both family support and legal information and services. In cases where family violence has been identified it is not clear whether the Line staff are required to refer cases for risk assessment but this would presumably contribute to victim safety.

It is possible that only some clients will be directed to screening by front line staff. Given the higher rate of family violence cases coming before the Family Court than are generally found in the population (e.g. Koziol-

McLain *et al.* 2006; Williams & Barry Houghton 2004; Karan & Lazarus 2004; Brown 2003a; Kuncie Field 2002; Brown *et al.* 2001) there is a strong argument for routine screening of all female clients and risk assessment for victims experiencing violence.

Selection and use of screening and risk assessment tools

As stated above, it is important that the choice of approach and screening and risk assessment tools is not left to individual dispute resolution practitioners and Family Relationship Centres. The review of screening and risk assessment practice and theory for this paper has demonstrated that protocols for practitioners need to be specific because consequences for victims can vary greatly depending on the tool and approach used, training for staff, the time available for implementation and the environment in which screening and assessment is conducted. How they are implemented (e.g. with or without clinical assessment or victims' perceptions of risk) can affect their accuracy (see Roehl *et al.* 2005; Campbell 2005a; Heckert & Gondolf 2004).

The use of empirically and clinically based screening and risk assessment tools, training and protocols for responses promote better outcomes for victims, providing force for an argument in favour of universal policies dictating aspects of methods for all Family Relationship Centres and dispute resolution practitioners.

It is important that the choice of approach and screening and risk assessment tools is not left to individual dispute resolution practitioners and Family Relationship Centres.

Risk assessments benefit from gathering as much information as possible from different sources. For Family Relationship Centres this may mean collecting information from third party sources, such as family and friends, police, child protection, doctors and other professionals. However, as many victims may not have previously disclosed the violence to friends, family, police or services, assessors need to remain aware that a lack of evidence of this nature does not imply fabrication (Jaffe, Crooks & Bala 2005). Information about the frequency and severity of behaviour (physical and non physical) and responses is also significant; such as the impact of the abuse on victims, coping styles and disclosures (Jaffe, Crooks & Bala 2005).

A key challenge in implementing the intention of the legislation is ensuring that screening and risk assessment processes are implemented rigorously and consistently. There must be a coordinated approach throughout each matter to ensure that once family violence is identified, family members are given appropriate support and consideration wherever they are in their progress towards resolution. Centres should work towards undertaking assessment in partnership with other agencies, based on a shared understanding of risk.

Risk management, advice and referral

The literature advises that risk assessments should be closely matched with risk management plans. Risk management aims to promote safety, accountability and healing for victims (Jaffe, Crooks & Bala 2005). Early and appropriate intervention is a key element of an effective response.

A fundamental goal of any risk management should be to prevent violence and ensure the safety of victims, especially averting any immediate threats to safety. Centre staff are mandatory reporters of child abuse to child protection authorities. Specific responsibilities regarding reports of violence against adults or threats of violence are less clear. At the minimum, suspicion of future threats of violence should be reported to the person at risk, to assist with their safety planning and choices. Family Relationship Centres and the Advice Line (and presumably court) staff would be in a position to encourage women to report abuse and fears of violence to the police (especially risk of homicide). Risk management would include linking victims with emergency and support services, legal advice and providing information about protection or restraining orders.

Centre staff are also in a position to establish collaborative networks with services and criminal justice agencies, so that concerns about existing violence or threats of future violence could be conveyed to them to enable informed service and agency responses. This could reflect the kind of risk assessments made by criminal justice agencies in some jurisdictions in the US. Case management of this kind would need to respect victims' wishes around disclosure and any resulting perceived threats to their safety.

In a family law context responses to a positive identification of family violence should include advice and referral for victims. Information about violence, victims rights and options should be available to all and provided in different languages and formats (e.g. video, audio and pictorially for those with limited literacy in English or other languages). Referral networks need to encompass a range of services, advocacy services, counselling and support, accommodation and income support, as well as culturally specific services for clients from diverse backgrounds. It will also be valuable to track referral and to follow what happens to victims and perpetrators after this process. Victims need to be supported and assisted, in order to be able to assert their property rights and parenting responsibilities (Taft 2003, Laing 2003b).

A screening and risk assessment framework could introduce protocols for referrals for abusive men to treatment, counselling and support to change their

behaviour. It is critical that any advice or referrals seek to make violent men;

- take responsibility for their behaviour;
- to acknowledge the impacts of their behaviour on victims;
- to take steps to actively change their attitudes and behaviour; and
- to work towards healing their relationships with the victims of their violence (where appropriate and safe to do so).

Advice, support and referral responses should not in any way seek to excuse or collude in the violence and abuse. Centre staff should also develop collaborative links with criminal justice agencies to assist them to respond where an abuser presents a serious risk of further violence or homicide.

Coordinated response

Previously the Family Court of Australia had limited access to resources for dealing with complex cases that go beyond mediation and parental education.

Such resources include timely access to specially trained child custody and access assessors with expertise in family violence, supervised access centres, and treatment resources for individual family members (including perpetrators, victims and children).

These components need to be well coordinated to monitor clients' progress and make necessary changes to parenting arrangements as circumstances change (Jaffe, Crooks & Bala 2005).

Family Relationship Centres could aim to foster a coordinated response to cases in which family violence is suspected, through linkages with a broad based service system. This could be achieved through various strategies, including communication and information sharing strategies, joint meetings, MOUs or interagency protocols, establishment of shared objectives and training.

In forging relationships with local services it will be important for Family Relationship Centres to ascertain what philosophies and approaches services use before referrals are made. For example, it is important to make use of services which take the view that perpetrators are responsible for their violence and abuse (not stress, victimisation, alcohol or drugs, etc.), that violence and abuse are not about anger (i.e. men can be violent without being angry and angry without being violent), and that family violence is a gendered crime.

There have been two significant trial projects in Australia to promote service coordination around courts: Project Magellan and the Columbus Project. These may be useful in informing the relationships mentioned above. They were initially established to

...risk assessments should be closely matched with risk management plans...

case manage child abuse matters, linking state child protection investigation and reports to the Family Court in selected cases. Their focus is on resolving cases promptly (and therefore at less cost) and providing services and support to victims through collaboration between services and the Court. A crucial aspect of both Project Magellan and the Columbus Project is strong interagency coordination, promoting information sharing and addressing issues efficiently. Continued monitoring and review of such trials is instructive to developing better coordination processes for the Family Court of Australia.

Family dispute resolution

As previously discussed a serious concern regarding the family law reforms is the potential for more victims of family violence to attend family dispute resolution. Some essential criteria to determine suitability for dispute resolution are: the clients' willingness to participate, the safety of clients from physical and emotional violence and abuse, the capacity of the victim to participate effectively in the dispute resolution process, a willingness to be honest, some capacity for consensual decision-making and to compromise (drawn from Bailey & Bickerdyke 2005; Astor 1994).

Some factors clearly render a case inappropriate for mediation or dispute resolution; for example, if a weapon has been used or its use has been threatened (Rimelspach 2001) and where the abuser has fantasies or made threats of killing the victim or of suicide (Ver Steegh 2003) or where the victim is in fear of the abuser.

A Keys Young (1996) study of family violence and the practice of mediation found that abused women had a more positive experience of the mediation process and a higher level of satisfaction with agreements where they:

- had been subjected to emotional abuse or one-off physical threats or threats only;
- had been separated from their ex-partners for a considerable time;
- had received personal counselling; and
- reported no longer feeling intimidated by their ex-partner and feeling confident in their legal advice and knew what they could expect from a settlement (Keys Young 1996).

These might serve as the basis for determining eligibility criteria for dispute resolution.

Family dispute practitioners and other professionals at Family Relationship Centres need to be able to distinguish those relationships that are abusive and therefore exempt from dispute resolution, particularly where there are mutual claims of violence. An inherent

feature of abusive relationships is the motivation of the perpetrator to dominate and control their victims, to have power over them, to degrade and intimidate them. Victims typically experience fear of the abuse and the abuser. As previously argued abusive relationships tend to be gendered; that is, the perpetrators are usually male and adult victims female.

Neilson (2005) cautions that many abusive partners are manipulative, can be charming and coercive. Victims, as a result of the abuse, can seem confused, uncooperative, fearful or even aggressive. Abusive violence can only be understood in the context of power and control dynamics of the relationship. It is necessary for dispute practitioners and other professionals at Family Relationship Centres to consider indications of domination and control associated with patterns of violent behaviour (including emotional abuse) over time, the social and cultural context, victim vulnerability and fears, and psychological and physical impacts of the abuse (p. 427).

There is a likelihood that some cases with family violence will proceed to dispute resolution, despite screening.

The DVIRC in Victoria has produced information for women victims of violence who are considering mediation or dispute resolution. This could inform the development of protocols for dispute resolution dealing with cases where family violence is a factor. The DVIRC (2006) advises women to consider:

- the focus for mediation (e.g. on financial, property or child contact arrangements, rather than about reconciling the relationship);
- that the parties do not have to reach agreement;
- that any agreements are not binding until a court has made an order;
- asking about practical arrangements for their safety;
- having a support person; and
- how to prepare themselves for the mediation process (e.g. getting legal advice before and after the mediation, identifying one's wishes, preparing documents and having a support person if they need it.)

In the literature there are other numerous recommendations for mediators dealing with cases involving family violence. For example, in the US, *Model Standards of Practice for Family and Divorce Mediation* were developed by the American Bar Association Section of Family Law and the Association of Family and Conciliation Courts (cited in Murphy & Robinson

There is a likelihood that some cases with family violence will proceed to dispute resolution, despite screening.

2005). They were developed in consultation with many organisations and individuals, and these have been adopted by several professional organisations. The Standards include guidelines to be adopted where violence is an issue. They require specific domestic violence training for mediators, screening before mediation can take place and steps that must be implemented to ensure the safety of the parties where violence is evident.

Other studies indicate that mediators should:

- offer women specific guidance in considering the possible impact of violence and abuse on the mediation process;
- offer women separate time with the mediator before, during and after sessions;
- use two mediators, with a gender balance; and
- demonstrate they could control abusive behaviour within the session and assist women to deal with any harassment and intimidation which occur outside the actual mediation session itself (Keys Young 1996);

and

- provide a thorough explanation of the process to clients;
- validate and acknowledge the impact of domestic violence and child abuse;
- recognise the effects of physical and other forms of abuse;
- provide safe entry and exit points, and waiting areas;
- set ground rules for behaviour and managing inappropriate behaviour; and
- respond to issues raised by women (Bailey & Bickerdyke 2005).

Field (2005) suggests that to make mediation more equitable for victims of violence, these clients should have a lawyer or advocate to prepare them for mediation, to protect their interests and to assist them with the terms and enforcement of a final agreement. Under the Australian family law reforms, clients are prevented from having legal representation at dispute resolution sessions at Family Relationship Centres, although Centres must refer to lawyers when appropriate. There is no general prohibition on legal representation in family dispute resolution in other contexts. Given this, women could be well advised to seek legal advice before and after dispute resolution sessions.

Some authors have raised the issue of neutrality for victims, a basic tenet of the mediation process.

Mediators or family dispute practitioners who maintain neutrality where there is an imbalance in power, are effectively weighting proceedings in favour of the abuser (Bailey & Bickerdyke 2005). In order to counteract this effect, mediators need to understand how the victim perceives the behaviours and words of the perpetrator. Perpetrator behaviour or words that may seem harmless can have specific abusive meanings to a victim of family violence (e.g. usually used to signal the onset of violence) (Kunce Field 2002). In order to promote safety, mediators should run checks with victims between and after sessions.

There is general consensus in the literature that if mediation is to be used where violence is evident, safeguards need to be in place to ensure that victims are protected and the unequal power balance addressed. Above all mediators must be specially trained around dynamics of domestic violence and be constantly alert to the issues involved (Zylstra 2001; Ver Steegh 2003).

Assessment and review (by internal and external evaluators) of dispute resolution processes in cases where violence is present will provide more information

about the outcomes of such sessions, and inform decisions to prevent systems abuse and victims' further experience of violence.

...if mediation is to be used where violence is evident, safeguards need to be in place to ensure that victims are protected and the unequal power balance addressed.

Parenting arrangements

The 2006 family law reforms exclude a presumption of

equal shared parental responsibility where there are reasonable grounds to believe that there has been family violence. However, research from Australia and other jurisdictions has shown that violent men are rarely prevented from having contact with their children (Kernic *et al.* 2005; Rosen & O'Sullivan 2005; Dewar & Parker 1999; Radford *et al.* 1999). Parenting options include no contact, supervised contact visits, supervised exchanges, parallel parenting (where parents share the responsibility for the child but have no or extremely limited contact with each other) or shared parental responsibility (Jaffe, Crooks & Bala 2005).

There are two main ways to make parenting arrangements where there is a dispute. The reforms allow for up to three hours of dispute resolution sessions with an advisor to help resolve disputes and reach an agreement on a parenting plan (i.e. an informal agreement covering issues such as where the child will live, how much time to spend with each parent and amount of parental responsibility for each party). A parenting plan is not registered with the Court. Alternatively, if the parties cannot come to an agreement then the Court can make a parenting order. This could cover the same issues as in a parenting plan but the

order is enforceable by the Court. However, parenting plans override court orders made after 1 July 2006 (provided the Court does not order otherwise).

In making decisions about options, parties and parenting, advisors should closely match arrangements with screening and risk assessments. Parenting arrangements need to be monitored and adjusted as dynamic variables change. These could include child parent relationship healing, participation in perpetrator programs and commitment to change, drug and alcohol use, or the child's wishes.

There are strong arguments for no contact arrangements with abusive men, whether or not the child has experienced abuse (American Psychological Association 1998). Abusive men may present poor role models for children (Bancroft & Silverman 2002) and display disrespectful and negative attitudes to women and or others. There is evidence to suggest that where it is known that a person is perpetrating violence against a partner, it is likely that child abuse is also taking place (Tomison 2000; Edleson 1999). There is also evidence to suggest that separation may precipitate child abuse. For example, Wilson (2002 p.10) argues in her research on the elevated risk of sexual abuse faced by a female child after her parents divorce:

The record of family functioning developed in repeated scientific studies convincingly establishes that being in a fractured family may result in harm to a significant number of girls. Thus it is simply insufficient to wait for abuse to occur. Embedding concerns about sexual exploitation in divorce proceedings represents a scientifically grounded, common sense effort to target prevention to those children most at risk.

New Zealand has enacted progressive legislation around a presumption of restricting parental contact in cases involving perpetrators of violence. The *Domestic Violence Act 1995*, (with amendments to the *Guardianship Act*, the *Family Proceedings Act* and *Legal Services Act*), most significantly introduced a:

... rebuttable presumption that a parent who had used violence against a child or against the other parent would not have the custody of, or unsupervised access to the child unless the Court could be satisfied that the child would be safe during visitation arrangements. (Busch & Robertson 2000, p. 269)

In addition, changes to the *Guardianship Act* mandated that the New Zealand Family Court consider imposing any conditions that would ensure the safety of children and adults (Jaffe & Crooks 2004). On a cautionary note Jaffe and Crooks (2004) have stated that despite the New Zealand legislative reforms, implementation has been

hampered by funding and resource limitations. However, the legislation demonstrates the potential for a codified recognition of family violence as a factor in determining parenting arrangements (noting the necessity for adequate resources, education and training to support its implementation) (Jaffe, Crooks & Bala 2005).

Contact and handovers

Research indicates that contact and handovers can place adults and children at risk from violence. For example, Sheehan *et al.*'s (2005) study of Child Contact Services (CCSs) in Australia conducted 142 interviews and surveyed 396 families who were clients of CCSs. The study found that domestic violence and/or alleged child abuse had occurred in the majority (78%) of families surveyed, making them high risk. This group had an above normal indication that unsupervised contact or changeovers would place children's welfare at risk through exposure to a range of stressors, e.g. verbal conflict between parents, witnessing domestic violence and child abuse.

The study concluded that use of CCSs or any contact arrangements for children and families that involved severe child maltreatment, severe domestic violence and risk of child abduction were not in the best interests of the child. While most children interviewed reported feeling safe while using the CCSs, for those children who were afraid of the contact parent, the study recommended that CCS staff and courts act swiftly to cease contact arrangements.

Kaye, Stubbs and Tolmie (2003) found in their Australian study that of 35 women who were resident parents facilitating contact with the father, only five (14.3%) said they had not experienced violence at contact changeover. A UK study by Radford, Sayer and AMICA (1999) found that 76% of 148 children ordered by the courts to have contact with a violent parent, were said to have been abused in the following ways during contact visits:

- 10% were sexually abused
- 15% were physically abused
- 62% were emotionally harmed
- 36% were neglected and
- 26% were abducted or involved in an abduction attempt.

It is important if some contact with the abuser is considered, that Centres take into account systemic issues regarding the stage of process and availability of community resources (i.e. services, advocacy groups, family and community support, etc.) to support

There are strong arguments for no contact arrangements with abusive men, whether or not the child has experienced abuse.

victims (Jaffe, Crooks & Bala 2005). If services to support and assist victims are not available for referral, professionals should err on the side of caution regarding recommendations for child contact and safety.

For example, in cases where supervised contact cannot be provided, there should be a cessation of contact until the safety of both adult and child victims can be assured (Jaffe, Crooks & Wong 2005). Reliance on family members or church members to supervise access is inappropriate in cases of overseeing contact with a violent parent, particularly if they are ill-equipped and uninformed to respond to instances of violence or abuse. Drawing on a review of the clinical and research literature, Jaffe, Crooks & Wong (2005, p. 89) write of the Canadian experience of family law processes that:

In our experience, appropriately qualified and trained supervisors and supervision centres cannot be replaced by well-intentioned and naïve informal supervisors, who tend to lack not only the requisite training and awareness of issues but also do not have access to critical background information that is before the court. Thus while untrained supervisors may be able to guard against blatant physical or sexual assault, they are poorly equipped to recognise and intervene when the perpetrator insidiously oversteps boundaries.

The authors go on to suggest that informal volunteers may be most appropriate in cases where concerns are less about safety than about assisting with parenting.

Other initiatives include funding and technical assistance for supervised visitation in cases of spousal violence and guidelines for judges in utilising custody evaluation in family violence cases (Dalton, Drozd & Wong 2004).

Continued monitoring, evaluation and review of the impacts for child and adult victims from contact with an abuser, as well as evaluations of impacts for victims who do not have contact, will better inform these decisions.

Breaches

The *Family Law Amendment (Shared Parental Responsibility) Act 2006* has changed the law with respect to breaches of parenting orders, so as to address these quickly and to broaden the Court's powers to do so (Women's Legal Services NSW 2006). A person is seen to have contravened or breached an order if they deliberately failed to comply or made no effort to comply, or prevented someone else from complying or aided someone to not comply (*Family Law Act 1975* section 112AB).

There are various sanctions that the Court may impose for contravening a parenting order. These are of increasing severity depending on whether:

- the contravention was alleged but not proved;
- the contravention was established but with a reasonable excuse;
- the contravention took place with no reasonable excuse but there had been no previous contravention; or
- the contravention took place with no reasonable excuse, where there has been a previous contravention or the party has shown a disregard for the obligations of the order.

The sanctions that can be imposed by the Court include:

- varying the parenting order;
- imposing an order for compensatory time;
- ordering compensation for expenses;
- ordering costs against the respondent (unless not in the best interests of the child);
- ordering costs against the applicant in some circumstances;
- ordering the respondent to attend a parenting program;
- imposing a bond;
- imposing a fine;
- imposing an order (e.g. a community service order); or
- imposing a sentence of imprisonment (see *Family Law Act 1975* section 70N Division 13[A] and section 112AD 2; Women's Legal Services NSW 2006).

The 2006 reforms to family law also see Family Relationship Centres playing a role in dealing with breaches. Where a parent contacts a Family Relationship Centre over a breach of a parenting agreement/plan or parenting order, a parenting adviser will contact the other party to arrange a meeting with both parents or separately (in cases of high conflict) to try to resolve the issue. If the dispute cannot be resolved, the parents could be referred to another service, such as the Contact Orders Program to assist in resolving the dispute (Howard 2006).

Contact Orders Programs (first established as a pilot in 1999) are being substantially expanded as part of the family law reforms. The Programs are designed to assist families experiencing difficulty in enforcing child contact orders, usually where there have been breaches of those orders. The types of assistance they provide include:

- group work;
- education;
- counselling;
- dispute resolution;

In cases where supervised contact cannot be provided, there should be a cessation of contact until the safety of both adult and child victims can be assured.

- children's contact services; and
- overall case management (Attorney General's Department 2006b)

Family Relationship Centres and Contact Orders Programs are in a position to re-assess the safety of children and adults in cases of family violence when dealing with breaches of parenting agreements, court orders or protection orders.

Monitoring and evaluation

Monitoring and evaluation of screening and assessment processes are understood to be on the government's agenda. There are a number of critical issues surrounding monitoring and evaluation of screening and risk assessment in the family law context, including:

- the suitability of different screening and risk assessment tools and approaches for a family law context. As has been stated both kinds of tools are in their infancy and it is yet to be determined what are the most important screening factors or risk factors, or the best tools to employ in an Australian family law context;
- the implementation of different tools and the adequacy of implementation by individual Centres and family dispute resolution practitioners;
- the adequacy of training, experience and information provided to family dispute resolution practitioners and other screeners and risk assessors, and to make improvements as required;
- the suitability of dispute resolution for any cases in which family violence has occurred or is at risk of occurring, and any increases in such cases proceeding to dispute resolution;
- the outcomes of screening, risk assessment and management for victims and perpetrators (including referral, safety, support, and criminal

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justice responses). Evaluative research needs to be mindful of the context of outcomes. That is, not just assuming that equal shared parental responsibility is a good outcome or that parental relocation is a bad one (Jaffe, Crooks & Bala 2005); and

- more information about the process of perpetrators changing their behaviour and appropriately healing relationships with children (and ex-partners), or under what circumstances a parent child relationship is possible (Jaffe, Crooks & Bala 2005).

The introduction of monitoring and evaluation strategies during the transition phase before 1 July 2009 would provide valuable guidance to ensuring consistent and good practice across courts and the Family Relationship Centres.

NEXT STEPS

Family violence screening and risk assessment constitute a key component of the 2006 family law reforms. These tools can potentially assist the family law system to be significantly more responsive to victims of family violence and to assist clients to better manage their risk and improve safety outcomes. Based on knowledge gained from screening and assessments, professionals have an opportunity to intervene at a very risky time, during and post separation.

However, staff and services associated with the family law system need to proceed with caution regarding the use of screening and risk assessment tools. Their implementation requires adherence to good practice and information, with a commitment to evaluation and refinement. In particular, screening and risk assessment findings must be matched with appropriate risk management, encompassing safety plans, information provision, linkages with service and criminal justice systems, and parenting arrangements (including no contact options), that are aimed at the safety and wellbeing of child and adult clients.

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