

Your Reference: Royal Commission  
Our Reference: [REDACTED]  
Date: 16 August 2024

Hon Natasha Stott Despoja AO  
Commissioner  
Royal Commission into Domestic, Family and Sexual Violence  
GPO Box 464  
ADELAIDE SA 5001

[Sent via the Royal Commission's Online Portal](#)

Dear Commissioner

**Re: Royal Commission into Domestic, Family and Sexual Violence – Issues Paper**

The Legal Services Commission (Legal Services) is South Australia's largest legal assistance services provider. We provide legal advice and education to all South Australians who seek our assistance, and grants of legal aid for representation in court to those who meet our funding guidelines.

We administer a number of targeted legal assistance schemes that specially funded by the State and Commonwealth governments aimed at addressing domestic, family, and sexual violence. We provide a wide range of services in support of victim/survivors via the following programs:

- our award-winning Women's Domestic Violence Court Assistance Service
- our northern Domestic Violence Unit and associated Health/Justice Partnerships with major South Australian hospital networks
- our participation in the multi-agency Safe and Well Kids program, providing support to children impacted by domestic violence
- our Family Advocacy and Support Service (FASS) in the Federal Court and Family Court of Australia (FCFCOA), providing duty lawyer and dedicated social support services to court users
- the Legally Assisted Financial Dispute Resolution-Small Property Claims program and
- the Family Violence and Cross-Examination of Parties Scheme.

Our busy family law practice frequently advises and represents clients in matters where domestic or family violence is a factor (estimated to be around 80% of family law files), and our successful Family Dispute Resolution program has been purpose-built to provide a safe environment for victims/survivors during mediation. In 2023 and in recognition of the prevalence of domestic violence in family law matters, we restructured our Family Law Division to bring all family law and family violence related programs together under common leadership.

We are the State's largest criminal law defence practice, and as such our lawyers have significant experience in representing those who have been charged with domestic violence offences. Further, our legal advisers respond to thousands of calls each year to our Legal Helpline from South Australians identifying as being at risk of domestic violence (making up around 30% of all advice appointments annually). Callers who identify as victim-survivors are automatically provided with longer advice appointments in acknowledgment of the complexity of the legal issues they are facing.

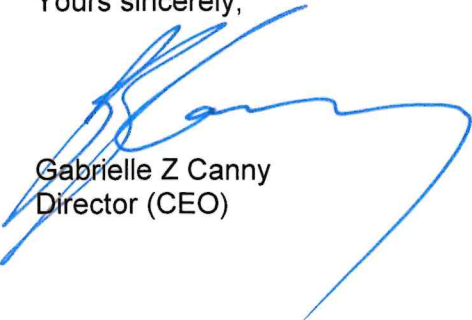
Given our experience in advising and representing both victim/survivors and perpetrators, Legal Services believes we can provide a unique perspective on domestic violence in the South Australian legal context. Overall, our lawyers report that the justice system is a blunt and ill-equipped instrument to respond to the complexities of domestic violence, that tend to span a relationship continuum (beyond defined acts at points in time), involve conflicting narratives, and require a more sensitive and individualised response beyond family separation. Both our family and criminal lawyers report that existing justice responses to domestic violence leave both perpetrators and victims feeling of lack of personal agency over their situation, which adversely affects all parties.

This experience has been echoed within our community legal education programs. A common theme that has arisen through community interactions as part of Legal Services' coercive control campaign and other activities, is that existing responses do not always promote choice. Particularly when speaking to First Nations or CALD communities, comments along the lines of 'I want the abuse to stop, but not the relationship' are common. Whilst such a position may not always be sustainable in the long term, the experience or perception that seeking help leads to a further loss of choice can lead to mistrust and a reluctance to engage with support services.

Our responses to the questions raised in the Issues Paper follow this correspondence. We have attempted to draw from our practical experience in advising and representing clients in this area and our response is therefore more targeted towards the issues of early intervention and responses in the justice system context, acknowledging that other perspectives will be equally important to the Royal Commission's work.

We would welcome any further opportunity to elaborate on any areas of particular interest to the Royal Commission as its work progresses.

Yours sincerely,



Gabrielle Z Canny  
Director (CEO)

## Submission to the Royal Commission into Domestic, Family and Sexual Violence – Issues Paper Questions

Our responses follow the key areas as identified in the Issues Paper. In our responses we use the term 'domestic violence' to refer to 'domestic, family, and sexual violence'. We describe the parties involved in domestic violence using the gender neutral "victim" and "perpetrator." We acknowledge that while most perpetrators are men and most victims are women, the situation, in our experience, can and is sometimes reversed or domestic violence occurs between same-sex couples. We have tailored our comments on 'sexual violence' to sexual violence in a domestic setting.

### Prevention

#### 1. What causes domestic, family, and sexual violence?

Domestic violence is a large and complex societal problem which can have multiple drivers, including gender inequality, power imbalances within domestic and family relationships, and associated mental health issues including trauma and stress. Some of these drivers are not static.

We often assist men who have perpetrated family violence and who have little to no insight into their harmful behaviour. It is not uncommon for clients to say things like "*that's just what you do in relationships*", "*I needed to make sure she wouldn't leave me*" and "*I was protecting her from herself*" in response to being questioned about instances of family violence. These comments show a lack of insight into or understanding around acceptable behaviour in relationships. We often see family violence issues that stem from a perpetrator's own insecurities and where they perceive to have lost control of a situation.

We are aware that recent studies have queried the efficacy of focusing solely on the interventions aimed at addressing gender inequality,<sup>1</sup> with reference being made to the 'Nordic Paradox'.<sup>2</sup> Instead, increased consideration is being given to what First Nations communities have been emphasising for some time: 'women do not talk about family violence in the context of coercive control and male power, attributing more weight to alcohol and social conditions.'<sup>3</sup>

---

<sup>1</sup> *Rethinking Primary Prevention*, [Rethinking Primary Prevention \(substack.com\)](https://substack.com), 17 April 2024.

<sup>2</sup> Nordic countries have a very high level of gender equality but equally high rates of domestic abuse, particularly homicide. Debate on the paradox has centred on two possible drivers, resentment towards gender equality and a culture of heavy drinking which is similar to that in Australia: see Humbert et al, *Undoing the 'Nordic Paradox': Factors affecting rates of disclosed violence against women across the EU* | PLOS ONE, PLOS, 2022.

<sup>3</sup> The Australian Institute of Health and Welfare (AIHW) recently reported that alcohol was involved in 1 in 3 (34%) incidents of intimate partner violence and 29% of family violence incidents. Drugs were consumed by someone involved in the incident in 1 in 8 (13%) incidents of intimate partner violence and 12% of family violence incidents. Intimate partner violence incidents involving alcohol or drug use were more likely to result in a physical injury than incidents that did not involve alcohol or drug use, with 34% of alcohol-related intimate partner violence incidents resulting in physical injury, compared with 20% of incidents that were not alcohol-related. AIHW reported that 43% of drug-related intimate partner violence incidents resulted in physical injury, compared with 22% of incidents that were not drug-related. Australian Institute of Health and Welfare, *Factors associated with FDSV*, 19 July 2024.

Poverty, homelessness, and unemployment are key drivers impacting both victims and perpetrators, meaning that the adverse consequences of domestic violence are not evenly distributed across all socio-economic groups.<sup>4</sup>

- 2. What works, or will work, to prevent domestic, family, and sexual violence?**
- 3. What existing initiatives are directed at addressing the attitudes and systems that drive domestic, family, and sexual violence? Are they effective?**

Education is crucial in the prevention of domestic violence. Legal Services recently delivered a public awareness campaign to educate the South Australian community about coercive control.<sup>5</sup> The key objects of the campaign were to provide the public with information about what it is, where to seek help and to let people know that intervention orders can be sought for protection against this behaviour. Such education programs should be extended.

Public education campaigns that encourage members of the community to be alert to the signs of domestic violence, such as the recent South Australian *See the Signs* campaign, can give family and friends of victims and perpetrators the confidence to recognise domestic violence issues themselves and they can encourage the victim or perpetrator to seek assistance.

Community-wide advertising campaigns need to be supported by more targeted and specific education campaigns. Some commentators argue that the advertising campaigns themselves need to target specific groups, drawing on analysis of other successful public health campaigns.<sup>6</sup> Current campaigns directly targeting those in the community as either victim or perpetrator include the recent Scottish advertising campaigns against coercive control. A similar campaign, *It's Not Love, It's Coercive Control*, has been launched in New South Wales.<sup>7</sup>

The Legal Services Community Education Team have provided a specialised program of legal education, developed through consultation with multicultural communities, that has been provided to people from new and emerging migrant communities. These have been designed to assist people in understanding the law but to also increase the capacity of individuals to seek timely legal assistance. Legal Services has also released numerous digital, web-based and print resources made available on topics such as sex and consent and specialised videos specifically for people with disability on legal issues including how Legal Services may be able to help and on other legal topics including elder abuse, family violence and victim rights.

South Australia and New South Wales are currently pursuing preventative education at the school level and focusing on issues of sexual consent and respectful relationships. As recent studies by the South Australian Commissioner for Children and Young People revealed, young people want to know about relationships, sexual and mental health. They are interested in information about not only the 'red flags' but also the 'green flags,' in terms of relationship behaviours and wish to be involved in the development of educational resources targeted at them. Legal Services incorporates this best practice into our 'Healthy Relationships and Consent' sessions that we run

<sup>4</sup> Australian Institute of Health and Welfare, **Factors associated with FDSV**, 19 July 2024, [Factors associated with FDSV - Australian Institute of Health and Welfare \(aihw.gov.au\)](https://www.aihw.gov.au/reports/1-in-4/factors-associated-with-fdsv)

<sup>5</sup> [See the Signs - Coercive Control - Legal Services Commission of SA \(lsc.sa.gov.au\)](https://www.lsc.sa.gov.au/see-the-signs-coercive-control)

<sup>6</sup> Hill and Salter, *Rethinking Primary Prevention*, 17 April 2024

<sup>7</sup> [It's not love, it's coercive control' | NSW Government](https://www.nsw.gov.au/its-not-love-its-coercive-control)

as part of our youth continuing legal education program and the work we have been undertaking with the Australian Refugee Association as part of their *Stronger Men Stronger Families* program.

In New South Wales, changes to curriculum commencing in 2027 will, for instance, require year 9 and 10 students to discuss how the portrayal of sexuality and health in the media and online content may influence people's attitudes' towards relationships, amid the rise of misogynistic 'manfluencers' and exposure to pornography.

### **Early Intervention**

- 4. What systems, including systems outside of government, receive information which may allow for the identification of individuals who are at high risk of experiencing or perpetrating domestic, family, and sexual violence?**
- 5. What is needed to allow for this information to be used by government and specialist domestic, family, and sexual violence services?**

Our work in Health Justice Partnerships has shown that the health system can be an important identifier of at-risk individuals. Medical staff, with the consent of patients, make referrals to our lawyers. Our lawyers are required to manage patient confidentiality by ensuring authority forms are signed and advising clients about confidentiality. There is an added dimension when our lawyers are actively working with social workers and health professionals, where there needs to be consideration of consent from the client for these professionals to attend legal appointments or for the solicitor to share any information with them as needed.

The following recent example highlights the effectiveness of the Health Justice Partnership approach in facilitating discrete and early legal advice and assistance:

- Ms X was married to Mr Y, they had an 18 month old child together. Ms X had migrated to Australia to be with Mr Y, and she did not have any family support in Australia. Ms X was regularly attending the Women's and Children's Hospital (WCH) for medical appointments for their child. Ms X was linked in with a social worker at the WCH, who referred Ms X to Legal Services for advice. Given our partnership and colocation at the WCH, we were able to meet with Ms X and her social worker discretely onsite at the WCH after she had attended a medical appointment for her child. During the initial appointment Ms X disclosed that Mr Y was being physically, verbally and financially violent and controlling, although she was very cautious about leaving Mr Y. After a number of further appointments, Ms X decided to flee her home with her child. Her social worker assisted to arrange emergency accommodation for her and her child. We assisted Ms X to liaise with SAPOL who agreed to apply for an intervention order protecting Ms X. We further assisted Ms X to liaise with the Department for Home Affairs in relation to her visa: the Department determined that Ms X could remain in Australia despite the separation. We are continuing to legally represent Ms X in parenting and property family law matters.

Interstate models such as SupportLink<sup>8</sup> has been implemented in the Northern Territory and ACT as a case referral and diversion system for police and other frontline services to participate in early

---

<sup>8</sup> [SupportLink | Australian Capital Territory Policing \(act.gov.au\)](https://www.act.gov.au/supportlink)

intervention. The SupportLink framework enables police to refer via a single referral service imbedded within their systems and gives local, state and nationally based support agencies the ability to proactively reach out to vulnerable clients. Legal Aid in Northern Territory and ACT respond to referral through SupportLink.

If a similar case referral and diversion system was to be implemented in South Australia, this would facilitate timely access to support for victims and also improve data collection capability across the sector. With such information held on one database for statistical analysis, this would allow effective review of demand, service delivery and the reallocation of resourcing and funding where needed.

Legal Services is a partner in the Safe and Well Kids program (SAWK) that provides a multi-agency wrap around service for children experiencing domestic violence where case information is shared between the participants.<sup>9</sup> The participants in the SAWK scheme have entered into a Memorandum of Administrative Arrangement to allow sharing of sensitive case information while maintaining confidentiality within the group.

The other information sharing service of which Legal Services is aware is MAPS, the Multi-Agency Protection Service<sup>10</sup> led by SAPOL. Consideration could be given to the information sharing protocols used by MAPS.

## **6. What interventions should be considered to manage the risk of a person who is identified as being at high risk of experiencing or perpetrating domestic, family, and sexual violence?**

### *At risk of experiencing domestic violence*

Social support programs and intervention programs aimed at highlighting the complexities of the dynamics at play (including recognition that leaving is complicated) and providing information and support to recognise these dynamics are likely to be helpful. Early reference to and awareness of the many available educative resources can be empowering, as can clear information on the specialist services and assistance that is available, and how to access it. As discussed later in this submission, there is room for improvement here.

### *At risk of perpetrating domestic violence*

Individuals who are at risk of perpetrating should be afforded the opportunity to undertake safe, non-judgmental programs focused on education and rehabilitation to address the underlying stressors that contribute to domestic violence, and encourage the development of insight into healthy relationship behaviours. This approach would assist in identifying, understanding, and developing strategies to cope with stressors in a healthy manner before escalation.

The *Stop It Before It Starts* campaign is a useful model that can be expanded to educate the wider community about identifying early behaviours which may lead to domestic violence and intervene

<sup>9</sup> [Safe and Well Kids - Womens Safety Services](#)

<sup>10</sup> [Police lead the way with MAPS: getting South Australian agencies working together on domestic violence | Adelaide AZ](#)

with supports for both perpetrators and victims. The shifting of responsibility to the whole community to be aware of the ability to respond early will assist with the destigmatisation of domestic violence.

## **Responses to DV**

### **7. What are the barriers to reporting domestic, family, and sexual violence to police or seeking support from domestic, family, and sexual violence services?**

#### *Fear of adverse consequences*

In our experience, victims of domestic violence are often isolated and under the control of the perpetrator. It can be difficult for victims to report the perpetrator's behaviour when they are being monitored and cannot go out on their own. In addition, victims may not trust the authorities or support services. There is often a fear that victims will not be believed or taken seriously by these services. Victims may also be fearful of intervention by the Department for Child Protection if there are children involved. They may be afraid that their children will be removed because they are at risk.

Cultural issues are a significant barrier for many victims, including Aboriginal victims, who may want meaningful outcomes and solutions that do not involve the criminal justice system.<sup>11</sup>

Financial insecurity can be a significant barrier for victims. The impact of financial abuse can be just as devastating for victims as physical abuse. Legal Services regularly encounters examples of the prevalence and impact of financial abuse in domestic violence and family law matters in the form of coercive control and sexually transmitted debt. While online applications have greatly improved the convenience of modern banking, evidence suggests that they have also facilitated abuse by lessening the rigor with which an application for financial services is assessed.<sup>12</sup> Financial institutions need to increase their awareness of the prevalence of this form of domestic abuse.

#### *Consequences for migration (visa) status*

Victims of domestic violence who are dependent on their partner's visa or who are on a provisional partner visa will often be reluctant to report family violence due to the implications for their (and their children's) visas. Whilst provisions exist to assist victim-survivors who hold a provisional partner visa and who have experienced family violence from their sponsor, the situation for other visa holders is far more uncertain. Often there are concerns that reporting the domestic violence will result in cancellation of the perpetrator's visa. As they are often the primary visa holder this can impact on the visa status of the rest of the family unit.

In addition, in our case work, we have observed that strong cultural expectations can exist to prevent victims from creating any sort of issue for the perpetrator whose position in their community, in society broadly and in respect to the law in Australia is the primary concern. The

<sup>11</sup> Kellie Scott, [Why victim-survivors don't report domestic violence - ABC Everyday](#), 8 April 2021.

<sup>12</sup> Equation UK, [4 ways tech has changed domestic abuse: financial and economic abuse | Equation](#), 13 September 2023

pressure that victims are under in this type of situation and the difficult choices they must make should not be underestimated. Through its Civil Law Division, Legal Services provides legal assistance to victims of domestic violence who face visa insecurity. This is a specialised area of legal practice which very often requires Ministerial Intervention.

#### *Lack of clear information / overwhelming information and systems*

At present, some victims report feeling exhausted, overwhelmed, confused and of being constantly re-traumatised by contacting numerous services seeking help. We suggest that there needs to be mapping of all currently available services in South Australia for victims and perpetrators in order to identify gaps and shortcomings, whether in State or Commonwealth services. Significant knowledge and expertise is available within existing agencies, although linkages between them are not always well established or maintained.

There is a perceived lack of clear practical information about what seeking help looks like (what will it involve, how long will it take, what are the steps). Another theme that has come up in our community engagement is that *'if I am going to seek help, I want to know exactly what that will look like before I take that first step.'*

We often hear experiences of victim-survivors seeking support, not having their calls answered or left feeling like they are not being heard or going in circles being passed from service to service. Long wait times in queues or waiting for their calls to be returned put victim-survivors at risk. More needs to be done to ensure systems are safe, accessible and easy to navigate.

#### *Unhelpful Police response*

Unfortunately, many victim-survivors continue to report negative experiences when interacting with police. In our experience victim-survivors are often being misidentified as perpetrators, and those who return to relationships do not feel their choice to do so is respected by police.

Some examples provided by our staff include:

- Police spoke to the perpetrator in relation to his behaviour towards our client, and he advised officers that his ex-partner has ██████████. This was untrue but was then noted on the client's profile with police. Our client was not diagnosed with ██████████ and provided medical reports in support. However, police dismissed the client's reports. The client was at risk as the perpetrator continued to threaten her, placing tracking devices on her car, and posting about the client on social media. Our service assisted the client with a private intervention order application.
- Our client was the sole lessee of a Housing SA property and had lived in the property for a long time. The other party was abusive, and our client requested he leave. He had only moved in with our client ██████████ months prior. She could not apply to SACAT to have the lease terminated on the grounds of hardship due to domestic violence as she wanted to remain in the property. They were not joint tenants so she could not apply to have him removed from the lease. Our client left the premises to wait for the perpetrator to leave. Police were called to the original property after it was significantly damaged by the perpetrator. The

police and the housing authority refused our client's request to take action to remove the perpetrator.

- Our client had limited English. Police had attended the home and sighted that the client had sustained injuries. Due to her limited English skills, they were unable to obtain a statement when she attended at the police station. An interpreter was not offered. Police referred her to our service. The client reported she had been desperate for Police to act so that she and her children can feel a sense of safety. She had lost faith in the police.

There have also been, over the last decade, a number of well-publicised reports of cases where the victim has called for police assistance only to be arrested as the perpetrator. This has particularly been the case for Aboriginal women. The reasons for misidentification are varied. If the victim is extremely distressed or intoxicated, perpetrators have been known to manipulate police into believing she has a mental illness. If there has been a physical assault on the victim and she has defended herself, the perpetrator will persuade police that his wounds are defensive due to her 'assault' on him. Fear of misidentification by police and the criminalised consequences keep many victims from reporting abuse.<sup>13</sup>

These problems persist despite significant investment in education and structural reforms within SAPOL to better equip officers to respond more effectively. The effectiveness of these programs ought to be considered. Education programs for police around domestic violence have proved successful in jurisdictions such as Scotland, and the United Kingdom generally, where there has been strong government commitment to resourcing such programs.<sup>14</sup>

*Lack of service coverage, particularly in regional and rural South Australia*

Many specialist services are limited to specific regions or locations and are not delivered statewide. This situation provides for an inconsistency of services available based on a person's locality. This is particularly the case for those who live in regional/rural areas who are often isolated and most vulnerable. For example:

- Our client lived in a regional area of South Australia with only one police officer stationed in her local area. She would have needed to travel considerable distance to access her next closest police station or a specially trained Family Violence officer to take her report. Our client was particularly concerned that being in such a small town, the local police officer played football with the perpetrator and attended a local pub he frequented. She believed local police would be unlikely to take action in response to her reports of domestic violence.
- Our client was based in the [REDACTED] region and travelled with her children and other family members to Adelaide in order to make a report of domestic violence to police as she believed they would be more likely to respond to her reports of high-level domestic violence. The client travelled to [REDACTED] Police Station a distance of 252kms away from her home.

---

<sup>13</sup> [The misidentification problem for family violence victim-survivors – Monash Lens](#)

<sup>14</sup> [Domestic Abuse Matters - SafeLives](#)

Other services are only available to particular client cohorts, leaving obvious and arguably inequitable gaps. For example:

- A male client in same sex relationship sought legal assistance due to a history of domestic violence, including physical, emotional and financial abuse. The client was also CALD with a significant previous history of mental health problems and drug use and was living in a regional area. The client was finding it difficult to report the abuse to SA Police who were dismissive of his claims. The client was provided with general advice on intervention orders and safety planning and was assisted with an application for legal aid in relation to property settlement. As the client was male the Women's Domestic Violence Court Assistance Service was unable to provide assistance with seeking an intervention order despite his many vulnerabilities.
- An elderly male client was caring for his wife who had [REDACTED] at home. They had an adult child also living with them who was violent. Police had responded on a number of occasions but did not assist the client with an intervention order despite there being property damage and verbal and physical altercations. The client had taken to sleeping in his car outside of the home where he could lock himself in when sleeping. As the client was male the Women's Domestic Violence Court Assistance Service was unable to provide assistance with seeking an intervention order.

#### **8. What are the elements of a best practice crisis response which will meet the needs of:**

- **a victim-survivor?**
- **a victim-survivor who is a child?**
- **a perpetrator (acknowledging that one need is to hold a perpetrator to account for their use of violence)?**

*For victims, including children*

Any crisis response must prioritise victim safety, listening to their instructions, ensuring they feel heard and understood, arming them with information on safety planning and any legal areas they may have concerns about (e.g. parenting arrangements). The response must avoid re-traumatisation where possible, providing appropriate referrals where necessary including to mental health services and leave the door open for further discussions with the person.

In terms of practical interventions, victims should have urgent access to legal and financial assistance, emergency and alternative accommodation, food support and psychological support. One of the main barriers for people escaping violence is that they are isolated and often financially dependent on the perpetrator. These supports need to be accessible to victims so they can easily leave a potentially dangerous situation.

Children's Contact Services are designed to provide a safe, supervised environment for children to spend time with a parent. However, at present there can often be lengthy wait time to access such services.<sup>15</sup> Increased capacity for Children's Contact Services will ensure victim-survivors,

---

<sup>15</sup> Children's contact service current wait times <https://pathwaysnetworksa.com.au/resources/childrens-contact-services/>

perpetrators and children have opportunities to be supported with any contact arrangements in a safe environment (where appropriate to do so).

*For perpetrators*

In relation to a perpetrator, holding them accountable for their use of violence but also making a genuine effort to engage them in a way to address the underlying issues leading to that use of violence (whether that relates to cultural issues, drug or alcohol abuse issues, mental health issues, educational issues, general disadvantage, or acute situational stress).

With greater restrictions on access to bail, particularly with regard to prescribed applicants, there is an increased need for more alternative bail accommodation options for people who have had allegations made against them, with inbuilt mental health and culturally appropriate support services. This is needed to prevent incarceration rates that continue to be at high levels (particularly for First Nations people). There is also a need to establish a dedicated bail accommodation service for women.

Incarceration of the perpetrator, while obviously providing immediate safety for the victim, needs to be balanced with effective rehabilitation programs within and beyond the prison system. In our experience, access to such programs remains patchy. Custody-based rehabilitation courses need to be properly funded so that they are genuinely available to prisoners. Too often the lack of course availability creates ineligibility for parole. The result can be tantamount to preventative detention which, although technically a means of reducing the risk of future violence, breaches the rights of the perpetrator and can divert attention from addressing root causes of violence. This coercive approach sets up prisoners to be opposed to the program, and again, dilutes any meaningful intervention that may be achieved.

Under the current system in South Australia, the Magistrates Court provides an intensive program for perpetrators accessible by court order from the first court appearance for an intervention order.<sup>16</sup> Many perpetrators have found the program successful. But some perpetrators report they feel pressured into entering the Court program while some feel resentment at the early timing of the program, particularly if they intend to plead not guilty to the criminal charges against them. They report to our criminal law practitioners that they feel they must simply get through the program to get to the end of their Court matters, rather than taking onboard the teachings of the program. This situation is not only a missed opportunity but also a moment in time that can unfortunately serve to reinforce the suspicion entertained by defendants that their position and point of view are irrelevant. In turn, this further strengthens anti-social attitudes, and a resentment towards authority and intervention programs. The same can be said for the prison-based programs, seen by some as merely a course to be completed in order to be eligible for release.

In South Australia, treatment intervention courts offer alternatives to a sentence of imprisonment for persons affected by drug and gambling addiction.<sup>17</sup> These long term programs offer ongoing support and monitoring for the defendant and have been well accepted by defendants in many instances as they deal with the defendant's behaviour in psychological, social, and medical terms.

---

<sup>16</sup> [Family violence court and domestic violence prevention programs - CAA \(courts.sa.gov.au\)](https://courts.sa.gov.au/family-violence-court-and-domestic-violence-prevention-programs)

<sup>17</sup> [Treatment Intervention Court - CAA \(courts.sa.gov.au\)](https://courts.sa.gov.au/treatment-intervention-court)

We believe that it would be beneficial to investigate a domestic violence diversion court based on the same principles as the substance abuse and gambling diversion courts already in operation, and be made available at both the Magistrates and Superior Court levels.

In terms of interventions targeted at perpetrators, we draw your attention to research undertaken by the Family Peace Initiative, which is working with perpetrators in the USA to understand what underlies their offending and what interventions will temper, rather than inflame their violence.<sup>18</sup> Their research indicates that all who batter seek to dominate and control their victim, although why they want to dominate and control differs. Understanding the motives helps in safety planning and intervention (i.e. different strategies are likely to be more or less effective depending on the underlying motivation). Three different motivation types have been identified: Entitlement based, Survival-based and Sadistic based. This work emphasises the importance of offender-specific intervention and the limitations of a one-size-fits-all approach.

### **9. What are the elements of a best practice health response?**

Mothers often attend hospitals for check ups during pregnancy or with unwell children without their partner and can have frank and confidential discussions about family violence.

Our work in Health Justice Partnerships has shown that the health system is an important identifier of at-risk individuals under the Women's and Children's Hospital / Health Justice Partnership (WCH/HJP), we provide a legal advice service for victims of family violence at the Women's and Children's Hospital and our Adelaide office. Training is provided by our lawyers to hospital staff on how to identify signs of family violence, the legal issues associated with family violence and how to discuss these issues with patients, and how to support patients to obtain legal help. Medical staff, with the consent of patients, make referrals to our lawyers.

#### *Mental Health Support for Both Victims and Perpetrators*

Both victims and perpetrators of domestic violence require mental health support after violence has occurred and assistance for perpetrators before an act of violence occurs could play an important role in prevention. Lack of resources, including lack of funding in the public health sector and long wait times for assistance, present considerable barriers to a best practice health response, particularly in rural and remote areas.

### **10. What are the elements of a best practice police response?**

Better training around dealing with domestic, family, and sexual violence situations, which acknowledges that the dynamics at play in these situations is incredibly complex and that sensitivity in the Police approach to these situations is critical. Ensuring police have sufficient training, triaging systems, and resourcing to respond effectively and appropriately to domestic, family and sexual violence will ensure people have positive experiences and will assist in mitigating further barriers to those reporting or seeking help from police. This will also ensure that victim-survivors receive a safe and consistent response and to limit ongoing systems abuse from victim-survivors being misidentified.

---

<sup>18</sup> <https://www.familypeaceinitiative.com/>

There may need to be a review of SAPOL policy and practice, and consideration of options SAPOL could take other than issuing an Intervention Order as standard in domestic violence situations, sometimes in cases where it is not warranted or requested. Easy and effective diversion as a health-focused response, modelled on the approach taken to low-level drug offending, might be worth exploring in appropriate cases.

SAPOL prosecution should support the wishes of victim-survivors at all times and work with them regarding a desired outcome. Prosecution quite often makes an assessment of how matters are to progress in Court proceedings irrespective of the victim's wishes. This then causes victims to disengage with police and prosecution. Perhaps more openness to the party's wishes and working together may help address behavioural issues and rehabilitation of the parties whilst having the protection of police and the Court rather than see the parties disengage and be at risk of further violence.

### **11. What are the elements of a best practice justice system response?**

At present, South Australian laws pertaining to domestic violence are deeply imbedded in the *Criminal Law Consolidation Act 1935* (SA) meaning that a criminal prosecution perspective is often the sole lens through which domestic violence is considered. In the current criminal justice system, punishment by incarceration effectively removes the perpetrator from the opportunity to commit further acts of violence, preventing immediate harm. This measure, however, is only capable of imposition after an event causing serious harm to the victim has occurred.

Intervention orders under the *Intervention Order (Prevention of Abuse) Act 2009* (SA) can be effective in setting boundaries and rules around the behaviour of the perpetrator towards the victim. As they are imposed by a third party and an agency with public authority, they reinforce to the perpetrator that their conduct is unacceptable to the broader community and not just the victim. Sometimes this statement is powerful for both the perpetrator and the victim.

The effectiveness of the current South Australian Intervention Order scheme should be investigated as to whether it provides a sufficient deterrent in relationships with a high level of violence, and, at a more general level, whether the increase in intervention orders sought and imposed has had any noticeable impact on the levels of domestic violence being reported.

Basic intervention orders that allow contact between the parties but prohibit assaulting, harassing and intimidating behaviour should be a particular focus of any review. There is a real chance that such orders provide no deterrence against a violent event, noting violent events can occur quickly between people who are permitted contact, and often occur in conjunction with disinhibiting circumstances like drugs and alcohol. For the most part they seek to prohibit conduct which is already prohibited by the criminal law. There is a risk that the imposition of such an order will lead to inadequate attention and resourcing being applied to the actual issue at hand (being behaviour and acute risk), thus ultimately providing a false sense of security but no protection. It remains to be seen whether recent changes to the *Bail Act 1985* will be effective as a deterrence in extreme situations. These changes impose electronic monitoring and home detention on perpetrators who breach basic intervention orders by use of physical violence or threats of physical violence.

The criminal justice system should be holding offenders to account, engaging with them to “break the cycle” and providing options for continuing support beyond that first intervention. The criminal justice system also needs to develop a better way to deal with situations where processes are weaponised, as opposed to being used for protection, such as the use of Intervention Orders to have someone removed from the family home only to be withdrawn, or varied, once this has been achieved. This requires acknowledgement of the complex dynamics in these situations and power imbalances between parties (that may change whilst a matter proceeds through Court). The trend of Intervention Orders being used in this way dilutes the power and significance of these orders for people who have a genuine need for protection, and creates a risk that Police, prosecution, or both, make an incorrect assessment of a situation which can have tragic and far-reaching consequences. Ultimately, a best practice criminal justice system needs to be alive to the nuances in this area and adjust the approach depending on the circumstances that exist in the matter at hand.

A best practice justice response must always remain mindful of maintaining the rights of an accused person and adhering to procedural fairness and the rule of law.

A best practice justice response also includes dealing with matters as quickly and efficiently as possible, and that can be achieved by having specialist courts and prosecution units in these areas. Whilst we have a specific domestic violence related Court in the Magistrates Court, there is not a specific Superior Court that deals with domestic violence. There is also a priority trial list for sexual offence trials in the District Court, but these matters start out in the general major indictable list like any other matter. Having a designated Court for domestic and sexual violence in both the Magistrates and District Court jurisdictions may assist in the focus on intervention programs at all levels (for those willing to participate) and also other added benefits a specialist court could bring.

One key element of an efficient system is a timely police investigation. In our lawyers' experience, justice sector attempts to fast track certain classes of court matters have struggled to succeed because of a lack of police resources. As a consequence, courts are allowing longer periods of adjournment in the early stages of prosecutions so that preliminary police work can be completed.

We would further argue that best practice in the justice system should provide alternatives to criminalisation of domestic violence. Currently, offences relating to domestic violence require the victim and perpetrator to participate in an adversarial system where giving evidence in court can be retraumatising. In some family, community and cultural contexts, victims are pressured not to pursue prosecution of the offender or are afraid of the wider consequences of doing so. Other victims do not necessarily wish to completely sever their link with the perpetrator. In such situations, the abuse is likely to continue. Some Aboriginal organisations are strongly opposed to the criminalisation of coercive control for cultural and other reasons, preferring culturally appropriate education and better social services such as housing and in-community services.<sup>19</sup>

---

<sup>19</sup> Victorian Aboriginal Legal Service, *Addressing Coercive Control Without Criminalisation*, 2021, <https://www.vals.org.au/wp-content/uploads/2022/01/Addressing-Coercive-Control-Without-Criminalisation-Avoiding-Blunt-Tools-that-Fail-Victim-Survivors.pdf>

We suggest that consideration should be given to formalising, in legislation and by regulation, rehabilitative courses as an alternative to prosecution. To be effective, it might be necessary in appropriate cases for participation in the course/program to act as a stay of any prosecution, allowing the perpetrator to admit fault and obtain help without the fear that the admission will be used against them in a criminal context.

In addition to criminal sanctions, South Australian courts should be empowered to use civil law remedies such as freezing orders over money and property, orders against banks and other lenders to reverse or cancel transactions made under duress, orders against internet service providers to compel the removal of tracking apps and other software, and orders against relevant government departments regarding the payment of social security benefits. The *Family Law Act 1975* (Cth) and the *Online Safety Act 2021* (Cth) provide examples of effective civil powers and sanctions in this regard.

Overall, we submit that consideration should be given to the creation of separate, stand alone, domestic violence legislation in South Australia which could contain both criminal sanctions and civil remedies tailored to domestic violence victims and perpetrators and allow for a more targeted and flexible form of intervention order. A separate Act would allow domestic violence to be treated as a social and health problem, and not just a matter for the criminal justice system. A model which is worthy of consideration is the Scottish *Domestic Abuse Act 2018*.<sup>20</sup>

## **12. Taking into account your response(s) to questions 8 to 11, which elements are already in place in the domestic, family, and sexual violence systems in South Australia?**

Best practice for victims includes wholistic case management. One accessible service with an appointed case manager that is able to arrange for appropriate warm referrals to legal, social support, financial counseling and specialist health services with an included safe childcare service available. At present this has been implemented to a degree via the State Government's commitment to the establishment of prevention and recovery hubs in the south and north of Adelaide (Northern Hub/Yellow Gate). However, these services ought to be extended statewide.

Legal Services participate in the Northern Hub and also wholistic case management for the benefit of children affected by domestic violence as part of the SAWK Program. Integrated service provision allowing access to mental health and financial counselling as part of legal service provision is also available to clients of our Women's Domestic Violence Court Assistance Service, our Northern Domestic Violence Unit, and our FASS Program at the FCFCOA. Continued funding for these services is vital to providing legal assistance to victims in the justice system when they most need it. There are however existing and obvious gaps in these services as outlined above.

Legal Services also operates a highly successful and well-regarded Family Dispute Resolution (FDR) service, which has been designed to support clients experiencing domestic violence (estimated to be around 80% of our clients in family law matters). Our FDR service ensures safety for participants with security monitoring, separate rooms, discrete entrances, and staggered arrival

---

<sup>20</sup> [Domestic Abuse \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://legislation.gov.uk)

Morrison et al, University of Edinburgh, 8 March, 2023, [Opinion - The Domestic Abuse \(Scotland\) Act 2018: Achieving its aspirations? | School of Social and Political Science](#)

and departure times. FDR provides early resolution of a matter at a lawyer-assisted dispute resolution conference, avoiding or reducing time (and cost) in the Court system, and using a flexible and child focused approach with legally trained family dispute resolution practitioners to facilitate discussions about the best interests of the children and what might occur should the matter proceed to Court.

Relatedly, *amicaOne*, a family dispute resolution app developed by Legal Services, uses Artificial Intelligence to assist users to obtain an estimate of a suggested division of money and property reflected as a percentage split. This can be a useful tool for victims when they are considering separating as this can be used privately and confidentially. It is noted that victims experiencing financial abuse may not have access to financial information or records, which can limit the effectiveness of this solution.

Other successful, current Court-based programs include the *Lighthouse Project* in the FCFCOA which plays a central role in the Court's response to cases that may involve risk relating to family violence, mental health, drug and alcohol misuse and child abuse and neglect, by shaping the allocation of resources and giving urgency to such cases.<sup>21</sup> Lighthouse screens parties for risk of domestic violence, with a primary focus on improving outcomes for families involved in the family law system. Parties are provided with tailored support and referrals to support services for any needs or concerns identified during the risk screening process. Data obtained for the Lighthouse Pilot Project in 2021, showed approximately 80% of family law cases alleged at least one major risk factor (including family violence).<sup>22</sup>

Participation in targeted behaviour change programs as part of any justice system response can be effective for some perpetrators. For example:

- The FCFCOA recommends that most parents complete some kind of parenting course such as the *Kids Are First* program provided by Anglicare SA.<sup>23</sup>
- The KWY program is a culturally sensitive program designed at addressing the driving factors of DFSV. Our lawyers have received highly positive feedback from male clients undertaking the program in response to domestic violence charges in the criminal courts. The program provided men with an understanding about what drives them to commit domestic violence and ways to reduce risk of triggers for perpetrating violence and breaking the cycle to ensure their children do not perpetrate or experience it.
- Other men's behaviour change programs that have had success in educating perpetrators of family violence include *Don't Become That Man* provided by OARS Community Transitions.<sup>24</sup>

---

<sup>21</sup> [Lighthouse overview | Federal Circuit and Family Court of Australia \(fcfcqa.gov.au\)](https://www.fcfcqa.gov.au/news-and-media-centre/media-releases/mr101121)

<sup>22</sup> <https://www.fcfcqa.gov.au/news-and-media-centre/media-releases/mr101121>

<sup>23</sup> [Anglicare SA - KidsAreFirst Services For Separated Families | healthdirect](https://www.healthdirect.gov.au/anglicare-sa-kids-are-first-services-for-separated-families)

<sup>24</sup> [Mens Support Line | Don't Become That Man \(dontbecomethatman.org.au\)](https://www.dontbecomethatman.org.au)

**Recovery and Healing**

- 13. Acknowledging that every victim-survivor will have different needs depending on their personal circumstances, are there universal needs that will arise for all victim-survivors?**
- 14. What are the best practice approaches to supporting a victim-survivor to recover from trauma and the mental, physical, emotional, and economic impacts of violence?**
- 15. Taking into account your response to question 14, what best practice approaches are already in place in the domestic, family and sexual violence systems in South Australia?**

We consider others are better placed to respond to these questions, but would encourage exploration of appropriate restorative justice practices as part of any future justice system response aimed at recovery and healing.