Queensland Government

Crown Law

Department of
Justice and Attorney-General

MEMORANDUM OF ADVICE

Special Taskforce on Domestic and Family Violence in Queensland

---

Table of contents

State Law Building
50 Ann Street Brisbane
GPO Box 5221 Brisbane
Queensland 4001 Australia
DX 40121 Brisbane Uptown
Telephone 07 3239 6703
Facsimile 07 3239 0407
ABN 13 846 673 994

Queensland
Government

Crown Law

Department of
Justice and Attorney-General

MEMORANDUM OF ADVICE

Special Taskforce on Domestic and Family Violence in Queensland

---

1. EXECUTIVE SUMMARY

We have been asked to advise in relation to eliminating or reducing duplication, gaps and inconsistencies in matters involving domestic and family violence (***DFV***) between the jurisdiction of State courts under the *Domestic and Family Violence Protection Act 2012* (Qld) (the ***DFVP Act***) and Commonwealth courts under the *Family Law Act 1975* (Cth) (the ***FL Act***).

Our advice reviews existing legislation and the complexity of current jurisdictional arrangements. That complexity is partly but not entirely due to the division of constitutional powers between the Commonwealth and the States. Everyday people experiencing DFV are confronted with a confusing array of multiple entry points to the justice system.

We consider jurisdictional reforms directed to having either State or Commonwealth courts exercising all domestic violence and other family-related jurisdiction under a one-court model. That could be modelled on the Family Court of Western Australia, which exercises both State and federal jurisdiction. That model is incomplete, in the sense that even that Court does not exercise all family-related jurisdiction. For that reason, we do not consider that the benefits of such a model would be likely to outweigh the significant cost.

Jurisdictional reforms have been considered by numerous review bodies in the past, but none has been implemented. That may be explained by numerous logistical, resourcing, constitutional and political issues. We point to some of those issues for the Taskforce's consideration. While such changes would certainly realise some important benefits, again we conclude on balance that the costs of implementing them would outweigh the benefits.

Rather, we have identified a number of other reforms that the Queensland Government could implement without relying on other governments. These reforms are of a more modest scale, and could be implemented with or without jurisdictional reform. They are directed primarily at the commonly reported problem of multiple entry points to the justice system for persons experiencing DFV and related family law issues. The proposals are set out in full below.

State Law Building
50 Ann Street Brisbane
GPO Box 5221 Brisbane
Queensland 4001 Australia
DX 40121 Brisbane Uptown
Telephone 07 3239 6703
Facsimile 07 3239 0407
ABN 13 846 673 994

The principal proposal is for the specialisation of Queensland courts and judicial and other officers. We propose a number of possible variations (proposals 1-3), which range on a spectrum from improved professional development for judicial and other officers, through to the expansion of the existing jurisdiction of the Children's Court of Queensland (the ***CCQ***) to include DFV and possibly other child- and family-related matters.

We make other proposals for improved information-sharing between courts and other agencies (proposal 4) and improved coordination of agencies' DFV responses (proposal 5). There are numerous and varied precedents for such initiatives in other jurisdictions. We also make suggestions about evidentiary and procedural matters (proposal 6).

Our proposals have not been the subject of consultation with the relevant stakeholders, and any policy planning should take account of the need for proper consultation before they are approved or implemented.

We also note the effect of the parenting provisions of the FL Act on DFVP Act proceedings, and identify some areas in the FL Act for possible reform in future review processes.

Proposal 1

The Taskforce might consider a recommendation that the Government undertake a scoping exercise for the professional development of participants in DFV legal processes, concentrating on relevant judicial and government officers in the first instance. The precise scope will depend on which of the following reforms is adopted.

Proposal 2

The Taskforce might consider a recommendation that (assuming Carmody inquiry recommendation 13.8 is implemented) judicial officers be appointed as both specialist Children's Court Magistrates and as specialist DFV Magistrates.

Proposal 3

The Taskforce might consider a recommendation that the Government consider piloting or establishing a specialist Domestic and Family Court (by that or another name) to exercise the existing jurisdiction of the Magistrates Court under the DFVP Act and the FL Act and some or all of the existing jurisdiction of the CCQ.

Proposal 4

The Taskforce might consider a recommendation along the lines of ALRC 114 recommendation 29-2:[1]

The Australian, state and territory governments, in establishing or further developing integrated responses to family violence, should ensure ongoing and responsive collaboration between agencies and organisations, supported by:

(a) protocols and memorandums of understanding;

(b) information-sharing arrangements;

(c) regular meetings; and

[1] ALRC 114, p 44.

(d) where possible, designated liaison officers.

Proposal 5

The Taskforce might consider a recommendation that the Government pilot or implement an agencies coordination model based on the SCAN teams, possibly chaired by the Queensland Police Service, to coordinate the response of relevant government agencies to incidents of DFV, with the aim of better protecting the safety and well-being of victims and their children.

Proposal 6

The Taskforce might consider recommendations that:

- a victim's evidence be pre-recorded in the way that a child's evidence may be pre-recorded under the *Evidence Act 1977*, pt 2, div 4A.
- the Government consider educational or promotional material for practitioners and self-represented litigants to make them aware of the DFVP Act provisions for the protection of parties and witnesses.
- the Government monitor and review the practical operation of the new *Domestic and Family Violence Protection Rules 2014*.

2. INTRODUCTION

2A Background

The Special Taskforce on Domestic and Family Violence in Queensland has been appointed to investigate and define the landscape with respect to DFV in Queensland.[2] Its terms of reference require it to have regard, among other things, to:

- Holistic, coordinated and timely responses to domestic violence, including building community confidence in the reporting and investigation of domestic and family violence and ensuring that those who are subject to domestic and family violence receive immediate and effective protection and support
- Ensuring that Queensland's law and order responses, including police, prosecutors and courts, provide an effective response to domestic and family violence, to deter perpetrators from committing violence, and hold them accountable for their behaviour
- Considering ways in which strategies for ensuring protection from domestic and family violence in Queensland best complement relevant systems and processes (including within the family law jurisdiction) to provide just outcomes and maximise the safety of families

[2] The Taskforce's membership and terms of reference are available at http://www.qld.gov.au/community/getting-support-health-social-issue/dfv-taskforce/, accessed 8 December 2014.

Thus, the Taskforce must consider and make recommendations in relation to eliminating or reducing duplication, gaps and inconsistencies between the jurisdiction of various courts under State and Commonwealth legislation.

We acknowledge the assistance afforded to us by Taskforce members and officers of the Department of the Premier and Cabinet, including discussion at Taskforce meetings and helpful comments on a draft of this advice.

2B Purpose

The purpose of this opinion is to provide expert legal policy advice in relation to eliminating or reducing duplication, gaps and inconsistencies between the jurisdiction of the Magistrates Court of Queensland under the DFVP Act and that of the Family Court of Australia (the ***FamCA***) and the Federal Circuit Court of Australia (the ***FCCA***)[3] under the FL Act.

This advice does not deal with:

- child protection proceedings in the CCQ under the *Child Protection Act 1999* (Qld) (the ***CP Act***);
- criminal proceedings including proceedings against children under the *Youth Justice Act 1992* (Qld) the ***YJ Act***);
- peace and good behaviour orders under the *Peace and Good Behaviour Act 1982* (Qld);
- civil proceedings (e.g. for injunctions in tort);
- interstate registration and enforcement of domestic violence orders.

In the limited time and resources available, this advice has not attempted to emulate the extensive work that has been carried out in recent years, for example by the Australian Law Reform Commission and the New South Wales Law Reform Commission,[4] the Law Reform Commission of Western Australia[5] and the National Council to Reduce Violence against Women and their Children.[6] Rather, it seeks to develop practically focused proposals that build on previous work, and articulate with the Taskforce's wider proposals.

---

[3] The Federal Magistrates Court of Australia (the ***FMCA***) was established in 1999, and was renamed as the FCCA in April 2013.

[4] Australian Law Reform Commission and the New South Wales Law Reform Commission, *Family Violence: A National Legal Response* (ALRC 114, NSWLRC 128), October 2010 (***ALRC 114***). Available at http://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114, accessed 29 September 2014.

[5] Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Discussion Paper* (Project No 104), December 2013 (***LRCWA discussion paper***); Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report* (Project No 104), June 2014 (***LRCWA final report***). Available at http://www.lrc.justice.wa.gov.au/P/project_104.aspx, accessed 29 September 2014.

[6] National Council to Reduce Violence against Women and their Children, *Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009-2021* (March 2009). Available at http://www.dss.gov.au/our-responsibilities/women/publications-articles/reducing-violence/national-plan-to-reduce-violence-against-women-and-their-children/time-for-action-the-national-council-s-plan-for-australia-to-reduce-violence-against-women-and-their-children-2009-2021, accessed 29 September 2014.

2C The nature of the problem

It is plainly apparent from the accounts of DFV that people have given to the Taskforce and from a large volume of previous literature that, like many legal problems, DFV is symptomatic of deeper underlying social issues. That broad social dimension often manifests itself in individual cases in the form of psychological manipulation and terror, in which the actions of both perpetrator and victim can sometimes defy rational explanation.

The intersection between operation of DFV legislation, child protection legislation and the FL Act was highlighted in Belinda Fehlberg's 2007 review of some 300 files from four registries of the FamCA and the then-FMCA.[7] Professor Fehlberg found that allegations of DFV or child abuse were raised in 79 % of all cases judicially determined by the FamCA and 67 % of cases judicially determined by the FMCA. Child abuse allegations were made in 50 % of FamCA cases and 18.5 % of FMCA cases.

The *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) (the ***SPR Amendment Act***), which will be discussed in greater detail later, provided a greater emphasis on both shared parental responsibility and simultaneously protecting children from harm. After that Act commenced, allegations of family violence or child abuse were made in 50 % of FamCA cases and 70 % of FMC cases.[8] DFV has been a major contributor to the massive growth in child abuse reports received by statutory child protection systems across Australia in the past decade. Along with parental mental illness and substance misuse, DFV is recognised as a key characteristic of families about whom notifications are made.[9] This is probably also heightened because DFV is included in the mandatory reporting obligations in three jurisdictions, namely New South Wales, Northern Territory and Tasmania.[10]

As Higgins and Kaspiew observed in their 2011 paper, *Child Protection and Family Law: Joining the Dots*,[11] empirical evidence suggests that those affected by issues relating to family violence, child safety concerns, mental illness and substance addiction are heavy users of the family law system. They summarised research undertaken by the Australian Institute of Family Studies (***AIFS***) in 2008 about the intersection of child protection and federal family law systems. The study of 10,000 separated parents showed that 26 % of mothers reported being physically hurt and 39 % reported emotional abuse, with the remaining 35 % reporting no violence.[12] Among fathers 17 % reported physical hurt, 36 % reported emotional abuse and 47 % reported no violence.[13]

---

[7] B Fehlberg (2011), 'Parenting disputes, state child protection laws and an attempt at lateral thinking' *Australian Journal of Family Law* 25: 157.

[8] See R Kaspiew, M Gray, R Weston, L Moloney, K Hand and L Qu and a family law evaluation team (2009), *Evaluation of the 2006 Family Law Reforms* (Australian Institute of Family Studies, Melbourne) (***AIFS evaluation 2009***), p 314.

[9] Allen Consulting Group (2003), *Protecting children: The Child Protection Outcomes Project: Final report for the Victorian Department of Human Services*.

[10] D Higgins, L Bromfield, N Richardson, P Holzer & C Berlyn (August 2010), *Mandatory reporting of child abuse (NCPC Resource Sheet)* (AIFS, Melbourne).

[11] D Higgins and R Kaspiew (2011), *Child Protection and Family Law: Joining the Dots*, National Child Protection Clearinghouse Issues No 34.

[12] Ibid, citing the AIFS evaluation 2009, p 26.

[13] Ibid.

Further, again with reference to the same 2008 AIFS study of separated parents, Higgins and Kaspiew examined the concerns of separating parents in relation to their children's safety following high levels of inter-spousal violence. A key concern for separating parents is the safety of the child in the care of the other parent. The study revealed that a greater proportion of mothers had concerns (for themselves 3.6 %, for their child 9.1 % or for both 8.4 %) compared with fathers (for themselves 1.6 %, for their child 12.3 % or for both 2.6 %).[14] This is consistent with recent research by Cashmore and Parkinson (2011) showing that concerns about the safety of quite young children including child abuse concerns are a major issue driving inter-parental conflict.[15]

However, there is no single judicial forum that can provide a family with a comprehensive suite of orders and remedies to address their needs particularly when it involves DFV, child abuse and post-separation parenting arrangements.

Whilst the FamCA generally deals with the more complex matters (which often involve allegations of child abuse and DFV), there is no clear demarcation between the matters heard by the FamCA and the FCCA in relation to the types of allegations made in parenting proceedings. The FamCA's annual report for 2013-14 reported that since 2011-12 there has been an increase in the proportion of applications that involve a Form 4 (notice of child abuse, family violence or risk of family violence) by almost 5 %. In 2013-14, 14.6 % of all applications for final orders involved a Form 4.

Those broad observations lead to the following introductory points:

- DFV as a legal problem can only be properly understood in its social context.
- A legal response to DFV can only ever be a partial solution. In particular, legal solutions will only be effective if they are accompanied and supported by education, support and information for victims, perpetrators, police, judicial officers, court staff and support professionals.
- Changes to courts' jurisdiction or powers may have little or no effect in relation to perpetrators for whom existing laws represent no disincentive. That will be particularly so where alcohol or drug abuse is a factor.
- Some victims say that having multiple State and Commonwealth courts dealing with overlapping issues under different laws is confusing and lets perpetrators use legal processes as a form of abuse. However, their views do not indicate precisely what legal reforms would resolve those problems.
- Numerous reform bodies have considered but ultimately eschewed thoroughgoing structural reform, partly on the ground that it is politically too difficult to achieve.

However, the multiplicity of laws and courts involved in DFV matters is a problem and should be addressed at some level. In particular, the choice for victims between several different entry points into the legal system should be simplified.

[14] Ibid, AIFS evaluation 2009, p 28.
[15] Cashmore and Parkinson (2011), 'Reasons for disputes in high conflict families', *Journal of Family Studies* 17(3): 186-203.

3. THE LEGISLATIVE BACKGROUND

Space does not permit a full description of the statutory framework under the DFVP Act, the FL Act and related legislation. This advice assumes a working knowledge of that framework. The following features of the statutory framework are most noteworthy for present purposes:

3A Domestic and Family Violence Protection Act 2012 (Qld)

The objects of the DFVP Act are to maximise the safety, protection and wellbeing of people who fear or experience DFV, to prevent or reduce DFV and the exposure of children to DFV, and to ensure that people who commit DFV are held accountable. It achieves those objects mainly by allowing courts to make domestic violence orders (***DVOs***),[16] giving police powers to respond to DFV including power to issue police protection notices (***PPNs***) and imposing consequences for contravening DVOs and PPNs.[17]

The DFVP Act defines ***domestic violence***[18] as behaviour by one person towards another in a relevant relationship[19] or to an associated person[20] that is physically or sexually abusive, emotionally or psychologically abusive,[21] economically abusive,[22] threatening, coercive or otherwise controls or dominates the other person and causes the other person to fear for his, her or someone else's safety or wellbeing.

The Magistrates Court, a court that convicts a person of an offence involving DFV or the CCQ hearing a protection proceeding can make a protection order.[23] An aggrieved, a person representing an aggrieved or a police officer may apply for a protection order.[24] The court may make a protection order if satisfied that the aggrieved and the respondent are in a relevant relationship, that the respondent has committed DFV against the aggrieved, and that a DVO is necessary or desirable to protect the aggrieved from DFV.[25] A court may make a temporary protection order.[26] A DVO can protect associated persons.[27]

A person who applies for a DVO or a DVO variation and is aware of a family law order[28] must disclose the order to the court.[29]

---

[16] A ***domestic violence order*** is a protection order or a temporary protection order: DFVP Act, sch (Dictionary).
[17] DFVP Act, s 3.
[18] DFVP Act, s 8.
[19] DFVP Act, pt 2, div 3.
[20] DFVP Act, s 9.
[21] DFVP Act, s 11.
[22] DFVP Act, s 12.
[23] DFVP Act, ss 26, 37, 42 and 43.
[24] DFVP Act, ss 25 and 32.
[25] DFVP Act, s 37.
[26] DFVP Act, s 23(3) and pt 3, div 2.
[27] DFVP Act, s 24 and pt 3, div 4.
[28] A ***family law order*** is an order, injunction, undertaking, plan or recognisance relating to a child of the aggrieved or respondent under the FL Act, s 68R or the *Family Court Act 1997* (WA), s 176.
[29] DFVP Act, s 77.

Before deciding to make or vary a DVO, the court may have regard to any family law order of which it has been informed, and consider whether to exercise its power under the FL Act, s 68R to revive, vary, discharge or suspend the family law order.[30]

In proceedings under the DFVP Act, the *Uniform Civil Procedure Rules 1999* apply only where the Act specifically so provides.[31] Otherwise, the *Justices Act 1886* and, where applicable, the *Childrens Court Act 1992* apply to proceedings under the DFVP Act.[32] Otherwise, the court may make directions.[33]

New *Domestic and Family Violence Protection Rules 2014* will commence on 28 February 2015. As discussed below, these rules will apply DFVP Act proceedings (other than appeals). The rules are to be applied by courts 'with the objective of avoiding undue delay, expense and technicality', and facilitating the objects the rules and the DFVP Act (r 5(2)).

In proceedings under the DFVP Act, a court is not bound by the rules of evidence and may inform itself in any way it considers appropriate.[34] If the aggrieved, a child or a relative or associate of the aggrieved who is named in the application (each a ***protected witness***) gives evidence, the court must consider whether to make any protective procedural orders, so that for example the protected witness is separated from the respondent by an audio-visual link, pre-recorded evidence, a screen or a support person.[35] The court may also order that a self-represented respondent may not cross-examine a protected witness in person.[36] The protective provision for special witnesses under the *Evidence Act 1977*, s 21A also applies.[37]

Each State has its own DFV legislation, and there are therefore eight different schemes across Australia. There are some consistencies in approach but also some differences, for instance as to intervention, enforcement of and definition of family violence.

3B Other Queensland legislation

At least since the latter half of last century, there has been statutory provision for the State to take steps for the care and protection of children in particular circumstances. The CP Act is the current legislation. It may be viewed as the public law aspect of family law, in that it is concerned with the legal relationship between the State and individual families. The CP Act was the subject of detailed examination in the Queensland Child Protection Commission of Inquiry (the ***Carmody inquiry***).[38] We do not propose to examine the CP Act in detail here, other than to note that CP Act proceedings often intersect with DFV and other family law proceedings.

---

[30] DFVP Act, s 78.
[31] DFVP Act, s 142.
[32] DFVP Act, s 143.
[33] DFVP Act, s 144.
[34] DFVP Act, s 145.
[35] DFVP Act, s 150.
[36] DFVP Act, s 151.
[37] DFVP Act, s 152.
[38] Queensland Child Protection Commission of Inquiry (Hon T F Carmody QC, Commissioner) (June 2013), *Taking Responsibility: A roadmap for Queensland child protection* (***Carmody report***). Available at http://www.childprotectioninquiry.qld.gov.au/, accessed 8 January 2015.

Similarly, there has long been special statutory provision for the prosecution of children for criminal offences. The YJ Act is the current legislation. Again, we do not propose to examine its operation in detail here.

3C Family Law Act 1975 (Cth)

The FL Act is very complex and detailed, and it is only possible here to give the barest outline of the most centrally relevant provisions. By comparison with the CP Act, it may be viewed as the private law aspect of family law, in that it is concerned with legal relationships within individual families.

The FL Act is an exercise of the Commonwealth Parliament's power under s 51(xxi) of the Commonwealth Constitution to make laws with respect to:

> … divorce and matrimonial causes; and in relation thereto, parental rights, and the custody and guardianship of infants …

In broad terms, then, the Commonwealth Constitution divides responsibility for family law so that the States are responsible for public law aspects (child protection), and the Commonwealth for private law aspects ('matrimonial causes'[39] and 'parental rights').

Section 51(xxi) does not allow the Commonwealth to make laws in relation to the children or financial matters of couples who never married. In relation to ex-nuptial children and de-facto financial matters, the FL Act relies on references of power from all States (other than Western Australia) to the Commonwealth under s 51(xxxvii) of the Commonwealth Constitution. Thus, the FL Act relies on a patchwork of constitutional powers, and that partly accounts for its complexity.

The jurisdictional provisions are complex because of the constitutional patchwork, the political compromises made when the FL Act was enacted and subsequent historical developments. At the risk of over-simplification, the structure of the jurisdictional provisions is as follows.

The FL Act establishes the FamCA, provides for the establishment of State family courts, and confers jurisdiction on the FamCA, the FCCA, State family courts and State magistrates courts in relation to matrimonial causes and children. Table 1 summarises the jurisdictional provisions.

[39] ***Matrimonial causes*** are defined in the FL Act, s 4(1) to mean for practical purposes proceedings for divorce, spousal maintenance, matrimonial property, maintenance agreements, injunction proceedings arising out of marital relationships and ancillary matters.

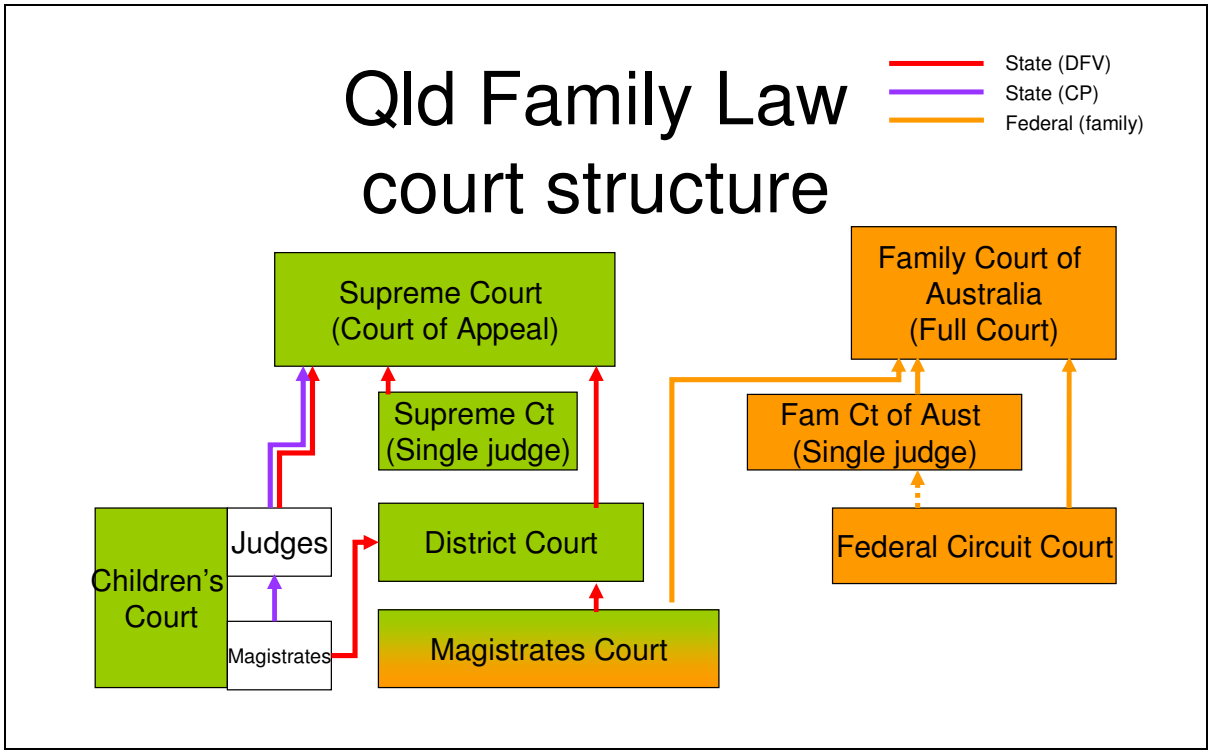
Table 1—Family Law Act jurisdictional provisions[40]

Subject-matter	Court	Jurisdictional provisions	Institution of proceeding	Limitations
• **Divorce (pt VI)** • **Spousal maintenance, matrimonial property and maintenance agreements (pt VIII)**	FamCA	s 31(1)(a) s 39(5)	s 39(1)(a)	s 40(1) (Regulations prohibit exercise of jurisdiction in WA)
	State Supreme Courts	S 39(5)	S 39(1)(b)	s 40(3) (Procl prohibits institution of proceedings in Supreme Court of Qld)
	State family courts	s 39(5)	s 39(1)(b)	s 41(3) (Procl changes operation of s 39 for WA)
	FCCA	s 39(5AA)	s 39(1A)	s 40A (FCCA cannot exercise jurisdiction where FamCA cannot)
	Magistrates courts	s 39(6)	s 39(2) s 46[41]	s 39(7) (Procl may prohibit institution of proceedings)
Children of a marriage (pt VII as applied by ss 69ZH and 69ZJ)	FamCA	s 69H(1)	s 69C	
	State family courts	s 69H(2)	s 69C	
	FCCA	s 69H(4)	s 69C	
	Magistrates courts	s 69J(1)	s 69C s 69N[42]	s 69J(3) (Procl may prohibit institution of proceedings)
Ex-nuptial children (pt VII as extended by s 69ZE)	FamCA	s 69H(1)	s 69C	Pt VII does not apply WA in respect of ex-nuptial children
	FCCA	s 69H(4)	s 69C	
	Magistrates courts	s 69J(1)	s 69C s 69N[43]	s 69J(3) (Procl may prohibit institution of proceedings)
De-facto financial matters (pt VIIIAB)	FamCA	s 39B(1)(a)	s 39A(1)(a)	s 40(1) (Regulations prohibit exercise of jurisdiction in WA)
	FCCA	s 39B(1)(b)	s 39A(1)(b)	s 40A (FCCA cannot exercise jurisdiction where FamCA cannot)
	Magistrates courts	s 39B(2) (referring States)	s 39A(1)(d) (referring States) s 46[44]	s 39D (Procl may prohibit institution of proceedings)

[40] Table 1 does not include specialised matters of limited present relevance such as those arising under the FL Act, s 39(5)(d)-(e), (5A) and (6)(d)-(e).
[41] Contested divorce proceedings, or property hearings over $20,000 unless parties consent, must be transferred to the FamCA.
[42] Contested hearings must be transferred to the FamCA unless parties consent.
[43] Contested hearings must be transferred to the FamCA unless parties consent.

Figure 1 graphically represents the court structure that results from the jurisdictional scheme represented in table 1 so far as it applies in Queensland (and States other than Western Australia).

Figure 1—Queensland Family law court structure



Part VII (Children) of the FL Act is important for present purposes. In particular, the SPR Amendment Act, which implemented equal shared parental responsibility, has had wide-ranging ramifications, including in relation to DFV issues. Briefly, s 60CA now requires that in making a parenting order, a court must regard the best interests of the child as the paramount consideration. Section 60CC(2) makes the primary considerations in determining the child's best interests (a) the benefit of a meaningful relationship with both parents, and (b) the need to protect the child from physical or psychological harm from being subject to abuse, neglect or DFV. We consider the effect of s 60CC further below (part 8).

The *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth) (the ***FV Amendment Act***) is an important recent development. The Australian Government summarises its effects as follows:[45]

- Prioritise the safety of children in parenting matters by giving greater weight to the protection from harm when determining what is in a child's best interests.
- Change the definition of 'family violence' and 'abuse' to reflect a contemporary understanding of what family violence and abuse is by clearly setting out what

[44] Property hearings over $20,000 unless parties consent, must be transferred to the FamCA.
[45] 'Changes to Family Law from 7 June 2012', available at http://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyViolence/Documents/Fact%20Sheet%20Changes%20to%20Family%20Law%20from%207%20June%202012.pdf, accessed 22 January 2015.

behaviour is unacceptable, including physical and emotional abuse and the exposure of children to family violence.

- Better target what a court can consider in relation to family violence orders as part of considering a child's best interests.
- Strengthen advisers obligations by requiring family consultants, family counsellors, family dispute resolution practitioners and legal practitioners to prioritise the safety of children.
- Ensure the courts have better access to evidence of family violence and abuse by improving reporting requirements.
- Make it easier for state and territory child protection authorities to participate in family law proceedings.

3D Consistency between FL Act parenting orders and DVOs

The FamCA, the FCCA, State family courts and State magistrates courts may make parenting orders (including injunctions[46]) or other orders under the FL Act (including injunctions[47]) which may require or permit a respondent to a DVO to have contact with an aggrieved or a child in a way that is inconsistent with the DVO.

Section 109 of the Commonwealth Constitution resolves inconsistencies between Commonwealth and State laws by providing that the Commonwealth law prevails. Consistently with this general position, the FL Act provides that a DVO will be invalid to the extent it is inconsistent with an order or injunction made under the FL Act which requires or authorises a person to spend time with a child.[48] In that way, an order under the FL Act may undermine the effectiveness of a DVO.

However, in an attempt to reduce inconsistencies between parenting orders and DVOs, s 60CG (inserted by the SPR Amendment Act) requires that a court making a pt VII order must, so far as it can consistently with the paramount consideration of the child's best interests, ensure that the order is consistent with any DVO and does not expose a person to an unacceptable risk of DFV.

Similarly, s 68R of the FL Act provides that in DVO proceedings, a State court that has jurisdiction under pt VII may revive, vary, discharge or suspend parenting and other FL Act orders. Section 78 of the DFVP Act (noted above) mirrors s 68R of the FL Act.

Further, where a court does make an order or injunction under the FL Act that is inconsistent with an existing DVO, it must specify that it is inconsistent with a DVO, and explain, amongst other things, how the contact between the person and the child is to take place, and the court's reasons for making an inconsistent order.[49] A copy of an inconsistent order must be given, amongst others, to the Registrar of the court which made the DVO, the relevant Commissioner for Police and the Chief Executive of the Department of Communities.[50]

[46] FL Act, s 68B.
[47] FL Act, s 114.
[48] FL Act, s 68Q.
[49] FL Act, s 68P(2).
[50] FL Act, s 68P(3)(e) and (f)

3E State family courts under the FL Act

Section 41 of the FL Act provides for the establishment of State family courts which may exercise jurisdiction under that Act. The process by which a State family court may be established and invested with federal jurisdiction may be summarised as follows:

- Section 41(1) requires that, as soon as practicable after the commencement of the FL Act, the Australian Government negotiate with each State government agreements for the creation of State family courts, under which the Australian Government will provide the necessary funds for the establishment and administration of those courts (including the provision of counselling facilities).[51] We do not know whether and if so to what extent the then-Australian and Queensland Governments conducted s 41(1) negotiations after the FL Act commenced. It seems improbable that, if Queensland now decided to establish a State family court, the statutory requirement would be engaged. Of course that would not prevent the two governments voluntarily negotiating outside the statutory requirement.
- Where a State creates a State family court, the Governor-General may, by proclamation, declare that s 41 applies to that court.[52] A reference in the FL Act to the family court of a State is a reference to a court declared under s 41.[53]
- Thereupon, ss 39, 46, 94 and 96 are read as if references to the Supreme Court of the State were references to the State family court, and the State family court is invested with federal jurisdiction (primarily in relation to divorce and matrimonial causes) accordingly.[54] The effect of those provisions is considered below in the Western Australian context.
- The Governor-General may make a proclamation only if he or she is satisfied that:
    - judges will be appointed to the State family court only with the approval of the Commonwealth Attorney-General;
    - judges appointed to the court are by reason of training, experience and personality, suitable to deal with family law matters and cannot hold office beyond 70 years of age; and
    - appropriate family counselling, family dispute resolution services and family consultants will be available to the court.[55]

Jurisdiction is also conferred on State family courts in relation to matters arising under part VII (Children).[56]

The Family Court of Western Australia

Only Western Australia has taken up the option of establishing a State family court. The Family Court of Western Australia (the ***FCWA***) was originally established in 1975 and is continued in existence under the *Family Court Act 1997* (WA) (the ***FCWA Act***). The

[51] FL Act, s 41(1).
[52] FL Act, s 41(2).
[53] FL Act, s 4(1A)(b).
[54] FL Act, s 41(3).
[55] FL Act, s 41(4).
[56] FL Act, s 69H(2).

FCWA is a court of record.[57] It consists of the Chief Judge, other judges and acting judges.[58] It has a Principal Registrar and Registrars[59] who may be appointed magistrates under the *Magistrates Court Act 2004* (WA).[60] A person who is both a magistrate and the Principal Registrar or a registrar of the FCWA is a ***family law magistrate*** (***FLM***).[61]

The Magistrates Court of Western Australia (the ***MCWA***) constituted by a FLM (***MCWA (FLM)***) or the MCWA sitting outside Perth may exercise all the non-federal jurisdiction of the FCWA except adoption and surrogacy jurisdiction.[62] Where the MCWA is not constituted by a FLM, parties to contested applications for parenting orders or property orders above a certain amount must consent to the jurisdiction.[63]

On 4 November 1991, the Governor-General made a proclamation (not for the first time) declaring the FCWA to be a State family court under the FL Act, s 41. Accordingly, as noted earlier, the FCWA effectively succeeds to the former position of the Supreme Court of Western Australia under ss 39, 46, 94 and 96. In fact, those provisions have since been amended so that most references to State Supreme Courts are accompanied by specific references to State family courts.

Sections 39 and 46 of the FL Act have the following effect in relation to the jurisdiction of State courts:

- Subsection 39(5) invests State Supreme Courts [or the FCWA] with federal jurisdiction with respect to matters arising under the FL Act in respect of which matrimonial causes are instituted under the FL Act (and various other matters). The FCCA has a similar jurisdiction under s 39(5AA).[64]
- Subsection 39(6) invests State magistrates courts with federal jurisdiction with respect to matters arising under the FL Act in respect of which matrimonial causes are instituted under the Act (but not in relation to validity or annulment of marriages and divorces).[65]
- Subsection 46(1) provides that where property proceedings over $20,000 are commenced in a State magistrates court and are contested, the court is required to transfer proceeding to the FamCA, a State family court, a State Supreme Court or the FCCA unless the parties consent to jurisdiction. However, this does not apply to the MCWA (FLM).[66]
- Subsection 46(2A) provides that defended divorce proceedings must also be transferred to the FamCA, a State family court, a State Supreme Court or the FCCA, but again this does not apply to the MCWA (FLM).

[57] FCWA Act, s 9.
[58] FCWA Act, s 10.
[59] FCWA Act, s 25.
[60] FCWA Act, s 26.
[61] FCWA Act, s 5.
[62] FCWA Act, s 39.
[63] FCWA Act, s 43.
[64] The FamCA, FCWA and FCCA have jurisdiction under pt VII with respect to children: FL Act, s 69H.
[65] State magistrates courts have jurisdiction under pt VII with respect to children: s 69J.
[66] State magistrates courts (other than the MCWA (FLM)) are required to transfer contested non-consent parenting proceedings under pt VII to the FamCA, FCWA or FCCA: s 69N.

Sections 94 and 96 of the FL Act have the following effect in relation to appeals to and from State courts:

- Section 94 provides that, subject to ss 94AAA and 94AA, appeals lie to Full Court of the FamCA from decrees of a single judge of the FamCA and decrees of a State family court or a single judge of a State Supreme Court exercising original or appellate jurisdiction under the FL Act.
- Section 94AAA provides that an appeal lies to the FamCA from a decree of the MCWA (FLM).
- Section 96 provides that an appeal lies from a decree of a State magistrates court exercising jurisdiction under the FLA to the FamCA, the State Supreme Court or a State family court. Again, this does not apply to the MCWA (FLM).

Regulations may be made providing that the FamCA's jurisdiction under the Act must not be exercised in a particular State or Territory. Regulation 39BB of the *Family Law Regulations 1984* provides that from 21 April 2012, the jurisdiction of the FamCA must not be exercised in Western Australia in relation to matrimonial causes, de-facto financial causes, matters under the *Marriage Act 1961* (Cth), certain other matters arising under the FL Act and appeals from the MCWA (other than the MCWA (FLM)).[67]

The FCCA's jurisdiction cannot be exercised in a proceeding in a State or Territory if the corresponding jurisdiction of the FamCA cannot be exercised in the State or Territory.[68] The intention is that the MCWA (FLM) has substantially the same jurisdiction and appeal structure in family law and child support matters as the FMCA (now the FCCA).[69]

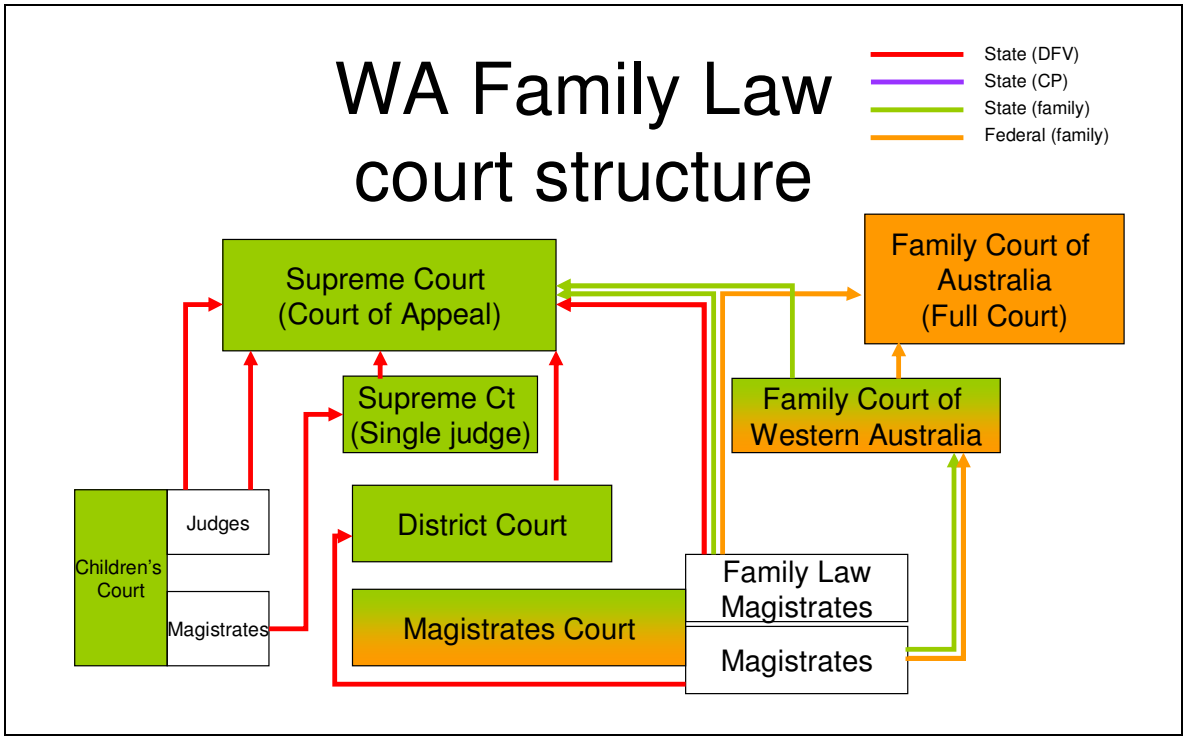
The Governor-General may by proclamation fix a date after which matrimonial causes may not be brought in the Supreme Court of a specified State or Territory.[70] By proclamation made on 27 May 1976, the Governor-General fixed 1 June 1976 as the date after which certain proceedings may not be brought in the Supreme Courts of States *other than* Western Australia. A further proclamation made on 23 November 1983 fixes 25 November 1983 as the date on and after which certain proceedings may not be brought in the Supreme Courts of States again not including Western Australia.[71]

The Governor-General may also by proclamation fix a day after which proceedings may not be brought in magistrates courts of a specified State or Territory.[72] By proclamation of 14 June 2006, the Governor-General fixed 1 July 2006 as the date after which proceedings under s 39(6) may not be brought in the MCWA in Perth, other than the MCWA (FLM).

Broadly speaking, then, in Western Australia the FCWA supplants the FamCA, and the MCWA (FLM) supplants the FCCA. Figure 2 graphically represents the Western Australian court structure.

[67] Part VII does not extend to Western Australia unless its Parliament makes a reference of power: s 69ZE(2).
[68] FL Act, s 40A.
[69] Explanatory Memorandum to Jurisdiction of Courts (Family Law) Bill 2005 (Cth).
[70] FL Act, s 40(3).
[71] State Supreme Courts have never had jurisdiction under pt VII of the FL Act.
[72] FL Act, s 39(7).

Figure 2—WA Family law court structure



4. OTHER MODELS

In this part, we analyse recent DFV initiatives in Western Australia, New Zealand and Tasmania.

4A 'Breaking the Cycle'

Before turning to other jurisdictions, we briefly note the 'Breaking the Cycle' pilot which operated in Rockhampton from 2009 to 2012. Breaking the Cycle built on local, grass-roots initiatives and relationships and was endorsed and sponsored by the then-Department of Communities.[73] It involved a joint police, child safety and specialist DFV assessment, with referral and inclusion of other services as required.

It was a 'whole-family' approach, addressing victim and perpetrator needs and providing intensive case management. In that way, it shared a number of the positive features of schemes in other jurisdictions. In addition, the pilot worked with the Aboriginal and Torres Strait Islander community to ensure an appropriate response for Indigenous women.

Research participants (including both victims and perpetrators) indicated positive experiences. It was highly valued for its practical help, emotional support and advice given by empathetic, non-judgmental staff. Positive outcomes were reported for both victims and perpetrators, including improved health and well-being.

[73] H Nancarrow and R Viljoen (2011), *Breaking the Cycle: Client experiences and outcomes*, Centre for Domestic and Family Violence Research. Available at http://www.noviolence.com.au/public/reports/btctrialcdfvrreport.pdf, accessed 21 January 2015.

4B Western Australia

The Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws,* Final Report ('LRCWA final report') surveys a number of innovations in relation to DFV proceedings in that State.[74]

Specialist courts and legislative recognition

In Western Australia there is a specialist Family Violence Court (***FVC***) in a number of venues and the Barndimalgu Aboriginal Family Violence Court in Geraldton. Particular issues involving these Courts were discussed in the LRCWA final report. There had been unfavourable media reports as to the rates of recidivism of perpetrators and the Western Australian Attorney-General had commissioned and received a draft report on the review of these Courts and the future of them. However, the LRCWA was unable to gain access to this Report and on our current research it is still not publicly available.

FVCs do not have legislative recognition.[75] The LRCWA noted that by contrast the Drug Court is prescribed as a specialty court.[76] The LRCWA proposed that FVCs be prescribed as specialty courts pursuant to the *Sentencing Act 1995* (WA).[77] The statutory review of the Sentencing Act recommended greater flexibility in availability of conditional suspended imprisonment noting that at that time the option could only be imposed by the Supreme, District, Children's and the Perth Drug Courts.

The LRCWA recommended that consideration be given to amending the Sentencing Regulations to extend the authority to impose conditional suspended imprisonment to Magistrates Courts.

Participation in Family Violence Courts

Some submissions to the LRCWA suggested that all DFV-related charges be listed in the FVC for first appearances to enable various agencies involved to provide information to the accused about the program and to facilitate access to Victim Support Services.

However, it is not always appropriate because if an accused has been refused bail the matter should be brought before a court as soon as possible. Given the exigencies of the FVC this may not be possible.

The LRCWA's resulting recommendation 59 was that if an accused is charged with a DFV-related offence, police should ensure so far as practicable that the accused is either bailed or summonsed to appear at the next available sitting of the applicable FVC in Perth. That requirement would be embodied in the police prosecution policy and broadcast across the agency.

---

[74] LRCWA final report, p 155.
[75] LRCWA discussion paper, p 136.
[76] Regulation 4A of the *Sentencing Regulations 1996* (WA) cited in WA final report, p 157.
[77] LRCWA discussion paper, proposal 44 (p 136) referred to in LRCWA final report, p 157.

Collocation of the child safety department

Based on its observation of the Midland FVC, the LRCWA concluded that the collocation of an officer from the Department of Child Protection and Family Support had merit. It proposed that the Department enable an officer to attend the FVC in each location. However, perhaps unsurprisingly, the Department did not support such a proposal but indicated its agreement to provide an officer to participate in the FVC's case management team. It is perhaps understandable given the resource implications, which the LRCWA acknowledged, as to appropriate staffing measures.

Deferral of sentencing

The LRCWA noted that offenders who participate in the FVCs and the Barndimalgu Aboriginal Family Violence Court are placed on conditional bail following a plea of guilty. In other words, the programs were effectively a pre-sentence option.

However, the rub was that pursuant to s 16(2) of the Sentencing Act it could not be adjourned for more than six months after the offender is convicted. It was not always possible for offenders to complete the Group Family Violence program within six months. Hence, the LRCWA recommended that s 16(2) be amended to provide that the sentencing not be adjourned for more than 12 months after conviction.

Integration of family violence and criminal jurisdictions

The LRCWA was favourably impressed by the collaborative inter-agency approach of the FVCs and the judicial officers, prosecutors and other staff working in them. It noted not only the lack of awareness and understanding of the facets of DFV by professionals working in the justice system as a key concern of stakeholders but also the duplication where parties are required to appear in different court jurisdictions in relation to the same incident of DFV.[78] The LRCWA sought submissions as to whether one court should deal with all DFV-related criminal offences including bail, sentencing and trials and DVO applications. There would be much to commend that for the reasons as already iterated.

4C New Zealand

Court orders and support services

Under the *Domestic Violence Act 1995* (NZ), part 2A (which commenced on 25 September 2013), there is a legislative suite of programs designed for both applicants and respondents to DVOs. They are divided into safety programs and non-violence programs.

Part 2A establishes safety and non-violence programs to be provided by a service provider who has been granted approval to undertake assessments and provide such programs. The relevant secretary has the power to grant, suspend or cancel an approval of a person or organisation as a service provider and must publish on an internet site maintained on behalf of the Ministry of Justice a list of service providers.

[78] LRCWA final report, p 158.

Safety programs

Where the court makes a protection order, the applicant or his or her representative may request the registrar to authorise the provision of a safety program to the applicant, a child of the applicant's family or a specified person.[79]

Importantly, lawyers acting for an applicant in such an order must ensure that the applicant is aware of their right to make a request under this section. If an applicant is not legally represented, s 51C(2) requires the Judge or the registrar to cause the applicant to be informed of their right to make such a request for program inclusion.

Non-violence programs

In relation to non-violence programs, s 51D by contrast requires a respondent in mandatory terms to undertake an assessment and attend a non-violence program. There are exemptions from attendance where there is either no service provider or the court considers there is a good reason for not making such direction.

Where a direction is made for a respondent to attend and the DVO is made without notice, objection may be made within a specified period of time and the court will confirm, vary or discharge that direction: s 51E.

If the service provider becomes aware during the assessment or provision of the program of safety concerns in relation to a protected person, it must notify the registrar. The court is to be given a report on whether the respondent has achieved the objects of the non-violence program, and advice of any concerns about the safety of the protected person.

Inter-agency cooperation

These legislative initiatives are supported by the "Family Violence Interagency Response System" (***FVIARS***), which involves Police, Child Youth and Family and National Collective of Independent Women's Refuges. It aims to provide a joint response to all DFV reports and ensure "a nationally consistent and collaborative response to family violence events", with the focus on repeat victimisation and cases of a high risk of serious violence or death.[80]

The agencies meet regularly and the key appears to be good quality information to assess risk. A designated agency then subsequently keeps contact with the victim and children. Child safety is another key perspective.

4D Tasmania: 'Safe at Home'

'Safe at Home' (***SAH***) is the Tasmanian Government's integrated whole-of-government response to family violence. It was cited as a ground-breaking paradigm-shifting reform when it commenced in 2004, and was comprehensively reviewed in 2009.[81]

---

[79] *Domestic Violence Act 1995* (NZ), s 51C.
[80] New Zealand Family Violence Clearinghouse (2008), 'Current Initiatives', cited in the Tasmanian SAH review (see below), p 30.
[81] SuccessWorks (June 2009), *Review of the Integrated Response to Family Violence: Final Report* (Department of Justice, Hobart) (the ***SAH review***). See generally http://www.safeathome.tas.gov.au/.

SAH comprises 16 separate funded initiatives across four departments,[82] as well as the reforms contained within the *Family Violence Act 2004* (Tas).[83] The SAH review by SuccessWorks in 2008 involved an analysis of data, findings from the Urbis review[84] and consultations involving some 258 individuals.

The SAH Review proposed some 37 recommendations; the most significant of these for present purposes are as follows:

- the adoption of family safety as a unifying paradigm;
- a strengthened risk management approach by Safe-at-Home;
- a victim rights charter for Tasmania;
- support and training to achieve cultural competence by Safe-at-Home service providers;
- research into the make-up and needs of male victims and female offenders;
- establishment of the Specialist Family Violence Court;
- improved support for children appearing in Court;
- use of Specialist Family Violence prosecutors in family violence matters in the Supreme Court.[85]

Space does not permit a full examination of SAH or the SAH review. In brief, the review found that the implementation of SAH had been successful to date, but that it was timely to move to a broader and more strategic perspective. That would involve moving beyond SAH and the criminal justice response to encompass prevention, early intervention and a range of other strategies.[86] The review included a useful survey of best practice in integrated responses to DFV.[87]

The SAH review found that the following were working well in SAH:[88]

- increased public awareness of DFV;
- improved legal recognition for DFV;
- the victim is not the driver of the response, in that police take responsibility for pressing charges, and victims have the prospect of respite from the perpetrator;
- improved police response to DFV, including clarity of police procedures;
- Integrated Case Coordination (***ICC***) meetings, which bring together separate government agencies and allow effective information-sharing and case management;
- Court Support Liaison Officers (***CSLOs***) who act as a conduit to the legal process;

[82] Department of Justice, Department of Police and Public Safety, Department of Health and Human Services and Department of the Premier and Cabinet.
[83] SAH review, p 3.
[84] Urbis (2008), *Review of the Family Violence Act 2004 (Tas)* (Department of Justice, Hobart).
[85] SAH review, pp 3-4.
[86] SAH review, p 20.
[87] SAH review, pp 21-30.
[88] SAH review, pp 31-32.

- Family Violence Counselling and Support Service (***FVCSS***) which supports victims to better participate in the process; and
- the ICC case-based database, which links data from multiple agencies.

The SAH review considered what would reduce the level of DFV,[89] what would improve the safety of adult victims[90] and child victims[91] and what would reduce the offending behaviour of perpetrators.[92] Of particular relevance here, it considered the relationship between DFV and Family Court orders.[93] The review considered that there was:

> … a major disconnect between Safe At Home (and other family violence policy frameworks in other jurisdictions) and the Family Court that requires urgent rectification. This will not be resolved by Safe At Home alone but needs to be achieved through amendment to the Family Law Act at Commonwealth level.

The SAH review recommended that the SAH Statewide Steering Committee consider making a submission to the AIFS evaluation of the SPR Act, and that the Tasmanian Government raise concerns about the operation and impact of the FL Act through the then-Standing Committee of Attorneys-General.[94]

5. JURISDICTIONAL REFORM OPTIONS

As explained above, and as is evident from figures 1 and 2, victims of DFV encounter a fragmented legal system and multiple courts with overlapping jurisdictions. The joint Australian and New South Wales Law Reform Commissions' final report (***ALRC 114***) explained the difficulties with the current system in this way:[95]

> … in the area of family law, neither the Commonwealth nor the states and territories have exclusive legislative competence. The result is an especially fragmented system with respect to children. Moreover the boundaries between the various parts of the system are not always clear and jurisdictional intersections and overlaps are 'an inevitable, but unintended, consequence'.[96]
>
> For example, family violence involving children may arise as a dispute between parents and the state in a children's court—where care and protection proceedings are initiated with respect to a child or children—or as a dispute between parents in a court with jurisdiction under the Family Law Act. There is also a danger that issues concerning violence may fall into the cracks between the systems. The consequence of the division of powers means that:
>
> > neither the Commonwealth nor the States' jurisdiction provides a family unit with the complete suite of judicial solutions to address all of the legal issues that may impact on a family in respect of their children.[97]

[89] SAH review, pp 34-38.
[90] SAH review, pp 38-49.
[91] SAH review, pp 49-59.
[92] SAH review, pp 59-66.
[93] SAH review, pp 49-51.
[94] SAH review, pp 51 and 69.
[95] ALRC 114, p 52 (original footnotes).
[96] Family Law Council (2000), *The Best Interests of the Child? The Interaction of Public and Private Law in Australia—Discussion Paper*, [2.3].
[97] L Moloney and others (2007), *Allegations of Family Violence and Child Abuse in Family Law Children's Proceedings: A Pre-reform Exploratory Study* (AIFS, Melbourne), at [7.3.2].

There is a substantial body of literature, both in Australia and the United States, which advocates the establishment of, or at least a movement towards, a 'one-court model' or 'unified family courts'.[98] For example, the American Bar Association has long endorsed the proposal that unified family courts be established with jurisdictions which include:[99]

> … juvenile law violations; cases of abuse and neglect; cases involving the need for emergency medical treatment; voluntary and involuntary termination of parental rights, proceedings; appointment of legal guardians for juveniles; intra-family criminal offences (including all forms of family violence); proceedings in regard to divorce, annulment, maintenance, custody and child support; proceedings to establish paternity and for enforced child support …

As noted in ALRC 114, the potential benefits of a 'one-court' model are:[100]

- parties would not be shuttled from court to court;
- fewer court appearances;
- less cost;
- less repetition of evidence;
- quicker resolution of issues—if properly resourced;
- those experiencing family violence would be less likely to drop out of the system without the remedies they need for achieving safety;
- confidence in the ability of the legal system to respond to family violence would build;
- specialised judges, as well as specialised court staff, lawyers, prosecutors and
- specialised practice;
- premises with safety protection; and
- co-location of services—including legal and family violence support services.

However, as also noted by the ALRC 114, [101] there are a number of very significant challenges to be met in practice with creating one court.

---

[98] See for example: A Nicholson, 'Justice for Families and Young Offenders: A uniform court system as a 21st century reform', *2003 John Barry Memorial Lecture* (14 October 2003), University of Melbourne Department of Criminology; L Dessau, 'Unified Family Courts – Expectations and Experiences', *Third National Family Court Conference* (20-24 October 1998), Melbourne; L Dessau, 'Children and the Court System', *Children and Crime: Victims and Offenders Conference* (17-18 June 1999), Australian Institute of Criminology, Brisbane; J Kuhn (1998), 'A Seven-Year Lesson on Unified Family Courts' *Family Law Quarterly* 32(1): 67-93; B L Dunford-Jackson and others (1998), 'Unified Family Courts: How Will They Serve Victims of Domestic Violence?' *Family Law Quarterly* 32(1): 131-146; M Hardin (1998), 'Child Protection Cases in a Unified Family Court' *Family Law Quarterly* 32(1): 147-199; H Belgrad (2003), 'An Introduction to Unified Family Courts from the American Bar Association's Perspective' *Family Law Quarterly* 37(3): 329-331; A Nicholson and M Harrison (2003), 'Specialist but Not Unified: The Family Court of Australia' *Family Law Quarterly* 37(3): 441-457; J Jackson (2012), 'Bridging the Gaps between Family Law and Child Protection' *Australian Family Lawyer* 22(3): 6-20.

[99] See L Dessau, 'Unified Family Courts', op. cit.

[100] ALRC 114, pp 144-145.

[101] ALRC 114, at p 145.

Because the Commonwealth has power with respect to marriage and matrimonial causes, any structural change towards a one-court model would require some Commonwealth involvement.

Broadly speaking the two options to establish 'one court' are referral of State power with respect to DFV to the Commonwealth, and conferral of federal jurisdiction in family law matters on one or more State courts.

5A Option 1: One-court model – Federal

The Queensland Parliament could refer to the Commonwealth Parliament under s 51(xxxvii) of the Commonwealth Constitution power to make laws with respect to DFV. The reference of power could attach conditions such as requiring that the resulting Commonwealth laws establish a one-court model.

The Commonwealth Parliament could then enact Commonwealth DFV laws in the FLA or elsewhere. Those laws would confer jurisdiction with respect to DFV on the FamCA and the FCCA.

There are numerous precedents for the referral of matters to the Commonwealth by the States, including in family law matters. For example, the Queensland Parliament has referred to the Commonwealth Parliament powers with respect to the matters of ex-nuptial children[102] and de-facto relationships.[103] In reliance on these references, the Commonwealth Parliament amended the Family Law Act to cover ex-nuptial children and de-facto relationships.

If this option were adopted, Queensland would have to consider what to do with other State family-related jurisdiction such as matters under the CP Act and the YJ Act.

5B Option 2: One-court model – State

Queensland could establish a State Family Court with jurisdiction in both family law and domestic and family violence. A State family court could be given jurisdiction in other State matters such as CP Act and YJ Act matters.

However, a Queensland family court could only operate as 'one court' if it had jurisdiction in family law matters. For the constitutional reasons given earlier, that can only happen in this way. A State family court could be declared under s 41 of the FLA. This option would not require any Commonwealth legislative amendment, but it would be a major legislative and logistical exercise for the State.

Table 2 summarises the possible jurisdiction of a State family court under option 2 and the legal changes that would be required.

[102] *Commonwealth Powers (Family Law—Children) Act 1990* (Qld) and FL Act, pt VII as extended by s 69ZE.
[103] *Commonwealth Powers (De Facto Relationships) Act 2003* (Qld) and FL Act, pt VIIIAB.

Table 2—Possible jurisdiction of a State family court

Matter	Existing court	Current law	Change required
'Matrimonial causes'	FamCA/FCCA	FL Act, pts 6-8	• Section 41 proclamation • New Family Law Act (Qld)
De-facto matters	FamCA/FCCA	FL Act, pt 8AB	Revoke 2003 reference
Ex-nuptial children	FamCA/FCCA	FL Act, pt 7, div 12, subdiv F	Revoke 1990 reference
Domestic and family violence	Magistrates Court (Qld)	DFVP Act	Amend DFVP Act
Child protection	CCQ	CP Act	Amend CP Act Amend QCAT Act
Youth justice	CCQ	YJ Act	Amend YJ Act

In Western Australia, the FCWA has only the first three categories of jurisdiction. Jurisdiction for DFV restraining orders is exercisable by any WA court, and child protection and youth justice matters are dealt with by the Children's Court (see also fig 2).

Option 2 gives rise to a number of significant policy and practical issues which the Taskforce might think makes it not worth pursuing. These include:

- It would be very ambitious to include all the family-related jurisdictions listed in Table 2 in one court. While there may be common themes relating to families and children in each of those jurisdictions, there are major differences of both substantive and procedural law between the criminal jurisdiction under the YJ Act, the public law aspects of the CP Act, the private law aspects of the FL Act and the mixed public and private law aspects of the DFVP Act.
- If in an attempt to address that issue, a less ambitious range of jurisdiction is conferred on a State family court, a line will have to be drawn between matters within and outside its jurisdiction. Put another way, there will inevitably be related matters in individual cases some of which will be within the one-court jurisdiction and some of which will not.
- There would continue to be some fragmentation, particularly in appeal structures. For example, appeals from a State family court in federal matters under option 2 are to the Full Court of the FamCA.
- The proclamation under s 41(2) of a State family court is a matter for the Australian Government's discretion. In particular, it can only be made if s 41(4) criteria are met. One is that Commonwealth Attorney-General approval is required for appointment of State family court judges. Whether such a requirement should be included in State legislation would be a political question for the Queensland Government.
- It is by no means clear that s 41(1) of the FL Act has any effect now, so long after the commencement of the Act. But whether it has or not, a new State family court would have significant cost implications. Some agreement or other understanding would have to be reached between the Australian and Queensland Governments about how the existing resourcing of the FamCA and the FCCA on one hand and the future resourcing of a State family court would be funded.

- There would also be resource implications for legal service providers such as Legal Aid Queensland (which receives both State and Federal funding depending on which jurisdiction matters fall within).
- In a decentralised State like Queensland, there would be large logistical and resourcing issues. We have not given it detailed consideration, but one option could be a two-tier court, consisting of:
    - State family court judges permanently appointed to high-volume metropolitan and regional centres; and
    - ordinary Magistrates in rural and remote centres who may constitute the State family court (similar to the CCQ).
- As noted above, a State family court supplants some (but not all) of the jurisdiction of the FamCA and the FCCA. We expect that significant issues would arise in effecting a transition of existing jurisdiction from the FamCA and FCCA to a State court or courts. Recent history shows that the status and remuneration of judicial officers in the family law jurisdiction can be a complex matter, even when managed by the Australian Government alone. The transfer of assets, liabilities, infrastructure and budgets would also be a significant undertaking.

5C Jurisdictional reforms – Concluding remarks

Australia's federal system of government places obstacles in the way of creating one unified court with jurisdiction to deal with all the myriad legal problems which may arise out of family relationships. Although at a theoretical level it may be possible largely to overcome those obstacles, the practical reality is that for Queensland to attempt such a process would be an enormous logistical and resource-intensive exercise. The cost of such an exercise could well outweigh the benefits. We think that some (but not all) of the benefits of a one-court model could be realised by more modest and achievable reforms considered below.

6. SPECIALISED COURTS

In this part and part 7, we consider a number of more practical and perhaps realistic proposals that could be implemented whether or not any structural and jurisdictional reform is attempted. Given the importance of the proposal of creating a 'specialised court', we deal with that proposal first and separately. However, the proposals in parts 6 and 7 are not mutually exclusive; any one or more of them could be usefully adopted.

In this part, we consider first the way in which courts presently administer DFV jurisdiction, and then consider a number of possibilities along a spectrum between improved judicial skills and training at one end and at the other, the establishment of a specialised Queensland court that exercises a wide range of State-based jurisdiction relating to children and families.

6A Current state

Ordinary Magistrates who do not have any particular specialisation or extraordinary training have jurisdiction to hear and determine DVO applications.

In our experience the general practice in the Magistrates Courts is that different types of matters are heard separately at different times. For example youth justice matters may be heard on a Tuesday, DVO applications may be heard at 2pm everyday, criminal matters may be listed for callover at 9am every day, and hearings at 9am every day.

Matters are not necessarily heard by Magistrates with particular experience or specialisation. In regional or remote centres, a single Magistrate will have to deal with the full range of matters in the Magistrates Court's jurisdiction. Even where there is more than one Magistrate, they often rotate through each court.

In recent years, there have been numerous specialist courts within the Magistrates Court, including CCQ, the Coroner's Court and others that operated until recently under the Courts Innovation Program such as the Drug Court, the Murri Court and others.

At present any Magistrate can preside in the CCQ. Magistrates simply 'change hats' from the Magistrates Court to the CCQ. The CCQ at Brisbane is the only Children's Court in Queensland that is presided over by a dedicated Magistrate.

The rules, procedures and laws a Magistrate is required to master are vast and it is commonly accepted that criminal matters dominate the Magistrates Court's jurisdiction. Criminal matters are guided by strict rules of evidence, procedure and the burden of proof is generally to prove matters beyond a reasonable doubt.

In contrast, in DFVP Act proceedings the court is not bound by the rules of evidence, or practices or procedures applying to courts of record and the court need only be satisfied of any matter on the balance of probabilities.[104] The new DFVP Rules will further liberalise proceedings.

To our knowledge Magistrates receive no specialised training, and very little support is provided to the court when hearing and determining proceedings pursuant to the DFVP Act.

The LRCWA final report said:[105]

> The Commission explained in its Discussion Paper (and earlier in this Report) that there is considerable concern among people working in the family and domestic violence sector that some judicial officers, lawyers and police do not properly understand the nature and dynamics of family and domestic violence and that this impacts on decision-making. In addition, this lack of understanding may lead to inappropriate comments being made to victims of family and domestic violence and the negative experience may in turn discourage victims from seeking assistance from the legal system in the future.

In what follows, we propose a series of options to address some of those issues. At the risk of oversimplification, the options range along a continuum from training for judicial and other officers to a specialised court that subsumes the existing DFV jurisdiction of the Magistrates Court and the jurisdiction of the CCQ.

---

[104] DFVP Act, s 145.
[105] LRCWA final report, p 183 (reference omitted).

6B Training

In our experience, the legal complexity and emotional difficulty of DFV cases demands superior understanding and skills on the part of judicial officers, police prosecutors, lawyers who represent victims, perpetrators and children, child safety and other public officers, and various support personnel.[106]

A bench book may assist Magistrates with a number of things such as practices, procedures and powers which may ensure adoption of consistent practices statewide. Australian governments are considering the development of a national DFV benchbook.[107]

It must be acknowledged that highly qualified professionals may not readily acknowledge a need for training. However, we believe that the Taskforce should give consideration to the following suggestion.

Proposal 1

The Taskforce might consider a recommendation that the Government undertake a scoping exercise for the professional development of participants in DFV legal processes, concentrating on relevant judicial and government officers in the first instance. The precise scope will depend on which of the following reforms is adopted.

6C Specialised judicial officers

The next step along the continuum is the specialisation of judicial officers within the existing court structure.

The ALRC identified the benefits of specialisation to include:[108]

- greater sensitivity to the context of family violence and the needs of victims through the specialised training and skills of staff;
- greater integration, coordination and efficiency in the management of cases through identification and clustering of cases into a dedicated list, case tracking, inter-agency collaboration, and the referral of victims and offenders to services;
- greater consistency in the handling of family violence cases both within and across legal jurisdictions;
- greater efficiency in court processes;
- development of best practice, through the improvement of procedural measures in response to regular feedback from court users and other agencies; and
- better outcomes in terms of victim satisfaction, improvement in the response of the legal system (for example, better rates of reporting, prosecution, convictions and

[106] ALRC 114, p 900.
[107] Australian Government response to ALRC 114, p 5. Available at http://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyViolence/Pages/default.aspx, accessed 8 January 2015.
[108] ALRC 114, p 72.

> sentencing in the criminal context), better victim safety, and—potentially— changes in offender behaviour.

Parties would benefit from information-sharing (see below) and consistency in the court's approach and expertise. For example, specialised magistrates hearing a DVO application may be better trained to understand the devastating effects of emotional harm on aggrieved persons and children, and may access information in related CPO proceedings. This may ensure that DVOs and CPOs are consistent and complementary. Duplication could be avoided, as where a CPO prevents a parent from having unsupervised contact with a child, and a mirror condition is made in a related DVO.

The Carmody inquiry recommended the specialisation of Children's Court Magistrates.[109] In a similar way, judicial officers could be appointed as specialist DFV Magistrates. In that way, they would exercise their existing jurisdiction under the DFVP Act but with the benefit of specialist professional development as outlined above.

Queensland could appoint specialist 'Domestic and Family Magistrates[110] who are supported by specialised education and training. Specialised magistrates could exercise the existing jurisdiction of the Magistrates Court in relation relates to a range of family matters: DFV, child protection, and those matters over which the FL Act confers jurisdiction on State magistrates courts.

Proposal 2

The Taskforce might consider a recommendation that (assuming Carmody inquiry recommendation 13.8 is implemented) judicial officers be appointed as both specialist Children's Court Magistrates and as specialist DFV Magistrates.

6D A specialised DFV court

A specialised court may limit some of the duplication, inconsistency in orders, provide consistent court procedure and practice, uniform rules of evidence, and allow for information-sharing in related DFV or CP proceedings:[111]

> 19.32 That families may be involved in proceedings in more than one jurisdiction is a recurring theme of the interactions under review in this Inquiry. The need to go to multiple courts increases the possibility of inconsistent orders, and the possibility that people will drop out of the system without the protections they need, thus putting them at risk of further violence and abuse. It also increases costs and stress on families at a very difficult time. Children in particular may find the uncertainty and delay difficult to handle …

The ALRC identified some of the difficulties and experiences in multiple jurisdictions:[112]

> 19.35 The tensions between different parts of the system have been attributed to the different cultures and histories of the different parts of the system. In the United

[109] Carmody report, pp 464-466 (recommendation 13.8).
[110] We refer to Domestic and Family Magistrates, although other titles may also be appropriate.
[111] ALRC 114, p 898.
[112] ALRC 114, p 899-900 (emphasis added).

> Kingdom, Professor Marianne Hester refers to the three 'planets' of domestic violence, child protection and parenting orders:
>
> > Domestic violence work in the UK (and many other countries) has been influenced by feminist understanding of domestic violence as gender based, and tends to see the problem as (mainly) male perpetrators impacting on (mainly) female victims or survivors. The work of child protection services in the UK has a very different history to that of domestic violence, with the family, and in particular 'dysfunctional' families, as central to the problem. Within this approach the focus is on the child and her or his main carer, usually the mother. **These structural factors, with domestic violence and child protection work on different 'planets', have made it especially difficult to integrate practice, and have resulted in child protection work where there is a tendency to see mothers as failing to protect their children rather than as the victims of domestic violence, and where violent male perpetrators are often ignored.** These difficulties are made even more complex where both child protection and arrangements for child visitation post separation of the parents intersect. Within the context of divorce proceedings, mothers must be perceived as proactively encouraging child contact and must *not* be attempting to 'aggressively protect' their children from the direct or indirect abuse of a violent father. **The child protection and child visitation/contact planets thus create further contradictions for mothers and children: there may be an expectation that mothers should protect their children, but at the same time, formally constituted arrangements for visitation may be implemented that do not adequately take into account that in some instances mothers and/or children may experience further abuse.**[113]

There may be benefit in a specialised court dealing not only with DFV matters but also related areas, such as child protection:[114]

> Family violence issues are part of the core work of children's courts. Many children's courts magistrates are also likely to have experience in exercising jurisdiction under family violence legislation in their capacity as magistrates dealing with adults. The benefits of the enhanced jurisdiction are significant. It creates a more seamless system for victims of family violence— including children—to allow them to access as many orders and services as possible in the court in which the family is first involved; removes the need for the child and the family to have to navigate multiple courts; reduces the need for victims of family violence to have to repeat their stories; and consequently reduces the likelihood that people will drop out of the system without the protections they need.

Even if a State family court for Queensland (equivalent to the FCWA) as discussed in part 5B is not created, there may be value in the creation of specialised State courts dealing with DFV and related matters. If constituted within the Magistrates Court, it could exercise certain jurisdiction under the FL Act.

Queensland could create a specialised 'Domestic and Family Court'[115] consisting of Domestic and Family Magistrates who are supported by specialised education and training.

---

[113] M Hester, 'Commentary on H Douglas and T Walsh, "Mothers, Domestic Violence and Child Protection"' (2010) 16 *Violence Against Women* 516, 517.
[114] ALRC 114, p 61.
[115] We refer to a 'Domestic and Family Court', although other titles may also be appropriate such as Family Violence Court, or Family Violence and Children's Court.

A specialised court would have jurisdiction in relation relates to family matters: DFV, the existing CCQ jurisdiction (including child protection) and those matters over which the FL Act confers jurisdiction on State magistrates courts (compare table 2).

A specialised court or specialised magistrates would shift the focus from criminal matters to areas where awareness and consideration of social work principles are an important consideration and the strict rules of evidence and procedure need not be followed.

PStatutory or non-statutory

An issue is whether a specialised court should have a statutory basis. There are presently no stand-alone legislated specialised DFV courts in Australia.[116] Previous specialist courts in Queensland have operated on both a statutory and non-statutory basis. There are advantages and disadvantages of both models. The Government would need to exhaustively consider those in making policy decisions, but for present purposes the advantages and disadvantages are summarised as follows.

A *statutory model* gives legal certainty and allows consistent and uniform rules to be set. That can be a significant consideration particularly when new ways of administering justice are proposed, and relatively new insights into social problems are involved. Importantly, it allows existing jurisdictions with specific statutory bases (such as child protection and youth justice) to be exercised by the one court. It can also involve special powers and procedures (such as the existing CCQ) that are not available to ordinary courts.

Conversely, a *non-statutory model* gives more flexibility, which will be important particularly in regional and remote areas where resourcing and other implications may prevent judicial officers from specialising exclusively in domestic and family matters. On the other hand, it cannot exercise existing jurisdictions with specific statutory bases. Also, it must operate within the statutory powers and procedures of an ordinary court, and this can limit its flexibility.

The cost of setting up a specialised Domestic and Family Court, whether statutory or non-statutory, may present a barrier. However, we would expect that transfer of and utilisation of existing resources would be able to occur which may significantly minimise the costs. Also costs and resources could be spread across related jurisdictions, such as child protection.

In the case of regional courts where workloads and resources may make it difficult to justify permanently convening a specialised court, local Magistrates could nevertheless participate in specialised training and if necessary transfer DFV proceedings to a nearby Domestic and Family Court. Conversely, specialist magistrates could conduct proceedings remotely via electronic means, or a pool of domestic and family magistrates could travel to hear and determine DVO applications in regional areas.

The breadth of jurisdiction of a Domestic and Family Court could be expanded by encouraging parties to consent to the exercise of the Queensland Magistrates Court of jurisdiction to make parenting orders. (Where the parties do not consent to the Magistrates

[116] ALRC 114, p 71. As noted, the WA FVC has no statutory basis.

Court exercising jurisdiction, the Court is required to transfer proceedings to the Fam CA or the FCCA.) Consent could be sought as part of an integrated response model. The incentive for perpetrators to consent would be the opportunity to work towards rehabilitation through a program, acknowledgement of their attempts to take responsibility, minimisation of child protection intervention, and safe child contact could take place.

Late in the drafting of this advice, we saw a report that the effectiveness of the Western Australian FVC had been questioned. That serves to emphasise that any specialisation proposal in Queensland must be considered carefully beforehand and subject to proper evaluation.

Proposal 3

The Taskforce might consider a recommendation that the Government consider piloting or establishing a specialist Domestic and Family Court (by that or another name) to exercise the existing jurisdiction of the Magistrates Court under the DFVP Act and the FL Act and some or all of the existing jurisdiction of the CCQ.

7. OTHER REFORM PROPOSALS

In this part we consider alternative reform proposals which could be adopted in addition to, or separately from, the specialisation proposals in part 6. Of the many proposals that have been made previously, we have selected those which, in our view, are likely to have the most impact for the investment.

7A Improved information-sharing

Good quality and timely interagency information-sharing is a common theme in the other jurisdictions, including those we examined above in part 4. ALRC 114 said:[117]

> Throughout the course of this Inquiry, the Commissions have heard about the problems that arise because of the gaps in information flow between the family law system, the family violence system and the child protection system. In many circumstances, important information is not being shared among courts and agencies and this is having a negative impact on victims, impeding the 'seamlessness' of the legal and service responses to family violence.

There is provision already for family law courts to make orders requiring information from relevant agencies in relation to suspected child abuse or children who may be exposed to family violence.[118] For example, the Department of Communities, Child Safety and Disability Services may be required to produce information in relation to a respondent parent who has a history with the Department. The Department would then be required to respond by providing a report or appearing in court and providing information. However, the process is time-consuming and requires a return court appearance after the order is issued.

[117] ALRC 114, p 78.
[118] FL Act, s 69ZW.

Whilst information is currently available case-by-case in that way, more systematic information-sharing protocols or memorandums of understanding may assist in information exchange nationally between the FamCA, the FCCA, the CCQ, Magistrates Courts, and government departments that may have information relevant to proceedings in various courts. The "Magellan" list in the FamCA of matters involving allegations of child abuse has protocols for receipt of information from other Government agencies, and provides guidance as to how this may work.

Professor Chisholm has reported to the Australian Government on improving information-sharing in the family law system (mainly between child protection and family law systems).[119] While it does not primarily concern DFV matters, any further work should have regard to his report.

The information accessible by a court and parties in any proceedings where domestic violence is a relevant issue may be improved by:

- a central point of contact such as a liaison officer for each department, court and law enforcement body, and/or
- a database from which authorised persons could access information such as the status of related proceedings, interim or final orders made, and any convictions and sentencing of persons found in breach of DVOs without the need for a subpoena or court order.

Any provisions with respect to information-sharing should provide appropriate safeguards to ensure privacy and that those disclosing information are afforded appropriate protections.

The CP Act contains a number of provisions in relation to information sharing. It may be appropriate for similar provisions, with necessary amendments, to be inserted into the DFVP Act. For example, s 159M of the CP Act provides for the giving of information by prescribed entities and service providers. Section 159N grants the chief executive or an authorised person power to request information from a prescribed entity.

Proposal 4

The Taskforce might consider a recommendation along the lines of ALRC 114 recommendation 29-2:[120]

The Australian, state and territory governments, in establishing or further developing integrated responses to family violence, should ensure ongoing and responsive collaboration between agencies and organisations, supported by:

(a) protocols and memorandums of understanding;

(b) information-sharing arrangements;

(c) regular meetings; and

[119] R Chisholm (2013), *Information-sharing in family law and child protection: Enhancing collaboration* (Attorney-General's Department, Canberra). Available at http://www.ag.gov.au/FamiliesAndMarriage/Families/Documents/Information-sharing%20in%20family%20law%20and%20child%20protection%20-%20Enhancing%20collaboration%20-%20April%202012.pdf, accessed 22 January 2015.

[120] ALRC 114, p 44.

(d) where possible, designated liaison officers.

7B Establishment of a coordinated agencies response

A key aspect in other jurisdictions is the establishment of an overarching body armed with interagency co-operation and involvement.

In Tasmania and New Zealand, the Victim Safety Response Team (***VSRT***) and FVIARS respectively coordinate the response with key stakeholders. The parameters are clearly the safety and wellbeing of victims and their children.

We understand that the FCWA (not just the FVC) also has a child protection worker collocated to assist with information sharing.

It would seem sensible that as police are often the 'first responders' and are on the ground in even rural and remote locations, they should convene such bodies. They can readily access information including criminal histories and DFV callouts, but they also have coercive powers to remove an offender and take a child into protective care. That said, DFV services and Legal Aid also often play a significant first-responder role. Apart from the Tasmanian SAH model described earlier, other States have also used varying agency coordination models.

The continuity of contact by one agency is clearly another key factor. Too often, once the immediate risk is addressed, the victim and children are not followed up with the kind of "wrap-around" service which Tasmania provides.

In Queensland, the mechanism adopted to give effect to a co-ordinated agencies response should be provided for legislatively, to give it appropriate recognition and imprimatur. Also it would include statutory protections for exchange of information between agencies.

A precedent already exists in the CP Act, ch 5A, pt 3 which gives statutory recognition to the purpose and responsibilities of SCAN teams. The concomitant exchange of information is provided for in part 4. There was criticism of the functionality and effectiveness of the SCAN teams in the Carmody inquiry[121] and those should be addressed, so that any model under the auspices of the DFV umbrella is an improved version.

Alternatively, the Taskforce could consider the option of an integrated response that includes a family dispute resolution process for DFV matters. The Commonwealth funded a short pilot of a model developed by Rachael Field and the Women's Legal Service between 2011 and 2013 which could form the basis for such a response.[122]

Proposal 5

The Taskforce might consider a recommendation that the Government pilot or implement an agencies coordination model based on the SCAN teams, possibly chaired by the Queensland

[121] Carmody report, pp 101-103 and 546-547.
[122] R Kaspiew, J De Maio, J Deblaquiere & B Horsfall (2012), *Evaluation of a pilot of legally assisted and supported family dispute resolution in family violence cases* (AIFS, Melbourne).

Police Service, to coordinate the response of relevant government agencies to incidents of DFV, with the aim of better protecting the safety and well-being of victims and their children.

7C Evidentiary requirements and protecting witnesses

ALRC 114 said:[123]

> To improve the experience of victims of family violence in the context of family violence proceedings, the Commissions recommend, in Chapter 18, that state and territory family violence legislation should prohibit the respondent in protection order proceedings from personally cross-examining any person against whom the respondent is alleged to have used family violence. Further, where a decision is made not to grant an exclusion order against the person who has used family violence, even though such order has been sought, the Commissions recommend in Chapter 11 that a court should be required to give reasons for declining to make the order. Transparency of decision- making is an essential ingredient of fairness.

A number of initiatives may assist in improving the way evidence is given in proceedings for applications, variations, or revocations for DVOs and related breaches.

> Most states and territories have enacted regimes for the comprehensive pre-recording of evidence for child victims of sexual assault (and those who are cognitively or intellectually impaired). The Commissions recommend that similar provisions should be available in relation to the evidence of all adult complainants of sexual assault, to minimise the negative experiences of complainants of sexual assault in the criminal justice system where this can be done without prejudicing defendants' rights to a fair trial.[124]

As noted earlier, the DFVP Act affords a number of protections, including:

- a child can not be compelled to give evidence;[125]
- protected witness orders including that a protected witness may give evidence by way of audio-visual link;[126]
- restrictions on cross-examination in person;[127]
- the rules of evidence do not bind a court in DFVP Act proceedings.[128]

We also note below the impending commencement of the new DFVP Rules.

We suspect that these provisions may be under-utilised or misunderstood. Regular training may be considered mandatory both through lawyers' continuing professional development and training of police prosecutors, judicial officers, court staff and support staff.

In breach proceedings involving allegations of serious criminal offences, for example sexual assault or serious assaults, consideration may be given to allowing pre-recording of a

[123] ALRC 114, p 63.
[124] ALRC 114, p 70.
[125] DFVP Act, s 148.
[126] DFVP Act, s 150.
[127] DFVP Act, s 151.
[128] DFVP Act, s 145.

victim's evidence in the way that a child's evidence may be pre-recorded in certain circumstances under the *Evidence Act 1977*.

The Domestic and Family Violence Protection Rules 2014

On 28 February 2015 the new *Domestic and Family Violence Protection Rules 2014* will commence. They will apply to courts and registries in relation to DFVP Act proceedings. The new rules will not be applicable to appeal proceedings and the *Uniform Civil Procedure Rules 1999* will apply to an appeal under the DFVP Act.

The new rules may have a positive effect in several ways including consistency in how proceedings are conducted and parties' understanding of the rules. Also having specific rules may assist unrepresented parties, particularly given that they rules are only 43 pages in length and therefore easier to navigate.

We will not summarise the rules in any detail, but we note that they provide broad discretion to the court as to compliance with technicalities and compliance with form.

The rules 'are to be applied by DFVP courts with the objective of avoiding undue delay, expense and technicality and facilitating the objects of these rules and the DFVP Act.'[129] Rule 6 allows the court to waive compliance with a rule and that failure to comply with a rule does not render a document or a step taken or order made in a proceeding a nullity. Rule 6 may apply where an unrepresented person's understanding of court process and procedure may be understandably limited. For example the court may waive compliance with the requirements for affidavits at rule 35.

In ALRC 114 it was noted that:[130]

> Repeated contact with different parts of the legal and service systems may also require women and children who are the targets of violence to have to tell their story repeatedly.

Rule 33 of the new DVFP Rules provides for evidence or an affidavit used in an earlier proceeding, an earlier stage of the same proceedings or in a cross application to be relied upon if it is relevant and the court gives its permission to be relied upon.

Rule 33 may allow a party to retell their story told in an earlier proceeding without having to redraft a further affidavit that may have been used in an earlier proceeding. Thus, a party might rely on a police statement from a criminal proceeding or on an affidavit in a child protection proceeding. Allowing a party to file and easily use affidavits or evidence in earlier related proceedings may prevent a party from having to draft numerous documents and repeatedly tell their story in a different form.

The new rules are a positive step forward and appear to acknowledge that DFVP Act proceedings are distinctly different from ordinary litigation. The rules will require monitoring to ensure that they have a positive effect on how proceedings are conducted and

[129] *Domestic and Family Violence Protection Rules 2014* rule 5(2).
[130] See ALRC 114 at p 899 (paragraph 19.33).

that they are applied consistently. It is important that judicial officers, practitioners and court staff are made aware of the new rules and their application.

Proposal 6

The Taskforce might consider recommendations that:

- a victim's evidence be pre-recorded in the way that a child's evidence may be pre-recorded under the *Evidence Act 1977*, pt 2, div 4A.
- the Government consider educational or promotional material for practitioners and self-represented litigants to make them aware of the DFVP Act provisions for the protection of parties and witnesses.
- the Government monitor and review the practical operation of the new *Domestic and Family Violence Protection Rules 2014*.

7D Other matters

There are numerous other possible reforms that could be implemented. We have focussed on a limited number of achievable initiatives. However, we note three other initiatives that may be worthy of consideration.

The alternative sentencing options in Western Australia have much to commend them. Anecdotally Magistrates in Queensland have commented upon the lack of options currently available to them for breaches of orders.

Similarly, the collocation of child safety and other relevant personnel would be advantageous. It would assist with appropriate access to information, ensuring that courts receive information as to proceedings involving the family in other courts and agencies.

In New Zealand, the legislation requires courts in making primary orders, rather than in the dealing with breaches, to assist applicants and respondents. There are often multiple DVOs between the same applicants and respondents, and they are often frequent users of other government support services. To assist at the "front end" with such programs would be commendable and probably cost-effective, and enquiries should be made with the relevant New Zealand authorities.

8. FAMILY LAW ACT ISSUES

We have considered earlier (part 3C) the provisions of the FL Act that are relevant to DFV issues in Queensland. Those provisions include part VII (Children). We have noted the general effect of the SPR Amendment Act and the FV Amendment Act.

It is not necessary or possible to thoroughly examine the provisions of part VII. However, both the SPR Amendment Act and the FV Amendment Act affect how DFV is managed in the family courts, and we briefly consider their effects below.

The Australian Government, through the Attorney-General's Department and the AIFS, has commissioned a large volume of academic and practical research and analysis, and some of

that work is ongoing. Obviously, amendments to the FL Act are a matter for the Commonwealth Parliament and not the Queensland Government. Nonetheless, we identify below some issues in the operation of part VII that the Taskforce may think worth raising with the Commonwealth. We recognise that with the available time and resources, it may not be possible for the Taskforce to give detailed consideration to these issues, but they could perhaps be raised for further consideration in future law reform processes.

8A Part VII: Equal shared parental responsibility

Professor Patrick Parkinson[131] provides a thoughtful history of the reforms in Australia largely following the lead of overseas jurisdictions which have evolved from divorce reform in the late 1960s and early 70s. The idea was that:[132]

> … dead marriages should be given a decent burial and it should be possible for the parties to get on with their lives and start afresh once decisions have been made about financial matters and custody".

Typically the Courts would order custody to one parent, usually the mother, and grant access or visitation to the other. Custody included the rights and powers that were necessary for the upbringing of the child including the right to make decisions about education and religion. He argues that the concept has now evolved into the "indissolubility of parenthood", following the advent of the *Children Act 1989* in England and Wales and similar legislation in other European jurisdictions:

> … in all of these jurisdictions, the effect of legislative reforms has been that legal divorce ends relationships as spouses but not as parents.

In Australia, reforms in 1995 and the SPR Amendment Act in 2006 were broadly consistent with international trends.

The Hull Committee (which instigated the SPR Amendment Act) wanted to:[133]

> … shift the family law system away from what it saw as the problem, namely that there was effectively a presumption, or default position, to the effect that children should be with one parent, normally the mother, for most of the time, and with the other parent, normally the father, for alternative weekends and half the school holidays (the 80:20 outcome …).

The SPR Amendment Act created a presumption of equal shared parental responsibility.[134] However, that did not apply if there were reasonable grounds to believe that a parent of the child (or a person who lives with the parent) has engaged in child abuse or DFV.[135] The SPR Amendment Act also reformed the way in which the best interests of the child are taken into account in making part VII parenting orders (see part 8B below).

---

[131] P Parkinson (2013), 'Violence, Abuse and the Limits of Shared Parental Responsibility', *Family Matters* No 92, pp 7-17.
[132] ibid, p 8.
[133] R Chisholm (November 2009), *Family Courts Violence Review* (Attorney-General's Department, Canberra) (***Chisholm report***), p 123. Available at http://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyViolence/Documents/Family%20Courts%20Violence%20Review.pdf, accessed 7 January 2015.
[134] FL Act, s 61DA(1).
[135] FL Act, s 61DA(2).

Professor Parkinson notes that the effect of the SPR Amendment Act was not always understood by the general population:

> … there is no presumption of shared parenting in Australian law, and still less equal time. The most that the legislation imposes by way of presumed outcome is a presumption in favour of equal shared parental responsibility *in the absence of violence or abuse*.[136]

Both Parkinson and Chisholm refer to *Goode and Goode*[137] for the proposition that if parental responsibility is to continue to be shared then there is at least strong encouragement in the legislation to consider shared parenting and to do so positively.

Parkinson argues that the transformation of the law of parenting post-separation has not occurred without serious resistance in the main from women's groups and feminist advocates. One of the main arguments has been the more that legislation supports and encourages the involvement of non-resident parents, the more it exposes women to the risks of violence and abuse.[138] He contends that there is simply:[139]

> … no evidence for a linear relationship between the time that non-resident parents spend with their children and a greater incidence of post-separation violence towards the primary care giver.

However, this observation probably discounts the high incidence of fear and anxiety which existed amongst many female litigants in the family law system as to raising issues of violence. That raises the risk that they may not be seen as a "friendly parent", irrespective of serious issues relating to safety. However, the so-called friendly parent criterion[140] was repealed by the FV Amendment Act.

There may be a number of reasons why good parenting can be compromised by matters other than violence and abuse. Chisholm cites mental health and the special needs of a severely handicapped child.[141] The litigation is focussed on the violence rather than what is in the child's best interests.

Despite the FV Amendment Act's recalibration of shared parental responsibility in cases of DFV or abuse, our experience is that the courts and litigants still struggle to reach practical and clear outcomes in cases where both Commonwealth family law and State DFV jurisdictions are invoked.

---

[136] P Parkinson (2013), 'Violence, Abuse and the Limits of Shared Parental Responsibility', *Family Matters* 92: 7-17 at p 11 (emphasis added).
[137] [2006] FLC 93-286; 36 Fam LR 422; 206 FLR 212 .
[138] P Parkinson (2013), 'Violence, Abuse and the Limits of Shared Parental Responsibility', *Family Matters* 92: 7-17 at p 11, referring to Jaffe & Crooks (2004).
[139] Ibid p 12.
[140] FL Act, s 60CC(4)(b).
[141] Chisholm report, p 128.

8B Best interests of the child: Parental involvement versus risk of harm

In making parenting orders under pt VII, a court must regard the best interest of the child as the paramount consideration.[142] In determining the child's best interests, the court's primary considerations are:[143]

> (a) the benefit to the child of having a meaningful relationship with both of the child's parents; and
>
> (b) the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

As Brown J put it:[144]

> The provisions in the Family Law Act … relating to children rest on twin pillars. The first is the importance to children of having a meaningful relationship with both parents; the second is the need to protect children from physical and psychological harm.

The SPR Amendment Act did not intend to subordinate the safety of the child to the child's meaningful relationship with their parents.[145] However, a query been raised[146] as to whether the converse should apply – that is that the child's safety is the more important consideration. It certainly has been the perception of the judiciary that since the SPR Amendment Act, there has been an increase in allegations of DFV, child abuse, substance abuse and mental health issues in cases requiring a judicial determination.[147]

Further, there is a perception that because the FL Act deals in more detail with the 'pillar' of parental involvement, that pillar is 'taller' than the protective one.[148] The AIFS evaluation 2009 found that legal and other professionals have significant concerns that protection from violence does not get the same level of focus as parental involvement.[149]

Of course, the AIFS evaluation pre-dated the FV Amendment Act. The FV Amendment Act inserted s 60CC(2A), which requires the court, in applying the two primary considerations under s 60CC(2), to give 'greater weight' to the need to protect the child from harm. That fortifies s 60CG which requires the court, so far as it can consistently with the best interests of the child being paramount, to ensure that a parenting order is consistent with any DVO and does not expose a person to an unacceptable risk of DFV.[150]

However, the presumption of shared parental responsibility remains in place. Parkinson says:[151]

---

[142] FL Act, s 60CA.
[143] FL Act, s 60CC(2). There a numerous additional considerations under s 60CC(3).
[144] *Mazorski v Albright* (2007) 37 Fam LR 518 at 526, cited in the Chisholm report, p 127.
[145] Family Law Amendment (Shared Parental Responsibility) Bill 2005, Explanatory memorandum, p 14.
[146] Family Law Council (December 2009), *Improving Responses to Family Violence in the Family Law System: An advice on the Intersection of Family Law and Family Law Issues*, p 50.
[147] Ibid, p 51.
[148] Chisholm review, p 130.
[149] AIFS evaluation 2009, pp 235-236
[150] See also FL Act ss 67Z and 67ZBA.
[151] P Parkinson (2013), 'Violence, Abuse and the Limits of Shared Parental Responsibility', *Family Matters* 92: 7-17 at p 11.

> The 2011 amendments to the Act modify this emphasis [ie, the emphasis of the 2006 reforms] only a little. The requirement to consider equal time and substantial and significant time remains, but in the evaluation of what arrangements are in the best interests of the child, greater weight is to be given to the need to protect children from harm than to the benefit to the child of having a meaningful relationship with both parents.

The AIFS evaluation 2009 identified through surveys of legal practitioners four themes relating to the balance between the principles of protecting children from harm and maintaining meaningful involvement with each parent:[152]

(i) the manner in which the shared parenting philosophy of the SPR Amendment Act is understood, that is, the failure to understand the impact of family violence;

(ii) the systemic failure which inhibited appropriate investigation responses to family violence;

(iii) the aspects of the legislative framework that influenced the decisions that are being made about raising concerns;

(iv) concern amongst legal sector professionals that allegations are made to gain tactical advantage over fathers in places where they are pursing shared care.

It is not possible to examine those themes in detail here. It is sufficient to note that the effects of the SPR Amendment Act have been significant and are the subject of continuing debate. The debate has highlighted complexity and confusion in the way that family law orders intersect with DVOs, and that complexity and confusion has not been resolved by provisions like ss 68P and 68R of the FL Act. It is also important to note that the operation of the twin pillars in the DFV context have to some extent been clarified by the FV Amendment Act.

Nevertheless, the Taskforce could consider recommending that the Government seek amendments to the FL Act both at the general level of equal shared parental responsibility and at the specific level of the interaction between parenting orders and DVOs. The four themes identified in the AIFS evaluation 2009 could inform that approach.

8C Domestic and family violence and the FL Act

There are a number of strands which percolate through the writing and research on the problematic issues in part VII and its interplay with DFV.

One is a shift in perspective of the objects of part VII and the attribution of parental responsibility and the link with "time" with each parent. A second is about how allegations of DFV should be relevant to parenting orders. In that context, the Australian Government's policy response to ALRC 114 and the other reviews we have mentioned is significant.

[152] AIFS evaluation 2009, p 245.

Refocus of part VII

Professor Chisholm makes detailed recommendations about the focus of part VII and the attribution of parental responsibility. In his view, it would be desirable to:[153]

- separate the decisions about parental responsibility from provisions about living arrangements; and
- revise the formulation of the considerations relevant to determining the child's best interests so that they are more clearly based on promoting the child's interests rather than accommodating notions of parental rights.

In essence there would be no default provision or presumption. He argues cogently that:[154]

> A proper consideration of the 'paramount consideration' principle requires the court to consider equal time, as well as other possibilities, in determining what is likely to be best for the child. The court is not limited to any particular arrangement, but must consider what arrangement will be best for the child in each particular case. The difficulty with the present formula is that the specific requirement that the court should consider one particular outcome, namely equal time (and if not, substantial and significant time) seems to have given many people the impression that there is a *presumption* in favour of equal time, in cases where parents have not forfeited their entitlements by reason of violence or abuse.

He continues that there are difficulties inherent in an approach which:[155]

> … singles out a particular outcome for special mention, whether that outcome is equal time in non-violence cases or – as in New Zealand – no contact in cases of violence.

Professor Chisholm's recommendations are part of a suite of alternative proposals which vary from a restrained amendment in 3.5 if the more sweeping amendments are not adopted.[156] Again, space does not permit a detailed examination here, but they (and the Australian Government's response to them) should inform any approach the Queensland Government might make to the Australian Government seeking amendments to part VII.

Making allegations of harm and violence relevant to parenting orders

Professor Parkinson says that much Australian legislation focuses on a *history* of DFV rather than *current* safety concerns.[157] He argues that any incident of DFV, however long in the past, could be sufficient to rebut the presumption of equal shared parental responsibility.[158] It has other flow-on effects such as the exemption from the requirement for a section 60I certificate, the requirement of the Court to take certain steps promptly and the consideration of DVOs that may no longer be current.[159]

---

[153] Chisholm review, p 131.
[154] Chisholm review, p 131.
[155] Chisholm review, pp 131-132.
[156] Chisholm review, pp 132-135.
[157] Parkinson (2013), 'Violence, Abuse and the Limits of Shared Parental Responsibility', *Family Matters* 92: 7-17 at p 12.
[158] Parkinson, p 12; FL Act, s 61DA.
[159] FL Act, s 60CC(3).

He refers to AIFS data which indicate that a history of DFV did not necessarily impede friendly or cooperative relations between parents. For instance, 16 % of mothers who reported being physically hurt by their ex-partner during the relationship reported friendly relationships at the time of the interview. A further 24 % reported having a cooperative relationship. Conversely, a parent who had current safety concerns for themselves or their child was much more likely to report difficult relationships with the other parent.[160]

Parkinson contends that the then-s 61 of the *Care of Children Act 2004* (NZ) offers a clearer focus. Under that provision the issue is 'whether a child will be safe if a violent party provides day to day care for or has contact other than supervised contact with the child.'[161] He argues that although the FL Act is not as well focussed as the New Zealand provision, the FV Amendment Act may make clearer how DFV should be taken into account.[162]

He supports a bifurcated approach so that safety is relevant in two ways. First, in assessing what is in the best interests of the child, greater weight is given to the need to protect the child from harm than the benefit to the child of having a meaningful relationship with both parents. Secondly, parental safety is relevant under s 60CG which, as we have noted, provides that in considering parenting orders, the court must, to the extent that it can consistently with the child's best interests being the paramount consideration, ensure that the order does not expose a person to an unacceptable risk of DFV.

Where there is a present risk of violence towards the primary carer, but the child will nonetheless benefit from spending time with the other parent, measures are required so far as possible to ensure that the parents do not meet or other protective measures are taken:[163]

> Focussing on the two priorities of protection will, it is to be hoped, provide adequate guidance on when a sole parental responsibility order together with restrictions on contact would be appropriate. However, the importance of these two priorities might be missed in the way the legislation is currently drafted because they are placed in different sections of the Act and the Court is required to consider so many other aspects of the history of violence in an unfocussed way.

Parkinson says that a history of DFV remains important even when there are no safety concerns. While the Act gives little clarity about why, he points out a number of bases for the relevance of a history of DFV:

- A history of violence is an important issue in exploring the children's attitude towards living with a parent or having contact with a parent who is violent.
- A child's fear of the violent parent and concern about the parent's unpredictability are relevant, as are the ways in which witnessing the violence has affected them.[164]
- A history of coercive controlling violence is particularly relevant in determining parenting arrangements after separation, eg, in assessing the mother's capacity for parenting and her attitude towards contact between the child and the other parent.

[160] See AIFS Evaluation 2009, op cit, pages 31-33.
[161] Parkinson, p 13.
[162] Parkinson, p 14.
[163] Parkinson, p 14 (emphasis added).
[164] Parkinson, p 14 referring to Holt, Buckley & Whelan (2008) and Woolf and others (2003).

> The impacts may be long-term for women who have experienced subjugation and control, and may have greater lasting impact than the physical abuse.

- Mothers may be "misdiagnosed as suffering from various psychopathologies, even though their deficiencies and problems are situational and reactive to the experience of abuse."[165]
- The experience of coercive controlling violence may also explain the parent's resistance to regular contact between the children and the father, even if it can be safe enough, or a desire for relocation.
- In particular, that type of coercive control violence against an intimate partner "is a window to the soul and reveals much about the character of the person."[166]

A further aspect is assessing the use of controls such as contact centres. Contact centres are clearly helpful where they are assisting the parents to "self-manage", so that they may no longer need the services of the centre (because they have built enough trust and confidence in the other parent to move beyond using the centre). However, the services offered by contact centres should be critically examined where they continue to be used because of ongoing concerns about safety. In such circumstances, the notion that the parents can be assisted towards a healthy co-parent relationship is often likely to be unrealistic. Parkinson suggests that "Services should provide life-support to a parent-child relationship only for a relatively limited period".[167] Parkinson concludes:[168]

> Cases where there is a risk of serious harm to the child or a primary care-giver, relationships that have intractable conflict, or where the child has begun life with a single mother, are all situations where the old sole custody norm is likely to be more appropriate than trying to preserve an ongoing co-parenting relationship.

The New Zealand legislation was amended in March 2014 to clarify ways in which DFV should be taken into account. For instance, s 5A provides that if an application is made for guardianship or a parenting orders and a final DFV protection order has been made, the court must have regard to whether the DVO is in force, the circumstances in which it was made and any written reasons given for making it.

Further, there are specific powers in the *Care of Children Act* to provide for supervised contact. If in making a parenting order a court is not satisfied that the child will be safe with that person, it may order that contact be supervised. Further, an independent children's lawyer can be appointed when there are concerns for the safety or wellbeing of the child.

Ultimately, Parkinson advocates a narrower focus on how DFV is addressed in making parenting orders, which is a less proscriptive approach than that of Professor Chisholm.

[165] Parkinson, p 14.
[166] Parkinson, p 15.
[167] Parkinson, p 15.
[168] Parkinson, p 16.

Australian Government responses

As noted, the Australian Government is primarily responsible for the administration of part VII of the FL Act, and its response to previous and pending reviews and research will have significant effects on the administration of State DFV legislation.

In June 2013 the Australian Government provided a response to ALRC 114.[169] Of the 186 recommendations, 56 were identified for the Commonwealth to respond to, 24 are being addressed in a national response through the Standing Council on Law and Justice, nine recommendations are being addressed through a National Justice CEOs project, and the State and Territories have committed to responding to the remaining 97 recommendations that related directly to them.

In respect to recommendations for legislative amendments to the FL Act, the Australian Government has implemented a number of legislative reforms (particularly through the FV Amendment Act), is working on other proposed legislative reforms, and has accepted a number of the recommendations in principle. For example:

- Recommendation 6-4 was that a new definition of family violence be adopted. The FV Amendment Act provided a new definition of 'family violence' in the FL Act, s 4AB which is consistent with the ALRC 114 recommendation.
- Recommendation 16-4 was that s 60CG of the FL Act be amended to provide that the court should give primary consideration to protection of the person over other factors relevant to the child's best interests. The Australian Government accepted the recommendation in principle, noting that the FV Amendment Act inserted s 60CG(2A) which provides that the court is to give greater weight (not 'primary consideration') to that factor.
- Recommendation 17-1 that s 60CC(3)(k) be amended was accepted and was implemented by the FV Amendment Act.
- Recommendations 17-3 and 17-4 in relation to injunctions for personal protection were noted in a way that suggests they may not be implemented.
- Recommendation 17-6 for the repeal of s 114(2) of the FL Act was accepted but has not yet been implemented.
- Recommendations 22-1 and 22-4 for the amendment of ss 10D, 10E, 10H and 10J of the FL Act relating to the confidentiality and admissibility of family counsellors and family dispute resolution communications were accepted but have not yet been implemented.

We note that the AIFS is presently evaluating the FV Amendment Act. The results of the evaluation will no doubt be relevant to the Taskforce's deliberations, although they are not available at the time of writing.

[169] Available at http://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyViolence/Pages/default.aspx, accessed 8 January 2015.

9. CONCLUSION

The consistent themes in the research, various review reports and in common experience are the pervasive nature of DFV, recidivism and its causes, and the intensive and sometimes inefficient and uncoordinated involvement of multiple Government departments and NGOs. These themes demand a more focussed and effective response from all governments. The practical reality of a justice system in a decentralised State like Queensland call for serious consideration of DFV initiatives like those in place in Tasmania and Western Australia.

In our opinion, the benefit of ambitious jurisdictional reforms may be outweighed by the cost and time that would be required. Referring State jurisdiction to the Commonwealth courts would address some issues but may result in less effective delivery of justice services, particularly in rural and remote areas.

On the other hand, while establishing a State family court like that of Western Australia would have some benefits, it would not necessarily address all the duplication, gaps and inconsistencies between the jurisdiction of State and federal courts. It is not coincidental that such reforms have been considered by numerous review bodies outside Western Australia in the past, but never implemented. That may be explained by the numerous logistical, resourcing, constitutional and political issues.

Rather, we think the more cost-effective way to proceed is to pursue more immediate, practically focussed reforms to the existing system. Our principal proposal is for specialisation, and we have proposed a number of alternatives along a continuum from training for judicial and other officers to a specialised court that subsumes the existing DFV jurisdiction of the Magistrates Court and the jurisdiction of the Childrens Court of Queensland.

We have also made other proposals, none of which are mutually exclusive, for improved information-sharing between courts and other agencies and improved coordination of agencies' responses.

We have also noted the effect of the parenting provisions of the FL Act on DFV proceedings in State courts. We have identified some areas in that Act for possible reform if the Taskforce were minded to recommend that the Queensland Government approach the Australian Government to seek amendments.

With compliments,

Kathryn McMillan QC
Chambers

A D Keyes
Senior Deputy Crown Solicitor
for **Crown Solicitor**

27 January 2015