REVIEW OF THE

DOMESTIC AND FAMILY VIOLENCE ACT

ISSUES PAPER

April 2015

Legal Policy
Department of the Attorney-General and Justice
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Submissions Close 13 July 2015

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TABLE OF CONTENTS

1 INTRODUCTION

On 15 February 2011 the Australia Government published the *National Plan to Reduce Violence against Women and their Children 2010-2022* (the National Plan), providing a framework for action by the Commonwealth, state and territory governments under the 12 year strategy to reduce violence against women and their children.

In line with its commitments under the National Plan, and in conjunction with the Australian Government, the Northern Territory Government established the *Domestic and Family Violence Reduction Strategy 2014-17: Safety is Everyone's Right* (the Strategy). The Strategy is directly aligned with the objectives and priority areas of action under the National Plan and the Northern Territory Government's *Framing the Future* blueprint.

At the Strategy's core is an integrated response by Government and non-government agencies to increase the safety of victims and their children, reduce rates of intergenerational trauma caused by exposure to domestic and family violence, increase accountability of perpetrators and establish integrated service delivery systems that are sustainable and adaptable.

Lead agencies implementing the Strategy are the Northern Territory Department of the Attorney-General and Justice, The Department of Community Services and Police, Fire and Emergency Services. Coordination and support of the implementation of the Strategy is through the Domestic Violence Directorate of the Department of the Attorney-General and Justice.

One of the key components of the Strategy is the review of all domestic and family violence related legislation in the Territory, in particular the *Domestic and Family Violence Act 2007* (the Act).

2 CONSULTATION

The Attorney-General and Minister for Justice, the Hon John Elferink MLA, is calling for submissions regarding possible improvements to the Act, its operation and its interaction with related Territory legislation such as the *Care and Protection of Children Act* and the Criminal Code of the Northern Territory.

Any comments, issues, observations and suggestions are welcome.

2.1 Process

Policy options and recommendations for change may be further developed by the Department of the Attorney-General and Justice from the submissions received. It is intended to provide a report to Government on those issues.

Further consultation (either broad or targeted) may be necessary, depending on the level of complexity or the scope of any proposed changes to the Act.

2.2 How to make a submission

Anyone can make a submission. It can be as short as an informal letter or email, or it can be a more substantial document. Electronic submissions should be provided whenever possible.

Submissions should be sent to:

Director, Legal Policy
Department of the Attorney-General and Justice
GPO Box 1722,
DARWIN NT 0801

Or by email to Policy.AGD@nt.gov.au

The closing date for submissions is 13 July 2015.

Any feedback or comment received by the Department of the Attorney-General and Justice will be treated as a public document unless clearly marked as 'confidential'. In the absence of such clear indication, the Department of the Attorney-General and Justice will treat the feedback or comment as non-confidential.

Non-confidential feedback or comments will be made publicly available and published on the Department of the Attorney-General and Justice website. The Department of the Attorney-General and Justice may draw upon the contents of such documents and quote from them or refer to them in reports, which may be made publicly available.

Any requests made to the Department of the Attorney-General and Justice for access to a confidential submission, feedback or comment will be determined in accordance with the *Information Act* (NT).

3 BACKGROUND

Following a comprehensive review in 2006-07, the *Domestic Violence Act 1996* was repealed and replaced by the *Domestic and Family Violence Act 2007*, which commenced operation on 1 July 2008.

The objects of the Act are set out in section 3(1) as follows:

(a) to ensure the safety and protection of all persons, including children, who experience or are exposed to domestic violence; and

(b) to ensure people who commit domestic violence accept responsibility for their conduct; and

(c) to reduce and prevent domestic violence.

To this end, the Act provides:

- for the making and variation of domestic violence orders by police officers and by the Court of Summary Jurisdiction;
- for the confirmation of domestic violence orders by the Court of Summary Jurisdiction;
- for the recognition in the Northern Territory of domestic violence orders made in other Australian jurisdictions and in New Zealand;
- for the enforcement of orders;
- for the establishment of mandatory reporting requirements such that an adult commits an offence if he or she fails to report to a police officer his or her belief, based on reasonable grounds, that someone has caused or is likely to cause serious physical harm to another person within a domestic relationship and/or the life or safety of another person is under serious or imminent threat from domestic violence;
- for the giving of evidence by vulnerable witnesses; and
- for the protection from liability for health practitioners who report domestic violence.

The principal improvements in the legislation over the *Domestic Violence Act 1996*, as outlined in the Explanatory Statement for the Domestic and Family Violence Bill 2007,[1] are as follows:

- young persons aged over 15 and under 18 years of age can obtain domestic violence orders on their own behalf with the leave of the Court and all children can obtain domestic violence orders through an authorised adult such as a relative;
- domestic violence orders can be made against young persons aged over 15 and under 18 years of age where they perpetrate domestic and family violence;
- other persons in close relationships (carer's relationships, betrothals, promised wives, dating relationships) can obtain domestic violence orders where they experience violence in their relationships;
- the basis on which a domestic violence order is granted is that there are reasonable grounds for the protected person to fear domestic violence by the defendant;
- economic abuse and intimidation are grounds for domestic violence orders;
- where a child witnesses family violence is a ground for seeking a domestic violence order on the child's behalf by a Police Officer or child protection worker;

[1] The Bill, Explanatory Statement and Second Reading speech are available in full at: http://notes.nt.gov.au/dcm/legislat/Acts.nsf/84c76a0f7bf3fb726925649e001c03bb/3e215043c8b599366925737700062f93?OpenDocument

- there is a presumption in favour of the victim with children remaining in the family home when a domestic violence order is made (so that it is the offender who must leave the family home);
- the Court can make domestic violence orders mandating that an offender attend rehabilitation and treatment programs;
- the Court is obliged to explain to the applicant and the offender, in an appropriate language or appropriate terms, the effect of the domestic violence order;
- publication of the details of children affected by domestic violence is prohibited and that the Court has the power to prohibit the publication of other details of a personal nature;
- vulnerable witness provisions apply to applicants and persons giving evidence when domestic violence orders are being sought;
- the maximum penalty for breach of a domestic violence order is increased to two years imprisonment, and the offence is one of strict liability;
- for a breach of a domestic violence order the Court is required to impose a term of actual imprisonment for a second or subsequent offence unless it is of the opinion that such a penalty should not be imposed, with the exception being where harm has been caused to the victim and in which case a term of imprisonment is to be imposed;
- where a young person between 15 and 18 is being sentenced in proceedings for a breach of a domestic violence order the above provisions in relation to sentencing an adult apply to the extent provided by the sentencing principles in the *Youth Justice Act*.

Despite these improvements, and subsequent ad hoc amendments to the Act (such as the introduction of mandatory reporting requirements in 2009), domestic violence remains a major problem in the Territory.

In 2013-14 there were 7,295 assaults in the Territory. More than 60% of these were associated with domestic violence. Alarmingly, over 80% of domestic violence victims in the Territory are women, with indigenous women being almost 22 times more likely to be victims of domestic violence than non-Indigenous women, representing 73% of all domestic violence victims in the Territory.

While legislative measures alone are unlikely to substantially improve these statistics, strong domestic and family violence legislation is a key component of the Strategy.

4 LEGISLATIVE ISSUES

The Department of the Attorney-General and Justice has resolved not to elicit comment in relation to any specific issues regarding the Act. Nevertheless, we note that the review of the Act is informed by the recent inquiry into domestic and family violence by the Australian and New South Wales Law Reform Commissions (the Commissions) and their joint report *Family Violence – A National Legal Response* (ALRC Report 114) (the Report).[2]

The Report, published in October 2010, describes the background to the inquiry, provides an overview of the framework for reform and contains 187 recommendations in relation to a range of issues including: criminal laws; bail; domestic violence orders; sentencing; homicide defences; evidence; child protection; sexual assault; reporting and pre-trial processes in sexual assault proceedings; information sharing; integration and specialisation.

[2] A 76 page summary report is also available at http://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-114-summary

The Department of the Attorney-General and Justice has reviewed these recommendations and identified those which it considers relevant in the context of the Territory. Those recommendations are listed at Attachment A.[3]

[3] A full list of the recommendations is contained in the Report.

ATTACHMENT A

Recommendations:

Family Violence – A National Legal Response

5. A Common Interpretive Framework – Definitions in Family Violence Legislation

Recommendation 5–1 State and territory family violence legislation should provide that **family violence** is violent or threatening behaviour, or any other form of behaviour, that coerces or controls a family member or causes that family member to be fearful. Such behaviour may include but is not limited to:

(a) physical violence;

(b) sexual assault and other sexually abusive behaviour;

(c) economic abuse;

(d) emotional or psychological abuse;

(e) stalking;

(f) kidnapping or deprivation of liberty;

(g) damage to property, irrespective of whether the victim owns the property;

(h) causing injury or death to an animal irrespective of whether the victim owns the animal; and

(i) behaviour by the person using violence that causes a child to be exposed to the effects of behaviour referred to in (a)–(h) above.

Recommendation 5–2 State and territory family violence legislation should include examples of emotional and psychological abuse or intimidation and harassment that illustrate conduct that would affect—although not necessarily exclusively—certain vulnerable groups including: Indigenous persons; those from a culturally and linguistically diverse background; the aged; those with a disability; and those from the gay, lesbian, bisexual, transgender and intersex communities. In each case, state and territory family violence legislation should make it clear that such examples are illustrative and not exhaustive of the prohibited conduct.

Recommendation 5–3 The definition of family violence in state and territory family violence legislation should not require a person to prove emotional or psychological harm in respect of conduct against the person which, by its nature, could be pursued criminally.

6. Other Statutory Definitions of Family Violence

Recommendation 6–1 State and territory criminal legislation—to the extent that it refers to the term 'family violence' in the context of homicide defences—should adopt the same definition as recommended to be included in state and territory family violence legislation (Rec 5–1). That is, 'family violence' should be defined as violent or threatening behaviour, or any other form of behaviour, that coerces or controls a family member or causes that family member to be fearful. Such behaviour may include but is not limited to:

(a) physical violence;

(b) sexual assault and other sexually abusive behaviour;

(c) economic abuse;

(d) emotional or psychological abuse;

(e) stalking;

(f) kidnapping or deprivation of liberty;

(g) damage to property, irrespective of whether the victim owns the property;

(h) causing injury or death to an animal irrespective of whether the victim owns the animal; and

(i) behaviour by the person using violence that causes a child to be exposed to the effects of behaviour referred to in (a)–(h) above.

Recommendation 6–2 State and territory family violence and criminal legislation should be reviewed to ensure that the interaction of terminology or definitions of conduct constituting family violence would not prevent a person from obtaining a protection order in circumstances where a criminal prosecution could be pursued.

Recommendation 6–3 Where the definition of family violence in state or territory family violence legislation includes concepts recognised in that state or territory criminal legislation—such as stalking, kidnapping and psychological harm— family violence legislation should expressly adopt the criminal law definitions of those concepts.

7. Other Aspects of a Common Interpretive Framework

Recommendation 7–1 State and territory family violence legislation should contain guiding principles, which should include express reference to a human rights framework, drawing upon applicable international conventions.

Recommendation 7–2 State and territory family violence legislation should contain a provision that explains the nature, features and dynamics of family violence including: while anyone may be a victim of family violence, or may use family violence, it is predominantly committed by men; it can occur in all sectors of society; it can involve exploitation of power imbalances; its incidence is underreported; and it has a detrimental impact on children. In addition, family violence legislation should refer to the particular impact of family violence on: Indigenous persons; those from a culturally and linguistically diverse background; those from the gay, lesbian, bisexual, transgender and intersex communities; older persons; and people with disabilities.

Recommendation 7–4 State and territory family violence legislation should articulate the following common set of core purposes:

(a) to ensure or maximise the safety and protection of persons who fear or experience family violence;

(b) to prevent or reduce family violence and the exposure of children to family violence; and

(c) to ensure that persons who use family violence are made accountable for their conduct.

Recommendation 7–5 State and territory family violence legislation should adopt the following alternative grounds for obtaining a protection order. That is:

(a) the person seeking protection has reasonable grounds to fear family violence; or

(b) the person he or she is seeking protection from has used family violence and is likely to do so again.

Recommendation 7–6 State and territory family violence legislation should include as the core group of protected persons those who fall within the following categories of relationships:

(a) past or current intimate relationships, including dating, cohabiting, and spousal relationships, irrespective of the gender of the parties and whether the relationship is of a sexual nature;

(b) family members;

(c) relatives;

(d) children of an intimate partner;

(e) those who fall within Indigenous concepts of family; and

(f) those who fall within culturally recognised family groups.

8. Family Violence and the Criminal Law

Recommendation 8–2 Police, prosecutors, lawyers and judicial officers should be given training about potential federal offences committed in a family violence context, including when such offences should be prosecuted or used as a basis for obtaining a family violence protection order.

This training should be incorporated into any existing or proposed training about family violence that is conducted by, among others: state and federal police, legal professional bodies, directors of public prosecution (state and Commonwealth), and judicial education bodies.

9. Police and Family Violence

Recommendation 9–1 State and territory family violence legislation that empowers police to issue protection orders should call these orders 'safety notices' or 'notices' to distinguish them from court orders.

The legislation should provide that police may only issue safety notices where it is not reasonable or practicable for:

(a) the matter to be immediately heard before a court; or

(b) police to apply to a judicial officer for an order (by telephone or other electronic medium).

The safety notice should act as an application to the court for a protection order and a summons for the person against whom the notice is issued to appear before the court within a short specified time. The notice should expire when the person to whom it is issued appears in court.

Recommendation 9–2 State and territory family violence legislation and/or police codes of practice should impose a duty on police to:

(a) investigate family violence where they believe family violence has been, is being, or is likely to be committed; and

(b) record when they decide not to take further action and their reasons for not taking further action.

Recommendation 9–3 State and territory governments should ensure that support services are in place to assist persons in need of protection to apply for a protection order without involving police. These should include services specifically for:

(a) Indigenous persons; and

(b) persons from culturally and linguistically diverse backgrounds.

10. Bail and Family Violence

Recommendation 10–1 State and territory legislation should not contain presumptions against bail on the grounds only that an alleged crime occurred in a family violence context.

Recommendation 10–2 State and territory legislation should provide that, on granting bail, judicial officers should be required to consider whether to impose protective bail conditions, issue or vary a family violence protection order, or do both.

Recommendation 10–3 State and territory legislation should impose an obligation on police and prosecutors to inform victims of family violence promptly of:

(a) decisions to grant or refuse bail; and

(b) the conditions of release, where bail is granted.

Victims should also be given or sent a copy of the bail conditions. Where there are bail conditions and a protection order, police and prosecutors should explain how they interact.

Police codes of practice or operating procedures, prosecutorial guidelines or policies, and education and training programs should reflect these obligations. These should also note when it would be appropriate to send bail conditions to family violence legal and service providers with whom a victim is known to have regular contact.

11. Protection Orders and Criminal Law

Recommendation 11–1 State and territory family violence legislation should make it clear that the making, variation or revocation of a protection order, or the refusal to make, vary or revoke such an order, does not affect the civil or criminal liability of a person bound by the order in respect of the family violence the subject of the order.

Recommendation 11–2 State and territory legislation should clarify that in the trial of an accused for an offence arising out of conduct that is the same or substantially similar to that on which a protection order is based, references cannot be made, without the leave of the court, to:

(a) the making, variation and revocation of protection orders in proceedings under family violence legislation—unless the offence the subject of the trial is breach of a protection order, in which case leave of the court is not necessary;

(b) the refusal of a court to make, vary or revoke a protection order in proceedings under family violence legislation; and

(c) the existence of current proceedings for a protection order under family violence legislation against the person the subject of the criminal proceedings.

Evidence given in proceedings under family violence legislation may be admissible by consent of the parties or by leave of the court.

Recommendation 11–3 State and territory family violence legislation should include an express provision conferring on courts a power to make a protection order on their own initiative at any stage of a criminal proceeding. Any such order made prior to a plea or finding of guilt should be interim until there is a plea or finding of guilt.

Recommendation 11–4 State and territory family violence legislation should expressly empower prosecutors to make an application for a protection order where a person pleads guilty or is found guilty of an offence involving family violence.

Recommendation 11–5 State and territory legislation should provide that a court before which a person pleads guilty, or is found guilty of an offence involving family violence, must consider whether any existing protection order obtained under family violence legislation needs to be varied to provide greater protection for the person against whom the offence was committed.

Recommendation 11–6 State and territory family violence legislation should provide expressly that one of the conditions that may be imposed by a court making a protection order is to prohibit the person against whom the order is made from locating or attempting to locate the victim of family violence.

Recommendation 11–7 Application forms for protection orders in each state and territory should clearly set out the types of conditions that a court may attach to a protection order, allowing for the possibility of tailored conditions. The forms should be drafted to enable applicants to indicate the types of conditions that they seek to be imposed.

Recommendation 11–8 State and territory family violence legislation should require judicial officers making protection orders to consider whether or not to make an exclusion order—that is, an order excluding a person against whom a protection order is made from premises shared with the victim, even if the person has a legal or equitable interest in such premises.

Recommendation 11–9 State and territory family violence legislation should provide that a court should only make an exclusion order when it is necessary to ensure the safety of a victim or affected child. Primary factors relevant to the paramount consideration of safety include the vulnerability of the victim and any affected child having regard to their physical, emotional and psychological needs, and any disability.

Secondary factors to be considered include the accommodation needs and options available to the parties, particularly in light of any disability that they may have, and the length of time required for any party to secure alternative accommodation.

Recommendation 11–10 State and territory family violence legislation should require a court to give reasons for declining to make an exclusion order where such order has been sought.

Recommendation 11–11 State and territory family violence legislation should provide that:

(a) courts have an express discretion to impose conditions on persons against whom protection orders are made requiring them to attend rehabilitation or counselling programs, where such persons have been independently assessed as being suitable and eligible to participate in such programs;

(b) the relevant considerations in assessing eligibility and suitability to participate in such programs should include: whether the respondent consents to the order; the availability of transport; and the respondent's work and educational commitments, cultural background and any disability; and

(c) failure to attend assessment or to complete such a program should not attract a sentence of imprisonment, and the maximum penalty should be a fine capped at a lower amount than the applicable maximum penalty for breaching a protection order.

Recommendation 11–12 Where appropriate, state and territory courts should provide persons against whom protection orders are made with information about relevant culturally and gender-appropriate rehabilitation and counselling programs.

Recommendation 11–13 State and territory legislation should provide that a court sentencing an offender for a family-violence related offence should take into account:

(a) any protection order conditions to which the person being sentenced is subject, where those conditions arise out of the same or substantially the same conduct giving rise to the prosecution for the offence; and

(b) the duration of any protection order to which the offender is subject.

12. Breach of Protection Orders

Recommendation 12–1 State and territory legislation should provide that a person protected by a protection order under family violence legislation cannot be charged with or found guilty of an offence of aiding, abetting, counselling or procuring the breach of a protection order.

Recommendation 12–2 Federal, state and territory police, and directors of public prosecution should train or ensure that police and prosecutors respectively receive training on how the dynamics of family violence might affect the decisions of victims to negate the existence of family violence or to withdraw previous allegations of violence.

Recommendation 12–3 Police codes of practice or operating guidelines, and prosecutorial policies should ensure that any decisions to charge or prosecute victims of family violence with public justice offences—such as conspiracy or attempts to pervert the course of justice, where the conduct alleged to constitute such offences is essentially conduct engaged in by a victim to reduce or mitigate the culpability of an offender—should only be approved at the highest levels within state or territory police services, and by directors of public prosecution, respectively.

Recommendation 12–4 Police should be trained about the appropriate content of 'statements of no complaint' in which victims attest to the fact that they do not wish to pursue criminal action. In particular, police should not encourage victims to attest that no family violence occurred when the evidence clearly points to the contrary.

Recommendation 12–5 The national family violence bench book—the subject of Rec 13–1 and Rec 31–2—should contain a section on the sentencing of offenders for breach of protection orders. This section should provide guidance to judicial officers on how to treat the consent of a victim to contact with a respondent that is prohibited by a protection order. In particular, this section should address the following issues:

(a) that it is the responsibility of the respondent to a protection order to obey its conditions;

(b) the dynamics of power and control in family violence relationships and how such dynamics might vitiate a victim's initiation of, or consent to, contact prohibited by a protection order;

(c) that the weight the court is to give to the fact that a victim initiated or agreed to contact prohibited by a protection order, will depend on the circumstances of each case; and

(d) while a victim of family violence may have genuinely consented to contact with the respondent to a protection order, a victim can never be taken to have consented to any violence committed in breach of a protection order.

Recommendation 12–6 State and territory police guidelines or codes of practice should provide guidance to police about charging an offender with breach of a protection order and any underlying criminal offence constituting the breach. In particular, such guidance should address the issue of perceived duplication of charges and how that issue is properly addressed by a court in sentencing an offender for multiple offences based on the totality principle and principles relating to concurrent and cumulative sentences.

Recommendation 12–7 To the extent that state and territory courts record and maintain statistics about criminal matters lodged or criminal offences proven in their jurisdiction, they should ensure that such statistics capture separately criminal matters or offences that occur in a family-violence related context. In every other case, state and territory governments should ensure the separate capture of statistics of criminal matters and offences in their jurisdictions that occur in a family-violence related context.

Recommendation 12–8 The national family violence bench book (see Recs 13–1 and 31–2) should contain a section guiding courts on how to sentence offenders for breach of protection orders, addressing, for example:

(a) the purposes of sentencing an offender for breach of a protection order;

(b) the potential impact of particular sentencing options, especially fines, on a victim of family violence;

(c) sentencing factors relating to the victim, including the impact of the offence on the victim;

(d) sentencing factors relating to the offender, including the timing of the breach;

(e) factors relevant to determining the severity of sentencing range and the appropriateness of particular sanctions for different levels of severity of breach;

(f) that breaches not involving physical violence can have a significant impact on a victim and should not necessarily be treated as less serious than breaches involving physical violence; and

(g) the benefits of sentencing options that aim to change the behaviour of those who commit violence.

Recommendation 12–9 Police operational guidelines—reinforced by training—should require police, when preparing witness statements in relation to breach of protection order proceedings, to ask victims about the impact of the breach, and advise them that they may wish to make a victim impact statement and about the use that can be made of such a statement.

Recommendation 12–10 State and territory family violence legislation should not impose mandatory minimum penalties or mandatory imprisonment for the offence of breaching a protection order.

13. Recognising Family Violence in Offences and Sentencing

Recommendation 13–1 The national family violence bench book (see Rec 31–2) should include a section that:

(a) provides guidance about the potential relevance of family-violence related evidence to criminal offences and defences—for example, evidence of a pre-existing relationship between the parties, including evidence of previous violence; and

(b) addresses sentencing in family violence matters.

Recommendation 13–2 Federal, state and territory police, and Commonwealth, state and territory directors of public prosecution respectively, should ensure that police and prosecutors are encouraged by prosecutorial guidelines, and training and education programs, to use representative charges wherever appropriate in family-violence related criminal matters, where the charged conduct forms part of a course of conduct. Relevant prosecutorial guidelines, training and education programs should also address matters of charge negotiation and negotiation as to agreed statements of facts in the prosecution of family-violence related matters.

Recommendation 13–3 State and territory sentencing legislation should provide that the fact that an offence was committed in the context of a family relationship should not be considered a mitigating factor in sentencing.

14. Homicide Defences and Family Relationships in Criminal Laws

Recommendation 14–1 State and territory criminal legislation should ensure that defences to homicide accommodate the experiences of family violence victims who kill, recognising the dynamics and features of family violence.

Recommendation 14–2 State and territory governments should review their defences to homicide relevant to family violence victims who kill. Such reviews should:

(a) cover defences specific to victims of family violence as well as those of general application that may apply to victims of family violence;

(b) cover both complete and partial defences;

(c) be conducted as soon as practicable after the relevant provisions have been in force for five years;

(d) include investigations of the following matters:

  (i) how the relevant defences are being used—including in charge negotiations—by whom, and with what results; and

  (ii) the impact of rules of evidence and sentencing laws and policies on the operation of defences; and

(e) report publicly on their findings.

Recommendation 14–3 The national family violence bench book (see Rec 31–2) should include a section that provides guidance on the operation of defences to homicide where a victim of family violence kills the person who was violent towards him or her.

Recommendation 14–5 State and territory criminal legislation should provide guidance about the potential relevance of family-violence related evidence in the context of a defence to homicide. Section 9AH of the *Crimes Act 1958* (Vic) is an instructive model in this regard.

16. Family Law Interactions: Jurisdiction and Practice of State and Territory Courts

Recommendation 16–1 Family violence legislation in each state and territory should require judicial officers making or varying a protection order to consider, under s 68R of the *Family Law Act 1975* (Cth), reviving, varying, discharging or suspending an inconsistent parenting order.

Recommendation 16–2 Application forms for protection orders under state and territory family violence legislation should include an option for an applicant to request the court to revive, vary, discharge or suspend a parenting order.

Recommendation 16–6 State and territory family violence legislation should provide that courts not significantly diminish the standard of protection afforded by a protection order for the purpose of facilitating consistency with a parenting order.

Recommendation 16–7 Application forms for protection orders under state and territory family violence legislation should include an option for applicants to indicate their preference that there should be no exception in the protection order for contact required or authorised by a parenting order made under the *Family Law Act 1975* (Cth).

Recommendation 16–9 Australian, state and territory governments should collaborate to provide training to practitioners involved in protection order proceedings on state and territory courts' jurisdiction under the *Family Law Act 1975* (Cth).

Recommendation 16–10 Application forms for protection orders under state and territory family violence legislation should clearly seek information about property orders under the *Family Law Act 1975* (Cth) or any pending application for such orders.

Recommendation 16–11 State and territory family violence legislation should require courts, when considering whether to make personal property directions in protection order proceedings, to inquire about and consider any property orders under the *Family Law Act 1975* (Cth), or pending application for such orders.

Recommendation 16–12 State and territory family violence legislation should provide that personal property directions made in protection order proceedings are subject to orders made by a federal family court or other court responsible for determining property disputes.

Recommendation 16–13 State and territory family violence legislation should provide that personal property directions do not affect ownership rights.

18. Evidence of Family Violence

Recommendation 18–1 State and territory courts should ensure that application forms for protection orders include information about the kinds of conduct that constitute family violence.

Recommendation 18–2 Application forms for protection orders under state and territory family violence legislation should require that applicants swear or affirm a statement incorporated in, or attached to, the application form, setting out the basis of the application. Where the applicant is a police officer, the application form should require the police officer to certify the form.

Recommendation 18–3 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.

Recommendation 18–4 State and territory courts should require that undertakings by a person against whom a protection order is sought should be in writing on a standard form.

The form should require each party to sign an acknowledgment that he or she understands that:

(a) breach of an undertaking is not a criminal offence nor can it be otherwise enforced;

(b) the court's acceptance of an undertaking does not preclude further action by the applicant to address family violence; and

(c) evidence of breach of an undertaking may be used in later proceedings.

Recommendation 18–5 State and territory family violence legislation should provide that:

(a) mutual protection orders should not be made by consent; and

(b) a court may only make mutual protection orders where it is satisfied that there are grounds for making a protection order against each party.

19. The Intersection of Child Protection and Family Laws

Recommendation 19–1 Federal, state and territory governments should, as a matter of priority, make arrangements for child protection agencies to provide investigatory and reporting services to family courts in cases involving children's safety. Where such services are not already provided by agreement, urgent consideration should be given to establishing specialist sections within child protection agencies to provide those services.

Recommendation 19–2 State governments should refer powers to enable the Australian Government to make laws allowing family courts to confer parental rights and duties on a child protection agency in cases where there is no other viable and protective carer. Family courts should have the power to join a child protection agency as a party in this limited class of cases.

Recommendation 19–3 Where a child protection agency investigates child abuse, locates a viable and protective carer and refers that carer to a family court to apply for a parenting order, the agency should, in appropriate cases:

(a) provide written information to a family court about the reasons for the referral;

(b) provide reports and other evidence; or

(c) intervene in the proceedings.

Recommendation 19–5 Federal, state and territory governments should ensure the immediate and regular review of protocols between family courts, children's courts and child protection agencies for the exchange of information to avoid duplication in the hearing of cases, and that a decision is made as early as possible about the appropriate court.

20. Family Violence, Child Protection and the Criminal Law

Recommendation 20–1 State and territory child protection legislation should authorise a person to disclose to a law enforcement agency—including federal, state and territory police—the identity of a reporter, or the contents of a report from which the reporter's identity may be revealed, where:

(a) the disclosure is in connection with the investigation of a serious offence alleged to have been committed against a child or young person; and

(b) the disclosure is necessary to safeguard or promote the safety, welfare and wellbeing of any child or young person, whether or not the child or young person is the victim of the alleged offence.

The information should only be disclosed where:

(a) the information is requested by a senior law enforcement officer, who has certified in writing beforehand that obtaining the reporter's consent would prejudice the investigation of the serious offence concerned; or

(b) the agency that discloses the identity of the reporter has certified in writing that it is impractical to obtain the consent.

Where information is disclosed, the person who discloses the identity of the reporter, or the contents of a report from which the identity of a reporter may be revealed, should notify the reporter as soon as practicable of this fact, unless to do so would prejudice the investigation.

Recommendation 20–2 State and territory law enforcement, child protection and other relevant agencies should, where necessary, develop protocols that provide for consultation about law enforcement responses when allegations of abuse or neglect of a child for whom the police have care and protection concerns are being investigated by the police.

Recommendation 20–3 State and territory family violence legislation should confer jurisdiction on children's courts to hear and determine applications for family violence protection orders where:

(a) the person affected by family violence, sought to be protected, or against whom the order is sought, is a child or young person; and

(b) proceedings related to that child or young person are before the court; and

(c) the court is satisfied that the grounds for making the order are met.

Recommendation 20–4 Where a children's court has jurisdiction to hear a family violence protection order application (see Rec 20–3), the court should also be able to make a family violence protection order in favour of siblings of the child or young person who is the subject of proceedings, or other children or young people within the same household, who are affected by the same or similar circumstances.

Recommendation 20–5 Where a children's court has jurisdiction to hear a family violence protection order application (see Rec 20–3), the court should also have jurisdiction to make a family violence protection order for the protection of an adult, where the adult is affected by the same or similar circumstances.

Recommendation 20–6 Where a children's court has jurisdiction to hear a family violence protection order application (see Rec 20–3), the court should also have power to vary or revoke a family violence protection order on the application of a party to the order, or on its own motion.

Recommendation 20–7 State and territory child protection legislation should:

(a) specify that judicial officers and court staff are mandatory reporters; and

(b) require child protection agencies to provide timely feedback to mandatory reporters, including an acknowledgement that the report was received and information as to the outcome of the child protection agency's initial investigation.

23. Intersection and Inconsistencies

Recommendation 23–1 Where state and territory family violence legislation permits the use of alternative dispute resolution in family violence protection order proceedings, such legislation should provide that violence cannot be negotiated or mediated.

Recommendation 23–2 State and territory legislation and policies for alternative dispute resolution in family violence protection order proceedings should provide for comprehensive screening and risk assessment mechanisms.

Recommendation 23–3 State and territory governments, courts, and alternative dispute resolution service providers should ensure that, where alternative dispute resolution is permitted in relation to family violence protection order proceedings, education and training is provided to judicial and court officers and alternative dispute resolution practitioners on:

(a) the nature and dynamics of family violence; and

(b) the conduct of alternative dispute resolution processes in the context of family violence.

Recommendation 23–4 State and territory courts should ensure that the terms of a family violence protection order indicate that participation in family dispute resolution, as ordered or directed by a family court, or provided under the *Family Law Act 1975* (Cth), is not precluded by a family violence protection order.

Recommendation 23–5 State and territory courts should ensure that parties to family violence protection order proceedings are informed that, if involved in proceedings or family dispute resolution under the *Family Law Act 1975* (Cth):

(a) they may be exempt from requirements to participate in family dispute resolution under the *Family Law Act 1975* (Cth);

(b) they should inform a family dispute resolution practitioner about any family violence protection orders or proceedings; and

(c) they should inform family courts about any family violence protection orders or proceedings, where family court proceedings are initiated.

Recommendation 23–6 The Australian Government Attorney–General's Department and state and territory governments should ensure that family violence screening and risk assessment frameworks indicate the importance of including questions in screening and risk assessment tools about:

(a) past or current applications for protection orders;

(b) past or current protection orders; and

(c) any breaches of protection orders.

Recommendation 23–7 Family dispute resolution service providers should ensure that:

(a) tools used for family violence screening and risk assessment include questions about past and current protection orders and applications, and any breaches of protection orders; and

(b) parties are asked for copies of protection orders.

Recommendation 23–8 State and territory legislation and policies for alternative dispute resolution in child protection matters should provide that violence cannot be negotiated or mediated within alternative dispute resolution processes.

Recommendation 23–9 State and territory legislation and policies for alternative dispute resolution in child protection matters should provide for comprehensive screening and risk assessment mechanisms.

Recommendation 23–10 State and territory child protection agencies and alternative dispute resolution service providers should ensure that child protection staff and alternative dispute resolution practitioners undertake training on:

(a) the nature and dynamics of family violence; and

(b) the need for parents, as well as children, who are victims of family violence to have access to appropriate support.

Recommendation 23–11 State and territory governments should take a comprehensive and strategic approach to support culturally responsive alternative dispute resolution—including screening and risk assessment processes—in child protection matters.

Recommendation 23–12 Alternative dispute resolution service providers should ensure that, in intake procedures for child protection matters, parties are asked about relevant:

(a) orders, injunctions and applications under state and territory family violence legislation and the *Family Law Act 1975* (Cth);

(b) family dispute resolution agreements and processes; and

(c) alternative dispute resolution agreements and processes in family violence matters.

Recommendation 23–13 The Australian Government Attorney-General's Department and state and territory governments should collaborate with Family Relationship Services Australia, legal aid commissions and other alternative dispute resolution service providers, to explore the potential of resolving family law parenting and child protection issues relating to the same family in one integrated process.

25. Sexual Offences

Recommendation 25–1 State and territory sexual assault provisions should include a wide definition of sexual intercourse or penetration, encompassing:

(a) penetration (to any extent) of the genitalia (including surgically constructed genitalia) or anus of a person by the penis or other body part of another person and/or any object manipulated by a person;

(b) penetration of the mouth of a person by the penis of a person; and

(c) continuing sexual penetration as defined in paragraph (a) or (b) above.

Recommendation 25–2 Federal, state and territory sexual offence provisions should provide a uniform age of consent for all sexual offences.

Recommendation 25–3 The Australian, state and territory governments should review the utilisation and effectiveness of persistent sexual abuse type offences, with a particular focus on offences committed in a family violence context.

Recommendation 25–4 Federal, state and territory sexual offence provisions should include a statutory definition of consent based on the concept of free and voluntary agreement.

Recommendation 25–5 Federal, state and territory sexual offence provisions should set out a non-exhaustive list of circumstances that may vitiate consent including, at a minimum:

(a) lack of capacity to consent, including because a person is asleep or unconscious, or so affected by alcohol or other drugs as to be unable to consent;

(b) where a person submits because of force, or fear of force, against the complainant or another person;

(c) where a person submits because of fear of harm of any type against the complainant or another person;

(d) unlawful detention;

(e) mistaken identity and mistakes as to the nature of the act (including mistakes generated by the fraud or deceit of the accused);

(f) abuse of a position of authority or trust; and

(g) intimidating or coercive conduct, or other threat, that does not necessarily involve a threat of force, against the complainant or another person.

Recommendation 25–6 Federal, state and territory sexual assault provisions should provide that it is a defence to the charge of ‘rape’ that the accused held an honest and reasonable belief that the complainant was consenting to the sexual penetration.

Recommendation 25–7 State and territory sexual offence provisions should provide that the judge must, if it is relevant to the facts in issue in a sexual offence proceeding, direct the jury:

(a) on the meaning of consent, as defined in the legislation;

(b) on the circumstances where there may be no consent, and the consequence of a finding beyond reasonable doubt that one of these circumstances exists;

(c) that a person is not to be regarded as having consented to a sexual act just because:

  (i) the person did not say or do anything to indicate that she or he did not consent; or

  (ii) the person did not protest or physically resist; or

  (iii) the person did not sustain physical injury; or

  (iv) on that, or an earlier, occasion the person consented to engage in a sexual act—whether or not of the same type—with that person or another person.

Where evidence is led, or an assertion is made, that the accused believed that the complainant was consenting to the sexual act, then the judge must direct the jury to consider:

(d) any evidence of that belief;

(e) whether the accused took any steps to ascertain whether the complainant was consenting or might not be consenting, and if so, the nature of those steps;

(f) the reasonableness of the accused's belief in all the circumstances, including the accused's knowledge or awareness of any circumstance that may vitiate consent; and

(g) any other relevant matter.

Recommendation 25–8 State and territory legislation dealing with sexual offences should state that the objectives of the sexual offence provisions are to:

(a) uphold the fundamental right of every person to make decisions about his or her sexual behaviour and to choose not to engage in sexual activity; and

(b) protect children, young people and persons with a cognitive impairment from sexual exploitation.

Recommendation 25–9 State and territory legislation dealing with sexual offences, criminal procedure or evidence, should contain guiding principles, to which courts should have regard when interpreting provisions relating to sexual offences. At a minimum, these guiding principles should refer to the following:

(a) sexual violence constitutes a form of family violence;

(b) there is a high incidence of sexual violence within society;

(c) sexual offences are significantly under-reported;

(d) a significant number of sexual offences are committed against women, children and other vulnerable persons, including those from Indigenous and culturally and linguistically diverse backgrounds, and persons with a cognitive impairment;

(e) sexual offenders are commonly known to their victims; and

(f) sexual offences often occur in circumstances where there are unlikely to be any physical signs of an offence having occurred.

26. Reporting, Prosecution and Pre-Trial Processes

Recommendation 26–1 The Australian Centre for the Study of Sexual Assault, the Australian Institute of Criminology and similar state and territory agencies should prioritise the collection of comprehensive data in relation to sexual assault perpetrated in a family violence context. In particular on:

(a) attrition rates, including reasons for attrition and the attrition point;

(b) case outcomes; and

(c) trends in relation to particular groups including Aboriginal and Torres Strait Islander peoples.

Recommendation 26–2 Commonwealth, state and territory Directors of Public Prosecution should ensure that prosecutorial guidelines and policies:

(a) facilitate the referral of victims and witnesses of sexual assault to culturally appropriate welfare, health, counselling and other support services at the earliest opportunity;

(b) require consultation with victims of sexual assault about key prosecutorial decisions, including whether to prosecute, discontinue a prosecution, or agree to a charge or fact bargain;

(c) require the ongoing provision of information to victims of sexual assault about the status and progress of proceedings;

(d) facilitate the provision of information and assistance to victims and witnesses of sexual assault in understanding the legal and court process;

(e) facilitate the provision of information and assistance to victims and witnesses of sexual assault in relation to the protective provisions available to sexual assault complainants when giving evidence in criminal proceedings;

(f) ensure that family violence protection orders or stalking intervention orders are sought in all relevant circumstances; and

(g) require referral of victims and witnesses of sexual assault to providers of legal advice on related areas, such as family law, victims' compensation and the sexual assault communications privilege.

Recommendation 26–3 Federal, state and territory governments and relevant educational, professional and service delivery bodies should ensure ongoing and consistent education and training for judicial officers, lawyers, prosecutors, police and victim support services in relation to the substantive law and the nature and dynamics of sexual assault as a form of family violence, including its social and cultural contexts.

Recommendation 26–4 State and territory legislation should prohibit:

(a) any child; and

(b) any adult complainant, unless there are special or prescribed reasons, from being required to attend to give evidence at committal hearings in relation to sexual offences.

Recommendation 26–5 Federal, state and territory legislation should:

(a) establish a presumption that, when two or more charges for sexual offences are joined in the same indictment, those charges are to be tried together; and

(b) state that this presumption is not rebutted merely because evidence on one charge is inadmissible on another charge.

Recommendation 26–6 Federal, state and territory legislation should permit the tendering of pre-recorded evidence of interview between a sexual assault complainant and investigators as the complainant's evidence-in-chief. Such provisions should apply to all complainants of sexual assault, both adults and children.

Recommendation 26–7 Federal, state and territory legislation should permit child complainants of sexual assault and complainants of sexual assault who are vulnerable as a result of mental or physical impairment, to provide evidence recorded at a pre-trial hearing. This evidence should be able to be replayed at the trial as the witness' evidence. Adult victims of sexual assault should also be permitted to provide evidence in this way, by leave of the court.

Recommendation 26–8 The Australian, state and territory governments should ensure that relevant participants in the criminal justice system receive comprehensive education about legislation authorising the use of pre-recorded evidence in sexual assault proceedings, and training in relation to interviewing victims of sexual assault and pre-recording evidence.

27. Evidence in Sexual Assault Proceedings

Recommendation 27–1 Federal, state and territory legislation should provide that complainants of sexual assault must not be cross-examined in relation to, and the court must not admit any evidence of, the sexual reputation of the complainant.

Recommendation 27–2 Federal, state and territory legislation should provide that the complainant must not be cross-examined, and the court must not admit any evidence, as to the sexual activities—whether consensual or non-consensual—of the complainant, other than those to which the charge relates, without the leave of the court.

Recommendation 27–3 Federal, state and territory legislation should provide that the court must not grant leave under the test proposed in Rec 27–2, unless it is satisfied that the evidence has significant probative value and that it is in the interests of justice to allow the cross-examination or to admit the evidence, after taking into account:

(a) the distress, humiliation and embarrassment that the complainant may experience as a result of the cross-examination or the admission of the evidence, in view of the age of the complainant and the number and nature of the questions that the complainant is likely to be asked;

(b) the risk that the evidence may arouse discriminatory belief or bias, prejudice, sympathy or hostility;

(c) the need to respect the complainant's personal privacy;

(d) the right of the defendant to fully answer and defend the charge; and

(e) any other relevant matter.

Recommendation 27–4 Federal, state and territory legislation should provide that evidence about the sexual activities—whether consensual or non-consensual—of the complainant, other than those to which the charge relates, is not of significant probative value only because of any inference it may raise as to the general disposition of the complainant.

Recommendation 27–5 Federal, state and territory legislation should require that an application for leave to cross-examine complainants of sexual assault, or to admit any evidence, about the sexual activities of the complainant must be made:

(a) in writing;

(b) if the proceeding is before a jury—in absence of the jury; and

(c) in the absence of a complainant, if a defendant in the proceeding requests.

Recommendation 27–6 Federal, state and territory legislation should require a court to give reasons for its decision whether or not to grant leave to cross-examine complainants of sexual assault, or to admit any evidence, about the sexual activities of the complainant and, if leave is granted, to state the nature of the admissible evidence.

Recommendation 27–7 Australian courts, and judicial education and legal professional bodies should provide education and training about the procedural requirements for admitting and adducing evidence of sexual activity.

Recommendation 27–8 Federal, state and territory legislation and court rules relating to subpoenas and the operation of the sexual assault communications privilege should ensure that the interests of complainants in sexual assault proceedings are better protected, including by requiring:

(a) parties seeking production of sexual assault communications, to provide timely notice in writing to the other party and the sexual assault complainant;

(b) that any such written notice be accompanied by a pro forma fact sheet on the privilege and providing contact details for legal assistance; and

(c) that subpoenas be issued with a pro forma fact sheet on the privilege, also providing contact details for legal assistance.

Recommendation 27–9 The Australian, state and territory governments, in association with relevant non-government organisations, should work together to develop and administer training and education programs for judicial officers, legal practitioners and counsellors about the sexual assault communications privilege and how to respond to a subpoena for confidential counselling communications.

Recommendation 27–10 State and territory evidence legislation should provide that:

(a) the opinion rule does not apply to evidence of an opinion of a person based on that person's specialised knowledge of child development and child behaviour; and

(b) the credibility rule does not apply to such evidence concerning the credibility of children.

Recommendation 27–11 Federal, state and territory legislation should authorise the giving of jury directions about children's abilities as witnesses and responses to sexual abuse, including in a family violence context.

Recommendation 27–12 Judges should develop model jury directions, drawing on the expertise of relevant professional and research bodies, about children's abilities as witnesses and responses to sexual abuse, including in a family violence context.

Recommendation 27–13 Federal, state and territory legislation should provide that, in sexual assault proceedings, tendency or coincidence evidence is not inadmissible only because there is a possibility that the evidence is the result of concoction, collusion or suggestion.

28. Other Trial Processes

Recommendation 28–1 Federal, state and territory legislation should prohibit a judge in any sexual assault proceedings from:

(a) warning a jury, or making any suggestion to a jury, that complainants as a class are unreliable witnesses; and

(b) giving a general warning to a jury of the danger of convicting on the uncorroborated evidence of any complainant or witness who is a child.

Recommendation 28–2 Australian courts and judicial education bodies should provide judicial education and training, and prepare material for incorporation in bench books, to assist judges to identify the circumstances in which a warning about the danger of convicting on the uncorroborated evidence of a particular complainant or child witness is in the interests of justice.

Recommendation 28–3 State and territory legislation should provide, consistently with s 165B of the uniform Evidence Acts, that:

(a) if the court, on application by the defendant, is satisfied that the defendant has suffered a significant forensic disadvantage because of the consequences of delay, the court must inform the jury of the nature of the disadvantage and the need to take that disadvantage into account when considering the evidence;

(b) the judge need not comply with (a) if there are good reasons for not doing so; and

(c) no particular form of words needs to be used in giving the warning pursuant to (a), but in warning the jury, the judge should not suggest that it is 'dangerous to convict' because of any demonstrated forensic disadvantage.

Recommendation 28–4 Federal, state and territory legislation should provide that, in sexual assault proceedings:

(a) the effect of any delay in complaint, or absence of complaint, on the credibility of the complainant should be a matter for argument by counsel and for determination by the jury;

(b) subject to paragraph (c), except for identifying the issue for the jury and the competing contentions of counsel, the judge must not give a direction regarding the effect of delay in complaint, or absence of complaint, on the credibility of the complainant, unless satisfied it is necessary to do so in order to ensure a fair trial; and

(c) if evidence is given, a question is asked, or a comment is made that tends to suggest that the victim either delayed making, or failed to make, a complaint in respect of the offence, the judge must tell the jury that there may be good reasons why a victim of a sexual offence may delay making or fail to make a complaint.

Recommendation 28–5 Federal, state and territory legislation should:

(a) prohibit an unrepresented defendant from personally cross-examining any complainant, child witness or other vulnerable witness in sexual assault proceedings; and

(b) provide that an unrepresented defendant be permitted to cross-examine the complainant through a person appointed by the court to ask questions on behalf of the defendant.

Recommendation 28–6 Federal, state and territory legislation should permit prosecutors to tender a record of the original evidence of the complainant in any re-trial ordered on appeal.

29. Integrated Response

Recommendation 29–1 The Australian, state and territory governments, in establishing or further developing integrated responses to family violence, should ensure that any such response is based on common principles and objectives, developed in consultation with relevant stakeholders.

Recommendation 29–2 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

(d) where possible, designated liaison officers.

Recommendation 29–3 The Australian, state and territory governments should prioritise the provision of, and access to, culturally appropriate victim support services for victims of family violence, including enhanced support for victims in high risk and vulnerable groups.

Recommendation 29–4 The Australian, state and territory governments should prioritise the provision of, and access to, legal services for victims of family violence, including enhanced support for victims in high risk and vulnerable groups.

Recommendation 29–5 State and territory victims' compensation legislation:

(a) should define an 'act of violence' to include family violence and ensure that evidence of a pattern of family violence may be considered;

(b) should not provide that acts are 'related' merely because they are committed by the same offender, and should provide that victims have the opportunity to object if claims are to be treated as related; and

(c) should ensure that victims' compensation claims are not excluded on the basis that the offender might benefit from the claim. (Other measures should be adopted to ensure that offenders do not have access to victims' compensation award.)

30. Information Sharing

Recommendation 30–3 Non-publication provisions in state and territory family violence legislation should expressly allow disclosure of information in relation to protection orders and related proceedings that contains identifying information in appropriate circumstances, including disclosure of family violence protection orders to the federal family courts under s 60CF of the *Family Law Act 1975* (Cth).

Recommendation 30–4 State and territory child protection legislation should not prevent child protection agencies from disclosing to federal family courts relevant information about children involved in federal family court proceedings in appropriate circumstances.

Recommendation 30–5 Federal family courts and state and territory child protection agencies should develop protocols for:

(a) dealing with requests for documents and information under s 69ZW of the Family Law Act 1975 (Cth); and

(b) responding to subpoenas issued by federal family courts.

Recommendation 30–6 State and territory family violence legislation should require courts exercising jurisdiction under that legislation to inquire about existing parenting orders under the *Family Law Act 1975* (Cth), or pending proceedings for such orders.

Recommendation 30–7 Application forms for family violence protection orders in all states and territories, including applications for variation of protection orders, should clearly seek information about existing parenting orders under the Family Law Act 1975 (Cth), or pending proceedings for such orders.

Recommendation 30–9 The Australian, state and territory governments should ensure that privacy principles regulating the handling of personal information in each jurisdiction expressly permit the use or disclosure of information where agencies and organisations reasonably believe it is necessary to lessen or prevent a serious threat to an individual's life, health or safety.

Recommendation 30–10 The Australian, state and territory governments should consider amending secrecy laws that regulate the disclosure of government information to include an express exception to allow the disclosure of information in the course of a government officer's functions and duties.

Recommendation 30–11 State and territory family violence legislation should expressly authorise the use or disclosure of personal information for the purpose of ensuring the safety of a victim of family violence or an affected child.

Recommendation 30–12 State and territory child protection legislation should expressly authorise agencies to use or disclose personal information for the purpose of ensuring the safety of a child or young person.

Recommendation 30–13 State and territory family violence legislation and child protection legislation should expressly provide for information sharing among specified agencies in specified circumstances, and should include provision to allow information to be shared with specified private sector organisations.

Recommendation 30–14 The Australian, state and territory governments should develop guidelines to assist agencies and organisations working in the family violence and child protection systems to better understand the rules relating to the sharing of information.

Recommendation 30–15 The Australian, state and territory governments should ensure that, in developing any database to allow the sharing of information between agencies and organisations in the family violence or child protection systems, appropriate privacy safeguards are put in place.

Recommendation 30–16 Federal family courts, state and territory magistrates courts, police, and relevant government agencies should develop protocols for the exchange of information in relation to family violence matters. Parties to such protocols should receive regular training to ensure that the arrangements are effectively implemented.

Recommendation 30–17 Federal family courts and state and territory child protection agencies should develop protocols for the exchange of information in those jurisdictions that do not yet have such arrangements in place. Parties to such protocols should receive regular training to ensure that the arrangements are effectively implemented.

31. Education and Data Collection

Recommendation 31–1 The Australian, state and territory governments and educational, professional and service delivery bodies should ensure regular and consistent education and training for participants in the family law, family violence and child protection systems, in relation to the nature and dynamics of family violence, including its impact on victims, in particular those from high risk and vulnerable groups.

Recommendation 31–2 The Australian, state and territory governments should collaborate with relevant stakeholders to develop and maintain a national bench book on family violence, including sexual assault, having regard to the Commissions' recommendations in this Report in relation to the content that should be included in such a book.

Recommendation 31–3 Australian tertiary institutions offering legal qualifications should review their curriculums to ensure that legal issues concerning family violence are appropriately addressed.

Recommendation 31–4 Australian legal professional bodies should review continuing professional development requirements to ensure that legal issues concerning family violence are appropriately addressed.

Recommendation 31–5 The Australian, state and territory governments should collaborate in conducting a national audit of family violence training conducted by government and non-government agencies in order to:

(a) ensure that existing resources are best used;

(b) evaluate whether training meets best practice principles; and

(c) promote the development of best practice in training.

Recommendation 31–6 State and territory governments should undertake systemic and ongoing reviews into deaths resulting from family violence.

32. Specialisation

Recommendation 32–1 State and territory governments, in consultation with relevant stakeholders, should establish or further develop specialised family violence courts within existing courts in their jurisdictions.

Recommendation 32–2 State and territory governments should ensure that specialised family violence courts are able to exercise powers to determine: family violence protection matters; criminal matters related to family violence; and family law matters to the extent that family law jurisdiction is conferred on state and territory courts.

Recommendation 32–3 State and territory governments should ensure that specialised family violence courts have, as a minimum:

(a) specialised judicial officers and prosecutors;

(b) regular training on family violence issues for judicial officers, prosecutors, lawyers and registrars;

(c) victim support, including legal and non-legal services; and

(d) arrangements for victim safety.

Recommendation 32–4 State and territory governments should, where possible, promote the following measures in all courts dealing with family violence matters, including courts in regional and remote communities:

(a) identifying and listing on the same day, protection order matters and criminal proceedings related to family violence, as well as related family law and child protection matters;

(b) training judicial officers in relation to family violence;

(c) providing legal services for victims and defendants;

(d) providing victim support on family violence list days; and

(e) ensuring that facilities and practices secure victim safety at court.

Recommendation 32–5 State and territory police should ensure, at a minimum, that:

(a) specialised family violence and sexual assault police units are fostered and structured to ensure appropriate career progression for officers and the retention of experienced personnel;

(b) all police—including specialised police units—receive regular education and training consistent with the Australasian Policing Strategy on the Prevention and Reduction of Family Violence;

(c) specially trained police have responsibility for supervising, monitoring or assuring the quality of police responses to family violence incidents, and providing advice and guidance in this regard; and

(d) victims have access to a primary contact person within the police, who specialises, and is trained, in family violence, including sexual assault issues.