

## Relationships Australia Northern Territory

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### Response to Review of the Domestic and Family Violence Act Issues Paper

**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.

*Relationships Australia Northern Territory (RANT) considers that domestic violence and abuse affects not only those people who are violated but also those people who indirectly experience the violation. Research has established that exposure to domestic violence and abuse has wide-ranging and serious effects on children's emotional development and behaviour.*

*This is reflected and acknowledged in the new Family Services guidelines (May 2000) for Mandatory Reporting of children who are exposed to domestic violence and abuse. It is further supported by changes made in 2012 to the Family Law Act 2007 to the definition of 'family violence', to include children witnessing or being exposed in any way domestic violence and abuse.*

**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.

*RANT supports legislation providing examples of emotional and psychological abuse. We further recommend this should be elaborated on to not only include such examples, but also the effects of all types of abuse on those subject to violence, which in many instances directly includes children.*

*A recent submission to the Human Rights Commission by Relationships Australia National notes the following –*

*“We would also like to note that changes to the definition will not necessarily result in changes to legislation, processes or actions. For example, while psychological, verbal, emotional and financial abuse are already captured in mainstream definitions of family violence when we talk about women's safety, these behaviours are unlikely to be investigated and are difficult for authorities to respond to. Therefore policy development needs to also consider how enhancements to the definition of family violence will be translated into processes that will decrease the prevalence of family violence, and correspondingly the safety of women and children” (Relationships Australia, 2015).*

**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.

*An unintended consequence of the current focus on reporting physical harm appears to have resulted in an obscuring of*

*other forms of Family Domestic Violence, particularly emotional or psychological abuse.*

**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.

*See - Relationships Australia 2015, Examination of children affected by family and domestic violence, Submission to the Human Rights Commission available at <http://www.relationships.org.au/corporate-centre/submissions-and-policy-statements/submission-to-the-human-rights-commissions-examination-of-children-affected-by-family-and-domestic-violence>*

**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.

*A recent submission to the Human Rights Commission by Relationships Australia National notes the following -*

*“While terminology is one part of the picture, what is more concerning are the types of behaviour captured (or not captured) by, and implications of, contemporary definitions and how this relates to legal, policy and service delivery frameworks.*

*It is common to reference children at state and international levels as “witnesses” of and as being “exposed to” violence and abuse. These terms inadequately describe the child’s personal experience of family violence. We consider that if a child has seen or heard any form of abuse, then they have directly experienced that abuse.*

*The term “witness” and “exposed to” also has the effect of minimising the child’s experience and furthermore plays into what we often hear as men’s justification and rationalisation of abuse. For example, “the (child) was in the other room so didn’t hear it” and “I would never hurt my kids” (but is violent to their mother).*

*This minimisation through language positions the child separately from abuse being perpetrated within the family, and therefore the child is not considered impacted by the abuse of their mother. Research confirms that to abuse a child’s mother is to abuse the child.*

*We would also call for acknowledgement, in definitional terms, of men’s use of violence as a father, as a choice to be an abusive father. There should be a shift in focus that recognises men’s choice to use violence towards women and children as a fathering and parenting choice. This would focus attention on the father’s responsibilities as a parent.*

*In our work with mother’s experiencing violence we note with concerning regularity that, as a result of her experiencing violence, a judgmental, blaming and fixed gaze is cast on her mothering ability and capacity. We strongly contend that a woman/mother’s experience of violence does not equate with being a poor or “un-protective” mother. Rather it is the impact of her partner’s violence that interferes and constrains her mothering of her children.*

*A shift in recognising men’s use of violence as a fathering and parenting choice also acts to place the responsibility and accountability with the perpetrator, and not the victim of, violence. This change would recognise men perpetrating violence as ‘unsafe fathers’ rather than women as ‘non-protective mothers.’” (Relationships Australia, 2015)*

**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;
- € relatives;
- (d) children of an intimate partner;
- € those who fall within Indigenous concepts of family; and
- (f) those who fall within culturally recognised family groups.

*RANT practitioners have found that when the law doesn’t provide protection to those (or their children) experiencing violence and they feel their life is under threat, this can result in that person also using violence to defend themselves, and those they care for. There should be consideration, training and education given within the law to this dynamic, as well as to the gendered nature of family violence. Consideration should also be given to including children of intimate partners in the core group of protected persons.*

**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.

*RANT practitioners have been advised of instances when people have presented to the police to report family violence and been talked out of it by front office staff, leaving the vulnerable party feeling humiliated and powerless. RANT supports all levels of front line staff in policing should have extensive training in the dynamics and effects of family violence.*

**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.

*RANT support victims of domestic violence being informed of bail decisions and any conditions of bail.*

**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.

*RANT acknowledges that for many of those living with violence it can be extremely difficult to end the relationship. Emotional ties can be hard to break and very often there is an element of financial dependence. Frequently these people are subject to a cycle of violence which includes the perpetrator of violence rationalising or minimising the abuse and/or providing a honeymoon phase with loving, kind and remorseful behaviour.*

**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;
- € 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.

*RANT recommend the development of any resources which provide the judiciary with further information on the dynamics of family violence, the ongoing effects of living with such violence, and the need for those who perpetrate violence to take responsibility for the violence ceasing.*

**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;
- € 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;
- € 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.

*When sentencing offenders, RANT recommends consideration be given to whether children were present in the home when the incident of family violence occurred. We further recommend that those involved with sentencing be provided with information detailing the possible long term impacts on children of being exposed to family violence, such as but not limited to – developmental delays, generalised and specific anxiety, nightmares and compromised sleeping patterns, nocturnal enuresis, hyper vigilance or hyper arousal, post-traumatic stress disorder, self-harming, aggression and anger regulation issues, fear, and schooling issues (Relationships Australia, 2015).*

**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.

*RANT recommends that when preparing statements police should always include when children were present in the home when the incident of family violence occurred if this is not current practice.*

**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.

*RANT recommends that the law be structured so that the onus should be on those who perpetrate violence to maintain the order, rather than the victims to defend themselves against it.*

**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.

*RANT considers those in frontline services such as policing should receive extensive training, not only on recognising the impact of all forms of domestic violence, but on the trauma-related effects of such violence.*

**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.

*RANT position is that the police and courts should treat those who perpetrate violence on family members as seriously as those who perpetrate violence towards society in general.*

**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.

*“Separated parents can be exposed to higher risk due to the need for contact for legal and financial settlements and child custody arrangements. The family law system processes and outcomes (eg. contact orders) often require victims (including children) to engage repeatedly with perpetrators of violence. In addition, perpetrators of violence may use contact with children as an opportunity to continue to intimidate, harass or abuse their former partners, and often children are caught in the middle.” (Relationships Australia, 2015).*

*“For example when separated parents have shared custody, following a decision of the Family Court and on visitation with the father, the father chooses to denigrate the mother to the child. The father asks the child who visits them at home and tells the child that “Dad is depressed” because Mum stops me from seeing you.” The physical abuse may have stopped; however, there is ongoing emotional abuse of the child by denigrating the mother. This behaviour undermines the child’s relationship with, and respect for, their mother. Children report they feel embroiled in family conflict, unsafe in expressing their own feelings, and feel a sense of responsibility for managing the influence of their father’s behaviour on the wider family unit” (Relationships Australia, 2015).*

**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.

*There is currently co-operation between FDRP and child protection agencies as far as the law allows. Integrating these services further would be difficult given they function under different laws and jurisdictions. There is a contrast between the judicial/semi-judicial role of DCF and the family matters court with the facilitative role of FDRPs. If an integrated process were to be formulated, we have concern about confusion this may cause with clients or child protection workers, who may develop expectations of a judicial / arbitral response from FDRPs.*

*The confidentiality and inadmissibility protections of section 10H and 10J of the Family Law Act currently protect clients to allow a full and frank discussion to reach a conclusion about the best interests of the children. Any integrated process must not compromise this confidentiality or inadmissibility.*

RANT further recommends that the NT Government give consideration to ensuring that the issue of Ochre (Working With Children) Cards is subject not only to a criminal history check, but also a Domestic Violence Order check and notes any other matters an applicant may have before the courts.

Relationships Australia 2015, *Examination of children affected by family and domestic violence*, Submission to the Human Rights Commission

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