Nuance in the numbers – challenging assumptions, bringing context into view

Centre for Innovative Justice

With Centre for Family Research & Evaluation, Melbourne City Mission & Youthlaw

June 2024

Acknowledgement of Country

The agencies contributing to this submission acknowledge the people of the Woi wurrung and Boon wurrung language groups of the Eastern Kulin Nation on whose unceded lands we conduct our business. We acknowledge their Elders past, present and future, as well as the ongoing strength of the world's oldest continuing and living cultures. Always was, always will be.

We also acknowledge the ongoing impacts of colonisation, impacts which contribute to intergenerational trauma and associated rates of family, domestic and sexual violence (FSDV) experienced by Aboriginal communities. We recognise the structural discrimination and systemic racism which, to our collective shame, sees Aboriginal children removed from their families at disproportionate rates and which also sees Aboriginal communities disproportionately policed and incarcerated at a higher rate than any other peoples in the world.

As such, we commit to ensuring that our work supports and is informed by the strengths of First Nations peoples and strives towards truth, reconciliation, sovereignty and healing.

Artwork 'Luwaytini' by Mark Cleaver, Palawa

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About the contributors:

Centre for Innovative Justice, RMIT University

The Centre for Innovative Justice (CIJ) aims to challenge legal and associated systems by putting the experience of individuals and communities who need support at the centre. The CIJ meets this aim by conducting rigorous research which focuses on impact developing workable solutions. We design our work to be useful for those experiencing and implementing change.

Specifically, this submission draws on a program of research at the CIJ which focuses predominantly on gendered violence and the impacts of this violence that drive people into contact with legal processes. This has included extensive work supporting the implementation of recommendations from the Royal Commission into Family Violence (RCFV), particularly focusing on 'perpetrator intervention' and court responses. The program also includes multiple ANROWS funded projects, including leading projects focused on young people's use and experience of harm. The CIJ has also led multiple projects in partnership with First Nations communities, particularly regarding disproportionate experiences of victimisation, criminalisation of Aboriginal women and the increasing misidentification as predominant aggressors of family violence.

Centre for Family Research & Evaluation, Drummond Street

The Centre for Family Research and Evaluation (CFRE) is a collaborative applied research, evaluation and training centre within Drummond Street Services (DS). CFRE works with different levels of government and agencies across Australia, offering research, evaluation, consultancy services and training across our expert areas, including intersectional practice, family violence, whole-of-family care, LGBTIQA+ inclusive practice and evidence informed decision making.

Drummond Street (DS) is a social services organisation, committed to social justice. This lays the foundation for DS to deliver equitable services that support all families, including the most marginalised. DS assertively engages communities as defined by place, neighbourhood, and identities; following the community's lead in defining themselves, which may be in relation to culture, faith, sexualities, genders, abilities, socioeconomic status, shared interests or lived experiences. In particular, DS seeks to engage with and support those families and communities who have been historically underserved and experienced overlapping forms of marginalisation. All DS' work is grounded in intersectionality and aims to respond to the experiences of inequality, oppression and marginalisation that many individuals and communities experience.

Melbourne City Mission

Established in 1854, Melbourne City Mission (MCM) is one of Victoria's oldest, largest and most diverse non-profit community service organisations. The MCM Group – comprising MCM Services, Hester Hornbrook Academy and MCM Housing – work collaborate to empower and enable people, offering comprehensive support through more than 80 programs, including homelessness, housing, family violence, disability, mental health, early childhood and education, child and family services and home-based palliative care. As the largest youth homelessness services provider in Victoria, family violence is a common thread in MCM's work.

MCM provides homelessness and family violence supports to young people, including through **Frontyard Youth Services,** the only state-wide specialist access point for young people aged 16 – 24, as well as integrated supports to 2,500 young people aged 12 to 24 experiencing or at risk of homelessness each year; **Restart**, in partnership with Centre for Multicultural Youth, a therapeutic program for young people 12 – 17 years using violence in the home; and **Amplify**, a specialist family violence case management response for unaccompanied young people experiencing homelessness in the western suburbs. MCM are vocal advocates for dismantling barriers, addressing gaps, enhancing social justice, and fostering diversity and inclusion towards a more equitable future for everyone.

Youthlaw

Youthlaw is Victoria's specialist community legal centre for children and young people. As fearless advocates for young people, Youthlaw provides accessible and tailored legal services to young people under 25 years and their supporters, whilst working to address systemic legal and social justice issues.

Through its Family Violence Program, Youthlaw provides an integrated practice model where specialist youth family violence practitioners and lawyers work together to respond to the legal, safety and holistic needs of children and young people using and / or experiencing family violence. Youthlaw's Family Violence Program has operated a duty lawyer service at Melbourne Children's Court since 2016 and leads successful services focusing on early intervention.

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Bringing perpetration into view

The agencies contributing to this submission welcome the chance to support this timely inquiry. As the nation continues to grapple with the enormity of family and domestic violence, it is crucial that all jurisdictions develop a more detailed and nuanced understanding of this challenge.

Improving the collection of data regarding use, as well as experiences, of family and domestic violence, is a vital step in meeting this challenge. As the CIJ first described in its 2015 report, *Opportunities for early intervention: bringing perpetrators of family violence into view*, this kind of violence may exist at epidemic proportions, but it "does not sweep invisibly through communities, leaving victims inexplicably in its wake. Instead, family violence consists of controlling, coercive, abusive or violent behaviour used by ***identifiable individuals*** – ones with whom our legal system can and must engage".[1]

Also highlighted in the CIJ's report, researchers and service providers note that escalation of violence against women, children and young people is often more feasible to predict than other forms of offending – particularly in terms of who an offence will be perpetrated against, as well as where it will occur – with a wealth of information available if collected and appropriately applied.

As the horrific filicide of Luke Batty demonstrated – and as was recognised by the resulting Coronial Inquest[2] and Royal Commission into Family Violence (RCFV)[3] – information about the patterns and behaviours of adults using violence can play a vital role in preventing violence escalation by keeping an adult perpetrator within view. Accordingly, some of the most foundational recommendations of the RCFV proposed mechanisms which could improve information sharing (through establishing the Central Information Point and Information Sharing legislative regime) as well as strengthen consistent assessment and monitoring of risk (through the Multi-Agency Risk Assessment and Management Framework, or 'MARAM').

Because of these and other RCFV driven reforms, Victoria has begun to develop a more considered and detailed understanding of family violence perpetration. Most immediately, opportunities for information sharing about those using violence are enabling improvements in data sharing across services and agencies, while the rollout of the MARAM is seeing a gradual strengthening in coherence and consistency in how risk is identified, assessed and described.

That said, this submission seeks to highlight the considerable distance that Victoria still needs to travel to achieve the aims of these and associated reforms in any lasting and meaningful way. This includes the way in which these reforms and other mechanisms are operationalised; the unfortunate tendency to equate activity with effectiveness; and how these failures may impact opportunities to collect meaningful data around perpetration as a result.

Just as vitally, the submission highlights the unintended consequences of a system that renders too many experiences invisible while skewing the visibility of others – capturing the experiences of highly marginalised people within 'perpetration data' when these individuals desperately need support and safety instead.

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[1] Campbell, E. (2015) Opportunities for early intervention: bringing perpetrators into view, Centre for Innovative Justice, RMIT University, Melbourne, p 5. https://cij.org.au/cms/wp-content/uploads/2018/08/opportunities-for-early-intervention.pdf

[2] Coroner's Court of Victoria, Finding into Death with Inquest, Luke Geoffrey Batty, COR 2014 0855, https://www.coronerscourt.vic.gov.au/sites/default/files/2018-12/lukegeoffreybatty_085514.pdf

[3] State of Victoria, Royal Commission into Family Violence, (2016) Final Report. No 132 (2014-16)

This makes it crucial to question the purpose of any data collection activity, as information gathering is never just a neutral exercise. Rather, it can improve safety and support, or it can profile the wrong people and inadvertently disclose information about victim survivors that they have not consented to share. Data can be used to drive punitive approaches, or it can help us to be smarter and better informed. To use data well, it should be viewed as an input, rather than as the end goal – always remembering to see the nuance within the numbers, so that these numbers can help us to meet our collective aim of improving safety and reducing risk.

Identifying data touchpoints

The Victorian Government should be applauded for commissioning the RCFV in 2015 – and subsequently for committing to implementation of all 227 of its recommendations. It's important to recognise, however, the gaps or relatively scant focus of the RCFV in specific areas, such as the development of pathways to support for children and young people as victim survivors or recognising young people's use of harm in intimate relationships. The agencies contributing to this submission also caution against assumptions that every existing recommendation has been implemented as intended – or that, where recommendations have been fully implemented, that they are having the intended effect. This is inevitable to an extent – system reform takes time and depends on associated cultural change to take hold in any meaningful way.

When considering what data is available to form an accurate picture of perpetration, this makes it important to reflect on whether certain reforms – as well as challenges highlighted by the Family Violence Reform Implementation Monitor – have been fully operationalised or are having the impact that we might expect.

Are current data collection opportunities being fully leveraged?

The first question that the Inquiry should be considering is whether the points of data generation that might be assumed to be functioning in Victoria are actually producing meaningful information.

For example, the CIJ's work supporting the implementation of 'perpetrator-focused' recommendations from the RCFV highlighted opportunities for greater data collection from services which come into contact with adults using violence. In particular, the CIJ supported the implementation of Recommendation 85 consulted with over 100 different service types to '*map the roles and responsibilities of services and agencies in relation to perpetrator interventions*'. In doing so, it developed a 'web of accountability' framework which surfaced the roles of services in terms of how they might step in or hold back when identifying or responding to adult perpetration. Informed by direct engagement with men who had used violence about their experiences of service engagement, the framework identified those disciplines with the potential to lean in with care and, conducted appropriately, collect information which could support useful intervention.[4]

This work contributed to the ultimate development of the MARAM Framework, in which an increasing number of services have now been trained. The question is, however, to what extent is MARAM capability building and upskilling of a greater diversity of services genuinely driving improved data collection. This includes in specific areas related to understanding risk which could in turn uplift the capability of a range of agencies to recognise adults as perpetrating violence against children and young people.

[4] Vlais R & Campbell, E. (2019) *Bringing pathways towards accountability together: perpetrator journeys and system roles and responsibilities* RMIT University, Melbourne, https://cij.org.au/cms/wp-content/uploads/2018/08/bringing-pathways-towards-accountability-together-perpetrator-experiences-and-system-roles-and-responsibilities-170519.pdf

It also includes the extent to which services understand their own role in using the MARAM or are feeling confident in using it at all. Experience from work conducted by the agencies contributing to this submission reveals that services across a range of areas – such as alcohol and other drug (AOD), family services, homelessness and mental health services – are often only receiving intermediate MARAM training or do not otherwise feel equipped to apply the MARAM in their settings or to integrate it into their assessments in a client-centred way.

Any answer to this question about data generation must also recognise that data *collection* is a task for which services are not adequately funded, if at all, meaning that any data recorded by community services is likely to be inconsistent at best. This represents a missed opportunity where, for example, community-based providers working with men around issues such as mental health or substance misuse might hold information about a man's potential use of violence, yet a lack of support for effective implementation of the MARAM means that this information is not recorded or shared across the wider system.[5]

Further, the CIJ's extensive engagement with family-focused services highlights that many, including those directly supporting victim survivors, may feel ill-equipped to engage with people using violence and thereby to elicit risk-related information. While it is crucial to recognise that victim survivor services are often the richest source of data about risk of adult perpetration, a lack of direct engagement with adult men by wider services can mean that additional opportunities to gather pertinent information may be missed.[6] This can include where initial risk assessments are made at intake by an increasingly stretched Orange Door workforce, which may in turn be impacted by high turnover and variations in practice.

Finally, it is important to note that these initial assessments are intended to be updated by services to which victim survivors or people using violence are referred. The CIJ and CFRE's research into family violence service provision during COVID, however, included a targeted case file review of 70 MARAM risk assessment tools (including Screen and Identification, Brief and Intermediate and Comprehensive MARAM tools) and associated safety plans collected from organisations offering a broad range of programs to people experiencing and using violence.[7]

The *Futureproofing safety: surfacing inequality and building service capacity for crisis ready responses* research found that services frequently failed to enter updates of the risk assessment that had been conducted by the Orange Door in the MARAM template, preferring to record updates in their case notes instead.[8] The research team heard from providers in data-testing workshops that this was because the MARAM framework was too unwieldy and time consuming to use.[9]

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[5] Ibid

[6] Chung, D., Upton-Davis, K., Cordier, R., Campbell, E., Wong, T., Salter, M., Austen, S., O'Leary, P., Breckenridge, J., Vlais, R., Green, D., Pracilio, A., Young, A., Gore, A., Watts, L., Wilkes-Gillan, S., Speyer, R., Mahoney, S., Anderson, S. & Bissett, T. (2020), *Improved Accountability: the role of perpetrator intervention systems*, ANROWS Research Report 20, June 2020 https://cij.org.au/cms/wp-content/uploads/2020/08/anrows-improved-accountability-full-report.pdf; Campbell, E., Ellard, R., Hew, E., Simpson, M., McCann, B., & Meyer, S. (2023). *WRAP around families experiencing AVITH: Towards a collaborative service response* (Research report, 04/2023). ANROWS, https://anrowsdev.wpenginepowered.com/wp-content/uploads/2023/04/RP.20.01-Campbell-RR1-WRAP-AVITH-1.pdf

[7] McCann, B. Campbell, E. Carson, R. Logan, N. Ellard, R. Simpson, M. Fong, H. Stevens, E. Poyner, E. Gibson, M. Young, S. Hew, E. De Maio, J. Jamaleddine, Z. Soutter, E. Maury, S. Price, E. Forster, H. Kaspiew, R. Horsfall, B. Falconer, L. La Rocca, L. Lasater, Z. (2023), *Future-proofing Safety: Surfacing inequality and building service capacity for crisis-ready responses* (Research report, 09/2023). Family Safety Victoria. Future-proofing-Safety-Final-Report.pdf (cfre.org.au)

[8] Ibid, 32.

[9] Ibid.

As a result, detailed information about risk was not being recorded through client management systems, such as the Specialist Homelessness Information Program that is used by services that receive government funding for certain programs, including family violence programs.[10] This finding suggests that the potential of the MARAM as a source of accurate data collection is not being fully realised – particularly in terms of dynamic risk. Dynamic risk refers to changes in circumstances or behaviour (such as an upcoming Family Court hearing or escalating AOD use) which can impact and increase the risk profile that a perpetrator poses.

Further – and as discussed in more detail below – the *Futureproofing safety* research highlighted that certain types of risk and associated perpetration may not be being captured by the MARAM at all. Particularly concerning, the research found a glaring absence of data recorded on MARAM assessments about risk to children and young people. Specifically, very few risk assessments were completed for children and young people as victim survivors in their own right, whether these were initial MARAM assessments at intake by the Orange Door, or subsequent assessments by the services to which a family had been referred.[11]

Far from a COVID-related exception, the ongoing work of the agencies contributing to this submission – including from our various research, training and practice perspectives – indicates an ongoing gap in initial assessments by the Orange Door for children and young people as victim survivors in their own right. Rather, young children continue to be subsumed within the experience of their protective parent, often remaining so during ongoing service contact, while young people unaccompanied by a protective parent are disappearing from view altogether after any initial contact with an intake point.

Finally, the CIJ's continued engagement with practitioners across our wider advocacy and research echoes a concern about efficient access to data and delays which can impact on victim survivor safety. As reflected in Djirra's submission to this Inquiry, requests for information about perpetration from services which support victim survivors must be made to the Orange Door, rather than directly to the Central Information Point, even where services are Tier 1 organisations under the MARAM.[12] More generally, services with which the agencies contributing to the current submission collaborate report that greater resourcing of the CIP to process and update data, as well as respond to requests, is a crucial step in improving understanding of perpetration.

Legal assistance as a touchpoint

In addition to some of the foundational infrastructure recommended by the RCFV, Victoria has seen a consolidation and expansion of its specialist court responses to family violence. Building on the Specialist Family Violence Divisions first established in 2008, the gradual expansion of specialist approaches occurring since that time was accelerated by the RCFV's recommendation that all headquarter Magistrates' Courts become Specialist Family Violence Courts (SFVCs) and, with that, become capable of responding to family violence in a more expert and holistic way.

[10] This system records client and service data such as client needs; the type(s) and length of support received; family violence risk and safety planning and demographic information.

[11] McCann et al, above n 7, 32.

[12] Djirra, 27 May 2024, *Submission no 8, Inquiry into Capturing Data on Family Violence Perpetrators*, Victorian Parliamentary Legal & Social Affairs Committee.

Noting the considerable investment required to achieve this goal, the agencies contributing to this submission welcome this ongoing expansion. At the same time, we caution against any assumption that these courts are always able to ensure that appropriate support is available to people seeking protection through the Family Violence Intervention Order (FVIO) system, or that accountability experienced by people against whom these orders are made. Further, as discussed below, the proactive approach and volume facing these courts can sometimes mean that the circumstances of those identified as respondents are not always fully interrogated.

Focusing first on the bulk of matters processed through these courts, being cases involving female victim survivors and male respondents, in 2018 the CIJ conducted work to support the development of a single, best practice Court Mandated Counselling Order Program (CMCOP). This work occurred because, while specialist courts had obtained the legislative power to mandate men using violence to Men's Behaviour Change Programs a decade earlier, the approaches used across the different specialist locations at the time varied to a certain extent.

What the CIJ found in its work to develop a more consistent model was a tendency to default to a 'throughput' approach – one focused on "getting him to a program" without any real capacity to understand whether a man ordered to participate in a Men's Behaviour Change Program (MBCP) had even attended his initial assessment, let alone benefited from the program.[13] Similarly, where a man might be subject to a subsequent FVIO, he would not necessarily be brought back before the same court or Magistrate, missing a lens on his ongoing patterns of behaviour.

Since the CIJ's review and design work, the CMCOP's establishment has meant a greater focus on information sharing through the 'risk review' meetings between the court, police and program providers recommended by the CIJ, amongst other mechanisms.[14] The CIJ's broader work regarding other court-related RCFV recommendations, however, points to a similar default to a 'throughput' model more generally in terms of courts being focused on "getting an order in place", without there being adequate time to ensure that the process promotes safety and accountability in a genuine way.

The CIJ's 2021 report *More than just a piece of paper: getting protection orders made in a safe and supported way* explored the enormity of volume to which courts are responding and, amongst other things, recommended that all parties receive access to support and legal advice prior to attending court, so as to inform more considered decision making.[15] The CIJ made this recommendation because of how few affected family members (AFMs) and respondents to FVIOs are actually likely to be receiving the support and advice that they need – despite it being a reasonable community assumption that this is readily available to all.

[13] Campbell, E., Vlais, R & Bissett, T. (2018) *Beyond 'getting him to a program': towards best practice for perpetrator accountability in the Specialist Family Violence Court context*, Centre for Innovative Justice, RMIT University, Melbourne. https://cij.org.au/cms/wp-content/uploads/2018/08/cor-literature-review.pdf

[14] Recent announcements, however, that the relationship between the courts and relevant providers may not be sustained through the CMCOP are cause for concern. See https://ntv.org.au/court-directed-male-family-violence-interventions-to-end-30-june/

[15] Campbell, E., Bissett, T., Howard, A., Lewers, N., Polis, M. & Richter, J (2021) *More than just a piece of paper: getting protection orders made in a safe and supported way. Responding to Recommendation 77 of the Royal Commission into Family Violence*, Centre for Innovative Justice, RMIT University, Melbourne.

The relevance of this issue to the current Inquiry is that access to court-based support and family violence informed public legal assistance represent opportunities for identifying and assessing risk of perpetration – as well as intervening to prevent its escalation. Similarly, information which can identify links with Family Law processes is crucial to incorporate. This includes where systems abuse may be furthered against victim survivors who do not have independent legal advice and who may be pressured into parenting agreements at the Magistrates' Court level as a result, even though these parenting agreements may be unsafe for adult and child victim survivors alike.

The value of public legal assistance is particularly pertinent to consider when courts are responding to an unprecedented volume of family violence matters. For example, it is vital to remember more broadly that the Victorian Department of Justice identified in its 2022 – 2025 Legal Assistance Strategy that the demand for legal services currently outweighs the ability for providers to meet that demand in any adequate way.[16] Further, the impact of the current cost of living crisis has meant that an increasing number of Victorians are qualifying for legal assistance, placing more stress on legal assistance providers.[17] The Strategy notes that "understanding the nature and extent of the need for legal assistance in Victoria is vital to ensure that services reach those that most need it, and that limited resources are allocated as efficiently as possible."[18]

The 23 per cent increase in the reporting of family violence in Victoria between 2017 and 2022, [19] combined with this wider lack of legal assistance funding, can therefore mean that a victim survivor could be living below the poverty line and still not necessarily be eligible for ongoing representation for their family violence or (often related) family law legal matter.[20] This is crucial context when it is increasingly recognised that adult perpetrators can deploy the family law system to perpetuate systems abuse, with complex and extensive legal processes often compounded by deliberate delays which in turn see victim survivors incur onerous legal costs.[21]

This dire situation persists, despite evidence indicating that specialist legal assistance provided at an early stage can reduce the risk that people using violence pose and improve victim survivor safety, if conducted in a meaningful and appropriate way.[22] In part, this is because it can reduce heightened emotions and allow a respondent to a FVIO to feel heard, which research shows is more likely to lead to compliance.[23] Most importantly, it provides an opportunity for the concept of family violence to be explained; information about the process to be conveyed; and details about the meaning of any FVIO imposed fully stepped out.[24]

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[16] Department of Justice and Community Safety, *Victorian Legal Assistance Strategy 2022-2025* (Web Page) <https://www.justice.vic.gov.au/justice-system/legal-assistance/victorian-legal-assistance-strategy-2022-2025> ('Victorian Legal Assistance Strategy')

[17] Ibid.

[18] Ibid.

[19] Wand, K. (2024) 'Community Legal Centres struggling to provide critical family violence support as funding trails demand' <https://www.fclc.org.au/family_violence_funding_trails_demand>..

[20] Millane, E., Jackson, A. & Blane, N. (2023) 'Justice on the Brink: Stronger Legal Aid for a Better Legal System' *Impact Economics and Policy* ('Justice on the Brink').

[21] Lyons, K. (2024) 'Debt, danger or a decade of fighting: how a lack of legal services leaves DV victims with dire choices' *The Guardian* https://www.theguardian.com/australia-news/article/2024/may/17/debt-danger-or-a-decade-of-fighting-how-a-lack-of-legal-services-leaves-dv-victims-with-dire-choices

[22] Campbell, above n1, Campbell et al, above n 15.

[23] Pike, J. (2015) 'Demanding accountability in domestic violence courts: Defendants' perceptions of mandated batterer's intervention programs' (PhD Thesis, State University of New York) 108.

[24] Campbell, above n 1; Campbell, Bissett & Vlais, above n 13; Vlais & Campbell, above n 4; Campbell et al, above n 15.

While privately funded practitioners have not necessarily received training to avoid collusion, legal practitioners from Victoria Legal Aid and relevant Community Legal Centres have specialist knowledge in how to advise and represent people using violence while promoting accountability and safety.[25] Comprehensive and specialist public legal assistance is therefore a crucial avenue for preventing further violence by encouraging compliance and reducing future breaches, while also reducing the need for applications or variations – all of which take up valuable court time.

Specialist public legal assistance is also a valuable touchpoint for people coming through the family violence legal response, through which they can receive referrals and information, as well as have their needs identified. This in turn can be a vital source of information and data about perpetration. Separately (and as discussed in more detail at a later point), it is a crucial avenue for identifying cases where victim survivors have been misidentified as predominant aggressors – enabling this to be brought to the attention of the court and potentially rectified.

Investing in 'perpetrator' focused services

MBCPs (including those to which courts are currently mandating men to attend), as well as other services working with people using violence, are obviously a crucial touchpoint and potential source of data. Any engagement by this Inquiry with No to Violence could explore the information that is currently available from these services, as well as the considerable limitations on services in terms of their capacity to record data, including in any consistent way.

Separately, ANROWS funded research in which the CIJ was a partner outlined a potential Minimum Data set that could be developed across multiple programs, to which the Inquiry should refer.[26] Other valuable ANROWS research has also highlighted the value of family safety contact (often known as 'partner contact') delivered through MBCPs.[27] This is a core element of MBCPs through which practitioners support victim survivors whose partners or former partners are participating in the MBCP – doing so as a way of providing much needed assistance, as well as a way of testing the information that is reported by participants about their own patterns of behaviour. Funded adequately, it is useful to note that data from family safety contact would prove a highly valuable way of receiving information about people using violence.

In any discussion about data available from MBCPs, however, it is vital to understand the reluctance of these programs to report on 'progress' or 'risk' for participants. This hesitance stems from an awareness that the data that a program collects is still very limited, while self-reports from participants are obviously moderated by their own (sometimes distorted) perceptions.[28] As a result, programs are concerned that courts or other decision makers seeking to rely on MBCP reports may act on incomplete or skewed information.

This is a reasonable concern, given that courts and other decision-making bodies may be looking for some sort of indication on which to base any decision to vary an order (including ordering contact with children). In these circumstances, courts may do so without necessarily considering that it is likely to be the scrutiny of a court and the imposition of a FVIO or similar order that is actually containing risk, rather than a man's participation in a program.

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[25] Simpson, M., Campbell, E. Ellard, E, Pathmanathan, J & Campbell Walker, F. (forthcoming) Evaluation of Victoria Legal Aid's Legal Practice Model, Centre for Innovative Justice, RMIT University, Melbourne.

[26] Chung et al, above n 6.

[27] Chung, D., Anderson, S. Green, D. & Vlais, R. (2020), *Prioritising women's safety in Australian perpetrator interventions: The purpose and practices of partner contact,* Research Report 8/2020, ANROWS. https://anrowsdev.wpenginepowered.com/wp-content/uploads/2020/04/ANROWS_CHUNG-et-al_Partner-contact.pdf

[28] Shephard-Bayly, D. (2010). *Working with men who use violence: the problem of reporting "progress".* Australian Domestic and Family Violence Clearinghouse Newsletter 39.

With this acknowledged, the CIJ has recently produced a paper which proposes work towards reporting 'signposts' of incremental change (or the absence of such) that MBCPs may start to consider. Adequately resourced to conduct this work, MBCPs may begin to be well positioned to contribute more data regarding the behaviour of their participants, albeit while proceeding with understandable care.[29]

Impacts of COVID – touchpoints constrained

The *Futureproofing safety* project referred to above was led by CFRE in partnership with the CIJ and the Australian Institute of Family Studies. This project was a broad study of the response to family, domestic and sexual violence across Victoria during COVID and, amongst other things, identified various data touchpoints that were seriously impacted by COVID and which, to an extent, have not fully recovered.

For example, the research identified a significant constraint on the availability of forensic examinations following sexual assault, including assault in the context of family violence.[30] This was initially because of restrictions on forensic examiners travelling while 'stay at home' orders were enforced. As a result, victim survivors who wanted a forensic examination had no choice but to 'hold evidence' (ie remain in the clothes in which they had been assaulted and avoid washing) while travelling in a police van to another part of Victoria to be examined.[31]

Unsurprisingly, the CIJ heard from sexual assault counsellors that, during this time, many victim survivors chose not to undergo a forensic examination after a sexual offence – losing the opportunity for forensic evidence to be collected that could inform (and sometimes be crucial to) any future prosecution.[32] At the time of the publication of the research in September 2023, the full remit of forensic examinations had not been reinstated, with victim survivors still limited in the forensic support that they could receive. The withdrawal of this service has therefore contributed to a major data gap in relation to sexual offences. The CIJ therefore encourages the Inquiry to seek information about the current availability of forensic examinations to ensure that this crucial source of data about perpetration is adequately collected in the future.

Similarly, the *Futureproofing safety* research identified another significant data gap stemming from the impact of COVID. While many workforces deemed themselves 'essential' and continued to operate during Victoria's extended lockdowns – including frontline services delivering support to families in need – the research found that Child Protection services were significantly reduced.[33]

This had two key impacts in terms of information that might be available about perpetration. The first of these was the capacity to gather information about risk where Child Protection were not present to make relevant assessments, with some services reporting to the CIJ that the obligation to raise concerns about quite serious levels of risk seemed to have fallen on them instead.[34]

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[29] Vlais, R., Campbell, E. & Green, D. (2022) *Signposts for assessing and reporting family and domestic violence perpetrator change* Centre for Innovative Justice & Stopping Family Violence, RMIT University, Melbourne. https://cij.org.au/cms/wp-content/uploads/2018/11/signposts-for-mbcp-reporting-final-april-2022.pdf

[30] McCann et al, above n 7, 144.

[31] Ibid.

[32] Ibid, 145.

[33] Ibid, 141.

[34] Ibid.

The converse impact was that Child Protection were not able to facilitate contact between parents and children who had been removed – including where parents were in custody.[35] The ongoing impact of this on family reunification processes cannot be underestimated, with the withdrawal of Child Protection during this time likely to have lifelong effects on families and children that should inform our understanding of any data emerging about use and experience of family violence in the future.

Finally, the *Future-proofing safety* research highlighted that children and young people were rendered particularly invisible during COVID. In particular, the organisational case studies and case file reviews referred to in the section above revealed a worryingly low rate of risk assessments concerning children and young people, despite legislative requirements to complete a child MARAM.[36] The agencies contributing to this submission therefore encourage the Inquiry to explore whether available data suggests that this gap persists, although our combined research and practice experience indicates very strongly that it does.

More broadly, the research showed that the impact of school closures had significant implications for identification of violence against children and young people. This included violence from family of origin against young people identifying as queer, particularly where their identities would otherwise be supported in the school environment, as would connections with relevant services.

Wider research identified a range of broader impacts for children being confined to their homes.[37] These range from reductions in physical exercise and poorer diets;[38] an increase in screen time and irregular sleep patterns; to disrupted education;[39] entrenched inequalities; deteriorating mental health, including increased anxiety; and increased vulnerability to neglect and abuse.[40] This was similarly highlighted by research led by Melbourne City Mission, *Amplify: Turning up the volume on young people and family violence*, which specifically highlighted the significant impacts of COVID-19 on young people experiencing family violence.[41]

While the skewed visibility of children and young people is a broader challenge discussed below, the impact of lockdowns and subsequent school disengagement on a generation of young people should not be underestimated as relevant agencies or inquiries attempt to interpret data about perpetration of family violence in the future.

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[35] Ibid, 144.

[36] McCann et al, above n 7.

[37] Wang, G., Zhang, Y., Zhao, J., Zhang, J., & Jiang, F. (2020). 'Mitigate the effects of home confinement on children during the COVID-19 outbreak'. The Lancet, 395(10228), 945-947; SBS News 'Australia's coronavirus school closures are hurting children in poverty, UNICEF warns'. (2020). Retrieved from https://www.sbs.com.au/news/australia-s-coronavirus-school-closures-are-hurting-children-in-poverty-unicef-warns

[38] Duffy, C. (1 September 2020 'Children not logging on to learn as families struggle to pay for food, rent'. ABC News. Retrieved 1 September 2020, from https://www.abc.net.au/news/2020-04-28/vulnerable-students-could-fall-behind-remote-learning-covid19/12190834

[39] Centre for International Research on Education Systems and Mitchell Institute, (2020) Impact of learning from home on educational outcomes for disadvantaged children. Victoria University, Retrieved from https://www.vu.edu.au/sites/default/files/impact-of-learning-from-home-federal-government-brief-mitchell-institute.pdf; Armitage, R., & Nellums, L. B. (2020). 'Considering inequalities in the school closure response to COVID-19'. The Lancet Global Health, 8(5), e644.

[40] Tucci, J., Mitchell, J. & Thomas, L. (2020). A Lasting Legacy – The Impact of COVID-19 on children and parents. Australian Childhood Foundation, Melbourne.

[41] Corrie, T. & Moore, S. (2021), Amplify: Turning Up the Volume on Young People and Family Violence (Research Report), Melbourne City Mission, p 26.

Skewed visibility – young people

Children and young people as victim survivors in their own right

The RCFV put considerable emphasis on the need to recognise children and young people – the "silent victims",[42] as the RCFV termed them – as "victim survivors in their own right". Certainly, Australia's first National Child Maltreatment Study found that two thirds of Australians have been abused, neglected or exposed to domestic and family violence as children.[43]

Further, the Crime Statistics Agency reports that over 14,000 AFMs in a family violence police report in 2023 were aged 15 – 24,[44] while data from the Australian Institute of Family Studies showed that almost a third of 18 and 19 year olds had experienced violence from an intimate partner.[45] These are striking statistics given that violence is under reported by young people, while police and other agencies are still developing the capacity to identify young people as victim survivors. Combined, this means that the actual figure is likely to be considerably higher.

Even more crucial to note, children and young people from particular cohorts are at higher risk of experiencing violence during childhood. As referred to above, young people with diverse gender and sexual identities experience disproportionate rates of harm and additional barriers to support. This may include threats to 'out' or reveal their gender identity.[46] Building on existing research, early data from the *Amplify* program – a pilot being run by MCM founded on its earlier research and being evaluated by the CIJ – indicates that the majority of the young people aged 15 - 19 years who are accessing the Amplify case management support are young women and/or gender diverse young people fleeing family violence.

Further, children and young people with disability are particularly at risk,[47] as are children and young people from First Nations communities.[48] As highlighted by the *Amplify* research described above, young people who have experienced adult perpetrated harm but are unaccompanied by a protective parent are also more vulnerable to experiencing additional violence.[49] This includes experience of intimate partner violence, particularly where unaccompanied young people have no stable housing and are vulnerable to subsequent exploitation or the use of "survival sex" to put a roof over their heads.[50] The CIJ and MCM are further exploring these experiences in a subsequent research project, *Unsafe & Unseen: spotlighting unaccompanied children and young people seeking shelter* funded by FSV, the findings of which are likely to be released early in 2025.

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[42] State of Victoria. (2016). *Royal Commission into Family Violence*: Summary and recommendations, Parl Paper No 132 (2014-16), Summary and recommendations

[43] Haslam D, Mathews B, Pacella R, Scott JG, Finkelhor D, Higgins DJ, Meinck F, Erskine HE, Thomas HJ, Lawrence D, Malacova E. (2023). The prevalence and impact of child maltreatment in Australia: Findings from the Australian Child Maltreatment Study: Brief Report. Australian Child Maltreatment Study, Queensland University of Technology

[44] https://www.crimestatistics.vic.gov.au/crime-statistics/latest-victorian-crime-data/family-incidents-2

[45] Growing Up Project: The Longitudinal Study of Australian Children (LSAC), Australian Institute of Family Studies

[46] Corrie & Moore above n 41, p 42.

[47] Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, (2023) Final Report, Volume 3, *Nature and Extent of Violence, Abuse, Neglect and Exploitation*, Commonwealth of Australia https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%203%2C%20Nature%20and%20Extent%20of%20Violence%2C%20abuse%2C%20neglect%20and%20exploitation.pdf

[48] Importantly, up to date data in this area is being collected as part of a crucial recent investment into First Nations led research into this subject https://ministers.dss.gov.au/media-releases/13016#:~:text=First%20Nations%20women%20and%20children,a%20result%20of%20family%20violence.

[49] Corrie & Moore, above n 41.

[50] Ibid.

While identifying these young people's experiences is crucial to intervention, as well as to providing support and recovery, the Inquiry is also urged to consider it as a crucial path to identifying and collecting data about perpetration.

Vital to remember is that approximately one child is killed as a result of family violence every fortnight in Australia.[51] Just as crucial, a 2019 investigation by the Victorian Commissioners for Children and Young People into children who died by suicide and were known by Child Protection, concluded that, 'their lives were marred by family violence, dysfunction and often chronic neglect'. [52] These "lost, but not forgotten" young people – whether directly killed or taking their own lives – should not only be a reminder that children and young people experience family violence, but that an identifiable adult in their lives has likely used it against them.

Currently, however, there is a disconnection between family violence and suicide in terms of government reporting and data collection. For example, the Australian Bureau of Statistics[53] has linked different risk factors to youth suicide, but the specific role of family violence has been overlooked. This renders the inherent risks and impacts of family violence on children and young people invisible.

As the *Missing Figures: the role of domestic and family violence in youth suicide* report has shown, young people's deaths by suicide too often sit largely outside the family and domestic violence narrative, despite the association between experiences of family and domestic violence during childhood and adolescence and youth suicide being well established internationally.[54] By contrast, limited efforts have been made in Australia to examine this relationship, while in death reviews and coronial inquiries, the intersecting role of family violence preceding suicide is often ignored altogether or minimised.[55]

More generally, agencies contributing to this submission note that the lack of capacity to screen for and assess family violence risk within suicide prevention and aftercare services only amplifies this risk. For example, if suicide care plans are shared with families as a result of a lack of family violence screening and assessment, this may put the young person at even greater risk of harm and abuse, as does the sharing of disclosures of family violence at intake points This echoes the gaps in MARAM training or confidence in using the MARAM by many services, as noted above.

This may impact particular cohorts of young people, in particular. For example, Drummond Street services (of which the Centre for Family Research and Evaluation are a part) note the higher rates of children and young people identifying as LGBTIQA+ experiencing both suicidality and family violence who are accessing their services, a trend reflected in broader research.[56]

[51] Brown T, Bricknell, S., Bryant, W., Lyneham, S., Tyson, D. & Fernandez Arias, P. (2019). Filicide offenders. *Trends & issues in crime and criminal justice* no. 568. Canberra: Australian Institute of Criminology.

[52] Commission for Children and Young People, (2019) *Lost, not forgotten: Inquiry into children who died by suicide and were known to Child Protection* Melbourne, p3.

[53] Australian Bureau of Statistics, (2021) *Causes of Death, Australia*. Commonwealth of Australia.

[54] Meyer, S., Atienzar-Prieto, M., Fitz-Gibbon, K., & Moore, S. (2023). *Missing Figures: The Role of Domestic and Family Violence in Youth Suicide - Current State of Knowledge Report*. Griffith University: Brisbane

[55] Ibid

[56] Hill, A., Lyons, A. & Jami Jones, I (2021) National Report 4 Writing Themselves In 4, *The Health and Wellbeing of LGBTIQA+ Young People in Australia*

Crucial for this Inquiry to consider, therefore, is how the role of family violence in youth suicide can be recognised in a way that avoids histories of childhood trauma being masked by other presenting issues (such as poor mental health or substance misuse). While these issues are likely the symptoms of this trauma, family violence informed assessments can enable consideration of whether trauma is in fact the primary driver of suicidal behaviours and ideation.[57]

That said, an additional caution is that information available from statutory agencies may substantially underestimate the nature of the risk or trauma that young people have experienced, or even fail to consider a particular form of family violence. For example, the *Futureproofing safety* research team heard about inadequate Child Protection responses to young people with diverse gender and sexual identities experiencing violence from their families of origin.[58]

A further caution is that many young people will have "aged out" of the Child Protection system[59] and be navigating the service system on their own. Too often these unaccompanied young people are missed in the picture of victim survivor experiences, as well as in the delivery of any associated, appropriate support.

As a result, organisations working in this area are calling for policy settings to consider the diverse needs of young people across different life stages and experiences – including the needs of young people 12 – 18 as distinct from those of children; and of young people 18 – 24 as distinct from those of adults.[60] Similarly, they are calling for policy settings to consider that sexuality, religion, racial discrimination, disability and age are also key drivers of the violence that young people experience, in addition to gendered dynamics in certain intimate relationships or the gendered dynamics of any violence committed against children and young people at home.[61]

Here the agencies contributing to this submission encourage the Inquiry to engage with the *Pave the way: Investing in the safety and futures of the next generation* submission to Victoria's Rolling Action Plan. That submission includes further information about the experiences of young victim survivors; the barriers that they encounter to navigating the service system; and the way in which support and safety should be designed and delivered.[62]

In particular, however, the Inquiry is encouraged to consider where a lens on young people's experiences can also be sources of information about the patterns of perpetration against them. This can be through listening to the voices of young people directly, their protective parents where these are present, or any trusted adult in a young person's life, which research has shown can be a particularly strong factor in facilitating support.[6364]

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[57] Meyer et al, above n 54, 31.

[58] McCann et al, above n 7.103..

[59] Royal Commission into Family Violence (RCFV) (2016). Summary report and recommendations. Melbourne: Victorian Government pp. 366-367; Currently, once a young person has reached the age of 17, child protection will not respond to any reports of abuse or neglect at all, unless a protection order or the like has already been granted. In October 2021, a new amendment to the Children, Youth and Families Act 2005 (Vic) was introduced into Parliament which would have enabled new child protection reports on at-risk 17 year olds, closing a long-standing service gap. This amendment did not pass and should be re-introduced into Parliament.

[60] Moore, S., Campbell, E., Pall, C., Demant, L, Fox, A. & Bryant, S. (2024) *Pave the way: Investing in the safety and futures of the next generation* Melbourne City Mission, Centre for Innovative Justice, Youth Affairs Council and Y-Change, Berry Street.

[61] Ibid

[62] Ibid

[63] Moore, T., Arney, F., Buchanan, F., Chung, D., Chong, A., Fernandes, C., Schulze, D. (2020). Practice Brief: *Slow down and listen: Improving children's and young people's safety during periods of violence, separation and reunification*. Adelaide: Australian Centre for Child Protection, University of Adelaide; Kallstrom, A., & Thunberg, S. (2019). "Like and Equal, Somehow" - What Young People Exposed to Family Violence Value in Counselling, *Journal of Family Violence*, pp. 553-563.

[64] Kallstrom & Thunberg, above n 63, 553-563.

A lens on perpetration can also be trained by understanding the services currently in contact with young people, given that most Child Protection and family services are not designed to work with young people over 15, as the *Amplify* report highlighted.[65] This means that general youth services are managing substantial family violence risk, while specialist family violence services and the Orange Door remain a significant gap in terms of identifying or responding to the risk experienced by young people, including for young male victim survivors, for whom there are no identified services in Victoria.

The evidence therefore suggests that, if the Orange Door's reach were broadened to support young people as victim survivors in their own right – regardless of parental consent or engagement – this would present an opportunity to increase understanding about perpetration against young people, as well as address this substantial service gap.[66] We note here that this would need to occur through the introduction of specific youth-focused roles, in addition to the Orange Door's current child wellbeing capability.

In addition, research indicates that disengagement from school and early school leaving is often a signal that a young person is experiencing family violence.[67] Schools are often uniquely positioned to identify and respond to family violence, including noting signs where a child or young person is arriving at school without breakfast or clean clothing or needing material support.[68] That said, disclosures at school and subsequent reports and information sharing need to be handled sensitively so that a young person's trust is not destroyed, including as events unfold which are beyond their control.

Further sources of information can be found in the homelessness sector. For example, a 2022 data capture from 110 young people supported in youth homelessness programs run by MCM found that:

- Almost 90 per cent of young people receiving support from the homelessness service had experienced family violence growing up;
- 57.1 per cent of females went on to experience intimate partner violence;
- 35.5 per cent of males went on to use violence in their intimate relationships (noting that the issue of young people's use of violence more broadly is discussed further below).[69]

Information from the limited dedicated youth homelessness services that are available, or even from sources of brokerage funding to provide emergency motel accommodation for young people (despite this being a completely inappropriate safety response), may therefore be a source of data about potential rates and sources of perpetration where this has been recorded. A more detailed interrogation of family violence refuges – who they are able to support and who they are not – may also broaden the gaze on the cohorts of people experiencing violence and the types of perpetration that they are experiencing as a result.

Further, research shows that information from wider support services which are attempting to provide young people with support for a range of needs may be a useful source of data about the use of controlling behaviour or systems abuse by an adult in their lives.

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[65] Corrie & Moore, above n 41.

[66] Ibid, 25; Campbell, E., Richter, J, Howard, J & Cockburn, H. (2020) *The PIPA Project: Positive Interventions for Perpetrators of Adolescent violence in the home* Research Report 03, 2020. ANROWS, Sydney.

[67] Campbell et al, above n 66; Rosmalen-Nooijens, K. C., Wong, S. L., & Soron, T. R. (2017). Young People, Adult Worries: Randmized Controlled Trial and Feasability Study for Internet-Based Self-Support Method "Feel the ViBE" for adolescents and young people exposed to violence, Journal of Medical Internet Research

[68] Corrie & Moore, S, above n 41, 31.

[69] Moore et al, above n 60.

For example, the *WRAP Around Families Experiencing AVITH: Towards a Collaborative Service Response* highlighted that abusive parents may often withhold consent for their children (including adolescents) to engage with certain services as a means of perpetrating further abuse or control over the protective parent.[70]

Echoed in the *Amplify* findings as well,[71] some of the considerations inherent in whether an agency will seek consent from a parent are not based on age, but on organisational policy. For example, while some agencies may recognise children as "mature minors" once they are aged 16 and are deemed capable of making their own decisions about their service receipt, there is no specific legal age when a young person may be deemed sufficiently mature.[72]

This means that some organisations decide that they will not provide access to their services without parental consent for young people under the age of 16 or 18, while others decide that they will. Once a young person is under the care of the state through Child Protection, meanwhile, the state is deemed to remain their official 'parent' up until the young person is aged 18, even where the young person is homeless and is not receiving the state's protection in any other meaningful way.

An audit of different organisational data to ascertain where a parent has withheld consent for service support (where it is the organisation's policy to seek it) may be a useful source of data about perpetration, including where systems abuse may be present through Family Law proceedings.

A final system contradiction in the legal context may also offer a lens on different forms of perpetration, discussed in further detail in the next section. For example, while a young person can be made the subject of an FVIO from the age of 10 years, a young person can only seek an in-person application for an FVIO in response to violence perpetrated against them once they are 14. As a result, young people can only be protected by an FVIO where they are named as an AFM on an order that also protects a protective parent or, in circumstances that are far more unusual than in relation to adult victim survivors, unless Victoria Police brings an application in which the young person is the primary AFM.

Contradictions inherent in the FVIO process are discussed in more detail in the next substantial section of this submission and are a particularly crucial area for the Inquiry's consideration – remembering how important it is to explore the nuance within the numbers at every possible turn.

Adolescent violence in the home – an overrepresentation in the data

Adolescent violence in the home or 'AVITH' has attracted increasing attention over the last decade. Notably, the RCFV dedicated a specific chapter of its substantial final report to AVITH, identifying a need for increased policy attention and resourcing for this particular form of violence.[73]

[70] Campbell et al, above n 6, 70.

[71] Corrie & Moore, above n 41, p 37.

[72] Victorian Department of Education and Training (2021) Mature Minors and Decision Making available at https://www2.education.vic.gov.au/pal/matureminors-and-decision-making/policy

[73] State of Victoria. (2016). Royal Commission into Family Violence: Summary and recommendations, Parl Paper No 132 (2014-16), Summary and recommendations

Otherwise referred to as 'adolescent family violence'; (or 'child to parent violence' internationally[74]) studies describe AVITH as a pattern (not an isolated incident) of violent or abusive behaviour used by an adolescent [75] within their family, mostly against parents or other caregivers and siblings.[76] Like other forms of family violence, this behaviour may involve property damage; financial, psychological and emotional abuse; physical intimidation; and assaults, including sexual assaults.

AVITH is also significantly underreported. This is in part because many parents often feel shame, stigma, a sense of responsibility for the behaviour, or a sense that it is their job to manage and protect their child.[77] Equally, parents may view their child's behaviour as "normal" or developmentally appropriate; and/or fear the consequences of reporting to police or involving other authorities.

Despite this underreporting, data in Victoria, including analysis conducted for the RCFV, has continued to indicate that a consistent number of of respondents to police family violence callouts are young people aged 19 years or younger[78] and 17 years or younger.[79] Wider research also indicates that young people in contact with police for use of family violence are at risk of repeat contact quickly, including for breaches of intervention orders.[80]

The context behind these figures, however, is crucial to understand, with this section providing a detailed discussion regarding the findings of a landmark study led by the CIJ, *The PIPA project: Positive Interventions for Perpetrators of Adolescent violence in the home*[81] which offers a lens on this complexity for the current Inquiry to consider.

Policy and legislative setting contributing to the numbers

Important to understand first as a background to any analysis of AVITH related data, the Victoria Police Code of Practice adopts a 'zero-tolerance' response to family violence-related callouts. This translates to routine applications for an FVIO by police to seek protection for the AFM on behalf of the state. Specifically, Victoria Police members are obliged to apply for an order on behalf of an AFM, "wherever the safety, welfare or property of a family member appears to be endangered by another family member".[82] This translates into a consistent rate of around 70% of all FVIO applications being brought by Victoria Police.[83]

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[74] Miles, C & Condry, R. (2015) 'Responding to adolescent to parent violence: Challenges for policy and practice' The British Journal of Criminology, 55(6), 1076–1095.

[75] For the purposes of this paper and the wider PIPA project, the definition of adolescence used is children and young people between the pages of 10 – 17 in recognition of the specific legal status of this age group.

[76] Howard, J., & Abbott, L. (2013). *The last resort: Pathways to justice*. Melbourne: Digital Reprographics; State of Victoria. (2016). Royal Commission into Family Violence: Report and recommendations, Vol I. (No 132 Session (2014–16)). p 147.

[77] Howard & Abbott, above, n 76; Daly, K., & Nancarrow, H. (2010). 'Restorative justice and youth violence toward parents'. In J. Ptacek (Ed.), Restorative justice and violence against women (pp. 151–176). New York: Oxford University Press.; Fitz-Gibbon, K., Elliott, K., & Maher, J. (2018). *Investigating Adolescent Family Violence in Victoria: Understanding Experiences and Practitioner Perspectives*. Monash Gender and Family Violence Research Program, Monash University.

[78] State of Victoria, above n 76.

[79] As one example: Crime Statistics Agency (2018) Victoria Police family violence data dashboards. Retrieved from https://crimestatistics.vic. gov.au/family-violence-data-portal/family-violence-data-dashboard/victoria-police

[80] Boxall, H. & Morgan, A. (2020). Repeat domestic and family violence among young people. Trends & issues in crime and criminal justice no. 591. Canberra: Australian Institute of Criminology https://www.aic.gov.au/publications/tandi/tandi591

[81] Campbell, above n 66.

[82] Victoria Police. (2017). Code of practice for the investigation of family violence (3rd ed.). Retrieved from https://content.police.vic.gov.au/sites/default/files/2019-01/Code-of-Practice-for-the- Investigation-of-Family-Violence-Edition-3-V3-FINAL.pdf?_ga=2.86617435.27411390.1556498288-1868960958.1556498288

[83] Crime Statistics Agency, above n 79.

In cases where the behaviour constituting family violence would also be a criminal offence, police are directed to adopt a "pro-arrest" and "pro-prosecution" response.[84] Victoria Police's framework for responding to family violence notes that AVITH may be different in crucial respects to adult intimate partner violence and acknowledges the complexity of responding in such circumstances. It does not extend, however, to articulating a different approach to decisions regarding arrest, prosecution or the use of civil options.[85]

Detail within the PIPA data

With this as backdrop to consideration of any AVITH related data, a particular data set emerging from the PIPA project is useful for the Inquiry to consider. In addition to focus groups with a wide range of practitioners from different service settings, the PIPA project included a thematic analysis of randomly selected samples from the Children's Court of Victoria, Victoria Legal Aid and Youthlaw, which totalled 139 files once duplicates were excluded.

To note, the PIPA researchers embarked on the project with the aim of increasing understanding around the prevalence and demographics of AVITH, as well as knowledge around the impacts of the legal response on adolescents and their families. Similarly, the PIPA team expected to see a particular conceptualisation, being a primarily gendered behaviour which replicated conventional patterns of coercive control found in adult perpetration.

Instead, the PIPA team found a complexity and variation which complicated, rather than clarified, our understanding of the prevalence data concerning AVITH in Victoria. This complexity and variation intersected in multiple ways, making any inclination to describe 'typologies' of AVITH futile, as other studies in this area have similarly concluded.[86]

Further, the PIPA research confirmed the importance of being aware of and transparent about data sources in terms of articulating or conceptualising a problem and the nature of data actually recorded.[87] Given that a large proportion of the data on which the PIPA research was based derived from legal case files, this meant that it provided information about the behaviour and circumstances attracting a legal response, rather than about the prevalence or phenomenon of AVITH itself, although qualitative findings derived practitioners from legal and wider community service provision settings reported similar variations in relation to their client base.[88]

Most relevant to the focus of this Inquiry, the variation in the PIPA data strongly suggested that young people attracting a standard Victorian family violence legal response were not the specific cohort that we might have envisaged. Specifically, it revealed that the figures on which the RCFV and policy makers had previously relied may not have reflected the true nature of the issue and that more detailed and nuanced data collection was required as a result.

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[84] Victoria Police, above n 76.

[85] Ibid.

[86] Condry, R., & Miles, C. (2014). Adolescent to parent violence: Framing and mapping a hidden problem. *Criminology & Criminal Justice*, *14*(3), 257–275. http://doi.org/10.1177/1748895813500155; Miles, C. & Condry, R. (2016) 'Adolescent to parent violence: the police response to parents reporting violence from their children' 26(7) *Policing and Society* 804 See also Daly and Wade (2016), who describe challenges in categorising the character of reported incidents of adolescent to parent violence used in South Australian court files they reviewed.

[87] Holt, A. (ed) (2015) *Working with adolescent violence and abuse towards parents: Approaches and contexts for intervention* (Taylor & Francis Group, London) 5; Simmons, M., McEwan, T. Purcell, R. & Ogloff, J. (2018) 'Sixty years of child-to-parent abuse research: What we know and where to go' 38 *Aggression and Violent Behaviour* 31.

[88] The primary differentiation was found in descriptions from practitioners working in specialist AVITH contexts, who tended to describe patterns of behaviour by adolescents which were more likely to echo coercive control than the patterns described by practitioners from other settings, who tended to describe contexts of intergenerational or complex trauma.

In particular, while the research did reveal some cases which appeared to involve the anticipated patterns of family violence, these files also included features which complicated this analysis, such as disability and pre-existing trauma. Similarly, the files also featured matters in which the behaviour, the risk of future violence and the fear of the AFM described on the file did not appear to meet the legislative definition of family violence. This included one matter described in case notes by police as involving a one-off incident between teenage siblings in which they could identify no past or ongoing risk, nor fear of future behaviour on the part of the named AFM. Despite this, police had applied for an FVIO, presumably because of the risk-averse imperative in the Code.

To this end, participating Victoria Police members repeatedly referred to concerns about 'being damned if we do and damned if we don't',[89] in terms of how they responded to police callouts. Another referred to a fear of having to explain their decision in a Coronial or other form of Inquiry, with this concern that their jobs were "on the line"[90] often driving decisions in the field.

While legal practitioners across the research expressed sympathy for this position, all simultaneously voiced frustration that individual police did not always appear to understand the legislative definition of family violence and were consequently bringing FVIO applications which should never come to court. Where courts took a similarly risk-averse approach, this meant that young people were attracting a standard legal family violence response – and being made subject to an interim FVIO with the associated risks of criminalisation upon breach – in circumstances which lawyers, and even police, argued were not warranted.[91]

Further, the case files revealed matters in which young people had been made subject to FVIOs where concerns were expressed by parents that the driving factor behind their child's behaviour was suspected mental health or alcohol and other drug (AOD) issues. This included where the file narrative indicated a history of the young person having experienced family violence themselves and where the subject of a dispute between a parent and young person then appeared to be around use of AOD.

This finding does not suggest that mental health or AOD issues are driving or causal factors of AVITH. Rather, what it suggested to the PIPA researchers – supported by practitioner feedback in focus groups - was that (suspected) AOD or mental health concerns may be the symptoms of prior family violence victimisation, but with a standard family violence legal response then imposed upon the young person, who became labelled as a perpetrator instead.

[89] Campbell et al, above n 66, 135.

[90] Ibid, 136.

[91] Particularly important to note here, not all matters involving young respondents to FVIOs are heard by in dedicated Children's Courts or by Magistrates with specialist experience in this area. Some are heard in SFVCs, which are likely to take a particularly proactive approach not necessarily informed by considerations about child development or trauma. Separately, many matters in rural and regional areas are heard in standard Magistrates' Courts sitting briefly in the Children's Court jurisdiction and are therefore potentially heard by Magistrates with no specialisation in either family violence or child development.

This family violence response was then harnessed to refer young people to applicable mental health or AOD services. Files indicated that this either included police responding to a reported family violence incident and then taking the young person to a hospital emergency department for mental health treatment or a Magistrate ordering participation in a mental health or AOD service as a condition of an FVIO. Referral pathways to mental health or AOD services were more likely to be pursued once matters tipped over into the criminal sphere via a breach of the FVIO; or where there was a concurrent criminal matter which could be used as a lever. This suggested that families had not been linked to services or supports prior to the intervention of the standard family violence legal response – with that response being used as the only mechanism available to facilitate access or engagement.

Capacity to understand or comply with FVIOs and other considerations in the law

In addition to the variation of circumstances in which young people were experiencing a standard family violence response when identified as perpetrators, the research indicated that very young adolescents were also experiencing this response. While the research team's expectation was that the majority of young people on case files and described by practitioners would be older adolescents, a significant minority (47% of girls) and 25% of boys) featured in the data were aged 10 to 14 years.[92]

To this end, all legal practitioners participating in the research criticised the absence of any requirement in the standard family violence legal response to consider whether a respondent to an FVIO had the capacity to understand or comply with the order. Some specifically described having raised this with the court and/or with police and being met with a disinterested response. This stands in stark contrast with a common law requirement at criminal law to consider a young person's capacity to understand their behaviour, soon to be enacted in legislation.

One file indicated that the young respondent's age had been raised by a lawyer with the presiding Magistrate as relevant to the client's comprehension of the FVIO, with the Magistrate indicating that age or capacity to understand would not be relevant unless the respondent attracted a criminal response upon any future breach.[93]

Legal practitioners similarly described or otherwise commented on the challenge of explaining to their young client what an FVIO meant and, in some cases, the fact that the order did not allow them to return home. Several practitioners from other service contexts similarly described the challenge of explaining this to their client's parent, who had simply wanted the violence to stop (and had consented to their child being removed for a short time as a form of respite), but who now wanted them home where the parent knew that the young person was safe.

This concern was made more acute in the absence of specific crisis accommodation or when adolescents were likely to be excluded from any crisis accommodation that was available in the event that they used violence against staff or other residents.[94] Further, the lack of any requirement in the Family Violence Protection Act 2008 that risk be a consideration when a court ordered that a young person be excluded from the home (beyond identification of whether the person with whom they were to reside had a criminal record) meant that young people were being placed in other locations without consideration of either their own or other people's safety.

[92] Ibid, 77.
[93] Ibid, 147

[94] Here we note the RCFV recommendation that specific crisis accommodation be provided for young people identified as using AVITH, but that this be linked to a specific therapeutic response. This recommendation has not been fully implemented.

For example, 31 per cent of young people in the Children's Court sample[95] were excluded from their home by an interim or final FVIO, with 21 per cent placed with their grandmother, who may then be at risk herself; 12 per cent with a separated father, who may have been the original perpetrator of family violence; and eight per cent were placed with a girlfriend, who may then experience violence as well.[96]

While placement with family would be assumed in most cases to be preferable to out of home care, the file review indicated no consideration by the court of any risk to the relevant family members posed by a potential continuation of violence from the young person, or risk posed to the young person by the family member instead. This included a lack of any consideration reflected on the file about supports which may be required to ensure that the placement was functional or safe.

Further, practitioners echoed suggestions in existing studies that exclusion from the home could also exacerbate risk to the original victim survivor (usually a mother), with the fragile trust in the relationship damaged by the system's intervention.[97]

While some studies suggest that some parents find intervention or protection orders useful, particularly for the purposes of short-term respite,[98] the PIPA project suggests that these orders are likely to be experienced as overly punitive or unhelpful where risk is not examined; and where families are not provided with support to repair relationships and recover over the longer term.

Overall, this suggested to the PIPA researchers that the standard legal response to family violence in Victoria may simply be delaying, dispersing or displacing risk, rather than properly addressing it. Crucially, parents may be unlikely to call police or seek further assistance from the family violence system where they are concerned about their 13 or 14 year old (or older adolescent) being excluded from the home or risking criminal charges if they returned home.

Prominence of disability

Signalling similar concerns in terms of the capacity of young people (of any age) to understand or comply with the standard legal response to family violence was the extent to which disability – and, in particular, neurodevelopmental disorder or diversity – featured in the PIPA research. In particular, while 47.4 per cent of the merged Victorian files featured young people who were identified as having some sort of disability, 24 per cent specifically featured young people who were identified as having a cognitive impairment or, most specifically, Autism Spectrum Disorder (ASD).[99]

[95] Ibid, 152. This was the Victorian sample which contained the most reliable detail about this particular issue

[96] The location of the placements in the remainder of the Victorian sample examined was either inconclusive or not recorded at all on the file.

[97] Howard & Abbott, above n 76.

[98] Gallagher, E. (2004). Youth who victimise their parents. *Australian and New Zealand Journal of Family Therapy*, *25*(2), 94-105. doi:10.1002/j.1467-8438.2004.tb00591.x

[99] Campbell et al, above n 66, 94. In accordance with contemporary usage, ASD includes Asperger's Syndrome. Diagnostic and Statistical Manual of Mental Disorders (DSM-5) (American Psychiatric Association, 2013)

Victorian focus group participants similarly identified that a significant cohort of their client base were young people with ASD or another form of neurodevelopmental condition which impacted their capacity to regulate their emotions or behaviour, as well as their capacity to understand or comply with the conditions of a FVIO. Further, the case file review indicated that attending police may recognise the young person's disability or lack of capacity upon attendance, with one file note, in particular, recording that "due to their cognitive impairments" the young person "doesn't know right from wrong".[100] Despite this recognition, police had proceeded with an application for an interim FVIO and the court had granted it. This appeared to be because of the system's focus on averting risk and, as referred to in the section above, "getting the order in place."

All but one Victorian police participant described their frustrations about the lack of discretion which they felt was afforded to them by the Code. A small number described examples in which they had used discretion – including where the young person and family was already known to them. What was clear was that the standard family violence legal response was frequently being used to impose an interim FVIO (and sometimes a final, but less often) on young people who, not only by virtue of their age, but by virtue of their cognitive or neurodevelopmental capacity, had little to no chance of understanding what had occurred or what they were required to do.

The PIPA research team heard from a cross-section of practitioners that parents with young people who were using violence at home, but who had an ASD or other variation of cognitive capacity, were particularly unlikely to seek the assistance of the standard family violence response. This was in part because these parents knew that their child could not understand or comply with an FVIO and, equally, could not understand or cope with being excluded from the home, even temporarily.

This parental anxiety was even more acute given that mandatory reporting requirements carried the potential of Child Protection intervention – intervention which was unlikely to address the violence of a young person but was more likely to result in the removal of younger siblings instead. Here it is worth noting that the absence of a framework in relation to AVITH on the part of Child Protection authorities was a significant finding not only in the Victorian component of the PIPA research but across all three jurisdictions examined.

Prevalence of trauma

In addition to disability, the impact of trauma on young people using AVITH (or identified as such) was an overarching and dominant theme from the PIPA research. Certainly, prior experience of family violence and abuse amongst young people using AVITH is well recognised in existing literature.[101] This has been described in terms of 'social learning', whereby young perpetrators replicate or 'replay' the violence and controlling behaviour which they have seen exhibited by adults in their lives, including by adopting the role of these adults once they are out of the young person's life.[102]

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[100] Ibid 96

[101] Campo, M. (2015). *Children's exposure to domestic and family violence: Key issues and responses* (CFCA Paper No. 36). Melbourne: Australian Institute of Family Studies. Cochran, J.K., Sellers, C.S., Wiesbrock, V. S .&Palacios, W.R. (2011).Repetitive intimate partner victimization: An exploratory application of social learning theory.*Deviant Behaviour*, *32*(8), 790-817. doi:10.1080/01639625.2010.538342; Holt, A. (2013) *Adolescent-to-parent abuse: Current understandings in research, policy and practice* Policy Press, Bristol, England. Kwong, M., Bartholomew, K., Henderson, A. & Trinke, S. (2003) 'The Intergenerational Transmission of Relationship Violence' 17(3) *Journal of Family Psychology* 288.

[102] Kwong et al, above n 95; Margolin, G. & Baucom, B. (2014) 'Adolescents' Aggression to Parents: Longitudinal Links with Parents' Physical Aggression' 55(5) *Journal of Adolescent Health* 645.

In particular, recent ANROWS research found that 1 in 2 young people who experience family violence during childhood go on to use violence in the home during adolescence. Of those who report use of violence during adolescence, almost 9 in 10 report childhood experiences of family violence and other forms of maltreatment.[103] This research is supported by a wide body of evidence which demonstrates that experiences of violence from trusted adults in their lives is the most significant risk factor for young people's use of violence in the home.

This includes 2023 ANROWS funded research led by the CIJ and partnering with CFRE, the *WRAP Around Families Experiencing AVITH* project noted above. Amongst many other findings, this highlighted that experiences of current and ongoing, as well as prior, adult perpetrated harm, were urgent presenting needs for young people using AVITH, despite relevant support services not having the resources or experience to work with or otherwise intervene in patterns of perpetration by adults in a young person's life.[104] Other research has signalled that children and young people who experience family violence are at heightened risk of experiencing intimate partner violence in adulthood.[105]

Accounts by practitioners in the PIPA project, meanwhile, included children and young people using severe violence against their sole parent mother or siblings after they had escaped their abusive father; as well as young people being "coached" by a separated father to undermine or even commit family violence against their mother.[106] This was particularly likely to occur where there were continuing Family Law proceedings on foot. Practitioners also described sole parents (usually mothers) attempting to compensate for their former partner's neglectful parenting in ways which were then exploited by their distressed children, as well as mothers struggling amidst their own trauma to assert authority or impose boundaries.

Some practitioners specifically highlighted children being returned home from visits with their abusive father 'escalated' and distressed - and therefore more likely to lash out at their mothers, rather than at the original perpetrator, who remained firmly out of view, a theme echoed in the wider evidence base.[107]

In addition to this 'social learning', therefore, a strong theme from the PIPA project was the impact of early childhood and ongoing trauma on children's neurological and behavioural development. Rather than simply replicating violence, practitioners reported that their clients were just as likely to have developmental delays as a result of trauma. This in turn impacted on their capacity to learn; to regulate behaviour or emotions; and to understand or comply with standard family violence legal responses.

[103] Fitz-Gibbon, K., Meyer, S., Maher, J., & Roberts, S. (2022). Adolescent family violence in Australia: A national study of prevalence, history of childhood victimisation and impacts (Research report, 15/2022). ANROWS.

[104] Campbell et al, above n 6.

[105] Ibid

[106] Campbell et al, above n 66, 102., Douglas, H. & Walsh, T. (2022) 'Adolescent Family and Dating Violence and the Criminal Law Response' *Journal of Family Violence*;

[107] Routt G., & Anderson L. (2011). Adolescent violence towards parents. *Journal of Aggression, Maltreatment &Trauma, 20*(1), 1-19. doi:10.1080/10926771.2011.537595; Routt, G., & Anderson, L. (2016). Building respectful family relationships: Partnering restorative practice with cognitive-behavioural skill learning. In A. Holt (Ed.), *Working with adolescent violence and abuse towards parents: Approaches and contexts for intervention* (pp. 15-33). Abingon, Oxon; New York, NY: Routledge.

Strong evidence to this effect led to the PIPA research team's conclusion that recognition of developmental trauma disorder[108] was something with which the standard Victorian legal response to family violence needed to grapple, just as it needed to come to terms with neurodevelopmental disorder and diversity in adolescents, as discussed in the previous section – both of which may be contributing to skewed visibility of young people in family violence data.

Parenting "tools" and a lack of young people's voices

The PIPA researchers heard that a lack of capacity to regulate emotions and behaviour, as well as to understand or comply with legal orders, was not limited to adolescents in the context of family violence. Practitioners from different service types volunteered that parents and wider family members could similarly struggle to regulate their own behaviour and, as a result, to impose boundaries or model appropriate responses to conflict. This was particularly in scenarios where parents were also struggling with mental health or AOD issues, as well as their own experiences of trauma, whether from adult relationships or their families of origin.

Accordingly, practitioners described the family violence legal responses being used as parenting tools. This was described as particularly being the case in contexts where families were accustomed to – and therefore relatively unperturbed by - legal system intervention, with multiple family members often having 'orders' against each other in multiple directions, without these orders necessarily having any meaningful or constructive effect.

This meant that young people were the recipient of the standard Victorian family violence legal response in circumstances where they were not necessarily the only, or even the predominant, perpetrator. Rather, the research indicated that these young people were being identified as the target of a response designed to operate in terms of a 'victim/perpetrator' binary, rather than in terms of intergenerational trauma and perpetration or the complexity that this combination brings.

In this regard, Victorian practitioners across different service types specifically referred to their concern that young people often did not feel able to voice their experiences, or to feel believed by authorities when they did. Further, the civil context in which so many matters were being heard via FVIOs (at least initially) meant that, as legal practitioners noted, lawyers were less likely to seek instructions about their young clients' former experiences of violence, abuse or neglect.

This was because civil protection order regimes are concerned with preventing future violence, rather than imposing consequences for past perpetration or offending. This meant that legal practitioners were less likely to seek instructions regarding factors which might mitigate sentence, such as prior experience of family violence or other forms of trauma. This in turn impacted on the extent to which these prior experiences were recorded or were otherwise apparent on case files.

Legal practitioners reported and case file reviews also indicated that young people did sometimes disclose their prior experience of trauma and family violence to lawyers, but then instructed these practitioners that they did not want this discussed in open court for fear of repercussions from their parents. This placed legal practitioners in a difficult bind as a result of their client confidentiality obligations.

[108] van der Kolk, B., Pynoos, R., Cicchetti, D., Cloitre, M., D'Andrea, W., Ford, J., & Teicher, M. (2009). *Proposal to include a developmental trauma disorder diagnosis for children and adolescents in DSM-V* (Official submission from the National Child Traumatic Stress Network Developmental Trauma Disorder Taskforce to the American Psychiatric).Bremness, A., & Polzin, W. (2014). Commentary: Developmental trauma disorder—A missed opportunity in DSM V. *Journal of the Canadian Academy of Child and Adolescent Psychiatry*, *23*(2), 142–145.

Combined, the scenarios described above – either of practitioners being less likely to ask about prior experience of family violence because of the civil FVIO context, or of practitioners being unable to present evidence of this experience in court when it was disclosed by their young clients - meant that young people were bearing the brunt of the standard Victorian family violence legal response because their experiences were less likely to be disclosed to the court.

Systems abuse

Further, practitioner observations and case file reviews pointed to a small but concerning trend for FVIOs to be used as a deliberate tool by a minority of parents to perpetuate ongoing family violence against their children. In one case, this was in the context of a mother's acute mental health issues and broader disadvantage. The research indicated, however, that this trend was occurring predominantly in the context of well-resourced families, with both parents generally presenting as AFMs. As noted above, legal practitioners told the PIPA research team that, where they suspected that their young client was being subject to ongoing abuse, they would attempt to have their client referred for assessment by the Children's Court Clinic for assessment and confidential disclosure.[109]

This finding suggested that young people who are identified by police as perpetrators of family violence may sometimes not only have experiences of prior victimisation but be victim-survivors of ongoing family violence *at the time they are brought to court*, a finding echoed in the subsequent *WRAP Around Families r*esearch, referred to above. Equally it suggested that wider family violence may be present in households which would otherwise be considered by the legal system to be protective and well-functioning – violence which had otherwise gone undetected by the system because of the specific socio-economic factors in the relevant families' lives, with them less likely to interact with service or legal system mechanisms as a result.

As this misuse of the system by a particular cohort of parents was not likely to be brought to the court's attention, the extent to which it was apparent even within the limits of legal case files examined suggested to the PIPA researchers that this may be an issue of wider concern.

Certainly, as discussed in the section below, the abuse of standard family violence responses is increasingly recognised (and enacted) in the context of adult intimate partner violence, whereby adult perpetrators will attempt to 'get in first' or lodge strategic applications against the victim-survivor of their abuse as a form of further control and to deny a victim survivor access to their children.[110] These findings from the PIPA Project, however, suggest that the imposition of the standard family violence legal response in Victoria may also be colluding inadvertently in the perpetration of family violence by adults *against* children and young people – hardly the purpose for which this response was designed.

Post PIPA

The PIPA project findings were launched in March 2020 by the Minister for Family Violence Prevention at the time. This was only a few short weeks, however, before Victoria retreated into one of the world's most protracted periods of stay-at-home orders in response to the COVID-19 pandemic.

[109] Campbell et al, above n 66, 90.It should be noted here that the RCFV recommended that the availability of the Children's Court Clinic be expanded beyond criminal and child protection matters to be available to child respondents (State of Victoria 2016a, p. 173).

[110] Douglas, H., & Walsh, T. (2018). Adolescent family violence: What is the role for legal responses? The Sydney Law Review, 40(4), 499–526. https://data-informit-org.ezproxy.lib.rmit.edu.au/doi/10.3316/informit.082195741036507; Reeves, 2018)

Extended lockdowns, of course, did not mean that the factors contributing to AVITH were mitigated but, rather, were increasing during this time. This prompted the Victorian Government to announce in August 2020 that an additional $20 million had been allocated to keep perpetration of family violence "in sight", including the use of family violence by adolescents.[111]

A report issued by the CFRE in September 2020 similarly flagged an increase in AVITH and related issues in its client base between March and August 2020.[112] The data was collected across a wide range of client issues, including clients who lived in public housing who had been subjected to 'hard lockdown' in July of that year.

The CFRE report provided a striking snapshot of the issues facing communities. Risk alerts recorded across the data indicated more than a doubling of suicide risk across clients and a near tripling of risk for use or experience of family violence respectively. [113] Figures for youth at risk and for mental health issues were around 1.5 times higher than the equivalent period in 2019; while wider presenting needs indicated that alcohol use had more than doubled, as had gambling issues, and that parental mental health was 1.4 times higher than in the same period in 2019.

By contrast, CFRE reported a particular concern that, with children and families no longer interacting with external services, there were fewer "eyes" on vulnerable children, as well as fewer interactions with parents who may be struggling and in need of additional supports. Overall, the recorded increase in family violence and suicide risk, as well as parental risk factors, such as mental health, alcohol use and gambling, combined with the decrease in child related issues presenting for support to indicate a significant risk to vulnerable children.[114]

Separately, while additional pressures faced by families during lockdown could potentially have made families less likely to report their experiences to police, [115] a discussion paper prepared by the CIJ and CFRE, *Behind Closed Doors: Adolescent violence in the home (AVITH) during COVID and challenges to come*, noted that, where AVITH was reported, matters were not always progressing to a hearing in which the full extent of their experiences could be assessed.[116]

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[111] State of Victoria (2020) 'Keeping Family Violence In Sight During Coronavirus'. At https://www.premier.vic.gov.au/keeping-family-violence-sight-during-coronavirus; This echoed an increase noted in early UK studies, both in terms of escalation in severity and frequency for many families. Conversely, some families experiencing AVITH had noted a decrease because of the removal of stressors in the young person's life. Condry, R., Miles, C., Brunton-Douglas, T. and Oladapo, A. (2020) *Experiences of Child and Adolescent to Parent Violence in the Covid 19 Pandemic*, University of Oxford.

[112] McCann, B. & Gibson, M. (2020) *COVID-19 Response Edition 2: Assessing the impact of COVID-19 on client needs and drummond street's response*, Centre for Family Research and Evaluation, Drummond Street Services: Melbourne.

[113] McCann & Gibson, above n 111, 6.

[114] Ibid, 9 – 10

[115] Kiran, M., (24 April 2020), 'Why you should ignore the pressure to be productive during lockdown'. https://www.theguardian.com/us-news/2020/apr/24/productivity-in-coronavirus-lockdown; Tanner, C. (13 July 2020) 'Lessons from lockdown one: remote learning and the pressures facing working parents' https://lens.monash.edu/@politics-society/2020/07/13/1380825/lessons-from-lockdown-one-working-parents-need-understanding-and-support; Grose, J., 9 September 2020, 'The Pandemic is a Mental Health Crisis for Parents', New York Times. Retrieved https://www.nytimes.com/2020/09/09/parenting/mental-health-parents-coronavirus.html;, Krentz, M., Kos, E., Green, A., and Garcia-Alonso, J. (21 May 2020), 'Easing the COVID-19 burden on working parents', Boston Consulting Group. Retrieved from https://www.bcg.com/en-au/publications/2020/helping-working-parents-ease-the-burden-of-covid-19

[116] Campbell, E. & McCann, B. (2020) *Behind Closed Doors: Adolescent violence in the home (AVITH) during COVID and challenges to come*, Centre for Innovative Justice, RMIT University, Melbourne. https://cij.org.au/cms/wp-content/uploads/2020/11/behind-closed-doors-november-2020-.pdf

This is because, like all courts, the Children's Court had to prioritise some appearances and initially adjourned FVIO matters for 12 weeks, with any existing interim orders remaining in place for the intervening period. Anecdotal reports from lawyers, meanwhile, suggested that fewer young people were attending, in part because of safety concerns and because some were reported to have been advised not to attend by police.[117]

Combined, this meant that more children and young people were likely to be subject to interim FVIOs which they did not understand; and were likely to go for longer before they attended court and had contact with a duty lawyer. This included contact enabling disclosure of their own experience of violence, as the PIPA project found was so vital. Given that conditions of interim orders generally tend to be more onerous than those of final orders, young people were also likely to be more vulnerable to breach.

With the potential impacts of that period acknowledged, the Children's Court moved to conducting online hearings as quickly as possible, aware of the need to facilitate young people's engagement in the process and for the court to be able to assess risk.[118] Legal services then noted an observable increase in FVIO matters proceeding against young respondents as lockdown restrictions eased.[119] This suggested that families began to report, or that children disclosed their own experiences and use of violence, as they returned to school.[120]

Lawyers consulted for the *Behind Closed Doors* paper, however, described a noticeable "net-widening" in terms of young people who had not previously been in contact with the law, then being propelled into a legal response because of behaviour which had developed or escalated during COVID-19. This included young people with previously diagnosed mental health issues which had become more acute during lockdown, with calls for support from parents eventuating in Crisis and Assessment Team and police involvement. It also included young people developing significant alcohol dependence where this had not been an issue before, with parents calling police because of safety concerns but police then proceeding with an FVIO and criminal charges despite parents not wanting this to occur.

Lawyers also spoke about the challenges where courts would adjourn a matter in order for young clients to access support services, such as AOD or mental health services. As so many services had been on "pause" during COVID-19 or had wait lists which outstripped the adjournment period, this in turn negatively impacted court outcomes. By November 2020, lawyers were noting the value of their young clients returning to face-to-face learning or to sport, the factors which had been so crucial in their lives prior to COVID-19.

Where police and court intervention still trailed the young person and their family as a result of their use of AVITH during lockdown, however, this was the source of seriously ruptured relationships, with lawyers wondering "how can families go back from this?"[121]

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[117] Campbell, E. (2020) 'Voices of adolescents should not be another casualty of this pandemic'. Centre for Innovative Justice, RMIT University, Melbourne. Retrieved from: https://cij.org.au/news-and-views/voices-of-adolescents-should-not-be-another-casualty-of-this-pandemic/

[118] Percy, K., (20 May 2020), ''Justice hasn't changed, just the mode of delivery': How Victorian courts are adapting to coronavirus'. ABC News, https://www.abc.net.au/news/2020-05-20/coronavirus-pandemic-for-victorian-courts-judges-justice-system/12258858

[119] Internal service data provided by Youthlaw to the authors, Campbell & McCann, above n 115, p 24.

[120] Ibid.

[121] Ibid.

Rather than being indicated in police or legal service data, it is possible that the full impacts of lockdown on rates of severity of AVITH were most likely to be seen by services working with some of Victoria's most vulnerable families, regardless of whether families were presenting at court. This includes a significant expanded network of services specifically resourced by the Victorian Government to respond to AVITH through a more holistic model of care which draw significantly on the early findings of the *WRAP Around Families* research in development.

Related to this, efforts continued to improve the links between adequate service support and the information on which any court decision making relies – and which in turn may inform resulting police and court data. For example, Youthlaw's *Pre-Court Support for Adolescents using violence in the home (AVITH)* program focused on providing legal and specialist casework assistance to young people either prior to the first mention of an FVIO application – or, more realistically, between first and second mention. An evaluation by the CIJ highlighted the ongoing importance of linking young people with expert support and legal assistance as quickly as possible, so that the next court mention date can be informed by the young person's engagement and history.[122] One of the most striking findings of this evaluation was that, as a result of this support and better information provided to the court, all but one of a sample of files saw the FVIO application withdrawn.

The opportunity for a court to interrogate the complexity behind any application for an FVIO is therefore crucial and relevant to the reliability of court and police data. This is particularly important when the consequences of being identified by the system as a 'perpetrator' can have devastating impacts for young people, not only in terms of their potential criminalisation as a result of breaches of any FVIOs, but their exclusion from services, as well as the way that information about them will be shared under Victoria's information sharing regime. The resulting harm from the system's intervention can have profound and long-term effects, despite the reality that many young people in these circumstances may be victim survivors themselves, including potentially of current systems abuse by a perpetrator parent, as outlined above.

Misidentification – further imperatives to interrogate the data

Young people are not the only cohort in the community, of course, that is vulnerable to what is known as "misidentification". In particular, evidence indicates that a growing number of adult women are being "misidentified" by family violence system responses. ANROWS funded research defines this phenomenon as situations where the person experiencing family violence or most in need of protection is wrongly taken to be the person perpetrating family violence (the 'predominant aggressor') and the person perpetrating harm is wrongly identified as a person experiencing family violence or as being most in need of protection.[123]

[122] Ellard, R., Hew, E., Simpson, M. & Campbell, E. (2022) *Evaluation of the Pre-Court Support Program for Adolescents using violence in the home (AVITH)* Final Report, Centre for Innovative Justice, RMIT University, Melbourne. https://cij.org.au/cms/wp-content/uploads/2018/11/final-pre-court-support-pilot-evaluation-evaluation-report.pdf

[123] Nancarrow, H., Thomas, K., Ringland, V. & Modini, T. (2020), *Accurately Identifying the "Person most in need to protection" in domestic and family violence law*, ANROWS Research Report, No. 23/2020, Sydney 5.

The definition of 'predominant aggressor' used here, meanwhile, is that outlined by No to Violence, in which it describes "the person who is exerting the greatest amount of harm and control over their partner or family member through any number of abusive behaviours including physical and sexual violence, threats, intimidation, emotional abuse, stalking and isolation".[124] Important to note is the inadequacy of the term 'primary aggressor' as it has been taken to refer to the person who initiated the family violence or used violence first. This may apply to victim survivors who use violence in self-defence by resisting ongoing violence directed at them.

For example, an examination of data related to Women's Legal Service Victoria clients indicated that 10% had been misidentified, with 5 out of 8 clients experiencing abuse during the incident where they were identified as the 'primary' aggressor, which included threats, physical violence, and restraint.[125]

A rise in misidentification of women has been described as an unintended policy outcome of non-discretionary policing practices, rather than as a genuine increase in the frequency of female perpetration. Given that similar increases have not been seen in the misidentification of male victim survivors as would be expected, however, critics argue that the rise in female misidentification, is not just collateral damage from an otherwise benign but proactive intervention system.[126]

Far from an inadvertent outcome or byproduct of a proactive family violence system, in fact, 'misidentification' may be the deliberate outcome of a man's weaponisation of the system against his female partner. Alternatively or additionally, it may be the direct result of profiling and racism by statutory systems.[127] In particular, services working with Aboriginal and Torres Strait women continue to see frequent examples of their clients being characterised as a person using family violence, rather than as the person most in need of protection.

This is reflected in police data which shows that, in 2020, close to 80 per cent of Aboriginal women named as a respondent in police Family Violence Reports had been previously recorded as an AFM. This was the case for only 27 per cent of male respondents, and close to 59 per cent of all female respondents.[128]

In addition to police failing to identify predominant aggressors accurately when attending family violence incidents involving First Nations women, victim survivors can also be characterised as respondents in self-initiated FVIO processes. This commonly occurs when an application or a cross application is made against a victim survivor as a form of systems abuse. While less is known about the rate at which this occurs, one Magistrate from a SFVC reported to the Family Violence Reform Implementation Monitor that misidentification is a factor in three to four cases appearing in a daily list of 35 matters [129]

The impact for First Nations victim survivors of an order being made against them is far-reaching and profoundly damaging. Not only does it perpetuate the existing patterns of abuse, but it:

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[124] No to Violence (2019): Discussion paper: predominant aggressor identification and victim misidentification, 3. Note that research suggests victims are rarely passive to the abuse they experience, and may 'resist in myriad ways, including violence'.

[125] Women's Legal Service Victoria (2018): 'Officer she's psychotic and I need protection': Police misidentification of the 'primary aggressor' in family violence incidents in Victoria. The agencies contributing to this submission also refer the Inquiry to the submission from Flat Out and the Police Accountability Project (No. 38).

[126] No to Violence, above n 123, 24.

[127] Here the agencies contributing to the submission refer the Inquiry to the submission from Flat Out and the Police Accountability Project, No. 38.

[128] Family Violence Reform Implementation Monitor, (2021) Monitoring Victoria's family violence reforms. Accurate identification of the predominant Aggressor, 10.

[129] Ibid, 28.

- contributes to the growing criminalisation of Aboriginal women;
- contributes to the removal of Aboriginal children from their mothers;
- creates additional barriers to accessing critical services and supports; and
- increases distrust in police,[130] resulting in a reluctance to seek police help for future or ongoing experiences of violence, or in reporting instances of misidentification.

Misidentification also intersects with lethality, with a review of family violence related deaths in 2015 finding that 44.4 per cent of female victims of homicide were identified as the respondent in a protection order on at least one occasion. [131]

Here we acknowledge that significant work has been undertaken in recent years to address the complex drivers of misidentification. This has included:

- the rollout of Koori Family Violence Police Protocols in designated areas across the state;[132]
- the provision of guidance and training for police, the judiciary and staff from Child Protection, Orange Door and the Victims of Crime Helpline in the identification of predominant aggressors;[133]
- improved collection of police data;[134]
- processes to correct police records where misidentification occurs; [135]
- the inclusion of indicators in the MARAM risk assessment framework to assist in more accurate identification of perpetrators;[136] and
- the development of a tools by Family Safety Victoria to support the family violence workforce with the issue of misidentification, as well as by No To Violence to help counsellors to identify instances of misidentification.[137]

In its 2021 report, however, the Family Violence Reform Implementation Monitor (FVRIM) highlighted that patchy understanding of the dynamics of family violence and coercive control continues to drive inconsistent practice across the justice system.[138] A lack of clarity about local and systems approaches to identifying instances of misidentification and correcting the record when it occurs contributes to poor practice and poor data collection.[139]

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[130] Nancarrow et al, above n 122.

[131] Domestic and Family Violence Death Review and Advisory Board (2017), 'A report of the Domestic and Family Violence Death Review and Advisory Board' 82

[132] The protocols, which were launched in some locations around the state between 2011 and 2013, stipulate that where police attend a family violence incident and one or all of those involved identify as Aboriginal or Torres Strait Islander, they should be provided with a referral to an Aboriginal or mainstream support service. The Royal Commission recommended that these protocols are rolled out across the remaining identified sites (Recommendation 151).

[133] Family Violence Reform Implementation Monitor, above n 126.

[134] Via data collection methodologies and compliance established under the Dhelk Dja Reference protocols under Dhelk Dja Framework. State of Victoria (2018). *Dhelk Dja: Safe Our Way - Strong Culture, Strong Peoples*, Strong Families, Department of Health and Human Services.

[135] Royal Commission into Family Violence Recommendation 41.

[136] Family Violence Reform Implementation Monitor, above n 126.

[137] See for example the Predominant Aggressor Communication Tool (PACT) tool: No To Violence, above n 123.

[138] Family Violence Reform Implementation Monitor, above n 126.,

[139] Family Violence Reform Implementation Monitor, ibid, 5.

The resulting disconnect between organisational policy and practice on the ground is evidenced by the fact that specialist family violence organisations, such as Djirra, report receiving few referrals from police attending family violence incidents involving Aboriginal people, as required under the Koori Family Violence Protocols agreed between police and local Aboriginal communities.[140] The FVRIM identified 12 proposals for broader systems reform, including recommendations relating to police, courts, legal services and Child Protection.

The CIJ is currently embarking on dedicated research exploring the experiences of First Nations women who have been misidentified. Commissioned by Djirra, the project will include an interrogation of Djirra service data, case file reviews, interviews with Djirra clients and extensive focus groups with professionals. Amongst many other considerations, the research will consider the rate at which First Nations clients of Djirra are experiencing violence from non-Indigenous men, including where these non-Indigenous partners are using systems such as the Family Law system to perpetuate and further abuse.[141]

More broadly, evidence indicates that misidentification may be more likely to occur when police operational demands are privileged over investigatory priorities, or when trivial criminal information, such as a victim survivor's use of an illicit substance, supersedes consideration of information about family violence risk.[142] This further contributes to particular cohorts being put at greater risk of misidentification, where police perceptions of a victim survivor with a history of substance abuse or criminal justice system contact may become the primary consideration.

More broadly, research by the lead author of this submission – both in the context of a national ANROWS funded research project, as well as research to support the implementation of RCFV recommendations – found that migrant and refugee women were also acutely vulnerable to systems abuse and resulting misidentification.[143] These separate studies heard multiple accounts from practitioners about men attempting to leverage their female partner's lack of English and uncertain visa status to position them as the predominant aggressor.

This would include men using violence against their partners and then videoing their resistance or retaliation as 'evidence' of perpetration; men inflicting wounds (such as scratches) upon themselves before calling police; and, most commonly, presenting as calm and fluent in English when either they or their partner had called police, while their female partner presented as heightened and distressed, but unable to communicate her experiences effectively.[144] Victoria Police participants, meanwhile, described using Google Translate when attending family violence callouts and frequently struggling to find an interpreter that could provide sufficient nuance in these circumstances.[145]

Being brought before a court, therefore, was a crucial mechanism for this misidentification to be corrected – including where a court might direct Victoria Police to have a recording translated, or to make further inquiries about the history of the relevant family. Here the research highlighted instances of matters being returned before the court and, upon conducting further investigations into the circumstances and history, Victoria Police reversing their position and bringing an application for an FVIO against the male partner instead.[146]

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[140] Djirra. Submission to the Parliamentary Inquiry into Victoria's Criminal Justice system, September 2021, 13.

[141] See also Djirra's submission to the Yoorook Justice Commission on 14 June 2024. https://djirra.org.au/yoorrook-justice-commission-14-june-2024/

[142] No to Violence, above n 123, 6.

[143] Chung et al, above n 6; Campbell et al above n 15.

[144] Chung et al, above n 6; Campbell et al, above n 15.

[145] Chung et al, above n 6. Campbell et al, above n 15.

[146] Chung et al, above n 6; Campbell et al, above n 15.

Accordingly, the agencies contributing to this submission encourage the Inquiry to bring a critical lens to any examination of data involving perpetration by women, as well as by young people, acknowledging the nuance behind these numbers and the profound harm to women and their children that can result from misidentification.

We would also encourage the Inquiry to consult with the Victims of Crime Helpline about whether they feel equipped to assess misidentification when speaking with men referred to the Helpline by Victoria Police where these men are identified as victim survivors. While the CIJ's 2020 review and proposed redesign work, *Strengthening Victoria's Support System*, found that a significant capability uplift in this workforce was required to conduct this work in a sufficiently specialised way, the Inquiry may find it useful to explore what work has occurred in this regard since that time.[147] Men who have genuinely experienced family violence – whether from their female partner or, more commonly, a male partner or male member of their wider family networks – require much needed support, and this is an area in desperate need of capability uplift across Victorian family violence workforces more generally.

Misidentification of members of LGBTIQA+ communities

A further area for the Inquiry to be alive to when accessing and interpreting data is data in relation to family violence in relationships across lesbian, gay, bisexual, trans, intersex and/or queer (LGBTIQA+) communities. Certainly, evidence indicates that this occurs at rates similar to, if not higher than, heterosexual/heteronormative relationships.[148]

LGBTIQ+ populations face unique and intersecting vulnerabilities in relation to family violence. These include the impacts of abuse being compounded by discrimination and stigma; pervasive myths that LGBTIQ+ people do not, or cannot, experience abuse within relationships; and heteronormative and cisnormative assumptions that violence is only perpetrated by men and experienced by women.

This means that people who identify as LGBTIQA+ are often reluctant to report experiences of violence because, when they do, they are often met with stereotypes about what a 'victim' and a 'perpetrator' should look like. For example, heteronormative stereotypes when applied to a relationship between two cis-gendered gay men may lead police to determine that the more 'masculine' presenting person in the relationship is the predominant aggressor, simply based on their idea of what a victim and perpetrator in heterosexual relationships might look like.

A lack of awareness and data about LGBTIQA+ relationships in general and LGBTIQA+ family violence more specifically therefore renders LGBTIQA+ people vulnerable to misidentification within police responses, intervention order processes, legal proceedings and family law processes alike.

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[147] Ellard, R., Campbell, E, Caruana, C. Ali, J., Ogilvie, K., Haralambous, M, (2020) *Strengthening Victoria's Victim Support System: Victim Services Review Final Report*, Centre for Innovative Justice, RMIT University, Melbourne. https://cij.org.au/cms/wp-content/uploads/2020/11/strengthening-victorias-victim-support-system-victim-services-review-centre-for-innovative-justice-november-2020.pdf

[148] Bermea, A., van Eeden-Moorefield, B., & Khaw, L. (2019). A systemic review of research on intimate partner violence among bisexual women. *Journal of Bisexuality*, 18(4), 399–424; Guadalupe-Diaz, X., & Anthony, A. (2017). Discrediting identity work: Understandings of intimate partner violence by transgender survivors. *Deviant Behaviour*, 38(1), 1–16; Russell, B., & Sturgeon, J. (2018). Police evaluations of intimate partner violence in heterosexual and same-sex relationships: Do experience and training play a role? *Journal of Police and Criminal Psychology, 34*(1)

For example, a 2022 study found that 37 per cent of LGBTIQA+ study participants who were involved in FVIO proceedings had been listed as both a respondent and as an AFM. As all participants identified as victim survivors of family violence, this indicates a high rate of potential systems abuse by perpetrators, with systems lacking the nuanced understanding to unpack violence within LGBTIQA+ families and relationships.[149]

This finding is supported by what services report in practice. For example, Drummond Street has been running programs for women, trans and gender diverse people using violence since 2019. Through the delivery of these programs (both within the community and within justice settings), the organisation has seen extremely high rates of misidentification, with systems and services struggling to identify patterns of coercive control and 'power over', as opposed to the use of resistive force or escalating conflict within relationships, which often leads to the intervention in the first place.

For many people accessing Drummond Street's perpetrator responses, the misidentification is often ingrained, with perpetrators convincing clients who have been misidentified that they are the problem instead. Systems then perpetuate this belief by misidentifying patterns of control and abuse. This can be particularly problematic in relation to current information sharing processes, family law proceedings (where biology is often prioritised instead of protective parenting in LGBTIQA+ parents) and within broader interventions within the service system.

The high rates of misidentification have changed the way that Drummond Street delivers its perpetrator response programs. This includes the delivery of group and individual support for those using coercive control and 'power over' to change their behaviour, while also supporting clients who have been misidentified through ongoing dynamic risk management and safety planning and therapeutic recovery support. Many services, however, are not afforded this flexibility in what they offer, or in how they can begin to support clients who are at particular risk of misidentification.

Overall, this means that the factors and preconceptions driving the misidentification of certain cohorts in the community as 'perpetrators' of family violence – whether these be young people, women from particular backgrounds or circumstances or people with diverse gender and sexual identifies – make it crucial to bring an intersectional lens to any analysis of relevant data.

Similarly, the Inquiry is encouraged to emphasise the benefits of mechanisms which provide checks and balances on misidentification in its final reporting – especially where these provide opportunities to rectify the damaging impacts of misidentification and correct relevant records, including within information sharing regimes. This includes the extent to which the current MARAM tools are being used to address and correct misidentification of adult women, noting that the equivalent Child and Young People focused MARAM is still pending after a number of years.

Further considerations around the implications of data following misidentified young people, in particular, are discussed in the final section below.

Gaps in the data picture

While the above substantive discussions have focused on the primary areas of the CIJ's research – including work in partnership with contributing agencies – our submission also urges the Inquiry to consider other areas of data, flagged in other submissions, that may be missing from the predominant Victorian narrative.

[149] Reeves, E., & Scott, B. (2022). *'Can't you girls work this out?': LGBTQ+ victim-survivors' experiences of Victoria's family violence intervention order system.* Monash Gender and Family Violence Prevention Centre, Monash University.

- This includes, as referenced in the discussion relating to young people, data relating to perpetration of violence from families of origin around a victim survivor's diverse gender or sexual identity.[150]
- It also includes violence experienced by victim survivors from culturally diverse backgrounds when families of origin or extended families may perpetuate their entrapment in violent intimate relationships.[151]
- Equally important but often invisible is data related to perpetration of violence against people with disability. Research notes that women and children with disability and related support needs are at particularly high risk of violence and experience it not only at disproportionate rates but in particular ways. This may include withholding of supports or medication or otherwise using disability to isolate them from assistance.[152]
- Often overlooked and poorly understood, gendered violence against those working in the sex industry, as well as violence perpetrated against victim survivors of sexual exploitation or trafficking, is crucial to consider. Intimate partner violence, including coercing a victim survivor into sexual exploitation through misrepresentation of an intimate relationship, is often misinterpreted if reported. Barriers to reporting (and negative experiences when doing so) overlap with other forms of marginalisation, such as for women from migrant or refugee backgrounds or with uncertain visa status, to highlight that mechanisms for better data capture in these areas are essential.[153]
- Sexual abuse more generally is a frequently overlooked area of perpetration within family violence. While the Sexual Assault Services Victoria submission to this Inquiry (No. 30) should be a primary source of reflection on this topic, including its call for greater interrogation of MARAM data, the Inquiry is also urged to consider seeking data from justice agencies where family violence and sexual offending overlap in initial charges, but where only one component is ultimately the subject of proceedings and recorded as an index offence.[154] In other words, justice system data is often just the tip of the iceberg in any picture of perpetration in some cases – despite the reality that, in others, it is misrepresenting the experiences of victim survivors.[155]
- The Inquiry is also encouraged to examine available data on perpetration by members of police forces, noting that Victoria Police and other forces around Australia have recognised prevalence of perpetration within their ranks as a challenge.[156]

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[150] Here the contributing agencies refer to the submissions to the Inquiry from Switchboard (No. 43) and Thorne Harbour Health (No. 39).

[151] Here the contributing agencies refer to the submission from InTouch Multicultural Centre Against Violence, No. 34.

[152] Here the contributing agencies refer to the submission by Villamanta Disability Legal Rights Service, No. 36.

[153] Here the contributing agencies refer to the submission by Project Respect, No. 24. The CIJ has also identified this challenge in reporting for women with uncertain visa status when reporting their experiences of sexual violence. KPMG and Centre for Innovative Justice, (2023) *This is my story: It's your case, but it's my story. Interview study exploring justice system experiences of complainants in sexual offence matters* NSW. KPMG and Centre for Innovative Justice, (2023) *This is my story: It's your case, but it's my story. Interview study exploring justice system experiences of complainants in sexual offence matters* NSW.

[154] In addition to the Sexual Assault Services Victoria submission, No. 30, a discussion around the way in which some types of offending are within data around other offending can be found in the following paper: Campbell, E. (2016) *Defending the Indefensible: what role should the community play?* Centre for Innovative Justice, RMIT University, Melbourne.

[155] Supporting this at a qualitative level, the CIJ's work interviewing survivors of sexual assault in NSW showed that sexual offence data may be the only data or charge prosecuted despite this occurring in the context of severe intimate partner violence. Data about 'attrition' in sexual offence prosecutions can also be misleading in terms of the reasons why prosecutions do not proceed. KPMG and Centre for Innovative Justice, above n 153.

[156] https://www.abc.net.au/news/2021-12-01/victoria-police-unit-to-investigate-officer-involved-dv/100661014

- Further, the Inquiry is encouraged to remember that systems beyond the justice system have information about perpetration. In addition to statutory authorities like Child Protection, wider systems like Centrelink, private industry (such as banks and utilities) are full of information about patterns of perpetration if the right questions are asked.[157]
- Finally, the Inquiry is encouraged to centre the importance of data sovereignty for First Nations communities across all of its analysis and recommendations.[158]

Getting in at the start

Finally, it is important for the Inquiry to be considering the impacts and interactions of data over the life cycle. This is not to profile individuals or communities or to develop a primarily quantitative understanding of the scale of perpetration. Rather, the objective should be to identify and target points of intervention to improve outcomes and safety.

For example, work conducted by the Department of Justice and Community Safety and the (as it was then) Department of Health and Human Services identified that these Departments shared a certain number of 'complex, common clients' who were presenting to statutory systems at different points in their lives. The most striking finding of this work, reported in the CIJ's Victim Services Review, was that the majority of these clients had been the victim of some sort of crime or interpersonal harm early in life and had first presented to the system as such.

This work showed that, generally, these clients had not received any support for this experience. A considerable time later, however, they presented to Child Protection experiences or justice systems in relation to their use of harm or the commission of an offence.[159] This data tells us a stark story of how and when systems must intervene, but the question remains in terms of what is done with this data or how data like this will be used.

Similar questions arise around whether data in the form of records of offending or use of violence will track children and young people through their life course.

Echoing the missed opportunity identified in the 'complex, common clients' work – data that is employed for the purposes of delivering support could be used to intervene at an earlier point to support recovery and healing in early childhood. This is in contrast to intervention coming, as the practitioners in the PIPA project described, "ten years too late" [160] once the system responds to a young person's resulting use of AVITH.

Further, detailed service and court data recorded at the point of this decade-late system response could be used to inform the scaling up of trauma-informed support for young people; to inform an assessment for NDIS support for a young person with disability; and support for families who have shared experiences of trauma.[161]

[157] See Ellard et al, 2020, above n 146, p 29 – 31, for an example framework of all the systems that can have a lens on data around the perpetration of harm if appropriately interrogated.

[158]Here the agencies contributing to this submission defer to the submission by Djirra, No. 8.

[159] Ellard above, n 146, 50.

[160] Campbell et al, above n 66, 127.

[161] Campbell et al, above n 6.

Young people using violence in intimate relationships and potentially in adulthood

Separately, where a young person is recorded on a system as having used violence in adolescence, it would be useful to understand purely from a prevalence perspective the extent to which this young person goes onto use it in adulthood. Equally, it would be useful to map the correlation of use of AVITH and use of violence by young people in their intimate and peer relationships. Here we note that the use of violence in intimate relationships was a theme in the *Amplify* research[162] and is emerging in early data from the Amplify program. Also useful to note are anecdotal reports from legal services, including Youthlaw, that this is an under-examined trend emerging in FVIOs and Personal Safety Intervention Orders (PSIOs), without sufficient interrogation of the accuracy or overlap of relevant assessments.

While there are currently no Victorian services designed to respond to young people who use intimate partner violence, as with the evidence in relation to AVITH, an evidence review by the CIJ to support the development of the pending young person focused *MARAM Practice Guidance* indicates that experiences of adult perpetrated violence are significant risk factors for the use of intimate partner violence by young people.[163] Existing evidence also indicates, however, that trauma histories can interact with gendered beliefs about relationship roles and, in particular, experiences of punitive parenting for perpetration of intimate partner violence by boys and experiences of sexual abuse for perpetration of intimate partner violence by girls. [164] The presence of violence in peer relationships has also been shown to be a significant risk factor.[165]

A further question then becomes whether data can map at a population level the interaction of this kind of perpetration with peer and wider community influences. This might include young men's activities online, or the extent to which they have been exposed to efforts to counter these influences, such as through considered and consistent Respectful Relationships education from an early age (noting that evidence shows that ad hoc delivery of these programs can actually contribute to a backlash and be counterproductive).[166] Given emerging patterns on social media involving the deliberate circulation of coercively controlling tactics, combined with a coalescence of narratives about men being 'victimised' by the system, as found in the CIJ's own research,[167] it is crucial that a more sophisticated understanding of the relationship between different kinds of perpetration can emerge.

These questions are posed with caution, however, given that any record following a young person into adulthood may prevent them from obtaining certain forms of employment or otherwise leave them subject to information sharing schemes as 'perpetrators'. By extension, a proactive and perverse interrogation of data may lead to a disproportionate focus from Child Protection authorities if they go on to have their own children, when additional support may be what is needed instead. This arguably suggests that a mechanism similar to a spent convictions scheme should ensure that young people are not penalised in adulthood by data retained about behaviours used in their adolescence which were likely the manifestation of childhood trauma.

[162] Corrie & Moore, above n 41.

[163] Campbel, E. (2022) *Adolescents Using Family Violence (AFV): MARAM Family Violence Guidance Project , Review of the Evidence Base*, Centre for Innovative Justice, RMIT University.

[164] Ibid, 63.

[165] Ibid.

[166] Ibid.

[167] Campbell et al, above n 15

Conclusion

The above discussion leads to a broader question about how we interpret and use data at this 'pointy end' of intervention. For example, is there value in demanding further nuance in police and court data to ensure that developmental age and stage are better understood and that punitive responses are avoided?

How should data be linked, if at all, to understand the relationships of different experiences and use of violence? Alternatively, will an increased focus on data collection actually discourage victim survivors, especially from specific cohorts, from disclosing or seeking support, or police from exercising any limited discretion that is currently available to them?

Overall, it is crucial for the Inquiry to encourage and proceed with caution – and to recognise in its final report and recommendations that context is critical in any consideration of data around perpetration. While data is vital to understanding patterns of coercive control and potential lethality, blunt approaches to the use of data can also be counterproductive – discouraging victim survivors from seeking support where they fear that they may bear the brunt of the system response instead.

This means that it is critical to maintain a lens on the nuance in the numbers – so that data can only ever be used in a way that supports the overarching goal of keeping *all* Victorians safe.