

Senate Standing Committee on Social Policy and Legal Affairs

Inquiry into family violence orders

July 2024

Advocacy and collaboration to improve access and equity

Royal Australian and New Zealand College of Psychiatrists submission

Inquiry into family violence orders

About the Royal Australian and New Zealand College of Psychiatrists

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) is responsible for training, educating and representing psychiatrists in Australia and New Zealand. The RANZCP has more than 8,400 members, including around 5,900 qualified psychiatrists. The RANZCP is a membership organisation that prepares medical specialists in the field of psychiatry, supports and enhances clinical practice, advocates for people affected by mental illness and advises governments on mental health care.

Introduction

The RANZCP welcomes the opportunity to contribute to the Senate Standing Committee on Social Policy and Legal Affairs' [Inquiry into family violence orders](#) (the Inquiry). The recommendations contained within this submission are based on extensive consultation with RANZCP Committees, including the Family Violence Psychiatry Network Committee, the Faculty of Forensic Psychiatry Committee, the Section of Child and Adolescent Forensic Psychiatry Committee and the Section of Perinatal and Infant Psychiatry Committee. These committees are made up of community members and psychiatrists with clinical and lived experience. As such, the RANZCP is well positioned to provide assistance and advice about this issue due to the breadth of academic, clinical and service delivery expertise it represents.

The RANZCP is responding to the following Terms of Reference:

- 2c)** The current barriers for litigants in the family law system to obtain and enforce FVOs, including but not limited to, the availability of wrap-around support services and security for victims of violence
- 4)** Any other reform that would make it safer and fairer for victims of violence in the family law system who need the protection of FVOs.

This submission builds upon the RANZCP's ongoing work in improving the mental health outcomes of those who experience violence. This commitment is detailed in the [Position Statement 102: Family violence and mental health](#) and our [submission](#) to the Australian Law Reform Commission's Justice Responses to Sexual Violence.

Recommendations

The RANZCP acknowledges that there are services in place in the Federal Circuit and Family Court designed to minimise the barriers to access. These services also provide several legal and social services for litigants who are victim-survivors of family violence. However, the current [Family Advocacy and Support Service](#) (FASS) is not designed to provide mental health support and relies on state run and jurisdictional specific programs that are tailored for crisis events. Mental health and safety supports are available, but the onus is on litigants to actively seek out support during a traumatic and confusing time.

The RANZCP fully supports the function of the FASS and current efforts to increase safety and wellbeing, but highlights that in their current form they are inconsistent in capacity and application across the jurisdictions, and not tailored to address the ongoing mental health needs of litigants.

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To address these issues the College recommends that;

- an analysis is undertaken to identify and address gaps and inconsistencies in support across the jurisdictions
- appropriate training is made available to family law professionals and court officers involved in the FVO process in relation to mental health and its interplay with the court system
- clear pathways to mental health services and supports are established for litigants address ongoing rather than emergency mental health needs
- proceedings and the surrounding processes are designed in accordance with trauma-informed care and culturally safe practices
- court modifications and considerations are made available and offered to all litigants to reduce the risk of re-traumatisation and increase safety and wellbeing without victim-survivors needing to request them

Background

In Australia, in 2022, 1 in 4 women and 1 in 8 men experienced violence by an intimate partner or family member or a current or previous partner.(1) Family violence (FV) is a socially determined crime, but also a public health issue. FV is associated with serious health consequences and puts an enormous financial burden on the country, with estimates as high as \$26B annually.(2) While FV is a significant concern across all populations, there are several populations who are more likely to experience FV including: women, children and infants, people with disability, older people, people from culturally and linguistically diverse backgrounds, LGBTIQ+, people in rural and remote areas, Aboriginal and Torres Strait Islander people and Māori. Accordingly, cultural safety in all proceedings is crucial – see RANZCP [Position Statement 105: Cultural Safety](#).

It is commonly acknowledged that the physical impacts of FV can be severe, however, it is important to recognise the long term and pervasive impacts of FV on mental health. Individuals who have experienced FV can develop a variety of long-term, chronic conditions such as post-traumatic stress disorder, major depressive illness, eating disorders, problematic substance use, chronic pain, generalised anxiety disorders and panic disorder.(3)

Psychiatrists play an important role in clinical leadership as well as identification, risk assessment and referral, and treatment including perpetrators of FV. Pre-existing mental illness and disability are associated with a higher risk of being victimised by carers and intimate partners. Serious mental illness such as psychotic disorders are associated with two to eight times greater experience of domestic violence.(4) The experience of domestic violence in turn exacerbates pre-existing mental illness, suicide attempts, and substance abuse. To better ensure positive health outcomes, the involvement of mental health services and leadership should be part all systems involved in addressing FV. Utilising trauma and violence-informed approach to address the needs of victim-survivors¹ is best practice when dealing with FV.

In this submission the term barrier is used to maintain consistency with the [Terms of Reference](#) of the Inquiry.

¹ Throughout this submission, the term 'victim survivor' is used. The RANZCP acknowledges that the preferred terminology differs across the community, however this term acknowledges the ongoing effects and harm caused by abuse and violence as well as honouring the strength and resilience of people with lived experience of family violence. Ultimately, it is imperative to follow the lead of the person seeking support, given the journey from victim to survivor is unique to each person.

Term of Reference 2 c: Barriers

The nature of the family law system exacerbates difficulties experienced by victim-survivors and families during proceedings, including when seeking Family Violence Orders (FVO). The extended duration of proceedings, backlog of cases and the ongoing stigma and trauma involved in seeking FVOs is a significant barrier. The adversarial nature of proceedings 'exacerbates conflict and trauma'.⁽⁵⁾ The expectation of delay, drawn out proceedings, adversarial proceedings and the expectation of interaction with the perpetrator can prevent victim-survivors from seeking FVOs.

There is also stigma surrounding mental health conditions within the court system, and a public perception that history of mental health conditions equate to a lack of capacity or trustworthiness. The RANZCP recommends that appropriate education should be available to family law professionals and court officers to reduce the stigma surrounding mental health conditions and increase equity of access to the court system. It is also a recommendation of the RANZCP that there be clear pathways to mental health services, including access to psychiatry services, and supports for people throughout proceedings.

Term of Reference 4: Safety and Wellbeing

The importance of trauma-informed practice has been raised repeatedly by victim survivors and the RANZCP supports their calls for professional training in trauma-informed practice to be made mandatory for service providers such as police, first responders, teachers, medical professionals and judges.

As noted in the RANZCP's [Position Statement 100: Trauma-informed practice](#), trauma-informed practice includes recognising diversity in trauma presentation, appreciating the unique experiences of particular communities, and practicing in a manner that supports recovery and limits risks of re-traumatisation

Victim survivors frequently report experiencing re-traumatisation at multiple stages in the criminal justice process with court proceedings often exposing victim survivors to triggering experiences that leave them feeling further disempowered, stigmatised, and shamed.

In addition to the mental health support outlined above, the RANZCP advocates for court modifications and considerations. These considerations include but are not limited to:

- Reduction of delays in finalising proceedings, which draws out trauma.⁽⁶⁾
- Greater provision and availability of special measures currently available in various specialist domains, such as pre-recordings, screens, removal of wigs and gowns, and closed courts.⁽⁶⁾
- Greater consistency in and utilisation of the legislation and conduct rules designed to reduce the risk of inappropriate questioning by defence counsel.⁽⁶⁾
- Consideration of whether juries for sexual violence cases are appropriate, particularly when myths and misconceptions about memory and responsive behaviour continue to persist.⁽⁷⁾

Conclusion

The current process in place for people seeking FVOs does not adequately consider the mental health burden and trauma involved in undertaking proceedings. It is important that reforms are made to increase the safety and wellbeing of parties and work to reduce the stigma and mental health burden of seeking FVOs. Mental health training is required for officers of the court to adequately support people during proceedings, and considerations for health and wellbeing should be made to minimise trauma during the process. Trauma informed care should be a key consideration in all proceedings and reforms.

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The RANZCP thanks the Standing Committee on Social Policy and Legal Affairs for the opportunity to provide this submission. If you have any questions or wish to discuss any details further, please contact Nicola Wright, Executive Manager, Policy, Practice, and Research via policy@ranzcp.org or on (03) 9236 9103.

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