Submission by

**Domestic Violence Action Centre**

to the

**Australian Law Reform Commission**

In response to the Review of the Family Law System

Issues Paper

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*Basis for the submission*

The Domestic Violence Action Centre (DVAC) welcomes the opportunity to provide a written submission to the Australian Law Reform Commission in response to the Issues Paper – The Review of Family law system. Given the changes within Australian families and Australian culture over the last few decades, and the complex needs of many of the families within the family law system we support the premise and efforts to improve our system to better respond to the changing needs of the complex families that use the family law system, especially those also experiencing forms of Domestic and Family Violence (DFV).

At DVAC, we recognise that there are many barriers for families that we work with in accessing and navigating the family law system and the problems that arise given the context of domestic and family violence. We see a high percentage of women who have accessed our service who have experience of the family law system in relation to parenting and property matters or are currently going through the family law system.

The DVAC Submission’s primary objective is to provide feedback regarding themes of the experiences of adults, young people and children with lived experience of family violence and the family law court and how this space helps or hinders safety and wellbeing of children and their caregivers. This submission seeks to give voice to the victims; both women, young people and children that work with our service, and acknowledge the thematic issues faced by this group within the Family Law System and better systemic responses to achieve safe outcomes for children and victims of DFV.

As an organisation, we feel it is important to raise past and current issues raised by women and children as well as recommendations. We have sought to include quotes and issues directly raised by women who have both experienced family violence and gone through the Family Law System, and to speak to the intersectionality of issues amongst the Child Protection, Justice, and Family Law space. We are pleased about the positive outcomes, which may be generated by this inquiry, particularly for women, and children who have experienced domestic and family violence.

**Thank you to every person who contributed to this submission, and all the women, young people and children that shared their story with us over the years.**

**We hope to be able to see positive changes for those that have experienced domestic and family violence, so they can be safe and free from fear.**

*Our Service*

The Domestic Violence Action Centre (DVAC) is a community-based organisation located in Ipswich and Toowoomba. Since April 1994, DVAC has been committed to working with our community towards the prevention and elimination of domestic and family violence.

To this end, the DVAC is actively involved in supporting women, young people and children who are experiencing or who have experienced domestic & family violence, supporting men who are actively committed to behaviour change as well as providing information and education to the community at large.

DVAC provides a range of services the local government areas of Ipswich City Council, Somerset Regional Council (excluding Kilcoy), Lockyer Valley Regional Council, Scenic Rim Regional Council (excluding Beaudesert) and Toowoomba and the Darling Downs.

These services include:

* Telephone information, referral, advocacy and support services to women, young people and children;
* Court support for women in our 11 regional courts;
* Counselling services for women, children and young people;
* Group work for women, children and young people;
* Safety upgrades for women and children wanting to stay in their homes;
* Providing professional training and resources to other service providers and stakeholders;
* Community education and awareness raising events.

DVAC is also funded to provide sexual violence support services to those who have experienced historical sexual violence in the Ipswich region. This distinct program of DVAC, the Service Against Sexual Violence, commenced in June 2016, and provides counselling and support services to those regardless of gender over the age of 14 years. The DVAC has also been funded from August 2016, to deliver a group program, ReNew, for young men (and their mothers) who are using violence against their mother and/or siblings. This program is being delivered in partnership with Talera Services.

In addition to this, the DVAC has a lead agency role in the community facilitating an integrated response to domestic & family violence issues. This role involves encouraging other key stakeholders to engage in collaborative responses to domestic and family violence issues throughout our community to ensure safety for women and children and accountability for violent perpetrators. Our integrated response model liaises with Child Protection, Police, Judicial and Health systems.

The DVAC staff all hold tertiary qualifications, in fields such as Social Work, Community Development, Social Science, Human Services and Humanities. All staff are extremely experienced and are actively encouraged to undertake ongoing professional development opportunities to enhance their existing skills and knowledge.

*Areas for concern:*

The Domestic Violence Action Centre (DVAC) recognizes the significant numbers of women, children and some men affected by DFV in the Australian community locally, statewide and nationally. We recognise that DFV affects a substantial portion of our community, and it is not limited to particular groups but affects all different backgrounds, abilities, and communities.

Due to the statistics demonstrating the higher proportion of female victims of DFV, we believe DFV is a gendered issue. This is because after the age of 15 years, one out of three women have experienced physical violence and one in five women have experienced sexual violence (Our Watch, 2018. ANROWS, 2018. ABS, 2006). Around three quarters of intimate partner homicides are female victims (AIC, 2005) meaning women are three to four times more likely than men to be victims in intimate partner homicides (Mousos, 2000).

**The ALCR reported approximately more than half of the parenting proceedings in family law courts have allegations of family violence reported** (ALRC, 2010, p. 673). Most children witness or directly experience the abuse. 1 in 5 parents reported ongoing safety concerns associated contact that child has with the other parent (Australian Institute of Family Studies (AIFS), 2018).

A fourth of women and a sixth of men reported physical violence around the time of separation (before or during) (AIFS, 2018; ALRC 2010). Around two-thirds of separated mothers and half of separated fathers report emotional abuse around the time of separation (AIFS, 2018; ALRC 2010). To place this in context it may also be important to note, we have also found across Domestic Violence court that there are often vexatious applications and claims of DFV following the other party applying for a Domestic Violence Order (DVO). Domestic violence legislation and police response around cross-applications often responds to this by considering who is more at risk of serious harm or death. Minimization, denial and blame are also a core ingredient of tactics used to control others which is part of the complexity behind assessment and working with DFV.

Domestic and family violence does not end after separation. In fact, this is one of the biggest risk factor for serious and dangerous forms of abuse, as abuse can escalate in the lead up to leaving, the time of leaving and following (Albobelli, 2009). For example, following separation the period of highest risk is between 6 weeks to 12-18 months after separation, this is often the time when family law processes occur, and arrangements for divorce, parenting and property are finalized (Hardesty, 2002). Given that contact arrangements are then sometimes the only access to the victim, especially if no contact Domestic Violence Orders (DVOs) are in place, this is often where contact can be used to facilitate continued abuse of women and children and place them further at risk.

Domestic Violence is harmful to children, and is a form of child abuse, but also often co-occurs with other forms of child abuse (Herrenkohl, Sousa, Tajima, Herrenkohl & Moylan, 2008). Domestic violence can be a strong indicator of child abuse, given research 30 to 60% of domestic violence matters also having a co-occurrence of child abuse (Bragg, 2003). Domestic and Family violence is not limited to conflict between parents alone, as often children are brought into the conflict by a party, and can be used to cause distress or manipulation of the other parent. Abuse on contact may be the last vestige of control and power control by the perpetrator over the victim and the children. Protecting the child is linked to protecting the primary carer or attachment figure who is a victim of violence so to further not traumatise the child (Bragg, 2003).

Research has highlighted that due to the intersectionality of Family Law, domestic violence and child protection issues, children and young people continue to be placed in unsafe situations post-separation. Court-ordered contact with perpetrators of domestic violence is not necessarily safe just because the ex-partner or victim may not be present. In fact, sometimes it restricts the other parent to act protectively and interfere with forms of abuse from the perpetrator towards the children.

The Family Law System can also be considered, necessarily, “future focused” in its provision of post-separation care arrangements for children. However, the perspective of focusing predominately on the future capacity of parents can serve to minimise or even altogether miss the ongoing impacts of domestic violence on women and children. “The experience of a past or present abusive dynamic is a very common characteristic of high-conflict family law clients,” (AIFS, 2018; as seen in ALRC 2010, p.673). A historical overview and knowledge about past behaviours can highlight risks and can inform decision-making to mitigate these risks.

When women have experienced or are continuing to experience violence or coercive control from a partner, they are not in a position to negotiate safely with them within the family court context. Subsequently, additional support from informed and experienced professionals with an understanding of family violence may be crucial to assist in the family law process for the safety and wellbeing outcomes for children and adult victims of DFV.

Due to the risk that family violence places on the safety and wellbeing of children and victims, we need to respond to the level of complexity that family violence adds to the Family Law process; and address the systemic gaps and issues to ensure that no further harm is experienced or compounded by the wider system. Better communication and integrated responses are needed between the family law system with child protection, police and hospital as well as specialized services to address the complexities faced by families.

Objectives and Principles

“Safety [of the children] should be the first priority, *then* factor in contact, but there needs to be processes... like supervised contact initially especially with issues of DV and if the child doesn’t know the other parent,” (client N)

“The [family law] process is too difficult and doesn’t protect the child” (client P)

“Threatening me to take the kids off me was ignored from Police and Lawyers. I left because he was drinking weekly and driving home intoxicated and being verbally and sometimes violent especially when I was pregnant with both children. Other than the house and my car everything was in his name...” (Client J)

 “It’s hard for Mums experiencing DV… there’s emotional damage and trauma… but it’s the child at the greatest risk.” (Client P)

“I think the objective is to provide legal support, protect women and children who are experiencing domestic violence and for fair and equitable outcomes for both parents.” (Client W)

“Supervision and processes around safety is imperative especially if there is a history of DV” (Client N)

feedback from women

Reviewing the role and objectives of the modern family law system as well as the guiding principles are important. The ALRC has already highlighted the changing culture and diversity of Australian families and the need to review and respond to the presenting family law issues within the community.

The primary considerations within the family law court include:

* The benefit to the child of having a Meaningful relationship with both of the child’s parents.
* The need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

DVAC philosophically concurs with principles around allowing children to have meaningful relationships with parents and extended family members ***if safe to***. Safe connection and attachment are imperative for children and young people. Research highlights that one positive and secure attachment relationship can be enough. In fact, one of the strongest protective factors mitigating the impact of domestic violence for children is a secure and positive relationship with, and attachment to, a caring adult, usually the mother (Herrenkohl, Sousa, Tajima, Herrenkohl & Moylan, 2008). All children have a right to reach their optimal development and this occurs when there is the opportunity for attachment to a primary caregiver, and where adults who interact with the child’s world are loving and trustworthy, and the environment enriches emotional development and maximizes cognitive and emotional development (World Health organisation, 2004). When any one or more of these core developmental components is impaired, so is the child’s development. While secure attachment relationships can assist children’s resilience and is a protective factor in combating negative and highly traumatic/stressful events, ongoing exposure to trauma can have significantly deteriorating outcomes on the mental health and wellbeing of the child (Herrenkohl, Sousa, Tajima, Herrenkohl & Moylan, 2008; Sousa, C., Herrenkohl, T., Moylan, C. A., Tajima, E.A., Bart Klika, J., Herrenkhol, R. C., and Russo, J. 2011). Safety needs to be the first priority, as further trauma in relationships can decrease wellbeing outcomes for children. Not only this, but children who are exposed to unsafe persons (persons who have used any form of violence or coercive control and a source of fear) can be emotionally, psychologically or physically unsafe to have continued contact (especially unsupervised) with that person and this can lead to negative outcomes, such as further experiences of abuse, neglect or exposure to DFV. This is hugely important in the context of separation and family law, because in DFV relationships separation is the most dangerous and potentially lethal time for women and children. Many women have reported that around the time of separation there is often escalation of violence, intimidation, stalking and harassment. One of the key indicators of risk to women, young people and children’s safety in this context is access to the victim and their family. Unsupervised contact between a person using violence or ‘perpetrator’ and their children, and even to their adult victim at contact handovers allows this continued access and provides a window of opportunity for persons using violence to focus their efforts to intimidate and regain control. For decades DVAC has heard from women about the pervasive and ubiquitous nature of post-separation abuse. They describe consistently situations of contact or contact handovers that are unsafe for children and themselves.

“I have found the process corrupt, sexist and discriminatory – a process that benefits those who have money.” (Client F)

“In my experience lawyers and the court minimise or disbelieve domestic violence. I was left feeling that what I was experiencing is not really happening… that I was the one with the problem and told repeatedly that I need to work with him despite there being domestic violence in the relationship.” (Client W)

“I was forced into a 50/50 Shared Care arrangement…I was not believed about DV as he accepted this without admission from the Family Law Lawyer. I was accused from Legal Aid and the Legal Aid Lawyer that I was being vindictive and [that] I didn’t leave for safety reasons.” (Client J)

feedback from women

***Recommendations:***

* Principles need to consider the safety and wellbeing of the children in any directives, then consider the safety and wellbeing of parents in decision-making processes.
* Contact/care arrangements need to be primarily focussed on the safety of the children (physical, psychological and emotional) and the rights of the child.
* The wellbeing and safety of the children needs to be prioritized and contact only if safe to do this.
* Supervision needs to be by those equipped to provide a safe environment, such as professionals with DFV assessment skills.
* When parenting orders and conditions around safety and contact are breached there needs to be appropriate consequences in place and accountability for behaviour.
* It is important to take disclosures or allegations of abuse seriously. If there are past or current concerns around DFV; including disclosures of physical, sexual, psychological, emotional abuse or neglect these need to be taken seriously and the family members linked with support services.
* The person found to be using violence especially needs to be linked with services that can address this use of violence; such as accountability programs and men stopping violence groups to be assisted to make changes to their behaviours and gain support to do this.
* Consultation and review with relevant services such as child protection, police and specialist services including family violence services to review safety considerations if DFV identified.

Access and engagement

“I never had it [family law] explained to me with the consequences of orders – It would have been good to have it explained fully, to have clear legal advice and not different legal advice from different places.” (Client N)

“In my experience legal services do not have time or do not want to have a look at what work I had prepared for court.” (Client W)

“There needs to be a quicker turn around and court needs to be a bit more organized” (client P)

“As a person accessing legal support there are so many hurdles to try and overcome. Such as being limited to a specific time such as 15 minutes (when there has been no referral) or 30 minutes when referral is done. This is not enough time to ask questions or for lawyers to look at my paper work.” (Client W)

feedback from women

It is not new information that there are barriers to accessing the family law system for many. Navigating the family law system processes from mediation, divorce, property and parenting, and court are complex. Little awareness and understanding of the Family Law System is a big barrier for many. This is compounded for those with language or cultural barriers, or literacy and learning difficulties, disabilities etc. In fact, even people with high literacy and english skills still struggle with navigating the legal language and process of the court system. In addition to this, geographical and physical barriers, childcare issues, and financial challenges also inhibit accessibility to the Family Law System. Families that are also navigating risks associated with post-separation coercive control, manipulation and violence tactics, experience further challenges and dangers while engaging with the Family Law System.

Some groups of women experience layers of disadvantage, which coupled with the experience of domestic violence serves to exacerbate the impacts of domestic violence and create further barriers to leaving violent relationships. Research indicates that younger women (18 – 34), Aboriginal and Torres Strait Islander women, women from rural and remote areas, women with a disability and women from culturally and linguistically diverse (CALD) backgrounds may be more vulnerable to becoming victims of domestic violence and face unique barriers to leaving a violent relationship (Mitchell, 2011). There is still limited research on the prevalence of violence in gay or lesbian relationships, or where one or more of the partners identifies as transgendered, intersex or queer. Perhaps this could be due to greater vulnerability of these populations or increased reluctance to seek formal assistance, or a lack of specialized services with appropriate skills to assess DFV linked with these communities.

Due to the repeated trauma of domestic violence, women who have been victims of domestic violence can present poorly in court, often presenting as ‘difficult’, emotionally labile or even aggressive. However, rather than contextualising this presentation within an understanding of the impact of domestic violence on its victim, a women who is seeking to protect her children from a perpetrator may be labelled hostile or vexatious by the Courts. Such presentation may cause the Court to form an unfavourable view of her ability to parent, particularly her *perceived* “failure” to parent in isolation of these past or current, highly traumatising experiences.

At the DVAC, many of the women that access the service report the process of Family Law often being used as a threat from the person using violence if they are the father of any children. Direct threats around financial abuse and delaying the court processes have been used to increase financial difficulties and stress. Some parents report financial bills up to $100,000 as reported by the ALRC sometimes leading to bankruptcy or further impoverishment (2010, p.35). Financial strain comes from a lack of available subsided legal services, and the length of time these court proceedings can take. There have been multiple cases reported to DVAC where Family Law has been used as a threat by a perpetrator to inflict financial abuse by delaying court and tying up the victim’s money or by maintaining control of victim through access to them through court or contact, preventing the victim from moving on or wholly focusing on needs of children, instead of the perpetrator.

“It should be more affordable. I can sit on hold for 3 hours for legal advice and still can’t get through. You need to know the supports available” (Client N)

 “There are no separate rooms. You end up all sitting out together in the same area... when I went there my heart was racing… I went an hour and half earlier so I could get a seat where I could avoid him.” (Client N)

“I was told that if I didn’t follow Legal Aid Lawyers directions I wasn’t going to get funded and she wasn’t going to appear for me in the Family Law Court and that I would be on my own and I would lose the kids, so I was forced to sign.” (Client J)

“There’s no security except downstairs on the first floor. I was feeling really scared and worried and anxious. The whole time I was stressing about seeing him” (Client N)

“My child was abducted from me by my ex and I was told I had to wait 2 – 3 months for Legal support” (Client C)

feedback from women

The difficulties accessing a lawyer and the extent of money required to be represented for an extended Family Law matter means many aren’t able to proceed or feel coerced into agreeing to sub-satisfactory orders that do not meet the needs of the children’s wellbeing or place the child or victim at risk of further abuse. In some circumstances contact arrangements are not realistic or safe or becoming out-dated due to the child’s age, needs or circumstances. Many report not being able to access any legal representation. It is difficult to access legal aid or legal support for reviews of parenting orders without money unless they are urgent police or child safety matters. This means victims are often stuck with inappropriate, irrelevant or unsafe parenting orders and contact arrangements. Sometimes children are forced to attend even if feeling scared or unsafe at contact until they are old enough to no longer be forced to go.

Inevitably, due to complexity and risks associated, mediation is significantly challenging due to these agreements often not being followed through with, or decision-making placing children at risk, or it is not believed safe to allow mediation given the high-risk nature of the violence that has been used (such as high risk indicators of strangulation, threats to kill etc.).

The family law system allows for ongoing access to victims through correspondence, mediation processes to court attendance. Given the context of post-separation family violence, there is a significant power imbalance and highly unlikely that fair and equitable negotiations on parenting and property matters can occur without skilled management. Due to the vulnerabilities of these families engaging with family law easing access barriers for safe and equitable judicial processes is imperative.

Increased access to information and help understanding of the Family Law system is beneficial, especially for those that may experience additional complexities and barriers navigating the system. They may need targeted information and support to step through the process. There are many ways to increase accessibility to information. A core point is plain language and clear interpretation of the legislation from people who have a clear understanding of this. The information then needs to be made accessible to address barriers; such as online, written, visual and verbal communication. This could be in person, skype or phone. Interpreters and liaison workers are important to step people through the process. Free access to legal advice around family law is crucial for particularly complex family law cases, and especially for family violence matters. Furthermore, legal representation is needed from those professionals that understand DFV and are willing to gain further individual understanding of each DFV case to mitigate the risks to children and victims of DFV. Consultation with involved and relevant services with family members may benefit the process and assist decision-making processes in order to address concerns about safety and wellbeing. Utilizing a clear, simplified and more efficient process that uses plain language, as well as collaborative responses with specialized DFV services and professionals will assist to address safety and wellbeing needs of children and victims.

“More support and more information is needed” (Client N)

“The process is too long” (Client P)

“Unfortunately it’s hard to get worthwhile legal advice, and you need a good solicitor that understand what kids and people like me have gone through [DFV] which is hard to find.” (Client N)

“It [court] has dragged out for longer than it needs to be.” (Client S)

 “There’s not enough information. I even live on the computer and look up everything as much as I can. I am even learning something new every day.” (Client N)

“Trying to go through legal aid is a long process… We need more support from legal aid” (Client P)

“I would like to see low cost legal options and faster responses from legal services especially in relation to domestic violence.” (Client C)

 “All legal costs should be reduced regardless of the outcome.” (Client P)

feedback from women

The DVAC believes it is essential for family violence matters to have DFV specialist consultation through the process. This could be assisted by better coordination and partnerships with specialist family violence services in order to consult around family violence matters and link perpetrators, victims and children with support services. DFV advocates and specialists within the Family Law system may assist with the smoother transition through the court process and be able to focus on safety for the victim and their families.

***Recommendations:***

* Simplify the Family Law process and use plain language in information about navigating the Family Law System.
* Specialist lawyers with DFV knowledge and skills required for complex child safety concerns e.g. DFV/SV matters.
* DFV specialist family law support workers available to assist victims and children throughout the family law process, able to step from application, to mediation through family law court as needed.
* Free legal advice needs to be available and accessible for all DFV victims, as well as subsidized costs for legal representation in order for legal representation for hearings.
* Information sharing and consultation with relevant services involved with family members.
* Consultation with specialised DFV services for cases where there has been allegation or reports of DFV in order to focus on safety and wellbeing priorities of children, and the parents.
* Partnerships and collaboration between Family Law professionals with support services in order to decrease barriers and equitable engagement with the Family Law system.
	+ One idea would be to have an available Family Law specialist visiting services e.g. IFS, FIS, CS, DV services, community centres, CALD and ATSI community hubs to speak with people and services – not limited to 15 minute consultations.
* Available Family Law advice phone line to step through process such as through services such as Women’s legal service who already provide services to victims of DFV involved in court. They could be supported financially to be more widely available for legal advice and support.

“I didn’t get family law court order for my son because my address is on the report. He still found me, even though I drive to NSW to get away and be safe” (Client P)

“I was happy with the process and how it had worked for my family. The only thing I felt needed to be different was the length of time it took for court hearings and legal service responses. I also felt the legal representation was too costly which resulted in financial strain for my family” (Client C)

“I spent $15000, but only could afford it because of a credit card.” (Client P)

“It would help to have all services in one place and someone supporting you during this time” (Client P)

“It cost me around $30,000 to pay for a Lawyer and Barrister that sat there and did nothing and I nearly lost the children, he [ex-partner] wouldn’t budge on anything and seemed to dictate the proceedings. The purpose of taking this back to Court was that he wouldn’t agree on school, costs and the lack of care and I was being threatened all of the time and [he was] not financially contributing.” (Client J)

feedback from women

* Available interpreters for non-English speaking people or culturally appropriate support workers.
* Security should be considered for victims of DFV attending court if known allegations of DFV such as;
	+ Special witness options for young people/victims of DFV.
	+ A separate room and waiting area as needed.
	+ A special witness ability to conference in or negotiate through lawyer.
	+ Availability security on the court level and ability to accompany to car/transport
	+ Available separate exit like at DFV court to be utilised if available.

Legal principles in relation to parenting and property

“He [my ex-partner] has played games with an innocent boy... playing siblings off one another by actively having favourites… making nasty comments and putting him down, making threats and demanding children and I do what he wants even if it’s against the court order.” (Client N)

“This is about how it benefits him [the children’s father] not about the children” (Client J)

“I pushed for a final court order because he agreed to the time and conditions thinking maybe he had changed and the time offered was smaller than he was threatening. But I didn’t understand what you had to go through to review the order if issues came up. Now the children are unsafe/exposed, and are repeating very worrying things to me about feeling scared and abuse but because he is young I can’t change it. I can’t get legal aid to get back to court because it’s based on the police outcome of investigation, which can’t use a young child as a reliable witness, and the child safety outcomes depend on police investigations. This means my child continues to go to contact and coming back traumatised. I am so worried for him” (Client N)

feedback from women

DVAC is not in a position to comment in relation to the specific legalities given the specialist knowledge of the legal system required, however will make comment as to the complexities of family violence within the family law act and the definition of family violence.

***The definition of Family Violence***

Family Violence definition under the family law act refers to violent, threatening or other behaviour by a person that coerces or controls a member of the person’s family (the ***family member***), or causes the family member to be fearful.

***According to the Family Law Act 1975 behaviour that may constitute DFV or exposure of the child to DFV:***

*According to the Family Law Act examples of behaviour that may constitute family violence include (but are not limited to) an assault; or a sexual assault or other sexually abusive behaviour; or stalking; or repeated derogatory taunts; or intentionally damaging or destroying property; or intentionally causing death or injury to an animal; or unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support; or preventing the family member from making or keeping connections with his or her family, friends or culture; or unlawfully depriving the family member, or any member of the family member’s family, of his or her liberty. For the purposes of this Act, a child is* ***exposed*** *to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence. Examples of situations that may constitute a child being exposed to family violence include (but are not limited to) the child: overhearing threats of death or personal injury by a member of the child’s family towards another member of the child’s family; or seeing or hearing an assault of a member of the child’s family by another member of the child’s family; or comforting or providing assistance to a member of the child’s family who has been assaulted by another member of the child’s family; or cleaning up a site after a member of the child’s family has intentionally damaged property of another member of the child’s family; or being present when police or ambulance officers attend an incident involving the assault of a member of the child’s family by another member of the child’s family.*

***Reviewing the Family Violence definition***

As the family violence definition states the examples given are not limited to the above. The tactics used to control, coerce or intimidate another family member are many. Subsequently it can be difficult for those with little experience of the nuances of DFV to sometimes see the behaviour, intent and affect clearly. They key to understanding domestic and family violence is recognising it as an issue of power and control or one party trying to assert power or achieve dominance over the other, using a range of tactics of abuse. We at DVAC support the premise that domestic violence is also child abuse because by creating terror in the family home and exposing the children, directly or indirectly, to violence, harm is being caused to children. Domestic violence has been shown to commonly co-occur with other forms of child abuse. Bedi and Goddard (2007) reported that the rate of co-occurrence of Australian children experiencing physical abuse and domestic violence was 55% and the co-occurrence of sexual abuse and domestic violence was 40%. We have found that at the DVAC many cases of child abuse occur in the context of DFV and that this doesn’t stop at separation.

“If anything goes wrong and anything happens to the victims there should be accountability” (Client P)

“The nature of domestic violence and post – separation abuse tactics (taking my child to harm me) were not taken in to account.” (Client C)

“I have been attending Family Court for approximately 5 to 6 years with no resolution – no final order. There has been little communication and no clear explanation has been provided as to why this process is taking so long.” (Client F)

“I have been advised to accept orders that place my children in danger in order to avoid trial as the outcome will be worse.” (Client W)

“He forced me back to Ipswich after I left through Legal Aid, now I can’t move over 30 minutes away from Ipswich due to the Court Orders. A man – when the oldest was in Year 6 – said in the Anger Management Course that the Father was saying he wanted to take them to the beach and drown them. Why was this not a duty of care for the children?” (Client J)

feedback from women

In understanding the power and control tactics of perpetrators, the use of children has long been recognised as a key weapon of terror and subjugation. There are numerous tactics and behaviours of perpetrators that may exemplify their attempts to continue to abuse, control, harass and intimidate their families. Often the same tactics used to control or cause harm to an adult victim can be used towards the child or adapted to use the child as part of the coercion, especially if the child and contact is the only access to the adult victim. For example some families have reported issues of a perpetrator encouraging children to say or do certain things towards their mother, such as surveillance to track the mother’s location or activities or encouraging violence. The sabotage of relationships through denigrating the other parent to the child is common e.g. using ‘gas lighting’ towards the children or manipulating their relationships such as telling the child the mother does not love them or that they are crazy or sick etc. The victim is not in a position to stop the coercive behaviour, as it is not their behaviour to control or have responsibility for, and they may be traumatized from the effects of abuse. Please see appendix one for examples of abuse tactics towards children that are often experienced during care and contact arrangements with a perpetrator. It is important to have a more comprehensive understanding of the idea of ‘witnessing’ DFV, to more than seeing fights or physical assault incident/s but a pattern of behaviour of control and intimidation to all family members which may take many forms (Edleson 1998; Humphreys 2010). Appendix one also highlights examples of exposure to DFV. The affect of the violence and control on children is varying and appears in many presentations of trauma. For a small snapshot of common trauma symptoms see appendix two.

Recognition that children’s exposure to DFV is itself abusive is reflected in the extended definition amendments to the Family Law Act 1975 which prescribes that serious neglect of a child is to be considered child abuse and also recognises that a child exposed to family violence may suffer serious psychological harm.

***The best interests and outcomes for the child***

*Part VII of the Family Law Act 1975 highlights the current objects of this Part are to ensure that the best interests of children are met by:*

*(a) ensuring that children have the benefit of both of their parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child; and*

*(b) protecting children from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence; and*

*(c) ensuring that children receive adequate and proper parenting to help them achieve their full potential; and*

*(d) ensuring that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children.*

“There needs to be accountability for perpetrator like making them go to counselling or anger management or supporting change like making parents do parenting programs.” (Client P)

“I have been advised by many lawyers not to raise the issue of domestic violence because it will circumvent the safety of the children client” (Client W)

“The standards on fathers are different from the ones that a mums need to meet. People seem to be more lenient with fathers.” (Client S)

“If there has been domestic violence, children should not have any contact with the person using violence. This can change once the children and mum are supported and the person using violence is accessing support were he takes responsibility for his actions. A review can take place to access risk and danger of the children.” (Client W)

“I was slammed for not facilitating a positive father relationship, [but] it was not my job to make him responsible. He has to have a meaningful relationship with the children.” (Client J)

feedback from women

It is important to not dismiss or minimise allegations of DFV or child abuse. The probability of the co-occurrence of DFV and child abuse varies according to a range of factors, including the frequency and severity of violence (Bedi & Goddard, 2007). For example, one study in the United States found that in families where there were reports of weekly violent incidents, child abuse by the male perpetrator was almost always present (Bragg, 2003).

Although the idea and principle of the act to support and facilitate a meaningful relationship with both parents is in itself a good principle, it is not always in the best interests of the child. Stopping contact may in fact be in the best interests of the child for a period of time or indeed at all depending on the level of violence and intimidation. Despite the risks, contact is often a given even if the child is expressing significant fears and worries about contact and past DFV has been highlighted.

Based on some of the experiences of the women and children that have accessed our service, the objectives of the act for both parents to have a meaningful relationship with the child does not always achieve the best interests of the child, **if** this places the child at risk of further fear, intimidation, threats, coercive control, abuse or neglect. The child can also be placed in a position to be further exposed to DFV through court-ordered contact and handover arrangements, which has multiple safety concerns for the children and the victim of DFV. For further details please see response to Objectives and principles section for concerns around supporting contact and meaningful relationship **if safe to.** The meaningful relationship may be achieved in ways that doesn’t place the child at as much risk, including photos or cards.

“Acknowledge that there is a power in-balance in the system – mediation and court process” (Client W)

“The most recent report writer was encouraged by mum, to contact the children’s school, pediatrician and doctor in order to have a broader outlook on how involved both parents are in the lives of children. This was not followed through even though the report writer had said that she would. However in the final report she wrote that dad was more hands on then me.” (Client F)

“There’s no accountability from ICL (Independent Children’s Lawyer) when children and were placed at risk due to actions from ICL. I sent the ICL a copy of the concerns raised with Child Safety, as well as photographic proof of injuries to the children but the ICL sent it to the father. Now my children’s behaviour has escalated due to dad being aware of concerns raised.” (Client W)

“Since June 2016 he has done 4 mediations in which he has not even done what he has agreed to. I get threatened two fold over everything and he changes his mind and then threatens me in writing and verbally in front of the children and at the school. I get slammed for high conflict when I try not to engage.” (Client J)

feedback from women

The common assumption that the use of DFV is only to another adult in the relationship and does not affect the children is a myth. The actions and behaviour of using violence (physical, emotional, psychological or sexual etc.) to control and intimidate another is not a safe parenting decision. Safe and together training highlights the use of DFV is a parenting choice due to the impact on the child and there needs to be accountability for fathers as well as mothers (David Mandel, 2018).

Joint parenting decisions within the context of DFV, is an unrealistic expectation for those caught in an unequal power imbalance within their relationship due to one party’s active use of coercive control. Expectations of the victim of DFV informing the perpetrator about certain decisions or information provision such as home or school location is unrealistic and unsafe especially where there is concern about surveillance and further use of violence and particularly where there is a no contact order in place. Saathoff & Stoffel (1999) found that many perpetrators of domestic violence that have ongoing contact with their children do not understand the impact the violence has on their children and that incorporating parenting components into perpetrator intervention programs is a mechanism for more responsible fathering.

There needs to be accountability, checks and balances to ensure children remain safe. Other parties who are monitoring or supervising need to ensure continued safety for children if the child is having contact with someone who has chosen to use violence or concerns have been flagged around the safety of contact or contact handover arrangements. Although past behaviour can be an indicator of future behaviour, sometimes risk escalates and violence is used unexpectedly or in an unpredictable manner so the perception of fear and danger from the child or the woman are good indictors as part of the assessment of risk and safety.The safety of abused children is inherently linked to the safety of the adult victim, thus helping adult victims find security helps to ensure the welfare of the child (Bragg, 2003).

***Recommendations:***

* Include use of children and further nuances named above within the definition of family violence, or consider these other forms within DFV analysis. Consult with specialised workers and specialists if unsure whether particular patterns of behaviour constitute as DFV.
* Follow through with the focus on the best needs of the child by not placing children at risk of further harm by court-ordering unsupervised contact without:
	+ Thorough specialised DFV assessment of past and current behaviours, intent behind behaviours and affect on the children,
	+ Supervision where DFV identified,
	+ Safety planning in place,
	+ Ability to review decisions if safety concerns present,
	+ Consider no contact arrangements if significant safety concerns.
* Consult with DFV specialised services regarding complex cases to put in place safe contact plans if deemed appropriate at all.
* Do not expect joint parenting decisions in all circumstances, as it is not always applicable or safe as certain expectations to inform other party about certain decisions.

Resolution and adjudication processes

“A child counsellor encouraged me to go through all of court and encouraged me to fight through court as long as I could because she was so worried about the children and could see the DV behavior. She was brilliant. You could tell she was there for children. She said to me ‘ask yourself when your child comes back to you later in life and says “why did you let me see father?” what would you say.’ (Client N)

“It has been a hard road for the last twelve years and it is not over yet… I am still being threatened and the system allows him to play victim and get away with it.” (Client J)

“I don’t know whether trying mediation to adapt orders after instated would work. Why have to go through the stress and pressure of court if it can be sorted out through mediation?” (Client N)

“It seems to be one sided and directed for the rights of the Father not the best interests of the children and there has been no line down the middle of the Father’s and Mother’s who deserve to have 50/50 but when there is a DV Order it is not taken seriously…” (Client J)

feedback from women

Communication between state and federal court systems is important for consistency. Both state and local Domestic Violence Court and the federal Family Law System seek to address issues at this time of crisis and change in families. However, due to miscommunication and uncertainty about the enforcement of conditions mean response to any breaches of either order can be inconsistent. The complexities within families that face DFV mean state and federal systems try to respond in their jurisdiction to the presenting court issues, however due to the interplay there are often gaps. The lack of coordination between legislation, interpretation and enforcement can leave vulnerable persons and children at risk of further abuse.

No matter what court or system dealing with DFV issues and families experiencing this; safety and risk need to be at the forefront of decision-making. DFV matters create a layer of complexity in family law decision-making processes. Greater communication and integration between state and federal processes in DFV court and Family Law court can assist in speeding up the safety process for vulnerable children, young people and adult victims of DFV.

For some families that have engaged with the DVAC, issues have occurred within the interplay between DFV and Family Law systems. There can be issues with the enforceability of orders with one party not following through with Family Law Court orders but these deemed not serious enough to pursue amendments (or there is no access to). There can be issues with the perpetrator using contact as an excuse to breach their DVO in order to make contact with the parent under the guise of talking about the children but then using this as a way to yell or denigrate them about their parenting or not even speaking about the children but saying they are. There can be issues with a victim being fearful of breaching a family law order due to fears of legal ramifications, even if these are efforts to keep self or children safe from further forms of violence. Then if a perpetrator chooses to use violence, women are often blamed for not stopping contact. There are issues due to difficulty gathering evidence in unsupervised contact and gathering statements and feelings of the children expressing fear or disclosing incidents of abuse and neglect due to threats made towards them or worry the perpetrator might find out.

Within the family law system, face to face mediation is often deemed too unsafe for parties to be in the same room or to directly negotiate if assessed as high risk by specialist DFV services. This is due to the nature of power and control used to coerce decisions, or the serious threat of injury or death from the perpetrator if the victim does not agree to demands or requests or even the threat of accessing victim’s location.

For some parties, legally assisted shuttle mediation can work due to the lawyers communicating with each other on the client’s behalf and no need to be in the same room. However this can still have risks associated including that if fear and intimidation has been used, it is possible that coercive control and intimidation can still occur or intended consequences can happen even in this space.

Families with complexities such as DFV need to be supported at court. If there are cross-accusations of DFV, then the person most at risk of harm or being killed or the most vulnerable needs to have additional support.

Themes from feedback of the lived experience of court express that in order to have felt better supported at court they would have benefitted from support persons, clearer and consistent information about the process, effective legal representation skilled aware of DFV circumstances, and the use of plain language while stepped through the family law process.

“The assessments of both the “living with” and visiting parent should be evaluated on an equal and fair level, when determining the parenting skills and needs required, as often it is the “living with” parent that is only assessed (especially when they are the respondent) and in reality it is the other parent who has been the abuser and is need of strategies and training in this area and help.” (Client A)

“I have tried mediation and dispute resolution in order to come up with an order that would work for the children. But this was unsuccessful as the kid’s dad’s family did not agree to any of the request made.” (Client F)

“The system makes excuses and has too many delays, even if it’s around safety…when it comes to children, employ more people” (Client N)

feedback from women

If there are concerns identified about misuse or abuse of family law system to further intimidate, harass or cause distress, there needs to be a notification system so the court and legal representatives can be aware of tactics. Perhaps there could be a notification channel for misuse of the system.

Adversarial court system can set up parents to have protracted battles rather than focusing on solution focused or collaborative processes. This often can set up the parent with the most money who can afford the best legal representation to win. Voices of children are often lost within the system and the conflict can escalate. Victims of DFV can be disempowered further in this process. Other arbitration models have been demonstrated to yield greater success. Subsequently there is scope for problem solving decision- making to be developed within the family law system to help manage risk to children in families with complex needs or experiences of family violence. Some suggestions include:

* Integration with family support services and specialist DFV services in the context of DFV experiences.
* DFV Support workers within Family Law Court space able to support victims through process, assist with safety planning and risk analysis etc.
* Risk and danger assessments as well as safety planning needs to occur especially if family law arrangements are considering to instate contact arrangements where DFV has been identified.
* Referrals and links to support services may be crucial in order to support children and their families navigate relationships, safety and risk.

***Recommendations:***

“Family Court process to be closely interlinked with the support networks and be continually reviewed within the Court Process to ensure the Victims (especially the children/s) needs are being met.” (Client A)

“it’s sad how big the gaps are in the system [referring to police, child protection and family law]” (Client N)

“The system is not talking to each other. They don’t communicate whatsoever. I am responsible to constantly call legal services, child protection, police and support services to update them about the outcome. The [family law] Judge should be entitled to know history, especially DV history. The family law system having access to some of the history (like previous reports, DVOs applied for or granted, relevant notifications etc) would be better than me having to prove it, as the victim of DV.” (Client N)

feedback from women

* Families need to be screened for DFV by specialists prior to mediation, dispute resolution or family law court.
* Mediation should not occur for high-risk assessed clients.
* If mediation occurs, it needs to be legally assisted and not face-to-face to ensure safety and avoid manipulation of the other party by using forms of control tactics.
* Courts should only provide greater opportunities for parties involved in litigation to be diverted to other dispute resolution processes or services to facilitate earlier resolution of disputes if safe to and these arrangements/orders set in place or enforceable and appropriate review processes can speedily be addressed if there are safety concerns.
* Integration with family support services and specialist DFV services in the context of DFV experiences.
* DFV Support workers within Family Law Court space able to support victims through process, assist with safety planning and risk analysis etc.
* Risk and danger assessments as well as safety planning needs to occur especially if Family Law arrangements are considering to instate contact arrangements where DFV has been identified.
* Referrals and links to support services may be crucial in order to support children and their families navigate relationships, safety and risk.

Integration and collaboration

Several important reviews into family violence and service responses have highlighted the need for integration among services such as the Not now, Not ever report and the Carmody report among others. Information sharing for the purposes of safety and wellbeing of children and other vulnerable and at-risk persons such as victims of DFV is important. We have seen the outcomes of people and children falling into the gaps between the Child Protection, Police, Hospital, Judicial and Court systems and other service sectors. Better communication, liaison and collaboration for the shared focus of creating safe care and contact plans for children are crucial. Then considering the parent’s needs; especially focusing on the safety and wellbeing of the victim of DFV.

“Victims that are or have been in Domestic Violence should be given a social worker who will advocate and work with the victim and their children to go through the process of having to deal with many issues that do arise during and the after effects. Even through the court process. It is disgusting that women and children have no support as they are the ones that have to deal with the children 24/7. Most mothers committed suicide or are forced to give their children to the perpetrator or hand them into child services as they do not have the supporting mechanisms for them to safely go.” (Client A)

“I even tried to park as far as I could from my ex-husband during contact exchange. It says in my DVO that he is to stay away from me and not come close by 10 meters. However, this is difficult to enforce, [because] if I park away from him, he will follow me. I reported this to police and they said that I am the one that needs to change my behaviour.” (Client W)

feedback from women

In order to reduce delays, inconsistencies and issues between court systems such as federal Family Law Courts and state Domestic Violence courts there needs to be integration between both systems, driven from the federal level. Information between these courts should be shared and safety decisions able to be made at least until further decision-making processes around the children’s care can be addressed with the support and collaboration of DFV specialist workers and services. DV Court, Family Law Court, Child Safety matters/reports, and Children’s Court need to better communicate and work together to address safety concerns of children. It is not good enough that every section of the system says it is a matter for another system to manage, leaving families in limbo and further at risk of further abuse.

***Recommendations:***

* More communication between Child protection, Family law and DFV services.
* More communication at state and national levels.
* Greater integration between state and federal court systems especially in relation to family violence and family law, but also relevant statutory stakeholders.

Children’s experiences and perspectives

“It takes a lot to get children to speak.” (Client N)

“Children do have ‘RIGHT’S’, and their VOICE is supposed to be heard, and is a valued asset when it comes to Family Court.” (Client A)

“It is necessary for children to be heard… and not just a 20 minute thing. You need to have special experienced people who get it [DFV and impact on children] and understand the reactions and responses of children.” (Client N)

“The ICL and relevant Childs Rights Services should be backing and supporting the children and their opinions when valid, including their right to say NO to such things as “Time With” and “Communication Time”. They can be further traumatised by appeasing the system and those involved within.” (Client A)

“It is meant to be child focused! My children were interviewed by the Family Law Report writer and asked what they wanted however none of their expressed wishes were included in the recommendations or the report. “So what is the point if they are not going to be listened to.” (Client F).

feedback from women

Safeguarding the safety and wellbeing of our children within the family law system should be a shared goal for all parties; professionals and family members. In order to do this, we need a picture of how children are cared for and how safe they feel or are around each parent.

However, the intensity and formality of court processes is an intimidating space and process for adults, let alone children. Many children and young people report feeling unsure and conflicted about contact and can get caught up in the conflict and used as part of manipulation against another parent. However there are also children who clearly feel worried and fearful about contact with a parent who has used violence towards them or another family member, and struggle to tell others about this; especially strangers or professionals they have just met.

It is difficult to find a balance between including children’s voices, but also avoid placing them in a position to feel responsible for adult decisions and at risk of unintended consequences to their relationship with their parents or their wellbeing. A child speaking up about feeling worried or unsafe around a parent using forms of violence is incredibly dangerous, if contact proceeds to go ahead.

Many children have expressed to family members their feelings of fear or express a strong desire to not visit the other parent, but that court orders compelled them to attend contact regularly. This fear may be present for important reasons; factors can include continued verbal/physical violence at handovers, that parent’s anger or coercive control on contact, or a lack of relationship with the parent. If there have been past experience of violence or coercive control, the child has been traumatised by these past experiences and will likely feel unsafe with that parent in future due to their past behaviour and being a figure of fear.

Unfortunately, a child’s resistance to ongoing contact with the perpetrator is often construed by professionals working with these children and families as the child being coached to say ‘poisonous things’ about the father from the mother, or that the child is mimicking the mother’s feelings, or that the mother is imagining or blowing things out of proportion. The misunderstanding of children’s presentation and comments can be dangerous. Having people briefly meet children or briefly observe them cannot portray the complex dynamics of DFV. For example some children can act like the ‘perfect’ child while being around a perpetrator of violence in order to avoid conflict or escalations.

So that question remains how do we safeguard the safety and wellbeing of children, while hearing their thoughts and feelings about where they wish to live and whom they wish to see. We need to take fear and worry of children seriously. They may not be able to articulate reasons why. They may feel scared to disclose their experiences due to threats or fear of repercussion or mixed feelings to parents. We need to take history of violence or allegations of violence seriously.

“It’s extremely tricky., my child wouldn’t talk to anyone because he was worried about dad finding out. My child was not game enough to speak up while still seeing dad. How do you protect around that?” (Client N)

 “Every child is different and should be individually assessed. A professional that has knowledge on trauma and developmental needs is important and should form part of the team that assess and informs the judge. If necessary, for this professional to focus on building a relationship with each child so that they can make accurate assessments regarding the safety of each child.” (Client S)

“My child started disclosing things after starting contact, so we went to the police, he was nervous, was questioned, we left, the police then spoke to father in home and would only follow through if admitted, of course he didn’t. Now the father is encouraging my son to keep secrets and that it [the experiences he disclosed] never happened. Now how do you encourage and support children to feel safe to talk about their worries.” (Client N)

feedback from women

The core components behind listening to children’s voices about their feelings and needs involve:

* A safe relationship, space, and time to build this.
* Clear and child-friendly explanation of role and information.
* Explain adults make decisions, not children but they would like to hear and consider how they feel about options.
* Ensure child appropriate spaces and conversations.
* Encourage and provide opportunity for children to write or say how they feel about where they want to live if they can or if they want ensuring not to push them.
* Open-ended questions and use of play and art can be used to explore children’s wants.
* Ensure persons talking with children and young people have the appropriate skills, knowledge and experience; especially in relation to attachment, trauma and DFV in order to be able to make proper assessment.

In order to safeguard children’s wellbeing and safety, mitigating risks associated with involving children in Family Law processes there needs to be a broader assessment of the family, the history and the wider system. This may help to ensure statements made by children or observations are not misused or by involving children in the decision-making process does not have unintended consequences or risk associated. Systemic wider assessment with family, involved services and other family members may be crucial for adults with the best interests of the child have the relevant information to be able to make decisions on the care and wellbeing and contact arrangements of the children involved. This is especially important if a child is not willing or able to comment due to age, worry or discomfort.

***Recommendations:***

* Consider age and developmental ability to engage in feedback processes with children
* Ensure skilled workers speaking or meeting with children have DFV knowledge and child-appropriate skills.
* Ensure child friendly space and time to develop relationship and multiple meetings with family.
* Utilise a broader systemic assessment, speaking to multiple family member, relevant workers and services who have been involved.
* Review assessment with involved agencies.
* Consult with specialised DFV services regarding assessments or engage them in assessment process.
* Facilitate information sharing of child protection notifications made to Child safety services or concerns flagged with health or police systems in relation to allegations to assist with confirming concerns for child’s welfare if relevant.

“Children have been taken OUT of the violent situations by the mother, for the COURT who is supposed to protect them, back into the danger of the perpetrator.” (Client A)

“A child need’s time to talk and feel safe. You need specialised training for knowledge, understanding, and empathy in order assess safety and put measures in place.” (Client N)

“Counselling for children who have/still are, victims of Family violence without the perpetrator’s authorisation, knowledge or involvement of such counselling, due to the harmful effects this can further cause [harm and distress]. This includes Court appointed psychological services for the children involved, due to the narcissistic behaviour of the perpetrator, resulting in their voice only being heard, and no progress on the child’s behalf, often resulting in the child’s psychological breakdown leading to such things as self-harm, violence, and suicide.” (Client A)

feedback from women

* Ensuring that by speaking to child it does not place them at risk of being targeted by excessive coercive control.
* If appropriate persons speak with the child, and they identify risk of abuse or interrogation by a person who has used violence within the home there needs to be considerations to avoid their feedback being given to person child is fearful of in order to avoid ramifications if contact occurs in future.

Professional skills and wellbeing

A knowledge and understanding of domestic violence is essential to being able to assist decision-making processes with and for families. Given the high statistics of families with family violence engaged with the family law system it is imperative that professionals in the judicial system are knowledgeable about the issues associated with DFV, what it looks like and the symptoms of trauma in order to be able to make accurate assessments and prioritize safety and wellbeing of children. Independent children’s lawyers and court report writers and judges especially need the specialized knowledge or at the very least links to specialized knowledge through consultation and working closely with relevant agencies.

It is important to recognise that domestic violence is a specialised field with a wide knowledge base (both theoretical and practical) and that dedicated services can be a useful resource for workers (in the form of training or case planning) as well as support for women (they can conduct thorough risk assessments, safety planning, advocacy, support and referral, as well as assist with applications for Domestic Violence Orders and provide court support).

“My lawyer was suggesting more contact to hurry up the process and get to the end and it wasn’t until the end of FL court that the lawyer saw his true colours but the process was finished then – If they [lawyers] are gonna take a case on they need to understand this [DV]” Client N)

“There is no knowledge about DV out there” (Client P)

“There are current services in the Brisbane/Ipswich area due to lack of training or funding, place complex DV cases into the ‘Too Hard Basket’” (Client A)

“Everyone should be trained on domestic violence and trauma – judges, lawyers, family report writers and independent children lawyers” (Client W)

feedback from women

*Basic learning needs of professionals:*

* Have an understanding of the interplay between domestic violence and abuse that can occur on contact.
* Recognise the vital importance of risk assessment and safety planning with children and victims of DFV.
* Be aware of the different ways a woman may present or disclose domestic violence.

The Victorian Family Violence Risk Assessment and Risk Management Framework and Practice guides (version 2) 2012, and the Western Australian Family and Domestic Violence Common Risk Assessment and Risk Management Framework (2011) advise that any assessment should be informed by the following elements-:

* the victim's own assessment of their safety and risk levels;
* a sound evidence base, which identifies factors that indicate an increased risk of reoccurrence of domestic violence;
* the professional judgement of the person making the assessment, which takes into account the above and includes all other information known about the victim and their situation.

Domestic violence risk assessments should be ongoing over the course of the client's interaction with a service because risk can escalate and subside over time. These assessments are complex and should be undertaken by experienced workers.

“[We need] Domestic Violence Training and Education for all Law Enforcement Officers starting from the bottom of the pecking order to the top as in commissioner space, Solicitors/Barristers, Magistrates young and old.” (Client A)

“It is good when you have a Judge that specialises in the area of mental health. I was ordered to attend an assessment and identified as an unfit parent but the family court Judge at the time recognised from his experience in mental health court that the report provided did not comply with a standard report so he referred me to a different psychiatrist to do another assessment who identified that due to on-going high levels of stress my diagnosis is Post Traumatic Stress Disorder and that I am a parent willing and able to look after them” (Client W)

“I was told that I need to continue to encourage a positive relationship with dad, to record the breaches to the order and warned to not breach the order because she could have an Enforcement Order against me and that there could be severe consequences to her for breaching however nothing will be done regarding the breaching dad is doing.” (Client S)

feedback from women

Skills take time to build. There are a number of online training courses and manuals available to upgrade practitioners’ skills risk assessment. These include Common Risk Assessment Formula (CRAF) (The Lookout, 2010); AVERT (AVERT, 2018); and Danger Assessment (Jacquelyn C. Campbell, 2018). A number of service providers in the domestic violence sector also provide training programs from time to time; for example, the Centre for Domestic and Family Violence Research in Mackay have developed an accredited course on domestic violence. Other domestic violence services also offer various training, including, DVConnect, DVAC and Relationships Australia.

***Recommendations:***

* Families need to be screened for DFV prior to mediation, dispute resolution or Family Law Court.
* If domestic violence is not within your area of expertise, screen for and identify risk and safety issues, assess urgency and then refer the client to a specialised domestic violence service. An interim safety plan could be implemented until the client speaks to the domestic violence service.
* Safety should always be the foremost consideration. Good safety planning is fundamentally important to preventing or reducing future risk.
* Core skills and knowledge required in DFV for judicial and court professionals and those called on for professional assessment such as family law report writers.
* Core skills and knowledge in children’s attachment and developmental needs in the context of trauma to assess emotional safety and security of children.
* Prior to family law reports completed, specialised training and knowledge on DFV needs to be undertaken and consultation with DFV specialist services should occur in the context of complex DFV cases.

Governance and accountability

“There has been a ‘failure of the system’ to protect my child.” (Client N)

“Open more contact centres.” (Client F)

“That’s what happens - Reports are made to people [in Family Law, Police and Child Protection] and nothing happened. No wonder people aren’t game to speak up. It’s all dismissed and you just go back to the same treatment.” (Client N)

 “Shift the attitude that mums are responsible for ensuring that they keep records of any breaches with no real outcome. Once a breach is reported to the relevant services steps should be taken to ensure that it is addressed.” (Client W)

“Every time I say no to him having extra time above the family law time, he threatens taking me back to court… There has been no respectful communication. He is threatening and using the system to get what he wants rather than communicating.” (Client N)

“If anything goes wrong and anything happens to the victims there should be accountability” (Client P)

feedback from women

The governance and regulatory processes for the Family Law System is important, especially for victims of DFV. Careful and considered decision-making, prioritizing safety of all parties but especially the most vulnerable such as children.

There have been many reports of women and children who have expressed a fear and worry about the child being under the care of or attending contact with their father if that person has used violence before. Children are often still sent if court-ordered to contact due to the potential for court breaches and legal ramifications for the other parent despite concerns for the child’s safety and wellbeing or indeed their own during contact handovers. The difficulties for other systems becoming involved following orders put in place, and the relegation of “that’s a family law matter” mean that child protection services may not engage due to at least ‘one parent willing and able’ and CPIU or police unable to following through with allegations due to the lack of evidence in relation to child abuse if there is not a protective parent present to intervene. There have been situations where children have begged not to attend, are wetting their pants in trepidation, and taking anger and frustration out on the safe parents due to them not being able to stop contact. This is particularly difficult to ascertain if the child is young due to the language ability and developmental stage of younger children.

It is important for regulatory systems to communicate with each other. Accountability processes need to exist in cases where children are continuing to be harmed in the crossfire or children’s wellbeing is significantly deteriorating due to contact and care arrangements. The lack of supervised contact space in public and supported locations means it is a short process of supervision and assessment of the child’s comfort and wellbeing levels which can also demonstrate their feelings of safety and security with that parent. Accountability in terms of parents following orders and ‘being of good behaviour’ throughout contact handovers is crucial. If one party commits DFV at handover; including excessive forms of verbal abuse there needs to be processes in place to mitigate this or utilities other parties to facilitate the peace. This is turn would create more safety for victims and children of DFV, due to the unlikely nature that DFV is perpetrated in front of others, and where there are ramifications for not following this order. Better communication and partnerships among relevant services may allow for more protection and safety, due to the common occurrences of notifications regarding the child’s welfare, but little response if at some point during the week, the child stays with a willing and able parent.

It is a duty of care to respond as a wider system to DFV and child abuse, especially given the high rates of co-occurrence and the vulnerability of the victims placed in the intersectionality of these systems. Situations of ongoing abuse occur in the context of contact where there is a past Family Law Court order in place, but lawyers and police officers do not recommend reviewing order due to limited evidence, or the expense to pursue this. “It is therefore important that protection orders made under the state and territory laws and family law orders that allow children to spend time and communicate with parents operate together to ensure the safety of all parties” (ALRC, 2010, P.676).

“He should have been given anger management or intervention but he didn’t even follow with the directives on court order. Both of us had to do a POP course [parenting orders program]. But there was no follow through from him or follow up from court.” (Client N)

“Interim parenting orders have been difficult to follow because during contact we [my kids and I] had to change contact time three different times on three different days as per the father’s request. On the final agreed time, he did not show up at the agreed place or time despite having waited for him. We then decided to go home, but once at home the police called me and asked her to bring the children to the police station in order for handover to take place.” (Client F)

“When safety concerns were raised with Child Safety regarding dad and his ability to care for the children I was informed that because they [Child Safety] assessed me as a parent willing and able to look after the children they would not do anything because I am a protective factor in the children’s lives.” (Client S)

feedback from women

***Recommendations:***

* Review process needs to be in place and accessible, especially in relation to out-dated, irrelevant or where safety concerns have been raised, in order to mitigate risk. This is particularly important for DFV cases given the changing nature of risk.
* Communication processes need to be in place between Child Protection, Police, DV and Family Law Systems for accountability purposes.
* Accountability processes for DFV behaviours demonstrated while adhering to Family Law Court order and leniency if for breaching for immediate harm reasons or the child has expressed to multiple parties they do not feel safe to attend contact at that point in time.
* A consultation line or legal advice for issues in relation to breaches, accountability, reporting gaps in systems and reviewing circumstances may assist to address systemic gaps. This may be particularly important given the inaccessibility for some in accessing legal advice quickly and affordably or indeed at all given accessibility barriers.

Conclusion

The DVAC is very pleased to be able to write a submission Australian Law Reform Commission in response to the issues paper – The Review of Family Law System. Given the complexities of families involved with the Family Law System who also report experiences of past or current DFV, it seems fitting for DVAC to make comment on the themes of issues raised by largely women, young people and children who have experienced family violence and the family law system.

The key points raised in this paper sought to highlight that DFV is not a single incident, nor solely directed to one family member but often is an intentional pattern of behaviour used to intimidate, harass or control, often directed to one or all of the family members. All family members are affected by DFV in some form. DFV does not end at separation, and in fact often escalates or changes to adapt to forms of post-separation abuse. Children are most at risk in situations of contact or care arrangements with a parent who continues to use forms of DFV. The Family Law System can become a legitimized tool of abuse for the perpetrator to harass, impoverish and intimidate their victim, or regain access to the children.

It is crucial that safety is prioritised for children and victims of DFV going through the Family Law process. Specialized skills and knowledge of the nuances of DFV and impact of trauma is needed in order to better assess and support these individuals and families. Subsequently links with specialized DFV services and workers is imperative.

Universal legal representation would go a long way to ensure equal and fair processes and increasing accessibility within the system. Specialized DFV legal representation and assistance is important in complex DFV or sexual violence matters. Greater DFV training and education, as well as links to specialised DFV services may assist with the effectiveness of the processes. Less adversarial models may also enable less conflict within the Family Law space. Integration between state and federal systems, and across Child Protection, Police and DFV services are the key to moving forward and progressing to address the systematic barriers facing children and adult victims of DFV.

We hope to continue to work with state and federal court systems in order to work towards addressing barriers, and ensuring fair and equal processes within the wider system. The federal family law system has a lot of power in being able to make decisions for families and changes made could significantly increase the safety and wellbeing outcomes for children and women who are experiencing and have experienced DFV.

Appendix 1: Safe after Contact Training Module

In understanding the power and control tactics of perpetrators, the use of children has long been recognised as a key weapon of terror and subjugation. There are numerous tactics and behaviours of perpetrators that may exemplify their attempts to continue to abuse, control, harass and intimidate their families such as (but not limited to):

Physical harm

* Physical abuse of children or threats to hurt the child, often in the guise of discipline;

*Sexual harm*

* Sexual abuse (e.g. kissing, touching, rape, coaching);
* Boundary violations (e.g. Having child sleep in their bed, helping with bath time routines when not age appropriate);
* Exposure to pornography either through inadequate storage of materials or not providing adequate privacy when accessing pornography;
* Grooming behaviours.

*Emotional/psychological harm*

More common and overlooked examples of how children may be harmed are in relation to emotional/psychological abuse;

* Witnessing verbal or physical abuse during handovers, or hearing angry phone calls on contact;
* Allowing a new partner or their children to be verbally or physically abusive to children and/or their mother;
* Exposure to violence of the father toward a new partner on contact visits;
* Abduction of children or purposely contravening Family Law Court orders;
* Active, chronic and persistent denigration of the mother during visits;
* Perpetrator asking the child report back about the other parent;
* Active undermining of the mother as a person (e.g. “that bitch is crazy” or “your mother is a lazy s\*\*t”) or her parental authority(e.g. “you don’t have to do what she says” or “tell her I said you don’t have to clean your room”));
* Asking children to choose between parents or saying that it is the other parent’s fault they are not a family anymore;
* Not allowing the child access to phone contact with the other parent when on contact;
* Threatening suicide;
* Using children as emotional support;
* Escalation of abuse, threats, stalking when the mother re-partners or undermining of the child’s relationship with a new partner;
* Having children make false statements to police or child protection officials about abuse in the mother’s household;
* Consistently running late for pick-ups and drop-offs, changing times, or withholding the children;

*Neglect/ignoring parental responsibilities*

* Inadequate food or excessive junk food;
* Lack of bedtimes or routines;
* Late to school or consistent non-attendance during contact times;
* Clothes and belongings not washed and/or returned;
* Lack of supervision and exposure to inappropriate movies/video games/websites;
* Spending no time with child/ignoring the child on contact;

*Trauma responses*

* Lack of presence of the protective parent on contact amplifies trauma experienced by the child

The term “witnessing” of domestic violence is often used when explaining children’s experience but implies direct witnessing of physical assault of their mother by their father. This leads to misconceptions about the nature of children’s exposure and the severity of impact. Physical violence is extreme and harmful to both women and children but does not capture the range and complexity of children’s experience to domestic violence and undermines an understanding of the severity of the impact of the range of violence children may be exposed to.

Exposure to or experiencing domestic violence may include:

* Directly witnessing physical or sexual assaults;
* Being forced to watch or participate in assaults;
* Intervening to prevent violence;
* Being used as a hostage during violent incidents;
* Observing intimidating and threatening behaviour;
* Observing destructive and aggressive behaviour (*e.g.* punching walls, throwing things, harming pets);
* Hearing verbal and emotional abuse toward themselves or another family member;
* Overhearing yelling or violence;
* Having to call for help during violent incidents;
* Observing the aftermath of a violent incident.

This more comprehensive understanding of children’s ‘witnessing’ of violence now also reflected in the new amendments to both state and federal legislation. It is now recognised that ‘witnessing’ domestic violence is more than a child being emotionally traumatised after observing a fight between the mother and a male adult in where there may be verbal or physical abuse. The critical point to note is that “domestic violence” is not just physical assault, and sometimes may be emotional and verbal abuse without actual physical assault. Domestic violence is not a single event or a number of discrete incidents but a pattern of control and intimidation of all family members that may or may not involve physical abuse.

Appendix 2: Safe after Contact Training Module Impacts on Children

The impacts of domestic violence on children are varied due to the heterogeneous experiences of children. Factors that influence how children are affected by family violence may be:

* The age and development stage of the child. Neurobiological researchers have found that an infant’s brain experiences the most development within the first five years and that many symptoms in childhood can be seen as dysfunction in early brain wiring and chemistry;
* The nature, frequency, duration and severity of violence to which the child is exposed;
* The nature of the relationship with the abuser – parent, other family member, extended family members;
* The presence or absence of supportive adult caretakers and other support systems, particularly a safe, supportive primary attachment figure (most often the mother);
* The child’s personal resources – for example, the child’s personality, resilience, physical health, disability;
* Responses of ‘systems’ involved with the family.

Many other writers have described symptoms of children exposed to domestic violence. The table below lists of some of the symptoms that may be seen in this population of children but is not exhaustive.

|  |  |
| --- | --- |
| Symptom Domains | Indicators |
| Emotional | Hypervigilance  |
|  | General fearfulness and anxiety |
|  | Separation anxiety |
|  | Nightmares |
|  | Depression |
|  | Dissociation/”tuning out”; may appear distant |
|  | Suicidal thoughts/self-harming |
| Behavioural | Withdrawal from others and normal activities |
|  | Aggression and violence toward others (most often boys) |
|  | Clinginess/Withdrawal (most often girls) |
|  | Sleep problems |
|  | Bed-wetting or other toileting problems |
|  | Inability to concentrate  |
|  | Decreased school performance |
|  | Cruelty to animals |
|  | Rule-breaking/conduct problems |
|  | Exaggerated startle response |
| Social/Relational | Difficulties with peers |
|  | Poor social skills |
|  | Overly compliant |
|  | Defiant of authority figures |
|  | Lacks respect to women/female teachers |
| Self Concept | Lack confidence in themselves |
|  | Poor self esteem |
|  | Feelings of powerlessness/learned helplessness |
|  | Express beliefs they can control the situation by changing their behaviour |
|  | Exaggerated sense of responsibility to protect other family members |

There are inherent problems in assessing children using the traditional DSM groupings of the above symptoms. Children may be diagnosed with a number of recognised disorders of which a combination of the above symptoms is the identifying characteristics, such as: Attention Deficit/Hyperactivity Disorder; Oppositional-Defiant Disorder; Asperger Syndrome (or other Autistic Spectrum Disorders (ASD)); Separation Disorder; Generalised Anxiety Disorder; or Reactive Attachment Disorder. It is questionable how useful it is to label a child using groupings of symptoms as these behavioural and emotional manifestations are the result of experiences of domestic violence and some disordered system within the child.

Current research identifies exposure to chronic and ongoing violence, such as family violence or neighbourhood violence, as constituting **trauma** for children. Many of the above listed symptoms are better understood as the result of exposure to a family environment characterised by fear, unpredictability, and abuse during childhood, the critical time for neurobiological and brain development. This will be further explored in Module 6 in understanding and working with these children.

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