

Chapter 4: "All I want is a life free from violence" – the impact of family and domestic violence on children

Summary

What are the current public policy approaches and educational campaigns targeting children's experiences of family and domestic violence?

Overall there is no coherent public policy approach to children affected by family and domestic violence. This results in uncoordinated and poorly directed responses to children who experience family and domestic violence.

Children's experiences of family and domestic violence must be understood in their own right and not just as part of an adult situation.

Most school-based prevention programs are delivered in secondary schools. There is little evidence about effective practice with younger children.

Children and young people should be directly involved in the development and evaluation of programs designed to achieve attitudinal and behavioural change.

4.5.6 Children affected by family and domestic violence who are involved with the family law system

Since beginning my term as National Children's Commissioner in March 2013, the issue of family and domestic violence in the context of the family law system has been raised with me by children, by adults on behalf of children, and by adults reflecting on their childhood experiences.

Concerns about family and domestic violence in relation to the family court system were raised in 18 submissions provided to my current examination.

Expert participants at each of my eight roundtables raised similar concerns.

The types of concerns raised in my examination included: a lack of understanding and inappropriate responses to family and domestic violence by those working in the family law system;^{224 225 226} a conflict between the right of parental contact and the rights and best interests of the child and their non-violent parent;^{227 228} court decisions which do not yet fully reflect the amendments to the Family Law Act in 2012;²²⁹ and the inappropriate use of mediation for these families.^{230 231}

Also highlighted was the manipulation of court decisions by some perpetrators of family and domestic violence as a means to continue to control and inflict abuse and violence on their ex-partner which invariably impacts on their children, often for prolonged periods.²³²

Post-separation violence in families was identified as a serious problem.^{233 234 235 236 237}

The submission by Melbourne Research Alliance to End Violence Against Women and their Children suggested that:

The pathway to children's safety through separation is currently marred by the Family Law response which is frequently unresponsive to the on-going dangers and threats to the well-being of children who are continuing to live with post-separation violence.²³⁸

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- new consideration of parental involvement (section 60CC(3)(c) and (ca))
 - broader scope of family violence orders (section 60CC(3)(k))
 - new advisors applications (section 60D)
 - disclosure of family violence (repeal of section 60K and adding of sections 67ZBA & 67ZBB)
 - new requirement to disclose child protection matters (section 60CH & section 60CI)
 - removal of mandatory cost orders (repeal of section 117AB)
 - immunity from costs order for state, territory or commonwealth child protection authorities (section 117)
 - giving effect to the Convention on the Rights of the Child (section 60B).

In the context of the 2012 amendments, Fehlberg, Kaspiw, Millbank, Kelly and Behrens note that:

It remains to be seen how this recognition of the exposure of children to family violence will play out in practice.²⁴²

Recently, the Australian Institute of Family Studies (AIFS) completed a project evaluating the 2012 Family Violence Amendments. The project has three parts:

- Responding to Family Violence – A survey of family law practices and experiences, which primarily involve online surveys of professional practices and perspectives
- A Survey of Recently Separated Parents 2014, based on a large-scale survey of parents' experiences and perspectives
- A Court Outcomes Project involving:
 - » a quantitative analysis of patterns in orders for parental responsibility and time made in the Family Court of Australia (FCoA), the Federal Circuit Court of Australia (FCCoA) and the Family Court of Western Australia (FCoWA)
 - » a national analysis of court filings data provided by the FCoA, the FCCoA and the FCoWA
 - » an analysis of published judgments.

A report on the results of this project was provided to the Commonwealth Attorney General at the beginning of August 2015.

The AIFS evaluation report was publicly released on 12 October 2015, two days before I transmitted my report to the Attorney-General.

AIFS acknowledges that its evaluation occurred two years after the family law reforms were implemented and notes that 'this is a comparatively short period of time for change to unfold'.²⁴³

The AIFS report concluded that:

Practice continues to evolve and it is likely that greater effects of the reforms will unfold over time.²⁴⁴

I look forward to reading the report in full, especially the issues it raises in relation to children's safety and the family law system.

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4.5.6.3 The work of the Family Law Council

Currently, the Family Law Council is preparing a report on families with complex needs and the intersection of the family law and child protection systems. An interim report was released by the Commonwealth Attorney General on 21 August 2015, with the final report due by 30 June 2016.

In its Interim Report, the Family Law Council, through its review of research data and submissions, found that two aspects of the current legal system impede the protection of children. These are:

- (1) the increasingly public law nature of the parenting order work of the family courts, which were designed to deal with private law matters; and
- (2) the separation of courts and systems dealing with parenting orders, child protection and family violence matters.²⁵⁰

Specifically, the Interim Report noted that:

The family courts have no capacity to compel a child protection department to intervene in a family law case or to investigate the family court's concerns, and the family law system has no independent investigative body akin to a child protection department that can provide the courts with a forensic assessment of child risk issues. These limitations mean that the risk of harm to children in family law cases is managed by judicial officers within a framework designed for 'private' disputes about the child's care time with each parent, rather than a child protection framework. Although the family courts are not strictly bound by the proposals of the parties, there will rarely be an option available to a judicial officer beyond making a parenting order in favour of the 'least detrimental' of the proposals presented to the court.²⁵¹

The Interim Report focuses on the prospect of having a streamlined, coherent and integrated approach to improve the overall safety of families and in particular children, while involved in the family law, child protection and family violence jurisdictions.

The Family Law Council made six recommendations in its Interim Report to the Attorney-General. The Family Law Council indicates that these issues will be further considered and addressed in its final report.²⁵²

The Interim Report by the Family Law Council states that its recommendations:

Represent the first step in a larger program of reform to address the wider systemic issues. In particular, the Council's recommendations are designed to build on the stated priorities of the National Framework for Protecting Australia's Children 2009–2020 and the National Plan to Reduce Violence against Women and their Children 2010–2022.²⁵³

The intent of the Family Law Council to be inclusive of the existing work of the National Framework for Protecting Australia's Children 2009–2020 and the National Plan to Reduce Violence against Women and their Children 2010–2022 is very welcome.

As a member of the National Forum for Protecting Australia's Children, I look forward to engaging with the Family Law Council as it progresses towards its final report and recommendations.

I also advocate that the Family Law Council directly consults with children as part of its work. Hearing the views of those most affected by the decisions that the courts make is fundamental to any program of reform.