No way to live

Women's experiences of negotiating the family law system in the context of domestic violence

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JUNE 2010

SOUTH EASTERN SYDNEY ILLAWARRA NSW HEALTH

THE UNIVERSITY OF SYDNEY

benevolent society

ISBN 978-0-9807720-1-2
June 2010

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Acknowledgements

This project arose from the commitment to social justice and to the human rights of women and children of four NSW domestic violence services: St George Domestic Violence Counselling Service (South Eastern Sydney Illawarra Area Health Service), Green Valley and Liverpool Domestic Violence Service (Sydney South West Health), the Benevolent Society's Centre for Women's Health and Staying Home, Leaving Violence (Eastern Sydney). Throughout the ensuing process, they provided expert advice on recruiting participants and ensuring that they could participate safely and feedback on the final report and recommendations. Maria Hole, Lisa Lawrence, Maria Kissouri and Zoe Sharman provided invaluable inspiration and support.

Initially unfunded, the project would not have proceeded beyond the original idea without the commitment and dedication of Lynda Andrews, a final year social work honours student at the University of Sydney. Lynda completed the majority of the interviews as part of her field placement and subsequently continued to work on the project as research officer. Few students would have been capable of undertaking interviews about such sensitive and often painful material. Lynda's respectful and compassionate understanding, research skills and professionalism were essential to collecting the data for this report.

The St George Domestic Violence Committee provided the funding to enable the interviews to be transcribed, the analysis undertaken and the report written. Their generosity and support was essential to completing the project. Lea Hazelton completed the transcriptions with accuracy and offered sustained commitment to the project. The Port Stephens Family Support Service assisted with recruiting participants from outside the metropolitan area, supported participants with transport and child care and provided a safe and comfortable venue for interviews.

Jarrah Hoffmann-Ekstein, Policy Officer at the Benevolent Society provided valuable input into the final report and the development of the 'snapshot' that will ensure that the messages from the research are widely distributed. This project also received funding from SESIAHS Women's Health and Community Partnerships through the Public Health Outcomes Funding Agreement (PHOFA) - National Women's Health Program that enabled the report to be published and distributed.

Most importantly, the women who participated in the research must be acknowledged for their generosity in taking the time to share their experiences, in each case motivated by the desire to help other women and children. Their courage and commitment to creating safer futures for their children shine through their stories. Their testimony attests to the distance we have still to travel to realise the full human rights of women and children escaping violence and abuse.

All responsibility for the contents of the report remains with the author and does not necessarily reflect the view of the agencies which supported the research.

Executive Summary

Introduction

This research explored the experiences of 22 women as they navigated the family law system following their separation from a relationship in which they had experienced domestic violence. The research highlights the inadequacies of the current system in protecting women and children from abuse and makes recommendations for legislative and other reforms.

The research was conducted during the second half of 2008, following major legislative change with the introduction of the *Family Law Amendment (Shared Parental Responsibility)* Act 2006. Some aspects of this legislation, for example the "friendly parent" provision and a more restrictive definition of family violence had led to concerns about whether victims of domestic violence would be able to raise these concerns in family law proceedings, despite explicit reference in the legislation to the need to protect children from child abuse and from exposure to family violence. Research into the previous major reforms introduced through Family Law Reform Act 1995 had identified the development of a "pro contact" culture even when allegations of domestic violence were raised (Behrens, Smyth, & Kaspiew, 2009).

Over the past 20 years, a substantial body of research has shown that exposure to domestic violence is associated with a range of emotional, behavioural and developmental problems in children and young people (e.g. Margolin, 2005; McFarlane, Groff, O'Brien, & Watson, 2003; Wolfe, Crooks, Lee, McIntyre-Smith, & Jaffe, 2003). Further, a mega-analysis of many studies found that exposure to domestic violence was associated with similar levels of harm to those experienced by children who experience direct physical child abuse (Sternberg, Baradaran, Abbott, Lamb, & Guterman, 2006). Increasingly, children's exposure to domestic violence is being conceptualised within a complex trauma framework. Van Horn and Groves (2006) propose a developmental model of trauma in which the traumatic event is recognised as only the beginning of a chain of events that may reverberate across the course of the child's development through childhood and adolescence:

> *When one parent uses intimidation and violence or the threat of violence to exert control over the other, the family lives in a state of trauma and turmoil. Children are subject to repeated stress and ever-broadening networks of traumatic reminders. They may live in constant fear and anxiety, and their anxiety is heightened whenever they are reminded of the violence they have witnessed. (Van Horn & Groves, 2006, p. 53)*

In addition to the impacts of exposure to domestic violence, the co-existence of domestic violence and direct child abuse brings increased risk that children will experience the compounding effects of both violence exposure and direct child abuse.

In many cases, domestic violence

does not end with separation and in fact it may escalate to lethal violence (Davies & Mouzos, 2007; Hardesty & Chung, 2006; Jaffe, Crooks, & Poisson, 2003). In addition, there may be an intensification of "non violent coercive tactics" (Frederick, 2008, p. 525), such as financial abuse and threats of subjecting the partner to protracted litigation. Children may be subjected to increased exposure to domestic violence after separation, since this may be the only context in which the violent partner has access to his victim (Hardesty & Chung, 2006; Jaffe, et al., 2003). Hence it is of crucial importance to the safety and well being of women and children that the family law system identifies and responds appropriately to domestic violence.

The research and the participants

In depth interviews were conducted with 22 women who were recruited through flyers sent to domestic violence services in economically diverse areas of Sydney and a regional area of NSW. The research question guiding the research was: How are current family law policies and practices experienced by women who have been subjected to domestic violence as they negotiate parenting arrangements? A sub question was: Are women able to disclose domestic/ family violence and achieve parenting arrangements that are safe for themselves and their children?

The women's interviews were transcribed in full and coded using the software program N*Vivo. Categories and concepts were identified, compared and explored to identify key themes relevant to the research question. The strength of this methodology lies in the generation of rich data that provides a detailed picture of the experiences of women as they attempt to navigate complex service systems. It gives a voice to a vulnerable group as they try to access the protections designed to protect them from further harm. The limitation of this methodology is that the findings of a non-representative sample such as this cannot be generalised. However, they can complement the findings of larger, quantitative studies and together can assist in building our understanding of the success or otherwise of our policy responses to complex social issues, such as domestic violence within the context of separation.

The women were aged between 24 and 54 and had 51 children aged from one year through to young adults at the time of the interviews. The women had been separated for periods ranging from six months to 8 years, with an average of 2.75 years. Five of the women came from culturally and linguistically diverse backgrounds as did seven of their ex-partners. Threats to abduct children were a particular issue for women with partners of CALD background.

This was a sample in which there had been a high rate of legal intervention. Eighteen of the women had had Apprehended Domestic Violence Orders (ADVOs) against their ex-partners. In two cases the ex-partners had taken out counter ADVOs against the women. Eight of the women's ex partners had been charged with criminal offences: three had been charged and convicted of assault against their partners; one had been convicted of stalking; three had been charged with breaching ADVOs and two were convicted of this; and one had been charged with child sexual assault although the case did not proceed beyond committal.

The women were at various stages of the family law process. For example, nine of the women had interim orders and were awaiting final court hearings; seven had final orders adjudicated in a court hearing of which three were involved in appeals; and four of the women were returning to the family law process to attempt to renegotiate older consent orders that were no longer working for them and their children and were involved in mediation (FDR). Similarly, there were

a range of parenting arrangements from 50:50 shared time (5 cases) to contact with fathers only at a supervised contact service (3 cases with final orders and 2 with interim orders). In only one case of final orders involving supervised contact was this type of arrangement permanent; in the other cases it was expected that contact would progressively move to being unsupervised, even though one father had been assessed as posing an "unacceptable risk" because of child sexual assault. The sole parent without any time with their child was a woman who had consented to her ex partner caring for the child and who did not seek any contact because she feared the physical and emotional danger that this would pose to her following extended contravention litigation.

This report

The report describes the five key themes that emerged from the data:

- The interconnectedness of woman and child abuse;
- A complex and uncoordinated system;
- Common beliefs that shaped responses to mothers' efforts to achieve safety;
- Lack of understanding about domestic violence dynamics and consequences;
- Consequences in the lives of women and children.

This is followed by women's perspectives of what helped and their suggestions for change. In essence, the women's experiences of negotiating the family law system to protect themselves and their children from abuse, led them to conclude that the current arrangements are not working for separations involving domestic violence and child abuse, although they could see the merits of the current approach for relationships not characterized by violence. One woman succinctly summed up the failure of the currently policy to address domestic violence:

> *Whoever in their right minds thought that 50/50 was going to work is just ridiculous because for 50/50 to work you need to have a respectful relationship with the other parent and be able to communicate. Now if there was respect and communication in my household then I wouldn't have got divorced. So, I don't know where they're coming from with this 50/50. See why would you leave someone that you could communicate with and live respectfully and happily, like a normal adult relationship? Domestic violence people are leaving because they can't do that and then you've got to go back into the situation and communicate for the rest of our lives. Doesn't make sense.*

The final chapter, discussions and conclusions, draws the findings together and offers recommendations arising from the findings.

Violence against women and children is interconnected

The women had experienced domestic violence both within their relationship and since separation. The domestic violence experienced by the women was severe and multifaceted and was characterised by a pattern of behaviours aimed at exerting coercive control. This type of intimate partner violence is known as "coercive controlling violence" in the Kelly and Johnson (2008) typology. The most frequently reported forms of abuse reported by the women were emotional/ psychological, financial, controlling behaviours, using children, "using the system" to abuse and physical violence.

> *Because our life was like living in a concentration camp, that's how*

> *I described it once. We thought it was like living in a concentration camp … so you wouldn't have the bruises but it would be that psychological stuff and the children as well.*

Changeovers were a common site for this post separation violence, continuing children's exposure to domestic violence:

…I was severely assaulted, I was beaten unconscious … part of it happened in the flat while I was picking up the kids and then it sort of moved outside … So my younger [child] saw him beating me and he was in the stairwell and he kept hiding his head and – and I was beaten so I fell to the ground. I don't know 100% if I passed out but I know I was blacking out when I fell to the ground and he has told his counsellor that I wouldn't wake up – that he kept telling me 'mummy wake up'… [child was preschool aged]…

In common with the large body of existing research, the study found that domestic violence and direct abuse of children frequently co-occurred. Twenty one of the women reported that their ex-partner had directly abused their child/ren and the children were frequently subjected to multiple, overlapping forms of abuse: twelve women described emotional abuse of children; eight described physical abuse; six described sexual abuse or inappropriate sexual behaviours; three described incidents of neglect; and nine reported children being exposed to dangerous situations, such as drug use.

> *[He] used to beat [child] with a strap, he's hit her so hard he'd leave welts, picked her up by the ear, by the arm and smack her. It got to the point where she was afraid of him … He's picked [her] up by the arm, hit her with a belt, took her breath way one day [sound of strangling breath] screaming out to me 'help me help me', I couldn't do anything [crying], because she had a lock on her door too, I couldn't get in. She's in there calling out for me and that's the worst, worst thing you can hear.*

From the women's descriptions of the abuse and violence that they and their children experienced, it was clear that this abuse was intertwined – children were exposed to violence against their mothers; mothers were exposed to violence against their children; and many forms of abuse were directed simultaneously to both women and children.

In the end, there was the incident where he threw my son into the cupboard and slammed the door on his head, and then he rammed me in the living room, had his arms folded and just rammed me…

A complex and uncoordinated system

> *So I've had a totally inconsistent approach. And I mean, to me, all the different Court actions, all the different stuff that goes on, it's all connected and unfortunately it's not seen as that.*

In order to try to protect themselves and their children, the women found that that had to navigate a fragmented and uncoordinated service system, marked by delays and barriers to accessing accurate information. They provided many examples of a lack of coordination between the state civil protection order system and the Family Courts:

> *At one stage we had – I had a Family Court order where his parents were the supervisors. The Family Court order said that they were to come to collect the children and take them to point of contact. I had an AVO that said that he couldn't come to my house. The thing with AVOs, they are lifted for Family Court orders. But when he came to my house with his parents, and I rang the cops, the cops wouldn't charge him because the Family Court order didn't say that*

he couldn't come with his parents to collect the children. So even when you have AVO and a Family Court Order, I found that they just don't work well together.

One woman found herself in a 'catch 22' position in which it was impossible for her to simultaneously meet the requirements of the Family Court and the state child protection agency:

With my [Family Court] breach, I didn't send the children [on contact] and there was a whole lot of stuff going on and I didn't send the kids and that was the recommendation from the Child Protection Agency [NGO], one that is fully funded by DoCS. They made the recommendation. DoCS supported that recommendation. And Family Court found that I was guilty without reasonable excuse. I was being put on a 2 year good behaviour bond with $2,000 payment if I breached – if I broke the bond. And I also had to pay the father legal costs and I also have to pay him other costs as well … If I breach my good behaviour bond, I risk going to jail. DoCS have told me I risk going to jail if something happens to the kids [on contact] and I've put them in an unsafe position.

"Leave it to the Family Court": Shifting responsibility for protecting women and children

One of the systemic gaps that the women encountered was the reluctance of the statutory child protection service to become or remain involved when the context of parental separation became known.

And DoCS were actually asked to get involved in our case and I've found since that basically pretty much, once DoCS know it's in the Family Law Court, they back off … And they keep saying "Well you've just got to go through the Family Court and try and protect your children that way".

This shifting of responsibility for child protection to the Family Courts means that child protection is no longer funded by the state, but moves into the realm of private law where the protection of children depended on the resources – both financial and emotional – of the women. It also shifts the focus from child protection to a 'parenting dispute'. This was often a situation in which women perceived themselves to be disadvantaged by an imbalance in financial resources with which to continue to protect their children.

Common beliefs that shaped responses to mothers' efforts to achieve safety

Layered over this systemic complexity was a range of beliefs about women, allegations of abuse and family law and about the appropriate form of post separating parenting that appeared to shape a lens through which women's concerns about safety were viewed. This lens was applied, not solely in the family law arena but also in the wider domestic violence and child protection service networks once the context of separation and family law was identified.

The common beliefs that shaped this lens were:

- that children need a relationship with their fathers (even in a context of abuse and violence)
- that women fabricate allegations of child abuse and domestic violence
- that mothers attempt to stop contact, including by alienating children from fathers
- that women should not raise

allegations of violence and abuse in the family law system

- that shared care or at least some contact is inevitable, no matter what violence or abuse has occurred prior to separation and this can be negotiated.

These beliefs played out in the ways described below.

Invisible mothers and essential fathers

Although the changes to family law over the past decade have been framed within notions of the importance of children having an ongoing relationship with both parents, it was notable that only the importance of fathering was stressed to the women by the various professionals that they encountered. In contrast, mothering, as a form of 'women's work', was invisible and appeared to be taken-for-granted.

> *But every time we used to get into the Court and they would start to say the father has rights … Yeah, and I'm not meant to be scared or worried or upset – it's like 'oh no, its fine, they're with their father'… I understand but where do the kid's rights come into this? They're scared, they don't know him … And they're saying to me but he has to have time with the children. And I'm saying "but he's knocked me to the ground with a baby in my arms – why does he – and he's been charged, he's been found guilty of assault – he's been breaches of AVOs …"*

Despite the common community belief that women make up allegations of abuse to stop contact between children and ex-partners, eight of the women talked explicitly about the importance of maintaining this relationship. However, their beliefs about this were being tested by the reality of this experience for their children and in many cases they sought to ensure that this contact was safe through supervision:

> *I do think it is important for kids to have the opportunity to know both parents and so I have always been that they need to have contact with him so that it's not – they're 15 and they resent me because I stopped it – so I have thought of that it's important. So that's what you really grapple with – is that they need to know him but what damage is he doing in the interim? … And I think that they still should have some contact but what I disagree with is that he gets to use them as a tool and it's just continuing on the control that he did, post the separation…*

However, their commitment to maintaining the father-child relationship was challenged as the women saw the impact of continuing abusive or neglectful behaviour on their children and as they struggled to achieve contact that was safe. Their experience of supervised contact, when they were able to achieve it through contact services was universally disappointing. The women reported many examples of practice in these services that demonstrated poor understanding of the dynamics of both child abuse and domestic violence. There was also ignorance of the impact of trauma on children and naïve adherence to models of intervention that appear to assume that children spending time with the traumatic stressor (i.e. the perpetrator of abuse) is an adequate and safe intervention for traumatised children.

'He just wants to see his children' – a lens for excusing men's behaviour

The common belief that children need a relationship with their father, no matter the abuse they have suffered or the domestic violence witnessed, came into play in women's contact with a range of agencies where it appeared that this provided a lens through which the man's

abusive or inappropriate behaviour was excused.

> *And it's like he shouldn't be there, I've got an AVO … I've had other cops say to me 'look, he's the father, he wants to see them, it isn't the right way to do it but he just wants to see his kids'. And I was like 'well that's why we're in Family Court'. I don't want him coming to my house.*

Women's motives under question

In contrast to the emphasis on the importance of fathering – in the absence of attention to the quality of this fathering – the beliefs about mothers that the women encountered from professionals were predominantly negative. For example the women commonly encountered the belief that mothers fabricate abuse both in the family law system and when they attempted to use other services to protect themselves and their children:

> *The duty lawyer said that DoCS was involved. The [Federal] Magistrate flew off the handle and she said: "I have seen all this before where a mother feeds her story to DoCS, so of course they support her".*

The 'alienating' accusation about 'emotional' women

The most direct expression of the view that women deliberately undermine the relationship between fathers and children occurred when women were accused of "alienating" children, despite the discrediting of the concept of parental alienation in the scientific literature.

> *Everything is twisted and misconstrued as 'You are being combative. You are being a high conflict parent. You are alienating the children from the father'. And anything that you do to try and advocate for your children is somehow twisted into being high conflict and parental alienation. So you are basically silenced. And the children are silenced.*

The belief that women misuse the system existed not just among the professionals in the system, but also for some of the women interviewed, despite their own experiences of being disbelieved:

> *And I know that a lot of women go in and say, I know it's such a common thing for women to say that I was domestically abused, it's sort of the same as the men saying we're prostitutes and alcoholics, I know that, and I hate the women that haven't been abused that use that, I think it's disgusting and it's made my life so hard, and I know that there are people out there who do it. But I have evidence.*

Trying to protect: The balancing act – be 'friendly', not 'alienating'

The women were acutely aware that they had to temper their efforts to protect their children and to get assistance for their exposure to trauma with considerations that they may be perceived as motivated by the desire to undermine the father-child relationship. The women were warned that asking for the protections they judged safest for their children, could lead to worse outcomes. For example:

> *I had already made up my mind that I didn't want the sleepovers because I really didn't think it was safe for the children but [my lawyer] convinced me that if I wouldn't do it, the Judge would probably even now give me a slap on the wrist and give [ex] more than I would be willing to give, so he really strongly recommended me to do this otherwise it would all blow up in my face. So I did agree. I didn't feel like I had a choice.*

These expectations were perceived as unbalanced and unfair.

I think there's an expectation on residence parents, which are generally mothers – has a positive obligation for contact. So I'm supposed to be positive about the father's contact so when my kids are being pissed off that he doesn't ring, how do I deal with that?

The admonitions to be a "friendly parent" who encouraged contact usually involved the women not being "emotional", something that was both difficult and perceived as unjust to women who had been traumatised by violence:

… and you have to look at his legal team while you answer questions and I haven't had to do that yet. In the AVO court hearings the judge has always allowed me to look at him because of the history of abuse, and also be told that maybe the fear that I show isn't a good thing, because it will show that, it will show unwillingness to parent with him.

More harm than good? The perils of raising allegations of violence and abuse

From many sources, the women reported that they received the strong message not to raise allegations of abuse or violence in the Family Courts. The women reported managing a very delicate balancing act as they made choices about whether, and how much, to raise issues of violence and abuse. They lived with the fear that they could be punished by losing the care of their children if they were seen to be challenging the inevitability of an ongoing relationship between ex-partners and children. Whatever the letter of the law, the message that the women had received was that it was dangerous to raise issues of violence and abuse. This placed them in a difficult position in attempting to ensure their children's safety from continued abuse and exposure to domestic violence, because they feared that failure to 'prove' allegations could lead to the children being in greater danger of abuse.

… it's very hard with it because you get to disclose some things but you've got to be guarded and protected in what you disclose because unfortunately I suppose I'm the type of person that would be overly honest with things and want the Courts to know everything about our situation so you know I can protect my children and myself to a degree you know with things but then, you've also got to be thinking, I suppose, from the legal point of view, how he can turn things around, you know, back on me…

Lack of understanding about domestic violence dynamics and consequences

The potency of the common beliefs about women and allegations of abuse and violence in the context of family law was enhanced by the lack of understanding displayed by many professionals about the dynamics of domestic violence and child abuse, of their interconnection and of their effects on women and children.

Domestic violence tactics unrecognised

The women were dismayed that many professionals that they encountered had very limited understanding of the tactics employed by their abusers and of the abuser's ability to manipulate and deceive them. For example, the women encountered the common belief that abusive men could be identified simply through brief observation. **Contact service staff** seemed to be particularly susceptible to the man's ability to be charming in interactions with them, despite interactions such as these being a poor basis on which to assess the risks posed to children. The danger of superficial assessments is a relaxation of the supervisor's neutrality and vigilance.

In other cases the women thought that some professionals demonstrated naivety in their responses to their ex partners, given their level of documented violence.

> *Well, he'd promised the Court counsellor that he would do the right thing [allowing the children to undergo intensive counselling for trauma prior to commencing contact] and then he comes back a few days later to sign those final documents and says "No, I'm not agreeing that". Because when the Court counsellor said: "Oh he promised me". I laughed. I laughed at the Court counsellor and said "Yes I'm sure he probably has".*

Women also found that there was limited understanding of forms of abuse other than physical violence:

> *Another thing that I think that is that I remember the magistrate saying, in the evidence that she had, that she didn't really see anything there that looked like violence. And I thought 'oh', because what she is looking for is bruises and [perpetrator] does things like – with [eldest son] he would grab his legs and twist them across his body – like – and he could grab your arm really hard but not give you a bruise. So – and his main form of violence really was the psychological and emotional – that was big time. And that wasn't really recognised as violence.*

Traumatic responses unrecognised

A very strong theme in the women's accounts was the failure of the system to take into account the extent to which the **traumatic impacts** of the abuse undermined their ability to participate in the various processes, such as **mediation**:

> *We had to go through 3 bouts of mediation which was very, very hard to be in the same room, directly opposite the table with someone who, for the last 15 years has pushed me in a corner and that's basically – and I've got to try and voice what I want in that scenario where there is someone sitting directly – glaring at you directly over this table and you've got to try and voice what I want…*

Similar experiences and reactions were reported in women's dealings with report writers and in court hearings:

> *I felt that disadvantage again because you have to be there and he comes too, so you have to see each other in the [court] waiting room. And that brings up a lot of tension and emotions and with that, I sort of lose my focus. So when I had to talk to her [report writer], I felt I had to make sure that I didn't say too much or I didn't – I was afraid that [long pause] I was afraid – I just didn't feel safe. I basically didn't feel safe enough to speak freely about things that had been happening … This is the same as I felt whenever I had to go Court with my ex, period … It was just the mere fact that he was there, already walking towards the Court wondering whether we would walk into him or not, made it, for me, very stressful to start with. Now the Court case is stressful anyway. But I think that also influenced very much my focus and my being able to put my foot down and say like 'this is what I want and nothing more' or 'I can't agree with that', 'I can agree with that.'*

Consequences in the lives of women and children

'It's inevitable – fathers have rights': Women under pressure to agree to unsafe arrangements

Whatever the intentions of the law regarding addressing violence and abuse, many of the women received the strong message to the effect that contact (eventually unsupervised), substantial time with the other parent and in some cases shared care, was an inevitable outcome in the Family Courts, even were there was violence towards women and children. Fathers' rights to a relationship with their children were stressed by the many professionals with whom they came into contact. As a consequence, in an effort to avoid even worse outcomes, the women reported experiencing pressure to consent to arrangements that they did not consider the best option for ensuring the safety of themselves and their children. This pressure came from their own legal representatives, those of their ex-partners and Independent Children's Lawyers.

> *I have asked my original solicitor if we could have no contact or like phone contact or minimal contact or like contact where the kids have got an extra person to supervise … And my instant answer was "No", the father has rights to see his children. I understand but where do the kid's rights come into this?*
>
> (Woman who was assaulted while holding an infant)

Silenced about violence and abuse

The women received strong messages from various sources that it was dangerous to allege violence and abuse and they walked a tight rope in trying to protect their children without being seen as "unfriendly" parents or undermining the father-child relationship. As a consequence, they did not feel that they were able to put the full story of violence and abuse before the court. This has important effects on the quality of the decision making of the courts, as recognised by this woman:

> *Probably half or even the majority of things that have happened with us won't get written down on paper. I mean, this Court won't know about the ongoing abuse and harassment or things like that – they won't have a clue about those.*

Inadequate risk assessment - failure to focus on the safety of children

Linked to the lack of understanding about the dynamics and effects of violence and abuse and to the beliefs that undermined the mothers' credibility, was a failure to assess and manage the risk to children. This was a particular issue that the women identified in their dealings with contact services, even though the limited availability of such services means that they are being referred some of the most high risk cases by the Family Court.

Inadequate risk assessment – failure to focus on the safety of women

Poor understanding of the dynamics of domestic violence meant that often women's safety was not assessed nor were safety plans developed.

The emotional toll on children

The women had to live with the impacts of the abusers' behaviour on their children, both historically and from ongoing contact.

> *And my children will come to me "mummy I want to die" like the eight year old even, and the thirteen year old when younger used to say it. And that's really hard to hear your children say that.*

They also faced damaged relationships with their children as a result of the abuse. In addition to coping with the children's distress at spending time with their fathers, they were the ones had to force their children to do this:

… my youngest, she doesn't want to go to him and so she cries, she screams, she 'no, no, no', she's grabbing onto my neck as he's grabbing and she's kicking him because she doesn't want to go … And so I worry about the impact that that's having on them. And so it's – I find it's very distressing some of the things they come home and say. "My daddy said he's going to run over you" or "My daddy wants me to go to karate so I can bash you". Like it's very distressing.

Children denied counselling

Despite the high levels of distress of the children described by the women, obtaining professional assistance for them was not possible in most cases. For some, this was a decision made by the Family Courts; others were advised by their lawyers that seeking counselling could jeopardize their legal position; still others encountered agency policies that precluded their children from receiving counselling while they were going through the family law system.

The emotional toll on women

As a result of their experiences in attempting to achieve safety for themselves and their children, the women felt that they were on a lonely, largely unsupported journey. They expressed feelings of helplessness, fear, loss, despair, injustice and anger about their experiences of negotiating the service system. Overriding all other emotional responses by the women was **fear for the well being and safety of their children**. Some of these fears related to risks of harm and neglect while the children were in the care of their fathers; others were to do with impact of a poor role model on their children; while knowing their ex-partner's capacity for violence filled some women with fear about how the children would cope with this on their own, without their protection. Several of the women **feared lethal violence** towards their children:

Well I can't see there being a future because I'm scared [ex partner] is going to do something [upset] – I do I fear for the kids' life if they go with him – I'm scared that they're not going to come back. Just because of his mental illness and no one will listen. [crying]

For some of the women, there was a sense of **guilt** that they had escaped the abuse and violence to which their children would continue to be subjected. Although they had not, in fact, 'left their children behind', they were aware that the children were now alone in the face of their fathers' behaviour. For example:

And now I'm away I'm free and I'm so scared for my children because I don't want them being hurt the way I was you know, I don't want ... I'm strong and I got through it but I just hope my kids will get strong as well cause they will never get away from it (crying). Really, I mean … (crying).

The women continued to feel the **control** exercised by their ex-partners through use of the issue of the care of their children and as a consequence, they felt **trapped**:

Well what's hard for my life at the minute now is that I got myself away from him but I haven't. He's always there and I hate the – he's got a say in my life for the next 18 years. Like if I want to move for work – like he doesn't work, I do work. If I want to move for work, I pretty much have to ask him for permission. I can't take the [children] with me.

Nevertheless, the women **did not give up** on their lonely journey to try to protect their children but as this woman argues, it is difficult for women to play the protective role that they wished for their children:

But it's been more, at times, I suppose, like a roller coaster ride, you pick yourself up and you put yourself down … Because you've got to keep going. You've got no choice but – there's no support, I've found for mothers in there and in the Court system. There's no voice for the mothers … So I've tried to do everything that's been recommended or said and you wing it, I suppose. And you're in the system. It's not working but there's no other choice … something's got to happen because they have no voice, the children, and as a mother I am their voice and I'm not allowed to have a voice. That's not right.

Mothering under adverse conditions – "compensatory work"

The women were mothering under extremely stressful conditions. They were coping with financial pressures, in many cases with ongoing harassment, with the emotional impact of their experiences of abuse and with the losses they had suffered in order to be safer, such as their homes. Some were travelling for many hours with small children to access contact services. However, despite their own emotional distress, the ongoing struggle to achieve safe parenting arrangements, and the everyday stress of caring for children with very limited resources, the women demonstrated an approach to mothering that seems best described as **compensatory work**. They appeared to have to work extremely hard to make up the ground lost to a system that they had looked to for help and protection but that they felt had let them and their children down. In the face of their struggles to achieve safe parenting arrangements and the children's distressed behaviour, the women showed determination to support and assist the children to cope with the trauma they had experienced and the ongoing unsatisfactory relationships with their fathers.

Inadequate response in one part of the system flows on to the Family Court…

The Family Court relies on evidence from interventions in other parts of the domestic violence and child protection systems. If the response of other agencies was inadequate, as was frequently the case, the women did not have evidence of the violence and the Family Courts have to make difficult decisions with incomplete information.

Perpetrators are not held accountable

A source of the women's sense of injustice was their observation that their ex-partners were rarely held accountable, either for their violence and abuse, or for accepting their responsibilities as parents. This seemed to contrast with the scrutiny that the women experienced as mothers.

What helped?

Domestic violence services and workers were found to be extremely helpful because they provided the women with validation, practical support and information. Schools and Family Support Services also provided support to women and children. Lawyers and mediators who were prepared to listen to the women and take their concerns seriously and intervene to prevent the abuse of power by the perpetrator were highly valued by the women.

Well the most significant part for me was coming here [DV service]. Finding a place where I could be heard and validated for what I'm going through so that's given me the power [crying]. I know I'm not mad and that I can talk to [DV worker] and get the power to help me and help my children.

… Legal Aid don't pay her [my lawyer] enough. I can tell you that much. She'll be on the phone with me for two hours and not getting paid for it trying to settle

me down, because sometimes I'll be hysterical. Trying to get information out of me and telling me that things are going to be alright.

Conclusions - What needs to change?

Recognition of the interconnectedness of abuse of women and children

The experiences recounted by the women illustrate the difficulties and artificiality of drawing boundaries between domestic violence and child abuse. This may go some way towards assisting our understanding of the ways in which women see their safety and well being and that of their children as intertwined, a view that may be judged as insufficiently child focussed within the family law context. The interconnection of woman and child abuse presents a challenge to a legal system that assumes that the interests of women and children in this context can be disaggregated (Kaspiew, 2005).

Coordinated and complementary systems to protect children

A core principle in both the child protection and domestic violence fields is that the coordinated response of a range of agencies is essential to reduce risk and increase safety (National Council to Reduce Violence against Women and their Children, 2009; Wood, 2008). The importance of a coordinated response does not diminish when child abuse and domestic violence are at issue in the context of parental separation; in fact, it can be argued that the potential for risk to escalate in this context makes a coordinated response more essential than ever. Yet in this context, additional challenges to collaboration arise because the Family Courts operate at federal level.

This research again emphasises the inadequacy of state-level agencies "leaving it to the Family Court" to protect children, given the Family Courts' inability to investigate allegations of child abuse and the time that will have elapsed between the incidents leading to the allegations and any assessment of the family. One serious consequence of shifting responsibility for child protection to the Family Courts means that child protection moves into the realm of private law where the protection of children depends on the resources (Family Law Council, 2002) – both financial and emotional – of the parent (in this study the mother) who has concerns about the safety of the child/ren. In effect, this places the responsibility for child protection onto the most vulnerable and sadly, as has been seen in this report, the least credible participant in the process.

One problematic component of the coordinated response that emerged in this study concerned contact services. When the Family Courts identified risks to women and children and attempted to address these through ordering supervised contact, the paucity of accessible contact services and the poor quality of vigilance reported by the women highlighted that this field of work requires very highly skilled staff. It also highlighted the lack of ongoing case management of these complex and high risk cases beyond their contact with the Family Courts. This situation left the women with the sole option of returning to Court if they continued to hold fears for the safety of their children. However, the ability to take further protective action depended on their financial resources or the availability of Legal Aid.

Shifting the climate of disbelief

The difficulties which the women encountered in seeking to protect their children cannot be accounted for solely by the systemic problems and gaps that

[3] *See: More harm than good? The perils of raising allegations of violence and abuse.*

have been identified. In attempting to bridge the gaps in the system and keep their children safe, the women found that their motives were under question and they very commonly encountered assumptions that they were motivated by bitterness towards ex-partners rather than by a desire to protect their children.

The result of this climate of disbelief is that women may not disclose the full extent of the violence or their disclosures are minimized or disregarded. Subsequent decisions about parenting arrangements are made on the basis of incomplete information, thorough risk assessments are not undertaken and ultimately, children may be placed at increased risk.

Increasing understanding about domestic violence dynamics and consequences

Apart from some notable exceptions, the women encountered professionals in a range of agencies who failed to demonstrate adequate understandings of the both the complexities of domestic violence and its harmful effects on the development and well being of children and young people. There was limited understanding of the forms that post separation domestic violence can take – such as financial abuse, abuse through litigation, and exerting control though shared parenting requirements; of the impact of trauma on women and children and on the mother-child relationship; of the impact of trauma on how a woman may present in legal contexts; and of what is required to rebuild a relationship between a child and someone who has abused the trust inherent in the parent-child relationship.

A policy that is failing to protect

The current legislation is clear in its aim to protect children from child abuse, neglect and exposure to family (domestic) violence. As the findings from this research show, in many cases it is failing. However, the failure to adequately protect children cannot be laid at the door of the Family Courts alone: decision making was hampered by limited information arising from interventions by police and child protection services prior to the Courts' involvement. Scepticism about women's allegations of violence and abuse, poor or non-existent risk assessment, lack of specialist knowledge about trauma and the interventions associated with recovery and an emphasis on fathering regardless of its quality marked the interventions (or failures to intervene) of many agencies whose mandate is to protect women and children from violence and abuse.

Recommendations

Recommendation 1: National coordination

The National Framework for Protecting Australia's Children and the National Plan to Reduce Violence against Women and their Children should work together to keep women and children safe. To this end, the National Plans should reflect:

- the Family Law Council recommendations regarding improving collaboration across state/territory child protection agencies and the Family Courts,
- the findings of the evaluations of the Magellan and Columbus Programs, and
- the findings of the Australian Law Reform Commission's Family Violence Inquiry.

Recommendation 2: Legislative reform

The amendments recommended in the Family Courts Violence Review by Professor Richard Chisholm regarding the "friendly parent" provision, the provision for the making of costs orders where there are knowingly false allegations, and the provision directing family advisers on what information to provide, should be adopted.

In addition, the Family Law Council's recommendation that the definition of family violence in the legislation be amended to include a broader range of threatening and controlling behaviours and to encompass the concept of coercive control, should be adopted.

Recommendation 3: Training for family law professionals

All professionals and services which play a role in the family law system need comprehensive, ongoing training in understanding and responding to domestic violence. This should include training about: the interconnectedness of the abuse of women and children; conducting risk assessments and developing safety plans; the effects of trauma on women and children; the conditions that promote recovery from trauma; the dynamics of sexual and domestic violence perpetration; the risks and forms that post-separation violence can take; and the assessment of claims of change in the perpetrators of abuse.

Recommendation 4: Improved responses from state-level agencies

State-level child protection agencies should not defer investigations because the Family Courts are or may be involved in a case.

Police must employ proactive policies of investigation, evidence-gathering and ongoing protection of women and their children.

State-level agencies, including child protection, police and health, should undertake careful documentation and risk assessment when women report instances of domestic violence.

Recommendation 5: Community-wide education

The lack of understanding of the dynamics of domestic violence and the common beliefs held about women lying about abuse are not unique to the services and professionals which comprise the family law system. There is an urgent need for investment in a long-term, national education campaign targeting professionals, schools, workplaces and the general public.

1. The Research and the Participants

Background

The policy context

The past fifteen years have seen major changes in Australian family law. The first round of legislative change was enacted with the introduction of the *Family Law Reform Act 1995*. This replaced the concepts of custody and guardianship with the new concept of parental responsibility; whereas guardianship was formerly exercised by the parent with custody, parental responsibility was now shared, regardless of residence arrangements (Dewar & Parker, 1999). This legislation also introduced an objects clause which included a list of children's rights, including the child's "right to know and be cared for by both their parents" and the "right to contact on a regular basis with both their parents and other [significant] people" (Kaspiew, et al., 2009, p. 9) – colloquially referred to as the "right to contact" principle. The legislation also included "the need to ensure safety from family violence" as one of considerations in deciding children's "best interests" (Rathus, Lynch, & Finn, 1998). The ways in which the tension between these two objectives has been resolved in cases where domestic violence is present, has been the subject of a number of studies (e.g. Dewar & Parker, 1999; Kaspiew, 2005; Rhoades, Graycar, & Harrison, 1999; Shea Hart, 2004). These studies identified a trend to privileging the "right to contact" principle over protection from family violence in Family Court decisions, characterized as the development of what has been termed a "pro contact culture" (Fehlberg, Behrens, & Kaspiew, 2008) in family law. It has been argued that this legislation resulted in a retreat from the Family Court's developing recognition in case law earlier in the 1990s of the harmful psychological impact of domestic violence on children's welfare and on the parenting capacity of the non-offending parent (Rhoades, Graycar, & Harrison, 2000). Subsequent studies have identified child contact negotiations and changeovers as contexts for the ongoing abuse of both women and children (Kaye, Stubbs, & Tolmie, 2003; Laing, 2008; Rendell, Rathus, & Lynch, 2000).

Political pressure, primarily by fathers' rights organisations (Flood, 2009), rather than empirical research or a formal law reform process (Chisholm, 2007) was influential in further legislative changes introduced in the *Family Law Amendment (Shared Parental Responsibility)* Act (2006) following a parliamentary inquiry (House of Representatives Standing Committee on Family and Community Affairs, 2003). The four main elements of these changes were: compulsory mediation (termed family dispute resolution - FDR) prior to litigation except in cases of child abuse or family violence, this FDR outsourced from the Family Court to a new network of community based Family Relationship Services; the presumption of equal shared parental responsibility; greater emphasis on the need to protect children from exposure to family violence and child abuse; and legislative support for less adversarial court processes in children's matters that were heard in the courts (Kaspiew, et al., 2009, p. 4)

This legislation established a two tiered framework (Parkinson, 2006) for decision making about parenting arrangements in the "best interests" of children after separation. The two primary considerations are the "meaningful involvement" of both parents in children's lives (an expansion of the previous concept of the "right to contact") and the rights of the child to be protected from exposure to abuse, violence and neglect (Kaspiew, et al., 2009). Again, where violence is an issue, there is a tension between these two key principles.

Although neither the parliamentary inquiry nor the legislation endorsed "equal time" arrangements (a key plank of the fathers' rights movement), the legislation did require family "advisers" - family dispute resolution practitioners, lawyers, family consultants in the Family Court – who are assisting parents to develop parenting plans "to inform them that they could consider the option the child spending equal time or substantial and significant time with each of the parents…" (Fehlberg, et al., 2008, p. 341) Fehlberg et al. (2008) also note, however, that there is no requirement on advisers to raise the need to protect children from child abuse and family violence, despite this being the other primary consideration. Similarly, judicial decision makers must consider "equal time" or "substantial and significant time" with each parent if shared parent responsibility was appropriate.

In addition to the two primary considerations, a number of "additional" factors were to be taken into account. One of these, the colloquially termed "friendly parent provision", i.e., the extent to which a parent has facilitated the child's relationship with the other parent, has been identified as primarily targeting women (since mother residence continues to be the primary post separation arrangement) and as inhibiting women's ability to seek to limit contact with fathers when child abuse and/or domestic violence are at issue (de Simone, 2008; Hardesty & Chung, 2006; Rathus, 2007). Further, a provision for costs to be awarded against a party who "knowingly made false allegations or statements" was included: "to address concerns that allegations of family violence may be "easily made" in family law proceedings."(Kaspiew, et al., 2009, p. 10) The inclusion of these provisions raised questions about the extent to which the legislation's intent to protect children from exposure to violence would be achieved (e.g. Hollonds, 2006; Rathus, 2007), given the findings from research about allegations of domestic violence from the first wave of legislative change.

In introducing this legislation, the government was clear in its intent to introduce "cultural change" (Attorney-General & Minister for Family and Community Services, 2005; Howard, 2004) in the way in which post separation parenting arrangements are decided and organised, emphasising a model of shared, cooperative parenting. There is a clear disjunction between the government's legislated model of post-separation parenting and the gendered pattern of parenting that continues to be dominant in in-tact families (Fehlberg, et al., 2008), despite the increased numbers of women in paid employment, and the cultural ideal of the 'new father' (Flood, 2009; Rhoades, 2000). The majority of separating couples decide their post separation parenting arrangements without recourse to the law: of those who do use the law, only around five per cent proceed through the legal system to a judicial determination, and this small proportion of cases comprises those with the most complex issues: domestic violence, child abuse, mental illness, drug use and high levels of conflict (Dewar & Parker, 1999) – in short, based on our limited knowledge about post-separation shared parenting (Smyth, 2009), those least able to manage the form of parenting promoted in the legislation (McIntosh & Chisholm, 2008).

The introduction of the legislation was preceded by "tough talk" from the then Attorney General Phillip Ruddock

(Peatling, 2005b). In June 2005 at the conference of the Lone Fathers Association – vocal supporters of shared parenting and vocal in claiming that women falsify allegations of violence – the then Attorney said that claims of abuse would have to be "independently verified" and asserted that the new legislation would "contain a number of measures as to how to make sure enforcement can be more effective" when orders have been "deliberately disobeyed." (Peatling, 2005b) The Chair of the 2003 parliamentary inquiry, Kay Hull asserted that the proposed legislative changes heralded a "more balanced" approach to Family Law and that: "...children have a right to be protected from untrue claims of abuse that affected who had custody of them as well as from abuse."(Peatling, 2005a)

These political assertions reflect widespread community beliefs about allegations of violence and abuse which persist despite their lack of empirical basis (Brown & Alexander, 2007). For example, the recent national survey of community attitudes to violence against women found that almost half (49 per cent) of respondents believed that 'women going through custody battles often make up or exaggerate claims of domestic violence in order to improve their case'; only 28 percent disagreed with this statement (Victorian Health Promotion Foundation, 2009, p. 41). They also reflect the assertion by fathers' rights organisations that women deliberately thwart the maintenance of ongoing relationships between fathers and children. Again, this belief does not reflect the empirical evidence. For example, the initial 1996 legislative changes were followed by an increase in the numbers of contravention applications (alleging that contact orders have been breached) by non-resident parents. Dewar and Parker's (1999) review of 1998/99 applications found that the majority were brought by non-resident fathers, and that the majority were found to be without merit. Similarly, Rhoades' (2002) study of enforcement legislation found that only two of 100 cases matched the stereotype of the one-sided, unreasonable, contact-thwarting mother. The most commonly raised contact concern was domestic violence (in 55 of 100 cases) and in the majority of these cases the outcome was changed orders that restricted the father's contact. Rhoades' (2002) research illustrates the ways in which child contact arrangements can enable abusive ex-partners to continue perpetrate abuse and to exercise control through contravention litigation or the threat of it.

Nevertheless, the 2006 legislation contained elements as foreshadowed by the then Attorney General, i.e. the "friendly parent" and costs provisions, plus a narrowing of the definition of "family violence." Family violence (the terminology used rather than domestic violence) is defined in the Family Law Act as:

> *"…conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person's family that causes that or any other member of the person's family reasonably to fear for, or reasonably to be apprehensive about, his or her personal wellbeing or safety.*
>
> *Note: A person reasonably fears for, or reasonably is apprehensive about, his or her personal wellbeing or safety in particular circumstances if a reasonable person in those circumstances would fear for, or be apprehensive about, his or her personal wellbeing or safety." (Family Law Council, 2009, p. 24) Emphasis added.*

Given the research about the impacts of the first wave of legislative change for women dealing with domestic violence, these trends in the 2006 legislation raised the question about whether the explicit reference to protection of children from exposure to domestic/family violence and child abuse would enable women to disclose violence and abuse and to make

safe parenting arrangements for their children in the aftermath of a relationship in which they were subjected to domestic violence.

Domestic violence, children and family law

Over the past 20 years, a substantial body of research has shown that exposure to domestic violence is associated with a range of emotional, behavioural and developmental problems in children and young people (e.g. Margolin, 2005; McFarlane, et al., 2003; Wolfe, et al., 2003). Further, a mega-analysis of many studies found that exposure to domestic violence was associated with similar levels of harm to those experienced by children who experience direct physical child abuse (Sternberg, et al., 2006).

In addition to the impacts of exposure to domestic violence, the co-existence of domestic violence and direct child abuse brings increased risk that children will experience the compounding effects of both violence exposure and direct child abuse. For example, a meta-analysis by Edleson (1999) found that domestic violence and direct child abuse co-occurred in 30-60 per cent of cases. A study of children evaluated for child sexual assault found that 58 per cent of intrafamilial sex offenders were also physically abusing their female partners and in 86% of homes with partner violence, the children were also physically assaulted (Kellogg & Menard, 2003).

While initial research focussed on the concept of children 'witnessing' domestic violence, more recent research has identified the many complex ways in which children and young people may be exposed to harmful domestic violence (Holden, 2003). Increasingly, children's exposure to domestic violence is being conceptualised within a trauma framework. While a significant proportion of children and young people who have been exposed to domestic violence will meet the diagnostic criteria for posttraumatic stress disorder, Margolin and Vickerman (2007) argue that the chronic and repetitive nature of this exposure beginning in early childhood is more accurately captured within the notion of complex trauma – "a relatively recent conceptualization of long-standing, repeating, traumatic events." (Margolin & Vickerman, 2007, p. 615)

Van Horn and Groves (2006) propose a developmental model of trauma in which the traumatic event is recognised as only the beginning of a chain of events that may reverberate across the course of the child's development through childhood and adolescence:

> *When one parent uses intimidation and violence or the threat of violence to exert control over the other, the family lives in a state of trauma and turmoil. Children are subject to repeated stress and ever-broadening networks of traumatic reminders. They may live in constant fear and anxiety, and their anxiety is heightened whenever they are reminded of the violence they have witnessed. (Van Horn & Groves, 2006, p. 53)*

In many cases, separation does not end the domestic violence and in fact it may escalate to lethal violence (Davies & Mouzos, 2007; Hardesty & Chung, 2006; Jaffe, et al., 2003). In addition, there may be an intensification of "non violent coercive tactics" (Frederick, 2008, p. 525), such as financial abuse and threats of subjecting the partner to protracted litigation. Children may be subjected to increased exposure to domestic violence after separation, since this may be the only context in which the violent partner has access to his victim (Hardesty & Chung, 2006; Jaffe, et al., 2003). Brown and Alexander (2007) argue that the prevalence of child abuse and domestic violence during and following parental separation necessitates recognition of

child abuse in this context as a new and severe form of child abuse.

This brief discussion of the research on exposure of children and young people to domestic violence in the context of parental separation highlights the importance of the ways in which the family law system identifies and responds to domestic violence in deciding parenting arrangements. Decisions can affect the safety of women and children and the long-term development and well being of children.

This research

This research was a collaborative project between four women's domestic violence services and the Chief Investigator. A reference group from domestic violence services worked with the researcher to plan and advertise the study to women and to ensure that the research attended to the important issues of women's and children's safety that are inherent in all domestic violence research. It aimed to explore women's experiences of navigating the family law system following their separation from a relationship in which they had experienced domestic violence.

A major evaluative study of the 2006 changes was undertaken by the Australian Institute of Family Studies (Kaspiew, et al., 2009) and two other inquiries into the management of cases involving family violence have recently reported to government (Chisholm, 2009; Family Law Council, 2009). This research adds to the body of studies giving insight into the effects of current legislation, policy and practice on a vulnerable group within the courts. It addresses a gap identified in a previous study of allegations of violence and child abuse in children's proceedings (Moloney, et al., 2007) in that it provides rich, contextualised data that helps us to understand the process of decision making around the difficult issue of disclosing violence in family law processes.

The research also involved focus groups with domestic violence service providers and legal practitioners. This will be reported separately and will assist in further understanding of the of current operations of legislation and policy.

Definitions

Definitions of domestic violence (also termed intimate partner violence) are contested. A key area of debate is whether violence within intimate relationships should be conceptualized as arising from conflict or as a pattern of behaviours aimed at controlling the other party (Bagshaw & Chung, 2000). The former does not see violence as gendered, while the latter locates domestic violence within a historical and social context of structured gender inequality and as a form of violence against women.

This research is located within the body of feminist scholarship that understands domestic violence as a form of interpersonal abuse that is grounded in gender inequality and is perpetrated primarily by men against female intimate partners. In this form of abuse, the core dynamic is the imposition by the perpetrator of a regime of coercive control (Stark, 2007) through a complex pattern of tactics including physical and sexual violence, psychological, verbal and financial abuse, social isolation, threats use of children (Dutton & Goodman, 2005; Herman, 1992). This type of intimate partner violence is known as 'coercive controlling violence' in the Kelly and Johnson (2008) typology. Importantly, in the context of family law as discussed above, this form of violence does not necessarily end with separation (Fleury, Sullivan, & Bybee, 2000; Humphreys & Thiara, 2003; Kurz, 1996).

Child abuse is defined as acts of omission and commission that harm a child and impede their development. Although there is debate in the literature about whether exposure of children to domestic violence is itself

a form of child abuse (Nixon, Tutty, Weaver-Dunlop, & Walsh, 2007), there is abundant evidence as outlined above that exposure of children to adult domestic violence is harmful to their well being and development.

This report uses the term *family law* system to refer to the range of agencies and professionals involved in resolving issues of post separation parenting and ensuring the safety of victims of child abuse and domestic violence in this context. This includes the Family Court of Australia and Federal Magistrates Court (hereafter the Family Courts), Family Relationship Services, contact services, family report writers, family consultants within the Family Court, legal practitioners, the Legal Aid Commission, Family Dispute Resolution (FDR) practitioners, statutory child protection services, state and federal police and local courts. While some agencies listed may not necessarily see themselves as part of this system, their actions nevertheless impact on the outcomes for children and families (Family Law Pathways Advisory Group, 2001).

Methodology

The research was qualitative and exploratory. In depth, semi-structured interviews were conducted to explore women's experiences of negotiating parenting arrangements in the family law system after separating from a relationship in which they had experienced domestic violence. An interview guide (see Appendix 1) outlined areas for exploration but the approach aimed to allow the women to tell their story in their own words with only questions for clarification, or prompts for detail by the interviewer.

The research question guiding the research was: How are current family law policies and practices experienced by women who have been subjected to domestic violence as they negotiate parenting arrangements? A sub question was: Are women able to disclose domestic/family violence and achieve parenting arrangements that are safe for themselves and their children?

The interviews were conducted between June and December 2008 either by a social work honours student or the Chief Investigator. While the majority were face to face interviews, a small number were conducted by telephone where this was preferred by participants. In keeping with the ethical requirements by the University of Sydney's Human Research Ethics Committee that the research interviews not re-traumatise women, the focus of the interviews was on women's experiences of negotiating the service system rather than on the violence per se. This gave the women control over the extent to which they discussed the violence. Nevertheless, the violence against both women and children that was described was severe.

To analyse the data the women's interviews were transcribed in full and coded. Categories and concepts were identified, compared and explored to identify key themes relevant to the research questions, with the assistance of the software program N*Vivo. The strength of this methodology lies in the generation of rich data that provides a detailed picture of the experiences of women as they attempt to navigate complex service systems. It gives a voice to a vulnerable group as they try to access the protections designed to protect them from further harm. The limitation of this methodology is that the findings of a non-representative sample such as this cannot be generalised. However, they can complement the findings of larger, quantitative studies and together can assist in building our understanding of the success or otherwise of our policy responses to complex social issues, such as domestic violence within the context of separation.

The Sample

Women were recruited to the study through flyers distributed to four

domestic violence services in very diverse socio-economic areas of Sydney and to a family support service in a regional area of NSW. Additional women were recruited through 'snowball' sampling, i.e. where women were invited to refer other women to the study.

The women participated under the condition that their identities were not revealed, both for their safety and that of their children, and because they were participating in the family law system. Each woman was allocated an identifying number and this is used in reporting the findings. In addition, where there was a possibility that some details in the data might identify a child or family, every effort has been made to avoid this possibility in the way in which the data is presented. In keeping with transparency in reporting the results of qualitative data, quotations from the participants are usually attributed to participants using the identifying code name/number. However, not all quotations used to demonstrate findings are identified where this might enable participant identification through the combination of a number of pieces of data.

The data from interviews with twenty two women aged between 24 and 54 is presented in this report. Data from two women who referred themselves to the study are not included, because one women's legal involvement was in an overseas jurisdiction and the other did not describe experiences of domestic violence, despite having problems in dealing with the family law system.

There were 51 children involved in the sample, aged from one year through to young adults at the time of the interviews. The women had been separated for periods ranging from six months to 8 years, with an average of 2.75 years. Five of the women came from culturally and linguistically diverse backgrounds as did seven of their ex-partners. Threats to abduct children were a particular issue for women with partners of CALD background. No participants identified as Indigenous Australians.

This was a sample in which there had been a high rate of legal intervention. Eighteen of the women had taken out Apprehended Domestic Violence Orders (ADVOs) against their ex-partners. (In some cases these had expired.) One woman had had an interim ADVO but was refused an ADVO when the Magistrate hearing a charge against her ex-partner for breaching the interim ADVO dismissed the charge because of inadequate police investigation. She was reluctant to go through further court action after this experience. In two cases the ex-partners had taken out counter ADVOs against the women. One woman had been arrested following allegations by her ex-partner that she assaulted her child, but she was not charged by police. She experienced this as a part of the pattern of ongoing harassment through litigation alleging contravention of parenting orders.

Eight of the women's ex partners had been charged with criminal offences: three had been charged and convicted of assault against their partners; one had been convicted of stalking; three had been charged with breaching ADVOs and two were convicted of this; and one had been charged with child sexual assault although the case did not proceed beyond committal.

Stage of the Family Law process

The women were at various stages of the family law process. Nine of the women had interim orders and were awaiting final court hearings. Seven had final orders adjudicated in a court hearing; of this group, one woman was appealing, ex-partners were appealing in two other cases and another was threatening further litigation. Another of the women wished to appeal but was afraid that this would result in an even worse outcome than the order for equal time. One woman had consented to final orders for her child to live with her ex-partner before the

final court hearing following a protracted period of contravention litigation initiated by her ex-partner. She agreed to having no contact with her child to try to escape what she experienced as use of the law to harass her.

Four of the women were returning to the family law process to attempt to renegotiate older consent orders that were no longer working for them and their children; of these, one woman wished to relocate to be closer to family support, two wished to reduce the time that children were with their fathers because of ongoing domestic violence and poor care of the children and one child (now entering adolescence) was resisting spending all of the agreed time with his father. All of these women were involved in mediation (FDR) processes at the time of the research interview and one had been granted a certificate of exemption after attendance due to domestic violence. Another woman had no formal parenting arrangements in place because she feared that taking legal action could provoke her ex-partner to act on his frequent threats to abduct the children. He had agreed to attend a Family Relationship Centre but had failed to keep the appointments offered.

Current parenting arrangements

Despite the serious levels of domestic violence and allegations of direct child abuse in the sample (discussed below), all of the men had some form of contact with their children, including two men judged an “unacceptable risk” to their children because of child sexual assault. Both had only supervised contact at a contact service, one until the children reach 18. Supervised contact was only ordered on a short-term basis to the other man: it was planned that contact would subsequently be supervised by relatives (who did not believe the allegations of child sexual assault) and the woman had been ordered to relocate to facilitate this process.

In total, five of the fathers had contact only at a supervised contact service. These included the two men described above, both involving final orders. Two of the other families using supervised contact services had interim orders. The third had final orders with supervised contact ordered for two years, followed by a gradual increase in contact time and a planned progression to unsupervised time involving overnight stays. In this case, there was severe physical and emotional abuse of both mother and child and a separate ADVO for the child who was reported to be terrified of the father. Two other women in the sample used contact services for changeovers.

Five women had 50:50 shared time arrangements: in three cases these were interim orders, one was a final order and one was a consent order that the woman was seeking to change by returning to court. Each of these women had been subjected to controlling violence that involved severe physical abuse that had been witnessed by the children. In two cases (one final and one interim), the women also had concerns about direct abuse of the children due to neglect of a very young child and intrusive, sexualised behaviour with another child.

The sole parent without any time with her child was a woman who had agreed to consent orders with her ex partner caring for the child. She did not seek any time with the child because she feared the physical and emotional danger that this would pose to her following an extended period of contravention litigation initiated by her ex-partner. She had witnessed her ex-partner’s ability to use the system to continue to abuse a former partner.

The other parenting arrangements were primarily mother residence, with the children spending time with fathers, typically including weekends and part of the school holidays, some with mid week contact as well and all including some overnight component.

2. The Violence & Abuse Experienced

A pattern of control

The violence and abuse experienced by the women both within their relationship and since separation, was severe and multifaceted. The forms of abuse most frequently reported by the women in the study were emotional/psychological, financial, using children, using the system to abuse and physical violence. Two women reported that they had been sexually assaulted, one of these in front of her infant child. Two women had received hospital treatment for injuries. One had used a women's refuge.

Some examples are provided to set the context in which the women were attempting to negotiate safe parenting arrangements. Control was the theme throughout the various forms of abuse from the most blatant, to more subtle:

> *There were things like he wouldn't let me sleep for three nights in a row, I'd go to sleep for 20 minutes and he'd wake me up …*
>
> *He used to wake me up at 6 o'clock in the morning – "go and get me some drugs". And our fights were because I wouldn't go and get his drugs for him. But then he'd just kick and bash into me until I got up and went and got them. And that's what it was like, for 4 years, living with him. It's wrong. And now I'm out of there, he's still controlling me. (Woman 6)*
>
> *[Ex partner] had already made me have 2 terminations before [child]. Literally dragged me in by the hair. I didn't know I was having [child] until I was 4 months. I had no idea. So that was too far – there was nothing we could do about it and the flogging I copped for that was incredible.*

One woman's husband manipulated the mental health service and managed to have her scheduled to a psychiatric hospital where she was medicated and held for five days for assessment until she was discharged, having been assessed as having no mental illness. This gave her ex-partner the opportunity to abduct the children:

> *So then they had to take me by ambulance and because I was scheduled, I had to be under escort … to [nearest] Hospital where they had room for me. And then they told me at [this hospital] that the Head Psychiatrist only comes every Monday and they said 'I'm sorry you'll have to wait the week-end'… so I had to take medication as soon as I arrived at the hospital, when I first got there, they make you take tablets. And it was demeaning and very – to me it reminded me of that book One Flew Over the Cuckoo's Nest I read many years ago and I felt very scared because I didn't know when I was going to be released…*

These patterns of control continued after separation, through the use of litigation, an ability of the man to 'play the system' (i.e. to exploit the uncoordinated system

and the assumptions about the nature of violence), and the ongoing contact with the women over children:

> *And he'll still pull the strings as to what happens. And when they – when he walks into the Court house and "oh no, I want to change" – the Court just jumps to his beck and call. Whereas if I say "I need something changed" or "I would like something this way", it's an impossibility. It can't be done … it's the only way he still has contact with me. The only way he still pulls the strings with me. The only time [ex partner] ever sees me, is in Court. The only time [ex partner] ever has contact with me is when he has to ring to speak to the kids. (Woman 8)*

> *So we went over [to his house] once, my daughter left her school tie there. Uh at his house so I called him and I drove her over and parked a couple of houses down the street and got her to go and get the tie. And he came out taking photos of me and my car outside his house to prove to the court that I wasn't scared of him. I am scared of him, but I didn't want my kid - she needed her tie.*

Proving that she was not in fear of him was clearly an advantage in undermining this woman's application for a protection order. This scenario emphasises the impossible choices that often faced the women if they were both to keep themselves safer and also meet the needs of their children.

Emotional abuse

The women described the corrosive effects of having lived with emotional abuse, effects that they struggled to overcome once out of the relationship.

> *Because our life was like living in a concentration camp, that's how I described it once. We thought it was like living in a concentration camp … so you wouldn't have the bruises but it would be that psychological stuff and the children as well. (Woman 15)*

> *When you have been told over and over again that you're not good, not a good mother, hopeless at what I'm doing, you know. I could do lots of things at work and have my own job at work, but as soon as you walked in the front door I was not good at the housework, not good as a mother I was not good at doing anything. Nothing was ever good enough. So for me to leave a relationship like. So yeah. So now coming back to knowing all that, being a single mother with very high insecurities about myself- huge thing to get over. Huge! (Woman 3)*

The women reported that this form of abuse impacted on their health and self confidence. Through ongoing contact with ex-partners in family law processes and parenting, the emotional abuse continued:

> *And it's like Court's not finished. Until they're [the children] adults, even though the final hearing is finished and he's at a contact centre, because he keeps going back to Court and because he harasses the eldest child … it's like our emotional abuse goes on and it feels like I'm still at Court, even though we're not at Court – does that make sense?*

> *… really the [physical] violence is the last thing with [ex-partner]. And in all honesty, that's easier to get over – I know that sounds like backward but it is easier than this sustained psychological warfare that goes on all of the time. And that's what it's like – it's a psychological warfare constantly, constantly. (Woman 10)*

The less tangible nature of this form of abuse also posed problems for women in

'proving' domestic violence in the family law system:

> *The problem is that it's all psychological, emotional abuse and how do you prove that? (Woman 12)*

> *Yet the psychological and financial stuff he can get away with and that's hard to prove and that's where people don't listen to you. (Woman 2)*

Financial Abuse

Financial abuse is a common but poorly documented from of domestic violence (Branigan, 2007). Some women described experiencing this type of abuse while in the relationship.

> *Like I use to have to fight with him for $10. He took total control of everything, although he would say like he never had money. But you can't say you don't have money when you're buying houses, you've got [several very expensive cars] … You know, I'd be fighting for money for groceries and then I'd get to the stage where I'd say "You know what, you have to go and do the grocery shopping". And then he'd say to me "Shut the fuck up", "Like what the fuck else are you going to do all day". It was just a very hard situation. I would ask for money for groceries and he would give me like $30. I think well what am I going to buy with $30? (Mother 16)*

Most, however, talked about financial abuse that they were experiencing post-separation.

> *He's not paying child support. He's lying about his wages. He's showing himself as unemployed. You know, this is a way of being used. That's how I feel. I feel like I've been abused, and now I've been abused by him. And it's constant. It's not just physical violence, it's abuse, you know. (Woman 18)*

Some of this financial abuse was facilitated through ongoing litigation by the ex-partner, in this case continuing after final orders:

> *So financially I find it very difficult and it doesn't help when he keeps going back to Court. Because then I've got to come up with an extra $75 and I'm lucky that I've got Legal Aid but you have to keep coming up – and I've got to photocopy a lot of things…*

For some, there was a great sense of injustice as their ex-partner was able to manipulate the system:

> *He is getting legal aid, we don't know how, but he is, and I think because he hasn't put tax returns in for years and he's been cheating on his tax income and he doesn't have to pay me child support … and then he gets legal aid as well.*

It also made parenting difficult:

> *'Cause my kids like brand named food … I even tried putting it into the box but they can tell the difference. But my eight year old … a few months ago I took him to the supermarket and I showed him the no frills juice and the juice he wanted to buy and there was $4.00 difference. So, he said "well, can we have two?" and I said "no you can't have two but we can save $4". Then we might be able to buy hot chips when we go down the beach or have an ice cream or something. In some ways it's a good life lesson for them. It helps them learn. So I try to make it into a positive. But yeah 8 year olds are materialistic as hell.*

The escalation of financial abuse post separation is consistent with the literature that suggests that separation is often associated with intensification of "nonviolent coercive tactics", such as financial and legal abuse (Frederick, 2008, p. 525).

Physical violence

Fifteen women described experiences of physical violence, both in the relationship and since separation. In all cases, the physical violence that occurred after separation was a continuation of the physical violence that had occurred in the relationship. This violence was severe and in many cases occurred in front of children, including at changeovers. Two women have sustained permanent physical disabilities as a consequence of this violence.

However the women often had no evidence of this, because of dynamics such as fear and shame and the fact that this violence was perpetrated by someone they loved and who claimed to love them:

> *The night he hit me, knocked me out, split my lip open and he had me on the floor with his steel-capped boot on my throat and I managed to get away, and I ran and locked myself in the bathroom. I called my parents and they came over and said 'call the police' and 'I can't', 'why?' 'One, I'm afraid of what he'll do and two, I love him, I don't want to get him into trouble.' Isn't that stupid? And as much as he's hurting me, I don't want to hit back and hurt him. How dumb is that? Cos he said to me once 'I only have to hit you once and you'd never get up.' He'd be so close he'd be spitting on me. And then he'd blame me for getting him worked up. (Woman 22)*

The children's matter of the woman cited above was initially heard in the local court and no evidence about the severe violence to this woman (and her children) was tendered by the woman's Legal Aid funded lawyer. She was devastated by the Magistrate's decision that her child live with the ex-partner. This was based on allegations of drug use that she denies. No drug testing was done despite her requests. The matter subsequently moved to the Family Court, and care of the child is now shared on an interim basis pending the final hearing.

Another woman talked of the difficulties of 'proving' violence, even when potentially life threatening, if the perpetrator was cunning and could present a credible front:

> *… this was when he punched me in the face and cracked my nose on the way – I was driving – I was going in the car to [organisation] with him when he punched me in the face – king hit me. And then he called the police and said I hit him … He's so charming, that's the trouble – he's so charming to people and wins them over. He actually won this policeman over saying that I'm a mentally disabled … Basically the Judge discounted some of the things that actually happened to me because I didn't go to the doctors straight away. And I thought, just because he punched me on the temple, what evidence are you going to have to take to a doctor anyway? … But I actually couldn't see for a couple of seconds. Because that can kill you when you get punched there. I was at the side and he went woom, like … he's very strong.*

Others were aware of the limitations of having no evidence of the physical abuse they had suffered:

> *And I can understand why a lot of people, a lot of the stay at home mothers, a lot of the physically abused women, it's a wonder they get out because other than the hospital if they go to the hospital and they record their injuries. They have to obviously. That's the only way a lot of them people believe that something's gone on. (Woman 3)*

One woman had suffered severe emotional abuse and escalating physical assaults. Her ex-partner has faced criminal charges for breaching protection

orders and stalking. Despite the severity of the violence, she had felt pressured by her original solicitor into agreeing to 50:50 shared care because of fear of her ex-partner, together with the belief that children need contact with their father.

> *… he threw a kettle at me and scalded me and burnt me with second degree burns! There's the ambulance report like I mentioned before. I was intoxicated that night but, he stomped on my head with his foot and perforated my ear drum, he put me in the shower and turned it on hot, cold, hot, cold … then he rang the ambulance, and he used to ring people to say like 'I will show people how stupid you are '… After the kettle it became more of a, 'Oh my god this guys gonna' kill me.' 'Cause a slap in the head or anything like that can be done and it's over, he used to be more mentally abusive up until then and I think it even shocked him what damage he did.*

She also feared that her survival strategies such as using alcohol, together with the effects on her mental health of having lived with abuse and controlling behaviours would disadvantage her in the family law system. She was very mindful of the ways in which the survival techniques that she developed to cope with living with violence and abuse had undermined her parenting capacity and affected the well being of the children:

> *It got to the point that my best tactic, 'cause he was trying to convince me that I was insane, so my best tactic was that, after three days yell, scream, go hysterical, cry. So in the end I realised that if I lost the plot and acted like he wanted, the fight could be over in 30 minutes. So I was trying to think more and most ashamedly to me I would do it in front of the children 'cause I needed it to be over. And the children would see. The children would never see him, but they must have heard it and [child] saw it at least twice. He would make me lose my control in front of the children. So when the children went to the court house, [child]'d say 'yes I've seen mummy hit daddy but I haven't seen daddy hit mummy', but in the next sentence that came out of my little [one's] mouth was… that 'I used to hear mummy and daddy yelling all the time in the bedroom and it used to make me scared that daddy was going to hurt mummy so bad that we wouldn't have a mummy.'… so yeah, domestic violence turns you into a horrible person for survival. If I could throw something and lose my temper in front of my children to save my mental capacity so I could be a better mother to them then that was what I did.*

It was through the advocacy and support of a specialist domestic violence service that this woman had been referred to a solicitor who was willing to raise the issues of violence and its effects on this woman in the Family Courts. At the time of interview, she was awaiting final orders.

Exposing children to domestic violence

The women gave many examples of situations in which the children were exposed to domestic violence. For example:

> *… the only reason I got out of that situation was that a neighbour from behind rang my mum and said "You've got to come and get [woman] out"… So she came round and got me and got the [preschool age children]. To this day I don't know how we'd have gotten out. Because he took my car keys, he threw my mobile phone at the wall, ripped the other phone out. So she came, she got me, she got [the children]. Took me back to her place. And because it wasn't far, he*

came round. And was there bashing on the door. "I'm going to fucking kill you". (Woman 7)

This woman did not proceed with the ADVO taken out by the police after this incident, because her partner promised to change but in the longer term this decision contributed to the problem of 'proving' violence.

There were many examples in the women's accounts of **violence perpetrated in the context of changeovers**.

I was attacked at handover, and the police had to be involved – I mean, they were involved a fair few times where his father ran off with [child], refused to hand [child] over and attacked me in the car park… (Woman 10)

It was during that time that he was on an interim AVO and to try to keep things amicable but keep myself safe and the children I agreed to bail conditions which w[ere] a bit lesser and then he breaches those while he actually had the children and we were doing drop offs and pickups in a public place, at a shopping centre car park, he decided to – wanted to abuse me after the last Court agreeance and he agreed to the terms and then he wanted to go back on them and I walked away from him and he chased after me in the car and opened the car door and wouldn't let me leave and was abusing me in the car, in front of the children and everything – and I knew what I had to do. I had to go to the police station and report it and he was charged and locked up overnight and charged with a breach…

For another woman, the pattern of abuse involving the children that was evident before separation continued after separation in the context of contact changeovers:

…there's a lot of stuff that happened during the relationship. There was one particular incident where I called the police out when the father had – was particularly aggressive and had thrown me out of the house and locked himself in the house with my then 2 year old. I called the police to get [child] out, not because of violence but to get [child] out and the police came, and they got my [child] out but I didn't have any money, I didn't have any clothes and didn't have any suitcase.

…I was severely assaulted, I was beaten unconscious … he got a bond for beating me unconscious. And doing that in front of my kids … And my younger [child] – part of it happened in the flat while I was picking up the kids and then it sort of moved outside. I had one child with me … and after the assault, he went and locked himself in with my other [child] which was again why I called the cops. So my younger [child] saw him beating me and he was in the stairwell and he kept hiding his head and – and I was beaten so I fell to the ground. I don't know 100% if I passed out but I know I was blacking out when I fell to the ground and he has told his counsellor that I wouldn't wake up – that he kept telling me 'mummy wake up'… [child was pre-school ages] … And even though he was convicted, the Family Court constantly refers to this as "allegations of family violence" and I don't even understand that one. [upset]

Shared parenting responsibility was also a context in which children were exposed to domestic violence. For example:

And my son had a major accident … while he was at his father's and … he had to go straight to the hospital. Now, my ex didn't call me, my [other child] called me and said he'd been

taken to the hospital bleeding and she was hysterical! Now, she got in trouble off her father for calling me. We're shared custody, so if that happens I have every right to be there. I walked in and in front of my child he said "go home I've got custody". My child was covered in blood, so I said no, I sat by his bed and did not look at his father, and that night I ended up in the police station because my ex husband shouldered me into the wall. There was a problem where the medical staff would usually talk to mothers. I don't know, it's very one sided, I agree with my ex on that, he had custody of my son so they should have been going and talking to him about it but they didn't and I said look I don't know what happened he was in the custody of his father at the time go speak to his father… All I wanted to do was stay until I knew what was happening. So I stayed until the specialist came down and said he could go home for the night but come back in the morning for an operation to stitch him up… several times he [ex] said "go away we don't need you" in front of the child and that was really sad 'cause [child] was holding my hand even tighter when that was said.

As documented in the literature, the parenting by abusive men involves a range of behaviours that undermine the mother/child relationship, for example, denigrating the woman and encouraging the child to disrespect her and her authority (Bancroft & Silverman, 2002). The women reported that the tactics calculated to divide mothers and children were common after separation. For example:

My oldest one, where she sits and says "I hate you", like she'll swear at me … I can understand why she did do it because … she was under the impression that my ex and I were going to get back together. Because what my ex would do, he would say to the kids "like I did a lot of bad things to mum and I said a lot of bad things to you kids. To you kids and about your mother. But hey, nobody's perfect and I didn't mean to do it but the fact that your mother broke up our marriage" – he would try and get the kids to come to me and say things like "Mum, dad still loves you and you should forgive him".

And especially because it's mainly emotional abuse. It's very hard to find that out. And when they're on the phone with me and Dad is in the background, and they're trying to talk to me but Dad is in the background 'hang up the phone, just tell her you're alright', with a very angry tone of voice. That doesn't make me feel very comfortable because they instantly stop talking to me. I don't want to get them into more trouble. I know they feel bad about it at the moment, that that happens. I find that very stressful for them. [tearful] I find it just emotionally quite heavy on them, that they can't talk to their mum [while at father's place].

This is a little [child] that would come and sit on top of me and give me hugs and kisses and whatever but week-ends when her father picks her up, won't come near me. Won't even give me a kiss good-bye or anything because if she showed that to her father, then she loves me more than him and she knows that she can't do that, so she never did.

Direct abuse of children

The coexistence of direct abuse of children with domestic violence is well established in the literature (Edleson, 1999; Kellogg & Menard, 2003). Consistent with this, twenty one of the women reported that their ex-partner had directly abused their child/ren. Also consistent with the literature (Finkelhor, Ormrod, & Turner, 2007), the children were commonly subjected to multiple, overlapping forms of abuse. Twelve

women described emotional abuse of children; eight described physical abuse; six described sexual abuse or inappropriate sexual behaviours; three described incidents of neglect; and nine reported children being exposed to dangerous situations, such as drug use. Examples of reported physical abuse of the children included:

> *His favourite is [child 1]. And even [child 2] to this day says: " I don't know why mum I go to the contact centre, he only wants to see [child 1]"… he's very abusive to [child 2] – very abusive. He use to hit into her – it took her a year, after being at mum's, to feel safe enough. Something came up on TV and she said 'you know mum, did you know he use to punch me in the chest and I couldn't breathe'. And I didn't – I didn't know. [pause, upset] I didn't know.*

> *[He] used to beat her with a strap, he's hit her so hard he'd leave welts, picked her up by the ear, by the arm and smack her. It got to the point where she was afraid of him … He's picked [her] up by the arm, hit her with a belt, took her breath way one day [sound of strangling breath] screaming out to me 'help me help me', I couldn't do anything [crying], because she had a lock on her door too, I couldn't get in. She's in there calling out for me and that's the worst, worst thing you can hear.*

> *But when – with [son] with his [medical condition] and everything else, if [son] was sick at the dinner table, [ex] would pick up the food that [son] was eating and he'd force feed him, so he would be sick again, and again and again. I'd try and pick him up and take him out of the room and try and get him to the bathroom. Most times I did this, little [son] would be taken out of my arms – thrown into his bedroom, the door shut and [ex] would stand there and of course I'd argue the point. I'd stand there and go off my nut … Before he actually left … I was the buffer between [ex partner] and [son] …*

She fears that the assaults continue while he is in the care of this father:

> *I've contacted DoCS and I've advised them, on my behalf, what's happened. The school have contacted DoCS when they've seen [son] come in with sore arms or like he walked into school like this – and they'll say to him "Oh what happened [son]?" – "Fell off my bike". And they go "You don't fall off your bike – in the entire time you've been at school you've never had bike accidents." He says "No, I fell off my bike. I fell off my bike". And yet when they've actually got a chance to have a look at him – there's been massive bruises and then they contact me.*

Six children in three families had made clear disclosures of child sexual assault by their fathers. All had been investigated by the criminal justice system, but the young ages of the children precluded full progress through that system. This is consistent with the well documented difficulties of prosecuting cases of child sexual assault against very young children (Fitzgerald, 2006). Nevertheless, the Family Courts had in each case ordered limited, supervised contact only. In three other cases, the women described behaviours involving intrusive or sexualised behaviour towards children and inappropriate exposure of young children to R-rated movies.

Summary: Overlapping domestic violence and child abuse

From the women's descriptions of the abuse and violence that they and their children experienced, it was clear that this abuse was intertwined – children were exposed to violence against their

mothers; mothers were exposed to violence against their children; and many forms of abuse were directed simultaneously to both women and children. The following examples illustrate how woman abuse and child abuse, commonly co-occur:

> *… the last time I got anywhere near him, he laid me up in hospital for 4 days and he did that with my little one, who was 18 months at the time, in my arms – and yet he's still got access to [child] … I was standing in the front yard, holding a baby that he didn't want to have a car seat in the car for. And I said to him "No, you can't take her. You don't have a car seat. You're not taking her. Not happening". And I ended up in hospital.*

> *… the police caught him as well and then he chased me around the street in the car and nearly side swiped the car … With [child] – yes, with her in the car. Then drove in front of me, put his foot on the brake and nearly ran up the back of him, his car so I reversed down the street and then he chased me around the streets again. I was on the phone to 000 the whole time. And then he went around my car whilst we were going around a roundabout, went in front of my car again and at the lights he jumped out of the car and banged on every window of the car.*

> *In the end, there was the incident where he threw my son into the cupboard and slammed the door on his head, and then he rammed me in the living room, had his arms folded and just rammed me … He wanted to take the children out and I wanted them to stay at home with me. And he just flew into a rage and that's when I got the [physical] injury. And my eldest [child] rang the police. And they came round – by this time he'd taken off with the children…*

In these examples there are two victims of violence who are abused in concert. This presents a challenge to a legal system that assumes that the interests of women and children in this context can be disaggregated, by prioritising the "best interests of the child" (Kaspiew, 2005). This is discussed further in the final chapter.

3. A Complex and Uncoordinated System

So I've had a totally inconsistent approach. And I mean, to me, all the different Court actions, all the different stuff that goes on, it's all connected and unfortunately it's not seen as that. (Woman 5)

Confusion and Inconsistency

In order to try to protect themselves and their children, the women found that that had to navigate a fragmented and uncoordinated service system, marked by delays and barriers to accessing accurate information. The women struggled to come to terms with this complex network of services:

Yeah, and then you go to Centrelink and you go to Medicare and you go to your doctors and you go to your family health and solicitors and wherever else you need to go. And you tell your story once, and "oh that's not my job I'll refer you to Joe Bloggs over here", then Joe Bloggs says "that's a different department I'll have to refer you over here". You go through it and you don't have the headspace! And you just think it's all too hard! And then you wonder why people don't … I can understand why a lot of women stay with their families or stay with their partners. (Woman 3)

Often, there was poor coordination between the various services and even between parts of the same organization:

When we were going through that JIRT [Joint Investigative Response Team] thing, they said "DoCS will be involved" … And when I rang the Hotline for DoCS and I had to do a report of what the children had – they had recommended that I make a report as well with what the children came out with. They mentioned on the Hotline of DoCS to ring the local office. Well the local office had no idea what was going on and I was in their local area and sexual abuse had been disclosed. And then I said "Are you the officers that are involved to do with JIRT or the ones that are supposed to follow that up?" "Oh I don't know. You'll have to ring JIRT". I had to do all the chasing to find out who was in charge of what to do, what to help the children and find out … but none of the Departments knew what was going on or were linked despite them supposedly being so. For a mother to have to chase all that up and go through watching her children go through all that – that's just unbelievable that there is no system in place for that. That was quite shocking.

And another thing, the police officer in [local area] – she's taking me to Court the same day I was supposed to go to Family Court because the subpoena over-rid Family Court – I had to go to [local] Court. I'm sitting there waiting and I get a phone call from the police officer 'oh no, you don't need to be here today because I put the wrong subpoena

date on the paper'. So therefore I've got to wait another 4 months to get back into Family Law Court so I went and had a go at this police officer for putting on the wrong date. He's going 'oh I'm sorry'. I said 'Sorry isn't good enough for it mate. You go and kiss your kids good night to bed, don't you? I haven't seen mine for 12 months'. So I got really pissed off.

One woman found that delays in the part of the system responsible for **criminal investigation** of child sexual assault affected the progress of her matter in the Family Court:

I actually had a situation with JIRT too where between the children going for an interview and the father actually being asked for a voluntary interview was [7 weeks] or something thing like because they were bogged down. The wait was ridiculous and it was actually slowing up my time. We couldn't do anything through the Family Court or even report it until – just help with the children's case, until that time. And I was just left hanging for weeks and days – but they were very good in that fact they said as soon as he knows they would ring me because I was worried about our safety. But I was left hanging for like, you know, weeks with it. So that was really bad. And they said "We can't. We're understaffed and they didn't have enough resources there and that – other things take priority. You know the more serious cases." And I'm thinking, well, no offence to them but how do they class one case more serious than another…?

Woman 10 found that educational policies had not kept abreast of the changes in family law:

And I tried to enrol him in school. The system has not caught up with [the] Family Law. The Education Department needs a primary carer to allocate the school – with shared care there is no primary carer, so therefore there is no school allocated to my [child] … And I haven't just rung it up at school. I've rung the Department of Education in NSW and all they keep saying to me is: 'we need to have a primary carer to allocate a school to this child'. And I keep saying to them 'well, when he goes to school next year, he doesn't have a primary carer' and they said 'well he must have, we cannot allocate him a school' so it's like a catch 22.

Many examples of a lack of coordination between the state civil protection order system and the Family Court were provided by the women:

It's been really frustrating – like before I had Family Court orders and we had the cops involved and they didn't want to get involved because I didn't have Family Court orders. When I did have Family Court orders, the cops said they didn't want to get involved because I had Family Court orders. DoCS doesn't want to get involved because I've got Family Court orders. Family Court won't let me get a Sep Rep [Independent Children's Lawyer] back on.

At one stage we had – I had a Family Court order where his parents were the supervisors. The Family Court order said that they were to come to collect the children and take them to point of contact. I had an AVO that said that he couldn't come to my house. The thing with AVOs, they are lifted for Family Court orders. But when he came to my house with his parents, and I rang the cops, the cops wouldn't charge him because the Family Court order didn't say that he couldn't come with his parents to collect the children. So even when you have AVO and a Family Court Order, I found that they just don't

work well together. And they don't give the results that anyone thinks should happen. And I've called the cops to my house repeatedly when he'd turn up with his parents, and they'd warn him not to come again because it was inappropriate and he'd still come …

My AVO states … he's not allowed to enter my premises, like where I am. And he's not allowed to enter my parents' property either. But because the Court has given him the right or his nominee the right to drop the children off at my door. I now have – that doesn't stand because he's allowed to be there … [I said to the police] "The kids are in the house, why is he still there?" "We can't do a thing about it because the Court have overridden the AVO". And I'm like 'far out, like which way do you turn?" Honestly! … And I've been told by DoCS to take photographs. I've been told by the Court if I take photographs, they're not – because they don't know when the photographs have been taken … And you sort of think alright, why can't you guys put your heads together and go look there is something happening. I'm not there, I can't see it, I can't tell you.

The woman below found herself in a 'catch 22' position in which it was impossible for her to simultaneously meet the requirements of the Family Court and the state child protection agency:

With my [Family Court] breach, I didn't send the children [on contact] and there was a whole lot of stuff going on and I didn't send the kids and that was the recommendation from the Child Protection Agency [NGO], one that is fully funded by DoCS. They made the recommendation. DoCS supported that recommendation. And Family Court found that I was guilty without reasonable excuse. I was being put on a 2 year good behaviour bond with $2,000 payment if I breached – if I broke the bond. And I also had to pay the father legal costs and I also have to pay him other costs as well. And yet when he beat me unconscious, he got $200 fine … If I breach my good behaviour bond, I risk going to jail. DoCS have told me I risk going to jail if something happens to the kids [on contact] and I've put them in an unsafe position.

The lack of coordination across legal systems enables the perpetrators of abuse to 'play the system' and in so doing, put the safety of the victim and children at further risk. For example:

One of the reasons he put on for revoking the AVO for a gun licence was that he required it for his continuing employment. But at the same time, he was putting applications in to the Family Court using his pension concession card and saying he was unemployed.

Another issue relevant to co-ordination across the legal system relates to the time limits for protection orders. Many women who have been victims of domestic violence will continue to have contact with their ex-partners until their youngest children are 18 years of age, yet this is not easily taken into account:

And I rang the Court House about renewing it [the expired AVO] and but they said 'unless there's something recent in the last few months'.

'Waiting for something to happen' in order to initiate new action for legal protection is not conducive to recovery from trauma and building a new life.

"Leave it to the Family Court": Shifting responsibility for protecting women and children

Several of the women encountered reluctance of the state child protection services and Police to become involved once the context of family separation was recognised. For example, despite her children's disclosures of child sexual assault, this woman found that DoCS were reluctant to investigate:

> *And DoCS were actually asked to get involved in our case and I've found since that basically pretty much, once DoCS know it's in the Family Law Court, they back off. The only time they pretty much get involved is if those two [parents] are being abusive to the children. So when they've got one [parent] constant, they go 'oh well, we'll let the Family Law Court deal with it'. Which I think is quite disgusting actually. It shouldn't be whether it's one or both. One's enough. They should be involved … And they keep saying "Well you've just got to go through the Family Court and try and protect your children that way".*

This woman was aware of the limitation of the assessment of the children by a psychiatrist, many months down the track from the original disclosure:

> *He [ex partner] will get seen by the psychiatrist. I will get seen by the psychiatrist. And the children will get seen … And that final recommendation will go towards what happens to the children basically. And that's what happens apparently. And I don't know – I mean, at the end day, I don't how anyone's going to determine that from one visit with the children and I mean, you'd have to take me and my ex-partner out of the equation because one's going to counteract the other … So basically, unfortunate for the psychiatrist, apparently they're very well trained, but I don't know, you know what I mean? I'm thinking 'well how do you talk to kids when it's been months and months later?' It's not the ideal situation.*

Several woman encountered similar responses:

> *My children's school has made DoCS reports. My counsellor has made DoCS reports. The kids' counsellor has made DoCS report and DoCS have told me they don't want to get involved because I'm in Family Court.*

> *I really haven't had any support. Yeah so they [police] said that they would like, the woman, it was like: "oh it's a Family Court matter we don't want to get involved in this sort of stuff."*

> *DoCS have basically done nothing for me. I think. They've given me some good advice but as far as actually doing anything concrete – they've done absolutely nothing. I even have gone down there and said 'Look, he's dangerous, he's targeting the children, I'm afraid of what he's going to do, can you please appoint a worker. I can't handle this by myself. I'm exhausted.' This went on intensely for a couple of years before I'd arrived at this point. And now it's going to and fro from the police, into the Courts. I've got his solicitor writing letters demanding contact. I'm just exhausted and I need help." And they just said "You'll have to deal with it"… "Oh this'll ultimately go into the Family Court and ultimately you'll have to give him contact." She said "so when you do – when it does go through the Family Court, don't expect anything*

less than supervised contact permanently because from you've told me, he is quite dangerous".

Because I said "Well do my children get an AVO?" because they have the power at JIRT to put an AVO – if they think it's warranted so that there could be no contact or AVO or suggested or not. But because it's got to go through Family Court, and they didn't disclose anything obviously in that [JIRT] environment. It wasn't the children's fault. They couldn't do that. So basically, my children had disclosed things, a small amount. And then I got a huge volume of things that they mentioned trickled on from that, once they thought it was ok to tell someone or whoever about this … Now they haven't had another [JIRT assessment] …because they keep saying "Well if that happened, it may contaminate the Family Law Court process…"

Shifting the costs of child protection

This shifting of responsibility for child protection to the Family Courts means that child protection is no longer funded by the state, but moves into the realm of private law (Family Law Council, 2002; Higgins & Kaspiew, 2008) where the protection of children depends on the resources – both financial and emotional – of the women. This was often a situation in which women perceived themselves to be disadvantaged by an imbalance in financial resources with which to continue to protect their children:

I sent them $5,000 and initially going through the solicitors at [suburb] – a big family law firm – $35,000 and run out of money before I even got to … court because of the amount of money it costs – like I've run out of money – I can only go through legal aid. I'm not expecting a free ride but $35,000 is a lot of bloody money – I've got no more.

We're in debt for $75,000 and can't afford a lawyer for the appeal.

Where women were dependent on Legal Aid, the quality of their representation depended on the 'luck of the draw' and several found this lack of control distressing:

Going through the Legal Aid system … you don't know who you're going to get. And they couldn't give a rat's arse. At the end of the day they don't care. With Legal Aid the girl that come here [to the DV service] … she was great, really helpful at the time. And then when I actually went in to her office to make an appointment with her, she wasn't available she was in court something or other. And basically because it was Legal Aid I was going through the system they basically gave me someone else. So I had to explain the whole situation to someone else, then I had to go through this community thing. And it was all just, she had no interest in me whatsoever she was just doing her job. (Woman 3)

They [my lawyers] are extremely busy. I think that they put the ones, the paid for clients before the people that are legally aided granted … And because he's got money, he can say whatever he wants and I have to abide whatever Legal Aid, the time that they can give me or whatever they accept. (Woman 17)

The children's lawyer – through Legal Aid – has never met the children or me in the three or four years that the matter [involving serious allegations of sexual assault] has gone on.

One woman had spent all of the funds from her share of the sale of the family home (near $200,000) protecting her children through the court to a final hearing, and had incurred further debt.

Although her ex-partner was found to be an unacceptable risk to the children because of sexual and physical abuse, she faced further costs as he continued to litigate. For this woman, escaping domestic violence and protecting the children came at the cost of being able to purchase a home for herself and the children. Had the children been sexually assaulted by someone other than her ex-partner, the costs of child protection would have been borne by the state. The other effect of this shift from public to private law is a change of focus from child protection to a 'parenting dispute' (Family Law Council, 2002; Higgins & Kaspiew, 2008).

4. Common Beliefs that Shaped Responces to Mothers' Efforts to Achieve Safety

Layered over this systemic complexity and lack of coordination was a range of beliefs about women, about allegations of abuse and family law and about the appropriate form of post separating parenting that appeared to shape the lens through which women's efforts to protect themselves and their children were viewed. This lens was applied, not solely in the family law arena but also in the wider domestic violence and child protection service networks once the context of separation and family law was identified. The most common beliefs that women encountered in their contacts with the many professionals they dealt with were:

- that children need a relationship with their fathers (even in a context of abuse and violence);
- that women fabricate allegations of child abuse and domestic violence;
- that mothers attempt to stop contact, including by alienating children from fathers;
- that women should not raise allegations of violence and abuse in the family law system;
- that shared care or at least some contact is inevitable, no matter what violence or abuse has occurred prior to separation and that this can be negotiated.

Invisible mothers and essential fathers

Although the changes to family law over the past decade have been framed within notions of the importance of children having an ongoing relationship with both parents, it was notable that only the importance of fathering was stressed to the women by the various professionals that they encountered. In contrast, mothering, as a form of 'women's work', was invisible and appeared to be taken-for-granted, its importance acknowledged only by some of the women themselves.

The belief that children need a relationship with their father was encountered by the women from a range of professionals, solicitors, court appointed assessors, contact services and mediators. The women also perceived this to be a strongly held attitude in the general community. For example, Woman 10 had final orders that would mean shared time when her child turned 5. She believed that her allegations of domestic violence had been disbelieved by the Family Court judge and was afraid to appeal for fear of losing care of her child to her ex-partner. She was angry about the lack of community understanding:

I have got to allow him to attack me whenever he likes. There's nothing I can do. Absolutely nothing. Nobody wants to get involved because it's Family Law and it's a man and his son. Nobody wants to get involved.

Woman 11, whose children had been sexually abused on contact and who was being forced to relocate in order to ensure supervised contact could occur, was told by a court appointed expert that the

children need to maintain a relationship with their father because they "need to have positive experiences to forget the rest." This is not consistent with the research on children's recovery from child sexual assault (e.g. Deblinger, Mannarino, Cohen, & Steer, 2006) or with best practice regarding offender-victim contact when offenders have not participated in treatment and taken responsibility for their abuse and the associated manipulation of the relationship . Nor does it take into account the ways in which sexual offenders are able to 'groom' victims and potential protectors, including during contact (Berliner & Conte, 1990; Christiansen & Blake, 1990; Craven, Brown, & Gilchrist, 2006; Rogers & Renshaw, 1993). In a similar vein, a Court appointed family counsellor is reported to have told woman 4 that: "a crap father is better than no father at all". Yet, as Woman 18 observed, very little was expected on the part of fathers:

> *To me, being the father means someone who takes responsibility, at least. And the Court system, I mean, you talk to a … solicitor and they say 'we can't do really much because now even a father who's a criminal in jail has the right to see their own child.' But is that a good way of exposing the child to the father?*

For the woman below, the recognition by the Family Court of the trauma that the children had experienced through direct physical and emotional abuse and exposure to domestic violence was welcome, but was undermined by what she saw as an exclusive focus on the father/child relationship at a contact service:

> I*t's just right from the start, from [the Federal Magistrate] saying 'I want these children really closely observed for trauma when they have contact' and the Magistrate saying that to landing on a Contact Centre doorstep and them saying: 'Well we're only interested in renewing the relationship with the children and the father.'*

This woman had experienced a number of contact services as focusing on the father-child relationship at the expense of the child's mental health and well being, even though there was an ADVO in place for the child:

> *… [child] was soiling her pants, she was crying when I picked her up. At one stage, they let her go after one visit because she was upset. Another time she was crying so they took her into the office for 20 minutes and said to her "Well, you're just here to play with your father. You're here to spend 2 hours with him. These are Court Orders. You're to do this. It doesn't matter if you like it or not. You're just here to spend time with him and that is what you are going to do" … the children were consistently forced and bullied into interacting with their father at the Centre to the point where they were dragged into another room and told that they had to do it and that was it. Or they were told that they were misbehaving…*

She also found that the police were more willing to protect her through an ADVO than to challenge the father/child relationship by acting on the severe physical abuse of the children, for which they had evidence:

> *But from the start, I said to them [police]: "He's assaulting the kids, I need to get him out of the house. He's dangerous. I'm afraid of what he's going to do to the children" and the police said "Well, we'll just have to take this slowly". I feel they were better at supporting myself than they were in supporting the children. I felt that they didn't want to get involved with a father/child relationship. It almost seemed that way.*

Another woman whose children had been sexually abused by her ex-partner had a similar experience where she thought that the contact service did not

place the child's well being first:

> *The first visit, it was very emotional because [child] told me … that she felt sick in the stomach and was crying and they've got an outdoor children play area and there's a cubby house. She went to sit in the cubby house, because she thought she was sick in the stomach and the lady who was doing the contact, went and got her. She didn't feel that the woman had a chat to her and say 'how are you' and tried to work out what was wrong with her. It was more like 'come on, come on, your dad wants to see you', which upset her even more because she thought she couldn't have space to herself. She didn't put it in exactly those words but that type of thing.*

Another woman had experienced severe abuse that had resulted in a permanent physical disability. The children had also been subjected to physical and emotional abuse. She found the emphasis on the children spending time with their father rather than on the violence and child abuse difficult to understand:

> *From then, we ended up going out to the Family Law Courts in [city]. We've done a couple of mediation sessions in those courts as well. But every time we used to get into the Court and they would start to say the father has rights … Yeah, and I'm not meant to be scared or worried or upset – it's like "oh no, its fine, they're with their father"… I understand but where do the kid's rights come into this? They're scared, they don't know him … And they're saying to me but he has to have time with the children. And I'm saying "but he's knocked me to the ground with a baby in my arms – why does he – and he's been charged, he's been found guilty of assault – he's been breaches of AVOs…"*

A woman who felt that she had been duped into marriage to facilitate her partner's entry to Australia saw how his being a father was the main issue focused on:

> *How can the judge, who doesn't know about the background of why this man came out and why he's here and all of a sudden, because there's an Australian born child, that he gets to see the child and basically his solicitor said it out loud – 'that if this man doesn't get contact with his child then he will suffer the consequences of being deported'. Because he said those words, the Judge said 'oh poor thing, the child needs to see the father' and so she gave the orders.*

Despite the common community belief that women make up allegations of abuse to stop contact between children and ex-partners (Flood, 2009), eight of the women in this study were supportive of retaining the father-child relationship and talked explicitly about the importance of maintaining this relationship. However, their beliefs about this were being tested by the reality of this experience for their children and in many cases they sought to ensure that this contact was safe through supervision:

> *I want [child] to see his father, don't get me wrong – I want him to know his father but he needs supervised access.*
>
> *No. I want contact. I've always wanted [child] contact with [father]. It's just the way that he's still being there now [stalking and harassing the mother] that it makes it a little harder for me to understand that he could be a good father.*
>
> *So I don't want to take the kids away from him either. He's a good dad when he's not abusing me.*

Woman 20 was finding it hard to reconcile her beliefs about the importance of

fathers with her ex-partner's lack of involvement in caring for them prior to separation and the children's clear disclosures of sexual abuse. She sought to protect them through making sure that contact was supervised:

> *It's hard because I believe, I've always believed in a father having a role with children and always encouraged that and tried to push that you know sort of encouraged that but he never wanted that … I suppose the mother part of me, you don't want any men near your children once they disclose those sorts of things but then you also want them to understand that they've got a daddy and mummy that love them very, very much so - I'm not those one of those mums, I don't believe in children - you know a lot of couples can get caught up in I suppose bagging their partners out or saying negative things and I don't believe in that. Children are innocent and they're the innocent ones in these and you know I'm not there to judge or anything, although that's been a very hard road but my role is to protect my children and that's what I'll do as best I can. My children didn't really have a bond with their father beforehand. He was more floated around and they knew he was around the home or he'd be around from time to time but – because he never spent any hands on time with my children unless I really pushed and pushed and pushed.*

However, the children's reactions to the contact were distressing:

> *The first visit … I had to leave them absolutely screaming and banging on the doors and had to be locked and I had to go down and I could hear them screaming from a street level and things like that and carrying on … and the second visit I couldn't get them out of the car physically… they were, you know, upset and crying and saying "I don't want to see daddy, I don't want to see the lady that's supervising"…*

Woman 7 believed in the children having contact with their father, but struggled with the awareness of the harm this might do to them, and with the ways in which promoting ongoing contact kept her within her ex-partner's control:

> *… I do think it is important for kids to have the opportunity to know both parents and so I have always been that they need to have contact with him so that it's not – they're 15 and they resent me because I stopped it – so I have thought of that it's important. So that's what you really grapple with – is that they need to know him but what damage is he doing in the interim? And so trying to make sure they've got the skills to work through that …That's why there's no light at the end of the tunnel because he's always going to be there and giving his say because it's important for him to have the ongoing relationship with these kids … And I think that they still should have some contact but what I disagree with is that he gets to use them as a tool and it's just continuing on the control that he did, post the separation…*

Another woman was influenced by her understanding of the research about the importance of the father/son relationship but was finding that her son was less willing to spend time with his father as he got older despite her encouragement. She had returned to a family relationship centre to try to mediate an arrangement in a context in which her ex-partner wanted more contact and her son wanted less.

> *I guess because research shows that a father is important in the children's lives and the father does the male thing and he's growing up and in terms of sexual identity as well … I always like to encourage that relationship between my son*

and his father and that has always been something that I've wanted to do even though our relationship wasn't working – and so I've encouraged that relationship over the years and for it to be positive and encouraged him to be excited to go to his dad's this week-end, you can have so much fun blah, blah, blah – I guess, a few years ago, found out that I can't do that anymore because he's a child who's growing up and making up his own mind about what his father's like and me saying things like 'you're going to have so much fun this week-end', it kind of doesn't apply any more because he doesn't see it as having so much fun with his father.

Despite describing very inappropriate care of the children while in their father's care, Woman 12 was trying to balance her belief in the importance of contact with the father with the possible harm it could cause the children:

I think a father is very important to them, and this father – you know, it's their father, they love him. So I do think that it is important to have their father in their lives but I think the less time they spend him, the better it will be for them.

'He just wants to see his children' – a lens for excusing men's behaviour

The common belief that children need a relationship with their father, no matter the abuse they have suffered or the domestic violence witnessed, came into play in women's contact with a range of agencies where it appeared that this provided a lens through which the man's abusive or inappropriate behaviour was excused.

One woman described her child's distress at the father's touching during a contact visit, despite the child's protests: "And she came home crying. It upset her for the next few days. Because he stepped over that boundary. They don't like him touching them." The children had an ADVO because of his physical abuse of them. However, the mother was unable to get any useful assistance in dealing with the issue of how the ADVO might be enforced within the context of a supervised contact visit:

[The contact service] said we don't really know how the AVO applies in this situation because it's their father and they're having contact visit. So do you say its harassment? And then another relative rang the police and said "Where do we stand with this? There's an AVO there and yet he's picking them up and kissing them and cuddling them and the eldest child is saying 'No' and what can we do about it?" And the police said "Oh well, we could give it a go if you want to". But he said "I don't know how we'd go in the Family Court".

Another woman had experienced ongoing harassment from her ex-partner through repeated litigation, breaches of ADVOs and contacting the police to accuse her of harming the children. Despite being warned by police that he would be charged if he continued contacting them with false allegations against the woman, and advice by a child protection service to the local police station that this woman and children were at high risk, a terrifying incident subsequently occurred at her ex-partner's instigation, for which he was not held accountable:

… on that night, he sent the cops to my house and even though he'd been told that the kids weren't coming [to contact], he sent me emails … He told the cops he didn't know where the kids were or what had happened to them, that maybe I'd killed them. So the police came to my house, just before 11 o'clock at night. I woke

to torches shining through the house. The police were actually outside the house and shining the torches through from the garden into the front bedroom. And I went to the door and just opened it. I'd woken out of a dead sleep, I hadn't heard them and they were just screaming: "have you killed the kids?" – and they insisted in coming into the house and … they went to the children's bedrooms and shone the torch on each child until they woke. And they were really obnoxious with me … I mean they just had the father's story and that's what they were running with … And even though this was the third time he'd sent the cops to my house, they didn't charge him. And at that time – there were no consequences – and at that point in time, he was under a good behaviour bond and he was under an AVO. And I've been told on the second time that if he did it again, that he'd be charged. They said they wouldn't charge him because he'd go to jail.

As long as the behaviour was framed as concern for the children and a desire to see them, the protections of the ADVO were not enforced, and the harassment continued. For the woman above, despite the ex partner's record of using the police to harass, and the existence of an ADVO, the father's concerns appeared to have been prioritised:

They [police] did say that he didn't know where they were or why they hadn't come [to contact]. And I said pretty much like "that he had been told". And they said "Did you ring him" and I said "No, I emailed him". "You emailed him? Do you know if he got it?" I went "Yeah, he got it because he responded to it". But before they left, they actually insisted that I ring the father from my home and tell him that the kids were ok. Now I understand that sort of breaches Charter of Rights or whatever. But that's what they did.

Despite this history, her ex-partner's breaches of the women's ADVO by coming to the home were excused by the police:

And it's like he shouldn't be there, I've got an AVO … I've had other cops say to me 'look, he's the father, he wants to see them, it isn't the right way to do it but he just wants to see his kids'.

Woman 4 found that her attempts to set limits on partner's turning up late for contact, which she experienced as ongoing controlling behaviour, were not understood by solicitors on both sides:

Yeah, [since the final orders were made] he's stopped turning up when he's meant to… and the two days after we had the final orders he didn't turn up on Saturday morning so we waited half an hour ... and then at 10:30 I started getting messages 'where are you?' when I told the police 'I'm leaving. When he comes tell him I was here' and then the next message is 'why are you depriving your son of time with me, you're using him' but there's no threat or anything like that, 'Oh I just want to spend time with my son' so the likes of his solicitor and my solicitor will say oh he's just concerned about his son but no he chose not to turn up, there was no emergency there was no accident so don't turn this around on me and when … I ended up taking him (son) back which I won't do again because of what he said when I walked in he said "I still f'ing control you" and he said "I will do this every week" and I said "well you can do this every week but I will not bring him back again if you're not on time".

In some cases it was the belief of the women themselves that their ex-partners just wanted time with the children, which undermined their protective actions on

behalf of themselves and their children:

> *And was there bashing on the door. "I'm going to fucking kill you". When the police came out then, and 'cause what he yelling out when the police was there was 'just let me say good-bye to the kids. Let me inside to say good-bye to my kids'. And the police said "Don't you do that. If he holds them, you don't have anything – he has the right – I can't take them off of him." And so even though that night I still was silly enough to let him hold and cuddle them and then he eventually left. And then the police again said to me: "If he would have walked off with those kids, I couldn't have done anything".*

Women's motives under question

In contrast to the emphasis on the importance of fathering – in the absence of attention to the quality of this fathering – the beliefs about mothers that the women encountered from professionals were predominantly negative. For example the women commonly encountered the belief that mothers fabricate abuse both in the family law system and when they attempted to use other services to protect themselves and their children:

> *The duty lawyer said that DoCS was involved. The [Federal] Magistrate flew off the handle and she said: "I have seen all this before where a mother feeds her story to DoCS, so of course they support her".*

> *Well the effect, the long term effect that it's had on me is the fact that every step of the way where I have tried to defend my son, for reasons that I don't want my son to go through this – I know what the cycle of violence is and I know how it works – I'm not an idiot. I'm trying to stop it. I'm not trying to prevent any relationship whatsoever but I'm trying to provide it in environment where I can make sure my son is safe and what he has been exposed to is not detrimental to his long term health and development. And every step of the way I was attacked for doing that, every single step of the way, I was accused of having an ulterior motive. I was accused of being a liar. I was accused of being bitter…*

Woman 7 had withdrawn the ADVO that was initiated by the police when called to the violent incident that ended the relationship, because of her ex partner's remorse. When the violence and harassment continued after separation she contacted the police about obtaining an ADVO but was met with suspicion (despite the record of the previous assault):

> *… when [police officer] asked about the kids I said "Oh, we don't have anything yet because we're discussing through solicitors" and they were like "Oh, did your solicitor tell you to come down here?" And I was like "No, I've just had someone push me over and abuse me. I'm here because I'm concerned. And he's just driven off with my kids in the car"… I think people think that you fabricate some of it to get your own way …*

Another woman described the scepticism she encountered from the police when she contacted the police after an incident where she felt threatened by her ex partner, whom she knew had access to guns:

> *I called the police and they said, they were no help, they just said: 'I suppose you're doing this 'cos he's got custody of the kid now.' I said, 'Thanks a lot. So when he shoots me and kills me what are you gonna' do then?' 'Oh you're being dramatic now.'*

Another woman was warned by her lawyer about the disbelief that can meet allegations of child sexual abuse in the

Family Court, especially given the young ages of her children. This filtered the information presented to the court:

> *The children have been appointed an independent lawyer and they advised that the best thing to do would be to let him have supervised contact because there is a risk that he can use that [allegations of child sexual abuse] as a defence and try and turn that around on me what's been brought up with the children … so we're trying to protect the children and myself as best as I suppose we can … You've got to be careful how you word things, you know with the children so I wasn't going to risk that so that was the only way I could protect my children [through asking for supervised contact] in the Family Court, because of their ages and obviously him not admitting to anything, he couldn't have been charged in a criminal court setting.*

The belief that women misuse the system existed not just among the professionals in the system, but also for some of the women interviewed, despite their own experiences of being disbelieved:

> *And I know that a lot of women go in and say, I know it's such a common thing for women to say that I was domestically abused, it's sort of the same as the men saying we're prostitutes and alcoholics, I know that, and I hate the women that haven't been abused that use that, I think it's disgusting and it's made my life so hard, and I know that there are people out there who do it. But I have evidence.*

> *… and I won't say that all women are right. Some women are. The ones that are in the same circumstances as what I am – that they've been pretty much been told we're lying. That we're lying, manipulative bitches – pretty much the term I'm going to use. Because there are women out there that are like that – that manipulate the system to get what they want and it's not always righ…*

Woman 20 emphasised the fact that the focus should remain on the protection of children:

> *… and I'm told that 4% of women make false allegations and I think: "well I fit into the 96%, why should I be judged or have to go through and tip toe … even despite what we've been through, I do understand and appreciate that you wouldn't want someone accused of something they haven't done either. But, you know, to me the system hasn't worked at all. You know, I mean you'd want to be protecting those children, even if there was a 2% risk of those children at risk, something should be in place to protect those children … I'm told it's mostly women that do the wrong thing and accuse them and abuse the system but surely all the others can't be jeopardised and things because of that. Because every step of the way I heard "Oh well, there's women out there" and now I say "I don't want to hear that. I'm not one of those women. These aren't one of those children".*

The 'alienating' accusation about 'emotional' women

The most direct expression of the view that women deliberately undermine the relationship between fathers and children occurred when women were accused of "alienating" children, despite the discrediting of the concept of parental alienation in the scientific literature (Meier, 2009). For example, although one woman had evidence of violence against herself and her children, she was described as 'alienating' the children by both the Independent Children's Lawyer and the contact service. Her ex-partner had been charged and found guilty of assaulting

her and evidence of physical assault of the children was sufficient to have them granted a separate ADVO.

> *I was told by someone in the police force that yes, he does have Red Flags [high risk factors], like everywhere … and the children need to be protected. But the children's lawyer didn't think there were any really any Red Flags and that the children should spend unsupervised time with him. I was suffering from parental alienation. She relayed to my lawyer 'this is a clear case of parental alienation from the mother'. She had police reports, probably DoCS reports…*

When supervised access was ordered, she found that efforts to raise the children's distress with the contact service resulted in further accusations of 'alienation':

> *And I rang them and said "This is what's happening with my children." I said "My son's getting nightmares. He's not sleeping. He wakes up in the middle of the night." I said "the acting out behaviour and the trauma before and after contact visits is just shocking". She said "Oh, that's what you're saying. That means nothing". She said "You're just saying this because you don't want the children to have contact with their father aren't you?" She said "That's all this is about. There's nothing else to this but the fact that you don't want the children to have contact with their father". And she's speaking quite loudly. And I'm saying: "No, No that isn't it. I'm trying to tell you that the children are traumatised."*

Woman 5 felt powerless to ask the court to enforce the order that her ex-partner advise her of his address because it would be construed as an effort to stop contact:

> *To me, it's part of the power game that I won't know where he lives. Yet it's in the orders that he's supposed to tell me. And because I don't have anything to prove that he doesn't live – and I repeatedly get told that the Courts don't like resident mothers breaching the fathers because they don't want to be blocking the contact. I get told there will be no funding from legal aid and that the Courts wouldn't be favourable to me raising breaches anyway.*

She went on to point out the imbalance between the emphasis on mothers stopping contact, with the lack of interest in ensuring that fathers maintain contact:

> *In Australian law … I have to have a positive attitude to contact. I have to provide the children for contact and I could be breached if I didn't provide them. But there is no requirement in Australian law and basically lets, most often no consequence of not turning up. It's not an issue … And repeatedly Magistrates have said that it's more my attitude to the father than the kids and Magistrates have said that in the last 6 months.*

The women's ex-partners were also quick to accuse the women of influencing the children against contact. For example:

> *And yet, anything the children say against him he tells them: "that's your mother talking your mother's poisoning your mind"… I talk to them about everything and he asks the little one saying "do you want to stay with me or do you want to go with your mum?" and he said the way that he said, straight away he said "I want to go with mummy. He doesn't take that as the child wanting to go with his mother he takes that as me putting those words in his mouth … brainwashing him … Of course he wants to be with his mum he's eight years old, a little eight year old probably would. But no that's me brainwashing again.*

It was common for women to feel that their concerns for the safety of their children were dismissed as being the result of bitterness toward their ex-partners:

> *Because as far as the Court is concerned, I'm the nagging, old ex-wife that doesn't want to play the game. And it's really sad.*

> *Yeah they just don't want to listen and they don't want to take it on board. They don't try and listen to what you're saying or the fears involved or … the serious issues. And I think they just kind of think you're the bitter wife or whatever and trying to get maintenance money out of the husband and all that. They put me in that category.*

> *I really don't think that – well I think it's great how they don't have to put you through mediation to start with but I think that people shouldn't be classed as vindictive mothers, which I feel everyone is. I feel like that everyone should be given a fair go and really look into the situation because when you're in that relationship, you don't always go to the police.*

Trying to protect: The balancing act – be 'friendly', not 'alienating'

The women were acutely aware that they had to temper their efforts to protect their children and to get assistance for their exposure to trauma with considerations that they may be perceived as motivated by the desire to undermine the father-child relationship. For example, one woman had agreed to supervised contact in a situation where her children had made clear disclosures of sexual abuse, because she feared the children being put into the care of their father if she were perceived to be encouraging false reporting by the children:

> *Well [father] can basically turn around and say, from what I've found out, he can say that I've put the words in the children's mouth, what things they've come out with or I've put them up to it and things like that so, yeah I chose what the only thing I could do to make sure they're protected. I mean, I don't mind whatever falls on my shoulders, I've heard and other people have heard, what's come out of my children's mouths, I'm not worried about that. But I'm worried about obviously a situation where I suppose you're given best case scenario, middle range and worst case. And the worst case scenario which you know would probably never happen but you've got to take it into account when you've got children, every possibility is that he could try and turn it around and accuse me of you know - and that's a form of abuse, you know what I mean? Putting things in their heads, and they could turn around - he could possibly get custody, you know and that would be unsupervised of course, so I'm doing absolutely everything to make sure you know, they're protected.*

Another woman was prevented from getting counselling for her children under the threat of being seen as 'alienating':

> *And as I said, I'm 2 1/2 years since I left him down the track – nearly 3 years actually. And I've still not really got any good intensive counselling for the children because I don't feel I can … when he [ex partner] found out where we lived, the children were quite upset and wouldn't sleep. So I took them out to the local domestic violence centre to speak to the workers there, which they've come to know. And my solicitor said to me "You want to back off from that or you'll be in trouble for that now". So here I've got a child who's been so traumatised they're thinking he*

could have [medical condition] and on the second hand, the lawyers are telling me to back off because I would appear as if I'm alienating the children and feeding on their anxiety.

The women were warned that asking for the protections they judged safest for their children, could lead to worse outcomes, for example:

I had already made up my mind that I didn't want the sleepovers because I really didn't think it was safe for the children but [my lawyer] convinced me that if I wouldn't do it, the Judge would probably even now give me a slap on the wrist and give [ex] more than I would be willing to give, so he really strongly recommended me to do this otherwise it would all blow up in my face. So I did agree. I didn't feel like I had a choice.

These expectations were perceived as unbalanced and unfair. For example:

I think there's an expectation on resident parents, which are generally mothers – has a positive obligation for contact. So I'm supposed to be positive about the father's contact so when my kids are being pissed off that he doesn't ring, how do I deal with that?

Woman 11 believed that the final orders that required her to relocate so that supervised contact could occur, were based on her being seen as trying to "alienate" the children when she sought sexual assault counselling for them and because she asked for no contact. Her conclusion was that: "I'm made to be the guilty party the whole time … my need to protect the children is used against me." In this case her ex-partner had been assessed as an "unacceptable risk" to the children by the Family Court, based on the evidence from the criminal case of child sexual assault.

The admonitions to be a "friendly parent" who encouraged contact usually involved the women not being "emotional", something that was both difficult and perceived as unjust to women who had been traumatised by violence:

You've got to try and keep the emotion out of it. And that's not an easy thing to do. You've got to stick to the plain cold facts and the plain cold facts sometimes are too damn hard to spit out. And I don't know how I would design a better system but I know it has to change because it's not an easy system to deal with when you've got so much else underlying yourself but you're not allowed to show that. And when you do crack, when the Court awarded [ex partner] the extra night with [son], I cracked. One of the few times I have actually lost it in the Court room. I had to leave the Court room. I was a blubbering mess. The Court couldn't understand why.

… because I was very much drilled by my solicitor 'don't you show negative emotion towards [ex-partner], don't say anything, don't do nothing, don't retaliate, be nice to him and you've got to ensure your family are nice to him, shake his hand, say hello to him and everything. Do not be angry towards him and you've got to tell your family not to be angry towards him no matter what he does'. So my parents were under a lot of pressure and extreme amount of pressure – an abnormal amount pressure – you can say to people "I'm going to tell you, your daughter was raped in front of our son and she's got no rights and she was battered and … you're just going to have to sit there and smile about it'. I mean that's not normal. That is not an order to stay calm. You're asking someone to actually be inhuman. It's my parents' right to grieve for what has happened to me.

[1] *See, for example: http://www.wsahs.nsw.gov.au/services/cedarcottage/documents/Cedar_Cottage.pdf*

And your solicitor tells you – because they know that I still get upset, they say 'try not to cry', 'try to be as calm' because you don't want to look like you're trying to sway anyone or anything. I'm thinking I've got to be like a robot. And it was very hard – it's horrible.

As discussed in chapter 2, the system that women were required to negotiate was complex and poorly coordinated. Yet one woman reported that she was warned against too strenuous efforts to ensure that the system was protecting her children:

And then you get told "Don't ring and chase things up even if things aren't done right" because then that will put people offside – I mean, I'm just a mother trying to make sure everyone does their job to protect my child without going overboard. But then I can't foresee or make sure that's done because then that can be turned around on me in the Family Court apparently and I can be seen as too aggressive rather than – and I'm thinking "Well what mother would want to protect their children. Wouldn't a mother do anything that they thought right or fit or legal to protect their children?" You're told that you'll be seen as overly protective or ambitious or aggressive or that sort of thing and it can be used against his side. So I suppose you constantly feel like a round peg trying to be pushed in a square hole.

The message from statutory child protection services that it was up to the women to protect their children, together with the climate of scepticism that they encountered in the family law system, left them as very disempowered advocates for the safety of their children.

More harm than good? The perils of raising allegations of violence and abuse

From many sources, the women reported that they received the strong message not to raise allegations of abuse or violence in the Family Courts. The women reported managing a very delicate balancing act as they made choices about whether, and how much, to raise issues of violence and abuse. They lived with the fear that they could be punished by losing the care of their children if they were seen to be challenging the inevitability of an ongoing relationship between ex-partners and children. For example, Woman 10 was warned against raising allegations of domestic violence by her doctor, legal representatives and the Judge:

I was told by my doctor – don't go into that because if you mention domestic violence in Court, you're stuffed …I wasn't allowed to [mention the domestic violence in court]…One incident – and that was when he attacked me in my home and that was only because it was 3 weeks before I went to Court. And I gave my evidence, he gave the exact opposite – the Judge therefore said 'well I've got no idea what's happened … both of you should be ashamed of your behaviour because it happened in front of the child and [woman] of all the allegations that you've made against [ex]" …because the Judge actually threatened to take [child] off me and that I would have supervised care if he saw me in Court again with such rubbish. Yeah. "You wouldn't be stupid enough again Ms [X] would you because I would make it my something to ensure that you had supervised care with this child."…The judge did not want to know. He was just absolutely very adamant that any discussions about domestic violence other than that one occasion, which he still managed to blame me on, were not to be discussed and this isn't what this Court is for.

Woman 13 had separated when her child who was now school aged was an infant and had orders for fortnightly weekend contact. She was being harassed at

changeovers and was increasingly concerned about the quality of care that her child was receiving while with the father. She wanted to go back to the Family Court to change the orders and reduce the contact, but was terrified of how her allegations about the ongoing domestic violence she experienced and the poor care of her son would be received, given her perception that she could end up with 50:50 care and with her child less well protected:

> *And there's nothing I can do. Either go to Court and have the risk of losing my boy or just stick out and I'm in the wrong … As it goes to this Court case, I don't know where I stand. I don't know what to do next. Like I'm too scared to even go back to Court. What's to say that the Courts won't give half and half? I don't want that for [child].*

Woman 16 was struggling with how much to disclose about her ex-partner's sexually inappropriate intrusive behaviours with their adolescent daughter:

> *And it's a very difficult situation because I have been told if I do go there and talk about the [intrusive behaviour] and the fact that he comes into the bathroom and the fact that he puts on R rated movies – I've spoken about that – but just to mention something about him [intruding with eldest daughter]. If I come out and say something wrong, that it can slap me back because he could say 'what are you insinuating' and then he'll tell the kids that mum's saying that I'm trying to sexually abuse you.*

The women's lawyers were obviously very influential in shaping their views about disclosing violence:

> *I'd had really strong reservations about him [solicitor]. He was saying things like domestic violence doesn't count at all, that it has no relevance in the Family Court at all, unless the children were abused. And I kept saying to him that the law's changed, the law's changed, and he wouldn't have anything to do with that.*
>
> *And the original lawyer didn't want to get into the family violence which sort of makes my pushing for supervision and stuff sort of very unsupported.*

Woman 19 received messages from a range of people that made her reticent to name inappropriately sexualized behaviour:

> *…even he was coming into my daughter's bedroom of a night time. I found out later. But there were things in his behaviour that I found quite inappropriate with the kids. He would hold them down on top of him and tickle them and – actually it came up in Court that the mother believed that there is – I think it's called sexualised behaviour. And my solicitor at the time was saying "Did you say that?" And I said "Well, no. I didn't say that. But I did believe that his behaviour was very inappropriate around the children." I looked at going into that in depth in the Court documents but I got some advice from some domestic violence people to be very careful because of Gardiner's parental alienation. So I probably didn't go into that as in depth as – in a perfect world I would have liked to … A couple of people said to me "No, don't go there because you could lose your children."*

Woman 20 was aware of the dangers of disclosing too much about sexual abuse of the children and perhaps not being in a position to protect them if she was not believed by the court:

> *… it's very hard with it because you get to disclose some things but you've got to be guarded and*

protected in what you disclose because unfortunately I suppose I'm the type of person that would be overly honest with things and want the Courts to know everything about our situation so you know I can protect my children and myself to a degree you know with things but then, you've also got to be thinking, I suppose, from the legal point of view, how he can turn things around, you know, back on me … so you get to say I suppose, or put in what's called the Affidavit, the information but it's nowhere near as, you know what I mean, accurate I suppose as what it could be - so it's very hard. I think you've got a limited amount that you can actually disclose … But then there's mothers that stand up to the enth degree and say "Well the Courts have authorised other supervised visits or things like that". I've heard about and they've ended up going to jail. You hear stories. Or they ended up being fined or whatever [the] case may be. All they're doing is trying to protect their children. How can a Court do that to a mother? I mean, if they're willing to go to those lengths, which I would be willing to go to those lengths to protect my children, but then I've also got to think well at the end of the day if I did do that, I wouldn't be worried about myself, but then he may get unsupervised contact because they've got to get custody with someone so that means they're put in that risk 24/7. So even if I was willing to go those lengths, I can't go to those lengths because I won't be around to protect my children then.

On the other hand, although Woman 2 was prepared to raise violence in mediation and in other parts of the process, she was left with the impression that no one wanted to hear about it:

That's one of the first things I did [in mediation]. I said he's a manipulator and intimidator, he lies and he has hit me in the past and there has been domestic violence in the past so yeah I spelt it all out. And this is when even I spoke to the psychologist and the you know professional people it's almost like they didn't want to hear it you know they were like: "Well we've gotta be neutral we can't take anybody's side, it's mediation and everything" and I thought great that's all I need: another one of these high flying supposedly professional people that are cold as bricks and don't want to know anything and yeah … And I find the hardest thing is getting any of these professionals to listen to you, mediators anybody, to just listen to you and you can't say anything about domestic violence and all this sort of thing. It's like they don't wanna' know.

The women's fear of consequences for raising issues of violence extended beyond the Family Court to contact services. Women with interim orders reported feeling constrained in tackling inappropriate service provision by contact services because they feared their efforts being judged as 'alienating' and hence jeopardizing their court outcomes:

My solicitor said: "The Court's given you supervised access. Just be grateful you've got it. Back off from the Centre staff because if you push this, they're going to write things about you in the report that you don't want".

Woman 17's words sum up the perilous position the women perceived that they were in when dealing with the family law system, where they feared that protective intentions on their part could result in worse outcomes for their children's safety:

I don't like the changes at all, especially when it comes to domestic violence. I feel that, and

I've done a lot of research on the computer and spoken to a lot of other women, and I find that if you make allegations, which can be true, it can be reversed and you will have the supervised contact and he'll be the main carer even though you have always been the primary care giver. I don't think that that's right.

5. Lack of Understanding About Domestic Violence Dynamics and Consequences

The potency of the common beliefs about women and allegations of abuse and violence in the context of family law was enhanced by the lack of understanding displayed by many professionals about the dynamics of domestic violence and child abuse, of their interconnection and of their effects on women and children.

Domestic violence tactics unrecognised

The women were dismayed that many professionals that they encountered had very limited understanding of the tactics employed by their abusers and of the abuser's ability to manipulate and deceive them. At its most extreme, such lack of understanding put women and children's safety at greater risk. For example, this woman had experienced stalking and harassment for many years since her separation, yet:

> *When [perpetrator] moved in across the road and I was broken into – when I went to the police station the first time, I went into the room with him [police officer] and he said to me, just taking details – 'oh he might just fancy you, that's why he moved across the road, he might fancy you' – this is a young male policeman.*

The women also encountered the common belief that abusive men could be identified simply through observation, despite the fact that "… most batterers perform well under observation." (Bancroft & Silverman, 2002, p. 198). Nevertheless, it was common for assessors to use short periods of perhaps 20 minutes in which to observe father-child interaction:

> *Because they wanted to interview him [ex partner] and then I and then they wanted to see us interact with [son] and I just think that's such a fake …like you're in a room like this and she's [report writer] standing there through a mirror with the windows watching how he's [ex-partner] interacting with (son) so of course he's going to be on his best behaviour … Well if he can't control himself while you're watching you know that would be pretty crazy!*

Another woman was distressed that the assessor did not understand the way in which her child's fear of his father might be expressed:

> *She [Family Report Writer] wanted us all in the same room … And when [son] saw his father, his face fell, he walked up to his father and he's gone: "I'm happy to see you" because he knows he has to choose. If he was to ignore his father, if he was to – and this is what I tried to explain to the Family Report Writer and she said to me: "You know in your heart that that's all wrong" and I'm thinking "No I don't"… And she couldn't understand why [son] went to his father if he's scared of his father. He goes to his father because he knows if he doesn't he's going to get* ***flogged*** *next time he goes around. He knows the consequences for ignoring him.*

Contact service staff seemed to be particularly susceptible to the man's ability to be charming in interactions with them, despite interactions such as these being a poor basis on which to assess the risks posed to children (Bancroft & Silverman, 2002). Woman 17 understood how her ex-partner could be engaging and charming, qualities that had drawn her to him before she came to see another, abusive and dangerous side:

> *I feel they [contact centre staff] should have some studies into domestic violence as well because the men, of course, put on charming acts. Because I did not go out with my ex-partner because of the person he is. He was a wonderful person at times and that's what they see.*
>
> *The head of the [Contact] Centre, was talking to a grandmother and she goes 'he's such a lovely fellow' and she says 'yeah, when he's not drunk'. And I'm sitting there thinking 'this is the constant thing that this Centre does'. The man or woman might turn up and be charming and bring presents and then it's upsetting to someone like myself is that they've won over these people and these people then make it obvious to us that 'he's lovely, isn't he great' or 'she's lovely', you know. And you think it's undermining what we've been through and I've even had to say to them 'look, if he was a great father and husband, I wouldn't be here, we wouldn't be at this Centre' and also we wouldn't be at this Centre if they weren't that bad. Because I said the Court decided this.*

The danger of superficial assessments such as these is a relaxation of the supervisor's neutrality and vigilance (Bancroft & Silverman, 2002, p. 112). Another woman also found that there was no understanding of the complexity of assessing whether and to what extent an abusive father had made the changes necessary for him to provide safe parenting, beyond the mere passage of time:

> *In all, it'll probably be 2 1/2 years almost, that he's had supervised contact … my lawyer said because he's behaving himself most of the time at the Access Centre or appears to be behaving himself, the Court is satisfied that he's not really violent … But I said to the solicitor that he's not usually violent when there's other people around because it is domestic violence and they're not going to be violent when there's witnesses.*

In other cases the women thought that some professionals demonstrated naivety in their responses to their ex partners, given their level of documented violence. For example:

> *Well, he'd promised the Court counsellor that he would do the right thing [allowing the children to undergo intensive counselling for trauma prior to commencing contact] and then he comes back a few days later to sign those final documents and says 'No, I'm not agreeing that'. Because when the Court counsellor said: "Oh he promised me". I laughed. I laughed at the Court counsellor and said "Yes I'm sure he probably has".*

The following example involved severe physical assault (resulting in hospitalisation) of the mother and child abduction:

> *…she [report writer] said actually "that the Court would take it very seriously if the children were included in the AVO" and that was the case with me so I felt supported in that. But when she came back to me with questions from [ex-partner] that sounded to her very reasonable, I realised that she didn't realise at all that she was actually being manipulated by him.*

Other women found that there was limited understanding of forms of abuse other than physical violence:

> *Another thing that I think that is that I remember the magistrate saying, in the evidence that she had, that she didn't really see anything there that looked like violence. And I thought 'oh', because what she is looking for is bruises and [perpetrator] does things like – with [eldest son] he would grab his legs and twist them across his body – like – and he could grab your arm really hard but not give you a bruise. So – and his main form of violence really was the psychological and emotional – that was big time. And that wasn't really recognised as violence. (Woman 15)*

…well the law says that there's an exception for domestic violence but domestic violence is not understood by the Court and therefore – and if it is understood in the Court, it's only physical abuse. Emotional abuse is not taken that seriously and therefore I'm not really hopeful for the future. I think that my children will continue to be emotionally abused by the father. They might even be physically abused because there's no-one there to stop him from doing that. That's my point. I think the abuse will go on and the Courts will allow that to happen because of their idealistic views and their lack of comprehension of what domestic violence is about and what abuse is about and what the impact of abuse is on the children. (Woman 12)

Traumatic responses unrecognised

A very strong theme in the women's accounts was the failure of the system to take into account the extent to which the **traumatic impacts** of the abuse undermined their ability to participate in the various processes, such as **mediation**:

> *We had to go through 3 bouts of mediation which was very, very hard to be in the same room, directly opposite the table with someone who, for the last 15 years has pushed me in a corner and that's basically – and I've got to try and voice what I want in that scenario where there is someone sitting directly – glaring at you directly over this table and you've got to try and voice what I want…*
>
> *But then I found at mediation again, very disturbing – because here I am, I've got a man who's a compulsive liar, that's threatened my life, that's threatened to take my children away from me and I have to come into this room being like – I have to show him that what he's doing to me and what he's done to me, it's not affecting me because I don't want him to think that I've gone down … which is exactly what he would love to see, that way he can takeover and what have you. And I have to put on a front in front of him and then I have to try and express myself to the mediator that I am so upset that I am so down, so depressed over this whole situation. Yet I have to put a smile on and show him that he hasn't gotten to me. I find that very hard. I found it very hard that we had to be in the same room … It would have been better to have been in separate rooms.*

Similar experiences and reactions were reported in women's dealings with **report writers** and in **court hearings:**

> *I felt that disadvantage again because you have to be there and he comes too, so you have to see each other in the [court] waiting room. And that brings up a lot of tension and emotions and with that, I sort of lose my focus. So when I had to talk to her [report writer], I felt I had to make sure that I didn't say too much or I didn't – I was afraid that [long pause] I was afraid*

– I just didn't feel safe. I basically didn't feel safe enough to speak freely about things that had been happening …This is the same as I felt whenever I had to go Court with my ex, period … It was just the mere fact that he was there, already walking towards the Court wondering whether we would walk into him or not, made it, for me, very stressful to start with. Now the Court case is stressful anyway. But I think that also influenced very much my focus and my being able to put my foot down and say like 'this is what I want and nothing more' or 'I can't agree with that', I can agree with that.' So the first Court case where we actually sat down and had to come to an agreement and our solicitors were talking to each other, just hearing his voice in the background made me feel scared and insecure … if I would have been able to focus myself, if I wouldn't have been in that nervous tension, feeling of fear that I would have been able to focus better and to come to an agreement which I would feel more happy about, or feel more solid about.

But, they put you in the same floor as the abuser! To wait for the court case. Because you have to show respect to the other parent, which means that in the AVO court the judge allowed me to look at him and I didn't have to look at my abuser. But in the Family Court I have to show respect to the other parent because he's the parent of my children so I'm going to have to look at him. I haven't looked at him for 18 months, and I don't know if I'm just going to slip back into the old me and just agree with everything he says for survival tactics because it's all too much. I don't know what my reaction is going to be. I know my physical reaction is that I shake. So I look like a drug addict. I vomit all morning so I'm probably all pale and drawn out. My eyes are always bloodshot because I've been crying the night before. So I probably look like everything he's accusing me of being. And I probably don't look like a very good parent because I can't hold it together when he's in the room.

For woman 12, the combination of despair that the assessor was being manipulated by the abuser and the impact of the trauma of abuse on her ability to express herself inhibited her ability to speak for what she wanted for the children:

So she [report writer] was negotiating suddenly for him [ex], for his part. And I felt she was unaware about his – the fact that he was manipulating her by using his sons … but I think it's more the second time that I felt that his charms had a big impact on her and so she came back with questions like 'why not this' and 'why not that' and it made me feel like I was the boogie man and I was a difficult person to deal with. I also felt that I could not express myself properly because I didn't feel that the situation was fully safe because … I felt that she was on his side and that sort of – that made me lose my confidence in speaking openly to her. [long pause] It's more than that. I just couldn't speak – I just felt like it numbed me. It's like 'oh my God'. I don't think I was able to speak freely about how I felt about things. I wasn't able to freely to say her 'yeah, he seems very charming but he's had a problem'.

Another woman, however, was aware that recognition of the ongoing impacts of trauma could work against her in being assessed as a good parent:

Sometimes it will work against you. So my psychiatrist… it may work against us. She's (psychiatrist) had reports put forth from her before,

> *because she works with a lot of domestically abused people, that it's her client's anxiousness that's interfering with the parenting - it's not the abuser it's that the person who's being abused is negative of the other one so her anxiety is interfering with the children so it goes against them like that.*

As discussed in the previous chapter, the women were warned by their lawyers that their (understandable) distress would undermine their credibility in court.

Although writing about the context of the criminal justice system, trauma expert Judith Herman's description of the misalignment between the needs of victims of trauma and court processes gives us some understanding of these women's experiences:

> *Victims need social acknowledgement and support; the court requires them to endure a public challenge to their credibility. Victims need to establish a sense of power and control over their lives; the court requires them to submit to a complex set of rules and bureaucratic procedures that they may not understand and over which they have no control. Victims need an opportunity to tell their stories in their own way, in a setting of their choice; the court requires them to respond to a set of yes-or-no questions that break down any personal attempt to construct a coherent and meaningful narrative … Indeed, if one set out intentionally to design a system for provoking symptoms of traumatic stress, it might look very much like a court of law. (Herman, 2005, p. 574)*

6. Consequences in the Lives of Women and Children

‘It’s inevitable – fathers have rights’: Women under pressure to agree to unsafe arrangements

Whatever the intentions of the law regarding addressing violence and abuse, many of the women received the strong message to the effect that contact (eventually unsupervised), substantial time with the other parent and in some cases shared care, was an inevitable outcome in the Family Courts, even where there was violence towards women and children. Fathers’ rights to a relationship with their children were stressed by the many professionals with whom they came into contact. As a consequence, in an effort to avoid even worse outcomes, the women reported experiencing pressure to consent to arrangements that they did not consider the best option for ensuring the safety of themselves and their children. This pressure came from their own legal representatives, those of their ex-partners and Independent Children’s Lawyers.

> *I have asked my original solicitor if we could have no contact or like phone contact or minimal contact or like contact where the kids have got an extra person to supervise … And my instant answer was “No”, the father has rights to see his children. I understand but where do the kid’s rights come into this?*
>
> (Woman who was assaulted while holding an infant and who was hospitalised)

> *I couldn’t think properly because I was overwhelmed with his solicitor saying: “She’s making up false allegations” in front of me. She’s going to subpoena this, she’s going to subpoena that. I just felt like they’ve already subpoenaed everything on me – counsellors, workplaces, doctors, psychologists, hospitals – everything they can think of they’ve already subpoenaed on me so when she’s say that, I just felt like she was sort of like manipulating me to sign as if – I don’t know, I just felt that I had to sign … I wanted sole parental responsibility as though as the Independent Children’s Lawyer said for me today, she said “I’m going to make a concession with you [woman] if you sign today, shared parental responsibility”.* (Woman whose partner has been convicted of stalking and who reported inappropriate sexual behaviour with a young child)

Despite both the woman in the following example and her children having been exposed to long-term physical and emotional violence, for which there was abundant evidence, she received a consistent message and was pressured to agree to increasing levels of contact she did not feel were in the children’s best interests:

> *… I was told that ultimately they’re going to make the children have unsupervised contact anyway. I mean, I don’t know if that’s true but every single person I know has [told*

me that] … So there was enormous amounts of pressure to allow me to agree to him having contact with the children. I was told by my solicitor that he was going to get it anyway so there was no point in trying to stop it at all. If I disagreed with it, I would be seen as alienating the children from their father. I kept saying to the solicitor the children are extremely traumatised … I sacked her [solicitor] in the end … I just got rid of her because she was pushing me to have one to two hours supervised and then she's pushing me to have 3 hours. And I just kept saying 'no, no, no.' The children aren't coping with the two … And then it goes to 4 hours with relatives. And then it goes to overnight contact … overnight contact and half holidays, which I argued in Court I didn't want him to have. And they just said: 'We won't get [supervision] unless he has it'.

The two young children of the woman below had made clear disclosures of sexual abuse to a range of people but had not disclosed in the formal JIRT assessment interview (which she described as marked by poor skills in relating to young children). Over time the children made further disclosures, but DoCS decided that the issue should be handled in the Family Court, where the mother received this message:

Well, it's basically – it is the legal advice but it's basically legal advice on how the Family Law Courts work. So basically, for instance, like if there's a – even despite, you know, people finding out or even whether they can prove or not a parent is abusive or not to children, they still more than likely, because of the shared care system, I've been told, with the Family Law Courts, they're going to get contact at some point in time … and more than likely, I have to grip myself for the fact that they or more than likely down the track, they're going to have unsupervised visits. That's what I've been told [by my lawyer] … eventually he'll get unsupervised visits. I've been told more than likely because fathers, whether they're abusive or not, they're entitled to rights.

Consequently, she felt pressured into the decisions that were made to agree to supervised contact:

… you sort of get to make decisions but they're not necessarily – they're like forced decisions. You know what I mean? Like you've got to – I suppose it's a catch 22, if you do this, this could happen, so you can't really make that decision. So then you've got to make this decision and then that covers that but then it's not necessarily a decision that you're comfortable or happy with, if that makes sense?... You go back and forth. Whenever we go to Court, and probably a situation you might be put into two little rooms each – the lawyers go and do their thing and talk and then they go back and forth and at the end of the day, from the impression that I've been given, and I could be totally wrong but the Family Law Courts like you, and push you to basically mediate and get a solution so you waste less of their time, basically.

Another woman originally felt pressured in mediation into consenting to near equal time arrangements. She was now seeking reduced time of the children with their father, because of his drug use, ongoing harassment and intimidation and refusal to negotiate matters such as choice of school. Despite these issue and his history of violence towards previous partners she was discouraged from seeking this:

I am asking for additional time. I guess, at the same time most legal advice I've got is that the Court wants it to be 50/50, you don't have any solid evidence, you're wasting

your money if you're going for more … everybody keeps telling me – like when I seek legal advice or whatever, it's that: "You're going to be wasting your money. You're not going to get full custody. That's not going to happen. He needs to do a lot more. Try to look reasonable and then they're going to be more likely to agree and it's going to be more cost effective for you".

Woman 16 was pressured into mediation with her partner, rather than shuttle mediation that was her preference:

There was a shuttle that was offered through my domestic violence counsellor – there was paper information that they had given to me and explain[ed] to me but the mediator said "no I can't do my job without having both people – both people in the same room"… Pressured is a great word for it because I just didn't want to go there.

Silenced about violence and abuse

As described in chapter 3 , the women received strong messages from various sources that it was dangerous to allege violence and abuse and they walked a tight rope in trying to protect their children without being seen as "unfriendly" parents or undermining the father-child relationship. As a consequence, they did not feel that they were able to put the full story of violence and abuse before the court. This has important effects on the quality of the decision making of the courts, as recognised by this woman:

Probably half or even the majority of things that have happened with us won't get written down on paper. I mean, this Court won't know about the ongoing abuse and harassment of things like that – they won't have a clue about those.

Inadequate risk assessment - failure to focus on the safety of children

Linked to the lack of understanding about the dynamics and effects of violence and abuse and to the beliefs that undermined the mothers' credibility, was a failure to assess and manage the risk to children. This was a particular issue that the women identified in their dealings with **contact services**, even though the limited availability of such services means that they are being referred some of the most high risk cases by the Family Courts. For example, although the Federal Magistrate had acknowledged that her children were deeply traumatised by the direct abuse of their father and by witnessing the violence towards their mother, one woman found that the contact service allowed behaviours by the father that replicated his previous abuse:

I've dropped them off sometimes at the [Contact] Centre and he'll be yelling at them "I can see you. And I'm going to get you". And then I can pick the kids up sometimes after an access visit, when he's been playing these quite aggressive games and they will be upset to the point of tears, both of them … And instead of the staff realising there was a problem – I mean, because they know that this is a man that has chased them around house and threatened to kill them. Now at the Centre, he plays games of hide-n-seek and tickling the children … And yet they don't pick him up on it … You can't even talk to some of them because it's just twisted into the fact that you must be lying as well. Or they said "Well this is for the Court to sort out". And you say "Well there's an AVO there for the children from the police. They're saying that they don't like being tickled or chased or touched or kissed or picked up or handled. And really, that's against the AVO". And they just say "Oh look, we don't

anything about that. We don't know anything about AVOs …"

Despite the Family Court's recognition of high risk to two young children with final orders allowing the father only very limited supervised contact with the children due to a history of sexual abuse and child abduction, another woman found that the contact service did not recognise the risks posed to the children and allowed a number of unsafe practices to occur:

… at Christmas he bought some clothes and the Centre allowed him to take all [young child's] clothes off except the underpants and shoes to put on clothes of his … if it was me, I would have said 'go into the toilet, put this on and come back'…and I'm thinking "it's too much invasive for these children', what they've been through. And when he first started going to the Centre, the Centre allowed him to take [child] to the toilet by himself, just the two of them to go to the toilet … And [another time] he bought himself a motorcycle and … he wanted to take the kids out to see his bike and the Centre let him take them out of the Centre and put them on the motorcycle and someone from the Centre took photos … And the head of the Centre, said 'well there was no problem, someone was with him'. But he'd sat them on the bike and they were taking photos and I said 'but you don't you realise he's already taken off with [them] before?'

Another woman recognized her ex-partner's threat to commit suicide, reported to her by a Contact Service worker, as a serious risk factor for their child, but no action was taken by the service:

They also told me that my ex-partner was also at risk of self harming himself, the Contact Centre said that. And then I asked them if they documented that and they told me "Oh they can't document that". And I just thought "Well, ok well if you can't document it and the supervision stops, if he's at risk of self harming himself, he could harm my [child] as well."[upset]

This woman was disappointed that there was no detailed assessment of her ex-partner's capacity to care for the children:

My ex used drugs and he drank a lot and I found him mentally not very stable. He's been complaining to me about, he wanted to commit suicide and things like that … I just want him to be assessed as well – whether he was emotionally ok and also capable to raise the children and in a competent way … And the point was, my solicitor said 'well you don't have any evidence'… So there's no evidence of his drug use, there's no evidence of his drinking … And all I wanted to know for sure whether he was off the drugs and I wanted to have a peace of mind for myself, but also the security for the children's safety for the children – that he has some sort of assessment done in which it has shown that he could handle the children in a positive way … So my concerns for the children have not been answered at all.

On the other hand, some women's concerns for the safety of their children resulted in their being labelled as "anxious". Their anxiety, rather than the risk posed by the perpetrator to the children then became the focus of attention:

And I just keep thinking 'as long as he's safe', but the no food and the unchanged nappy and the dirty one as well but as long as he's safe but that's the other thing that the family report said that I'm anxious about the situation but how can I be anything else? ... So on Saturday or whenever he has him I'm a nervous

wreck in the police station until I see him because he's threatened to take him, he's from [other country] so he's threatened to take him to [country] and that I'll never see him again … but that's another thing with the court that was very lax ..."Oh well he doesn't have a passport so it doesn't matter" and I'm thinking I'm not talking about getting him out of the country legally … all these kids that you hear about on the news how else do they get out? So until I see him I get you know in the afternoon I think 'oh he's back again safe'… but I really feel that people just don't get it which is fair enough because if you haven't been through it … I wouldn't understand all this. It's crazy!!

Inadequate risk assessment – failure to focus on the safety of women

As discussed in the first chapter, changeovers were frequently a context in which women continued to be subjected to violence and abuse from ex-partners. The data identified a number of examples of failures to assess and manage the risk to women's safety associated with managing changeovers. For example, although one woman's ex-partner was judged an "unacceptable risk" to his children on the basis of evidence of sexual abuse, he was allowed to have supervised contact with the children when the criminal case against him did not proceed. This outcome of the criminal charges may reflect the well-recognised difficulties of criminally prosecuting cases of child sexual assault (Fitzgerald, 2006) rather than the veracity of the children's allegations, which in this case were supported by forensic evidence. Although this man had threatened the woman's life and stalked her, resulting in the granting of an ADVO, the Family Court ordered her to relocate to facilitate contact, disrupting the new life that she had established. She was also required to provide her ex-partner with her contact details. She did not think that the Court took the threats and stalking into account at all since the final orders referred to neither these nor to the ADVO.

Even when the risk to women was identified, proactive protective action was not necessarily initiated, in this case by the police:

Constable [X] from [local] Police Station can't get over how angry and aggressive he [ex] is towards me. But they're still letting him go. And when I went and made a statement today, I said to the police 'I'm scared for my safety'. I said 'Even though I come to the police station [for contact change-overs], I still don't feel safe … And even the copper who's charging him – the sergeant, he goes 'he's losing it'… ' He's just got so much rage in his face and his voice when he sees you two guys' [woman and new partner]. That should be enough for those coppers – shouldn't it? He's dangerous. And he's such a big person too.

Woman 4 did not find that the protection offered matched up to what she was led to expect when attending the Family Court for family assessment:

The letter got sent saying… if there's been issues with domestic violence we'll activate a safety plan or something like that. So I did that and it was like the woman was really ticked off that I had done it because it meant that she had to then keep us in separate rooms and it was just really horrible. Then she said 'well I think you should go in while he's with [son]', and it was like I had no choice and it was just, it was just horrible and (son) was so confused because I kept coming in and out and in and out …

Another woman found that the contact service did not understand the dynamics of stalking and the risks it posed to her,

despite her ex partner having been convicted of stalking her:

> *He's not supposed to be there [at the centre] till 5 minutes before his visit starts … I drove down that street half an hour before my visit was supposed to start and my ex partner was already there and I spoke to the Contact Centre staff – because he's not to come to the Contact Centre until 5 minutes prior or to be within 500 metres of the vicinity and because there's an AVO as well that he's to abide by Orders, so I spoke to them and then she pretty much turned it around and said that it was my fault for driving up that [particular] street…*

Woman 13 experienced pressure to focus on the issues of shared parenting during mediation without reference to the violence in pregnancy that had led her to end the relationship. This is consistent with the 'future' focus' (Rathus, 2007) of the 2006 legislation, but is inconsistent with the empirical data about past violence and abuse during pregnancy as high risk factors for further violence (Campbell, Glass, Sharps, Laughon, & Bloom, 2007):

> *Whenever I said something, it wasn't – they didn't – they turned around and said that it wasn't relevant, it's not happening now. They weren't thinking about – they were relating to now, like where the relationship is over with, the child's here now what should be done about it?... They didn't want to know about the violence state of it. They didn't want to know that I was belted when I was pregnant. That he was harming his own child when I was – when it was in my stomach. They weren't concerned about that. They were concerned about how the father will relate to the child.*

Similarly, despite the history of abuse and violence by her ex-partner, Woman 7 was strongly advised that she was wasting her time in opposing shared care.

> *I'm not the first person to have an AVO out against him. He's got a history of it that I found out like as I was more into the relationship. Pretty much most of the relationships that he's been in have resulted in him having an AVO put against him. And he's been to Court for other violent offences. And drugs charges as well. And so even stuff like that – it seems like that doesn't even matter.*

The emotional toll on children

The women lived with the impact on their children of past and ongoing abuse.

> *[Older child] is glad he's gone, he tried to kill himself a couple of times. He said 'I can't live in this house with that man any more mum'. He needs counselling. What he did to him. I shouldn't have let it happen. I feel really bad 'cos I didn't do anything about it. Like I tried physically to get him off him, but he'd just push me over. He's very strong.*

> *And my children will come to me "mummy I want to die" like the eight year old even, and the thirteen year old when younger used to say it. And that's really hard to hear your children say that.*

> *And he's been having dreams, he's been telling me recently he goes, "Mum they won't make me stand up in front of my father and have to say things will I?" Like in a court room. Thinking he's going to have to get up on the stand and be a witness and say things in front of their father. Because they are scared of*

[2] *'Parental Alienation Syndrome' (PAS) is a term coined by American Psychiatrist Richard Gardner. Based on no empirical evidence and subsequently rejected in the scientific literature as "junk science"(Meier, 2009, p. 4), it proposed that vengeful mothers fabricated abuse allegations and turned children against innocent fathers in custody matters. Initially referring to child sexual assault, it later became associated*

saying things to their father because I think they are scared of the repercussions. And because they're being forced to spend time with this man if they say anything against him he can make their life hell.

They also faced damaged relationships with their children as a result of the abuse:

My [teenage] daughter … took off on me, living out on the streets, living with friends – she's cut and razor bladed her arms, she's ripped her arms apart, she blames me for everything and I keep saying 'you're right, it's all my fault'. I mean, it is my fault for staying with him, for allowing everything to happen because she was the one that got hurt the most.

They also had to cope with the children's distress at spending time with their fathers, and in particular with being the ones to have to force their children to do this:

And just trying to get him [child] to understand – he comments to me that before he has to go and that when he comes home – the first comment to me after 'I hate you because you forced me to go'… I get the anger. I get the frustration. I get the whole 'why do I have to go – I don't want to go – I don't like going – I don't want to be there'. And it's all directed back at me which is basically making me have to take 10 steps back and go 'it's not his dad, it's [son], he's upset and he has to have someone or something to fire at'. And I'm that firing line.

They just were terrified of having to see their father …This morning [child] said, said 'Tell [name] we don't want to see dad, that's because he has done really mean things to me and my sister and mum. I don't like him and I don't want to see him.' [crying] So, it's still the same … That really breaks my heart … from the time he left the house, it was – 'we're so glad dad's gone. We don't want him back in the house.' [Child] used to hide under the dining room table with a sword and say 'don't let dad come into the house. I'll give you my sword. You can get him. Don't let him near me again.' And then [tearful] there's this constant pressure that if you don't allow the children to see their father, that you're taking something away. You are – you're taking away a violent, abusive, lying man who hasn't changed in years.

… my youngest, she doesn't want to go to him and so she cries, she screams, she 'no, no, no', she's grabbing onto my neck as he's grabbing and she's kicking him because she doesn't want to go … And so I worry about the impact that that's having on them. And so it's – I find it's very distressing some of the things they come home and say. "My daddy said he's going to run over you" or "My daddy wants me to go to karate so I can bash you". Like it's very distressing.

Another woman talked about her unease at having to encourage the children to see the father about whom they had alleged sexual abuse. Clearly, in another context, a mother would not be expected to force contact between children and a suspected sexual abuser:

… like I always tell my children it's ok to have feelings – if you want to be angry or happy or sad or any of that, that's ok. But when they come up with these feelings: "I don't want to go", "I don't want to see Daddy", "I don't love Daddy", "I don't like Daddy" or "Daddy hurts me", "I'm scared of Daddy". I still have to say "You have to go and this is the situation". And their feelings are discounted so, in one way you're supposed to go and teach them protective behaviours and in another, you know, it teaches them to ignore their feelings as well.

with all allegations of abuse and domestic violence. Despite its lack of scientific validity, it has been extremely influential in many professionals developing a sceptical approach to allegations of abuse within the family law context and has discouraged investigation of allegations. For a full discussion see Meier (2009).

So it's very hard. So you're sort of fighting contradictions along the way I suppose at times.

Helplessness at being able to assist their children was a common feeling:

My [8 year old] son rang me in tears wanting to come home and I'm saying: "I'm sorry I can't come and pick you up I'll be in breach of the orders if I come and pick you up" and I didn't want to start any of that. So I said: "look if you really want to get out of there you ring and you tell another adult, somebody that you know you want to leave or whatever or you make moves to leave the house yourself." So this time he did. It was pouring with rain he had had a fight with his father and his father had told him to get out so he packed his bags, his school bag and that sort of thing and he met me down at the park. He said "mummy I'll wait for you down the end of the road at the park to pick me up".

For others, helping the children to cope with fathers who did not maintain contact was stressful:

I mean, the kids find it really, really hard with the father because even though he has – weekly phone contact – there'd be a number of times where he's gone months without ringing them. Even though he has mid-term weekend contact. He's only turned up once … And at no point, on any of those times, did he give us advanced notice except one occasion that he wasn't going to come. So the kids get ready, they get packed and they get – they don't want to go, they do want to go – and then that happens – and my eldest son particularly just sees it because of dad doesn't want to spend time with me. And so it destroys his ego and self esteem … He's also repeatedly pulled a knife on himself and says he wants to die. And most of those incidents have been around an issue with his father. They've all happened around an issue with his father.

Often the times after changeovers of care were particularly difficult:

Yeah that first night back. You know, even the eight year old, he calls me a slut a whore. And yeah, I get hit.

The kids are totally different when they get back to me. Like I said before. My daughter threw the TV at me because her father told her that I have a boyfriend so she didn't speak to me for three days.

… he comes back I can't even describe he's like a caged animal when he comes back it takes me two days to bring him back to normal so I really value those days that I have off [work] … and we have a contact book and that's meant to be for [son] only and he [ex] puts all these stupid messages in there for me and so he'll literally hand me the contact book, I'll grab [son] and he will look me right in the eye and say "mummy" and hit me and then look at him [ex] for approval. And I'll say "no we don't hit in our house" and hold his hand down and say "don't behave like this" and he's just, a completely different child when he comes back, it's horrible.

Children denied counselling

Despite the high levels of distress of the children described by the women, obtaining professional assistance for them was not possible in most cases. For some, this was a decision made by the Family Court as in a case where the Court suspended contact while criminal matters concerning allegations of child sexual assault were proceeding. However, the mother was ordered not to involve the children in counselling over this period of time in case the counselling "affected

proceedings." Yet good practice in child sexual assault treatment links recovery to timely access to support and counselling for children and non –offending parents (Lovett, 1995; Plummer & Eastin, 2007). The court order prioritised the legal process – which was conducted over several years – over the right of children to counselling to resolve the trauma arising from sexual assault by a trusted adult.

Other women were advised by their lawyers that seeking counselling could jeopardize their legal position:

> *Well they were querying that [son] had [mental health condition] or he was so traumatised by the actions of his father that he was coming up with [mental health]-type symptoms and he was seeing a paediatrician for that. And now the paediatrician feels that it's more that – like he has a post traumatic stress disorder and this has caused problems with his speech, has caused problems with his learning, it's caused problems with his behaviour – he has a lot of acting out behaviour around contact visits. And sleeping – he's had a lot of nightmares. So he feels it's more to do with the fact that he has a post traumatic stress disorder. The paediatrician said he needs counselling. So then you go to the solicitor and the solicitor said "oh, it's still a bit dangerous for you at the moment".*

Others encountered agency policies that precluded their children from receiving counselling:

> *My son was seeing a counsellor at the local Area Health Service, except at the time we were in Family Court, she didn't want to see us because they didn't want to be involved in Family Court matters … "We don't want to be involved in Family Court matters. We don't want to be subpoenaed. It is our policy."*
>
> *… one of the main things that I wanted to do was to try and get my kids into some sort of counselling because I can see that their self esteem is getting to them and you know the way they are abusing me … so there is nowhere I have found, nowhere. Most of these places like [agency] and places like that they won't see the kids until they are out of that traumatic situation so that means until they are no longer in contact with their father they won't touch - won't even look at the kids. And I think the kids need it now they need to learn how to defend themselves against this kind of abuse … they will only clean up the aftermath but while they are in this relationship with this abusive person we don't want to know 'em.*

In several other cases, the women's ex-partner would not agree to the children's having counselling as in the following example where the mother had searched to find an agency willing to help:

> *So and I thought ok, I've got to do something about that because he's [child] finally disclosed why he doesn't want to go, he's uncomfortable and he doesn't like it etc, etc. And so I rang up – well, first of all I rang up counsellors to see if I could get my son into some counselling to see – he wasn't telling me a lot of this emotion, so I wasn't too sure if he was making it up – like kids can make up stories. Sometimes kids exaggerate things. So I thought the best thing to do is to send him to go and see someone and make sure that he's been safe and that he was OK … they wouldn't want to take the case … [finally] they said, ok we are willing to take the case but we need to get the father's permission for counselling. And that became a problem because when I had spoken to the father about permission for my son to*

have counselling, he refused. And that was the end of counselling. I couldn't get counselling for him.

Whatever the barrier to the children's counselling, the result was that the women were commonly left as the sole supporters of distressed children, at the very time that the women were often at their lowest ebb in dealing with the complex systems and their children's distressed and difficult behaviour:

It's up to the mothers and we're the stressed ones we're the ones going through all this you know crap and we're lucky if we can get out of bed half the time. You know, let alone trying to stand up for our kids.

The emotional toll on women

As a result of their experiences in attempting to achieve safety for themselves and their children, the women felt that they were on a lonely, largely unsupported journey. They expressed feelings of helplessness, fear, injustice and anger about their experiences of negotiating the service system. Overriding all other emotional responses by the women was **fear for the well being and safety of their children**. Some of these fears related to risks of harm and neglect while the children were in the care of their fathers.

My [toddler] child will be neglected. During the night when he wakes up and he asks for his mother, well the father doesn't wake up at all because he'll be drunk. (Woman 18)

When I got the orders, I was still terrified because I feared for the life of my children because he drives recklessly … I thought that my children would probably end up being seriously injured or killed when they're in the car with him because his parents live at [rural town] and so he would drive up and drive back with them in the school holidays … when it was getting close to school holidays and I knew he was taking them [away], for that week before I'd be really praying hard that God would keep them safe.

Others feared the impact of a poor role model on their children. For example:

If the harassment keeps going, if the harassment keeps going – [child] will be just like him – he'll move away from his mum – he won't want nothing to do with me and then he's going to his father and drink, do drugs, smoke – do what he wants. And what can I do to stop him? I can't do anything to stop him.

Because this has already been going on for four years and I don't know how long this custody thing will take. It could another year and other half year and in the meantime these kids are learning all these bad behaviours you know that it's the worst role model out even though its their father, but then it's even more so. They're being pushed onto this bad role model with no defence. So how are they gonna' come out any differently? So to me the problem will get worse. Cause these children are will grow up with all these bad ideas and being and they're being forced to learn by putting them in contact with their fathers. How are they going to know any different?

Knowing their ex-partner's capacity for violence filled some women with fear about how the children would cope with this on their own, without their protection. For example:

… overnight stays is a major concern to me because, in my experience with him when we lived together, the evenings and the mornings were usually very difficult because he was very tense, very

easily annoyed, irritated. He usually wanted to be left alone to watch TV and couldn't handle any noises or somebody walking in front of the TV … So that was a very stressful time for me, because I was trying to make the children do what their Dad wanted without putting stress in it … [Those situations] could easily still happen but I'm not there to protect them any more and that's my biggest fear. Those would also be the things I won't hear from the children because I feel that they think they were the ones that were at fault … My hope is that they are all right but I don't know.

… because you don't know if they're safe or what's going on at that house. And if you've seen – there was never any violence to the girls but there was to me and I know, as I've seen him snap, and you go 'what happens if that happens when the girls are there?' If I was there to stop it – what happens if I'm not there to stop it?

Several of the women feared lethal violence towards their children:

Well I can't see there being a future because I'm scared [ex partner] is going to do something [upset] – I do I fear for the kids' life if they go with him – I'm scared that they're not going to come back. Just because of his mental illness and no one will listen. [crying]

But I know at any time, my ex husband could go off the rails and hit the roof. Now it only takes one split second, whether it's down the track or whenever, whether it's at a supervised visit which he would be mad to do, it does happen in some cases. Something could happen. Now it's too late when something's happened. And I said to that to DoCS a couple of times when I've had to speak to them. It is too late. I don't want turn around one day and be Karen Bell on telly and my children never come back to me again. He lives [where it's isolated] and eventually he'll get unsupervised visits.

For some of the women, there was a sense of guilt that they had escaped the abuse and violence to which their children would continue to be subjected. Although they had not, in fact, 'left their children behind', they were aware that the children were now alone in the face of their fathers' behaviour. For example:

And now I'm away I'm free and I'm so scared for my children because I don't want them being hurt the way I was you know, I don't want ... I'm strong and I got through it but I just hope my kids will get strong as well cause they will never get away from it (crying). Really, I mean … (crying).

This led two women to contemplate returning to the abusive partners in order to protect their children:

If he wins then I will go back to him because I will not feel safe with my [child] being there.

Because there's been times when I've considered going back to him because it may be easier. Like even now, I think in my head that it would be easier but I won't do it.

Loss was another emotion expressed by the women, as expressed for example by this woman who had moved from an affluent suburb to a much less affluent area:

… But all the facilities that I had in [previous location] like my personal doctor, our doctors , paediatricians all those sorts of things, community groups, all those things I was in for the kids, the kids group, that's all [gone]- So yeah, but moving from [affluent suburb] to here, being a single mother … and living in the [suburb] area … I didn't want the phobia of being a single mother in

a lower area. I mean don't get me wrong it's a great place, the people here are great and you don't know anything about it until you move but it's the only place I could afford. And now I like the house I'm in and I like where I am. It's good. But it took me a long time, and that was a part of my denial too I think ... For someone who worked, very independent, had my own good job had these things on my own, had lots of things never had to worry about money or lifestyle yeah, that was huge. Huge!

The women continued to feel the **control** exercised by their ex-partners through use of the issue of the care of their children, exemplified by Woman 16:

Yep. And for him, it's not about the kids. It's about ruining my life.

As a consequence, they experienced feeling **a lack of control over their lives** and of **being trapped:**

Well what's hard for my life at the minute now is that I got myself away from him but I haven't. He's always there and I hate the – he's got a say in my life for the next 18 years. Like if I want to move for work – like he doesn't work, I do work. If I want to move for work, I pretty much have to ask him for permission. I can't take the [children] with me.

I mean, I would so love to get out of the box I'm in and go somewhere different – different places, different face and start afresh. But I can't. And it is so frustrating that you just don't know which way to turn.

My life has exploded in front of my eyes and I have to pick up the pieces and the court's not helping me pick up the pieces, it's like scattering them even further. So now I have to leave it in everyone else's hands to put my life back together ... it's really hard.

Many of the women experienced a sense of injustice at their experiences of navigating arrangements for the care of their children. For some, this was connected to their perception that the system did not recognize their victimization and the trauma arising from this; for others, for the impact of decisions on their children. Connected to this sense of injustice for some of the women was **anger**:

Why the hell should I miss out on any time with my children because I left to save my life? How is that fair? It's just not fair. It's not. He's taken the right of me being able to raise my children off me because he [description of extreme violence and the resulting physical harm]

The Judge was absolutely personal bias. I have never felt the desire to actually kill somebody with me bare hands than that man – not because for what he's done to me – he's sentenced my [child] to a life of absolute unbearable cruelty and there's nothing I can do.

For others, the sense of injustice led to feelings of **despair** and **helplessness**:

I feel nothing that I have requested has been done and has not – it has just been disregarded.

And the thing that's hardest is because you're there for your children and it's their welfare that you're going through all this for. And because you don't know whether he's going to get the children, how the Court's going to go. If anything goes wrong, which my counsellor has said it has gone for people she knows – where everything's gone wrong. And then the children are now at the hands of the perpetrator. And there's nothing they can do.

This has been it seems designed – the whole process set up by the government is designed to put

children back with an abusive, dangerous parent. And we're not listening to the children. I've seen so many children at Contact Centres that are suffering trauma from having contact. I've walked out with other women and the children have said "Why have you left me in there? Why did I have to go and see him?"

Nevertheless, the women did not give up on their lonely journey to try to protect their children but as this woman argues, it is difficult for women to play the protective role that they wished for their children:

But it's been more, at times, I suppose, like a roller coaster ride, you pick yourself up and you put yourself down … Because you've got to keep going. You've got no choice but – there's no support, I've found for mothers in there and in the Court system. There's no voice for the mothers. I don't know what it's like for a father because I know there would be fathers too that go through this … But there's no voice. There's no voice there … So I've tried to do everything that's been recommended or said and you wing it, I suppose. And you're in the system. It's not working but there's no other choice … something's got to happen because they have no voice, the children, and as a mother I am their voice and I'm not allowed to have a voice. That's not right.

Mothering under adverse conditions – "compensatory work"

The women were mothering under extremely stressful conditions. Marital separation is a time of stress and challenge, made more complex and difficult when a woman has separated because of domestic violence (Walker, Logan, Jordan, & Campbell, 2004). They were coping with financial pressures, in many cases with ongoing harassment, with the emotional impact of their experiences of abuse and with the losses they had suffered in order to be safer, such as their homes. Managing parenting arrangements was a further source of stress. For example, one woman with shared care on an alternate week basis, found that this had effects on her ability to earn a living. This is an important consideration because poverty is a major stressor for female-headed, single parent families (Patrick, Cook, & Taket, 2007). The shared time also added layers of complexity in organizing her life and that of the children:

…with me, going from mother to single person and not having to pick them up from school and all that is confusing … I'm not in a routine … And what about work? So I don't have them one week so I can work as much as I want and then the next week I can't work much at all. What employer is going to have me there? At least if I have them on a regular routine basis I can organise after school care. And they can regularly go to after school care. You can't go to after school one week and then not the next week! That too unsettling. So therefore because they don't go to after school care with their father I don't put them into after school care because that would be too unsettling. I try to keep as much to the routine their father takes so, there's a lot of logistical problems, things like birthday parties. When you get a birthday invitation a week prior, I can't give them permission to go because they are with their dad that weekend or something so I don't know what to do about things like that either.

For others, travelling long distances to contact services with young children was difficult:

And that was a 4 to 5 hour drive for contact where I was living there. Because he wouldn't agree to have

it where the children were living. So we were driving several hours for a 2 hour visit.

And another thing is now I don't have transport, I have to take two trains out there [to the contact service] and two back. That's four just to see him, in one visit. And this Saturday is track work and I just learnt that I've got to catch a bus to [suburb] – then from there I have to catch a train to Central and then a train to [contact service suburb] and not every train goes to there … And that's a lot of travel for 2 [young] children. And especially when they know they're going somewhere like the Centre.

As discussed above, the barriers to accessing mental health care for children left the women alone to assist the children's recovery from traumatic exposure to violence and abuse and with their ongoing relationships with their fathers. Yet despite their involvement in multiple and exhausting court proceedings and agency visits, they demonstrated determination to assist their children through difficult times:

I'll move heaven and earth to protect my kids!

But when it comes to my kids, nup. You know I'd walk coals before anything happens to them.

Despite the widespread beliefs about women attempting to 'alienate' children from fathers (discussed in Chapter 3), many of the women were engaged in efforts to assist the children to develop a positive relationship with their fathers, which they saw as important to the children's development and well being. For example:

I always say to my kids, even though I'm aware of what [father]'s all about, I've always told the kids to love their dad and respect him, it doesn't matter what happens between mum and dad, that's between mum and dad. I've got my life. I've got a great life. Dad's got his life. He's got a great life, because he's always saying he's going out for dinners and stuff like that, which is all good. And you kids have got a beautiful bright future. And it's all about you kids now. And I keep installing that into the kids. Mum and dad are grown up, we can sort it out. Don't get involved.

Despite their own emotional distress, the ongoing struggle to achieve safe parenting arrangements, and the everyday stress of caring for children with very limited resources, the women demonstrated an approach to mothering that seems best described as "**compensatory work**". That is, they appeared to have to work extremely hard to make up the ground lost to a system that they had looked to for help and protection but that they felt had let them and their children down. In the face of their struggles to achieve safe parenting arrangements and the children's distressed behaviour, the women showed determination to support and assist the children to cope with the trauma they had experienced and the ongoing unsatisfactory relationships with their fathers. For example, in the face of the failure of the system to protect her children from a situation in which they were exposed to inappropriate sexual films and intrusive behaviours, one woman instigated a form of "protective behaviours" to try to make her children safe when in the care of their father:

I'm trying to teach the children that when mum's not around, always go into the bathroom. Always have your underwear, singlet and pyjamas ready, your towel – never, ever let anybody come into the bathroom when you're in the shower because I know my ex hangs out with people that are pretty similar to him … And I use to say to my kids, like "I don't want anyone, whether it be my brother, your dad, his friends, his cousins – I don't want anybody

coming into the bathroom and always be dressed appropriately". And when I find that my daughter says to me that dad comes into the bathroom – mind you there are 3 bathrooms in the house – and when she tells me that dad comes into the bathroom to go to the toilet, again I find that very disturbing.

Some women described working very hard to help their children regain composure after stressful contacts:

I take them out afterwards and they go to a park. In summer they go to a pool, and in winter they go to a park. I let them run wild, you know, like within reason. And they get it all out of their system. Then we go home. We always go somewhere and let them get it out of their system because I see the eldest one – she gets really upset and it takes her sometimes a day or two to settle down. Sometimes even when they go home, they're still unsettled and I've got to deal with all that.

Dealing with children on return from ex partners' care demanded extreme patience and understanding on the part of the women:

With [son], I'll cop it for 4 days where [son] is just absolutely unbearable. You can't do a thing with him. He's literally like a caged cat – you've got to pull him off the ceiling and try and calm him down constantly. "[Son]. Stop. Breath. Calm Down. Come down about 10 levels mate. Talk to me. Don't yell at me. Don't scream in my face". You go give him a hug, his fists are raised. If you go anywhere near him, "Mate, I was just going to give you a hug. I'm not going to hurt you". He goes "I know you're not going to hurt me mum, but" and there's always a "but" and then he'll run. And you sort of think "aarghh".

One woman, who was further down the track than most of the other women, having been separated for many years and returning to mediation to negotiate changed arrangements, talked of how she helped her child to cope emotionally:

But I think in terms of my son's mental health or emotional health, that he has been affected over the period of time in a way, where I could say I was affected, when I was living in that situation with him. And what I do and what I often suggest to people who are in this position, is to every time your child comes home, try and spend some time with them and talk to them about how they feel and about how they might feel with things, and affectively when they are with their fathers. You let them know that they can talk about it … and just teaching them the tools to survive really … So the best thing I can do now is the knowledge that I do have is to talk to him, talk him through it and allow him to be able to express whatever he can at home, when he comes home. And I think that makes me feel good that I guess I've done my job as a parent and also in terms – we tend to feel guilty about 'well wasn't there more that I could do to help him'. But allowing myself, and forgiving myself well that I did everything I could. There wasn't anything else that I could do.

Another woman drew on her own experience of surviving emotional abuse to help her children cope with their father's erratic contact and emotional and verbal abuse:

I guess more so since I left because even I wasn't really aware of what was going on while we were together. I was just in a bad space and … but I've done a bit of counselling here and reading and stuff and I can see it all now. Now that I'm totally away from it. I just explain it to them at times and stuff … Because they're thinking why doesn't he [father] want to hang out with me or do stuff with

me? You know like if they're trying to get his love all the time and he won't give it. That why I say: "that's nothing to do with you that's just the way he does things."

She was working towards arrangements that would provide the children with as much security and good role models as she could:

So, what I'm proposing with him having the children school holidays is that my idea is that at least I can take care of their education, their stability I can find good role models in their lives which I'm trying to do … But as long as I can control their schooling and make sure they're doing well at school and that sort of thing it's a greater more important part of their life. So no, it is a hard one because I know that he [father] can affect their self confidence and all that sort of stuff I mean it took me a long time to get over the way he treated me and until I knew what was going on but I suppose that at least I've been through it and I'm there for my kids and I can explain things to them so it's sort of helping to back them up and make them more resilient…

Woman 20 felt that she was betraying her children through forcing them to have contact with their father after their disclosures of sexual abuse. However she described how she was trying to prepare for a future where they might have to have unsupervised contact, so had to balance the children's distress in the immediate term with their longer term protection:

… because I've thought about later on, if he happens to get supervised/ unsupervised or whatever, my children will always probably have to have a, you know, that contact with their father despite what I believe, or whoever believes, that's gone on and I've got to think of my children's best interest in the adjustment. So if they have little increments and it's supervised, and during that time I've been able to think ahead about toilet training, and all that sort of thing – so it cuts down on – obviously when we've had the sexual part come out, all the things that I can possibly do to protect my children. So in one way, supervised contact has been very hard on the children and myself and the family and then we see the aftermath of it – you know to do with tantrums or upset or a couple of days or the week before or whatever, not wanting to go … I might be seen as not a very good mother for doing that but my children come first, and that includes their emotional and mental state and if this is going to help them in that transition so be it. I've got to think of not just now and here, but down the track with those children.

One case did not fit this pattern. A woman who felt that her relationship with her child had been totally undermined by her ex-partner, had agreed to the child residing with the father and to having no contact. Through relentless contravention litigation, her ex-partner had carried out his threat:

He said to me when I left that he will have [child] and he will put my life through hell if I left him. And he'll have me in and out Court until he got [child].

Inadequate response in one part of the system flows on to the Family Court…

The Family Courts rely on evidence from interventions in other parts of the domestic violence and child protection systems. If the response of other agencies is inadequate, the flow-on effects can impact on the decisions of the Family Courts as they do not receive accurate information. As previously discussed, one key example of this problem arises when other agencies, particularly DoCS did not or were unable to investigate allegations of child

abuse (including exposure to domestic violence), but referred women to resolve the matter in the Family Courts. As the Family Court cannot investigate child abuse allegations (Family Law Council, 2002), this creates an enormous 'gap' (Higgins & Kaspiew, 2008) that limits the extent to which children can be protected as protection needs to be based on thorough investigation and assessment of allegations. Examples were given in Chapter 2.

In other cases, police action is the issue, exemplified by the experience of another women, where evidence of criminal assault was lost and the criminal justice response did not reflect the seriousness of the violence, nor the fact that it occurred in the presence of a young child:

> *I was severely assaulted, I was beaten unconscious … I was attended by an ambulance at the police station. The interview was a disaster. The kids were in the room with me the whole time. There was some cop having trouble with the computer – he sort of having to re-type it out again, the kids were there. I was in such a state, the kids were in a state – and as I said, the kids were with me the whole interview process, the whole time I gave my affidavit/statement, which looking back now is totally inappropriate. The cops didn't know how to work the camera. My photos that they took that night ended up going missing … my photos showing my injuries went missing …I went to the Court and he was convicted. He got … a good behaviour bond, an AVO and a $200 fine … When I read up on bonds they're supposed to be only used for minor offences and stuff like that. But he got a bond for beating me unconscious. And doing that in front of my kids.*

Although it is often asserted that Apprehended Domestic Violence Orders are easily gained and are taken out as a family law tactic by women (Flood, 2009; Hickey & Cumines, 1999), the experience of women in the study in attempting to obtain protection via an ADVO, was far from 'easy'. For example, after many court hearings, one of the women was not granted an ADVO, and her ex-partner was acquitted of criminal charges, because of problems with the police investigation, leaving her with little evidence of his abusive pattern of behaviour, unprotected, and reticent to use the law again:

> *Then they arrested him because he was in breach of the interim AVO and they charged him with intimidation and harassment and then we went and had three mentions at [local] court , then … his solicitor asked to move it to the [other court] and we ended up in front of [Magistrate name] and it was a day hearing just on the charges and [the Magistrate] just dismissed it because [the Magistrate] said the Police didn't conduct their own investigation and all sorts of stuff and it was just horrible ... it was just horrific and the police prosecutor put in an application for an errant law and all this sort of stuff but it didn't proceed … 'cause at [Family] court his solicitor was saying that all the charges were dismissed and he was exonerated … And the DVLO [said] … they would have just not charged him and you would have had an AVO, but what comfort is that to me now? … it was four or five days in court and you meet the police prosecutor in the morning ... they've never seen your file and he's paying a bomb for some solicitor that's that aggressive and that on the ball with it and I just don't know that I would go through all that again [to try to get an AVO].*

> *Well the first one [AVO] that I went to was a temporary one … And he had a really good solicitor and because I'd let him into the house after leaving, they thought*

that I wasn't in fear him and they asked me about this one specific date where I let him in. I forgot the date. I mean, I remembered the date but they said "Was that Wednesday or Thursday?" and I said "Thursday" and she said "No, it was Wednesday"… And then she said to the judge "She doesn't even know what day it was" and then the AVO wasn't granted.

Even though the children in another case had been subjected to extreme physical abuse, they were not protected through the AVO system:

The Magistrate wouldn't allow children to be put on the AVO, in Court … The police actually applied for the children to be on my AVO and the Magistrate took them back off. And the police even said to me: "We'll put the children on this AVO but I can tell you now this Magistrate will not allow them to be on there. He will take them back off".

Systemic issues such as these 'downstream' compound the difficulty in bringing evidence of domestic violence, child abuse and exposure to domestic violence to the Family Court, beyond the difficulties arising from the often secret and hidden nature of violence in families.

Perpetrators are not held accountable

A source of the women's sense of injustice was their observation that their ex-partners were rarely held accountable, either for their violence and abuse, or for accepting their responsibilities as parents. Despite the strong messages that they received about the importance of fathers to children, discussed in chapter 3, agencies often did not hold them to account, and little was expected of them. This seemed to contrast with the scrutiny that the women experienced as mothers.

… I've been repeatedly asked quite strongly if I wanted to use the [domestic violence child support] exemption … Because they [Child Support Agency] don't want to deal with him. But even though nobody takes any notice of it, I refuse to do it because I still want it to be seen that he's not – that he's played such games with child support and then he's getting out of paying child support …

And when we were in a supervision centre, he repeatedly didn't show up … he'd only provided notice on one occasion voluntarily … And on third time he didn't show up, the Centre just simply couldn't get hold of him and even when I went a fortnight later for the next contact, they said that he'd never returned any of their calls, any of their messages and they said 'oh we hope he turns up this time'. So even though that broke their rules of the contact centre, not providing notice, they wouldn't do anything about it. And he also broke other rules at the centre as well and nothing happened, there were no consequences from that. And it didn't make any difference when it went to final orders. So, to me by constantly letting him get away with it, he just keeps going.

The women also noted that the men who had abused the children were not expected to pay for arrangements put in place to ensure that their contact with children was safe.

Family Court has taken the attitude that you should both share [costs] and I mean, we used a Contact Centre and so we both have to pay the cost of contact. But the reason we use the Contact Centre is because of domestic violence and because it's been deemed that we should do that for my safety and so that the kids aren't exposed to more violence.

The women's experience also

highlighted the lack of knowledge by many practitioners about the specialist therapeutic intervention that is required to address the parenting of abusive men that has resulted in harm to children. Generic parenting courses, for example, are inappropriate with this client group (Scott & Crooks, 2004). Nor is anger management accepted as good practice in intervention with men who use violence with their partners (Research and Education Unit on Gendered Violence, 2003). For example, the Independent Children's Lawyer (ICL) in one matter was prepared to accept minimal evidence of effort to change:

> *And the children's lawyer saying "Tell what me counselling courses you've done to make you a better parent?"… And he just "Oh yes, I've just done some anger management courses and I've done a parenting course". And she said "These have helped you to become a better parent?" And he said "Yes, I know I've done some terrible things to my children but because I've done these courses at Relationship Centres" and they're only about 6 weeks long, after 30 years …*

Although some men pushed for time with the children, it was not uncommon for them to actually have the children cared for by others, as this woman found:

> *… his nominee, which is his girlfriend, who is not in the paperwork anywhere – which is one thing which really bugs me – because she picks them up from school and pre-school. The original arrangement was she picked them up, she'd deliver them back to [ex partner], right. But she picks them up now, and because [ex partner]'s working, he's not getting home until 7 at night, my children are in this limbo phase where they're picked up at 3.30 … And he's not there until 6.30 or 7 o'clock at night and yet she's not on the paperwork, she has no parental role over them, and yet she's got them for this timeframe and there's not a damn thing I can do about it.*

Because of the ongoing financial abuse experienced by many of the women, this was an issue that women thought demonstrated the failure of the system to hold abusers accountable:

> *I think the Child Support should be taken seriously by the Family Court and maybe you can get like a certificate from the Child Support Agency, that your child support is up to date. And that maybe you can't bring Family Court action unless your child support is up to date. And your tax records are current. Because he's on a provisional assessment and has been - Child Support – in the first assessment period, he did a verbal income declaration of his income. Not a tax return – but a verbal, over the phone income declaration … No other government department would accept … a verbal income declaration. See me try and pull that on Centrelink!*

7. What Helped and What Needs to Change

What helped?

Just as no one agency was reported to be universally unhelpful in their response to the women's efforts to achieve safety, helpful responses were reported from a range of agencies. Some of the women reported practitioners who had gone "beyond the call of duty" to assist them. Unsurprisingly, given their specialist role and understanding of domestic violence, **domestic violence services and workers** were found to be extremely helpful.

> *Well the most significant part for me was coming here [DV service]. Finding a place where I could be heard and validated for what I'm going through so that's given me the power [crying]. I know I'm not mad and that I can talk to [DV worker] and get the power to help me and help my children.*

> *And I went through the women's domestic violence group. And I must say that was just wonderful because that's where a name was put onto what I was experiencing, which was really confusing for these years that I'd been with him.*

> *They've been wonderful, wonderful. Helped me with – because I was so threatened by him and so scared of him and I just sort of like wanted to keep the peace, like I didn't want to put an AVO on him, like I was all shaky … Being very supportive in every way. Just helping you deal with everyday life. Building your confidence. Being able to support me with solicitors, with mediation, just advice …*

> *… but she totally understood what I was talking about and could empathise with what I've been through and I just it felt, You know I'm not mad!! you know, you take it all on board everybody tells you "oh but he's such a nice person he's so charming" you don't know what to think you know you go nuts inside yourself and finally someone says you're not mad this is what you've been subjected to and that made it all clear… And that's very empowering. And then working with that mind more and just sort of focusing on me and how I can help myself get stronger and better and not let all his stupidity affect me and just leave it all there with him.*

Practical support from domestic violence workers, such as accompanying woman to the Family Court, was appreciated:

> *… it's very hard when you're going through the Family Court – because a lot of it you're dealing with everything really in the open for the first time. And it's - for some women, not all, I don't know is that as much as you may have to come to terms with some of this, it's the first time that your family are hearing it and you've got to tell them because they're going to hear it in Court – but I didn't know that at the time so I had to tell them because I didn't want it to be a shock – so*

you're dealing with all this emotion going on with family who are very angry and upset and all these emotions that they're going through – and then having [counsellor] there and knowing these sort of person is very good to help you go through Family Court, I think – I think having actually somebody to attend Family Court with you and even to a point liaise between your family because that is quite stressful I found.

Although not a specialist domestic violence service, some of the women had received valued assistance from family support services:

Well I know Family Support have been fantastic. That counselling service. They are the ones that mostly at the frontline and in touch with all this so they – and things and things like this should be taken into account when they're making laws and things and trying to make the best possible system because they're frontline, they see it all the time.

Schools – principals, teachers and counsellors - were also a source of support to both mothers and children in many cases. For example:

… [father] at one stage, said to the school "I'm coming up and you won't stop me" – there was a parent day on. And the school said "Look, I'm sorry, but the Court Orders say you are not to have contact with the children unless it is supervised and we are not able to arrange supervised contact and you're not to come to the school". And the Principal spoke to the children and said: "How do you feel"? and they said "We don't want him here. We don't want to see him". And even though they're quite young and the Principal said "The children don't want you here". And I thought, oh thank goodness someone listens to the children.

The school also assisted another child with the transition to and from the father's care:

… before he goes, he is in an absolute panic about going [to his father's] – he's now picked up from school. His teacher will walk him to the gates and stand with him until he's picked up because he's too petrified to stand there by himself and when he comes back to the school on Monday morning, they've allocated up until lunch that [son] has free space. He can come and go from the classroom, he can go and sit in the office – he's become very close to the Vice Principal. He'll go up and sit in the Vice- Principal's office with him and they'll talk about whatever…

Some lawyers were also extremely helpful:

[*Son] has been in and seen his solicitor [ICL] once in [city]. He came out very relieved after that. He got to speak to her. He got to tell her a little bit about himself and that sort of thing. He was quite good with that.*

And yeah, from the first time I saw the barrister, he said the next two visits, coming to Court, I won't charge you. You pay the first one, that was arranged for me to pay. And then the next 2 visits, like coming to Court, I won't charge you …[he said] " However long it takes, I'm behind you, in front of you – I will fight for you. It won't be a charge" … He said "it's not right what he's [perpetrator] doing".

Well yeah what he did was he put it through with a settlement offer because we owned a house and I owned half of it and he wanted me to accept a lesser settlement in exchange for less access and they said if I didn't accept that he would increase the time that he wanted with [child]. But luckily a child solicitor had been allocated and

she said "this is not on we're not trading money for time." So they did the parenting first and then they did the settlement so after the financial settlement … so it worked out quite well that he tried to draw me into this reduced settlement and they split up the property and access.

… Legal Aid don't pay her enough. I can tell you that much. She'll be on the phone with me for two hours and not getting paid for it trying to settle me down, because sometimes I'll be hysterical. Trying to get information out of me and telling me that things are going to be alright.

… she [lawyer] said to me that in 26 years of doing her job, she hasn't met anyone like my husband. And she said she would feel immoral if she didn't stick with me. She thought – she wanted to stick it out for me and the girls and … she's so kind, she even leaves me bags of clothes for my girls. She's a very special person and I don't think – I'm very lucky that I met her.

One woman had faced the dilemma of proceeding with a police application for an ADVO on behalf of her young children, but because of their ages she decided to only go through the Family Court, as she didn't want her children harshly cross examined in the local court. The court had ordered only limited supervised contact until the children were 18:

So in the end, I'm so thankful that the Family Court protected the [children].

Woman 9 had a positive experience of mediation at **a Family Relationships Centre** because of the focus on her child's perspective and the mediator preventing bullying by her ex-partner:

… we had individual sessions to begin with … Then we had the joint mediation session … And also the opportunity for my son to also meet with a child psychologist and she spent, I think, a whole hour with him, finding out what his concerns were and things like that. I thought that was really good, actually. And so she was able to bring that to the first mediation session, the conclusion about what had occurred there. And my son was able to express that he loves his father, and enjoys going to visitations, but there are certain things that happen that he doesn't like and he becomes afraid of. So one of the things was his father's moods. His father's mood swings… And so having the child psychologist express that in the mediation session was really good because, I guess, he had to listen that …

… the mediator gave us an opportunity to each discuss our points of view and when it was my turn to talk and I started talking – he started talking on top of me, trying to cut me down. And which the good thing is the mediators are there and picked it up and actually sort of stopped him and said 'just hold on a second, its [woman]'s turn to talk, you'll have a turn to respond to that'. I thought that was really good from the mediator's part to have sort of picked that up and stopped it pretty quickly.

Suggestions for Change

The reader will be able to discern throughout this report from the women's descriptions of their experiences, much of what they thought needed to change. The following are direct suggestions also made by the women about how the system could better respond to women and children who have experienced violence and abuse.

Focus on the children

This involves putting children's well

being first, listening to their wishes, and recognizing their rights to participation and safety:

The focus should be on the children and they shouldn't just spout it as some sort of rhetoric while the focus is on the parents. The focus should be on the children.

It's just that they have a lesser voice than us women. And us women find it really hard to have a voice sometimes when there's DV – how much more a child.

I just don't understand why children have to be pushed and shoved. They're little people and they need a voice and they need to grow up in a stable environment. They don't need to not know where they're going to be every night of the week.

If the children have been abused, if there are signs that the children have been abused – it's domestic violence. Whether there's assault charges through the Court or they've been found guilty of assaulting the children through the Court or not, I believe the children should have the right to say "I want no contact with that person". Even from an early age.

Assess allegations thoroughly, bringing together all available evidence

The Judges. They need to start to bringing up every bit of evidence. Ok, for instance, if it's physical abuse towards the mother and the children, I think the solicitors as well as the judge should bring up all profiles on the person, regardless of whether it's because of – whether it's relevant or irrelevant – it should all come up. It should all be stated.

Prioritise the safety and protection of children

… children need to be protected and that's the bottom line. They should be protected. It doesn't matter whether a child is at 2% risk or 100% risk, they need to be protected and it shouldn't be on a scale of "Oh well, if they've got one solid [parent]" … if there's a risk there, it should be counteracted with something, you know.

I understand that fathers do have rights to see their kids and I understand that a lot of fathers out there don't see their kids. But the ones that have hurt them in the past, I don't believe should have the rights to have the call as to what they want.

Ensure the safety of women victims of domestic violence

Yeah, I think with women and DV, I think it's really important that they can be protected in some way and their children.

Broaden the definition of domestic (family) violence

I think if they make an exception for domestic violence, or abuse, and drugs use, that the Court should do more effort to fully understand what it comprehends. And as well do better effort to do research on a family of what that means to the specific family. And also, especially realise, that it's very hard to prove emotional and psychological abuse.

Yeah, we had that breach and that was in front of the children but that hasn't been, obviously, taken into account that it was in front of the children. But from what I can gather the Family Law Courts actually – even if the husband is

abusive to the wife, that doesn't necessarily mean that he's abusive to the children, it was aimed at the wife and not the children. So there's leeway there apparently, which I find quite shocking because, I mean, if that's the sort of role model, you know – I can't quite fathom how that doesn't enter into it with the children, anyway.

Remove the assumption of shared parental responsibility when there is child abuse and domestic violence

I understand shared responsibility, understand that. But even that in itself, when you're dealing with domestic violence, it's a power thing. And the only way that he can have any control over my decisions is basically obliterating my advice as a mother to make any decision because that's what's happened. I physically don't have the right to make any decisions about my son whatsoever as his mother. None. Without his father's consent i.e. his permission. And that's basically what it boils down to. I have to go and beg and see him 'can I do this, can I do that'. And that is the reality of shared care with a domestic violence partner.

… and shared parental responsibility. So like actually having to call them up and see, having to discuss what specialist to go to or what school to go to or anything like that. Even though you're the parent taking them to school every day and you're the parent having a relationship with the school, the other parent has a view on that. That's just ridiculous cause that's gonna' mean an argument every time. My ex is gonna' say things are black when they're white just to be annoying, so that's not gonna' work. You need to have open communication and a respect for each other for that to work as well.

I mean, it sounds good in theory, I guess, but the reality is that sometimes – especially in domestic violence and how much quality can a perpetrator actually give to a child?

Training about domestic violence for all involved

This recommendation arose from the women's experiences with a range of service providers who, as outlined in Chapter 4, who did not demonstrate to the women understanding of the dynamics and effects of domestic violence.

… I think the Judges themselves actually need to be addressed in some way. They need to go on training courses about domestic violence – they need to understand what it is, how it works, how to get around the system – like, instead of taking people at face value, their job is to judge people and their job is to judge the evidence in front of them.

… I feel that the Contact Centre really don't believe women. That's why I feel that they need domestic violence [training] so that they can have a bit of understanding about how the cycle works.

I think training, education of – education for people that work in Court so they are thoroughly aware of the grooming skills of perpetrators. But also the Judge, I think. I'm thinking about what can be done for the lawyers …

Better coordinated services

The women knew from experience, the lack of coordination across systems and recommended that this be addressed:

But the Family Court [and AVO court] ... they need to be more

attached to each other. The Family Court needs to know when breaches are happening. We shouldn't have to subpoena evidence from other courts - they should know that hey this person is in this court and they are in your court too. Why do we have to subpoena evidence to the court? That judge should be updated if ... my judge that's sitting on my case should be able to be updated on Friday when my ex goes to court what the verdict is and if he's found guilty then he might see it as urgent enough to actually get up into court quicker.

I think Centrelink ties in with child support and the Family Court because Court creates poverty. And the Centrelink and the child support are now helping to make things harder and creating more poverty. I think they're all linked and I think there needs to be an overview of not just Court by itself. I think addressing Court by itself is not going to be the answer. I think child support, Court and Centrelink and people's welfare in general, and whether the parent who gets more access, are they capable to look after the children.

Several suggested offering coordinated services through a 'one-stop shop':

Because you go to these places and they look at you real vaguely like "it's not my job". Pass it onto someone else. And it's just, it's just, that's one thing that if I could change the system would be to go to a place like this or anywhere like a women's health centre where you see a case worker for instance, a person, and that one person does Medicare, school, change of address, change of all the details all the bank accounts … the one stop shop where there's one case worker one issue, yep um. Dealing with one person, dealing with one court. The whole lot once … Simplifying it. Doing it once. Ok, you've got all your information, you don't need to have, why do we need to fill out six forms that basically tells the same information? … Centrelink has access to everybody. Medicare links to everything. What do they, they all have links to each other ... why do we have to fill out forms? The court system has all of those forms and then some, they bring in doctors, nurse whatever it is they bring all these people in, professional people. If you're dealing with it once and one person I believe it would be so much easier, and linked to the courts system, for that to be easily accessible to everybody.

I think with the system, I think the Court somehow with this counselling, like with [DV service], there should be more of a connection between the two. So that if there are people distressed at Court that they can recommend places. I don't think there's any facilities at Court, that I know of, I'm not sure, that people who are having troubles at Court, could be recommended for the – people are coping better to go to Court. Because I think everything's segmented. The Court here – if you want to go to counselling it's here – if you want to go to a refuge it's there – there doesn't seem to be enough connection.

Another suggested an integrated court system, under one judge:

I think the major one is when you go into the Court, you have the same Magistrate all the time. That same one sees you – if you're in, like our case it was the Local Court, [ex partner] was the Criminal Court as well as Family Court, Children's Court – all those different people should be pulled into one place and the case should be heard all at once. If you've got to have all

those different judges for those different reasons, they all should be in one place – all up there together, listening to it to decide – not just one person and keep changing all the time. Because that's what happens – every time you go into Court, it's a different Magistrate, it's a different person – you've got to go through the whole story again, they don't get the whole story.

Provide more information

Several women suggested the court make more information available about the processes involved. This is particularly important when they are self-represented:

I'd like women to have some sort of education when they go to the Court about what the whole process is about and what sort of documentation, or anything that could help them and how that documentation could actually be read by a Magistrate … that was a big thing for me – I had all that documentation and it didn't get read and I didn't know beforehand, even though I'd seen a lawyer and I'd been and seen a barrister, no-one had said to me that it's got to be listed as an exhibit to be read by the magistrate. So you need people there to actually explain to women about the whole process and what they need and then to have people in the Court there who are prepared to take notice of what those women bring with them.

Definitely information on the whole Court process. Because even when the Court orders were made, I didn't know I was supposed to be there to pick them up. I just thought the Court's over now, I've been to Court, I've represented myself and the children, that's it. And the Magistrate said the orders will be ready on such and such a date but I didn't know I was supposed to be there to get them. Nobody told me.

Better resourcing of the system

The women suggested a number of improvements that would require additional resources:

- More contact services that also offered safe handover services: 'There just needs to be a centre where people can drop off their kids and pick up their kids and feel safe.'

- Better support at the Family Court, such as a safe room (as in the local courts for ADVO applicants) and domestic violence support workers:

… and those little rooms ... like the abusers like my ex comes up and looks in the windows. And there's been times where we've crossed paths and he's gone to shoulder charge me then seen (DV support worker) behind me. Little things like that, he's got too close to me and its unnerving … I just think like if we had a little room there where you and your solicitor can talk without someone looking in. Also, I found really helpful in the AVO proceedings is people like (DV support worker) and something should be put in the Family Courts … like a support person.

I mean I thought you'd be offered counselling and services to help support [at the Family Court]. I mean, there's domestic violence and there's places out there but we've got to go to them and we've still got to juggle children and all these things. There's nothing there in the Family Law System – I thought it'd be all online and in-line with the system to help the situation.

- A faster system
  It looks like a factory to me where they've got to churn people out

because – and when it's the too hard basket, they just adjourn for a couple of months down the track. They just "oh well, we can't fix this at the moment, come back in 2 months" or whenever they can fit you in. There seems to be a lot of putting off which prolongs people's agony that there's not an answer. That happens a lot. If I could change the system, where they can make things streamlined and quicker because people don't have the finances or the emotional capability to hang in there.

- Better access to Legal Aid
  … the one thing about Legal Aid and more access and stuff like that is while Legal Aid it's sort of available for all – the first one in the door gets the Legal Aid. And gets to talk to Legal Aid and so, in my case, I'm thinking of and another girlfriend's case, because she was also assaulted – we weren't the first ones in the door.

- A specialist court for abuse
  I like the idea of the Magellan Court. I think that's brilliant. There should be a special court separate for this situation. And specialised judges and magistrates.

Take violence seriously and recognise and respond to its impacts

These suggestions pertain not just to the family law system, but more broadly, to systems that could better support the women building new lives after escaping violence, given that they are often starting from scratch with precarious financial situations:

But first of all, they (Family Law system) have to acknowledge that it's [DV] a reality, and it's a big reality in many people's lives and treated as such and, yes, a screening process would be good.

And basically to make it that if someone who has been through such a violent relationship, when you ask them a question, I can't always get up the guts to spit it out straight away. There has to be some sort of leniency into how and when you're expected to say something. But if you burst into tears first, it's not taken as a sign of weakness. It's not taken as a sign of 'oh she's just being a pain in the bum'. And that's the way it feels at the moment.

Legal aid could pay legal costs up to so much on settlement or something like that for women or for men who have left everything behind. It's quite obvious I've got up and run. So for people who have got up and run maybe they could help out a little and get their finances on track. 'Cause your life isn't going to be on track until your finances are on track.

… women have to go back to work when your child turns 6 or 7 now, depending on when you started Centrelink … When you go through domestic violence, sometimes going back to work, if you're lucky enough to live with a mother or someone, sometimes you're going through so much mental torture that to try and be in a job and be functioning – I can work but to also I have to get transport, fit in times with picking the children up, you're juggling a lot. Sometimes you just need that extra time to get back on your feet and then you can get into a routine. I think the government's not allowing people that when you've got a 6 year old – like I think it should be 8. At least 8 – I think it should be 8 that they force this.

Examine the interface of parenting and property matters

Given the financial pressures on the women, often compounded by ongoing financial abuse, two of the women expressed the opinion that the separating children's and property matters did not assist women in having the resources to care for children. For example:

> *See I think the Family Court is wrong in that they separate the two anyway. Because this is our family home and the issues is the kids. Because my husband barely works and so doesn't provide any financial … wasn't paying maintenance … barely pays $20 a month if you can call that maintenance. Chooses not to work and therefore not help the kids out and not help me out in that way and now the family home has gone from under us as well. I feel like how can those two be separated? The financial and the children. Because you need money to take care of children.*

The Final Word: Women speak about the Current Family Law System

In essence, the women's experiences of negotiating the family law system to protect themselves and their children from abuse, led them to conclude that the current arrangements are not working for separations involving domestic violence and child abuse, although they could see the merits of the current approach for relationships not characterized by violence.

> *Whoever in their right minds thought that 50/50 was going to work is just ridiculous because for 50/50 to work you need to have a respectful relationship with the other parent and be able to communicate. Now if there was respect and communication in my household then I wouldn't have got divorced. So, I don't know where they're coming from with this 50/50. See why would you leave someone that you could communicate with and live respectfully and happily, like a normal adult relationship? Domestic violence people are leaving because they can't do that and then you've got to go back into the situation and communicate for the rest of our lives. Doesn't make sense.*

> *I was stunned by how idealistic it all [family law] is. My cousin is before the court as well, and she is able to do that but she doesn't come from a domestic violence situation. They have very equal relationship and they both have been fighting very hard to come to a level where they can get along with each other and no matter what I do, [ex partner] will always make – will always try to domineer me and try to tell me that I'm not a good person, that I'm failing in every single way and so we can't come to that level that the Court requires – that the law requires. The fact that the Court, the system is trying to reach those goals, it's just, in a situation like this, it's just not feasible, it's just not realistic. I just couldn't believe when I read that part. It's just disregarding the whole domestic violence situation. There's no understanding of whatsoever of what that sort of relationship requires and what that means also for the children*.

8. Discussion, Conclusion & Recommendations

The abuse of women and children is interconnected

The women described multiple and overlapping types of violence and abuse to which they and their children had been subjected, often in concert, and continuing after separation. The interconnected nature of these experiences may go some way towards assisting our understanding of the way in which the women often saw their safety and well being and that of their children as intertwined, a view that may be judged as insufficiently "child focussed" within the family law system which is based on the principle of the "best interests" of the child.

The women's descriptions of the abuse highlight the artificiality of drawing boundaries between domestic violence and child abuse. These boundaries and definitions have arisen from the different histories of the 'discovery' of child abuse, of domestic violence and of the effects on children of exposure to domestic violence. Further, the principle of the "best interests of the child" assumes that the welfare of women and children can be disaggregated when both have been subjected to overlapping violence and abuse. This issue has been identified previously in Kaspiew's (2005) research on violence in contested child's cases following the 1995 legislative changes.

The concept of trauma (Herman, 1992; Margolin & Vickerman, 2007) potentially provides a bridge for understanding the ways in which women and children's experiences are connected and for informing what has been termed "trauma informed decision making" (Van Horn & Groves, 2006) about parenting arrangements where domestic violence is at issue. However, the women reported that most of the professionals with whom they had contact (apart from specialist domestic violence services) demonstrated little or limited understanding about the impact of trauma on themselves and their children and of the conditions under which recovery could be promoted.

An uncoordinated system

A core principle in both the child protection and domestic violence fields is that the coordinated response of a range of agencies is essential to reduce risk and increase safety (National Council to Reduce Violence against Women and their Children, 2009; Wood, 2008). The importance of a coordinated response does not diminish when child abuse and domestic violence are at issue in the context of parental separation; in fact, it can be argued that the potential for risk to escalate in this context makes a coordinated response more essential than ever. Yet in this context, additional challenges to collaboration arise because the Family Courts operate at federal level.

The lack of adequate coordination between state and territory child protection systems and the Family Courts has been well documented (e.g. Family Law Council, 2002; Higgins & Kaspiew, 2008; F. Kelly & Fehlberg, 2002) and the urgency of finding a solution has been highlighted by research that has identified child protection as core business of

the Family Courts (Brown, Frederico, Hewitt, & Sheehan, 1998; Moloney, et al., 2007). This research again emphasises the inadequacy of the statutory child protection agency "leaving it to the Family Court" to protect children, given the federal Courts' inability to investigate allegations of child abuse and the time that will have elapsed between the incidents leading to the allegations and any assessment of the family.

One serious consequence of shifting of responsibility for child protection to the Family Courts means that child protection is no longer funded by the state, but moves into the realm of private law where the protection of children depends on the resources (Family Law Council, 2002) – both financial and emotional – of the parent (in this study the mother) who has concerns about the safety of the child/ren. In effect, this places the responsibility for child protection onto the most vulnerable and sadly, as has been seen in this report, the least credible participant in the process.

The findings of this study demonstrate that the protection of women and children post separation cannot be left solely to what is most readily recognised as the family law system – the two Family Courts and Family Relationship Services. Problems "downstream" in the policing of domestic violence, in the accessibility of protection orders through the civil law system, or the failure of statutory child protection to investigate allegations (either because of resource limitations or the belief that these will be handled by the Family Courts) flow through to affect the quality of information that is available to decision makers in the Family Courts for those cases that proceed to adjudication. This is crucial as the assessment of allegations of violence must be grounded in the best information, preferably from multiple sources (Altobelli, 2009). For cases that are settled earlier in the process, the lack of evidence of violence flowing from systemic problems can result in women feeling pressured to "consent" to arrangements that are not safe for either their children or themselves.

One problematic component of the coordinated response that emerged in this study concerned contact services. When the Family Courts identified risks to women and children and attempted to address these through ordering supervised contact, the paucity of accessible contact services and the poor quality of vigilance reported by the women (while this may not be a feature of all such services) highlight that this field of work requires very highly skilled staff (Parker, Rogers, Collins, & Edleson, 2008). This work requires understanding about the dynamics and tactics of sexual offending, understanding of the dynamics of controlling violence and understanding about the impacts of trauma. The lack of ongoing case management of these complex and high risk cases beyond their contact with the Family Courts suggests that the courts needs to be linked in more closely to both the child protection system and the coordinated response to domestic violence (Hardesty & Chung, 2006). Without links such as these, the women in this study were left with the sole option of returning to court if they continued to hold fears for the safety of their children. However, the ability to take further protective action depended on their financial resources or the availability of Legal Aid.

A climate of disbelief

As noted in the report, the difficulties which the women encountered in seeking to protect their children cannot be accounted for solely by the systemic problems and gaps that have been identified. In attempting to bridge the gaps in the system and keep their children safe, the women found that their motives were under question and they very commonly encountered assumptions that they were motivated by bitterness towards ex-partners rather than by a desire to protect their children. Beliefs such as these reflect broader

community attitudes that women falsify or exaggerate claims of domestic violence to increase their tactical advantage in parenting proceedings (Victorian Health Promotion Foundation, 2009) and that women exclude fathers from meaningful relationships with children after separation. As discussed in Chapter 1, these beliefs underpin some of the provisions of the 2006 legislation – the "friendly parent", "objective test" in the revised definition of family violence and the costs provision. In the women's experience, attitudes such as these permeated all the agencies in the system. Together with the frequency with which the importance of the father-child relationship was emphasized to women by professionals across the system, the scepticism with which women's safety concerns were met created a climate in which women were reluctant to bring forth full details of the abuse to which they and their children had been subjected. Where the climate of disbelief silences a woman who is seeking to protect her children, or minimises her experiences when she does take the step of disclosing violence, decisions about parenting arrangements are made on the basis of incomplete information, thorough risk assessments are not undertaken and ultimately, children may be placed at increased risk.

Women out of step: Dealing with "conflict" or "violence"?

As noted in the introduction, the 2006 legislation emphasised shared, cooperative parenting and avoiding exposing children to parental conflict. The press release of the (then) Attorney General in introducing the 2006 amendments clearly placed the intentions of the legislation within a framework that identified "avoiding conflict" as the priority:

> *The Government wants to bring about a cultural change in the way family breakdowns are handled. This $397.2 million package will give separating parents the support they need* ***to sit down across the table and agree what is best for their children, rather than fighting in the courtroom.*** *(Attorney-General & Minister for Family and Community Services, 2005) Emphasis added.*

Through a lens that focuses on resolving conflict in order to facilitate cooperative parenting (an important goal where violence and abuse are not at issue), a women seeking to prevent or to limit contact with an ex-partner in order to protect herself and her children from violence is immediately positioned as obstructive - as an "unfriendly parent", rather than as seeking to ensure a child's safety.

As seen in this report, women commonly received legal advice and advice from other sources that led them to fear that advocating for the levels of protection that they judged safest for themselves and their children could result in worse outcomes, such as orders that the children live with the abusive parent. Again, the consequence of the "balancing act" that women engaged in to try to seek protection without appearing as "unfriendly" parents, was a limitation in the amount and quality of information that was available to the family law system for identifying and responding to risk.

Lack of understanding about the dynamics and effects of domestic violence

Apart from some notable exceptions, the women encountered professionals in a range of agencies who failed to demonstrate adequate understandings of the both the complexities of domestic violence and its harmful effects on the development and well being of children and young people. There was limited

understanding of the forms that post separation domestic violence can take – such as financial abuse, abuse through litigation, and exerting control though shared parenting requirements; of the impact of trauma on women and children and on the mother-child relationship; of the impact of trauma on how a woman may present in legal contexts; and of what is required to rebuild a relationship between a child and someone who has abused the trust inherent in the parent-child relationship, beyond the concept of "spending time". There is a body of literature on specialist intervention with men who have sexually, physically and emotionally abused and exposed children to serious harm within familial contexts that did not appear to be drawn upon by those making recommendations and decisions about the care of children (e.g. Laing, 1999; Scott & Crooks, 2004, 2006)

A policy that is failing to protect

The current legislation is clear in its aim to protect children from child abuse, neglect and exposure to family (domestic) violence. Although not a representative sample, the participants in this study comprise members the group to whom this policy is directed. The tension between the twin legislative aims of maintaining a 'meaningful' relationship with both parents after separation and protecting children from abuse, neglect and exposure to family violence, for these families, was resolved by emphasising the maintenance of the relationship with the father, despite the severe violence and abuse that he had perpetrated. In no case was contact between fathers and children judged to be inappropriate apart from one case on a temporary basis while criminal proceedings were in train. There was a heavy reliance on the use of supervised contact as a protective measure but in only one case was this seen as necessary in the long term; in the other cases, it was assumed that contact would move from a supervised to an unsupervised format with the passage of time rather than with specialist intervention to address abusive behaviours.

However, the failure to adequately protect children cannot be laid at the door of the Family Courts alone: decision making was hampered by limited information arising from interventions prior to the Courts' involvement. Scepticism about women's allegations of violence and abuse, poor or non-existent risk assessment, lack of specialist knowledge about trauma and the interventions associated with recovery and an emphasis on fathering regardless of its quality marked the interventions (or failures to intervene) of many agencies whose mandate is to protect women and children from violence and abuse.

Recommendations

Recommendation 1: National coordination

The National Framework for Protecting Australia's Children and the National Plan to Reduce Violence against Women and their Children should work together to keep women and children safe. To this end, the National Plans should reflect:

- the Family Law Council recommendations regarding improving collaboration across state/territory child protection agencies and the Family Courts,
- the findings of the evaluations of the Magellan and Columbus Programs, and
- the findings of the Australian Law Reform Commission's Family Violence Inquiry.

Recommendation 2: Legislative reform

The amendments recommended in the Family Courts Violence Review by Professor Richard Chisholm regarding the "friendly parent" provision, the provision for the making of costs orders where there are knowingly false allegations, and the provision directing family advisers on what information to provide, should be adopted.

In addition, the Family Law Council's recommendation that the definition of family violence in the legislation be amended to include a broader range of threatening and controlling behaviours and to encompass the concept of coercive control, should be adopted.

Recommendation 3: Training for family law professionals

All professionals and services which play a role in the family law system need comprehensive, ongoing training in understanding and responding to domestic violence. This should include training about: the interconnectedness of the abuse of women and children; conducting risk assessments and developing safety plans; the effects of trauma on women and children; the conditions that promote recovery from trauma; the dynamics of sexual and domestic violence perpetration; the risks and forms that post-separation violence can take; and the assessment of claims of change in the perpetrators of abuse.

Recommendation 4: Improved responses from state-level agencies

State-level child protection agencies should not defer investigations because the Family Courts are or may be involved in a case.

Police must employ proactive policies of investigation, evidence-gathering and ongoing protection of women and their children.

State-level agencies, including child protection, police and health, should

undertake careful documentation and risk assessment when women report instances of domestic violence.

Recommendation 5: Community-wide education

The lack of understanding of the dynamics of domestic violence and the common beliefs held about women lying about abuse are not unique to the services and professionals which comprise the family law system. There is an urgent need for investment in a long-term, national education campaign targeting professionals, schools, workplaces and the general public.

References

Altobelli, T. (2009). Family violence and parenting: Future directions in practice. *Australian Journal of Family Law, 23, 194-221.*

Attorney-General, & Minister for Family and Community Services (2005). $397.2 *Million Generational Change to Family Law System* (No. Press Release). Canberra: Attorney-General and Minister for Family and Community Services.

Bagshaw, D., & Chung, D. (2000). Men, Women and Domestic Violence Retrieved 14 February, 2010, from http://adventist.org.au/__data/assets/pdf_file/12941/SA_university.pdf

Bancroft, L., & Silverman, J. G. (2002). *The Batterer as Parent* Thousand Oaks: Sage Publications.

Behrens, J., Smyth, B., & Kaspiew, R. (2009). Australian family law court decisions on relocation: Dynamics in parents' relationships across time. *Australian Journal of Family Law, 23, 222-246.*

Berliner, L., & Conte, J. R. (1990). The process of victimization: The victims' perspective. *Child Abuse and Neglect, 14,* 29-40.

Branigan, E. (2007). Who pays in the end? The personal and political implications of financial abuse of women in intimate partner relationships. *Just Policy*(44), 31-36.

Brown, T., & Alexander, R. (2007). *Child abuse and family law: understanding the issues facing human service and legal professionals.* Crows Nest, NSW: Allen and Unwin.

Brown, T., Frederico, M., Hewitt, L., & Sheehan, R. (1998). *Violence in Families. Report Number 1: The Management of Child Abuse Allegations in Custody and Access Disputes Before the Family Court of Australia*. Melbourne: Family Violence and Family Court Research Program, Monash University.

Campbell, J. C., Glass, N., Sharps, P. W., Laughon, K., & Bloom, T. (2007). Intimate Partner Homicide: Review and Implications of Research and Policy. *Trauma Violence & Abuse*, 8(3), 246-269.

Chisholm, R. (2007). Making it work: The Family Law Amendment (Shared Parental Responsibility) Act 2006. *Australian Journal of Family Law*, 21(2), 143-172.

Chisholm, R. (2009). *Family Courts Violence Review*. Canberra: Australian Government Attorney General's Department.

Christiansen, J. R., & Blake, R. H. (1990). The grooming process in father-daughter incest. In A. L. Horton (Ed.), *The Incest Perpetrator: A Family Member No One Wants to Treat* (pp. 88-98). Thousand Oaks, CA: Sage Publications.

Craven, S., Brown, S., & Gilchrist, E. (2006). Sexual grooming of children: Review of literature and theoretical considerations. *Journal of Sexual Aggression*, 12 (3), 287-299.

Davies, M., & Mouzos, J. (2007). *Homicide in Australia 2005-2006: National Homicide Monitoring Program Annual Report.* Canberra: Australian Institute of Criminology.

de Simone, T. (2008). The friendly parent provisions in Australian family law-- how friendly will you need to be? *Australian Journal of Family Law*, 22, 56.

Deblinger, E., Mannarino, A. P., Cohen, J. A., & Steer, R. A. (2006). A follow-up study of a multisite, randomized, controlled trial for children with sexual abuse-related PTSD symptoms. *Journal of the American Academy of Child and Adolescent Psychiatry*, 45(12), 1474-1484.

Dewar, J., & Parker, S. (1999). The impact of the new part VII Family Law Act 1975. *Australian Journal of Family Law*, 13(2), 96-116.

Dutton, M. A., & Goodman, L. A. (2005). Coercion in intimate partner violence: Toward a new conceptualization. *Sex Roles*, 52(11-12), 743-756.

Edleson, J. L. (1999). The overlap between child maltreatment and woman battering. *Violence Against Women*, 5(2), 134-154.

Family Law Council (2002). *Family law and child protection*: Final report. Canberra, ACT: Commonwealth of Australia.

Family Law Council (2009). *Improving responses to family violence in the family law system: An advice on the intersection of family violence and family law issues.* Barton, ACT: Commonwealth of Australia.

Family Law Pathways Advisory Group (2001). Out of the maze: *Pathways to the future for families experiencing separation. Report of the Family Law Pathways Advisory Group.* Canberra: Attorney-General's Department.

Fehlberg, B., Behrens, J., & Kaspiew, R. (2008). *Australian Family Law: The Contemporary Context*. South Melbourne, Victoria: Oxford University Press.

Finkelhor, D., Ormrod, R. K., & Turner, H. A. (2007). Poly-victimization: A neglected component in child victimization. *Child Abuse & Neglect*, 31, 7–26.

Fitzgerald, J. (2006). *The attrition of sexual offences from the New South Wales criminal justice system*. Sydney: NSW Bureau of Crime Statistics and Research.

Fleury, R. E., Sullivan, C. M., & Bybee, D. I. (2000). When ending the relationship does not end the violence. *Violence Against Women*, 6(12), 1363-1383.

Flood, M. (2009). "Fathers' Rights" and the Defense of Paternal Authority in Australia. *Violence Against Women*, 16(3), 328– 347.

Frederick, L. (2008). Questions about Family Court Domestic Violence Screening and Assessment. *Family Court Review*, 46(3), 523-530.

Hardesty, J. L., & Chung, G. H. (2006). Intimate partner violence, parental divorce, and child custody: Directions for intervention and future research. *Family Relations*, 55(2), 200-210.

Herman, J. L. (1992). *Trauma and Recovery*. USA: Basic Books.

Herman, J. L. (2005). Justice From the Victim's Perspective. *Violence Against Women*, 11(5), 571-602.

Hickey, J., & Cumines, S. (1999). *Apprehended violence orders: a survey of magistrates*. Sydney: Judicial Commission of New South Wales.

Higgins, D. J. (2007). *Cooperation and coordination: An evaluation of the Family Court of Australia's Magellan case-management model.* Canberra: Family Court of Australia.

Higgins, D. J., & Kaspiew, R. (2008). 'Mind the Gap . . .': Protecting children in family law cases. *Australian Journal of Family Law*, 22(3), 235-258.

Holden, G. W. (2003). Children exposed to Domestic Violence and Child Abuse: Terminology and Taxonomy. *Clinical Child and Family Psychology Review*, 6(3), 151-160.

Hollonds, A. (2006). Will the changes to the Family Law Act benefit children and reduce family violence and the impact of DV? *Developing Practice: The Child, Youth and Family Work Journa*l, 15, 7-9.

House of Representatives Standing Committee on Family and Community Affairs (2003). *Every picture tells a story: Report on the inquiry into child custody arrangements in the event of family separation*. Canberra: Commonwealth of Australia.

Howard, J. (2004). *Reforms to the Family Law System* (No. 1030 Press Release). Canberra: Media Centre, Prime Minister of Australia.

Humphreys, C., & Thiara, R. K. (2003). Neither justice nor protection: women's experiences of post-separation violence. *Journal of Social Welfare and Family Law*, 25(3), 195-214.

Jaffe, P. G., Crooks, C. V., & Poisson, S. E. (2003). Common misconceptions in addressing domestic violence in child custody disputes. *Juvenile and Family Court Journal*, 54(4), 57-67.

Kaspiew, R. (2005). Violence in contested children's cases: An empirical exploration. *Australian Journal of Family Law*, 19, 112-143.

Kaspiew, R., Gray, M., Weston, R., Moloney, L., Hand, K., Qu, L., et al. (2009). *Evaluation of the 2006 family law reforms*. Melbourne: Australian Institute of Family Studies.

Kaye, M., Stubbs, J., & Tolmie, J. (2003). *Negotiating child residence and contact arrangements against a background of domestic violence*. Brisbane: Griffith University Families, Law and Social Policy Research Unit.

Kellogg, N. D., & Menard, S. W. (2003). Violence among family members of children and adolescents evaluated for sexual abuse. *Child Abuse & Neglect*, 27(12), 1367-1376.

Kelly, F., & Fehlberg, B. (2002). Australia's Fragmented Family Law System: Jurisdictional Overlap in the Area of Child Protection. *International Journal of Law, Policy and the Family*, 16, 38-70.

Kelly, J. B., & Johnson, M. P. (2008). Differentiation among Types of Intimate Partner Violence: Research Update and Implications for Interventions. *Family Court Review,* 46(2), 476-499.

Kurz, D. (1996). Separation, Divorce and Woman Abuse. *Violence Against Women*, 2(1), 63-81.

Laing, L. (1999). A Different Balance Altogether: Incest offenders in treatment. In J. Breckenridge & L. Laing (Eds.), *Challenging Silence: Innovative Responses to Sexual and Domestic Violence*. Sydney: Allen & Unwin.

Laing, L. (2008). A perilous journey: seeking protection in the aftermath of domestic violence. *Communities, Children and Families Australia*, 3(2), 19-28.

Lovett, B. B. (1995). Child Sexual Abuse - the Female Victims Relationship with Her Nonoffending Mother. *Child Abuse & Neglect*, 19(6), 729-738.

Margolin, G. (2005). Children's exposure to violence - Exploring developmental pathways to diverse outcomes. *Journal of Interpersonal Violence*, 20(1), 72-81.

Margolin, G., & Vickerman, K. A. (2007). Posttraumatic Stress in Children and Adolescents Exposed to Family Violence: I. Overview and Issues. *Professional Psychology, Research and Practice*, 38(6), 613-619.

McFarlane, J. M., Groff, J. Y., O'Brien, J. A., & Watson, K. (2003). Behaviors of children who are exposed and not exposed to intimate partner violence: An analysis of 330 black, white, and Hispanic children. *Pediatrics*, 112(3), E202-E207.

McIntosh, J., & Chisholm, R. (2008). Cautionary notes on the shared care of children in conflicted parental separation. *Journal of Family Studies*, 14(1), 37-52.

Meier, J. S. (2009). Parental Alienation Syndrome and Parental Alienation: Research Reviews Retrieved March 26, 2010, from http://www.vawnet.org/Assoc_Files_VAWnet/AR_PAS.pdf

Moloney, L., Smyth, B., Weston, R., Richardson, R., Qu, L., & Gray, M. (2007). *Allegations of family violence and child abuse in family law children's proceedings: A pre-reform exploratory study*. Melbourne: Australian Institute of Family Studies.

National Council to Reduce Violence against Women and their Children (2009). *Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009-2021* Retrieved March 3, 2010. from http://www.fahcsia.gov.au/sa/women/pubs/violence/np_time_for_action/national_plan/Documents/The_Plan.pdf.

Nixon, K. L., Tutty, L. M., Weaver-Dunlop, G., & Walsh, C. A. (2007). Do good intentions beget good policy? A review of child protection policies to address intimate partner violence. *Children and Youth Services Review*, 29, 1469-1486.

Parker, T., Rogers, K., Collins, M., & Edleson, J. L. (2008). Danger Zone Battered Mothers and Their Families in Supervised Visitation. *Violence Against Women*, 14(11), 1313-1325.

Parkinson, P. (2006). Decision-making about the best interests of the child: The impact of the two tiers. *Australian Journal of Family Law*, 20(2), 179-192.

Patrick, R., Cook, K., & Taket, A. (2007). Multiple barriers to obtaining child support: experiences of women leaving violent partners. *Just Policy(*45), 21-29.

Peatling, S. (2005a, August 19). Parents without custody to be given bigger say. Sydney *Morning Herald,* p. 5,

Peatling, S. (2005b, June 23). Ruddock Promises Tougher Family Law. *Sydney Morning Herald*, p. 3,

Plummer, C. A., & Eastin, J. A. (2007). System intervention problems in child sexual abuse investigations - The mothers' perspectives. *Journal of Interpersonal Violence*, 22(6), 775-787.

Rathus, Z. (2007). Shifting the gaze: will past violence be silenced by a further shift of the gaze to the future under the new family law system? *Australian Journal of Family Law*, 21(1), 87-112.

Rathus, Z., Lynch, A., & Finn, K. (1998). *The relationship ends but the abuse goes on: the effect on women of the 1995 reforms to the Family Law Act and the recent cuts to Legal Aid*. Paper presented at the Everybody's Business: 2nd National Conference on Children, Young People and Domestic Violence – Conference Proceedings, Domestic Violence Resource Centre Brisbane.

Rendell, K., Rathus, Z., & Lynch, A. (2000). *An Unacceptable Risk: A report on child contact arrangements where there is violence in the family*. Brisbane: Women's Legal Service Inc.

Research and Education Unit on Gendered Violence (2003). *A Comparative Assessment of Good Practice in Programs for Men who use Violence Against Female Partners*. Canberra: Office of the Status of Women, Department of the Prime Minister and Cabinet.

Rhoades, H. (2000). Posing as Reform: The case of the Family Law Reform Act. *Australian Journal of Family Law*, 14, 1-18.

Rhoades, H. (2002). The 'No Contact Mother': Reconstructions of Motherhood in the Era of the' New Father'. *International Journal of Law, Policy and the Family*, 16(1), 71-94.

Rhoades, H., Graycar, R., & Harrison, M. (1999). *The Family Law Reform Act: can changing legislation change legal culture, legal practice and community expectations?* Sydney: University of Sydney.

Rhoades, H., Graycar, R., & Harrison, M. (2000). *The Family Law Reform Act 1995: The first three years* University of Sydney and The Family Court of Australia.

Rogers, G., & Renshaw, K. (1993). Covert Communication Between Sex Offenders and Their Child Victims *Annals of Sex Research*, 6, 185-196.

Scott, K. L., & Crooks, C. V. (2004). Effecting change in maltreating fathers: Critical principles for intervention planning. *Clinical Psychology-Science and Practice*, 11(1), 95-111.

Scott, K. L., & Crooks, C. V. (2006). Intervention for abusive fathers: Promising practices in court and community responses. *Juvenile and Family Court Journal*, 57(3), 29-44.

Shea Hart, A. (2004). Children exposed to domestic violence: Undifferentiated needs in *Australian family law*. Australian Journal of Family Law, 18(2), 170-192.

Smyth, B. (2009). A 5-year retrospective of post separation shared care research in Australia. *Journal of Family Studies*, 15(1), 36-59.

Stark, E. (2007). *Coercive Control: How Men Entrap Women in Personal Life*. New York: Oxford University Press.

Sternberg, K. J., Baradaran, L. P., Abbott, C. B., Lamb, M. E., & Guterman, E. (2006). Type of violence, age, and gender differences in the effects of family violence on children's behavior problems: A mega-analysis. *Developmental Review,* 26(1), 89-112.

Van Horn, P., & Groves, B. M. (2006). Children exposed to domestic violence: Making trauma-informed custody and visitation decisions. *Juvenile and Family Court Journal*, 57(1), 51-60.

Victorian Health Promotion Foundation (2009). *National Survey on Community Attitudes to Violence Against Women 2009: Changing cultures, changing attitudes –preventing violence against women*. Melbourne: Victorian Health Promotion Foundation.

Walker, R., Logan, T. K., Jordan, C., & Campbell, J. (2004). An Integrative Review of Separation in the Context of Victimization. Consequences and Implications for Women. *Trauma, Violence and Abuse*, 5(2), 143-193.

Wolfe, D. A., Crooks, C. V., Lee, V., McIntyre-Smith, A., & Jaffe, P. G. (2003). The effects of children's exposure to domestic violence: A meta-analysis and critique. *Clinical Child and Family Psychology Review*, 6(3), 171-187.

Wood, J. (2008). *Report of the Special Commission of Inquiry into Child Protection Services in New South Wales*. Retrieved March 3, 2010. from http://www.lawlink.nsw.gov.au/lawlink/Special_Projects/ll_splprojects.nsf/vwFiles/Volume3.pdf/$file/Volume3.pdf.

Apendix 1: Interview Guide

1. (Introduction) Thank you for agreeing talk with me today. As you know, I'm interested in hearing about your experiences of negotiating and managing contact between your child/ren and your ex-partner. There are no right or wrong answers in this — it's all about what you think and feel. If at any time you don't want to answer a question that I may ask you, that's fine — just let me know. From time to time I'll check with you about how you are finding the interview.

2. Can you begin by telling me about the current arrangements that you have in place for parenting/contact and how that is going? (It is anticipated that the response to this question will form the bulk of the interview, with only clarifying questions asked as needed) Possible areas to explore further - violence, abuse or harassment; processes involved in organising contact – legal, mediation; ways that the woman has coped with the situations involved, help sought etc

3. How has this (experience) been for you? For your children?

4. How do you see things working out into the future?

5. As you're aware, there have been some major changes to family law in recent years – e.g. more emphasis on contact and shared parental responsibility, changes to child support arrangements). What are you thoughts about these? (How are they affecting your situation?)

6. If you could design a system that would offer the best help possible arrangements for women dealing with both domestic violence and child contact issues, what would it be like?

7. Now a few questions about your living situation (if these haven't emerged in the woman's account)

   Can you tell me roughly how long you were with (ex-partner)? How long since you separated? Age/s and sex of child/ren. Any disabilities, special issues? Basis of arrangements (e.g. interim/ final Family Court order; private agreement; mediation); Place of birth (woman and ex-partner); Languages other than English spoken at home; Aboriginal or TSI descent

8. Thank you for talking with me today about what I know are very difficult things. (Possible debriefing questions, as appropriate) How has it been for you today, doing this interview? Is there anything I did or didn't do that made things difficult/easier for you for you? Is there anything I need to remember when I talk with other women going through

similar situations? Is there anything you need right now?

9. Closing thanks for participating and reminder that a summary of the findings will be available through the service that referred her to the study.