

**5. how the capacity of all family law professionals—including judges, lawyers, registrars, family dispute resolution practitioners and family report writers—can be strengthened in relation to matters concerning family violence;**

A cultural shift in the family court is needed to better support children experiencing family violence. The courts must consider the needs of children and their best interests over and above the rights of the perpetrator.

For many years it was believed that children could just bounce back from adversity. We know that this is not the case. Children have a unique experience of family violence and this experience is very different from that of adults. Family violence has harmful, immediate and long term effects on children. Children who experience violence have significant trauma responses. In fact the severity of the impact of family violence on children is similar regardless of whether they witness the violence or experience the violence directly<sup>i</sup>. It can be argued that there is no such thing as a ‘good dad’ who perpetrates violence. Children always experience the violence whether they are exposed to the physical violence or not; they experience the controlling behaviours, the aggression, the anger, the fear and the loss of their mother’s emotional availability.

There is irrefutable evidence demonstrating the impact of family violence on the wellbeing of children. If children’s early life experiences are characterised by chaos, persistent fear and stress, they learn coping mechanisms such as defiance, withdrawal and avoidance. This can in turn impair young children’s ability to regulate emotions and form healthy relationships<sup>ii</sup>.

Studies have shown that the impact of family violence is likely to manifest in behavioural and emotional issues. This can include aggression, antisocial behaviour, and difficulty in social interaction. Emotionally it is likely to manifest as anxiety, depression, trauma symptoms and problems with temperament<sup>iii</sup>. Although many children may not meet a Post-Traumatic Stress Disorder (PTSD) diagnosis, many will experience unwanted flashbacks of traumatic events<sup>iv</sup>. Attachment between child and caregiver can be disrupted due to family violence. Infants can experience symptoms of PTSD or trauma through eating problems, sleep disturbances, heightened irritability and crying, limited ability to self-soothe, as well as the loss of developmental skills<sup>v</sup>.

Studies have revealed that primary school aged children who have experienced homelessness and family violence can exhibit aggressive behaviour towards others, have a reduced interest in social interactions, and reduced capacity to retain and understand information<sup>vi</sup>. Children of this age can sometimes perceive themselves to be the reason that their family is experiencing adversity which can impact on their level of self-worth<sup>vii</sup>. There may also be a loss of community connections, lack of stability and limited routine.

Exposing children to ongoing trauma and harm through court imposed contact arrangements further traumatises children. The rights of children need to be given higher priority above those who perpetrate violence. Parenting capacity should be judged by value and nurturing rather than by relationship and perceived adult rights to have access to children. It can be detrimental for children to have to be exposed to a perpetrator who has inflicted such terror on their mother, themselves and often their extended family. This toxic stress can contribute to the child’s experience of cumulative harm.

We must also pay particular attention to children within Aboriginal communities. When working with children from Aboriginal families it is imperative that cultural considerations are taken into account, especially the impact of generational trauma, including a child removal history that continues to filter down to current generations. The cultural genocide creates a loss of traditional values, land desecration and loss of identity for Aboriginal people. This can lead to the issues that many in society face but can be more prevalent for Aboriginal people, impacting on children's wellbeing. To address this, the current system needs to work with the Aboriginal community. Every child has a right to learn about their own cultural and spiritual ways at home, in school and in the community. It is important that culture is considered along with a trauma or developmental perspective<sup>viii</sup>.

For children of families who have migrated to Australia or are from a refugee background, there are a number of factors that compound their experience. This can include learning a new language and cultural norms, loss of contact with extended family, friends and community, as well as the burden of facing racial discrimination at school and from the wider community. On top of this these children are likely to have experienced traumatic events in their home country and may have spent time in detention centres<sup>ix</sup>.

To ensure that the needs of children are recognised and prioritised we contend that:

- Magistrates, lawyers and court staff undertake family violence training with an emphasis on the impacts on children.
- Magistrates, lawyers and court staff undertake trauma training and the impacts on brain development and resulting lifetime trajectory
- All children are consulted about their preferred options in relation to access and are considered within all decisions.
- Safe places within court areas are available so children are not subjected to legal processes and argument.
- Family Courts should have in place qualified practitioners that are equipped to represent the best interest of the child and educate parents on the long-term impacts of conflict and trauma on their child's development.
- Abusive parents must undertake an educational program that clearly articulates the impact of family violence on children.
- Processes must be put in place to stop parties manipulating the system and delaying the resolution of family law matters, effectively perpetrating power and control through the court system.

We also support the Womens Legal Services Australia 5 step plan to keep women and children safe in family law, which includes:

- Place domestic violence experts in family court registries to undertake risk assessments.
- Introduce legislative protections to stop a victim being directly cross-examined by their abuser.
- Roll out a mediation model with specialist domestic violence lawyers and social workers.
- Address the barriers in the family law system for women in high risk groups such as women with disabilities, women from regional and rural communities and women in prison.

- Establish a national accreditation and monitoring scheme for family consultants with mandatory training on domestic violence and working with victims of trauma.
- Increase Commonwealth funding to the legal assistance sector, in accordance with the Productivity Commission's 2014 recommendations in its report – Access to Justice Arrangements.

Family violence has a devastating impact on its victims and the broader community. To move forward it is imperative that all family law professionals commit wholeheartedly to understanding children's experience of family violence. It is vital that there is a genuine commitment to upholding the best interests of children. The right of children to be safe **must** trump the rights of parent's custody or access to their children.

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<sup>i</sup> Kitzmann, KM, Gaylord, NK, Holt, AR & Kenny, ED (2003), 'Child witnesses to domestic violence: a meta-analytic review', *Journal of Consulting and Clinical Psychology*, vol. 71, issue 2, pp. 339- 352

<sup>ii</sup> Perry, BD (2005). 'Maltreatment and the developing child: how early childhood experience shapes child and culture', paper presented to The Margaret McCain Lecture Series, London, Ontario, Canada

<sup>iii</sup> Edelson, JL (1999) 'Children's Witnessing of adult domestic violence', *Journal of Interpersonal Violence*, vol 14, issue8, pp. 839- 870

<sup>iv</sup> Laing, L (2000), Children, young people and domestic violence, issues paper, no. 2, Australian Domestic & family Violence Clearinghouse Sydney

<sup>v</sup> Carpenter, GL & Stacks, AM (2009), 'Developmental effects of exposure to intimate partner violence in early childhood: A review of the literature, *Children and Youth Services Review*, Vol. 31, pp. 831-839

<sup>vi</sup> Shonkoff, J. P., Garner, A. S., Siegel, B. S., Dobbins, M. I., Earls, M. F., McGuinn, L., et al. (2011). The lifelong effects of early childhood adversity and toxic stress. *Journal of the American Academy of Pediatrics* , 232-246

<sup>vii</sup> Barker, J., Kolar, V., Mallett, S., & McAurthur, M. (2013). *What works for children experiencing homelessness and/or family domestic violence Part 1: Literature Synthesis*. Melbourne: Hanover Welfare Services.

<sup>viii</sup> Atkinson. J. "Children at Risk: Developmental Trauma within A Complex Trauma Environment." (pdf, 8.16 MD) <http://earlytraumagrief.anu.edu.au/files/JudyAtkinsonACATLGN2014.pdf>

<sup>ix</sup> What about the children: the Voices of Culturally and Linguistically Diverse children affected by domestic violence. Immigrant Women's Domestic Violence Service