



## Introduction

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Women's Legal Service Inc. (WLS) is a specialist community legal centre providing legal and welfare advice and assistance to women in Queensland. We have operated for over 30 years and assisted over 60,000 women. In the last financial year (2013/14), we assisted over 3,200 women. Forty percent (40%) of our clients are from rural, regional and remote areas of the State. We provide assistance in the areas of family and domestic violence (FDV), family law, child support and some child protection. Despite the services offered there are at least a further 24,000 requests per year for assistance that we are unable to meet.<sup>1</sup>

WLS has a particular interest in the intersection of legal processes and the law and women's experience, as well as in issues of violence against women and children. Our submission is informed by the direct experience we have with women providing legal advice, representation and welfare support.

Women often approach WLS, either at a time when they are thinking about separation or when they have separated from their partner. Separation is well recognised as the most dangerous time for women and children escaping violence. However, danger for women and children peaks again when women take steps post-separation towards permanent separation e.g. the finalisation of family law matters that can take place 12-18 months after separation.<sup>2</sup> Women are therefore involved in legal proceedings in the Magistrates courts, Children's and Family Law Courts and possibly criminal matters, at a time when they and their children are at most risk.

WLS welcomes the opportunity to provide a response to the Human Rights Commission about domestic violence and children. It is an area we have a particular interest in because it is an issue of high concern to our clients. Women often make a decision to separate when they realise the effect of the violence on their children or when they have knowledge of their children being directly abused.

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<sup>1</sup> WLS recently conducted an independent evaluation by the Ithaca Consulting Group of its Statewide telephone line and evening advice service and it was found that we were missing 2000 telephone calls for help on average each month and 90% of these were individual callers (rather than women telephoning repeatedly).

<sup>2</sup> Hardesty Jennifer L. "Separation Assault in the Context of Post-divorce Parenting: An Integrative Review of the Literature" Violence against Women 2002 quoting Ellis (1992) at p. 600.

## Some overarching comments:

### Queensland Taskforce on domestic violence

The Queensland Taskforce on domestic violence, under the leadership of Dame Quentin Bryce Report delivered in February 2015 its report *Not Now Not Ever: Putting an end to domestic and family violence in Queensland*. The issue of children was considered in particular in Section 5.7, strategies to achieving respectful and health relationships in 6.3.3 and Recommendations 24 – 29 that specifically deal with education programs for primary and secondary school children.

### Recommendation 1

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**That the Human Rights Commission consider the *Not Now Not Ever: Putting an end to domestic and family violence in Queensland* report delivered to the Queensland Government in February 2015 and in particular the provisions, strategies and recommendations dealing with children and early intervention.**

### The need to recognize the important role of the legal system in perpetrator accountability and setting/reflecting community standards

*“It is essential as a community we shift our focus on domestic violence onto offender accountability.”<sup>3</sup>*

The issue of violence against women and children in Australia occurs at alarming rates and is one of the greatest human rights challenges that we as a country face.

The statistics are startling.

Violence against women and children in Australia is extensive and occurs at unacceptably high rates. One in three women experience violence and one in five women experience sexual violence in their lifetime. One in four children witness violence in their home.<sup>4</sup>

In Queensland, reported occurrences of FDV have increased in the last four financial years; there was a 7% increase in reports to the police during 2010/11, a 9.6% increase during 2011/12, a 10.8% increase during 2012/13 and a 2.7% increase during 2013/14. As the Queensland Taskforce on Domestic Violence noted, on average, there are 181 incidents reported to the police every day in

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<sup>3</sup> *Not Now, Not Ever Putting an End to Domestic and Family Violence in Queensland*, a Report of the Queensland Domestic Violence Taskforce 2015 respondent to Taskforce p. 217.

<sup>4</sup> ABS 2006.

Queensland.<sup>5</sup> And we know these are just the tip of the iceberg, as victims are often reluctant to report partner violence.<sup>6</sup>

Intimate partner violence was found to be the main contributor to death and disability to women aged 15 to 44 in Victoria.<sup>7</sup>

Domestic violence claims the lives of more Australian women under 45 than any other health risk, including cancer.<sup>8</sup>

Every three hours, a woman is hospitalised from domestic violence.<sup>9</sup>

Aboriginal and Torres Strait Islander women are up to 35 times more likely to be hospitalised.<sup>10</sup>

In Queensland, the Domestic Violence and Family Violence Death Review Unit reports that approximately 45% of all homicides between 1 January 2006 and 31 December 2012 occurred within an intimate partner or family relationship.<sup>11</sup>

This year on average, two women per week in Australia have been killed by their partner or ex-partner. Fifteen people so far this year have been killed in Queensland alone, including two unborn children.

Domestic violence is not a “post code” crime and affects all socio-economic, cultural and religious groups.

This is not an issue that can be solved by action by governments alone. Every individual has a role to play in eliminating violence against women and the Queensland Domestic Violence Taskforce Report, *Not Now Not Ever* recognised this and challenged community members, individuals, faith communities, community organisations and sporting clubs to reflect on their behaviour and the behaviour they witness, and to speak out against attitudes that support FDV.<sup>12</sup>

Institutions such as the Family Law Courts, Child Safety, Legal Aid, the Child Support Agency and family dispute resolution services interact with high numbers of victims and perpetrators of violence in their respective client bases, and are therefore instrumental in the way violence against women

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<sup>5</sup> *Not Now, Not Ever Putting an End to Domestic and Family Violence in Queensland*, a Report of the Queensland Domestic Violence Taskforce 2015 p. 47.

<sup>6</sup> Ibid at p.75 quoting Australian Bureau of Statistics (ABS) ‘Action Taken in Response to Partner Violence’, Personal Safety Survey, Australia 2012.

<sup>7</sup> <http://www.vichealth.vic.gov.au/Programs-and-Projects/Freedom-from-violence/Intimate-Partner-Violence.aspx>.

<sup>8</sup> Ibid.

<sup>9</sup> Pointer S & Kreisfeld R (2012) Hospitalised interpersonal violence and perpetrator coding, Australia, 2002-05. Injury research and statistics series no. 77.

<sup>10</sup> Australian Institute of Health and Welfare (2006) Family Violence among Aboriginal and Torres Strait Islander peoples.

<sup>11</sup> Op cit. *Not Now, Not Ever Putting an End to Domestic and Family Violence in Queensland* at p. 76.

<sup>12</sup> Ibid. p. 16.

and children is considered and acted upon in the public sphere. These institutions send powerful messages to the community in the decisions they make every day about not excusing violence, prioritising safety, supporting victims of violence and making perpetrators accountable. It is important therefore that their role in stopping violence against women and children and preventing its continuation is acknowledged.

Accountability is critical and the courts have a significant role in promoting perpetrator accountability in the kinds of orders they make, ensuring as far as possible they do not expose adult victims and their children to ongoing violence, abuse, threats and intimidation.

## Recommendation 2

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**That relevant courts and legal policy makers understand the important role of the family law system in ensuring women and children’s long term safety from FDV post separation and where possible, they participate in multi-agency multi-disciplinary community integrated responses (coordinated community responses) to domestic violence.**

### What are the surveillance and data gaps?

### The Family Law Council’s current reference should include the FDV court system

The Family Law Council holds a current reference considering the intersection of child protection and family law. This is an important topic. We believe that the opportunity should have been taken up to consider the common intersection between family law, child protection and the FDV court system<sup>13</sup> and how the FDV court system could better interact and collaborate with these other two court systems.

## Recommendation 3

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**That the Human Rights Commission support a recommendation to the Federal Attorney-General to expand the Family Law Council’s current terms of reference considering the intersection of family law and child protection to include the FDV system.**

## Recommendation 4

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**That the Family Law Council’s expanded terms of reference include a consideration about how the FDV system could better interact and collaborate with the Family Law Courts and the children’s courts including but not limited to a consideration of:**

- **how evidence/better evidence of FDV could assist court decision-making;**

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<sup>13</sup> Although noting that some of our clients are also involved in the criminal court jurisdiction (perhaps about breaches of protection orders or other issues), and a myriad of other legal and quasi legal agencies. Eg. Centrelink, Child support Agency, FDR services.

- the making of domestic violence protection orders (DVOs) that include children and their impact on family law and children’s court orders;
- any issues about consistency between DVOs and family law orders;
- whether there were any ideas that would assist the better operation, improvement or encouragement of the use of S. 68R and S. 68T of the Family Law Act (provisions that allow the FDV courts during DVO proceedings to suspend, amend, discharge or vary family law orders allowing contact between the perpetrator and children) especially in urgent/priority matters; and
- how each court system could share information and work in a more integrated way.

## Resources

In 2008, it was estimated that the expenditure on responding to FDV in Queensland was \$111 million.<sup>14</sup> This figure is projected to increase. Although we exist in a tight fiscal environment, there is a significant cost to the community by **not** appropriately responding to FDV.<sup>15</sup> The investment for government is worthwhile; as it has been shown in the KPMG Report that for every woman whose experience of violence can be prevented there is a cost saving of approximately \$20,766 across all affected groups in society.<sup>16</sup>

It is also clear that public education campaigns and media reports of FDV increase awareness about violence in the community, but as a result of increased awareness, rates of reporting FDV will increase before they begin to decrease. Increased reporting rates can be a result of greater awareness of the issues and a greater confidence in getting a positive community response.<sup>17</sup>

It is therefore essential that greater resources be dedicated to frontline services in order to respond to this increased demand.

## Recommendation 5

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**That greater resources be dedicated to frontline FDV service delivery, including legal service delivery, especially in light of the heightened awareness of the issue in the community and in light of the Federal Government’s recent announcement to fund a \$30 million community awareness campaign on the issue.**

## Recommendation 6

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**That increased resourcing is made for services that provide direct therapeutic assistance and support to children and that these services work from a framework that understands the overlap and inter-relationship between violence against women and violence towards children.**

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<sup>14</sup> Ibid.

<sup>15</sup> KPMG, *The Costs of Violence Against Women and their Children*, a Report prepared for the National Council to Reduce Violence against Women and their Children, March 2009.

<sup>16</sup> Ibid.

<sup>17</sup> Liz Forsyth, Partner KPMG at the WLS Thought Leader Forum 20<sup>th</sup> May 2014 at Queensland Parliament House.

## Children's safety is inextricably linked to women's safety

There is a tendency for the legal system to view violence against women and violence towards children as two separate and distinct issues.

*"This time I rang the police, and it was the first and last time I ever did, the response basically, who cares. It's his house, he can do what he wants and they didn't even care that I was left stranded on the road with my children. I had to ring my sister to come get us."*<sup>18</sup>

As the Benevolent Society highlights in their *Social Issues Snapshot: The impact of domestic violence on children*,<sup>19</sup> safe outcomes for women and children who live with domestic violence are inextricably linked:

*Children's experiences of domestic violence are extensive and complex. They include witnessing or being exposed to violence, being the victim of direct abuse, being injured while trying to intervene, and exposure in utero. Research show that the severity of the impact on children is similar regardless of whether they witness violence or experience physical violence themselves... Violence towards children (or threats of violence) is also a strategy used by perpetrators to exert control over their partner or ex-partner and to undermine their parenting and the mother-child relationship. For mothers, such strategies create feelings of helplessness around protecting their children.*

*Children's safety and emotional well-being are directly linked to the safety of their mothers.*

*Addressing the needs of the mothers strengthens the mother-child relationship, as it supports mothers to respond effectively to their child, which in turn reduces the impact of the trauma of domestic violence on the child.*

This interconnection was also highlighted in the Taskforce report:

*"Apart from the widely acknowledged negative impact of domestic and family violence on children, the co-occurrence of domestic and family violence and child protection concerns has been well established. The Queensland Child Protection Commission of Inquiry highlighted domestic and family violence as a key risk factor for child abuse and neglect. A 2009 Department of Child safety Report found that 35% of household with substantiated child protection concerns had two or more incident of domestic and family violence with the previous year....."*

*Submissions to the Taskforce also reflect critiques of some attitude within the child protection field that can be counter-productive or indeed dangerous, when dealing with clients in domestic and family violence context. This includes attitudes which blame the victim (usually the mother) or hold her responsible for keeping the children safe with insufficient attention paid to making the partner accountable for their violence. **A focus on the safety of children to the exclusion of their primary***

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<sup>18</sup> Not Now Not Ever p.251

<sup>19</sup> Originally published 2012 and re-printed July 2013.

*carer has also been a criticism of the child protection response. The fear of children being taken away is often cited as a major barrier to seeking help, particularly for Indigenous victims of domestic and family violence.*"<sup>20</sup>

No matter how collaborative systems are, no matter how much information they share and goodwill they possess towards each other, the legal and justice system will put women and children in danger if they:

- concentrate their effort only on the investigation of direct child abuse and neglect whilst ignoring FDV;
- only recognise or acknowledge physical abuse;
- fail to recognise or acknowledge post-separation violence and believe that FDV stops when separation occurs or protection orders are made;
- fail to assess for, or understand power and control dynamics;
- fail to view assessment of risk of FDV as a specialised field requiring assessment by experts who have clinical experience in working with victims and children;
- fail to assess and make determinations about high risk matters and 'red flag' concerns;
- fail to recognise and assess that FDV represents an attack on the mother-child relationship; and
- fail to recognise, assess, or disregard the long term impacts on children's health and wellbeing when placing children with perpetrators of violence, or making orders that allow for their continued exposure to violence/abuse.

Children's exposure to FDV is a significant issue and it is recognised as a form of child abuse.<sup>21</sup> Research has shown fairly definitively that 'violent households are significantly more likely to have children than non-violent households and that violent households have a significantly higher proportion of children aged five years and under'.<sup>22</sup>

## Recommendation 7

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**That there is an urgent need to recognise, at every decision-making level in relevant legal processes, that children are at significant risk where there is violence towards women caring for them. The best chance for a child's recovery when there is FDV is to provide long-term safety to**

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<sup>20</sup> Not Now Not Ever p.239

<sup>21</sup> Edelson, Shin and Amendariz "Measuring Children's Exposure to Domestic Violence: The Development and Testing of the Child Exposure to Domestic Violence (CEDV) Scale (2008) 30 Children and Youth Services Review 502-521; C Humphreys, Domestic Violence and Child Protection: Challenging Direction for Practice Issues Paper 13, Australian and Domestic and Family Violence Clearinghouse, Sydney 2007 and M Flood and L Fergus, *An Assault on Our Future: The Impact of Violence on Young People and their Relationships*, White Ribbon Foundation, 2008, p. 8.

<sup>22</sup> Easteal P and Grey D "Risk of harm to children from exposure to family violence: Looking at how it is understood and considered by the judiciary" (2013) 27 Australian Journal of Family Law at p.59 citing K Richards, Children's Exposure to Domestic Violence in Australia, Trends and Issues in Crime and Criminal Justice No 419, Australian Institute of Criminology, 2011.

the victims of violence to support and strengthen mothers to better provide for the emotional needs of children.

## Recommendation 8

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**That legal systems and legislative reform need to be built around the needs of its most vulnerable users.**

### Homicide

In extreme cases, children can lose a parent to homicide as a result of FDV and this has devastating and lifelong impacts on them; in effect they lose both parents – one to the homicide and the other to the criminal justice system and processes. It is impossible to understand the grief, trauma, emotional aftermath and confusion such an event has on children.

The sad reality is that FDV can also result in child homicide. There have been a number of recent high profile cases that have highlighted the motive of killing a child as revenge against the mother<sup>23</sup> (a final and definitive act of power and control).

*“For the past two years various authorities have been made aware of our fears for the safety of the children and unfortunately no one would listen. We feel the judicial system has failed our family and will continue to fail other families until someone in authority starts to take action.” (Darcey Freeman’s uncle, media statement).<sup>24</sup>*

Jaffe et al argue there is little research that has identified the connection between adult domestic violence and child homicide.<sup>25</sup>

However, there is some research that indicates that child homicides are often preceded by a family history of child abuse, prior agency involvement and domestic violence.<sup>26</sup> Jaffe et al’s review of the literature indicates that children living in homes with domestic violence may be at risk of homicide, although the risk for lethality may not appear obvious in some cases due to the absence of a history of child abuse.<sup>27</sup>

The researchers above considered 17 domestic violence death review committee reports in the United States and Canada and found that children are at risk of being killed in homes where there is

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<sup>23</sup> The case of Luke Batty who was killed in 2014 and the case of Charles Mihayo <http://www.theage.com.au/victoria/killer-dad-charles-mihayo-dressed-up-filmed-daughters-before-murdering-them-court-told-20141105-11h7u6.html> are examples.

<sup>24</sup> Mornings with Jon Faine, Abc local radio, Melbourne, 5<sup>th</sup> February 2009 quoted in Kirkwood D Dr and McKenzie M (2013) *Filicide in the context of parental separation* 27 AJFL 78 at p.88.

<sup>25</sup> Jaffe Peter G., Campbell Marcie, Hamilton Leslie HA, Juodis Marcus *Children in danger of domestic homicide*, Child Abuse and Neglect 36 (2012) 71-74.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid. p. 72.



domestic violence. They note that what is not clear is the potential risk factors that may indicate lethal risk for a child. As children are not always physically attacked or directly abused in cases of domestic violence homicide, there may be different risk factors that may contribute to child homicide. They recommend building on the existing literature of FDV risk factors for adults deaths to identify factors specific to the risk of lethality for children.<sup>28</sup>

The issue of child deaths as a result of domestic violence is an issue of concern for Queensland. According to the Queensland Child Death Case Review Committee (CDCRC) in 2012/2013, domestic violence was the second most common parental and family issue identified in the child deaths investigated.<sup>29</sup> Child deaths were investigated at this time only if the child was a child known to Child Safety in the three years prior to their death.<sup>30</sup>

Research by Women's Aid Federation in the UK also supports these concerns. Their research highlighted the failure of child protection agencies to identify risk to children when the mother was a victim of domestic violence. Their research considered the deaths of children during post-separation contact arrangements<sup>31</sup>.

We support the recommendation by Jaffe et al for the development of FDV child risk factors. This recommendation has also been supported in Australia by Dr Deborah Kirkwood and Mandy McKenzie<sup>32</sup>

The prevention of child homicide should be a matter of huge public policy concern and should be of critical importance to both the child protection and family law systems because of the high levels of families affected by FDV that use and interact with these legal systems at a time of increased risk.

## Recommendation 9

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**That the Family Law, children and DV Courts introduces a FDV risk screening and assessment process across all courts that can be shared across jurisdictions and that this is developed with acknowledged experts in FDV.**

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<sup>28</sup> Ibid. p. 73.

<sup>29</sup> Queensland Child Death Case Review Committee: Annual Report 2012-2013  
[http://www.cdrc.qld.gov.au/pdf/reports/annual\\_report\\_2012-2013/CDCRC-Annual-Report-2012-13.pdf](http://www.cdrc.qld.gov.au/pdf/reports/annual_report_2012-2013/CDCRC-Annual-Report-2012-13.pdf)

<sup>30</sup> More updated statistics are unavailable because of a change to the way child deaths are investigated in Queensland. Following a recommendation of the Carmody Inquiry, they are intra-departmental and reports are given to the chief executive of the department and to our knowledge are not publically available.

<sup>31</sup> Kirkwood D Dr and McKenzie M (2013) *Filicide in the context of parental separation* 27 AJFL 78 at p.89

<sup>32</sup> Kirkwood D Dr and McKenzie M (2013) *Filicide in the context of parental separation* 27 AJFL 78

## Recommendation 10

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**That experts with acknowledged expertise in FDV be engaged to develop the identification of specific risk of lethality factors for children, building on the existing literature of FDV risk factors for adult deaths and specifically in circumstances where there are post separation family law orders or arrangements.**

### Co-occurrence between FDV and children's exposure and need for a holistic response

The rate of co-occurrence of Australian children experiencing *physical* abuse and being exposed to domestic violence, and experiencing *sexual* abuse and being exposed to domestic violence have been estimated at 55 percent and 40 percent respectively.<sup>33</sup> Bedi and Goddard state that 'families in which child abuse and intimate partner violence co-occur clearly represent a significant proportion of those in which either is present'<sup>34</sup>.

These statistics exemplify that children's exposure to FDV may be one of the types of violence/abuse present in a family and it is important to conduct a full assessment that considers all the dynamics in a holistic way.<sup>35</sup>

### Reproductive coercion and pregnancy risk

Emerging research has also highlighted the prevalence of reproductive coercion and coerced pregnancy experienced by women in abusive relationships, indicating that pregnancies themselves, and the resulting children, are deliberate strategies of power and control by the male perpetrator.<sup>36</sup> Reproductive coercion is the interference with a woman's decision-making and access to options regarding reproductive health choices.<sup>37</sup> This behaviour manifests in a variety of ways including limiting access to contraception and the negotiation of its use, compromising the ability to provide

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<sup>33</sup> Richards, Kelly *Children's Exposure to Domestic Violence in Australia* Trends and Issues in Crime and Criminal Justice in Australia No. 419 quoting Bedi and Goddard.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Elizabeth Miller, Beth Jordan, Rebecca Levenson and Jay G. Silverman, 'Reproductive Coercion: Connecting the Dots between Partner Violence and Unintended Pregnancy' (2010) 81 *Contraception* 457; Elizabeth Miller, Michele Decker, Heather McCauley, Daniel Tancredi, Rebecca Levenson, Jeffrey Waldman, Phyllis Schoenwald and Jay Silverman, 'Pregnancy Coercion, Intimate Partner Violence and Unintended Pregnancy' (2010) 81 *Contraception* 316; Heike Thiel de Bocangra, Daria P. Rostovtseva, Satin Khare and Nita Godhwani, 'Birth Control Sabotage and Forced Sex: Experiences Reported by Women in Domestic Violence Shelters' (2010) 16(5) *Violence Against Women* 605.

<sup>37</sup> Elizabeth Miller, Beth Jordan, Rebecca Levenson and Jay G. Silverman, 'Reproductive Coercion: Connecting the Dots Between Partner Violence and Unintended Pregnancy' (2010) 81 *Contraception* 457; Linda Chamberlain and Rebecca Levenson, *Addressing Intimate Partner Violence, Reproductive and Sexual Coercion* (2012) *Futures Without Violence* <  
[http://www.futureswithoutviolence.org/userfiles/file/HealthCare/reproguidelines\\_low\\_res\\_FINAL.pdf](http://www.futureswithoutviolence.org/userfiles/file/HealthCare/reproguidelines_low_res_FINAL.pdf)>.

or withdraw consent to intercourse, forced sex, limiting access to abortion or pregnancy support services, and the use or threat of physical, sexual and psychological violence if a woman does not fall pregnant or refuses to continue with a pregnancy.<sup>38</sup> Coerced pregnancy is a consequence of reproductive coercion where a pregnancy is deliberately intended or used by the perpetrator of violence as a tool of control over the woman.<sup>39</sup> Restricting a woman's reproductive autonomy is a means to elevate her dependency upon the perpetrator during the pregnancy, but also through establishing a lifelong connection with him as co-parents.<sup>40</sup>

Pregnancy raises a woman's risk of experiencing physical violence and abusive behaviour: potentially causing physical harm to the foetus or physiological side-effects of elevated stress in-utero.<sup>41</sup> It must be noted and understood that children resulting from reproductive coercion and coerced pregnancy have the heartbreaking experience of being intended as a further tool of control, manipulation and leverage in their father's violence against their mother.

## Family Reports

The high correlation between child abuse and FDV underscores the need for experts in FDV to make family assessment reports in the Family Law Courts.

Women's Legal Services Australia (WLSA) has been aware of the poor quality of some of these assessment reports for some time and has called for specific training about FDV and accreditation for family report writers.

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<sup>38</sup> vii Shane M. Trawick, 'Birth Control Sabotage as Domestic Violence: A Legal Response' (2012) 100 California Law Review 721; Elizabeth Miller, Beth Jordan, Rebecca Levenson and Jay G. Silverman, 'Reproductive Coercion: Connecting the Dots Between Partner Violence and Unintended Pregnancy' (2010) 81 Contraception 457; Planned Parenthood, 'Intimate Partner Violence and Reproductive Coercion' (Fact Sheet, Planned Parenthood Federation of America, Inc. August 2012); Rebekah E. Gee, Nandita Miltra, Fei Wan, Diana E. Chavkin and Judith A. Long, 'Power Over Parity: Intimate Partner Violence and Issues of Fertility Control' (2009) 201 American Journal of Obstetrics and Gynecology 148; Elizabeth Miller, Michele Decker, Heather McCauley, Daniel Tancredi, Rebecca Levenson, Jeffrey Waldman, Phyllis Schoenwald and Jay Silverman, 'Pregnancy Coercion, Intimate Partner Violence and Unintended Pregnancy' (2010) 81 Contraception 316; Belinda Luscombe, Help for Women Who are Forced to Get Pregnant (31 August 2010) Time < <http://content.time.com/time/health/article/0,8599,2014901,00.html>>; Amanda Marcotte, Reproductive Coercion: A Widespread Form of Domestic Violence Supported by Anti-Choice Legislation (2 June 2013) RH Reality Check: Reproductive and Sexual Health and Justice News, Analysis and Commentary < <http://rhrealitycheck.org/article/2013/06/02/reproductive-coercion-a-widespread-form-of-domestic-violence-with-direct-ties-to-anti-choice-legislation>>.

<sup>39</sup> viii Elizabeth Miller, Michele Decker, Heather McCauley, Daniel Tancredi, Rebecca Levenson, Jeffrey Waldman, Phyllis Schoenwald and Jay Silverman, 'Pregnancy Coercion, Intimate Partner Violence and Unintended Pregnancy' (2010) 81 Contraception 316.

<sup>40</sup> Amanda Marcotte, Reproductive Coercion: A Widespread Form of Domestic Violence Supported by Anti-Choice Legislation (2 June 2013) RH Reality Check: Reproductive and Sexual Health and Justice News, Analysis and Commentary < <http://rhrealitycheck.org/article/2013/06/02/reproductive-coercion-a-widespread-form-of-domestic-violence-with-direct-ties-to-anti-choice-legislation>>.

<sup>41</sup> Lorraine Bacchus, Gill Mezey, Susan Bewley, 'A Qualitative Exploration of the Nature of Domestic Violence in Pregnancy' (2006) 12(6) Violence Against Women 588; Pregnancy Advisory Service, 'Unplanned Pregnancies in Violent or Abusive Relationships' (Fact Sheet, The Royal Women's Hospital Victoria Australia, February 2011).

Family reports are highly influential in both the outcome achieved in the courts and the parties' ability to obtain legal aid funding. For these reasons they may result in major detrimental impacts on women's and children's lives when they minimise the violence or miss it altogether. Unfortunately, we remain concerned that voluntary and minimum standards will be insufficient.

For a recent example of poor report writer practice that highlights substantial and systemic concerns in the context of child sexual abuse, please see the report by Background Briefing "*In the child's best interest*".<sup>42</sup>

## Recommendation 11

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**That an accreditation system for family assessment report writers be developed to improve standards and promote consistency in the assessment of FDV in the family law system.**

### **Is a forensic approach the best way to obtain evidence of FDV/abuse /trauma?**

Evidence of FDV/abuse/trauma ought to be obtained through specialised screening and assessment conducted by experts who have long term practical and clinical experience in working with victims of violence.

Women's Legal Services Australia (WLSA) has called for research into current assessment practices in the family courts (and probably in the children's courts) and whether they are appropriately delivering the evidentiary outcomes required.

WLSA believes for the court and other decision-makers to make the best decisions they need the best evidence.

WLSA therefore supports academic research being undertaken as a matter of urgency that specifically considers assessment practices in family law (including in family disputes resolution and other out of court environments) including a consideration of the following-:

- how matters of family violence and abuse are assessed in the family law system;
- whether the current approach is the best approach;
- whether evidentiary outcomes are being met by current approaches;
- the experience and expertise required to work in this area;
- whether the use of other or additional experts such as family violence experts would assist the court to make decisions in the best interests of children;
- the use of psychiatric evidence and whether it is being utilized appropriately and/or over-prescribed in family violence and abuse matters;
- consideration be given to "expertise" in child sexual abuse cases and whether current approaches give sufficient weight to all of the dynamics that are occurring in the family,

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<sup>42</sup> <http://www.abc.net.au/radionational/programs/backgroundbriefing/in-the-childs-best-interests/6533660>

- including the inter-relationship between violence against women and violence against children;
- any recommendations for change.

We are aware of current research being undertaken by the Griffith University and Queensland University of Technology about how family violence is dealt with in family reports. This is a small grant that was funded by the Australian Institute of Judicial Administration. Any research should obviously build on current research already undertaken or being undertaken in the field.

Screening tools which are not specialised may not be effective. For example, we understand that a tool for assessment of harm of children used in Queensland child protection matters does not contain specific references to FDV. Instead it frames violence issues as “relationship issues”, which may mutualise violence.

Assessment reports should be undertaken by FDV experts to properly obtain high quality evidence of FDV or abuse or other trauma. This approach is intended to ensure that evidence of FDV is not misconstrued or overlooked where it is not specifically sought and appropriately addressed by a report writer.

## Recommendation 12

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**That FDV expert reports be utilised as a matter of routine assessment in family law for families where there are allegations of FDV.**

## Recommendation 13

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**That child protection/ safety agencies assessment of harm tool be evaluated to ensure that accepted risk factors for FDV and children’s exposure to FDV are included, and if not, that these be developed with acknowledged experts in FDV.**

## Recommendation 14

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**That academic research being undertaken as a matter of urgency into assessment practices in in family law (including in family disputes resolution and other out of court environments such as child protection) including a consideration of the following-:**

- how matters of family violence and abuse are currently assessed in the family law system;
- whether the current approach is the best approach;
- whether evidentiary outcomes are being met by current approaches;
- the experience and expertise required to work in this area;
- whether the use of other or additional experts such as family violence experts would assist the court to make decisions in the best interests of children;
- the use of psychiatric evidence and whether it is being utilized appropriately and/or over-prescribed in family violence and abuse matters;

- **consideration be given to "expertise" in child sexual abuse cases and whether current approaches give sufficient weight to all of the dynamics that are occurring in the family, including the inter-relationship between violence against women and violence against children;**
- **any recommendations for change.**

**That this research should build on any current research being undertaken in the field including the current research by Griffith University and Queensland University of Technology into how family violence is dealt with in family reports in family law funded by the Australian Institute of Judicial Administration.**

### **Learnings from FDV deaths to inform systems reform**

Some States and Territories have FDV death review committees that consider FDV deaths and make recommendations about systems reform. However, not all States and Territories have death reviews, and there are a variety of different models. For example, in Queensland, the FDV death review unit consists of one person in the coroner's office.

The current State-based approach to FDV death review means that there are a number of gaps, so at a national level, we do not have a comprehensive knowledge of FDV deaths in Australia.

There are also issues with federal agencies being adequately addressed in the State-based reviews and doubt surrounding whether the right questions are being asked.

### **Recommendation 15**

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**That a national approach to FDV deaths (both adults and children) be implemented to collate data and investigate system failure, that is publically accountable, able to make recommendations, and act on these learnings in a timely manner, building on the existing FDV review committees that exist at a State level.**

### **Recommendation 16**

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**That protocols be established between State FDV death review bodies and responsible Federal agencies to ensure identified systemic issues with Federal agencies and systems are properly exposed and adequately addressed, if they are not already in place.**

## What are the outcomes for children of public policy approaches and educations campaigns targeting family and domestic violence?

### The family law system

*"[The magistrate] seemed to be more concerned about the respondent's access to his daughter than [my client's] and her daughter's safety...the magistrate ordered both parties outside to organize some parenting arrangements."<sup>43</sup>*

There are a range of reasons why women who experience FDV find it difficult for their experiences of violence to be heard in the family law system. At worst this leaves them (and their children) exposed to further violence through the family law system. These reasons can include a problem in proving the violence to the satisfaction of the legal system. There are systemic barriers that impede a woman's ability to achieve this including:

- a failure by the police apply for protection orders or take action in relation to breaches of protection orders;
- a failure of child protection systems to properly investigate or be resourced to do so;
- a lack of understanding by professionals of FDV dynamics and the impact on victims (professionals can miss coercive and controlling behaviours);
- a failure by professionals within the system to understand the relationship between violence against women and violence against children;
- lack of Legal Aid and legal representation;
- fragmented and disjointed systems; and
- community services that are under-resourced and over-stretched.

Despite the extent of FDV in the wider community and in the family law system itself, the dominant discourse in research, policy and practice relates to high conflict families, common couple violence or separation instigated violence. The emphasis on 'conflict', separation violence and mutuality can direct attention away from issues of safety and risk.

FDV can be minimised in family law practice as being an isolated, uncharacteristic incident caused by the distress of a separation, rather than as a risk marker for severe or even lethal violence in the context of a pattern of historical abuse. Violence towards the mother can be assessed as separate from issues of risk and safety for the children. For example, it can be regarded that the perpetrator is a bad husband, but a good father. Despite FDV being highly relevant to the determination of parenting orders, its importance can be minimised in the context of parenting.

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<sup>43</sup> *Not Now, Not Ever* p.269

When FDV cases are categorised as high conflict, common couple or as separation violence - the effect on the victim is that the violence is mutualised and the responsibility for stopping the violence and protecting the children is shifted solely onto the adult victims.

In telling research by Patricia Easteal and Dimian Grey<sup>44</sup> in their consideration of 60 family court judgements where the facts included allegations of family violence and exposure to family violence and/or child abuse, it was found that orders for no time or even for only supervised time are not the norm in cases involving allegations of either child abuse or exposure to FDV.

Most of the cases applied the 2006 reforms to the Family Law Act, and only four applied the 2012 reforms. Unsupervised contact was granted in 70% of the cases – a trend that is consistent with research outcomes over the past 15 years. This is consistent with our clients' experiences and the reasons that women seek assistance from our Service – they are concerned primarily about their children's safety post-separation, particularly in relation to family law outcomes. These concerns are ongoing despite the changes to the Family Law Act in 2012 that clearly prioritised the protection of children.

## Emphasis on shared parenting and presumption of equal shared parental responsibility (ESPR)

Many women who seek assistance from our Service believe that they must give their children's father, who is the perpetrator of violence, equal time with the children. The presumption of ESPR and emphasis in the Family Law Act on shared parenting was not changed by the 2012 amendments. There is continued confusion in the community between ESPR and equal time. Many members of the community believe there is a presumption of equal time, which is not legally correct.

It is often difficult to prove violence/abuse to the satisfaction of the court because it occurs behind closed doors. Many victims can be unrepresented in court because of limited legal aid and many matters are settled in family dispute resolution (mediation), often without legal assistance. When orders for ESPR are made, the court is required to consider equal time or alternatively, orders for substantial and significant time. The presumption continues to place victims immediately on the back foot in the court or in mediation, resulting in orders/agreements that include ESPR or shared parenting provisions that can:

- expose adult victims of violence and their children to ongoing violence, intimidation and manipulation;
- allow ample opportunities for perpetrators of violence to exert ongoing control and decision-making in the family;
- provide opportunities for the mother's parental authority with the children to be continually undermined; and
- effectively deny many children the therapeutic assistance they require through domestic violence or trauma counselling, because the law requires the permission of the perpetrator and this is often refused or it is unsafe to undertake counselling because the perpetrator will have unsupervised contact with the child.

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<sup>44</sup> "Risk of harm to children from exposure to family violence: Looking at how it is understood and considered by the judiciary" *AJFL*(2013) at 59



Women's Legal Services Australia has long advocated that parenting arrangements should be in the best interests of each child, worked out on a case-by-case basis. The safety and wellbeing of families is too important to not take the time to judge each case on its own merits, especially when domestic violence and abuse are involved.

Women's Legal Services and domestic violence groups advocated strongly against the 2006 changes to the Family Law Act that emphasized shared parenting. There was concern about promoting shared and joint parenting in a legal system where:

- there are so many cases involving FDV and abuse,
- often the victim of violence is not legally supported by Legal Aid,
- Child Safety will not respond if they assess there is a 'protective parent',
- there is no specialised DV risk assessment and
- the adult victims are made to feel unsupported and that they are solely responsible for protecting their child.

## Recommendation 17

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**That the presumption of equal shared parental responsibility and emphasis on shared parenting be removed from the Family Law Act.**

## Recommendation 18

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**That given the paramount consideration of the family law system is the best interests of the child that the Human Rights Commission recommend research be undertaken into whether children who have been exposed to FDV/ abuse/ trauma are being denied their right to direct therapeutic assistance, considering the reasons for this and make urgent recommendation for systemic change.**

### Abuse on Contact training package

*"Fear for the safety of their children is an abusive weapon often used against women who find the courage to separate...The Family Law Act repeatedly brings the woman, and her children, back to the very person they have tried to escape. Even though the possibility of violence is ever present, and against her best judgement, the woman has to hand her children over or visits to her ex-partner. The common belief is that to do otherwise means she will lose all, or part, of her custody."<sup>45</sup>*

Women's Legal Service developed an *Abuse on Contact: Keeping Children Safe on Contact* training program in conjunction with a local domestic violence service (DV Action Centre) and a children's domestic violence service (Carinity-Talera). The training was developed with the assistance of a grant from the Ian Potter Foundation Fund, and the training took place in Brisbane, Toowoomba and the Gold Coast in 2014

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<sup>45</sup> *Not Now, Not Ever* p.271

The target audience involved community, children and generalist workers, with the aim of providing practical skills workers can implement in their day-to-day practice to increase the safety of women and children post-separation. The abuse on contact training package builds on the work of the Service in this area for the last 15 years.

Abuse on contact is harm that occurs when both adult and child victims of family or domestic violence are exposed to ongoing violence post-separation as a result of the legal requirement to comply with family law orders, parenting plans or other agreements that allow or promote time with the perpetrator of the violence. The training traversed the intersection of the legal system and violence towards women and children.

The training included the assessment of domestic violence risk for women and children up to and including lethality. Training to the broader community about FDV risk factors has been a consistent recommendation of international FDV death reviews that underscores the belief that no one sector has the responsibility for responding to FDV and we all must take responsibility. Not all FDV victims will go to specialist FDV services.

The training was also premised on the basis that perpetrating FDV was child abuse and had the same effect on children as direct abuse. Increasing the knowledge in the community about the effect on children of FDV could assist medical and therapeutic assessment of children, as FDV trauma can often be missed.

Legal options and practical tips were also provided that could increase women and children's safety through use of the legal system.

## Sexual abuse of children

WLS has been operating for 30 years and has extensive corporate knowledge about our client's experiences over this time.

We have significant concerns about how this issue is dealt with in the family courts, especially in the last decade. Our service would commonly have clients seeking our advice about this issue however, in the last decade there has been a marked drop off. What might be the reason for this?

- It might be that clients are obtaining an exemplary systemic response and are in no need for our assistance. WLS generally provides assistance to clients when they are not getting a fair and just response from the legal system.
- They are getting legal aid and legal aid is therefore handling all of these matters.
- Perhaps the rates of sexual abuse in the community are falling.

We are not certain of the answer and are unaware of any research on this particular topic that provides some guidance.

However, our concern is that the drop off has been caused by all or some of the following factors:

- An overall hardening of the system's response to these issues being raised by mothers more noticeable since the shared parenting reforms introduced into the Family Law Act in 2006. Mothers are not believed, the system assumes she is lying or the children are making it up<sup>46</sup>.
- Mothers being advised by lawyers to not to raise their concerns unless they have strong independent evidence of the abuse occurring.
- The courts increased propensity to change the living with arrangements for the children on the basis that the mother is emotionally damaging the children by raising and not proving the abuse to the satisfaction of the court.
- Questionable framework and evidence of risk of sexual abuse based on sexual abuse risk reports.
- Assuming that if the mother herself was a victim of sexual abuse during her childhood that she in turn is projecting this experience onto her children.

This results in our clients make unenviable decisions about consenting to orders before trial where the children see the father for shorter periods of time eg. Every second weekend rather than risk having the living with arrangements changed at trial for the children to live with the father fulltime. Mothers are therefore making impossible decisions that involve weighing up exposing their children to the risk of sexual abuse every second weekend vis a vis the risk of the child living with him on a fulltime basis if the matter proceeded to trial.

These clients become stuck between systems and the children suffer and arguably are being exposed to ongoing abuse. Child Safety will not / are reluctant to investigate any claims of sexual abuse of children if the family court is involved. The Police may also be more reluctant to respond thinking the claims are a tactic in a family court hearing. The Family Court itself is not set up to respond appropriately because it does not have an investigatory arm.

### The investigatory gap

Child Safety's reluctance to investigate abuse allegations when family law proceedings are on foot may protect Child Safety's resources by diverting the issue to the Family Law Courts. However, it also perpetuates powerful myths: that women lie about violence and abuse of their children, and they do so to obtain advantage in the Family Law Courts. Unfortunately, it can leave very vulnerable children exposed to ongoing violence and abuse. Separation does not stop violence and abuse. It can be a time of increased danger and risk and can be an opportune time for violence/abuse to be directed at the children who are often having unsupervised contact with the perpetrator. The Family Law Courts do not have an investigatory arm and this means without evidence; they will invariably maintain contact, including significant time arrangements.

### What needs to change?

The ALRC provided a comprehensive summary of the dilemma<sup>47</sup> in the ALRC Family Violence Report. However the following extract summarises the issues:

<sup>46</sup> <http://www.abc.net.au/radionational/programs/backgroundbriefing/in-the-childs-best-interests/6533660>

.....the Commissions are also concerned that the problems outlined above (the investigatory gap) have been identified for many years, that recommendations to deal with them have been made in numerous ways and that, in some locations at least, no solution has been found. The Commissions note the strength of support from stakeholders that this issue be dealt with effectively. In the interests of the children concerned, these problems should not be allowed to persist.

The Commissions are of the view that investigatory services in Family Court cases should be provided by state child protection agencies. Further, there is strength in the proposal of the National Abuse Free Contact Campaign and the National Council of Single Mothers and their Children that there should be a specialist section in state child protection agencies to undertake this work (investigations). This arrangement would have several advantages including:

- drawing on existing child protection expertise;
- providing a dedicated service responsive to the particular needs of Family Courts;
- developing expertise within child protection agencies in the needs of Family Courts;
- providing a resource of people familiar with both systems who can ‘translate’ between the systems and educate participants in both systems; and
- providing a service that is not in competition with resources that need to be devoted to state child protection matters.<sup>48</sup>

The ALRC recommendation regarding the establishment of a specialist agency within Child Safety was dependent on whether the issue could be resolved by MOUs and inter-court and inter-agency protocols. We believe that serious consideration should to be given to the establishment of such an agency as a matter of urgency. It has now been five years since the ALRC considered this issue in their Family Violence Report and they spoke in terms then of the *urgent* need in finding a way to remedy it.

## Recommendation 19

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**That a federally funded agency be established as a matter of urgency within Child Safety to provide investigatory and reporting services to the Family Law Courts in cases involving child abuse (including children’s exposure to FDV).**

## Recommendation 20

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**That a formal, independent, transparent and open investigation take place into the way that child sexual abuse matters are currently being approached and handled in the family law courts.**

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<sup>47</sup> Ibid.

<sup>48</sup> Ibid at paragraph 19.95 and 19.96.

