



16 June 2015

Ms Megan Mitchell
National Children's Commissioner

By email: kids@humanrights.gov.au

Dear Commissioner,

Examination of children affected by family and domestic violence

1. Women's Legal Services NSW (WLS NSW) thanks you for the opportunity to provide comments on the topic of children affected by family and domestic violence, the subject of your 2015 Annual Report.
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims support, care and protection, human rights and access to justice.
3. A significant part of our work is with women with children who have experienced domestic and family violence.

Gendered nature of domestic and family violence

4. While women sometimes perpetrate domestic and family violence, such violence is predominantly perpetrated by men against women and children.
5. Jane Wangmann identifies the quantitative and qualitative differences in the violence experienced by men and women, including the more serious nature of injuries experienced by women.¹
6. Michael Flood's work acknowledges that men are victims of domestic violence, as coercive controlling violence, perpetrated by women, but it is rare. He notes that research shows that much of women's violence against men is reactive to men's

¹ Jane Wangmann, *'She said ... 'He said ... ' Cross Applications in NSW Apprehended Domestic Violence Order Proceedings* (thesis), Sydney, 2009.

violence against women, is a single incident as opposed to a pattern of behaviour and generally does not create fear in the man. In contrast, generally men's violence against women creates fear in women.²

7. It is important to acknowledge that violence to children and mothers is often 'part of the same abuse'.³
8. It is also important to recognise that perpetrators of domestic and family violence often try to undermine and disrupt the mother's relationship with her children and her capacity to parent. This has significant impacts on the mother and the children.
9. This issue is being examined through research undertaken by the Australia's National Research Organisation for Women's Safety (ANROWS).⁴
10. It is particularly important to be aware of this in the context of care and protection proceedings and family law proceedings.
11. This is why a thorough understanding of the nature and dynamics of domestic and family violence is essential. There must be ongoing training in this area for police, court staff, judicial officers, children's court clinicians, family report writers, legal practitioners, those providing counselling to victims and perpetrators, those working in men's behaviour change programs, Family and Community Services and NGO child protection caseworkers and other support services for women and children.⁵
12. Failure to develop a thorough understanding of the nature and dynamics of domestic and family violence may have the unintended effect of sanctioning the continuation of the violence through a court or other official process.
13. We commend the NSW Department of Family and Community Services on the development of its Research to Practice Seminars. The most recent seminar was entitled *Home truths: Rethinking our response to Family Violence*.
14. David Mandel, a speaker at the seminar, advocated for the importance of moving systems to become more domestic violence informed. He argues this involves recognising the perpetrator pattern and making the perpetrator visible; being child centred; and being survivor strength-based.⁶

² See, for example, Michael Flood, 'He hits, she hits: Assessing debates regarding men's and women's experiences of domestic and family violence', presentation for Queensland Centre for Domestic and Family Violence Research, CQ University, 22 June 2012 accessed on 14 June 2015 at: <http://www.noviolence.com.au/public/seminars/michaelflood/michaelflood.wmv>

³ L Radford and M Hester, *Mothering Through Domestic Violence*, Jessica Kingsley Publishers, London, 2006 at 63.

⁴ For example, the ANROWS project led by Dr Rae Kaspiew: Domestic and family violence and parenting: mixed method insights into impact and support needs and ANROWS Research Topic list 1.8: The impact of domestic violence on parenting, with particular attention to the tactics a perpetrator may use to disrupt the mother-child relationship and what helps to heal or strengthen this relationship, accessed on 12 June 2015 at: <http://anrows.org.au/research-program/grants/topic-list>

⁵ For the importance of understanding of the dynamics of family violence, see Lundy Bancroft, Jay Silverman and Daniel Ritchie, *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics*, 2nd edition, SAGE, Los Angeles, 2012

⁶ See also D Mandel, *Child Welfare and Domestic Violence: Tackling the themes and thorny questions that stand in the way of collaboration and improvement of child welfare practice*, accessed on 12 June 2015 at: <http://endingviolence.com/wp-content/uploads/2013/04/VAW-Commentary-Mothers-Domestic->

15. We submit there needs to be a greater understanding and acknowledgment that by supporting mothers experiencing domestic and family violence we are also supporting their children.

Better protections for children in family law

16. It is important that laws and policies adequately protect children from domestic and family violence.

17. We welcomed the 2011 legislative amendments to the *Family Law Act* which saw an expanded definition of family violence and abuse and the prioritising of safety of children over a meaningful relationship with both parents.

18. Exposing children to family violence is included in the *Family Law Act* definition of family violence. 'Exposed' is defined as seeing, hearing or otherwise experiencing family violence.⁷

19. Section 4 of the *Family Law Act 1975* defines 'abuse' to include causing a child to suffer serious psychological harm as a result of being subject to or exposed to family violence.

20. However, elements of the *Family Law Act* continue to put children at risk of harm.

21. The presumption of equal shared parental responsibility and the emphasis on shared parenting continues in the *Family Law Act*.

22. The presumption is not intended to apply in cases of violence and abuse. However, in practice there are many barriers to challenging the presumption. It is often difficult to 'prove' violence / abuse to the satisfaction of the court because it occurs behind closed doors and so there may not be witnesses that can testify.

23. Many victims/survivors may be unrepresented in court because of limited legal aid and many matters are settled in mediation, often without legal assistance.

24. If parties are unrepresented at court, the woman is faced with being directly cross-examined by an alleged perpetrator of violence and having to directly cross-examine the alleged perpetrator. This has the effect of continuing the violence through a court sanctioned process.

25. In such circumstances women may settle on less than satisfactory terms which may have insufficient protections for their children.

26. As every family is unique cases should be decided on a case-by-case basis. The presumption of equal shared parental responsibility should be removed.

27. There also needs to be effective legislative protections for vulnerable witnesses in the *Family Law Act*.

28. We propose that part of a solution is an amendment to the *Family Law Act* to provide protection from being cross-examined by an alleged perpetrator of violence.

[Violence-and-Child-Protection-David-Mandel-September-30-2009-V.22.pdf](#)

⁷ Family Law Act 1975 (Cth) s4AB(3)

29. Similar legal protections exist in State law in criminal jurisdictions for sexual offences, for example, s294A *Criminal Procedure Act 1986 (NSW)*. In such cases, the court appoints a person to ask questions on behalf of the alleged perpetrator.
30. Such provisions in family law matters would provide fairness for all parties involved and increase the focus on what is in the best interest of the child.

If you would like to discuss any aspect of this submission, please contact Liz Snell, Law Reform and Policy Coordinator or myself on 02 8745 6900.

Yours faithfully,
Women's Legal Services NSW



Janet Loughman
Principal Solicitor